The Politics of EU Asylum Policy

A comparative study of decision-making before and after the 'refugee crisis'

Siri Svanemyr Eriksen

Master thesis

June 2017

Department of Comparative Politics

University of Bergen

Abstract

This thesis is concerned with explaining the development of EU asylum policy. The research question – *How did the refugee crisis affect EU decision-making in asylum policy?* – Is answered by deploying a new theoretical framework. Through a comparative case study using qualitative methods such as elite interviews and document analysis, the thesis demonstrates that when the centrality of asylum policy (its salience) increases, we observe restrictions on the political maneuvering of EU institutions, thereby making it harder to find sustainable common solutions.

There is a gap in the literature when it comes to understanding decision-making in the area of asylum policy. By combining elements drawn from a variety of studies of national- and European decision-making, I have developed a new theoretical argument which I call the *Salience Model*. The model is tested through a comparative case study of the decision-making on asylum policy before and after the refugee crisis.

The empirical findings are twofold. First, the autonomy of the Commission to propose legislation depends on salience. When there is low salience, the Commission proposes legislation supporting the rights and safeguards of the asylum seekers, which is also favored by the European Parliament. When salience increases, the Commission is put under political pressure by the Council's member states, resulting in a policy that is more focused on immigration concerns rather than the rights of asylum seekers.

Secondly, the analysis shows that the member states' positions in negotiations vary according to salience. The positions of member states in the Council before the 'refugee crisis' were in accordance with the preferences of the North-Western member states. By contrast, following the 'refugee crisis', all member states have an enhanced interest in pursuing their national political preferences, thereby making it much harder to reach an agreement. In sum, high salience, resulting from the refugee crisis, makes it harder to reach an agreement regarding asylum policy precisely when the importance of reaching such a common solution is greatest.

Acknowledgements

On this day, a year ago, an idea for a master project had started to develop. Now the thesis is finalized, and I am feeling proud over the work I have put in. There are many persons that deserve a thank you for making this project possible.

First and foremost a special thank you to my supervisor, Associate Professor Georg Picot. It has been a great pleasure to be guided by someone with your knowledge. Thank you for the support and thorough guidance in the process of developing this project from its beginning. I would also like to thank the CHAD research group at the Department of Comparative Politics for letting me present my ideas in the early phase, and for giving me useful feedback.

To all the great people at Sofie Lindstrøm; this master project would not have been the same without you. Thank you all for good company, shared frustrations, shared laughs and shared knowledge. Thank you to Andreas for reading parts of my thesis and giving useful feedback, and a special thanks to our barista Philippe! I would also like to thank my dear friends. Thank you for always coming to Bergen to visit me, and for taking me on both big and small adventures. These well needed breaks have given me the energy to have fun while working with the thesis. Thank you!

A special thanks to my family. Thanks to my mom, for always doing everything you can to help me (without exception). Thanks to my sister for giving me useful feedback on this thesis, and for always reminding me that I can do anything I set my mind to. And a special thanks to my brother for reading through parts of this thesis, but most of all for minimizing my worries in so many ways the last years, making the master process so much easier.

Siri Svanemyr Eriksen
Bergen May 2017

TABLE OF CONTENT

List of figures and tables

Figures

Tables

Abbreviations

AFSJ	Area of Freedom, Security and Justice
ALDE	Alliance of Liberals and Democrats for Europe
CEAS	Common European Asylum System
CoR	Committee of the Regions
COREPER	Committee of Permanent Representatives
DG HOME	General Directorate for Migration and Home Affairs
EASO	European Asylum Support Office
ECJ	European Court of Justice
ECR	The European Conservatives and Reformists
ECRE	European Council on Refugees and Exiles
EESC	European Economic and Social Committee
EFD	Europe of Freedom and Democracy
EFDD	Europe of Freedom and Direct Democracy
EP	European Parliament
EPP	European People's Party
EPP-EP	European People's Party – European Democrats
EU	European Union
EUL-NGL	European United Left-Nordic Green Left
G/EFA	Greens/European Free Alliance
GSC	General Secretariat of the Council
GUE/NGL	European United Left/Nordic Green Left
JHA	Justice and Home Affairs
MEP	Member of European Parliament
MSSD	Most Similar Systems Design
NGO	Non-Governmental Organization
NI	Non inscrits/non-attached MEP
PES	Party of European Socialists
QMV	Qualified Majority Vote
S&D	Progressive Alliance of Socialist and Democrats
SEA	Single European Act
UNHCR	United Nations High Commissioner for Refugees
V4	Visegrad 4 Group

1. Introduction

The common asylum policy seen in the European Union (EU) today emanated from five legislative acts adopted through an intergovernmental structure in the early 2000s. The legislative acts were later integrated into the EU formal structure and reformed, a process which were finalized in 2015. For the matter of asylum, that year would turn out to be extraordinary in more reasons than one. Due to conflicts in the Middle-East, the number of migrants crossing the EU borders doubled from previous years, and this was later referred to as the 'refugee crisis'. EU's inability to effectively share the burden between member states created the presumption that the Common European Asylum System (CEAS) was designed only for sunny days. The Commission therefore proposed a new reform of CEAS in 2016, this time without any thorough evaluation of the legislative framework that had recently been implemented. This thesis aims to explain the differences between these two periods of asylum legislation, and to show how the refugee crisis has affected decision-making regarding asylum policy in the EU.

The development of Schengen in the 1980s removed most internal borders between its member states, and without any restrictions for movement across member states, an approach for dealing with asylum seekers entering the EU territory became necessary. With the Amsterdam Treaty and the Tampere Conclusions in 1999 the EU started to work towards a common policy, that eventually would lead to the establishment of four legislative acts that today form the cornerstones of CEAS. The core of the asylum policy is the Dublin III regulation establishing rules by which a member state is responsible for assessing asylum applications. The Qualification directive establishes standards for who qualifies for being defined as a refugee and the rights attached to that status. Furthermore, the Reception Condition directive establishes standards for the reception of asylum seekers, including housing, health care etc. While the Asylum Procedure directive establish standards for the procedure of the asylum application. (Hix and Høyland 2011, 282-84). Nonetheless, the prerequisites for tackling asylum still vary across member states.

The challenges and weakness of the asylum system became especially evident when the numbers of refugees increased in 2015. The Syrian war is one of our time's biggest conflicts and have triggered the world's largest humanitarian crisis since World War II. Going on its seven year, there are over 13 million people in need of humanitarian assistance inside Syria. Many people have fled their homes seeking protection in neighboring countries as Turkey, Libanon and Jordan (European Commission 2017 c), but in search for protection many refugees

also crossed the borders to the EU. Asylum applications lodged in the EU-28 doubled from 627 thousand in 2014 to around 1.3 million in 2015 and 2016 (Eurostat 2017). Even though the numbers increased significantly, when compared to the 510 million habitants living in EU-28 the numbers only equaled 0,25 percentage. If there had been a fair share of asylum seekers between member states it would have been possible to cope with this number, but most refugees were stuck at the frontline member states leading to a massive pressure on the concerned countries as well as the refugees staying there.

Due to the 'refugee crisis' the Commission chose to propose a new reform of CEAS in 2016. The previous asylum policy had only been applied for one year during a time where the situation was characterized by unusual high numbers of asylum seekers. In contrast to the previous reform that was developed through several years, the new reform portrays an accelerated process. The reform is at the time of writing not finalized, but proposed legislation from the Commission is being discussed by the European Parliament and member states in Council. There are two main reasons why research is needed on this topic, and why it is needed right now. The first reason is of a general character, and pertains to the EU being a unique political construction. The refugee crisis is one of several crises the EU has experienced in recent times, and research on the ways in which increased importance of an issue affect might affect the position of political institutions, as well as decision-making as a whole, might improve our understanding of the EU as a political system. Secondly, there is no reason to believe that the numbers of refugees and asylum seekers will decrease in the coming years. War and conflict still continue to characterize the global world, making EU an attractive place for persons seeking international protection. The need to understand the underlying mechanism of what forms policy output is therefore necessary, especially now when the EU is reforming the policy for the second time. This leads to the research questions of this thesis:

"How did the refugee crisis affect EU decision-making in asylum policy?"

To answer the research question, I developed a new theoretical argument, called *the Salience Model*. By combining elements drawn from the theory of national- and European decision-making the model assumes that the behavior of the Commission, European Parliament and member states in Council are all dependent on the salience of the issue. By drawing on 'principle-agent theory' (Pollack 1997, Kassim and Menon 2003, Menz 2014), assumptions are made regarding the autonomy of the Commission. For times where salience is high, the member

states in Council will put pressure on the Commission, and its autonomy is therefore increased. This leads the Commission to propose policy legislations that lean towards the preferences of the member states. Drawing on the 'misfit-model' theory (Börzel 2000, Zaun 2016) the second assumption is that when salience is low only the stronger member states in the Council have the incentives and capacity to push their national interest onto the European level, and therefore will have leeway to form the policy output after their national interest. On the contrary, in times where salience is high all member states will have incentives to push their national interest into the European level, making it more difficult to find a common solution. At last, by drawing on the work of Simon Hix and Bjørn Høyland (2013), Robert Thomson (2011) and Georg Tsebelis and Geoffrey Garrett (2001), my model argues that the European Parliament has a liberal stance on asylum policy that is threatened when salience is high. At such times, members of the European Parliament will have incentives to vote in accordance with their member state rather than their political group in European Parliament (EP), leading to difficulties in obtaining a strong majority for a liberal policy. In sum, these three elements make decision-making under high salience extremely intricate.

The thesis tests the theoretical argument by conducting a comparative case study using a Most Similar System Design for selection of cases. The two cases, the second generation (1999-2004) and third generation (2008-2013) of asylum law, are drawn from the same institutional context and have intertemporal variation. Most similar system design are normally applied cross-sectionally, but I will argue that the design also applies to this study when the explanatory conditions are constant, while variation is on the variable of the interest, namely salience. For each of the two cases, four legislative acts will be studied in detail using the method of process tracing.

The empirical findings presented in this thesis will illustrate how the refugee crisis led to decision-making on the matter of asylum being more disputed and contested, thereby making it harder to reach a common agreement on the development and direction of EU asylum policy. This is clearly a paradox at a time where the need for a fair asylum policy is sorely needed. In times of high salience two features become evident. First, as a result of political pressure on the Commission, immigration concerns prevail over human rights in times of high salience, straining the relationship between the Commission and the actors securing human rights (European Parliament and NGOs). Secondly, decision-making becomes difficult when no member state takes the role of a passive negotiator. When all member states have an enhanced interest in pursuing national policy preference, it becomes difficult to reach common grounds.

The thesis will have the following structure. In the *second chapter* I will review the relevant literature on immigration and asylum policy, and present a justification of the relevance of this thesis. In the *third chapter* the theoretical framework will be presented. This starts with an overview of theories of European integration, before I will explain and discuss a theoretical model called the state-centric model (Givens and Luedtke, 2004), whose purpose is to explain the development of EU immigration policy. At last I will present the theoretical model I have developed to explain the EU asylum policy before and after the refugee crisis. I will present the theory that constitutes my model, and argue why the model is adequate in explaining the development of EU asylum policy.

In the *fourth chapter* I will discuss the selection of methods and their importance in answering the research question. In the *fifth chapter* I will present a descriptive summary of the historical development and the legislative acts that constitute the EU asylum policy. This overview is necessary for the understanding of the analysis that will be given in *chapter six*. Here a thorough case study of two cases and eight subcases will be presented in detail, before I in the *seventh chapter* summarize the findings, present my conclusions, as well as offer suggestions for further research.

2. The study of EU asylum and immigration policy

2.1 Institutions of the European Union

The starting point of any study of the European Union, is a general understanding of the EU as a political system. Three institutions are mainly involved in policy-making, the Commission with its right to initiate legislation, and the European Parliament and the Council with legislative power to adopt or reject proposals. This chapter will first give a brief overview over the institutions and policy-making in the EU, before a literature review of the asylum and immigration policy will be presented.

The Commission represents the executive power of the European Union and has the exclusive right to initiate legislation. Each member state appoints a representative to bear the role as a Commissioner, that is delegated to lead an organizational unit called a Directorates General (DG) resigned to a particular policy field. The Collegium is elected for a period of five years. From 2014-2019 the General Directorate for Migration and Home Affairs (DG HOME) is responsible for developing legislation in the area of asylum. The Commission has competence to be active in the policy-making process, the policy implementation and monitoring process, and in external representation (Hix and Høyland 2011, 34 and Richardson and Mazey 2015, 85).

The European Parliament (EP) is one of two institutions with legislative power in the EU, and is the only directly elected body of the EU (Nugent 2010, 179 and Hix and Høyland 2011, 54). The 751 Members of the European Parliament (MEPs) are organized after political orientation, where the conservative European People's Party (EPP) is the biggest group, closely followed by the Progressive Alliance of Socialist and Democrats (S&D). [1] The MEPs work in specialized standing committees, which follow up legislative proposals, negotiates with the Council and propose amendments to Plenary. Asylum issues are delegated to the LIBE Committee (Committee on Civil Liberties, Justice and Home affairs) (European Parliament 2017, 151).

[1] From left to right the groups in the EP are as follows: European United Left/Nordic Green Left (GUE/NGL) with 52 mandates, Group of the Progressive Alliance of Socialists and Democrats (S&D) with 191 mandates, The Greens/European Free Alliance (Greens/EFA) with 50 mandates, Alliance of Liberals and Democrats for Europe (ALDE) with 67 mandates, Group of the European People's Party, Christen Democrats (EPP) with 221 mandates, European Conservatives and Reformists (ECR) with 70 mandates, Europe of freedom and direct democracy Group (EFDD) with 48 mandates. And 52 non-attached members (NI).

The European Parliament has gradually extended their power over the past decade. The role of the European Parliament was in the beginning delimited to be consulted in legislative matters, this however changed in 1986 when the Single European Act (SEA) came into force and a new form of decision-making was introduced. The cooperation procedure, as it was called, gave the European Parliament limit agenda-setting powers. EPs power further increased with the Maastricht Treaty in 1993 when the co-decision procedure was introduced (Richardson and Macey 2015, 110 and Nugent 2010, 314-15).

The European Parliament shares legislative powers with the *Council of Ministers*, which work as a legislator on behalf of member states. There is legally only one Council, but the configuration of participants varies depending on the policy area. Today there are ten formations of the Council, and the national representatives who attend the meeting is often the minister for the policy area of concern (Nugent 2010, 139-43). The process adopting legislation in the Council is an extensive process. A proposal is first often discussed in working groups consisting of expert from member states specialized in the specific area, before the proposal moves on to the preparatory bodies. The real engine behind the work in the Council, is the Committee of Permanent Representatives (COREPER) which is composed of civil servants from the member states governments. Most decisions are taken already by COREPER, and when the proposal ends up at the Council' table is just a technical formality to adopt the legislation. COREPER label the proposals as either A-points or B-points before they send it to the Council. The former means that a decision is already taken by the COREPER and thereby can be accepted without discussion in the Council, while B-points are proposals where COREPER did not manage to find an agreement and further discussion are necessary among the Ministers in the Council (Mattila 2004, 30 and Hix and Høyland 2011, 63). After the Lisbon Treaty entered into force the Council adopts proposals either by unanimity or qualified majority vote (QMV). [2]

[2] Qualified Majority Vote is today the most common voting method in the Council, where a legislative proposal requires 55 % of member states voting in favor (16 of 28 member states), and these member states needs to represent at least 65 % of the total EU population (applies for cases after 2014 where the Council votes on proposal from the Commission or the High Representative of Foreign Affairs) (European Council 2016)

2.2 Policy-making in the EU

There is not a standard process for policy-making in the European Union, but rather several different procedures that are applied in different times depending on the issue of concern. The dominant procedure is referred to as the *co-decision procedure* or *the ordinary legislative procedure*. As of today, there are relatively few policy areas that are not subject of this procedure. With the introduction of the Lisbon Treaty in 2007 all aspects of the EU asylum and immigration policy was covered by QMV and the co-decision procedure (Hix and Høyland 2011, 284). The two cases studied in this thesis, were both adopted under the co-decision procedure.

The procedure consists of three possible stages depending on how easily the European Parliament and the Commission comes to an agreement. In the first stage the Commission's proposal is examined by the EP and the Council. The proposal is here adopted if it is accepted by both, and this is referred to as the *first reading*. If EP and the Council do not agree on this stage, the proposal moves on to the second stage. The EP can here approve, amend, reject or take no action on the proposal. If the EP approves or take no action the Council can, within three months, adopt it as a legislative act. But if the EP rejects it with an absolute majority of its members, this leads to the proposal to fall. Or the last scenario, the EP amends it with an absolutely majority, leaving the Council to accept or reject the amended proposal. If the Council rejects it, a third legislative stage occurs.

In the third phase a conciliation committee, composed of equal representatives from the Council and EP, is established. In practice, this committee is not very practical, as it can often consist of 100 people making negotiations difficult. These meetings are often preceded by trialogues, which brings together key representatives from the Council, the EP and the Commission. The trialogues can agree on a joint text, leaving the conciliation committee to agree on it without discussion. If they do so, the final adoption needs to be done by qualified majority vote in the Council and by majority by the votes cast in the EP. If the Council and EP fail to approve at this stage, a legal text cannot be adopted. If this is the case it is common that the Commission re-present it in a form that enables it to be approved by the Council and the EP (Nugent 2010, 314-19).

2.3 Literature on EU immigration and asylum policy

The most influential contributions to the study of immigration and asylum policy focus on two topics. [3] First the literature is comprehensive in explaining institutional change from national decision-making to supranational decision-making in the field of asylum by drawing on the concept of venue-shopping (Guiraudon 2000 and others). Second, the literature is comprehensive in studying whether EU asylum policy restricts or expands the rights of asylum seekers (Kaunert and Léonard 2012, Maurer and Parkes 2007, Servent and Trauner 2014). These are important contributions to the understanding of the historical development and content of EU asylum policy, but was is lacking in the literature is a thorough study of the politics behind the EU asylum policy. Three institutions are involved in legislative development, but how do they affect the process remains unanswered after reading the existing literature on the field. An overview of the literature will here be presented, followed by a reasoning over the importance of my thesis.

The focus for scholars after immigration and asylum became a competence for the European Union was trying to explain why there had been an institutional change from national policy-making to a more supranational structure. Virginie Guiraudon (2000, 252) was one of the first that sought to explain this by characterizing the transition as a case of 'venue-shopping'. Her work draws on the literature of 'policy venues' of Baumgartner and Jones (1993), which refers to an institutional location where decisions are made concerning a certain issue. By building on this literature, Guiraudon's argument (2000, 258) is that when policy-makers encounter obstacles in their traditional policy-venue they might seek new venues for policy-making that are more amendable to their preferences and goals.

Guiraudon (2000, 261-261) elaborate that by moving migration policy from a national context to a European level the national office working with migration control could avoid judicial constraints, when the European Court of Justice (ECJ) had no power over immigration issues under the Maastricht Treaty. Partisans of a more restrictive policy also benefited from shifting venues when there were less actors to oppose their view on the European policy venue, because the institutions sympathetic to migrant interest had less opportunity to influence the decisions-making in the Justice and Home Affairs domain (Guiraudon 2000, 261-262). Thus,

[3] This chapter do not solely focus on asylum policy but rather on the overall concept of immigration policy. This is because most of the literature study the overreaching concept of immigration rather than asylum alone.

Guiraudon argued that the national policy venue to a greater extent protected the rights of immigrants, and the venue-shopping was a result of trying to avoid this and develop a more restrictive migration policy (Guiraudon 2000, 268).

The argument of 'venue-shopping' has later been revisited by Kaunert and Léonard (2012, 1396), who argue that the transition from national policy to EU policy have not necessarily led to a more restrictive policy, but rather led to a rise in the legal standards applicable to asylum seekers. By examining the main asylum instruments adopted by the EU, Kaunert and Léonard (2012, 1402-1403) argue that the directives only lay down minimum standards which can be exceeded by individual member states, and that there is no evidence that member states have used the adoption of the EU asylum directives as an opportunity to lower their asylum standards to the level of minimum standards. On the contrary, they claim that the EU asylum provisions raised the legal standards in several respects rather than causing an overall drop in legal protection.

Andreas Maurer and Roderick Parkes (2007, 174-175) argue that moving immigration policy from a national level to a European level did not lead to any substantial change. By focusing on what happened after the institutional shift, they claim that the institutions were unable to adequately create an 'EU asylum policy image'. By that they mean that the institutions failed in creating a *substantive dimension*, that includes convincing a range of actors that they had the experience and the capacity to deal with human rights, and social, economic and foreign policy. Thereby, they argue that the transition from a national to a European venue failed to translate into policy-change.

The development of EU asylum policy was scrutinized by Ariadna Ripoll Servent and Florian Trauner (2014, 1146 and 1148). They compare two different strands of asylum laws. The first strand (referred to as the first generation) was developed under an intergovernmental structure, where the policy output was a compromise between member states without any external involvements. The other strand (second generation) of proposal was developed under a different legislative procedure, meaning that the European Parliament also were involved in the adoption of the proposals.

Their findings indicate that for the first generation of asylum laws (1999-2005) the Council sat a restrictive vision for asylum and insisted on maintaining flexibility for member states. Under consultation member states had the last word on legislation, and therefore were able to shape the policy field toward their own preference. In this period the Council and the Commission shared the right of initiative, there was unanimity in the Council, and the European

Parliament was not a balancing force. All of these elements made the Council strong (Servent and Trauner 2014, 1147 - 1148).

For the second generation of asylum laws (2005 – 2013) their findings indicated the policy became slightly more harmonized and less restrictive (Servent and Trauner 2014, 1153). Which confirm scholars claiming that the empowerment of the EU's supranational institutions made the EU asylum policy venue more liberal (Kaunert and Léonard 2012). Nonetheless, the analysis also highlighted that the European Parliament and the Commission modified their positions to a larger extent than the Council. The modifications introduced in the reform nuanced and tweaked existing EU asylum laws, but the core of the policy was not changed. The authors claim, by contenting themselves with changes of secondary order, the newly empowered EU institutions accepted and institutionalized the restrictive and half-heartedly integrated core of asylum regime set by the Council in the first negation round. This demonstrates that the formal empowerment of EU institutions, which were expected to introduce changes in a policy area, may not have been sufficient to modify its core characteristics. Once institutionalized even the presence of new actors may prove to be an insufficient condition to change the core of a given policy field (Servent and Trauner 2014, 1153- 54).

Natascha Zaun (2016, 136-138) analyzed the first phase of asylum law where supranational institutions were weak and intergovernmental bargaining characterized decision-making. By drawing on the 'misfit school' of Héritier (1996) and Börzel (2002), she argued that *regulatory expertise* is a capacity variable which accounts for member states' success in EU negotiations. She divides between strong, medium and weak regulators in the area of asylum. This is based on a measurement on government effectiveness (GEI) and the amount of asylum seekers a member state faces. She studies the Reception Conditions Directive, and concludes that member states generally prefer maintaining their status quo policies over changing them (when change means material and ideational costs). While the strong regulators are very active owing to the issue´s salience and strong exposure, the weak regulators are more passive and have little to bring to the negotiations. Therefore, even under unanimity vote, EU directives do not represent the lowest common denominator of all member states (Zaun 2016, 149)

Florian Trauner (2016, 322) analyzed how different crisis affected policy-making in the area of asylum. He claims that the economic and financial crisis created the biggest problem for the southern member states, while the refugee crisis of 2015 were an equated problem for

all member states, and perhaps also a bigger problem for the Northern member states. To regain control the EU both implemented the relocation scheme and the 'hotspot' approach, which were meant to provide an additional layer of instruments to the Dublin regulation. But EU refrained from changing the core of the asylum policy.

Terri Givens and Adam Luedtke (2004, 146) examined attempts to create a common European Union immigration policy by studying what they see as two contradictory political developments; The Commission, European Parliament and some member states pushed to develop a harmonized EU immigration policy, but this was met by resistance from other members of the EU. To explain this resistance, they developed a theoretical and conceptual model to see how proposals to harmonize immigration policy can be blocked or restricted. They argued that politics at national level has determined the nature and success of various harmonization proposals, by determining the positions of member states when negotiating in the European Council. Givens and Luedtke further highlighted that what determines the positions of member state was the political salience and institutional capacity to protect migrant rights. By salience they mean the level of attention paid to the immigration issue, and institutional constraint is activist work done by interest groups, national courts, and EU institutions. They argue that the degree of political salience combined with institutional constraints in a given country will determine if the national government will block harmonization, push for maximum restrictiveness in the harmonization or allow a relatively expansive harmonized policy (Givens and Luedtke 2004, 150-151). The features of the model by Givens and Luedtke will be discussed in detail in chapter 3.

2.4 Contribution of thesis and research question

The existing literature studying the development of EU immigration and asylum policy has sought to answer why member states have resigned part of their sovereignty in decision-making in order to develop an intergovernmental (and now also a supranational) approach to asylum policy. It has also studied the newly developed EU policy in terms of whether the policy restricts or expands the rights of asylum-seekers. What is lacking in the literature is a broader understanding of the mechanism forming the position of institutions as well as the output of asylum policy.

To what degree does the Commission have autonomy to propose legislation that would ensure a fair asylum policy? When 28 member states try to reach consensus on how to deal with asylum, how does that play out? And what is the role of the European Parliament in the

development of asylum policy? After reading the existing literature, these questions all remain unanswered. This thesis seeks to answer these questions by studying decision-making in asylum policy during two different periods in time. A contribution of this kind is important for two reasons. First, as the EU has experienced several crises, research that can contribute to the understanding of institutional mechanisms under such times helps develop our understanding of the EU as a political system. Secondly, war and conflict continue to characterize the global world, making the EU an attractive haven for refugees seeking international protection. Research on the mechanism of decision-making can contribute to illuminate the window of opportunities that will be available when the EU again reforms the CEAS. This thesis will therefore study the following research question:

"How did the refugee crisis affect EU decision-making in asylum policy?"

3. Theoretical framework

The amount of research on the development and the functions of the European Union is massive. There are two main strands of literature. One strand studies the historical integration of Europe and the other the EU as a political system. This thesis has used literature from the latter to develop a theoretical and conceptual model which I call the *Salience Model*. The development of this theoretical framework found inspiration in a model of Givens and Luedtke (2004) which illustrates the development of immigration policy (the state-centric model). The models are different in several respects, which will be discussed in details below, but the main difference is on its assumptions about the role of the actors involved. While the model of Givens and Luedtke is grounded in an assumption that member states are the dominant actor, my model assumes that supranational actors can influence EU politics.

This leads us back to the theories of European Integration. How much power is enjoyed by supranational institutions and to what extent have member states giving up their sovereignty? These are questions that have been an issue of debate between scholars for many decades and which lays the foundations of today's study of the EU as a political system. I will therefore start this chapter by introducing the most relevant European integration theories, before moving on to explain the state-centric model. Finally, I will explain the details of the Salience Model, which will be applied in this thesis for answering the research question.

3.1 Theories of European integration

In the school of European integration there are two broad theoretical strands, the scholars claiming member states dominate EU politics versus the scholars claiming supranational institutions play an important role. The first is referred to as the *intergovernmentalism,* while the latter here will be referred to as *supranational politics* (inspiration from Hix and Høyland 2011). The contributions to the *supranational politics* are varied, but they have in common that they oppose intergovernmentalism in the sense that they do not see member states as the sole actor dominating EU politics (Hix and Høyland 2011, 16-17). I will start by giving an outline of the first defender of supranational institutions, the neo-functionalist approach (Haas 1958). Thereafter the intergovernmentalist approach will be accounted for (Hoffmann 1966 and Moravcsik 1993), before I move on to explain new

contributions to the supranational politics, emphasizing multilevel governance theory (Hooghe and Marks 1996) and supranational governance theory (Stone Sweet and Sandholtz 1997).[4]

In the mid 1950s a body of scholarship emerged, which sought to explain the process of the economic integration between Western Europe. The first comprehensive theory of regional integration was the neo-functionalist theory presented by Ernst Haas in 1958 (Eilstrup-Sangiovanni 2006, 89-90). Haas claimed that the goal of member states was not just to struggle for power, but to defend their preferences and cooperated with each other when this was necessary. Neo-functionalist looked at the state as divided into its actor-components, where all actors had their political preferences and goal. Hence, the national preference was not fixed, but would change according to these actors' competition for influence. Regional integration was then expected to occur when societal actors decide that relying on the supranational institutions, instead of their government, would help them realize their interests. This would lead to the supranational institutions starting to gain increased authority and legitimacy (Haas 2004, xiv).

An important concept for the neo-functionalists was 'spill-over', which means that cooperation in one area leads to pressure to extend cooperation to other areas (Nugent 2010, 431). When the demands of societal agents continue to develop, it would be necessary to satisfy these demands by integrating activities in associated sectors. These sectors were not yet integrated themselves, but because of the 'spill-over' from other sectors they would then become the focus for more integration (Haas 2004, xv). The spillover could be functional or political. Functional spillover was connected to the rise of the modern economy where it was difficult to restrict integration to one particular economic sector without it effecting related sectors. The political spillover was related to national elites that turned to supranational level for decision-making or other activities. These elites then become more disposed to the integration process which would eventually led to more power to the supranational institutions while the nation states become less influential (Nugent 2010, 431).

As a counterapproach to the neo-functionalist theory the intergovernmentalist theory started to grow. One of the first contextualization of the critique of the neo-functionalist was presented by Stanley Hoffman in the 1960s, his argument came from a realist claim that the nation state was the central actor in European integration (Rosamond 2000, 75-76). This

[4] There are other contributions to the EU integration debate that are not included in this overview, as for example varies forms of 'new institutionalism'. This had to be excluded because of the scope of this thesis.

argument has later been developed by scholars as Andrew Moravcsik, and strongly opposed the concept of spill-over as well the strong role of supranational actors. Moravcsik emphasized that the key actor in the international arena was the nation states and underlined that the Community were a result of a series of intergovernmental bargains, not unintended spill-over from one sector to another (Moravcsik 1993, 475-7 and Nugent 2010, 432). The intergovernmentalist theory pointed out that neo-functionalism had offered an unsatisfactory explanation of European integration, because of its lack of empirical evidence. It claimed that the neo-functionalist approach was based on the idea that Europe would develop to become a federal state, which lead to neo-functionalists highlighting the uniqueness if its institutional structure rather than explaining integration by using theories of interdependence and regimes. In this sense, according to Moravcsik, the neo-functionalist derived to become an ideal-type rather than a general theory (Moravcsik 1993, 477-78).

The intergovernmentalist theory see the European Community through the lenses of international political economy. They explain that integration is a measurement for policy co-ordination, where its development is based on national preference formation and intergovernmental strategic interaction. The theory assumes that states act rational, which means that the cost and benefits of economic interdependence are the main determinants of a state's preference (Moravcsik 1993, 480-81). Regarding supranational institutions intergovernmentalists argue that national governments relinquished their power only if it strengthens their control over domestic affairs. The supranational institutions strengthen governments power by increasing the efficiency of interstate bargaining. If member states would to bargain between themselves it would be much easier not to fulfill agreements, but when delegating sovereignty to a supranational institution it is much easier to monitor the arrangements. Secondly, supranational institutions strengthen the autonomy of national political leaders towards domestic groups. By strengthening the legitimacy of a common policy, a two-level game is created, that increases the autonomy and initiative of national political leaders (Moravcsik 1993, 507).

As a counterapproach to the liberal intergovernmentalism other arguments have been developed. Marks, Hooghe and Blank (1996, 345) argue for a 'multi-level governance' theory in explaining the integration of EU. They claim that putting the state in center are not comprehensive enough in explaining the development of the European integration. The theory does not reject that importance of state government or not even that the states remain the most influent actor in the decision-making processes. But on the other hand they emphasize that the

states do not monopolize policy-making in the EU. According to the multi-level governance model decision-making competences are shared between the Council, the European Commission, the European Parliament and the European Court. The model further contradicts the liberal intergovernmentalists approach by claiming that collective decision-making among member states leads to a loss of power for the state executive. In decisions concerning harmonization rules that is to be implemented across the EU, there will be a zero-sum game were some will win and others will lose rather than a lowest common denominator (Marks et al. 1996, 345-46)

Marks et al. (1996, 346) also challenge intergovernmental argument, regarding political arenas and the state executive power. According to the intergovernmental theory the national arenas are important for developing a state's political preference, and societal domestic groups are nested in this area to strives to promote their interest. Multi-level governance model, on the other hand, claims that the national groups are not nested but rather interconnected. They operate in both national and supranational arenas to promote their interest, and in this sense the states do not monopolize the link between domestic and European actors (Marks et al. 1996, 346).

Another criticism of the intergovernmentalist framework is presented by Alex Stone Sweet and Wayne Sandholtz (1997, 298-300) by drawing on the work of neo-functionalist they present a supranational governance theory. They recognize that certain elements or stages of the European policy-making process are driven by the governments, but they do not accept intergovernmentalism as a way of explaining how integration has proceeded. They claim that three factors provoke supranational governance, and weakens the role of member states. First is the organization as the Commission, the Parliament and the Court of Justice. These organizations facilitate bargaining and logistical co-ordination, giving them a degree of autonomy. The second factor is the rules that stabilize state bargaining. These are incorporated in treaty law and ECJ jurisprudence, and decrease the power of member states. The last factor is the presence of transnational actors, as interest groups, business and knowledge-based elites and their influence over policy processes and outputs (Stone Sweet and Sandholtz 1997, 304-305).

Other contributions to the debate on European integration also exist, and because of the limited scope of this thesis they will not be elaborated. But above is the two main poles of the integration theory debate, the strand claiming that the member states are the important actor of the European integration, and the other strand claiming that the role of the member states is

challenged by other elements on the European arena. This lay the foundation of the following. First a model for the development of immigration policy will be presented, call the state-centric model. The authors Terri Givens and Adam Luedtke (2004, 149) draws on theories of intergovernmentalism, seeing the member states as the primary political actors. Then my model will be presented, *the Salience Model*, to explain the development of asylum policy. This model emphasizes the role of both the member states and the supranational institutions.

3.2 The State-centric model

As the name reveals, the state-centric model has a starting point from an intergovernmentalist approach. EU policy making is seen as a result of a bottom-up process where the final EU policy output is a result of domestic and national policies in member states. The states are the primary political actor, and the role of the supranational institutions is solely to facilitate arrangements between these states. With this starting point, Givens and Luedtke (2004, 146-149) develop a theoretical and conceptual model that explains how immigration policy can potentially be harmonized at the EU level, and how this harmonization can be blocked and restricted, by scrutinizing the positions of member states when negotiating in the Council. Thereby, they base the model on an assumption that the preference of member states is the factor that decides the decision-making and the outcome of EU asylum policy.

Givens and Luedtke (2004, 147) operationalize harmonization of immigration policy, as a variation that takes two forms; the *success* and the *nature* of a harmonization proposal. The success of a harmonization proposal is the first dependent variable, and is measured by whether the proposal has been enacted or not. The nature of harmonization is the restrictiveness versus the expansiveness of a successful harmonization proposal. Harmonization restricts immigrants' rights if the policy enacted put obligations on some member states to "lower" their standards. While harmonization is expansive towards immigrants' rights if it obligates the states to raise their standards.

Givens and Luedtke (2004, 152) claim that three independent variables affect the outcome of harmonization; Political salience, partisanship of government and the strength of migrant rights-protecting institutions at the national level. Political salience is defined as the level of attention paid to a certain issue, and they argue that when salience is low, pro-migrant institutions can play a role, and the member states would have a lower incentive to push forward national interest. However, when the salience is high, the governments will take electoral considerations into account. They will fear the threat of far-right parties, that use immigration

as a mobilizing issue, and governments will therefore try to meet the interest of restrictionist and anti-harmonization sentiments (Givens and Luedtke, 152).

When studying immigration policy Givens and Luedtke include asylum, legal migration, visa and border control, illegal immigration and anti-discrimination. Furthermore, they separate these policy fields in 'integration issues' and 'control issues', where the former are policies connected to EU nationals that move to another EU country, but this group are not seen as a security or a law-and-order threat. While the 'control issues' are policies dealing with third country nationals (TNCs) which does not have the right of citizenship in the EU. Asylum policy is in this regard labeled as a control issue. Based on the findings of Money (1999) they further claim that the partisanship of governments is a relevant factor for harmonization but only for the 'integration issues', they argue that the parties on the left and right prefer the same strong policy for controlling the inflow of new immigrants, and the variable about partisanship of governments is therefore not applicable for asylum policy (Givens and Luedtke 2004, 152-154, 158-160)

Their third explanatory variable is the strength of national institutions protecting migrant rights. They claim that it is the combination of salience and degree of institutional constraints in a given country that determines whether or not the country will block or allow harmonization and the degree of restrictiveness or expansiveness in the successful proposals (Givens and Luedtke 2004, 151). But when it comes to the conceptualization of this variable things become a bit confusing. Givens and Luedtke (2004, 149) claim that immigration policy arises from domestic and national immigration policy, but they also refer to the variable at several points as: "[…] the strength of migrant rights-protecting institutions at the *national level*." (2004, 152). However, when they define institutional constraints they mention activism by interest groups, national courts and *EU institutions* (2004, 151). It is a bit unclear how the EU institutions fit in this model. But it can seem like Givens and Luedtke use the argument that pro-immigrant institutions ally with supranational institutions to defend immigrant rights (2004, 148).

There are some clear challenges with the state-centric argument, which makes it inadequate for explaining the development of the asylum policy. The first major difference that separates the State-centric model from the model I have developed, is the view of the member states as the sole legislator. Since Givens and Luedtke published their article there have been major changes in the decision-making procedures that challenge and weakens the assumption about the strong role of the member states. The first change came within the Council, when the

area of asylum and immigration shifted from being adopted by unanimity to qualified majority vote in 2003 (Nice Treaty, article 63). Givens and Luedtke underline that every member state has the possibility to veto down a proposal they do not agree to, but after this shifted to QMV, the argument does not apply anymore.

The strong role of member states was additionally challenged in 2009 when the Lisbon Treaty entered into force and made the European Parliament co-legislator alongside the Council (Lisbon Treaty, article 294). The member states therefore not only need to come to an agreement amongst themselves, but also with the elected politicians in the European Parliament, when discussing asylum issues. This view of the states as the main actor might have been sufficient when studying the first generation of asylum proposals adopted in 1999-2004, when the member states were the sole legislator and adopted policy by unanimity. But for explaining the two other generations developed under the Lisbon Treaty, this perception of the states as having the unique role to dictate policy output is not sufficient.

Another shortcoming with the state-centric model is its perception of asylum policy as a 'control issue', meaning that parties from different ideological affiliation prefer the same strong policy for controlling the inflow of new immigrants, and the partisanship of governments is therefore not applicable for asylum policy (Givens and Luedtke 2004, 153-54). This argument is not convincing anymore. With the rise of far-right parties, the mass inflow of migrants in the last years and the EU-Turkey deal, it seems like an oversimplification to say that there are no nuances in the preferences of national parties when it comes to the controlling of inflow of new immigrants.

By drawing on some elements of the state-centric model I will present a model that is more adequate in explaining the development of EU asylum policy. While Givens and Luedtke look at immigration policy including asylum, legal migration, visa and boarder control, illegal immigration and anti-discrimination. This thesis has a narrower range, by just looking at the field of asylum. This is primarily due to the fact that asylum policy is in the time of writing in a very special situation because of the high pressure of refugees and asylum seekers from the Middle-East.

3.3 The Salience Model

For governments that have been democratically elected, there will always be a need to satisfy their electorate, for the obvious reason that political parties need the support of the people to be reelected and remain in power. Givens and Luedtke (2004) argue that the public's focus on an issue will affect the response of national governments. They call this political salience, and define it as the level of attention paid to a certain issue. In times where the salience around an issue is low there will not be much pressure on national governments to "deliver" a policy that the public accepts, mainly because the public is not especially concerned about the issue itself. Furthermore, at the other end of the scale, when an issue is problematized in the media, the public will be more concerned with it, and the salience will be high. The response of the ruling party will therefore tend to be to please the public and not let their political opponents seize the opportunity to win over voters. (Givens and Luedtke 2004, 150).

The concept of salience is especially important for asylum policy. In the public discourse asylum seekers and immigrants are often thought of as a threat to the welfare system, a threat to employment opportunities, and also tend to be positively connected to the rise of terrorism. Regardless of whether there is empirical evidence to draw such conclusions or not, these arguments are frequently used by key figures in politics, as well as in other institutions that have an interest in promoting a common front against immigration. In such a way, the salience around an issue arises when arguments are successfully being promoted through politics and media, and the governing political parties need to respond to the opposition. On the other hand, when the salience is lower the governing parties have more leeway to pursue their own politics and interest.

To explain how this has been manifested through the development of EU asylum policy I have developed a new theoretical model. I will here map out two different institutional roads, where the degree of salience affects the way that the EU institutions go about decision-making in the area of asylum. First the model predicts the Commission's autonomy to propose legislation, then the model predicts the position of the European Parliament and the position of the member states in Council in adoption of asylum legislation. An illustration of the model is shown on page 29.

3.2.1 The autonomy of the Commission

In the European Union, the executive power is shared between the Council and the Commission. The governments in the Council set the long and medium-term agenda, while they delegate political and administrative tasks to the Commission (Hix and Høyland 2011, 23 and 46). In theory, the Commission has the monopoly to introduce legislation in both the consultation and the co-decision procedure, and is the sole actor to decide the content of the proposals. The European Parliament and the Council can ask the Commission to propose legislation, but have no formal power to decide the content of the proposal [5] (Crombez 2006, 331).

Nonetheless, the degree of autonomy the Commission assets in practice is a controversial question. By using the 'principal-agent theory' I will argue that the degree of autonomy the Commission holds in EU asylum decision-making can be explained by the degree of national interest that are in stake for Member states. If the salience is low the Commission will have a greater extent of autonomy. But when the salience is higher, the national interest will increase, leading the member states in Council to try to limit the autonomy of the Commission.

The 'principal-agent' theory stems from new economics, but has been applied in political science both in the study of the US congress, and for the delegation of power from the Council to the Commission, European Parliament and the European Court of Justice (ECJ). The 'principal' is the initial holder of executive power, that enters an agreement with the 'agent', that are responsible for carrying out the task (Hix and Høyland 2011, 24, and Kassim and Menon 2003, 121-122). There are several reasons why the principal wants to delegate functions to an agent. Kassim and Menon (2003, 123-124) give a useful summary of these, but to mention some of them; the delegation provides a mean for minimizing transaction costs, to overcome problems of collective action, to improve the quality of policy in technical areas and to displace responsibility of unpopular decisions. Moreover, for the principal it is also dilemmas related to the delegation of power. One challenge occurs when the agent retains its effort to work on behalf of the principal, often called 'shirking'. And 'slippage' is the next phase where the agent

[5] European Parliament or the Council with a simple majority has the formal right to request the Commission to make a proposal. If the Commission do not follow up on the request, the Commission is at the risk to being taken to the European Court of Justice because of their inability to follow of its Treaty obligations (Crombez 2006, 331).

shifts from working on behalf of the principal's preferences and instead starting working for its own interest (Menz 2014, 312-313).

An important contribution to this literature is Mark A. Pollack (1997, 99-101 and 110) and his work with the 'delegation theory'. By scrutinizing under which conditions, and in which way, supranational institutions exert influence, he moves beyond the classic debate between neo-functionalist and intergovernmentalist. Pollack claim that the institutions neither following the wishes of the member states blindly, nor are they totally supranational (or with his words; 'run amok'). He argues that the autonomy the Commission holds is not constant, it will vary both over time and from issue to issue. What determines the degree of autonomy is the control mechanisms the member states might put in place to restrict the Commission.

By referring to McCubbins and Schwartz (1987) Pollack (1997, 109-111) mentions two types of control mechanism. The first is called 'police-patrol oversight', that includes to monitoring the behavior of the principal with the aim of detecting violations. This might include public hearings, field observations, and the examination of regular agency reports. Another mechanism is referred to as 'fire-alarm oversight', here the principal relies on third parties as citizens and organized interest groups to monitor agency activity. However, to implement such mechanisms are not costless for the member states, so before doing so the Council assesses their costs and evaluate if the cost is less than the sum of the losses put on them by the Commission. The amount of cost is here seen as closely related to national interest, assuming that the costs will be clearly higher if the national interest is high.

To illustrate how this applies to the Salience Model, it is useful to describe two extreme formulations of a principal-agent relationship. The 'runaway-bureaucracy thesis' is a relationship between the principal and agent, where the agent (the Commission) is the central figure in policy-making and it is entirely constrained from the principal (the Council), and therefore are free to pursue its own policy preference (Pollack 1997, 109). When the salience and the national interest is low the model assumes that the relationship between the Council and Commission are more towards a 'runaway-bureaucracy thesis', since the Council has less incentive to apply control mechanism because the cost of applying these would be higher than the cost of giving the Commission some autonomy. The 'congressional dominance thesis' is on the other hand arguing that the principal holds total or near-total control over the actions of the agent. When the salience is higher, the national interest will increase and thereby the costs of giving the Commission autonomy to develop legislative proposals freely will be higher than the costs of implementing control mechanisms.

3.2.2 Preferences of member states in the Council

As described in chapter two, decision-making under co-decisions means that the legislative proposals given by the Commission need to be adopted by the member states in the Council and the European Parliament. The Council consists of 28 member states (at least at the time of writing) that seeks to find a common preference, but all member states are not necessarily equally engaged in promoting their national views. By building on Natascha Zaun's (2016) implementation of the "misfit-model", I argue that salience affects which member states that are engaged in negotiations. If the salience is low it is only the member states that have a high number of asylum seekers and that are effective in promoting their national interest that will be engaged in the development of politics. These countries are called strong regulators, and include Germany, Sweden, the Netherlands, France and the United Kingdom. When the salience is higher, the battle for a common position will engage more member states making it harder to reach a common position. Furthermore, the preference of the member states will be decided by a GAL/TAN dimension.

In the study of the Council preference in decision-making, Tanja A. Börzel (2002, 194) developed an approach that emphasized the value of change. She argued that national governments want to minimize the cost of implementing EU laws, and therefore seek to upload their domestic policies to the European level. The member states strive to maintain the status quo of their legislation, so the better the fit between a member state's domestic policies and the EU policy, the lower is the material implementation costs at the national level.

Natascha Zaun applies this "misfit-model" to EU asylum policy-making, saying that member states position is to keep status quo. However, not all member states are equally effective in doing so, it depends on their ability to push their national policy forward to the European level. Member states' varying ability to do so is according to Zaun a result of their regulatory expertise and the exposure of asylum seekers. The regulatory expertise is based on how effective the governments are, by using a GEI index (Government effectiveness indicator), she showed that some member states are significantly more effective than others. Zaun argues that an effective administration in a member state combined with high numbers of asylum seekers, results in what she calls a 'strong regulator'. These states have high incentives to initiate co-operation on the EU-level and they see themselves as more attractive to asylum seekers because of their highly developed asylum systems. On the other end of the scale is the 'weak regulators', which has a low level of government effectiveness and are often

characterized as not preferring regulation in the asylum field when this will lead to economic costs and potentially can contribute to make the country more attractive to asylum seekers.

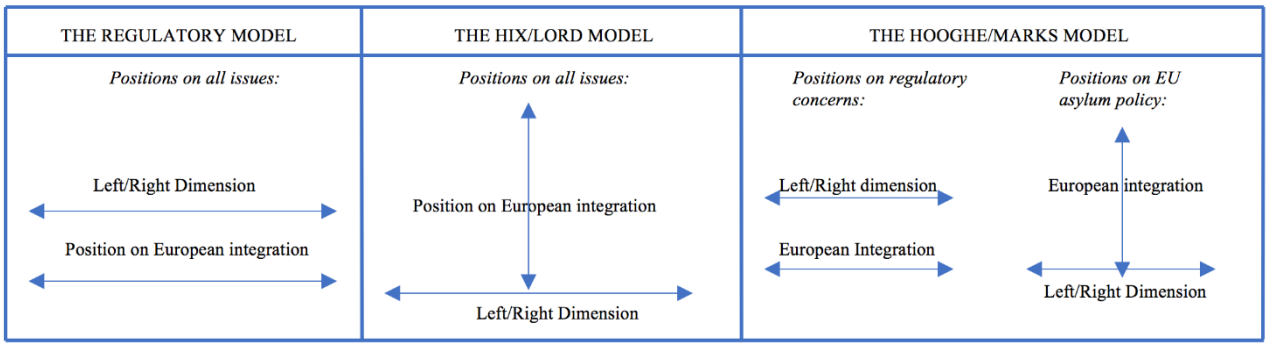
There is also a group in between called 'medium regulators', these member states have often effective governments but are not necessarily as exposed to asylum seekers as the strong regulators. These member states are assumed to take a middle path, sometimes acting like strong regulators, but under other occasions act like weak regulators. Based on the GEI index and the exposure of asylum seekers ten years prior to measurement Zaun defines the strong regulators in the area of asylum to be Germany, the United Kingdom, the Netherlands, France and Sweden. The medium regulators are Austria, Belgium, Spain, Finland and Luxembourg. While the weak regulators are Greece, Italy and Portugal (2016, 137-139). Zaun does not include the Eastern-European member states, probably for the practical reason that these member states were not a part of the EU when the first round of asylum laws were implemented from 1999-2004.

In addition to the element of change in the legislative proposal, the ideology of the governing political party also play a role. Sara Hagemann (2010, 50) analyzes the coalitions in the Council from 1999 to 2004, and her findings show that there was a governmental change in most of the member states in this period, and in cases where the shift went from left to right (or the opposite) there was a distinct change in the position of the member state. Based on this I assume that a member state preference regarding EU integration and EU asylum policy is based on the characteristics, ideology or 'color' of the political party in government. The divisions of political party group that for many first come to mind is the classic left/right dimension. However, I will argue that a more accurate way of separating political parties' preference of EU integration is a dimension varying from libertarian to traditional, known as the GAL/TAN dimension, and that this is the best way of measuring political parties views on EU asylum policy.

Hooghe, Marks and Wilson (2002, 971-72) studied three models on contestation for European integration. The regulatory model, which claims that the domestic party position on a left/right scale coincides with the position on European integration. The left pushes for more common economic regulation, while the right favors less regulation, and this is the foundation for the contestation for European Integration as well. Then is the Hix-Lord model, which claims that the contestation for European integration and the contestation on the left/right dimension are independent from each other. They claim that the positioning of parties on European integration are unrelated to the parties' position on a left/right dimension. At last there is the

Hooghe-Marks model, that claims the relation between left/right dimension and the position on European integration varies between different policies. The left/right contestation shapes position only on policies that are connected to redistribution and regulation capitalism. The different responses are illustrated in figure 3.1.

Figure 3.1: Three models of the relationship between domestic Left/Right dimension and position on European Integration



Source: Own model with inspiration from Hooghe et al. 2000.

When Hooghe et al. (2002, 972) tested these three models with multiple ordinary least squares regression, the findings supported the third model. The left/right position was insignificant for issues that were distant from regulatory concerns. They further highlighted that for asylum the position was unrelated to the left/right position (2002, 972). This further support the argument that the dimension of contestation that decides the position of EU asylum policy is the new politics dimension. This dimension is often labeled new politics versus old politics, or green/alternative/libertarian (GAL) versus the traditional/authoritarian/nationalist (TAN). The parties close to the TAN pole are the radical right parties. They are driven by what they see as perceived threats to the national community. European integration is the root of many of these threats as foreign cultural influence and immigrants, and it undermines national sovereignty. Parties towards the GAL pole are driven by specific policy goals and see the European integration as a solution to this (Hooghe et al. 2002, 976-77).

In sum, for the position of the member states in Council my model assumes the following. Change would often mean implementation costs for member states, so the status quo is therefore to prefer. Member states achieve status quo by pushing their own national policy onto the European level, making the other member states apply their policy rather than adopting the policy of someone else. This is manifested in the salience model in the following way. First if the salience is low, the strong regulators will have leeway to push their policy onto the

European level and the weaker regulators will to a little degree contradict this. However, when the salience increases the national interest of all member states arises, and weaker and medium regulators will have bigger incentive to fight for their interest in the Council. This will possibly lead to longer negotiating periods and it will be harder to reach an agreement within the Council. Secondly, the GAL/TAN dimension among the member states will affect the policy output of the Council, but when the salience is low this is only relevant for the strong regulators, but for the times where salience is high the position of all governments is of interest.

3.2.3 Preference of the European Parliament

Under the co-decision procedure the European Parliament (EP) has the same legislative power as the Council. The Salience Model is built on an assumption that the position of the European Parliament in the case of Justice and Home Affairs is close to many liberal parties and centrist voters, meaning that the EP is liberal in their stance and work as a counterweight to the Council in terms of pushing to raise the standards. Nevertheless, the position of the EP is threatened when the salience and national interest increase. I argue that the underlying motivation for the MEPs voting behavior may vary in accordance with the circumstances. The national interest of member states is influenced by salience, when the national interest increases the member states have more incentives trying to influence the MEPs. Higher salience therefore lead to a higher chance that MEPs vote in accordance with member state rather than their political group if their views are opposing. Lower salience would result in less incentives for the member states to convince the MEPs, and therefore leaves more room for maneuver for the political groups and generally a more liberal stance of the EP.

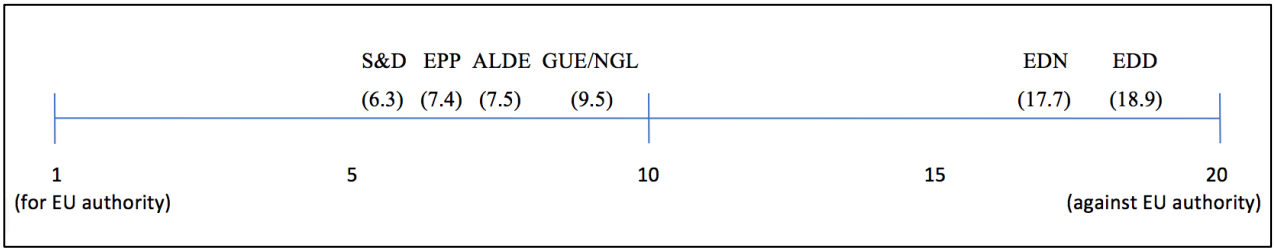
By researching roll-call voting it is possible to see a pattern of coalition formation among political parties in the European Parliament. Hix and Høyland (2013, 178) identify four winning coalitions. The first is called “a grand coalition” consisting of the two biggest groups, the conservative European Peoples Party (EPP) and Progressive Alliance of Socialist and Democrats (S&D). This coalition can be extended to a “super grand coalition” by the support of the center party Alliance of Liberals and Democrats (ALDE). A third winning coalition is a “left coalition” consisting of the S&D, ALDE, the Greens/European Free Alliance (G/EFA) and European United Left-Nordic Green Left (EUL-NGL). The two last parties are both to the left of the socialist, where the latter is a radical left political group. The fourth and last winning combination would be a “right coalition” consisting of EPP, ALDE and the parties to the right to EPP. After the election in 2014 there are two political groups to the right of EPP: The

European Conservatives and Reformists (ECR) and Europe of Freedom and Direct Democracy (EFDD) (European Parliament 2014).

Hix and Høyland (2013) emphasize that there is significant variation across policy areas when it comes to which coalition that is the most common. In the case of the Area of Justice and Home Affairs a center-left coalition occurs more often than a center-right coalition (Hix and Høyland 2013, 179-180). Furthermore, the liberals (ALDE) are pivotal in several policy areas. They can decide whether they want to go to the left and join S&D or to right and join the EPP, and the party that shares the company of ALDE will have the majority to form a winning coalition. This reasoning also implies that on average the position of the European Parliament is close to the preferences of many liberal parties and centrist voters (Hix and Høyland 2013, 181). If the European Parliament is quite liberal in their stance in several cases, how does this relate to the constituencies that elect them? According to Tsebelis and Garrett (2000, 27) the European citizens are on average less in favor of further integration than the Member of European Parliament (MEPs) and even their national governments. But since the public in general seems disinterested in the European Parliament election, the MEPs have freedom to act independently. This allows them to follow ideological interest instead. The voter turnout for the European Parliament is decreasing for every election since 1979, with an all-time low voter turnout in the last election in 2014 with 42,61 % (European Parliament 2014). This supports Tsebelis' and Garrett's assertion that the constituencies in general are not that interested, meaning that the political groupings have more leeway to have a liberal policy.

The claim that the EP is liberal towards EU integration, is also supported by Thomson (2011, 103). Based on Simon Hix thoughts that a national versus a supranational dimension plays a role when MEPs cast their votes, Thomas gives each political group in the EP a score on their position on EU authority. Ranging from 1 'for EU authority' to 20 'against EU authority', it is clear from figure 3.2 that the political groups that play a major role in coalition building all are in favor of EU authority and in favor of harmonization of EU rules. The far-right parties on the other shows a clear indication of being clearly against the EU authority, and the far-left (GUE/NGL) lies somewhere in between (Thomson 2011, 113).

Figure 3.2: Political parties position on EU authority



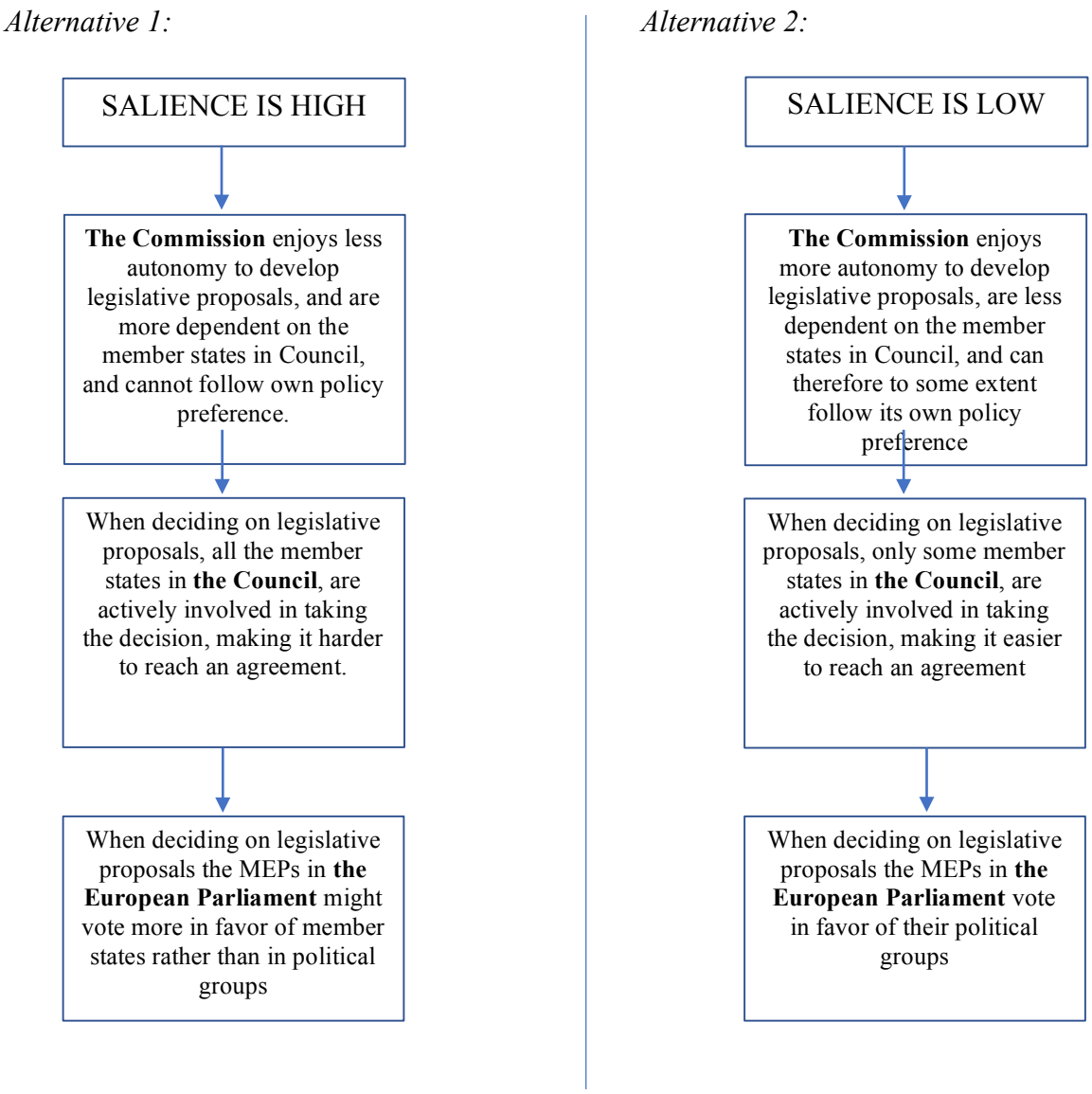
Source: Own figure with data collected from Thomson 2011, page 113.

When salience is low and there is 'business as usual' it is assumed that the EP will form a coalition that supports a liberal position towards EU asylum policy. But when the salience increases the assumption is that MEPs voting behavior becomes more unpredictable. When studying the political position of the European Parliament, some scholars find empirical support that the best predictor of members of the European Parliament (MEP) voting behavior is to look at the preference of their political party group. The ideological preference of the political party would manifest itself through the votes of the parliamentarians (Hix and Høyland 2013, 178, Wallace et al. 2015, 59-60). The Salience model would not necessarily oppose this, but would argue that the underlying motivation for the MEPs voting behavior may vary in accordance with the circumstances.

When studying the voting patterns of MEPs, Amie Kreppel (2001, 172) concludes that there is a high degree of coherence among voters in political party groups, regardless of time or legislative procedure. Nevertheless, she also states that there are several examples where national delegations defect from their group on a specific vote. Robert Thomson finds the same trends, and elaborate that when important national interest is at stake MEPs tend to dissent from their party groups' positions if it varies from their home member state's positions (2011, 122). The national interest of member states is influenced by salience, when the national interest increases the member states have more incentives to co-operate with the MEPs. Higher salience therefore means that MEPs have a higher chance of voting in accordance with member state rather than their political group if their views are opposing. Lower salience would result in less incentives for the member states to convince the MEP, and therefore leaves more room for maneuver for the political groups.

The salience model has shown that the power of the Council and the European Parliament, as well the role of the Commission will change according to the salience of the issue discussed. The two institutional roads of decision-making depending on the salience, are illustrated in figure 3.3

Figure 3.3: The Salience Model
Two Institutional roads for EU decision-making in asylum Policy



4. Data and methods

This thesis has been conducted through a post-positivist approach, meaning that my view on research is that it should be logical, empirical, based on prior theory and cause-and-effect oriented (Creswell 2013, 23-24). The research question - *How did the refugee crisis affect EU decision-making in asylum policy?* - Is a broad question where the goal is to give a thorough understanding of the process that shapes and forms the policy output in the area of asylum. According to Peter Swanborn (2013, 3), a good way to proceed with a broad research question is to use an intensive approach, which can take the form of a case-study. This thesis will therefore conduct a comparative study of eight legislative acts to give a thorough understanding of how the refugee crisis has affected decision-making in asylum. This chapter will present the research design of this thesis.

4.1 The comparative case study and case selection

The research design chosen for this thesis is a comparative case study, consisting of both within-case study and across-case studies. According to Robert K. Yin (2009, 9), research question starting with a *how* or a *why* is best answered using a case study, when such research is explanatory in nature by trying to trace links over time rather than just a study of a mere incident. In that regard the case study is suitable when seeking to explain the development of EU asylum policy. As underlined by both John W. Creswell (2013, 48) and John Gerring (2007, 40) As underlined by both John W. Creswell (2013, 48) and John Gerring (2007, 40) it is the exploratory nature of the case study that gives it the advantage of getting an in depth understanding of a phenomenon.

As for my thesis, a case study design might consist of several cases. This gives it the advantage of being more robust in explaining the phenomenon (Yin 2009, 53). The two cases this thesis will study is the 'second phase of asylum laws' adopted between 2011-2013, and the 'third phase of asylum laws' proposed in 2016. I argue that the selection of cases represents a variation of a *Most Similar System Design (MSSD)*. The main feature of a MSSD design is that the systems compared are as similar as possible with respect to as many features as possible (Przeworski and Teune 1970, 32). In my study, each case and its four subcases are similar in every regard what concerns the decision-making process. Both generations of legislation are developed under the same EU Treaty, which defines the formal role and power of the

institutions involved in decision-making. Furthermore, the reforms studied are developed under the same legislative procedure.

In a Most Similar System Design, Przeworksi and Teune (1970, 33) write that the number of common characteristics should be maximal, while the characteristics not shared by the cases should be minimal. Thereby, the inter-systemic differences are conceived as likely explanatory variables. My comparison is intertemporal, it compares two periods of legislations within the same institutional context. This is not the most used most similar systems design, which is normally applied cross-sectionally. In my case selection, I attempt to keep as many conditions as possible constant while having variation on the variable of interest, which is the rise in salience caused by the refugee crisis. The design is illustrated in table 4.1. I exclude the first generation of asylum laws, adopted between 1999-2004. This generation of asylum laws does not resemble the other cases in regard to the Treaty applicable at the time of adoption, nor the legislative procedures used.

Table 4.1. Case selection with a most similar systems design

Cases	Subcases	X_1 Salience	X_2 Treaty	X_3 Legislative procedure	Y: Policy output
CASE 1	Dublin III regulation	Low	Lisbon Treaty	Co-decision	?
	Qualification Directive	Low	Lisbon Treaty	Co-decision	?
	Reception Condition D.	Low	Lisbon Treaty	Co-decision	?
	Procedures Directive	Low	Lisbon Treaty	Co-decision	?
CASE 2	Dublin IV proposal	High	Lisbon Treaty	Co-decision	?
	Qualification regulation	High	Lisbon Treaty	Co-decision	?
	Reception Condition R.	High	Lisbon Treaty	Co-decision	?
	Procedures Regulation	High	Lisbon Treaty	Co-decision	?

The research design follows the recommendation of Yin (2009, 54) when it comes to replication logic. For both cases four subcases are studied, where I analyze the influence of the explanatory variable on the dependent variable in every case. Thereby; eight cases are studied separately, which makes the study more robust. Each of the cases are studied in detail with the use of process tracing. Process tracing involves examining pieces of evidence within a case, where sequences and mechanism are in focus. The method is often described as the work of a detective, who attempts to solve a crime by looking at clues to find a convincing explanation. In this way process tracing helps establishing causal direction (Bennet 2010, 208-09).

Some scholars would argue that process tracing mainly works as a descriptive tool and because of its lack of cases it is not suitable to draw conclusions about causal inferences (KKV 1994). I do however agree with scholars claiming that causal inference can be drawn from several types of observations, and that qualitative methods are a way of doing so (George and Bennet 2005, Goertz 2006, Gerring 2007, Mahoney 2010). Collier, Brady and Seawright (2010) calls the piece of evidence drawn from a context or process a causal-process observation (CPO), while the regular observation in a data set is called a DSO (data-set observation). The CPO works as a new kind of leverage in causal inference, not necessarily as a part of a large group of observations, but by yielding inferential leverage on its own (Collier et al. 2010, 184-85).

In sum, this thesis will study the following cases; the first case. In sum, this thesis will study the following cases. The first case, the second generation of CEAS consists of the Qualification Directive, the Asylum Procedure Directive, the Dublin III regulation and the Reception Condition Directive. These four legislative acts were all developed between 2008 and 2013. The second case, the third generation of EU asylum laws, consist of four legislative proposals to change the Common European Asylum System. This includes a Dublin IV regulation, a reform of the Reception Condition Directive, an Asylum Procedure regulation and a Qualification directive regulation. These changes were proposed by the Commission in 2016, but are not formally adopted yet. The overview over all cases included in this thesis are seen in table 4.2. Both generations also consist of a legislative act called the Eurodac regulation. The exclusion of the regulation from this study is based on the same arguments as used by Servent and Trauner (2014, 1144-1145), namely that the Eurodac regulation is a technical complement to the Dublin system rather than a cornerstone of the EU asylum regime.

Table 4.2. Cases and subcases

Cases	Within case units
Case 1: Second generation of EU asylum law	The Qualification Directive Official code: 2011/95/EU
	The Asylum Procedure Directive Official code: 2013/32/EU
	The Reception Condition Directive Official code: 2013/33/EU
	The Dublin Regulation Official code: 2013/604/EU
Case 2: Third generation of EU asylum law	Proposal for a Qualification Regulation Official code: 2016/0223 (COD)
	Proposal for an Asylum Procedure Regulation Official code: 2016/0224 (COD)
	Proposal for a Reception Condition Directive (recast) Official code: 2016/0222 (COD)
	Proposal for a Dublin IV Regulation (recast) Official code: 2016/0133 (COD)

4.2 Conceptualization and operationalization

After the increase of refugees in 2015, the media coverage of the situation increased and asylum became a part of the political discourse in Europe. The 'refugee crisis' puts immigration and asylum policy in the spotlight and solving the crisis rapidly became a top priority for the European Union. Thereby, the crisis led to an elevated attention to asylum policy and its salience increased. The refugee crisis is in this thesis therefore operationalized as salience, what McLean and McMillan (2009, 473) defined as: "*the importance of a political issue*".

Seeing the refugee crisis as only increased salience might be criticized for being a simplification. The increased numbers of refugees have had a tangible effect on the asylum system in the frontline member states, it has also led to high numbers of secondary movement where refugees are moving onto other member states in Europe before applying for asylum. Which in turn has led to pressure on certain member states. Nevertheless, in the context of studying the refugee crisis influence on *EU policy output* I see salience as a concept that adequately operationalize the refugee crisis. After 2015 asylum became part of the political discourse in Europe; where some part of society compels that EU and its member states need take responsibility for people in need, and the contrasting part of society emphasizes issues

related to immigration concerns, as pressure on the welfare state, employment and terrorism. These conflicting sides are also reflected in the media, where some news articles covering the numbers of people dying in the Mediterranean Sea while others emphasize the rise of terrorism because of increased migrant flows. In the context of this study I therefore argue that salience is an adequate conceptualization of the refugee crisis.

Measuring salience can be done in several ways. Givens and Luedtke (2005, 3) measure it by counting articles dealing with asylum seekers in some chosen newspapers in different countries. In another article, they code issues as either low or high salience based on whether the issue have achieved high public and media profile, based on second hand sources (Givens and Luedtke 2004, 152). In this thesis, I have operationalized every legislative act in asylum after 2015 as a 'high salience case', shown above in table 4.1. Followed by the operationalization explain above that refugee crisis lead to increased salience. I planned to confirm this by doing a newspaper search in LexisNexis Academic, from selected countries before and after the refugee crisis. The database provides such searches, but unfortunately the University was unable to provide access to the search engine.

The cases before the refugee crisis are operationalized as 'low salience cases' because they were adopted before the influx of migrants. But without any proper measurement of the salience it is hard to vindicate this. The consequence might be that the salience before the refugee crisis is higher than presumed, making it possible that some assumptions made for the cases of high salience also to some degree will be applicable for the low salience cases. With the rise of far-right parties in Europe and growing number these parties in the European Parliament after the election in 2014 (BBC 2014), there are reasons to believe that the salience before might have been higher. Nonetheless, the refugee crisis provided a new set of challenges and the asylum debate 'exploded', which leads me to assume that the salience after 2015 is considerably higher.

4.3 Collecting data

When approaching the research design, I used two different forms of data. First I conducted expert interviews with representatives from the three main institutions within EU decision-making; the Commission, the European Parliament and member states in Council. I also conducted an interview with an NGO. The purpose of the interviews was to get an in-depth knowledge of the political position of the different institutions when developing the legislative framework. When gathering knowledge on the third phase of CEAS, these interviews proved

to be especially important due to the unfinished status of the process and the correlated lack of formal documents. The second source of data was gathered by analyzing formal documents. These provided a formal overview over the process of all files, the position of some of the institutions and other important information.

4.3.1 Document analysis

The main source of documents was gathered from the Official Journal of the European Union (EUR-lex). The database includes EU law (directives and regulations of interest) as well as preparatory acts. This makes it possible for me to track the directives of interest from the legislative proposals is adopted by the Commission, through the potential amendments from the European Parliament and the Council, the potential revised proposals, to the final adopted EU law. The strength of document analysis is that it can be reviewed repeatedly, the content is very exact and that it covers a long span of time. The main weaknesses with the method is that it can be subject to bias selection and a reporting bias (Yin 2009, 102).

In order to minimize a bias selection, I followed three stages for every file. First the original proposal presented by the Commission was studied. Thereon all formal files presented by the Council and the European Parliament was studied. For the Council this was mainly Press Releases from Council Meetings where the proposal was discussed; for the European Parliament it was the official report from the Rapporteur in charge of the file and also a formal webpage where all explanations of the votes in plenary are presented. Even though there are formal documents presenting the opinion of actors outside the formal decision-making process, as the Committee of Regions (CoR) or the European Economic and Social Committee (EESC), I saw it as necessary to exclude these to minimize the magnitude of the study. The only actor I included that was not a formal part of the decision-making process was the non-governmental organization; European Council of Refugees and Exiles (ECRE n.d.). By doing this I could get information from an actor outside the formal decision-making process, that could contribute positively to the analysis. Choosing ECRE was a natural choice; the network consists of hundred NGOs and is the biggest organization in Brussel that closely follows the policy development regarded refugees.

The document analysis was further complemented with data gathered from the Chapel Hill Expert Survey (CHES) at the University of North Carolina. The data set estimated party positions on European integration, ideology and policy issues in a variety of European countries, making it possible to study the political affiliation of the Member states in

government. The data set gives an indication of political parties' preference towards European Integration (ranging from 1 "strongly opposing" to 7 "strongly in favor"). Even though measuring a government's orientation might seem like an easy task at first glance, this is not necessarily the case. Especially challenging is coalition governments, which might include political parties with quite different orientations. To cope with these challenges, I chose to look at the affiliation of the Minister in charge. This would often be the Minister of Interior, but some countries also had ministers especially concerned with immigration. By looking at the Minister(s) that was presented under two Council Meetings with Justice and Home Affairs, I could get an overview over their political affiliation and thereon, by using CHES, measure how the political party scored on both GAL/TAN and EU integration

4.3.2 Expert Interviews

In addition to using documents as a method of collecting data I also conducted elite interviews. These interviews were necessary when the formal documents lacked satisfactory information, especially regarding the position of the different actors as well as coalition building among member states and political groupings in the European Parliament. To gather the necessary information needed, I conducted a field trip to Brussels. Here I interviewed representatives from the three main EU institutions: The Commission, the European Parliament and member states in Council. Additionally, I interviewed a network of NGOs called the European Council of Refugee and Exiles (ECRE). I will here summarize how I proceeded with the selection of interviewees.

For *the Commission*, the unit responsible for developing legislative proposals in asylum policy is part of the Directorate General of Migration and Home Affairs (DG HOME). The responsible unit is called Unit 3 (asylum) and is a part of Directorate C on Migration and Protection. The practitioners working there would be the best source for information, since they have hands-on experience in developing the asylum legislative proposals. I managed to conduct an interview with one of the practitioners here, which was satisfactory for the scope of this thesis.

When interviewing *the Council* it was of interest to interview representatives from the member states, but also representatives from the General Secretariat of the Council (GSC). GSC work as an administration that organize the work of the Council. It assists both the European Council and its Presidency (Council of the European Union 2016). The General Secretariat is

separated into different Directorate-Generals that is separated into different Directorates that again are separated into different Units. The unit dealing with asylum directives is Directorate-General D, Directorate 1 and Unit 1B (External Relations, Asylum and Migration). I conducted an interview with three officials working here.

The European Union consists of 28 member states and interviewing representatives from all would exceed the scope of this thesis. I therefore selected member states with the goal of representing both strong and weak regulators. As explained in chapter 3, my model assumes that the strong regulators have most influence over the position of the Council in times of low salience, whereas under times with high salience all member states have an enhanced interest in negotiating. It was therefore important to get member states representing both groups. The easiest way to get in touch with representatives from member states was through their Permanent Representation (PermRep) to the European Union, located in Brussels.

I contacted member states that qualified as either a strong or a weak regulator. For the strong regulators; this included Germany, France, United Kingdom, Sweden and the Netherlands. For the weak regulators, I focused on the Southern and Eastern European states. The person of interest would be the official working with migration and asylum policy. After contacting the PermReps through e-mail and phone, several did not answer (Bulgaria, Cyprus, Czech Republic, Germany, Italy, Malta, Romania), some were not able to meet (Croatia, France), and for some countries I was not able to get in touch with the right person of interest (Greece). Nevertheless, I was able to get in touch and conduct interviews with the Swedish PermRep, the Dutch PermRep and the Slovakian PermRep. And I was satisfied with that since it represented two strong and one weak regulator.

For the European Parliament, my aim was to interview between three to five different politicians from different political party groups as this would provide an overview over the political preferences across the political parties. However, after months trying to get in touch with MEPs and after some cancellations from scheduled interviews, the only interview I was able to conduct was with the assistant of MEP Jean Lambert from the Greens. In the process of selecting the MEPs, I used the following strategy.

The representatives were chosen from the Committee of Civil Liberties, Justice and Home Affairs (LIBE committee), the committee responsible for dealing with asylum legislation on behalf of the European Parliament. I had an assumption that it would be difficult to get in touch with the relevant MEPs, so I chose two approaches. First I contacted relevant MEPs from the LIBE committee based on their political party family and experience in the committee, then

I chose to contact the rapporteurs of the different directives. The rapporteur has a leadership role in dealing with a legislative proposal. They draft committee reports, lead discussions and if necessary represents the European Parliament in negotiations with the Council (Thomson 2011, 105).

From the webpages of the European Parliament (EP) there were a total of 59 MEPs listed as chair, vice-chair or members of the LIBE committee. To ensure that the interviewees had knowledge about the negotiations from both generations, I choose MEPs that have been active in the committee from 2011 and until today, and was left with 21 politicians. Together they represented seven different political groupings in the European Parliament, the only one missing was the far-right party Europe of Nations and Freedom Group (ENF).

The idea was to interview at least three representatives from the two main parties (S&D and EPP), and one from the pivotal party (ALDE). These three would be the most important interviews as these three parties play a major role in the coalition building in the European Parliament. . I also wanted to try to get an interview with a MEP from one of the parties on the "right" of EPP that often joins a "right-coalition" (ECR or EFDD) and from the parties that often join a "left-coalition" (Verts/ALE or GUE/NGL). By ranging the MEPs by their experience in the LIBE committee, I chose which three candidates from each party I would contact. Where the MEPs had equal experience, I picked and ranged them randomly. Even though I only wanted one from each party I contacted several as I assumed that most of them would either be busy or difficult to get in touch with.

Table 4.3: Member of European Parliament active in LIBE committee 2011-2017

Nb.	S&D	ALDE	EPP	Left	Right
1	Claude Moraes (chair). From 2004	Sophia in ´t Veld (former vice-chair). From 2009	Kinga Gál (vice-chair since 2007). From 2004	Jan Philipp Albrecht (vice-chair). From 2009	Gerard Batten From 2009.
2	Juan Fernando López Aguilar (former chair) From 2009.	Nathalie Griesbeck From 2009.	Barbara Kudrycka (vice-chair since 2014) From 2004	Cornelia Ernst From 2009.	Valdemar Tomasevski From 2009.
3	Monika Flasíková Benová From 2009.	Louis Michel From 2009.	Agustín Díaz de M. G. Consuegra From 2004	Judith Sargentini From 2009.	Monica Macovei From 2009.

Note: If nothing else is specified the person serve as a member of the LIBE committee, not chair or vice-chair.

Source: Own model

As mentioned each legislative proposal has a rapporteur in the European Parliament. I assumed these persons were the ones most familiar with the process of dealing with the legislation of interest of this thesis. Of the seven rapporteurs, all but one is still a member in the European Parliament. Antonio Masip Hidalgo is no longer in the European Parliament, and I was unsuccessful in getting information of his whereabouts.

Table 4.4: Rapporteurs for the legislative acts in case 1 and case 2

Name	**Country**	**Political Grouping**	**Rapporteur for directive:**
Cecilia Wikström	Sweden	ALDE	Dublin III regulation and Dublin IV regulation
Antonio Masip Hidalgo	Spain	S & D	Reception condition directive
Sylvie Guillaume	France	S & D	Asylum procedure directive
Jean Lambert	United Kingdom	G/EFA	Qualification directive
Tanja Fajon	Slovenia	S & D	Qualification Regulation
Sophia in't Veld	The Netherlands	ALDE	The Reception Condition Directive
Laura Ferrara	Italy	EFDD	The Asylum Procedure Directive

Most of the MEPs did not respond on several e-mails or phone calls, and the most who replied were unfortunately too busy to meet. Some MEPs scheduled telephone interviews but ended up withdrawing. The only MEP which answered positively were Jean Lambert from the Greens, and I ended up interviewing her assistant.

When I had decided to include the European Council on Refugees and Exiles (ECRE) in the document analysis, I also saw it as useful to interview one representative from this network. By contacting ECRE they arranged an interview with one of their coordinators. In total, I conducted seven interviews. They all lasted between 45 to 50 minutes. The interviews were semi-structured, and I had planned an interview guide in advance. The interview guide consisted of open-ended questions, but was followed up by closed-ended questions if the interviewee did not respond to the first question (Harvey 2006, 434-35). For properly ensuring the privacy of the interviewees the project was reported to the Norwegian Centre for Research Data. The interviewees signed consent forms, where they were informed about the project and

their option to withdraw from the project at any given time. The interviewees could here choose whether they wanted to be anonymized or not.

4.4 Validity and reliability of the thesis

For establishing the quality of a research design some measurements are commonly used, called *validity* and *reliability*. The validity test can take different forms, Yin (2009, 40) separates between *construct validity, internal validity* and *external validity*. I will in the following discuss these measurements along with the reliability of this research design.

The *internal validity* refers to the causal relationship between the independent (y) and dependent variables (x) in the analysis. If I were to incorrectly say that salience (x) have affected the policy output (y) without knowing that the relationship might be affected by a third factor, this would weaken the internal validity (Yin 2009, 42). There are ways of minimizing the chance of the effect being spurious. Gerring (2007, 172-173) refers to process tracing as a tool for doing so. By deductively 'reconstruct' the causal chain within a case, we can with greater certainty say that x caused the effect we observe in y. This thesis has done so by thoroughly studied each case of interest, with the aim of securing the internal validity of this thesis.

According to Creswell (2013, 251), triangulation is another tool for securing validity. By using multiple sources, data and methods the researcher can corroborate evidence that strengthens the validity. In my research design, I have been doing so by using both interviews as well as document analysis to shed light on phenomenons, where interviewees have contributed with information I have sought to confirm the findings by using document analysis and/or double check with other interviewees. For my study, I would say that the validty is strong in the first case studied, but less evident for case two. This is due to the fact that there are less documents available for the second phase when this is not finalized. Studying a case that is not finalized is the greatest deficiency in this thesis, and led to the interval validity being weaker.

The *external validity* refers to whether a finding is generalizable beyond the case studied, so the relationship between the sample and the population. As explained by Yin (2009, 43) case studies have often been criticized for their lack of external validity because the findings are not directly applicable to other cases. But it is important to have in mind what the aim of the case study is. As for this thesis I do not seek to find a general theory that could explain all policy development in the European Union. If that was the case, the external validity of this thesis would be low. But on the contrary, I seek to gather knowledge on the development of one phenomenon, the asylum policy. And in that regard I will argue that the external validity is

high. By following the recommendations of Yin (2009, 44), also explained above, the design has a replicating form when I test my theory in eight different cases, which strengthen the external validity.

The third variation of validity mentioned by Yin (2009, 40-41) is *construct validity* which relates to whether the concept that are studied is correctly operationalized. The challenge here is that the researcher might have subjective judgements when operationalizing the concept and gathering the data. The refugee crisis is in this thesis operationalized as salience, *the importance of a political issue*. As recommended by Yin (2009, 42) I have defined salience as researchers before me (McLean and Millan 2009, Givens and Luedtke 2004), and I argue that the construct validity here is high. The weakness might be that the operationalization of the *refugee crisis* is defined as "only" *salience*. The refugee crisis might have led to other changes that affected the policy output of asylum policy (y), rather than just increased salience. An example could be the change of numbers of asylum seekers in Germany. The refugee crisis led to a shift in the allocation of refugees in Europe, leaving Germany to bear most of the burden, leading to a change in their position towards EU asylum policy, possibly changing the policy output. This is a concrete effect, that could be seen outside the operationalization of refugee crisis as increased salience. I have this in mind when conducting this study, but I would also argue for these being highly intertwined.

The last measurement for establishing the quality of this thesis is *reliability*. The objective of the reliability test is to minimize errors and biases in a study, by ensuring if someone were to conduct the same procedures as described in this thesis they would arrive at the exact same findings and conclusions (Yin 2009, 45). Creswell (2013, 253-254) recommends ways of enhancing the reliability, which I have taken into account. Regarding the interviews, they were all taped and transcribed. This increase the accuracy of the data. Furthermore, I also used codes when analyzing the transcriptions, meaning that the codes were defined in advance and every statement related to the codes were analyzed, meaning that the selection of information from the interviews was not characterized by coincidence. The reliability would here be higher if the transcriptions were coded by other than myself, but this was not possible in the scope of this thesis. For increasing the reliability, the interview guide used during interviews are included in the appendix, furthermore every document analyzed will be referenced in the text and in the bibliography.

5. A descriptive analysis of EU asylum policy

The EU policy on asylum has been developed in three phases. The first and initial phase was established between 1999-2004, but during this time EU had no formal competence to adopt common legislation in the area of asylum and immigration, leading it to evolve in an intergovernmental structure outside the formal channels of EU policy development. For the second phase evolved between 2008 and 2013 and reformed the initial legislative acts, and EU competence of. This time the EU have gained competence to draw up legislation in the area of asylum, and this was adopted under the co-legislation procedure. The last phase was triggered by the refugee crisis that hit Europe in 2015, it is here proposed to change existing legislative acts from the second phase, but this has yet to be finalized. This chapter will first present an overview over the main developments in EU asylum policy over three phases, followed up by a detailed description of the main legislative acts that form the CEAS. An exhaustive and thorough overview over this policy area is lacking in existing literature, which makes this chapter especially relevant before moving on to comparatively study the development of the second and third phase.

5.1 Three phases of CEAS

The first sign of European cooperation on asylum came with the adoption of the Dublin convention in 1990. The convention made it clear which member state was responsible for examining an asylum application that was lodged in one of the member states in the European Communities (Refugee Council 2002 and Hurwitz 1999, 646-47). A step towards further cooperation was established with the Maastricht Treaty in 1993, when a new organizational structure called the European Union (EU) was created. The structure was based on three 'pillars'; the European Communities; a Common Foreign and Security Policy and at last a Justice and Home Affairs pillar (Nugent 2010, 56). The third pillar on Justice and Home Affairs (JHA) started off as an institutionalization of existing intergovernmental structure rather than a new supranational competence, but it paved the way for further integration. It was first with the Amsterdam Treaty in 1999 that the work with the Common European Asylum System (CEAS) really started (Hix and Høyland 2011, 283 and Commission Communication of 17 June 2008, 2)

The first step was to create an Area of Freedom, Security and Justice (hereafter AFSJ) within 2004 (this period is referred to as the transition period). During the five years of the transition period the Treaty specified that decisions would be made by unanimous agreement

between the Member states governments, but the Commission was given the right to initiate legislation alongside the Council, and the European Parliament gained some power in the sense that the Member State governments needed to consult the European Parliament before they could adopt legally binding directives and regulations (Hix and Høyland 2011, 283-284). The Maastricht Treaty also included a clause called the 'passarelle clause' which gave the governments by unanimity the opportunity to pass all the policy areas in the AFSJ over to qualified majority voting and the co-decision procedure. So, in the end of 2004 the governments decided to pass all policy issues over to the main body of the Treaty (Hix and Høyland 2011, 276).

It is common to distinguish asylum files into generations (Moraga and Rapoport 2015, 643), and the asylum legislation adopted under the intergovernmental structure between 1999-2005 in the third-pillar is often referred to as the 'first phase of CEAS', but it will here also be referred to as 'the first generation of asylum laws'. This phase consisted of several legal acts constituting the CEAS; namely the Directive on Temporary Protection, the Directive on Reception Conditions, the Directive on the Qualification for becoming a refugee or a beneficiary of subsidiary protection, the Asylum Procedure Directive, the Dublin Regulation II and the Returns Directive. They were all adopted unanimously by the Council and it resulted in legal instruments that followed the principle of lowest common denominator (Velluti 2014, 17-18).

The aim of the first phase was to create common minimum standards that would harmonize the legal frameworks of the member states. But already in the Hague Programme [6] of 2004 the aim for the second face of the CEAS was set out, mainly to establish common asylum procedures (instead of minimum standards), create uniform status for those granted asylum or subsidiary protection and strengthening practical cooperation between national asylum administrations. This resulted first in a Green Paper [7] in June 2007 where stakeholders were consulted, which provided the basis for the preparation of a Policy Plan on Asylum, published by the Commission in 2008. The policy plan stated that the common minimum

[6] The European Council approved the Hague Programme in 2004, which establish general and political goals in the area of Justice and Home Affairs for the period of 2005-2009 (Official Journal of the European Union 2005)

[7] A Green Paper refers to a document published by the European Commission, where the aim is to stimulate discussions on a given topic. Relevant parties, both bodies and individuals, are invited to participate in a consultation process. The Green Paper might lead to legislative developments, that are outlined in White Papers (EUR-Lex n.d)

standards in the first generation of asylum law had not created a satisfactory level, and that they therefore would propose to recast some of the existing legislation (Commission Communication of 17 June 2008, 2-4). The Commission ended up proposing to recast the following legislative acts forming the CEAS, namely the Asylum Procedures directive, the Reception Conditions directive, the Qualification Directive and the 'Dublin System' (including the Dublin regulation and the Eurodac regulation) (Commission 2017 b). These legal acts are the applicable legal framework today, and are referred to as 'the second phase of CEAS' or 'the second generation of asylum laws' going from 2008 until 2013, as from the first amended file was proposed until the last file was adopted.

In 2015 over one million people crossed the borders into the European Union, making the numbers of migrants in Europe reach new levels (UNHCR 2015 and European Commission 2016 c). As a response to this, the European Commission proposed a strategy – European Agenda on Migration – that would help tackle the immediate challenges of the ongoing crisis. In 2016 the Commission also presented two packages that would reform the CEAS. The first package came in May where the proposal suggested to reform the 'Dublin system', also including to strengthen the Eurodac system and establishing a European Agency for Asylum (European Commission 2016 b).

The second package was proposed in June where the Commission presented a proposal to complete the reform of the Common European Asylum System and *"move towards a fully efficient, fair and humane asylum policy – one which can function effectively both in times of normal and in times of high migratory pressure."* (European Commission 2016 a). This included replacing the Asylum Procedure directive and the Qualification Directives with regulations, and reforming the Reception Condition Directive. This is at the time of writing still being discussed by the European Parliament and the Council, and no formal decision has been made. These legislative proposals will be referred to as 'the third phase of CEAS' or the 'third generation of asylum law'.

5.2 The EU asylum directives

I will here provide an outline of the four EU directives on asylum that constitute the cornerstones of the CEAS and their development. As argued also by Servent and Trauner (2014), these are the Reception Conditions, the Qualification Directive, the Asylum Procedures Directive and the Dublin regulation. The Eurodac regulation works as a technical compliment to the Dublin regulation, and is therefore not discussed in detail (Servent and Trauner 2014,

1144-1145). I will also briefly mention a fifth one, the Temporary protection directive. This is excluded from the analysis because this was neither reformed nor used since it was adopted in 2001, and the view of the Commission is that it is not going to be used in the future.

5.2.4 The Dublin System[8]

The Dublin regulation is regarded as the first cornerstone of the CEAS (Commission proposal, 3). When an application for asylum is lodged in of the member states by a third-country national, it is the Dublin regulation that lays down the criteria and mechanism that allocate which member state that is responsible to examine the application. The objective of the regulation is to guarantee the applicant effective access to the procedures for granting international protection and preventing persons from lodging several applications in different member states and having their application examined by a member state of their own choosing (Hruschka and Maiani 2016, 1485-87). Article 3 in the regulation ensures that member states shall examine any application for international protection that is lodged by a third-country national or a stateless person who applies for asylum on the territory of any of the member states, and that the application should only be examined by one of the member states. Which country that is responsible is determined by the 'hierarchy of criteria' set out in chapter III of the regulation. The general rule is that if no Member State can be designated responsible based on a set of criteria, the first Member State where the application is lodged is responsible for examining it (Hruschka and Maiani 2016, 1511).

Article 8 concerns unaccompanied minors, and are the first criteria in Dublin. If the minor has a family member or a sibling that is legally present in a member state, then that member state is responsible for the examination of the application. Article 9 concerns cases where the applicant has a family member that is allowed to reside as a beneficiary for international protection in one of the member states, then that member state is responsible for examining the application, provided that the applicant has expressed this in writing. The same goes for cases where the applicant has a family member whose application has not yet been the subject of a first decision (art. 10) or if the applicant has several family members and/or minor unmarried siblings submitting application for international protection at the same member states

[8] The Dublin System refers to the Dublin regulation, the Eurodac Regulation and their two implementing regulations (Commission proposal Dublin III, 4)

simultaneously (art. 11). If the applicant has a valid residence document or a valid visa, the member state that issued this is responsible for the examination (art. 12). If none of these criteria are met; article 13 applies, saying that the member state into which the applicants irregularly crossed the boarders (first country of entry) is responsible for examining the application (Regulation 2013/604/EU).

The Dublin System has been transformed two times. The Dublin Convention was the legal framework originally regulating responsibility for asylum applications (1990/1997). This was replaced by the Dublin II Regulation in 2003 as a part of the implementation of the first generation of asylum laws in the Common European Asylum System (CEAS) and again in 2013 by the Dublin III Regulation as a part of the second generation of asylum laws (Peers 2015, 486). Despite these changes the system meets great resistance, it is being criticized for lack of efficiency and ability to fulfill its basic functions (Hruschka and Maiani 2016, 1487). In a study done on behalf of the LIBE committee, these versions of Dublin were also criticized for not considering the overall numbers of asylum seekers, and in this sense not ensuring shared responsibilities among member states (Guild et al. 2014, 36). Steve Peers claim that despite several changes to the system, there has not been an attempt to radically reform the system and the core of system is therefore retained (Peers 2015, 486-87).

Closely related to the Dublin regulation is the Eurodac regulation, which helps identify individuals who have irregularly entered the member states and individuals who have lodged an asylum claim. By recording fingerprints of these individuals and sending them in to a central fingerprint database, it is easier to identify the asylum seekers first country of entry and help prevent multiple asylum claims and secondary movement (ECRE 2006, 3). Hence, the purpose of the directive is to assist in determining which of the member states that are responsible in examine the asylum claim according to the Dublin regulation (Regulation 2013/603/EU). This regulation will not be elaborated further because I see it as mainly a technical complement to the Dublin regulation, rather than a cornerstone of the CEAS.

In 2016 the Commission proposed a Dublin IV regulation. The proposal keep the core of the Dublin system, making the first-country of entry responsibility for the asylum claim. But to deal with the uneven share of asylum seekers they propose a ‘corrective allocation mechanism’. A reference key will indicate the share of the total number of applications made in the EU based on member states GDP and population. By comparing the reference key to the actual distribution of claims it will help determine which member states have disproportionate numbers. When the claims exceed 150 % of the country’s reference share, the surplus will be

relocated across EU (European Commission 2016 d). This proposal has not yet been addressed in the European Parliament and no formal decision has been made by the Council.

5.2.1 The Qualification Directives

The Qualification directive consists of two elements. The first element lays down the criteria that a person needs to meet to be recognized as someone who qualifies for receiving international protection, either as a refugee or as a beneficiary of subsidiary protection. Furthermore, the directive also lays down standards for what member states must offer to persons receiving international protection (Dörig et al. 2016, 1117). The first step in the process of receiving an asylum, is that the person of concern needs to be recognized as either a *refugee* or as a beneficiary of *subsidiary protection*. The Qualification Directive lays down the criteria of who qualifies to these statuses when applying for asylum in the EU member states. The directive describes a 'refugee' as a:

> *"A third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply"* (Art. 2(d), Directive 2011/95/EU).

In addition to the refugee status there is also a status called a subsidiary protection status defined in Article 2(f), saying that persons granted this status are persons that do not qualify as a refugee but that at the same time if returning to his or her country of origin, are in threat of facing serious harm. The persons granted one of these two statuses are defined as *'beneficiary of international protection'* (Directive 2011/95/EU on Qualification). The aim of the directive is therefore to create a uniform status for the two statuses that will be applicable in all member states. The 2011 recast directive was an improvement from the first directive in the way that it moved from laying down minimum standards for the qualification and status of refugee to laying down standards for a uniform status (Dörig et al. 2016, 1115).

In addition to the rules on qualification and status, the directive also lays down the benefits that must be offered to the persons that receive international protection. This includes access to a set of rights like accommodation, education, employment, social welfare, healthcare, integration facilities, and access to information in a language they understand. But it also protects the beneficiaries from refoulement, and gives them the right to a residence permit lasting for at least three years, as well as travel documents and freedom of movement within the member state (art. 21-35). These provisions are all minimum standards, so the member states are free to adopt more favorable standards (Dörig et al. 2016, 1117 and 1249).

In 2016 the Commission proposed to reform the qualification directive again; moving it from a directive to a regulation, meaning that it would make it harder for member states to interpret the legislation themselves, rather there will be a set of standards common for all. The Commission pointed out that under the current directive there is a lack of convergence among member states when it comes to recognition rates, the type of protection status granted applicants, the duration of residence permits and access to rights (Commission Proposal of 13 July 2016a, 4). This is informally referred to as the 'asylum lottery', meaning that the outcome of an asylum application might differ depending on which EU member state the evaluates the application.

In addition, the Commission highlighted that member states do not use the provision of cessation of status, meaning that they do not reevaluate the status and ensure that international protection is granted only as long the risk of persecution or serious harm persists (Commission Proposal of 13 July 2016a, 4). Under the current qualification directive, the asylum seekers have incentives, the Commission argue, to claim asylum in member states where the rights and recognition levels are perceived to be higher rather than the member states that are responsible for examining the application according to Dublin. Therefore, there is a need for stronger harmonization, that will be achieved through making the standards uniform in a regulation.

5.2.2 The Asylum Procedure Directives

Where the Qualification Directive sets out who can receive status as a beneficiary for international protection, the Asylum Procedure Directive deals with the procedures for granting and withdrawing this protection. It sets out a set of basic principles and guarantees (chapter 2), it lays down standards for procedures at first instance and the procedures for the withdrawal of international protection (chapter 3 and 4), and it lays down standards for appeals procedures (chapter 5). The basic principles and guarantees include obligations for member states regarding

the registering of applicants and deadlines related to this, it also obliges member states to give information and counselling at border crossings and transit zones and there are several provisions regarding personal interviews with the applicants (art. 6, 8, 15-17). It gives the applicant the right to remain in the member states while awaiting the examination of his/her application (art. 9) and several other guarantees and obligations are also given the applicant (art. 12 and 13)

The aim for proposing the asylum procedures directive in 2000 was to ensure that an individual asylum applicant would receive the same decision regardless of which member state he or she lodged the asylum claim in. It was also thought that this would help prevent secondary movement among member states. The Commission first proposed a proposal that met severe criticism, which led to a second proposal where the standards were generally lowered. The Directive did provide several basic principles and guarantees, but overall the Directive said to fail the objective of effectively harmonizing procedural standards. The directive also included a considerable number of optional provisions that permitted derogations from the minimum standards that the directive provided (Vedsted-Hansen 2011, 257-258 and 262). When evaluating the directive, the Commission stated that these optional provisions and derogation clauses had contributed to divergent procedural systems among the member states; especially related to what was defined as safe country of origin or a safe third country, but also related to other elements as personal interviews and legal assistance. The new directive was therefore proposed in 2009 where the aim from the Commissions side was to ensure higher degree of harmonization and better standards for international protection. The Council was not able to reach an agreement on the tabled proposal, so the Commission launched an amended proposal two years later in 2011. This proposal was more flexible and more compatible to the variation in national legal systems, that made it easier to implement, and the proposal were signed in June 2013 (Vedsted-Hansen 2016, 1293).[9]

As with the Qualification directive, the Commission in 2016 proposed to change the Asylum Procedure directive into a regulation. The aim is to secure more harmonization and remove incentives for asylum shopping and secondary movements by making the outcome of

[9] The directive applies to all member states, except the United Kingdom, Ireland and Denmark. Denmark has opted out of all legislative instruments concerning asylum. The UK and Ireland are bound by the former Asylum Procedure Directive 2005/85/EC.

asylum procedures more uniform across member states. The proposal includes several elements of change, but two parts seem especially controversial. First is the introduction of stricter rules to prevent abuse of the system. The Commission proposes that it is necessary to set out clear obligations for applicants to cooperate with the authorities when it comes to lodging an application, fingerprinting, providing necessary details, and presence and stay in the respective member state. Meaning that if the applicant fail to meet these obligations; for example by moving on to another member state or by giving inaccurate information, the consequence might be that the application being rejected (Commission Proposal of 13 July 2016c, 4-5). This seems to be especially problematic for the European Parliament and NGOs (R1 and R10).

The second contested element is related to the safe country lists. Under the current applicable directive, member states can utilize lists denoting any certain country as 'Safe country of origin' as long as it adheres to the EU common criteria. The asylum seekers originating from a country that is recognized as safe do not qualify as in need of international protection, the same pertains to applicants arriving from a country qualified as a 'safe third country', meaning that they could enjoy protection there and their application is therefore declared as inadmissible (Commission Proposal of 13 July 2016c, 5 and ECRE 2015, 3). Today 12 member states have national lists, but the Commission propose to replace these with a common European list, which today consist of seven countries (European Commission 2017 d).

5.2.3 The Reception Conditions Directives

The purpose of the Reception Conditions Directive is to lay down standards for the reception of applicants for international protection, and to offer applicants an equivalent level of treatment regardless of which of the EU member state the application was made (Peek and Tsourdi 2016, 1386-88). The directive ensures that material conditions are available from the moment the person concerned lodges their application for asylum; the material conditions includes housing, food, clothing and daily expenses allowances (art. 17). The directive also lays down standards for general provisions as information and documentation within three days (art. 5 and 6), schooling and education for minors (art. 14), access to labor market no later than nine months after the application as lodged and access to vocational training (art. 15 and 16), and medical screening and access to necessary health care (art. 12 and 18) (Directive 2013/33/EU). The directive applies for persons that meet the following three conditions; he or she needs to be concerned as a third-country national or a stateless person, he or she must have applied for

international protection and lastly, the person concerned need to be allowed to remain on the Member State's territory as an applicant (Peek and Tsourdi 2016, 1395).

The directive from 2003 was based on minimum standards covering different aspects of rights and treatment of asylum seekers. In 2007 the Commission reported that member states had not lowered their previous standards when adopting the directive, and in addition to this the directive allowed discretion in several areas that lead to an uneven playing field. To overcome these shortcomings the Commission launched a new recasted version of the directive in 2008. The main purpose was here twofold; the first aim was to ensure higher standards of treatment for asylum seekers regarding the standard of living to align it with international law, and the second aim was to limit secondary movements of asylum seekers amongst member states. The proposal removed the term 'minimum standards' to signal a higher level of harmonization. However, the adjective 'common standards' was not used, as it was in the Asylum Procedure Directive (Peek and Tsourdi 2016, 1386-87).

The European Parliament adopted the proposal in 2009, but negotiations in the Council showed that there were big difficulties in reaching an agreement. To overcome these disagreements in the Council, the Commission launched an amended proposal in 2011. The Commission here explained that the text introduces clearer concepts and granted the Member states more flexibility in integrating them into their national legal system. After the new amended proposal, there were several informal negotiations between the European Parliament and the Council during 2012, that at last resulted in a compromise. The text was then officially adopted in 2013 (Peek and Tsourdi 2016, 1387).

In 2016 the Commission also proposed to reform the Reception Condition Directive. In comparison to the other files discussed above, this legislative act is proposed to remain a directive. The argument of the Commission to reform the directive is that there is considerable degree of discretion for member states today, leading to considerable variations among member states in how reception systems is organized and the standards provided (European Commission 2017 e). The Commission have therefore proposed to implement measures to further harmonize reception conditions and to reduce incentives for secondary movement (Commission Proposal of 13 July 2016b, 3). The LIBE committee have adopted a report concerning this proposal, but the Plenary have at this point not voted over it yet. There has been no formal decision in the Council.

5.2.5 The Temporary Protection Directive

At last is the Temporary Protection Directive, the only one that was not recasted in the second generation of asylum laws, and therefore not a part of this study (see method chapter). It is also less relevant because it has never become operational. The purpose of the directive is to give temporary protection in the event of a mass influx of displaced persons from third countries, who are not able to return to their country of origin (Skordas 2016, 1057). The directive is based on minimum standards, and these standards will only be operational if the Council decides to, by a qualified majority on a proposal from the Commission (Vedsted-Hansen 2011, 264). The directive has its origins from the discussions about refugee flows from the former Yugoslavia, and the deliberations resulted in the 2001 directive. But despite several influxes of refugees, from Iraq 2006-2008, from North Africa since 2011, and from Syria since 2012, the directive has never become operational. Italy requested the directive to be activated in 2011 to cope with the influx from Tunisia, but the Council declined the request because they meant the conditions for implementation was not fulfilled (Skordas 2016, 1058-59, and 1061). According to the Commission the element of protecting persons in event of mass influx should rather be incorporated in the Dublin regulation, instead of implementing or recasting the Temporary Protection Directive: *"It always suffered from the shortcoming that it provides a set of rights … but what it lacks is an automatic system for distributing the burden among member states. So, it would be an option to amend, and try to make it more useful in that respect. But we decided to go the other way, to amend the Dublin Regulation instead."* (R2).

6. Analysis

In this chapter I will introduce the findings of two case studies, the second generation of asylum law (2008-2013) and the third and ongoing generation of asylum law (from 2016). Each generation contains four subcases that will be analyzed separately. The empirical findings will be tested in the light of the theoretical model, by scrutinizing how policy has been developed from the initial proposal in the Commission through to the adoption of the proposal by the European Parliament and the Council.

6.1 Case one: The second generation of asylum law

As described in chapter five, the aim of the second phase of CEAS was to establish common asylum procedures and remove minimum standards. The Commission therefore proposed to reform the existing asylum legislation in 2008/2009. All acts were formally adopted in 2013, with exception of the Qualification Directive that was adopted in 2011. Because the reform where amendments of the already existing asylum files, it was only possible to amend the areas (highlighted in gray in the proposal) that the Commission set out to change (R9). There will be a thorough study of the decision-making process of the four subcases; the Dublin III regulation, the Qualification Directive, the Reception Condition Directive and the Asylum Procedure directive. But first I will give a general overview over the institutional position and process for this phase.

6.1.1 Institutional positions and process

In terms of ambition the Commission wanted to move beyond the applicable standards. This was largely *"a Commission driven process, and from civil society as well"* (R2), which leads us to believe that the Commission felt less political pressure at the time and therefore had more leeway to pursue its own preferences. This assumption is strengthened by the Slovakian interviewee: *"I think at that time the Commission were willing to harmonize, idealistic, to higher up the bar […] And I think the Commission really pushed hard to get what they wanted, together with the Parliament"* (R3). This indicates that under the second phase of EU asylum law the autonomy of the Commission was leaning in favor of the 'runaway-bureaucracy thesis'.

For the member states in Council, the evidence demonstrates that there was a clear disagreement on how successful the negotiation around this phase had been. When questioning the interviewee from the Swedish PermRep, an example of a strong regulator, he answered that

they do not see any of the directives from the now applicable law (second generation) as very problematic, with exception of the redistribution mechanism in Dublin. On the contrary, the countries that seemed to have the most difficulty accepting the asylum packages when they were adopted were the frontline member states that experienced an increased pressure of asylum seekers. This became evident when both Malta and Greece voted against some of the proposals in the Council (as will be illustrated below).

In addition to the Southern member states opposing parts of the new asylum package, some Eastern member states also expressed that their views on the proposals were far from unproblematic. The Slovakian representative expressed that their outgoing position when negotiating the proposals was to remain with the status quo, meaning the first phase with minimum standards, as this was sufficient for them (R3). Despite the resistance from countries in the south and (at least) one of the Eastern member states, the second asylum package was adopted, indicating that the strong regulators had great impact on the policy output. A representative in the Dutch PermRep strengthened this assumption by saying that the member states involved in negotiating asylum policy at this time were the member states that had a big interest in the area (namely the strong regulators):

> *"I think it was actually easier to negotiate the first package directives, than it is now to negotiate a new brand of legislation. Because to be honest […] I think in the Council there were seven, max eight or nine member states that actually really negotiated these directives (refers to second generation). Which actually felt that it was an important issue, they already had experience with the policy topic. From what I have been told from colleagues that are still now working on these new legislative proposals, is that there were a lot of member states that actually did not say anything at the time, because they felt that asylum was not their issue." (R5)*

The lack of negotiating interest of the East European states at the second phase is confirmed by the Slovakian interviewee saying that "*Even back then (referring to second phase) you would have the normal division, north vs. south […] there were two big camps of member states that were negotiating the legislation"* (R3). Furthermore, she also underlined that at that time no one accounted for high numbers of refugees, and in this sense, the system was only designed for sunny days (R3).

To see if the political affiliation of the governing party influenced the position of the Council over time, I used Chapel Hill Expert Survey (2010). The dataset provided data on political party's position towards EU integration, so it was not necessary to measure the GAL/TAN position as discussed in chapter 3. I studied the position of ministers at two different points in time for the second generation. First October 2010 (Council meeting 3034), then again in June 2013 (Council meeting 3244). In 2010 most of the political parties in government were in favor of European integration, only the British Conservative Party was opposed, and three parties were neutral. Of the strong regulators three countries were in favor (Sweden, France and Germany) while the Netherlands was somewhat in favor. This had shifted a bit in 2013. Overall, fewer countries were 'strongly in favor' (from three to one), fewer was marked as neutral but had rather moved to somewhat in favor. The UK remained opposed to EU integration and shared company with Fidezs in Hungary. The position of the strong regulators was somewhat lower, but the changes were minimal. This indicates that there is no reason to believe that this have affected the outcome of the asylum policy during the second phase of CEAS. An overview over the position of the different countries are seen in table 2 and 3 in the appendix.

As for the European Parliament, the empirical findings indicate that the Parliament was overall pleased with the proposals in the second generation of asylum laws. The Commission was characterized as progressive in the eyes of the Parliament, and their strategy was to adopt anything proposed by the Commission and trying to make it even better than the existing asylum files (R9). By studying the explanations of votes by MEPs of the four files, the political parties criticizing the content of the proposal where the far-right (as EFD) or independent parliamentarians, these explanations had in common that thought CEAS never should exist. Another group criticizing the proposals was the far-left (as GUE), meaning that the proposals did not go far enough. For the political groups from center-left and center-right, most MEPs seemed overall satisfied with the proposal. There were some MEPs from these groups that voted against or abstained from voting, by emphasizing their dissatisfaction with the fact that the voting occurred on single files instead over the whole CEAS at once. All in all, the European Parliament was also perceived by others as having a lot of power and influence in the negotiation of this generation of asylum laws (R3 and R10).

6.1.2 The Dublin III Regulation

The Dublin III regulation was proposed by the Commission in December 2008. The European Parliament adopted the first opinion on the proposal after five months, where they approved the proposal. The Council on the other hand held four discussions where they were not able to reach an agreement on the proposal, two of these were held in the two last quarters of 2009, and the third and fourth were held in October and November 2010. There were no formal discussions in the Council regarding this file for over two years, but in December 2012 the Council reached a formal agreement (EUR-Lex view A).

Position of the Commission

The proposal from the Commission to change the existing regulation with a Dublin III regulation consisted of several elements. Four major elements focused on extending and strengthening the scope and the rights of the applicants for international protection, indicating that the Commission wanted to push for more clear and harmonized standards among member states in favor of the asylum seekers. The Commission proposed to change the scope of the regulation to also include beneficiaries of subsidiary protection, and measurements were proposed to strengthen the legal safeguards for the applicants, such as giving them the right to appeal against a transfer decision.

A third element in the proposal included to strengthen the right to family unity, and a fourth element laid down further protection safeguards for unaccompanied minors and other vulnerable groups. In addition to this, the Commission also proposed to make the system more efficient through several amendments such as clarifying the cessation of responsibility clauses, modifications to ensure responsibility determination procedure would become more rapid, including rules on transfers and adding a provision on compulsory interview (Commission Proposal of 3 December 2008a, 7-10). This demonstrates that the Commission had leeway to go beyond the wish of the Council and push for harmonization and more rights for the asylum seekers, which supports the 'runaway-bureaucracy thesis'. This assumption was also supported by ECRE saying that Dublin III was *"[...] far more protective of the individual asylum applicant than the Dublin II was"* (R10).

Nonetheless, the Dublin II regulation also had some weaknesses that were not addressed in the new proposal. Before adopting the regulation, the consultation process showed that the majority of member states favored to keep the main principles of the Dublin II, meaning that they wanted to remain with the principle that the country of first entry was the member state

responsible for examining asylum applications. This met resistance among civil society organizations as well as the UNHCR, that argued for a different approach in the allocation of asylum seekers (Commission Proposal of 3 December 2008a, 5)

Nonetheless, the Commission chose not to change this, because of the lack of a political will to do so. The 'first country of entry' principle therefore remained without any further reallocation mechanism (Commission Proposal of 3 December 2008a, 2 and 5). This demonstrates that the 'runaway-bureaucracy' thesis here are less evident. The Commission, and others, clearly saw the need for changing the current reallocation mechanism, but because of the lack of political will, a proposal to change this was never formally suggested by the Commission. This finding contradicts my model, even though the remainder of the findings support it.

Position of member states

It took several years for the Member states to reach an agreement on the Dublin III proposal. The overview of the procedure for the proposal refers to four formal meetings in the Council. The first two formal meetings reveal nothing in terms of the position of the member states. The third meeting refers that the member states presented their concerns with the proposal, where *"Malta, Greece and Cyprus, for example, repeated their call for solidarity and support from the European Commission and other member states to help them cope with the large number of asylum requests […] The Dublin II regulation should, in their opinion, be reformed."* (Council of the EU 2010, 9*)*. In the fourth discussion, the press release has a similar statement: *"Some member states emphasized the need for the principle of solidarity to be adequately reflected in the development of the next phase of the CEAS, including in the context of discussions on the revision of the Dublin II mechanism"* (Council of the EU 2010, 9*)*

For the meeting where the Council adopted the legislative proposal, there were no summary of which countries voted in favor or against the proposal in the official recordings of the Council. Nonetheless, a representative from the General Secretary of the Council informed me that Greece voted against the proposal, but since the rule of voting was qualified majority vote (and not unanimity) the proposal was still adopted (R6). The southern frontline member states requested a stronger redistribution mechanism, and Greece voted against the proposal when this was not included. This is an indication that the strong regulators have been successful in pushing their preferences onto the European level.

However, the Swedish PermRep paints another picture, saying that they also would have seen a stronger redistribution mechanism: *"[…] in the case of Dublin, we would have seen a stronger redistribution mechanism… We do not think the current system works in that regard, so we have been more about making a change. So, that there will be a redistribution mechanism between member states."* (R1, my translation). This makes it difficult to interpret where the 'lack of political will' was coming from, as referred to by the Commission. Some of the Eastern European (Visegrad 4[10] group) countries have in recent times expressed their dissatisfaction with any distribution that is not rooted on voluntary basis (R3, R7 and Visegrad Group 2016, 2), and they were probably not in favor of this during the second phase of CEAS either.

Nevertheless, it seems less plausible that the Eastern European countries were the only force against a stronger distribution mechanism (as they could have been voted down by QMV). It is more plausible that some of the stronger regulators did not want a distribution mechanism at that time either. The Slovakian PermRep stated that *"back then (referring to the Dublin III negotiations) Germany and some Northern states said 'we have to apply Dublin rules etc.'"* (R3). The interviewee did also on several occasions point out that the position of Germany changed significantly in 2015, from having a position in line with the national positon of Slovakia to now having a contradictory view. She also mentions UK as a country with similar positions as themselves (R3). This indicates that Germany and the UK (and perhaps several of the strong regulators) had a big influence on the outcome of the Dublin III negotiations, which supports the assumptions of my model.

Position of the European Parliament

The MEPs accepted the proposals from the Commission with amendments. By the report of the rapporteur, the Parliament state that they warmly welcomed the strengthening of the scope and rights of applicants. This gives an impression that the EP overall saw the Commission as moving in the right direction and that they supported the progressive approach of the Commission in establishing a liberal asylum policy. As written in the report: *"It should be mentioned that the European Parliament has expressed its opinion on several occasions and put forward a series of recommendations in its September 2008 resolution on the evaluation of*

[10] Visegrad 4, the Visegrad Group or simply V4, is four central European countries that work together with common interest within the all-European Integration. V4 consist of Czech Republic, Hungary, Poland and Slovakia (Visegrad Group).

these recommendations have been taken into account by the Commission." (Hennis-Plasschaert 2009, 29). This supports the first assumption in the theoretical framework regarding the position of the European Parliament, namely that they support a policy that is close to the view of liberal and centrist parties.

But EP also saw challenges in the proposal, and expressed its concern about the situations where member states feel particular pressure on their reception capacity, where the rapporteur pointed out the need for a burden sharing instrument that should be binding for all member states (Hennis-Plasschaert, 29-30 and 33). The 'first-country of entry' principle was not considered as a satisfactory way of burden-sharing by the European Parliament. Still the general impression was that the European Parliament accepted the proposal because it was a clear improvement from the Dublin II. Rachel Sheppard, the assistant of Jean Lambert (MEPs from the Greens) confirmed this: *"We did not vote in favor of Dublin, because we were never in favor of Dublin as a system. Although I think we abstained instead of voting against, because we recognized that Dublin III was better than Dublin II."* (R9).

By studying the voting patterns in the LIBE committee and the Plenary in the European Parliament this pictured is confirmed. In the LIBE committee, all MEPs voted in favor of the proposal (30 of 30 possible), none abstained and none voted against (Hennis-Plasschaert 2009). This do not directly correspond to the statement of Sheppard, but she might have been referring to the final voting in the Plenary. The proposal was adopted in the Plenary by simple majority, but there is no formal recording of the different votes. Nonetheless, there were two formal explanations of votes given. The first was a joint statement on behalf of four Swedish MEPs from the EPP-ED group[11], that voted in favor of the proposal, where they announced that they saw the challenge put on smaller member states at the frontline and acknowledged that something needed to be done to resolve this, without further specifying how.

The second explanation was a joint statement on behalf of five other Swedish MEPs representing PSE [12], stating that they voted against the reports both on Dublin III regulation as

[11] EPP-ED (European People's Party – European Democrats) was the former name of the conservative grouping in the European Parliament. Since 2009 the group have had the name European People's Party (EPP Group).

[12] Party of European Socialists (PES) is a political party that brings together Socialist, Social Democratic, Labour and Democratic Parties from Europe. Their political group in the European Parliament is S&D (Progressive Alliance for Socialists and Democrats) (PES)

well as Reception Condition directive. Their argument for doing so was that the policy on asylum and immigration was being conducted by the right-leaning majority in the EP (European Parliament Procedure 2009 a). This statement contradicts the assumption of my model, namely that the EP has a liberal position towards asylum policy. Nonetheless, it is important to notice that we do not know why some MEPs chose to give an explanation while others did not. The MEPs formally sending in their explanations might have done so to explain why they opposed their group, or maybe to explain why they voted in favor of their group. Thus, we do not know if the explanation represents an exception or the uniform position of a political group. The lack of data on the votes of MEPs makes it difficult to indicate the position of the European Parliament with certainty, if such data had been available this analysis would be more fruitful.

6.1.3 The Qualification Directive

The proposal to recast the Qualification Directive was proposed by the Commission in October 2009. During the following year, the Council held three formal discussions where no decision was made. Two years after the proposal were first presented, the European Parliament approved the proposal on its first reading, with amendments to the text. Shortly after the Council and the Commission agreed to the Parliament's first reading, and the proposal was signed by the Presidents of the Parliament and the Council in December 2011 (EUR-Lex view B).

Position of the Commission

When the Commission proposed to reform the Qualification Directive there were two main objectives. First, the Commission desired to ensure higher protection standards, so the standards would be in line with the Geneva Convention, European Court of Human Rights (ECHR) and the EU Charter of Fundamental Rights. Second, the objective was to ensure harmonization of protection standards, that would lead to reducing the diversity of national legal frameworks, decision-making practices and rights provided by member states (Commission Proposal of 21 October 2009a, 6). The position of the Commission emphasized the need for protection of the rights of asylum seekers. The assistant of the Parliament's rapporteur (Jean Lambert), supported this assumption when saying that the Commission was progressive when working with the recast of the Qualification directive, and that the position of the Parliament was to support anything the Commission proposed (R9). This implies that the autonomy of the Commission was high, and the member states in Council put less pressure on the Commission in steering it in a certain direction. Indicating that the relationship between the

principal and agent leaning towards the 'runaway-bureaucracy thesis', which supports the my model.

Position of the Member states

When studying the press releases from the three Council meetings, no information is given about the positions of member states. But in the addendum to the draft minutes from the meeting where the proposal was adopted, it reveals that all member states approved the position of the Parliament and adopted the proposed act, with the exception of Malta. The statement from the Maltese delegation emphasized that the directive was a burden for countries that face high numbers of asylum seekers, an argumentation that seems identical to the one given by the Greek delegation in the case of Dublin regulation:

> *"Regrets that the Proposal […] will render heavier the pressure that Malta is under. The approximation of the rights of beneficiaries of subsidiary protection with those of refugees in the areas of health care and access to employment will impose a further burden on Malta, due to the disproportionate number of beneficiaries of subsidiary protection present on the island. Reiterates its call for further solidarity through the intra-EU relocation of beneficiaries of international protection from Malta, as an effective means of addressing the disproportionate pressure Malta faces […]"* (The Council of the EU 2012, 7).

The Maltese Government was in 2012 led by the Nationalist Party, which according to CHES data scored that they were in strongly in favor of EU integration.[13] I can therefore exclude that they voted against the proposal because of resistance to further integration. The statement asked for more solidarity in tackling asylum applicants, and this indicates support for my model in two ways. First it implies that the Commission had high autonomy to pursue its own preferences. And secondly it demonstrates that the strong regulators again 'won' in the 'battle between north or south/strong and weak regulators', and supports the Salience Model.

[13] The data is gathered from 2014, when information about the Maltese political parties was not accessible in earlier years in the dataset.

Position of the European Parliament

The European Parliament approved the proposal from the Commission with amendments. In a working document from the rapporteur Jean Lambert to the Plenary, she strongly advises the Parliament to adopt the proposal, saying that the amendments proposed by the Commission is essential in order to move towards a full and inclusive interpretation of the relevant international Conventions and agreements (Lambert 2010, 7). The report was voted over in the LIBE committee where 46 MEPs voted in favor, three MEPs voted against and one MEP abstained from voting (Lambert 2011) The assistant of Jean Lambert explained the coalition in the following way:

> " *I remember very clearly […] the majority in the Committee for our position, so for the more progressive position, came from the Greens, with the Socialists, the Liberals, and GUE. Basically, the left, well center left […] So, we went into the trialogies with a slim majority on a lot of the progressive positions, which is not ideal, but it was the only option. Although they voted against most of the reform, the EPP, we managed to work quite constructive with them, so it turned out to be not too bad.* (R9)

The fact that the report was adopted supports the assumption that the position of the EP was liberal towards the development of asylum policy. However, based on the citation above, we have reason to believe that this was only by a small majority. Even though there is no official recording of the votes, 40 MEPS decided to give either a written or oral explanation. By analyzing these, 26 of them clearly stated what they voted, followed by an explanation. In accordance with respondent nine's reasoning, the explanations given by the socialist, the greens and the liberals were all in favor of the report.

For MEPs coming from GUE two voted in favor and two against the proposal. Dutch Cornelis de Jong explained that he abstained from voting *"[…] because we strongly protest against the splitting up of the Asylum Package. We do not want to vote on a single directive before substantial progress is made on all files."* (European Parliament Procedure 2011). French Jean-Luc Mélenchon also explained that he abstained from voting, and said this was due to the fact that the proposal discriminated between refugees and beneficiaries of subsidiary protection (European Parliament Procedure 2011).

According to respondent 9 the right leaning parties in EP were more reluctant. 17 explanations of votes were given by members of the conservative EPP. All explanations were

supportive of the proposal, where 14 claim they voted in favor of it. The majority were from Portugal (six explanations) and Italy (seven explanations). The remaining explanations were distributed among Lithuania, France and the Czech Republic. The far right represented by Geoffrey van Orden (ECR) from the United Kingdom and an independent MEP Andreas Mölzer (NI) from Denmark, both opposed the proposal. Their explanations had some commonalities to why abstain or vote against the proposal, both highlighted that it was problematic to broaden the definition of family, which will lead to higher numbers of asylum seekers and possibly an abuse of the asylum system (European Parliament Procedure 2011). Both MEPs also had in common that the respective member state they were sent from was not bound by the directive nor a subject to its application (Dörig et al. 2016, 1114).

6.1.4 The Reception Condition Directive

The initial proposal of a recast version of the reception condition directive was first presented in December 2008. The European Parliament approved the proposal with amendments the following year, subsequent of this the Council had three formal discussions the following two years but were not able to reach an agreement (EUR-Lex view C). The meetings in the Council revealed that several member states had problems with specific provisions of the proposal because it did not comply with their national asylum systems, so if they were to adopt the initial proposal, it could lead to substantial financial costs and administrative readjustments, which would disrupt an effective asylum procedure. This was also the case for the reform of the Asylum Procedure directive (Commission amended proposal of 1 June 2011, 3-5). To overcome these disagreements in the Council, the Commission launched an amended proposal in June 2011. Several informal meetings were then held between the European Parliament and the Council, which at last resulted in a compromise in 2013 (Peek and Tsourdi 2016, 1387).

Position of the Commission

The initial proposal of the Commission highlighted the need to achieve further harmonization of reception conditions. After consultations were held the member states stressed two elements in the proposals. A group of member states stressed the need for retaining some flexibility when it came to access to labor market and material reception conditions. While another group of member states underlined their preference to tackle deficiencies regarding the treatment of vulnerable asylum seekers via practical cooperation rather than through legislative

intervention. The Commission chose to follow up the first disagreement to some extent, but discarded the last one (Commission Proposal of 3 December 2008b, 4). This indicates support for the assumption that the Commission felt a high degree of autonomy, and support my model saying that the relationship between the Council and the Commission where leaning towards the 'runaway-bureaucracy thesis'.

Nonetheless, the proposal was not adopted, leading the Commission to propose an amended proposal to meet the disagreements with Council. According to the Commission the modified proposal of 2011 introduced clearer concepts and simplified rules, giving member states more flexibility when integrating the rules into national legal systems. For ECRE the amended proposal was perceived as a step back in terms of right from the initial proposal. The proposal reduced the safeguards of asylum seekers, and *"the initial ambition to aim for high standards of reception conditions while ensuring a sufficiently high level of harmonization has been seriously lowered."* (ECRE 2011 a, 4). This indicates that under the initial proposal the Commission had a high degree of autonomy, while this was somewhat weakened when an amended proposal was promoted to cope with the disagreements in Council.

Positon of the Member states

From the press releases from the Council meetings held in 2009 and 2010, it is not possible to gather information on the member states' position on this directive. The legislation was adopted in December 2012, and the press release announced that they had reached a political agreement, which reflected the negotiations with the European Parliament. There was no remark that some countries had voted against the proposal (Council of the EU 2013). Overall, this gives an impression that the disagreements were lower for this file, than for some other proposal where the frontline member states had voted against.

Positon of the European Parliament

The initial proposal of the Commission was adopted by the European Parliament with amendments. For the first reading in 2009, the report of the Rapporteur, Antonio Masip Hidalgo, was adopted by the LIBE committee with 33 MEPs voted in favor, while one voted against and one abstained. The report was adopted by simple majority in Plenary in May 2009, and there were four formal explanations of the votes (Hidalgo 2009). One joint explanation was fronted by five Swedish MEPs representing PSE, this was the same statement as referred to in the Dublin III regulation, where they voted against both proposals because they felt the policy

represented the right-leaning majority in the Parliament.

The British MEP Robert Evans, also from the social democrat party, uses his explanation to call for all countries to address poverty around the world and offering advice, help and support, but the explanation does not give a clear indication of what he voted in the case of the report. The same is the case for the third explanation given by the French MEP Martine Roure from PSE. The last explanation is written by two French non-attached members of the Parliament, Carl Lang and Fernand Le Rachinel. Even though they do not clearly state that they voted against the report, it is clear from their statement that they do not support the development of a common European asylum system, and I can with certainty assume they voted against: *"By adopting this second phase of the 'asylum package', Brussels is facilitating and encouraging global immigration to Europe. We shall always oppose this internationalist vision, the sole aim of which is purely and simply to destroy the peoples and nations of Europe."* (European Parliament Procedure 2009 c).

Regarding the position of the Greens, respondent nine recalled that they voted in favor of both the reception condition and the procedure directive, even though they were not overjoyed, they saw both as better proposals than the previous texts (R9). For the biggest political group in the Parliament at that time, the conservative EPP group, there are no formal explanations. However, the proposal was adopted with simple majority, meaning that this would be very difficult to achieve if not impossible without the support of the majority of MEPs from this group.[14] This indicated a low level of conflict around the initial report, when the European Parliament supported the Commission's approach to form a liberal asylum policy. This corroborates the Salience Model and the assumption that the EP support policy that seeks to secure a liberal asylum policy.

For the second reading in 2013 the disagreement in the LIBE committee seemed to have increased. 40 MEPs voted in favor of the report in the committee, but nine voted against and one abstained from voting (Hidalgo 2013). This could be related to the fact that they, as ECRE, saw the amended proposal as lowering the standards from the initial proposal. There is no explanation of votes for the second reading in plenary, making it difficult to find out the positions of the political groups.

[14] Inn 2009 – 2014 he EPP group represented 35.77 % of the MEPs in Parliament and was the biggest political group. Followed by the S&D with 25.6 % (European Parliament 2014).

6.1.5 The Asylum Procedure Directive

The initial proposal to reform the Asylum Procedure directive was presented by the European Parliament in October 2009. The member states in Council had the following year two formal discussions, but this did not lead to any adoption of the proposal. The European Parliament approved the proposal with amendments on their first reading on April 2011. But after a couple months the Commission proposed an amended proposal of the Asylum Procedure directive, when several member states opposed to specific elements of the initial proposal. The European Parliament approved the new proposal, even though they had proposed a number of amendments which was not taken into account. A couple of weeks later the proposal was also adopted by the Council in June 2013 (EUR-Lex view D and Vedsted-Hansen 2016, 1293).

The position of the Commission

The Commission chose to propose a recast of the Asylum Procedure directive because the applicable directive was based on minimum standards that was both insufficient and vague. The original directive (2004) from the first phase of CEAS was by ECRE labelled the most problematic legislation on asylum adopted so far, because there were no standards that secured a fair examination of applications and as as result the gap between member states where high (ECRE 2011 b, 3 and Commission Proposal of 21 October 2009b, 4). The demand for change was therefore high, and the initial proposal presented a fundamental revision of the substantive provisions of the directive and strengthening the safeguards for asylum seekers (ECRE 2011 b, 3). This gives support to the my model, claiming that the Commission during this time had high autonomy to develop proposals which were not bound by the Council.

But as we also did see for the Reception Condition directive, when the Council did not reach agreement on the initial proposal the Commission proposed an amended proposal which watered-down some of the elements in the initial proposal. The explanation from the Commission was that the modified proposal represented a simplification and clarification of rules. ECRE on the other hand stated that the amended proposal represented more flexibility for member states and that safeguards that was essential components of a fair asylum procedure was weakened. (ECRE 2011 b, 5). This indicates that the Commission started out with more autonomy, but when the Council did not accept it because the costs of implementing was too high, they proposal was pushed in a direction that better suited the preference of the Council.

Position of the Member states

The press releases from the Council meetings do not reveal information about the position of member states. There was no remark that countries had voted against the proposal. This could be due to the amended proposal being more flexible leaving less room for disagreement among the member states.

Position of the European Parliament

When studying the process of adopting the asylum procedure directive in the European Parliament, it seems like the disagreements have been higher than for the other legislative acts. The initial report of the Rapporteur Sylvie Guillaume, was barely adopted by the LIBE committee. 28 MEPs voted in favor, none abstained from voting, but 22 MEPs voted against the report (Guillaume 2011, 63). Despite the 'close race' in the Committee, the Plenary by first reading adopted the report by simple majority. 41 MEPs expressed their view of voting either through oral or written explanations. EPP, EFD and the non-attached members were the ones expressing that they either abstained from voting or voted against the proposal. Of the explanations of vote, one joint statement was from British MEPs belonging to the right-oriented party EFD; John Bufton, David Campbell Bannerman and Nigel Farage:

> *"UKIP MEPs abstained on the amendments to this report. This was not due to indifference on our part; rather, it is because this report is a development of the Common Immigration and Asylum Policy under the Lisbon Treaty. To vote on the amendments would have entailed endorsing existing EU legislation, which we don't want either, and a nit-picking exercise in order to decide which bits were worse than others. Therefore, UKIP MEPs abstained on the amendments, but voted a resounding 'No' to the report as a whole."* (European Parliament Procedure 2009 b)

Similar statements were given by fellow-MEPs in the EPD group, including the British Gerard Batten, the Danish Morten Messerschmidt and the Italian Oreste Rossi. Other opponents of the proposals were also found among three non-attached members from Bulgaria, France and Denmark. The third group of opponents were from the EPP group, the arguments for abstaining or voting against are not related to opposing the Common European Asylum System as a whole, but rather opposing elements of the report, as exemplified by the statement of the French Véronique Mathieu: *"I voted against the report by Mrs. Guillaume because it*

establishes criteria for the harmonization of asylum procedures that are unrealistic in relation to those procedures currently in force in our member states. We certainly want a common asylum system, but not at the cost of a utopian harmonization." (European Parliament Procedure 2009 b).

Even though most of the explanations coming from the EPP group were opposing the proposal, some parliamentarians from this political group also expressed their support for the proposal, emphasizing the need for harmonization and also underlining that the *"right to asylum is a fundamental right and must be treated fairly and equitably by the member states" (*José Manuel Fernandes, European Parliament Procedure 2009 b). This indicates that there was a lack of consensus among the members of EPP. The Greens representative expressed her view on the political preference of the EPP, saying that: *"(talking generally about the second phase of CEAS) […] we all definitely had the impression that the EPP group was the voice of the Council, because they have a majority of EPP governments in power"* (R9). This might be the reason for the disagreement in the EPP group. And the Dutch PermRep also confirmed a similar picture:

> *"In the end, if there is a lot of pressure from a member state on the MEPS, or if the MEPs realize themselves that there is a high national interest. Then indeed there are occasions where delegation just vote differently because of a certain interest of their own member state. There are a lot of examples of that. It indeed depends on whether you are able to explain why this is so important"* (R5)

Eight explanations clearly stating that they voted in favor of the proposal was also given by S&D MEPs. Not surprisingly, as the rapporteur, Sylvie Guillaume, is from the same political group. The explanations of votes also indicated that the report seemed to enjoy support from the center, three explanations in favor was given by two MEPs from the Greens and one from ALDE, where the overall perception is that they voted in favor of it because it moved towards a completion of CEAS. Regarding the GUE group it was difficult to range their position based on their statements. They did not clearly say what they voted, but the explanation expressed some discontent, as illustrated by the Portuguese Ilda Figueiredo: *"this proposal for a directive includes aspects that will end up restricting access to the right to asylum and applying conditions to it, above all, as regards each Member State's sovereign right to make its own*

choices and decide on its own asylum procedures. Hence, our critical position as regards this report." (European Parliament Procedure 2009 b)

When the amended proposal of the Commission was proposed, the EP approved it without amendments. It was first approved by the LIBE committee where the disagreements had decreased compared to the first round. 40 MEPs voted in favor, four voted against and six abstained from voting (Guillaume 2013, 6). As explained above, the proposal had been watered down from the initial proposal, which might be the reason that several MEPs could accept the proposal. As Carlos Coelho in the EPP group put it, after the first reading: *"I would congratulate the rapporteur on her work and commitment, but I regret that some of her proposals went a little too far, which ended up making an agreement with the Council impossible on this initiative […]"* (European Parliament Procedure 2009 b).

6.1.6 Summary of the second generation of CEAS

Studying decision-making for the second generation of asylum law (2008-2013), the main findings show that the Commission enjoyed a high degree of autonomy when developing the new proposals, leading to the proposals being pro asylum seekers' rights. This was warmly welcomed by the European Parliament and ECRE. The findings further indicate that the negotiations between member states in Council was a battle between the north and the south. The southern member states called for a stronger redistribution mechanism, but they did not collect enough political support for this among the other member states. The Eastern European states were not specifically interested in asylum at this time, and did not have any strong opinions in Council. The western/northern states, the strong regulators, were successful in pushing their national policy onto the European level.

In sum, the findings of the second phase of CEAS supports the assumption of policy-making in times with low salience. This is especially evident for the Commission and the Council. Regarding the European Parliament, the empirical findings are not that straightforward, partly because there is a lack of data to confirm the assumptions. The findings indicate that the EP supported a liberal stance on EU asylum policy by adopting every proposal from the Commission. Nonetheless, the findings also indicate varying support among the MEPs and disagreements among members within same political groups.

6.2 Case two: The third generation of asylum law

As a response to the refugee crisis, the European Commission proposed a reform of the CEAS in 2016, as explained in chapter 5. When the second phase of asylum law only amended certain parts of the existing files, the third generation opens for amending to whole text of the different files. Two of the legislative acts are proposed going from directives to regulations, meaning that the member states need to implement the file directly into national law instead of having the possibility to interpret it. Studying the decision-making for the third generation is somewhat challenging because the proposals has not yet been formally processed in the Council and the European Parliament. Nonetheless, it is possible to study the proposal of the Commission, informal meetings in Council and papers published by NGOs. Additionally, the interviews complemented the document analysis with information about the position of the different actors towards the proposed legislation, which all in all gave a comprehensive overview of the third generation of asylum law. This case study will follow the same structure as in the first case; it will start with a general overview over the institutional positions and process, before an in-depth analysis of the four subcases are presented.

6.2.1 Institutional positions and process

The third phase of CEAS proposed in 2016 were triggered by the migration and refugee crisis. Many of the included actors questioned how, and possibly why, new legislative amendments were being proposed so quickly without thoroughly examining the effect of the second generation, which just recently had been implemented into national law [15]. The Commission on the other hand, argued that this was necessary for coping with the crisis Europe experienced, and move towards a fully harmonized asylum system.

The position of the Commission has changed significantly after the refugee crisis. The respondent from ECRE described it as: "*You can definitely see the influence of the Council on the Commission, and the fact that a lot of the Commission's proposals would probably be accepted by the Council"* (R10). The Commission itself underline that it was a Commission

[15] For a directive to have effect at national level, member states must adopt a law to transpose it. Transposition must take place by the deadline, generally within two years. For the Procedure Directive (32013L0032) and the Reception Condition Directive (32012L0033) the deadline was July 21 2015, and the Qualification Directive (32012L0095) deadline was December 22 2013. A regulation is directly applicable, for the Dublin III regulation (32013R0604) this was July 19 2013. For more information see EUR-Lex and 'document information' for the respective directives and regulations.

driven process, but the political level in the Commission also had pushed for this. This differs from the second phase of CEAS where the process was driven by *"the Commission and civil society"* (R2), and gives support for the salience model saying that the Commission experience less autonomy in times of high salience and the relationship between the Council and Commission is leaning towards the 'congressional dominance thesis'. This assumption is confirmed by the interviewee from the Commission:

> *"In the current environment the Commission has become […] perhaps a bit more pragmatic, than what it has used to be in some ways […]. In this area, if you look at the overall flavor or tone of the current proposals they go a bit more in the direction of curbing on necessary luxury element to the asylum procedure. It is a big of an ugly word. Because of the crisis, and because of the political climate in member states. And I think, a recognition that we need to preserve also public support for our migration and asylum policy and that if we go too far in the direction of ignoring the concerns of member states and the people, on the popular level about uncontrolled migration and so on. And persons abusing that not being genuine refugees but coming here and claim the system, that will undermine the whole system of protection […]" (R2).*

This demonstrates that the Commission felt pressure to please the political interest in the Council when proposing the new phase of CEAS. This assumption is further supported when the consultation of other stakeholders was not prioritized: "*I think it is no secret that we dispensed with some of the normal preparatory stages that are normally gone through European legislation […] But it's been driven by the circumstances, the political circumstances, the external realities we have been faced with (R2).* Both the Commission and ECRE affirm that it was an informal NGO platform meeting hosted by the Commission, but it was short and the process was clearly accelerated (R2 and R10).

The representative from ECRE further expressed dissatisfaction with the new proposals from the Commission, explaining that when mapping the trajectory of different pieces of legislation, it was possible to see how the Commission was fluctuating between different interest and different pressures. Under the second phase of CEAS, she affirms that the EP had more to say, while for the third phase of CEAS the member states in Council was leading the Commission. She also stated that the content of the proposal was going backwards in terms of rights: "*Commission proposals in many of the directives and proposed regulations are very much below part, below standards on what human rights standards dictate"* (R10).

Even though there has been no formal voting of the proposals, the member states have had the opportunity to present their political preferences in the Council and to the Commission. The respondent from the Commission confirm that the views are varied, and he summarizes it to be four kinds of coalitions. First is the frontline member states in the south, which overall supports the reform proposed by the Commission, because they would like to see more sharing of the burden (R2). However, because of their economic situation they also see challenges with parts of the reform: "*Everything with short term deadlines, everything with a lot of obligations on the rights of the asylum seekers, is very difficult for them […]. Which was never the case, ten-fifteen years ago, because they never though that someone will ask for asylum in Greece." (R5).*

The second group of member states is the 'directly affected hinterland' who also support a far-reaching reform, which the interviewee describes to be Austria, Germany, Sweden and the Netherlands (R2). The Dutch Representative confirms that these countries are having somewhat the same position as themselves, she however does not mention Austria as an example but include the Benelux countries. Furthermore, she elaborates that the member states that have developed systems and generally have long experience with asylum seekers, seeks harmonization across all member states: "*[…] they (talking about Northern/Western states) want harmonization. Because it is very important that the other member states are going to step up and come a bit closer what they have developed as national systems. So, they want obligations, they want harmonization"* (R5).

Then there are the two remaining groups that mostly oppose the new reform of the Commission. First is some of the Eastern European states, the Visegrad 4 group is clearly against any form of forced distribution of refugees that are not based on voluntary basis (Visegrad group 2016, 2). Their national asylum systems are not fully developed because there has never been a reason for doing so, obligations for them therefore means financial costs, that leads to them being critical to any further development that are not voluntary (R5 and R7). This confirms the 'misfit-model' my model builds on, saying that member states prefer the status quo. The last group is the member states that feel that they are geographically more protected and therefore are more ambivalent towards change. The Commission explains these as being Spain, Ireland, UK and France (R2). The Dutch PermRep also include Denmark in this group.

These findings are interesting in two ways. First, it indicates a clear change of the nature of discussions in the Council. Instead of having only two groups discussing their interest about

asylum policy, there are now at least three or four coalitions with a clear preference for the outcome of the third generation of CEAS. This supports the assumption in the Salience Model that when salience is high the national interest increases, which gives incentives for all member states to actively push their own preference on to the table in Council making it harder to reach a consensus.

Secondly, the findings indicate an interesting change in the preference of the strong regulators. In the second phase of CEAS the North-Western states were seen as one group[16], while they now have conflicting interest. The findings indicate that Germany were faced with so high numbers of refugees that their position on the distribution of refugees changes, sometime during or after 2015. By looking at the number of asylum-applicants Germany received compared to the rest of EU-28, the assumption is confirmed. Table 6.1 shows that when adopting the main parts of the second phase of CEAS in 2013, Germany received around 30 percent of the total asylum applicants to the EU. While the number had increased significantly the last years, reaching almost 60 percent in 2016.

Table 6.1 Number of asylum applicants in Germany 2010-2016

	2010	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**
EU-28	259 400	309 040	335 290	431 090	626 960	1 322 825	1 259 955
Germany	48 475	53 235	77 485	126 705	202 645	476 510	745 155
Percentage of total	**18,7 %**	**17,2 %**	**23,10 %**	**29,4 %**	**32,3 %**	**36 %**	**59,1 %**

Source: Own table based on numbers from Eurostat 2017

This affirm the assumption that Germany now may have more in common with the Southern frontline member states regarding distribution of asylum seekers, than they have with the other Western European states that are more protected. Since both the Swedish and Dutch PermRep confirmed that they have a similar position as Germany, we can assume that they also experience some of the same pressures.

This paints a picture of more complex discussions in the Council then was the case in 2008-2013, where the North-Westerns states largely overthrew the interest of the frontline

[16] The United Kingdom and Denmark (latter not a strong regulator) has always had a more reluctant view on the asylum policy since they have an opt-out on this.

states in the South. From the interviews, it became evident that every institution saw the upcoming negotiations as very challenging and the uncertainty was especially linked to the negotiations between member states. The General-Secretariat in the Council summarized it as: "*There is no clear sign of where this is going, so the groups of member states are still quite strong in what they think is the right approach" (R7).* This support the assumption that when the salience is high, all member states are engaged, that hampers the process of coming to a common agreement.

Regarding the position of governments in member states at the time of writing (April 2017), there were no big changes from the second phase of CEAS. By collecting information on the minister in charge and comparing its political affiliation to the value given by Chapel Hill Expert Survey it revealed that none of the governments in power were strongly in favor of EU integration, 14 were in favor, seven were somewhat in favor, three were somewhat opposed and one opposed. In addition to the British Conservatives and the Hungarian Fidesz, both Poland (Law and Justice Party) and Greece (Syriza) now have governments opposing EU integration. For Poland and Greece, it is a clear shift towards more EU skeptical parties in power, but for the remaining countries the position is the same.[17] However, it is too early to say how this will affect the position of the Council, when no formal agreement is reached at this point.

For the European Parliament, the findings indicate that the overall content of the proposals has not been warmly welcomed. The representative from the Greens explain that their view is that the Commission now try to keep refugees outside the European borders and "*if they make it to the EU, there aim is to send as many people back as possible […]. And if they do have a claim to actually be here, again their aim is to make sure they are here for a short time as possible, and once they are here they have to do what they are told."* (R9).

Regarding the coalitions around the new proposals, the partition between the two biggest groups has increased. This is not directly related to the asylum files itself, but is explained by the election of the Parliament's president in January 2017. When the EPP and S&D earlier could join coalitions with each other, the political landscape has now changed, according to respondent nine. She explains that this is due to the election of a new EP President

[17] There most recent data from Chapel Hill Expert Suvery is from 2014. Meaning that the values of political parties are taken from this periode. Even though there are no reason to assume that the position of the more traditional parties to vary over three years, there is a possibility that the findings would be different if it was based om more recent data.

earlier in 2017. Both parties had one candidate each, but with the help of ALDE the EPP got their candidate elected (R9). Since there have not been any votes yet, it is impossible to anticipate how this would affect voting patterns. However, she underlines that socialist have been much more vocal in criticizing the proposals, as opposed to the EPP (R9).

6.2.2 The Dublin IV Regulation

The Dublin IV regulation was proposed by the Commission in May 2016. The refugee crisis showed the shortcomings in the design and implementation of the European Asylum system, and particularly the Dublin rules. According to the Commission, there were divergent views on what was the best way to reform the Dublin system (Commission Proposal on 4 May 2016, 2-4). The need for a better burden sharing, which the southern member states had pushed for during the second phase of CEAS, is now also supported by some of the North-Western member states after the increase of immigration and high numbers of secondary movements.

Position of the Commission

When the Commission started the new reform of CEAS they came to the conclusion that *" the current criteria in the Dublin system should be preserved, while supplementing them with a corrective allocation mechanism to relieve Member states under disproportionate pressure."* (Commission Proposal of 4 May 2016, 4). The Commission therefore proposed a 'corrective allocation mechanism' that would be triggered if a Member State face a disproportionate burden of asylum seekers. The population and the GDP of the member states would form a reference point, so if the numbers of asylum seekers exceed 150 percentage of the reference number over a given period, the surplus will be distributed (R2 and R7). The Commission explains this mechanism as: *"it is the most controversial of all the proposals by far. It is being discuss also at the highest political level, it is not resolved yet […]. I think this will be a key aspect of the whole future of the asylum system in Europe, to find a solution to this."* (R2).

When comparing the Dublin IV proposal to the Dublin III they are divergent from each other when it comes to the wording of the text. The proposal in 2008 focused on laying down further protection safeguards and using terms like *"strengthen the legal safeguards for applicants for international protection and enable them to better defend their rights"* and *"providing adequate safeguards for the applicants for international protection"* (Commission Proposal, 2008 a). The 2016 proposal seems more reluctant in using the same wording, instead

it points out that the "*Changes added under the 2013 Dublin III reform resulted in increased rights for applicants which could be misused to frustrate the entire system."* (Commission Proposal of 4 May 2016, 13). The change of focus is confirmed by the Commission representative saying that: *"[…] if you look at the overall flavor or tone of the current proposals they go a bit more in the direction of curbing on necessary luxury elements to the asylum procedure."* (R2). ECRE underlines that when there is a high volume of national and European jurisprudence, academic commentary, policy analysis and research that have had the last two decades pointed out the evident shortfalls of the allocation mechanism in the Dublin. However, according to ECRE, the designers of the Dublin IV: "*[…] seem to have ignored the majority of these critical observations."* (ECRE 2016 a, 4).

The preferences of the Commission have gone from working to promote the rights of the asylum seekers, to a more security oriented approach where giving to much rights to asylum seekers potentially could lead to abuses of the system. This demonstrates that the Commission is much more in line with the political preference of member states, meaning that the political pressure on the Commission is high and therefore the autonomy of the Commission is significantly lowered. This supports the salience model saying that when salience is high the congressional dominance thesis will be more dominant.

Preliminary position of the member states in Council and European Parliament

The interviews revealed that the different position of the corrective allocation mechanism is varying. The General Secretariat of the Council confirmed that the issue is quite contentious among member states, and that there is no clear sign of where this is going. One of the interviewees illustrated three different groupings towards the mechanism. First is the member states on the frontline, which are not happy with the distribution. The second group is the V4 countries, which do not want any distribution of asylum seekers that are not voluntary. Then there are the countries that receive many applications even though they are not on the external borders, because people coming into the southern boarders flew here, these are favorable to the reform (R7). This supports the illustration that when salience is higher, more states are engaged in negotiations in Council making it harder to reach a decision.

Regarding the European Parliament, the draft report from the Rapporteur Cecilia Wikström has been presented, but no formal vote has been done in the LIBE committee. Wikström does not accept the proposal as it stands at this point, she propose several changes that would make the Dublin system work. Regarding the 'corrective allocation model' she

proposes that the threshold for triggering the corrective allocation should be lowered to 100 percent of the reference point, not 150 percent as the Commission propose. Furthermore, she expresses dissatisfaction with the Commission's suggestion to introduce an 'opt-out' of the allocation system, meaning that member states could buy themselves out of the allocation system by paying 250 000 euros per applicant. In her report, Wikström write that it is unacceptable to put a price tag on human being, and that every member state should respect the legislation (Wikström 2017, 87-88).

Wikström oppose parts of the proposal, but it is more difficult to indicate what the overall position of the Plenary will be, when there has been no formal voting on this. The respondent from the Greens expressed that: *"In Dublin people are unhappy with the proposal from the Commission, and I think we just do not see how these proposals are going to solve anything. It is worse than the current Dublin."* (R9). However, there are not enough data available to at this point get a comprehensive picture of the situation.

6.2.3. The Qualification Regulation proposal

When the Commission presented the reform of the Qualification directive, they proposed to change it from a directive to a regulation to ensure further harmonization. The proposal is perceived as somewhat contentious. Mainly it is the whole idea that it is turning into a regulation, when some members of the European Parliament, some member states and ECRE fears that this might lead to a lowering of standards.

Position of the Commission

The Commission explained the transformation from a directive to a regulation as necessary when the recognition rates between member states was still high, and there was a lack of converges when it came to the type of protection status applicants were granted, the duration of residence permits granted and access to rights. Some rules are also optional by their nature, and therefore allows member states to a wide degree of discretion (Commission Proposal of 13 July 2016a, 4). Under consultations prior to the proposal being presented, the LIBE committee and NGOs expressed their fear that if the Qualification directive would turn into a regulation it could lead to lowering of standards. The member states on the other hand had generally expressed support for further harmonization (Commission Proposal of 13 July 2016a, 10-11). This indicates a lowering of the autonomy of the Commission. When the Commission pushed for more rights for asylum-seekers in the second phase of CEAS, the

Commission is now leaning towards the preference of the Council, that give support to the congressional dominance thesis. This is further supported by the assistant of the rapporteur of the Qualification directive:

> *"I mean the last time, the position of the Commission was completely different, when we worked on qualifications. They were really progressive […] This time what we are doing is, I mean the Commission is not progressive at all, we are totally against the Commission's proposals and are trying to pull it back in the direction of something we already got. So, it is kind of damage control as oppose to trying to do anything better than what we got" (R9)*

Preliminary position of the member states in Council and the European Parliament

One of the strong regulators, Sweden, expressed that they in general were positive to extending harmonization. One challenge they observed, was related to specific elements in the text that potentially could lead them to unwillingly lowering their national standards. Their main concern regarded the length of the residence permit, where the proposal suggested that one year residence permit is necessary to acquire beneficiaries of subsidiary protection, and three years is provided for refugees. Even though Sweden has this as a temporary law (because of the refugee crisis) they clearly state that: "*Having it as a permanent law will be difficult. Sweden does not support that at this point, and that is what we try to work on to make it possible to have longer."* (R1, my translation). Similar concerns were expressed by the Dutch PermRep:

> *"We found out that the way for us to get rid of all the appeals, is to give everybody refugee status, basically. To not make this distinction between subsidiary protection and refugee status. But we are the only member state who does that. And the Commission in all their proposals, still mentions the subsidiary protection status and the refugee status. Where we actually feel that 'look, you will all find out in ten or fifteen years from now, that actually it is better to give all the refugee status with the same rights'. If else, there is always something to appeal […]. So, to lose that now, because of being the only one, is very difficult." (R5)*

The position of some of the Eastern States is expressed through a statement from a Summit for the Prime Minister of the Visegrad Group countries held in 2016. In a common statement, they expressed their support for the following:

> *"[…] A thorough protection of the European Union external borders, proper border management, fully functioning hotspots, effective return policy, treating the root causes of migration right at their source, full implementation of the EU – Turkey deal and emphasize their openness to discuss and agree on proposals promoting these objectives". (Visegrad Group 2016, 2)*

These measurements are related to coping with asylum seekers at the external borders or before they enter European territories. No measures were mentioned regarding the obligations of member states in sharing the burden, nor the obligations to give asylum seekers a worthy stay while residing in Europe. The V4 countries have also been much more active in promoting their interest under this phase, as for example seen with the adoption of a decision for relocation of asylum seekers. The proposal sets a provisional measure to help Italy and Greece coping with asylum seekers, by relocating a certain number to other EU member states. The Czech Republic, Hungary, Romania and Slovakia here voted against this proposal, and Finland abstained from voting (Council of the EU 2015, 3). This indicates that the interest of the Eastern European states has increased from the second phase of CEAS.

For the position of the European Parliament, the draft report from Rapporteur Tanja Fajon has been presented, but not voted over in the LIBE committee. From her report, she makes it clear that: "*Proposing to again revise the CEAS so soon after the adoption of the last reform may not be the best way to ensure that the system operates fully and takes root in national policies and practices"* (Fajon 2017, 61). Nonetheless, when they first will reform the CEAS again, she underlined that it should be to improve protection granted to third-country nationals in need. She emphasizes that the EU has to provide its own security, but this go together with ensuring the rights for those coming here. She therefore proposed a report that would improve the proposal from the Commission (Fajon 2017, 62)

The report does not oppose moving towards further harmonization, but emphasize that the revised legislation should not lead to reduction of the length of the residence permits. The skepticism that further harmonization could lead to member states not being able to apply more favorable standards are shared by the assistant for the Greens saying that *"There is a lot of*

really nasty things in there. On the qualification directive specially, since it is now a regulation, and this is common to also the procedures directive and Dublin, they are cutting any discretion of the member state. So the member state can't decide to do anything better than what is laid down in the regulation" (R9). This concern is also supported by ECRE claiming that "*the majority of reforms of the criteria for granting refugee status or subsidiary protection promote harmonization downwards"* (ECRE 2016 b, 4). The report has not been voted over in LIBE committee nor the Plenary.

6.2.4 The Reception Condition Directive proposal

The refugee crisis exposed the weakness of the current system, and showed the need for ensuring greater consistency across the member states in reception conditions. While some member states provide reception standards that are very generous, other member state have problems securing that the asylum seekers get the dignified treatment they have the right to. This has contributed to secondary movements inside the EU, which put particular pressure on some member states (Commission Proposal of 13 July 2016b, 3). The reform of the Reception Condition Directive appears as less contested than the other files discussed. The reason for this might be that the file will remain a directive. The overall tone of the Commission has been to pursue harmonization to reduce secondary movement, as seen through the changes from directives to regulation. As shown above the reception condition for the second phase of CEAS did not reach the desired level of harmonization as the initially proposed by the Commission, so the leap over to a regulation might therefore be too big at this point.

Position of the Commission

When consultations have been hold regarding the Reception Condition, two elements have appeared as contested. First is the degree of harmonization and the possible outcome of that, and second is the sanctions for secondary movement. Regarding harmonization, most member states expressed the need for further harmonization of the reception conditions. While resistance and skepticism were promoted by some MEPs, were the argument was that harmonization could lead to lowering of the standards. Regarding incentives to reduce secondary movement, the member states showed their support of measures that restricted the applicant's freedom of movement, to ensure that the applicant remain available for the authorities. Some member states also agreed that material reception conditions could be conditioned to the member state where the applicant is required to be present. Some members of the EP were not as supportive for such measures, and suggested that incentives for making

applicants stay would be a more effective way of ensuring the same objective, as family reunification, access to labor market etc. (Commission Proposal of 13 July 2016 b, 7). ECRE also shared this discontent for sanctions for secondary movement: "*There is a lot of aspects which punish what should be a normal movement in considerations of the conditions within the countries where the person is first arriving."* (R10).

Even though I would say that the fingerprint of the Council on the Commission's proposal is less evident regarding the degree of harmonization proposed, this is not the case for the sanctions for secondary movement. Both the EP and ECRE express their dissatisfaction with these measures, but the Commission decided to go forward with it when it was supported by some member states. This gives support to the congressional-dominance thesis, and the salience model.

Preliminary position of member states in Council and the European Parliament

As shown above, there is no clear conflict among the member states in this file, and the overall impression is that it is supported by most member states in Council, because it still will be room for maneuver. Some Members of the European Parliament express dissatisfaction with parts of the proposals, especially with the sanctions for secondary movement. The assistant of the Greens expressed severe dissatisfaction with this proposal, but also confirms that the views among MEPs is varying*:*

> *"The EPP can accept those sanctions. I think, especially now that the socialists are no longer a part of this coalition, they will probably be against. We are against, GUE are against. However, we now also got the ECR, which are further right than EPP. So, they are going to support those sanctions. And ALDE, that is the big question. I think they may be ok with it." (R9)*

The report of the Rapporteur Sophia in't Veld emphasizes three things. First, she emphasized that she does not support the punitive measures proposed by the Commission, but propose that it is better to introduce incentives to reduce secondary movement. The second element the report points out is measurements for better integration, one example is the time period set out for the asylum seeker to access the labor market. The Commission proposed to reduce it from nine months to six months, in't Veld suggest it to be reduced to immediate access. The last key element in the report is to ensure the fundamental rights of all asylum applicants.

The report points out that extra measures are necessary to protect fundamental rights for applicants with special needs, and highlight child-friendly reception condition, full access to necessary health care etc. (Veld 2017, 72-73). The report was adopted by most members of the LIBE Committee on the 10th of May 2017. Three members from EPP abstained from voting, these were from Slovakia, Bulgaria and Romania. There were also nine MEPs that voted against the Report they were all from the far-right parties: ECR, EFDD and ENF and one non-attached member. For the rest of the political groups represented in the LIBE committee they all voted in favor of the report. (Veld 2017, 110)

6.2.5 The Asylum Procedure Regulation proposal

When the Commission presented the reform of the Asylum Procedure directive, they proposed to change it from a directive to a regulation to ensure further harmonization, as they also did for the Qualification directive. The file seems highly contested for two reasons. The first is the overall idea of transforming it to a regulation. While the other controversial issue is the element of 'safe country of origin lists' that meet resistance from several sources when the proposal sets out to replace national lists with a common European list (as explained in chapter 5).

Position of the Commission

The objective of the proposal is, according to the Commission, to establish a *"truly common procedure for international protection which is efficient, fair and balanced"*. To be able to achieve this the Commission proposed that it should turn into a regulation, making it directly applicable in all member states and remove all elements of discretion (Commission Proposal of 13 July 2016c, 3). However, this is very controversial and according to the Commission this is very contested among the member states, leading to reasoning that: "*There is quite a bit resistance to that. I have the sense that it will probably stay as a directive. There may be more discretion built into it, in terms of some of the procedures and deadlines and so on." (R2)*. This gives an impression that the Commission started out with more autonomy when developing this proposal, but envisage this autonomy to be curtailed.

Regarding the safe country of origin list, the Commission proposed a common European list even though they were cautioned not to do so by NGOs. ECRE makes it clear that the concept of 'safe country of origin' and 'third country concept' does not exist in international refugee law, and that it is a construction of the EU law with the aim of filter out people that are

believed not to need protection because of their nationality. According to ECRE this goes against the fundamental principle of individual assessing an asylum applicant. The respondent from ECRE further problematize the issues with a common European list:

> *"We have quite a strong view at ECRE that these kind of lists are not merited. We looked at the statistics of people getting protection coming from nationalities that the list proposes, and they are very divergent across each of the member states […] So in terms of harmonizing something like that, were national practices are completely divergent is very worrying. And it is also from a standpoint that if you come from that country, you don't merit protection, therefore the application where inadmissible, you are usually put into an accelerated procedure that has effects on your appeal rights" (R10)*

This further underline that the third phase of CEAS goes in the direction of violating international obligations for making it easier for member states to tackle the inflow. The relationship between the Council and the Commission are therefore leaning more towards the 'Congressional dominance thesis' than the 'Runaway-bureaucracy thesis', which supports my model.

Preliminary position of the member states in Council and the European Parliament

In the consultations with member states, the Commission reveals that some member states did not support the transformation to a regulation because it would imply significant changes on a national level in terms of how they organize asylum procedures (R2). This support the misfit model presented in the theoretical framework. The Commission refers to France, Belgium, Spain, Italy and some East-European states as being resistant to this (R2). This demonstrates two things. First it indicates, as also shown above, conflicting interests among the strong regulators in Council for this period of CEAS, that could make it harder to reach a common agreement. Secondly, it shows that states perceived as medium and weak regulators also have a clear preference in the outcome of the position of the Council, an additional reason why reaching a consensus might become difficult. The big divisions in the Council are also supported by the Swedish PermRep: *"I know there is several member states which have said, especially regarding the asylum procedure directive, that they want it to remain a directive and not a regulation"* (R1, my translation).

The safe country of origin list is also seen as problematic by member states. All member states would prefer to keep some national discretion regarding which countries are designated as safe or not. While some member state like the idea, because they are then not responsible for taking sensitive decisions, other oppose this because they see it as a sovereignty issue (R2). The European Parliament also seem somewhat resistant to the proposal because it might lead to lowering of standards. We find support for this position for the Greens: *"We are not convinced that moving to a regulation is going to harmonize the system, it is not realistic. And also, the biggest problem for us with it, is that it cuts all discretion for member states […] because it is a regulation there is no room for maneuver. You can not do anything better." (R9)*

The EP also indicates resistance towards the safe-country of origin lists, and the interviewee says she thinks there is a majority against this in the Parliament, but that they are awaiting reports from EASO. She also states that the Parliament's position is that national lists need to be phased out altogether, and illustrate the challenges with a common European list:

> *"One of the big problems are the harmonization. If you have an EU list what does that mean for national list? Should you allow them to co-exist? What is then the point of having any EU list? And of course, no member state would like to agree to get rid of their own national lists. This EU list now proposes 7 countries at the moment, but like the UK must have like 30 countries. But they will never agree to getting rid of their national lists."* (R9)

6.2.6 Summary of third phase of CEAS

The empirical findings of the third phase of CEAS indicated that the Commission was put under high political pressure because of the 'refugee crisis'. The Commission was less progressive in their approach, and compared to the second reform of CEAS the proposals were more reluctant in strengthening the rights of the asylum seekers. The refugee crisis has also affected the coalitions in the Council. For the second phase of CEAS the negotiations were mainly between the frontline member states in the south and the north-western states. After 2015 the findings demonstrate that most member states are engaged in negotiations, and it is possible to identify at least three coalitions with different objectives. For the European Parliament the Rapporteurs for the legislative proposals all show some degree of discontent towards the proposals from the Commission, supporting the assumption that the European Parliament seeks to secure a liberal asylum policy. Nonetheless, when the proposals have not been formally voted over in the Parliament it is not possible to conclude with certainty. In sum,

the findings of the third phase of CEAS support the assumption of policy-making in times with high salience, this is especially evident for Council and the Commission.

7. Discussion and conclusion

This thesis has been concerned with explaining the development of EU asylum policy, through the research question: *How did the refugee crisis affect EU decision-making in asylum policy?* A new theoretical model has been tested using a comparative case study, and the findings support the model, indicating that high salience around asylum makes it harder to reach common agreement on the direction of EU asylum policy. This is particularly visible in two areas.

First, the position of the Commission has changed remarkably, from focusing on strengthening the rights and safeguards of the asylum seekers before the refugee crisis, to letting concerns about immigration prevail during times when salience is high. The focus on immigration concerns under the third phase of CEAS complicates the Commission's relationship to the European Parliament (and NGOs), increasing the distance between their positions, and therefore making it harder to find common solutions.

Secondly the findings indicate that under times of high salience all member states have an enhanced interest in pursuing their national political preference, making it complicated to reach a common position in the Council. Asylum under low salience was an issue negotiated between the most exposed southern member states and the stronger north-western states that has had a long tradition with asylum-seekers. In these negotiations, the stronger member states were dominant in determining the Council's position. However, under high salience all member states have an increased interest in negotiating, making it harder to reach consensus.

How salience has affected the position of the European Parliament has been less evident in the empirical findings. In the following chapters I will discuss the evidence and to which degree the Salience Model has been supported.

7.1 Discussion of empirical findings

7.1.1. The autonomy of the Commission

The first claim of my model is that the Commission neither follows the wishes of the member states blindly nor are they totally supranational, the autonomy varies according to the salience of an issue. The findings indicate that this assertion is correct, supporting the

theoretical contribution of Pollack (1997). For the second generation, the Commission particularly highlighted the rights of the asylum seekers in the Qualification Directive and the Dublin III regulation. ECRE welcomed this approach of the Commission, and this support the presumption that the Commission had autonomy to pursue own political preferences under times with low salience.

The autonomy of the Commission is less evident in the third generation, especially regarding the Dublin IV regulation, when the rights of asylum seekers were watered-down and the Commission chose to keep the 'first country of entry' principle, even though they were warned by several actors to do so. For the Qualification regulation, the Commission proposed the transformation from a directive to a regulation when this was welcomed by most member states, even though NGOs and other warned on the lowering of rights. For the Asylum Procedure Regulation it seems like the Commission starts out with some degree of autonomy, however the Commission itself expressed an assumption that it will not pass the doors of the Council and therefore a watering-down of the proposal will most likely be the case. All in which indicate a Commission under high political influence.

Some deviations from the model is also identified in the data. The autonomy of the Commission is in some cases restricted under the second phase of CEAS as well. This is found especially for the Reception Condition Directive and the Procedure Directive, where the Commission ends up proposing an amended proposal for both files that results in a watering-down of the initial proposal. This can portray a restriction of the Commission autonomy. This can be related to the presumption presented in chapter 4, namely that the degree of salience before the refugee crisis hit might be higher than first expected.

By looking at the empirical findings, we see that the Southern frontline member states asked for a better distribution of asylum seekers long before the 'crisis' hit Europe. In addition, salience around immigration and asylum can be linked to the rise of populist right parties, that started long before the increase of asylum seekers to Europe. These parties often have an anti-immigration as core message, linking immigration as a threat to national identity, as a cause of criminality and as a cause of unemployment, and as abusers of the welfare state (Rydgren 2013, 4). Salience might also be geographically bounded, where it might be natural to assume that the salience increased in the member states where the numbers of asylum seekers were higher, and where far-right movements have been present in the political landscape. Looking at salience on asylum in this context, there are reasons to believe that the salience might be higher in the

second phase of CEAS than first assumed, that can help explain why the Commission in some areas had a restricted autonomy.

7.1.2 The political preference of the Council

The second claim of my model was that the preference of the member states is to keep the status quo, when it minimizes the costs of implementation. Under times with low salience it is only the strong regulators that have the capacity to do so, while when salience increases all member states have incentives to try to push their national interest onto the European level. The empirical findings supported this assumption, and thereby supporting Tanja A. Börzel (2002) 'misfit model' and Natascha Zaun' (2016) application of it. First and foremost, the findings show that negotiation in the second phase of CEAS was driven by the strong North-Western states. The southern states tried to oppose this and expressed a need for a stronger redistribution mechanism in the Dublin System. This also became evident through voting, where Greece voted against the Dublin III regulation and Malta voted against the Qualification directive. Nonetheless, in all cases the weaker regulators were voted down and the preference of the strong regulators prevailed, giving support to the salience model.

For the third generation, the 'rules of the game' have changed. Regarding the Eastern European states, they had a much clearer position on the proposed legislation presented when the salience was high. Regarding the Qualification directive and the Asylum Procedure directive they dissent that it should turn into a regulation, and they are neither supportive of the 'allocative relocation mechanism' in the Dublin IV proposal. This is very different from the second phase of CEAS when they saw asylum as not their issue and the need for promoting their concerns was smaller. Secondly, the division within the preference of the strong regulators have increased. While Sweden and Germany seem generally in favor of the new proposal. France and UK are not. The findings indicate a clear change in the position of Germany. As shown in chapter 6, Germany have moved from receiving 22 percentage of the total asylum-applications in EU-28 when the second phase of CEAS was finalized in 2013, to receiving 81 percentage of the total asylum applications in march 2017.

By accepting the 'first country of entry' principle under the second phase, Germany are under the third phase alongside with the Southern member states, asking for a better distribution of refugees. As are other North-Western states as Sweden and the Netherlands. This change in

positions is due to the uneven share of distribution of refugees. This is a consequence of the refugee crisis that are not directly operationalized as salience, as discussed in chapter four, but rather a practical effect on the asylum situation in Europe.

7.1.3 The political preference of the European Parliament

The last assumption of the Salience Model claims that the political preference of the European Parliament would be close to a liberal and centrist parties, promoting a liberal position towards EU asylum policy. However, this position might be threatened when the national interest is high leading MEPs voting in favor of their member state and their political interest. First and foremost, the EP accepted all files coming from the Commission in the second generation, and when the stance of the Commission was perceived as quite liberal, this can be seen as the first indication of support. Nonetheless, the picture varied from file to file. For the Reception Conditions there seemed to be a low degree of conflict in Parliament. However, some elements in the proposal did become down-graded in the amended proposal, which could help decrease the level of conflict. Even though the evidence could imply that most members in Parliament were satisfied with the proposal, this could be due to the fact that the right-leaning majority accepted the amended proposal because it was better than the initial proposal, while the left leaning majority accepted the amended proposals because it was better than the directive from the first generation of CEAS.

For the Asylum Procedure directive in the second generation, the disagreements within the Parliament were high. The initial report was barely adopted by a majority in the LIBE committee, and there seemed to be divisions among the MEPs in the EPP group. When the amended proposal was proposed, the disagreement became less evident. As mentioned above the Greens had the impression that the EPP worked as a voice for the Council during the negotiations under the second phase, and these findings corroborate this assumption. The Salience Model assumed that the MEPs would be tempted to vote in favor of their home countries under times with high salience, but the interviewees indicate that this is more common. Respondent from the Greens say that she assumes that EPP and S&D which have political parties in government, will have more incentives to vote in line with their national government, leading national delegation to vote against their group. The strong regulators, Sweden and Netherlands, both confirms this. They say that dialog and cooperation between the member state and the parliamentarians in EP is common. This indicates that cooperation between national governments and MEPs might be more common than assumed in the Salience

Model. Leading us to believe that salience might not be the causal factor for voting in the Parliament

To some extent it is possible to see that groups in the Parliament, mainly the center-left, criticized the third generation of 'going backwards' in terms of right, supporting the assumption that the EP supported a more liberal policy on asylum. It is more difficult to say something about the voting of the EP under the third generation when the only vote has been in the LIBE committee for the Reception Condition Directive. The votes here showed that some EPP members dissented from the group position. These were from Slovakia, Bulgaria and Romania. This supports Thomson (2011) argument that when the national interest is at stake, MEPs tend to dissent from their party groups position. However, the voting does not seem to be that straightforward either. There were also MEPs from the same nationalities that voted in favor, which contradicts an assumption that there were agreements among some national delegations.

Where's my model particularly confirmed the assumptions regarding the autonomy of the Commission and the position of the Council, the support for the assumptions of the European Parliament are less straightforward. There are several reasons for that. As discussed above, the salience might be higher for the second phase of CEAS leading me to find that MEPs voted in favor of national governments during this period. Secondly, the data gathered was not sufficient to draw conclusions. I initially wanted to interview several MEPs, if I did this could give me a more comprehensive picture over which and when MEP voted in favor of national delegations. This is also the same for voting patterns of MEPs. If I were to analyze data on the votes of every MEP, this would give me a broader picture of the situation. Related to insufficient data, there would also be easier to conclude on this if the third phase of CEAS was finalized. Even though I see that some MEPs dissent from their party group, it is hard to say if the numbers are high or low, without having anything to compare it with.

7.2 Summary of findings and conclusion

This thesis has illustrated how the refugee crisis led to decision-making on asylum being more disputed, and thereby making it harder to reach a common agreement on the direction of EU asylum policy. In a time where the need for a fair asylum policy is sorely needed, this comes through as a paradox. The theoretical argument I developed, the salience model, were supported in two of three assumptions.

When salience was low, as characterized by decision-making on asylum before the refugee crisis, the Commission was under less political pressure and therefore had autonomy in

the development of legislative proposals. That led to focus on the rights and safeguards for the asylum seekers, as predicted by the Salience Model. For the member states under this period the North-Western states, the strong regulators, dominated the position of the Council, as assumed. The southern frontline states sought to oppose this view, but was not successful in doing so. Regarding the European Parliament, the findings indicated that the EP had a liberal stance on EU asylum policy, and were supportive of the approach of the Commission in strengthening the rights of asylum seekers. But the findings also indicated that MEPs also voted in favor of their national governments under this period, leading us to believe that the salience under the second phase might have been higher than first assumed.

When salience was high, as characterized decision-making after the refugee crisis, the Commission was put under high political pressure. This lead the Commission to propose legislation that was less concerned with strengthening the safeguards of asylum seekers, but rather discard some of these rights and rather focus on immigration concerns, as the model had predicted. For the member states in Council, the model also predicted correctly, that all member states had an enhanced interest in promoting their national interest, making it much harder to reach a common agreement in Council. The East European States have become more engaged in prompting their view compared to before when asylum was 'not their issue'. The preference of the North-Western states has also become more divided. All of this indicating that finding a common solution seems much more divided now than for the second phase of CEAS. Regarding the European Parliament, it has been difficult to find sufficient data to test the model, partly because of insufficient access to respondents to interview as well as the fact that the third phase is not finalized yet.

The interviewee from the Commission painted a characterization of the role of the different institutions when negotiating asylum policy. He said that the Council represents the typical mindset of interior ministers, which is skeptical about immigration and try to avoid pull factors of migrants to Europe. On the other side of the spectrum is the European Parliament, who try to work for human rights and secure the EU as a haven of democracy and refugee protection. And somewhere in the middle, you find the Commission. This thesis has shown that the Commission were leaning towards the EP before the refugee crisis, making a policy possibly that supported asylum rights. But in contrast, after the refugee crisis, the Commission is leaning in the opposite direction, supporting the immigration concerns promoted by the member states in Council.

7.3 Contribution of thesis and its limitations

This thesis contributes a new theoretical argument that increases our understanding of how asylum policy is developed. The literature was lacking a comprehensive model that could explain EU asylum policy development, and I believe this thesis has contributed to that. During a time where the EU is seeking to adopt a new policy, the salience model can help explain why reaching an agreement might become more difficult as the need for doing so increases. The further apart the opposing poles are, the more mediocre the final policy output will probably become.

There are some limitations to this thesis that should be mentioned. The most obvious one is the fact that this thesis seeks to explain a process that has not yet finished. The European Parliament and Council have not come to an agreement regarding the third generation of asylum law, and the outcome is still unclear. Thus, this thesis could be criticized for conducting an analysis without the third generation of CEAS being finalized. If it was, it might have given more data for comparison, and I could with greater certainty confirm findings. I would say that this has been most evident for the European Parliament. When it comes to the Commission, several important documents have already been published, which allowed for comparison across the two cases. For the Council, the interviews contributed useful information about the preference of the actors before said positions have been formalized in documents, negotiations and votes.

Even though the third phase of CEAS is not finished, I would argue for the relevance and centrality of this thesis based on two reasons. First, studying a phenomenon under development can help predict as well as explain the final output. Second, as explained before, there is a lack of extensive models that can explain the underlying mechanism of EU asylum policy. This thesis contributes with such a model, one that could be applied and potentially developed for further research. A second limitation worth mentioning is that the EU has used several other measures to cope with the refugee crisis other than the reform of the CEAS. One example is the strengthening of the European Asylum Support Office (EASO). The agency supports the implementation of CEAS by applying a bottom-up approach. By studying the development of CEAS isolated from other instruments, this thesis could be criticized for presenting a skewed image of how the EU institutions have coped with the refugee crisis. Nonetheless, this was not the aim of this thesis.

7.4 Further research

To conclude, I would like to present a couple of recommendations for further research. My model had difficulties predicting the role of the European Parliament, and the effect of salience was here less evident. An idea for further research would therefore be to scrutinize the relationship between the member states in Council and members of European Parliament, in order to increase our knowledge of the circumstances under which the MEPs decide to vote in favor of their home country. The findings of this thesis imply that some political groups have a greater tendency to do so than others. This appears to be true for the big political groups, and especially in the European People's Party (EPP). This could be due to the fact that these parties are often in government. EPP might have a tendency to do so more often than the S&D might be that S&D more often has a position that is in line with the European Parliament, while the former does not. A thorough study of this was unfortunately outside the scope of this thesis.

Secondly, I would recommend a study of the third generation of CEAS after the final adoption of the legal framework. As shown in the second phase, the Commission can end up with an amended proposal, and as such the development can be studied more thoroughly when the negotiations are finalized. At last I will recommend further testing of *the Salience Model,* as the model could be applied to policy areas other than asylum policy. This thesis has shown that salience clearly affects the decision-making processes in regards to asylum policy, making it likely that this could also be the case for other areas.

Bibliography

Adcock, Robert and David Collier. 2001. «Measurement Validity: A Shared Standard for Qualitative and Quantitative Research». *The American Political Science Review* 95, (3):529-546.

BBC. 2014. «Eurosceptic 'earthquake' rocks EU elections». Accessed 14. May 2017. http://www.bbc.com/news/world-europe-27559714

Bennet, George. 2010. «Process Tracing and Causal Inference». In *Rethinking Social Inquiry,* edited by Henry E. Brady and David Collier, 207-220. Maryland: Rowman & Littlefield Publishers.

Börzel, Tanja A. 2002. «Pace-setting, foot-dragging, and fence-sitting: member state responses to Europeanization». *Journal of Common Market Studies* 40, (2):193-214.

Chapel Hill Expert Survey. 2010. Survey team: Ryan Bakker, Catherine de Vries, Erica Edwards, Liesbet Hooghe, Seth Jolly, Gary Marks, Jonathan Polk, Jan Rovny, Marco Steenbergen, and Milada Vachudova

Chapel Hill Expert Survey. 2014. Survey team: Ryan Bakker, Erica Edwards, Liesbet Hooghe, Seth Jolly, Jelle Koedam, Filip Kostelka, Gary Marks, Jonathan Polk, Jan Rovny, Gijs Schumacher, Marco Steenbergen, Milada Vachudova, and Marko Zilovic.

Collier, David, Henry E. Brady and Jason Seawright. 2010. «Sources of Leverage in Causal Inference: Toward an Alternative View of Methodology». In *Rethinking Social Inquiry,* edited by Henry E. Brady and David Collier, 161-204. Maryland: Rowman & Littlefield Publishers.

Commission amended proposal of 1 June 2011 for laying down standards for the reception of asylum seekers. 2011. *Official Journal of the European Union,* COM(2011)320.

Commission Communication of 17 June 2008 on Policy Plan on Asylum. 2008. *Official Journal of the European Union*, COM(2008)360.

Commission Proposal of 3 December 2008(a) on a regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member states by a third-country national or a stateless person. *Official Journal of the European Union*. COM(2008)820.

Commission Proposal of 3 December 2008(b) on a directive laying down minimum standards for the reception of asylum seekers. *Official Journal of the European Union.* COM(2008)815.

Commission Proposal of 21 October 2009(a) on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted. *Official Journal of the European Union.* COM(2009)551.

Commission Proposal of 21 October 2009(b) on minimum standards on procedures in Member states for granting and withdrawing international protection. *Official Journal of the European Union.* COM(2009)554.

Commission Proposal of 4 May 2016 on a regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member states by a third-country national or a stateless person (recast). *Official Journal of the European Union.* COM(2016)270.

Commission Proposal of 13 July 2016(a) on a regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. *Official Journal of the European Union*. COM(2016)466.

Commission Proposal of 13 July 2016(b) on a directive laying down standards for the reception of applicants for international protection. *Official Journal of the European Union*. COM(2016)465.

Commission Proposal of 13 July 2016(c) on a regulation establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU. *Official Journal of the European Union*. COM(2016)467.

Council of the EU. 2010. «Press Release. 3043th Council Meeting. Justice and Home Affairs». *European Commission Press Release Database*. Document 14423/10.

Council of the EU. 2012. «Addendum to Draft Minutes. 3127th Meeting of the Council of the European Union». Accessed 09 April 2017. http://data.consilium.europa.eu/doc/document/ST-17577-2011-ADD-1/en/pdf?locale=en

Council of the EU. 2013. «Reception conditions for asylum seekers: better and more harmonised living standards and more effective rules for fighting abuse». *European Commission Press Release Database.* Document 14556/12.

Council of the EU. 2015. «Draft Minutes. 3411th Meeting of the Council of the European Union». *Commission Press Release Database.* Document 12295/15.

Council of the European Union. 2016. «The General Secretariat of the Council». Accessed 16 April 2017. http://www.consilium.europa.eu/en/general-secretariat/

Creswell, John W. 2013. *Qualitative Inquiry and Research Design. Choosing among five approaches.* London: SAGE Publications

Crombez, Christophe, Tim Groseclose and Keith Krehbiel. 2006. «Gatekeeping». *Journal of Politics* 68, (2): 322-34.

Directive 2001/55/EC of the Council on minimum standards for giving temporary protection in the event of mass influx of displaced persons and on measures promoting a balance of efforts between Member states in receiving such persons and bearing the consequences thereof. 2001. *Official Journal of the European Union*, p. 12-23 *(ES, DA, DE, EL, EN, FR, IT, NL, PT, FI, SV)*

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted. 2011. *Official Journal of the European Union, p. 9–26 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)*

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. *Official Journal of the European Union, p. 60–95 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)*

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. *Official Journal of the European Union, p. 96–116 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)*

Dörig, Harald, Ingo Kraft, Hugo Storey and Hemme Battjes. 2016. «Asylum Qualification Directive 2011/95/EU». In *EU Immigration and Asylum Law*, edited by Kay Hailbronner and Daniel Thyme, 1108-1283. München: Verlag C.H Beck oHG

Eilstrup-Sangiovanni, Mette. 2006. *Debates on European Integration: a reader.* Basingstoke: Palgrave Macmillan

ECRE (n.d.). «Our Work». Accessed 12 April 2017. https://www.ecre.org/our-work/

ECRE. 2009. «Comments from the European Council on Refugees and Exiles on the European Commission Proposal to recast the Dublin Regulation». Accessed 23 April 2017. http://www.ecre.org/wp-content/uploads/2016/07/ECRE-Comments-on-the-Commission-proposal-to-recast-the-Dublin-Regulation_April-2009.pdf

ECRE. 2011 a. «Comments from the European Council on Refugees and Exiles on the European Commission Proposal on the amended Commission Proposal to recast the Reception Conditions Directive». Accessed 22 April 2017. http://www.europarl.europa.eu/document/activities/cont/201110/20111014ATT29340/20111014ATT29340EN.pdf

ECRE. 2011 b. «Comments from the European Council on Refugees and Exiles on the amended Commission Proposal to recast the Asylum Procedures Directive». Accessed 23 April 2017. https://www.ecre.org/wp-content/uploads/2016/07/Comments-on-the-amended-Commission-Proposal-to-recast-the-Reception-Conditions-Directive.pdf

ECRE. *2015. «Safe countries of origin: A safe concept?»*. Accessed 02 May 2017. http://www.ecre.org/wp-content/uploads/2016/06/AIDA-Third-Legal-Briefing_Safe-Country-of-Origin.pdf

ECRE. 2016 a. «Comments on the Commission Proposal for a Dublin IV Regulation». Accessed 14 May 2017. https://www.ecre.org/wp-content/uploads/2016/10/ECRE-Comments-Dublin-IV.pdf

ECRE. 2016 b. «ECRE Comments on the Commission Proposal for a Qualification Regulation». Accessed 14 May 2017. http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/ECRE%20Comments%20QR.pdf

EPP Group. «Our History». Accessed 12 May 2017. http://www.eppgroup.eu/history

EUR-Lex (n.d.). «Green Paper». Accessed 29 May 2017. http://eur-lex.europa.eu/summary/glossary/green_paper.html

EUR-Lex view A. Document 32013R0604. Accessed 09 May 2017. http://data.europa.eu/eli/reg/2013/604/oj (includes navigation elements).

EUR-Lex view B. «Document 32011L0095». Accessed 07 May 2017. http://data.europa.eu/eli/dir/2011/95/oj (includes navigation elements).

EUR-Lex view C. «Document 32013L0033». Accessed 07 May 2017. http://data.europa.eu/eli/dir/2013/33/oj (includes navigation elements).

EUR-Lex view D. «Document 32013L0032». Accessed 11 May 2017 http://data.europa.eu/eli/dir/2013/32/oj (includes navigation elements).

European Commission. 2011. «Asylum proposals: a more protective and effective Common European Asylum System (CEAS)». Accessed 30 March 2017. http://europa.eu/rapid/press-release_MEMO-11-365_en.htm?locale=en

European Commission. 2016 a. «Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy». Accessed 30 March 2017. http://europa.eu/rapid/press-release_IP-16-2433_en.htm?locale=en

European Commission. 2016 b. «Towards A Sustainable and Fair Common European Asylum System». *European Commission Press Release Database,* 4 May 2016.

European Commission. 2016 c. «Refugee Crisis in Europe». Accessed 26 April 2017. http://ec.europa.eu/echo/refugee-crisis_en

European Commission. 2016 d. «The Reform of the Dublin System». Accessed 23 May 2017. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160504/the_reform_of_the_dublin_system_en.pdf

European Commission. 2017 a. «Free movement in harmonised and non-harmonised sectors». Accessed 06 April 2017. https://ec.europa.eu/growth/single-market/goods/free-movement-sectors_en

European Commission 2017 b. «Common European Asylum System». Accessed 25 April 2017. https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en

European Commission. 2017 c. «Syrian Crisis». Accessed 20 May 2017. http://ec.europa.eu/echo/files/aid/countries/factsheets/syria_en.pdf

European Commission. 2017 d. «An EU 'Safe Countries of Origin' List». Accessed 12 May 2017. https://ec.europa.eu/home-affairs/e-library/multimedia/publications/an-eu-safe-countries-of-origin-list_en

European Commission. 2017 e. «Reception Conditions». Accessed 23 May 2017. https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/reception-conditions_en

European Council. 2016. « Qualified Majority Vote». Accessed 29 May 2017. http://www.consilium.europa.eu/en/council-eu/voting-system/qualified-majority/

European Parliament 2014. «Results of the 2014 European Election». Accessed 18 May 2017. http://www.europarl.europa.eu/elections2014-results/en/turnout.html

European Parliament Procedure. 2009 a. «Document A6-0284/2009». Accessed 15 April 2017. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT%20REPORT%20A6-2009-0284%200%20NOT%20XML%20V0//en (include navigation elements)

European Parliament Procedure. 2009 b. «Document A7-0085/2011». Accessed 17 April 2017. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT%20REPORT%20A7-2011-0085%200%20NOT%20XML%20V0//en (include navigation elements)

European Parliament Procedure. 2009 c. «Document A6-0285/2009». Accessed 17 April 2017. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT%20REPORT%20A6-2009-0285%200%20NOT%20XML%20V0//en (include navigation elements)

European Parliament Procedure. 2011. «Document A7-0271/2011». Accessed 20 April 2017. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT%20REPORT%20A7-2011-0271%200%20NOT%20XML%20V0//en (include navigation elements)

European Union. 2017. «Regulations, Directives and other acts». Accessed 20 May 2017 https://europa.eu/european-union/eu-law/legal-acts_en

Eurostat. 2017. «Asylum Statistics». Accessed 20 May 2017. http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.

Fajon, Tanja. 2017. «Draft report on the proposal for a regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection». *European Parliament*

George, Alexander L. and Andrew Bennet. 2005. *Case Studies and Theory Development in the Social Sciences.* London: MIT Press.

Gerring, John. 2007. *Case Study Research: Principles and Practices.* New York: Cambridge University Press.

Givens, Terri and Adam Luedtke. 2004. «The Politics of the European Union Immigration Policy: Institutions, Salience and Harmonization». *The Policy Studies Journal* 32, (1):145-165.

Givens, Terri and Adam Luedtke. 2005. *European Immigration Policies in Comparative Perspective: Issue Salience, Partisanship and Immigrant Rights.* Comparative European Politics, 3:1-22.

Goertz, Gary. 2006. *Social Science Concepts. A User's Guide.* Princeton: Princeton University Press

Government of the Republic of Slovakia. «Government of the Republic of Slovenia from 21 November 2008 till 10 February 2012». Accessed 8 May 2017. http://www.vlada.si/en/about_the_government/governments_of_the_republic_of_slovenia/government_of_the_republic_of_slovenia_2008_2012/

Guild, Elspeth, Cathryn Costello, Madeline Garlick, Violeta Morena-Lax and Minos Mouzourakis. 2014. «New approaches, alternative avenues and means of access to asylum procedures for persons seeking international protection». Accessed 29 March 2017.*http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509989/IPOL_STU(2014)509989_EN.pdf*

Guillaume, Sylvie. 2011. «Report on the proposal for a directive on minimum standards on procedures in Member States for granting and withdrawing international protection». *European Parliament,* document A7-0085/2011

Guillaume, Sylvie. 2013. «Recommendation for second reading on the Council position at first reading with a view to the adoption of a on common procedures for granting and withdrawing international protection». *European Parliament*, document A7-0217/2013.

Guiraudon, Virginie. 2000. «European Integration and Migration Policy: Vertical Policy-making as Venue Shopping». *Journal of Common Market Studies* 38, (2):251-271.

Haas, Ernst B. 2004. *The Uniting of Europe: political, social and economic forces, 1950-1957.* Notre Dame: University of Notre Dame Press

Hagemann, Sara. 2010. «Voting, Statements and Coalition-Building in the Council from 1999 to 2006». In *Unveiling the Council of the European Union*, edited by Daniel Naurin and Helen Wallace, 36-63. Basingstoke: Palgrave Macmillan.

Harvey, William S. 2011. «Strategies for conducting elite interviews». *Qualitative Research* 11, (4):431-441.

Hennis-Plasschaert, Jeanine. 2009. «Report on the proposal for a regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person». *European Parliament*, A6-0284/2009.

Héritier, Adrienne. 1996. «The accommodation of diversity in European policy-making and its outcomes: regulatory policy as a patchwork». *Journal of European Public Policy* 3, (2):149-167.

Hidalgo, Antonio Masip. 2009. «Report on the proposal for a directive down minimum standards for the reception of asylum seekers». European Parliament, document A6-0285/2009

Hidalgo, Antonio Masip. 2013. «Recommendation for Second Reading on the Council position at first reading with a view to the adoption of a directive laying down standards for the reception of applicants for international protection». European Parliament, document A7-0214/2013.

Hix, Simon and Bjørn Høyland. 2011. *The Political System of the European Union.* Houndsmill: Macmillan.

Hix, Simon and Bjørn Høyland. 2013. «Empowerment of the European Parliament». *The Annual Review of Political Science* 16, 171-189.

Hooghe, Liesbet, Gary Marks and Carole J. Wilson. 2002. «Does Left/Right Structure Party Positions on European Integration?» *Comparative Political Studies* 35, (8):965-989.

Hruschka, Constantin and Francesco Maiani. 2016. «Dublin III Regulation (EU) No 604/2013». In *EU Immigration and Asylum Law*, edited by Kay Hailbronner and Daniel Thyme, 1478-1604. München: Verlag C.H Beck oHG

Hurwitz, Agnès. 1999. «The 1990 Dublin Convention: A Comprehensive Assessment». *International Journal of Refugee Law* 11, (4): 646-677.

Kassim, Hussein and Anand Menon. 2003. «The principal-agent approach and the study of the European Union: promise unfulfilled?». *Journal of European Public Policy* 10, (1):121-139.

Kaunert, Christian and Sarah Léonard. 2012. «The development of the EU asylum policy: venue-shopping in perspective». *Journal of European Public Policy* 19, (9):1396-1413

King, Gary, Robert O. Keohane and Sidney Verba (KKV). 1994. *Designing Social Inquiry: Scientific Inference in Qualitative Research.* New Jersey: Princeton University Press

Kleine, Mareike. 2013. *Informal Governance in the European Union: How governments make International Organizations Work.* New York: Cornell University Press.

Kreppel, Amie. 2001. *The European Parliament and Supranational Party Systems.* Cambridge: Cambridge University Press

Lambert, Jean. 2010. «*Working Document on the proposal for a directive on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted».* European Parliament

Lambert, Jean. 2011. «Report on the proposal for a directive on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted». *European Parliament,* A7-0271/2011

Lijphart, Arend. 1971. «Comparative Politics and the Comparative Method». *American political science review* 65, (3):682-693.

Mahoney, James and Dietrich Rueschemeyer. 2003. *Comparative Historical Analysis in the Social Sciendes.* New York: Cambridge University Press.

Mahoney, James. 2010. «After KKV. The New Methodology of Qualitative Research*». World Politics* 62, (1):120-47.

Marks, Gary, Liesbet Hooghe and Kermit Blank. 1996. «European Integration from the 1980s: State Centric v. Multi-level Governance». *Journal of Common Market Studies* 34, (3): 341-378.

Mattila, Mikko. 2004. «Contested decisions: Empirical analysis of voting in the European Union Council of Ministers*». European Journal of Political Research* 43, 29-50.

Maurer, Andreas and Roderick Parkes. 2007. «The Prospects for Policy-Change in EU Asylum Policy: Venue and Image at the European Level». *European Journal of Migrants and Law*,(9):173-205.

McElroy, Gail. 2007. Legislative politics. in Jørgensen, Knud Erik, Mark A. Pollack and Ben Rosamond. 2006. *Handbook of European Union Politics.* London: SAGE publications, 175-94.

McLean, Iain and Alistair McMillan. 2009. *Oxford Concise Dictionary of Politics.* Oxford: Oxford University Press.

Menz, Georg. 2015. «The promise of the principal-agent approach for studying EU migration policy: The case of external migration control». *Comparative European Politics* 13, (3):307-324.

Moraga, Jesús Fernández-Huertas and Hillel Rapoport. 2015. «Tradable Refugee-admission Quotas and EU asylum policy». *CESifo Economic Studies* 61, (3):638 – 672.

Moravcsik, Andrew. 1993. «*Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach.* Journal of Common Market Studies 31, (4):474-524

Nugent, Neill. 2010. *The government and politics of the European Union.* Basingstoke: Palgrave Macmillan

Official Journal of the European Union. 2005. «The Hague Programme: Strengthening freedom, security and justice in the European Union». 2005/C 53/01

Peek, Markus and Lilian Tsourdi. 2016. «Asylum Reception Conditions Directive 2013/33/EU». In *EU Immigration and Asylum Law*, edited by Kay Hailbronner and Daniel Thyme, 1381-1477. München: Verlag C.H Beck oHG

Peers, Steve. 2015. «Reconciling the Dublin system with European fundamental rights and the Charter». *ERA forum*, 15:485-494.

PES. «The Party». Accessed 27 May 2017. https://www.pes.eu/oc/en/about-us/the-party/

Pollack, Mark A. 1997. «Delegation, Agency and Agenda Setting in the European Community». *International Organization* 51, (1):99-134.

Przeworski, Adam and Henry Teune. 1970. *Logic of Comparative Social Inquiry.* New York: A Wiley Series

Refugee Council. 2002. «The Dublin Convention on asylum applications: What it means and how it's supposed to work». Accessed 30 March 2017. https://www.refugeecouncil.org.uk/assets/0001/5851/dublin_aug2002.pdf

Regulation 2013/604/EU of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member states by a third-country national or a stateless person. *Official Journal of the European Union, p. 31–59 (BG, ES, CS, DA, DE, ET, EL, EN, FR, GA, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)*

Richardson, Jeremy and Sonia Mazey. 2015. *European Union: Power and policy-making*. New York: Routeledge

Rosamond, Ben. 2000. *Theories of European Integration.* New York: Palgrave

Rydgren, Jens. 2013. *Class Politics and the Radical Right.* New York: Routeledge

Seawright, Jason and John Gerring. 2008. «Case Selection Techniques in Case Study Research: A menu of Qualitative and Quantitative Options». *Political Research Quarterly* 61, (2):294-308.

Servent, Ariadna Ripoll and Florian Trauner. 2014. «Do supranational EU institutions make a difference? EU asylum law before and after 'communitarization'». *Journal of European Public Policy* 21, (8):1142-1162.

Skordas, Achilles. 2016. «Temporary Protection Directive 2001/55/EU». In *EU Immigration and Asylum Law*, edited by Kay Hailbronner and Daniel Thyme, 1381-1477. München: Verlag C.H Beck oHG

Stone Sweet, Alex and Wayne Sandholtz. 1997. «European Integration and Supranational Governance». *Journal of European Public Policy* 4, (3):297-317.

Thomson, Robert. 2011. *Resolving Controversy in the European Union: legislative decision-making before and after enlargement.* Cambridge: Cambridge University Press.

Trauner, Florian. 2016. «Asylum policy: the EU's 'crises' and the looming policy regime Failure». *Journal of European Integr*ation 38, (3):311-325.

Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJ C 306, 17.12.2007, p. 1–271 (BG, ES, CS, DA, DE, ET, EL, EN, FR, GA, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)

Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, OJ C 80, 10.3.2001, p. 1–87 (ES, DA, DE, EL, EN, FR, GA, IT, NL, PT, FI, SV)

Tsebelis, Georg and Geoffrey Garrett. 2000. «Legislative Politics in the European Union». *European Union Politics*, (1):9-36.

UNHCR. 2015. «2015: The Year of Europe's Refugee Crisis». Accessed 26 April 2017. http://tracks.unhcr.org/2015/12/2015-the-year-of-europes-refugee-crisis/

Vedsted-Hansen, Jens. 2011. «Common EU Standards on Asylum – Optional Harmonisation and Exclusive Procedures?». In *The First Decade of EU Migration and Asylum Law*, edited by Elspeth Guild and Paul Minderhoud. Leiden: BRILL.

Vedsted-Hansen, Jens. 2016. «Asylum Procedures Directive 2013/32/EU ». In *EU Immigration and Asylum Law*, edited by Kay Hailbronner and Daniel Thyme, 1284-1380. München: Verlag C.H Beck oHG

Veld, Sophia in't. 2017. «Report on the proposal for a directive of the Council laying down standards for the reception of applicants for international protection». *European Parliament, document A8-01862017*

Velutti, Samantha. 2014. *Reforming the Common European Asylum System - Legislative developments and judicial activism of the European Courts*. London: Springer.

Visegrad Group. «About the Visegrad Group». Accessed 11 May 2017. http://www.visegradgroup.eu/about

Visegrad Group. 2016. «Summit of the Prime Ministers of the Visegrad Group Countries». Accessed 14 May 2017. https://www.vlada.cz/assets/media-centrum/aktualne/Summit-of-the-Prime-Ministers-of-the-Visegrad-Group-Countries---Prague--8th-June-2016_2.pdf

Zaun, Natascha. 2016. «Why EU asylum standards exceed the lowest common denominator:

the role of regulatory expertise in EU decision-making». *Journal of European Public Policy* 23, (1):136-154.

Yin, Robert K. 2009. *Case Study Research: design and methods.* Thousand Oaks: SAGE publications.

Wallace, Helen, Mark A. Pollack and Alasdair R. Young. 2015. *Policy-Making in the European Union.* Oxford: Oxford University Press.

Wikström, Cecilia. 2017 «Draft report on the proposal for a regulation establishing the criteria and mechanism for determining the member state responsible for examining an application for international protection». *European Parliament*

List of interviews

Respondent 1 (R1). Anonymous representative in the Permanent Representation of Sweden to the EU. Interview by author. Brussels. January 19, 2017. Transcript

Respondent 2 (R2). Anonymous representative in the European Commission, Directorate General of Migration and Home Affairs (DG HOME), Directorate C Migration and Protection. Interview by author. Brussels. January 19, 2017. Transcript

Respondent 3 (R3). Anonymous representative in the Permanent Representation of the Slovak Republic to the EU. Interview by author. Brussels. January 20, 2017. Transcript

Respondent 3 (R4). Koolstra, Anna (Intern at the Permanent Representation of the Kingdom of the Netherlands to the European Union, NL PermRep). Interview by author. Brussels. January 20, 2017. Transcript.

Respondent 5 (R5). Kellij, Nanda (Officer with focus on Asylum at the Permanent Representation of the Kingdom of the Netherlands to the European Union, NL PermRep). Interview by author. Brussels. January 20, 2017. Transcript.

Respondent 6 (R6). Anonymous representative in Council of the European Union, General Secretariat, Directorate for Home Affairs. Interview by author. Brussels. January 23, 2017. Transcript.

Respondent 7 (R7). Anonymous representative in Council of the European Union, General Secretariat, Directorate for Home Affairs. Interview by author. Brussels. January 23, 2017. Transcript.

Respondent 8 (R8). Anonymous representative in Council of the European Union, General Secretariat, Directorate for Home Affairs. Interview by author. Brussels. January 23, 2017. Transcript.

Respondent 9 (R9). Sheppard, Rachel (Assistant of MEP Jean Lambert, Group of the Greens/European Free Alliance). Interview by author. Brussels. January 26, 2017. Transcript.

Respondent 10 (R10). Tylor, Amanda. (Coordinator at ECRE, European Council on Refugees and Exiles). Interview by author. Brussels. January 27, 2017. Transcript.

Appendix

Table 1.
General Interview guide

1. Can you start to tell me about yourself, your profession and your knowledge about EU asylum policy?
2. What is your thought about the functioning of the four different legislative acts applicable today?
3. What is your view on whether or not the directives ensure harmonization across member states?
4. What is your view on whether or not the directives ensure the rights of asylum seekers?
5. Can you mention the issues you think was the most contested for each of these directives when they were negotiated?
6. What are your perception regarding coalition building among the member states?
7. If you compare the Council's view on asylum policy with the view of the Commission and the European Parliament, how would you describe it?
8. Can you elaborate on what the main changes are in the new proposed reform?
9. What are the stance of the different institutions regarding this reform?
10. What are the strengths and weaknesses of the new reform?
10. Is there anything you would like to add?

Table 2
2010. Position on EU integration of Ministers attending the 3034th Council meeting

EU INTEGRATION	COUNTRIES	TOTAL
7 – strongly in favor	Luxembourg, Malta, Portugal	**3**
6 – in favor	Austria, Belgium, Bulgaria, Denmark, Estonia, Germany, Greece, Ireland, Spain, Finland, France, Latvia, Lithuania, Poland, Romania, Slovenia, Sweden	**17**
5 – somewhat in favor	Czech Republic, Hungary, Netherlands	**3**
4 - neutral	Italy, Cyprus, Slovakia	**3**
3 – somewhat oppose		**0**
2 - oppose	United Kingdom	**1**
1 – strongly oppose		**0**

Source: Chapel Hill Expert Survey 2010

Table 3
2013. Position on EU integration of Ministers attending the 3244th Council meeting

EU INTEGRATION	COUNTRIES	TOTAL
7 – strongly in favor	Luxembourg	**1**
6 – in favor	Austria, Belgium, Cyprus, Denmark, Estonia, Germany, Greece, Ireland, Lithuania, Poland, Portugal, Slovakia, Spain, Sweden	**14**
5 – somewhat in favor	Bulgaria, Finland, France, Italy, Lativa, Malta, Netherlands, Romania,	**8**
4 - neutral		**0**
3 – somewhat oppose	United Kingdom	**1**
2 - oppose	Hungary	**1**
1 – strongly oppose		**0**

Note: Czech Republic, Croatia and Slovenia was not present.
Source: Chapel Hill Expert Survey 2010

Table 4
2016. Ministers with asylum policy as responsibility

EU INTEGRATION	COUNTRIES	TOTAL
7 – strongly in favor		**0**
6 – in favor	Austria, Bulgaria, Cyprus, Czech Republic, Germany, Estonia, Finland, Ireland, Latvia, Luxembourg, Portugal Spain, Slovenia, Slovakia,	**14**
5 – somewhat in favor	Belgium, Denmark, France, Italy, Malta, Netherlands, Romania, Sweden	**8**
4 - neutral		**0**
3 – somewhat oppose	Greece, Poland, United Kingdom	**3**
2 - oppose	Hungary	**1**
1 – strongly oppose		**0**

Note: Lithuania (independent), Croatia not present.
Source: Chapel Hill Expert Survey 2014