Ca' Foscari
University
of Venice

Master's Degree programme

in Comparative International Relations

ex D.M. 270/2004

Final Thesis

Understanding EU's double standards for Ukrainian and Syrian protection seekers

A comparative sociopolitical analysis between the 2015 and the 2022 'refugee' crises

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Academic Year
2022 / 2023

Sintesi

Con l'obiettivo di fare chiarezza sull'approccio dell'Unione Europea (UE) in materia di concessione di protezione ai cittadini di Paesi terzi sfollati a causa dei conflitti, tale elaborato si propone di confrontare le risposte di *policy* adottate dall'UE a fronte della crisi 'rifugiati' siriana del 2015 e della crisi 'rifugiati' ucraina del 2022, evidenziandone le eclatanti discrepanze. Ritengo che tale confronto sia un caso studio emblematico, in quanto capace di mettere in luce l'esistenza di "due pesi e due misure" nell'approccio dell'Unione Europea alla concessione della protezione.

Questo lavoro di ricerca intende dunque, in primo luogo, illustrare le risposte di *policy* contrastanti dell'UE e, successivamente, indagare i fattori sociopolitici che possono aver influenzato le diverse decisioni politiche. La scelta di adottare un approccio sociopolitico deriva dall'intuizione che fattori di tipo identitario abbiano giocato un ruolo fondamentale nel motivare risposte di *policy* contrastanti. Pertanto, attraverso una lettura critica basata sul concetto di identità europea e i processi di alterità ('*othering*') e appartenenza ('*belonging*') ad essa correlati, la tesi intende argomentare e discutere tale posizione.

L'elaborato si articola in quattro capitoli principali, il primo dei quali descrive l'impianto teorico e legislativo utile all'interpretazione del caso studio, suddiviso in cinque paragrafi, che illustra la letteratura rilevante. Il primo paragrafo ripercorre le pietre miliari che hanno portato all'emergere del dibattito sulla migrazione e l'asilo all'interno dell'Unione Europea, evidenziandone la correlazione con il processo di integrazione europea. Contestualmente, vengono esposti gli sviluppi in cui tale processo si inserisce, ponendo enfasi sul cambiamento del carattere delle migrazioni a partire del periodo del dopo Guerra Fredda, caratterizzato dall'aumento degli sfollamenti forzati e dei conflitti.

In seguito, il capitolo discute criticamente il quadro giuridico e politico dell'UE in materia di asilo e protezione, analizzandone tre aspetti nello specifico: l'inadeguatezza della Convenzione sullo status dei rifugiati a rispondere alle esigenze dei richiedenti protezione nell'ormai mutato contesto geopolitico internazionale; l'ineguale distribuzione della responsabilità (o *burden-sharing*) tra gli Stati Membri, in relazione ai controversi principi del sistema di Dublino, componente centrale del Sistema europeo comune di asilo (CEAS); e, infine, i limiti delle forme complementari di protezione per

gli sfollati da conflitti nell'UE, con particolare riferimento alla Direttiva 2001/55/CE, cosiddetta "Direttiva sulla protezione temporanea".

Nel terzo paragrafo, il capitolo introduce il concetto di identità collettiva europea, la sua intrinseca relazione con l'identificazione dell''altro' (the '*other*') e la forte dimensione politica da cui scaturiscono, rispettivamente, processi di appartenenza ('*belonging'*) e alterità ('*othering'*). In tale contesto, viene altresì illustrato il processo di ridefinizione dell''altro', in cui convergono elementi religiosi e razziali, alla luce della riconfigurazione dell'ordine internazionale a partire dal periodo successivo al 1989, segnato dagli attacchi terroristici dell'11 settembre 2001, e successivamente dall'intensificazione delle migrazioni forzate a livello globale, in particolare dai paesi del Medio Oriente.

Nel successivo paragrafo viene introdotta la *securitization theory*, la relazione tra identità, sicurezza e migrazione condensata nel concetto di '*societal security*', e con speciale attenzione al contesto europeo, i processi di appartenenza e alterità scaturiti dalle politiche volte a preservare la sicurezza interna dell'UE.

A tal riguardo, l'ultimo paragrafo fa chiarezza sulla funzione dei confini ('*borders'*) nell'Unione Europea in relazione alla migrazione, con particolare enfasi sulla ripercussione della dimensione geografica, ovvero di differenziazione spaziale, sullo spazio sociale. È stato introdotto il concetto di '*border spectacle'*, cioè la 'spettacolarizzazione' dell'illegalità del migrante e la sua funzione di esclusione e marginalizzazione in tale contesto, e di ' *'humanitarian border,'* i cui processi di alterità vedono il coesistere dinamiche di vittimizzazione e '*securitization'* del migrante.

Il focus del secondo capitolo è l'analisi critica delle risposte di *policy* adottate dall'Unione Europea a fronte della crisi 'rifugiati' siriana del 2015, che riflette complessivamente una politica di chiusura ('*closed-door policy*'), comunemente definita come un approccio '*Fortress Europe*.'

Vengono discusse specifiche *policy* facenti parte della strategia UE chiamata *European Agenda on Migration,* la quale appare attribuire una netta priorità al rafforzamento delle frontiere, piuttosto che assicurare vie di accesso legali ai richiedenti asilo siriani. In particolare, quattro sono le *policy* esaminate nel capitolo: il potenziamento delle operazioni marittime di Frontex, il cosiddetto '*hotspot approach'*, i meccanismi di

ricollocazione ('*relocation*') e reinsediamento ('*resettlement*'), e il più ampio quadro di cooperazione con paesi terzi volto ad esternalizzare la crisi migratoria.

Per quanto concerne il potenziamento delle operazioni marittime, viene evidenziato come la sua attuale configurazione, seppur apparentemente motivata dall'imperativo umanitario di salvare vite in mare, prevedendo sia operazioni di ricerca e soccorso che di smantellamento di navi sospette di traffico e contrabbando di esseri umani, abbia contribuito piuttosto ad innescare processi di alterità attraverso la '*securitization'* e criminalizzazione dei flussi migratori, di fatto limitando la capacità dei richiedenti asilo siriani di raggiungere le coste europee.

In tale contesto, viene richiamata l'attenzione sull'enfasi posta da parte dell'UE sulla problematicità legata allo status di irregolarità dei richiedenti asilo siriani e la loro rappresentazione come parte di un gruppo omogeneo di migranti irregolari che minaccia la sicurezza, incarnando il concetto di '*border spectacle.'* Viene inoltre posta in rilievo la loro simultanea rappresentazione quali vittime delle reti criminali di traffico e contrabbando di esseri umani e in quanto minaccia ai confini dell'UE, riflettendo la costruzione del '*humanitarian border.'*

Riguardo all'approccio 'hotspot', se ne enfatizza la doppia finalità: quella di distinguere più rapidamente coloro ammissibili a richiedere la protezione internazionale da coloro destinati al rimpatrio, da un lato, e prevenire i movimenti secondari dei richiedenti asilo, dall'altro. In tal senso, si evidenzia come tale finalità abbia minato la capacità dei richiedenti asilo siriani di accedere alle procedure di richiesta di protezione internazionale. Si sottolinea, inoltre, la ripercussione sui richiedenti asilo siriani della funzione di esclusione degli hotspot, strutture volte alla ridefinizione dello spazio circostante, istituite nei punti di sbarco alla frontiera esterna di uno Stato membro caratterizzato da un'ingente pressione migratoria.

Vengono poi discussi i meccanismi di ricollocazione e reinsediamento, cioè quei programmi volti alla ridistribuzione dei richiedenti asilo tra gli Stati Membri, rispettivamente trasferiti dagli Stati Membri particolarmente esposti ai flussi (nello specifico Italia e Grecia) e dai paesi terzi che rappresentano paesi di origine e transito per tali flussi; tali meccanismi vengono menzionati in quanto rappresentano l'unica misura dell'Unione Europea ad uscire da una pura logica di '*securitization'*.

Ponendo speciale enfasi sui due meccanismi di ricollocazione adottati tramite decisioni del Consiglio dell'UE, viene messo in luce il fallimento della solidarietà tra gli Stati Membri con particolare attenzione all'inadempienza del Gruppo di Visegrád (V4), ancorata a considerazioni di tipo identitario. Queste ultime risultano essere legate, nello specifico, a posizioni xenofobe e anti-islam, che trovano la loro ragion d'essere nella contrapposizione tra cristiani europei e richiedenti asilo musulmani, che hanno contribuito alla costruzione dialettica del richiedente asilo come una minaccia culturale.

In merito alla cooperazione con Paesi terzi di origine e transito, di cui viene specialmente discusso il controverso Piano d'azione comune UE-Turchia, successivamente culminato della Dichiarazione UE-Turchia, si enfatizza come essa assuma la forma di assistenza finanziaria volta al contenimento degli arrivi, e dunque, delle partenze. In particolare, la cooperazione appare finalizzata al potenziamento da parte dell'UE delle capacità dei Paesi partner di gestire l'accoglienza dei richiedenti asilo e di mettere in sicurezza le proprie frontiere, esternalizzando le sue responsabilità in materia e rendendo di fatto illegale ogni tentativo dei richiedenti asilo siriani di cercare rifugio nell'Unione Europea.

Il terzo capitolo va poi a concentrarsi sull'analisi delle misure di *policy* adottate dall'UE in risposta alla crisi 'rifugiati' ucraina del 2022, che riflettono una politica di apertura ('*open-door policy'*) senza precedenti nella storia dell'accoglienza dell'Unione Europea.

In prima istanza, viene posta in risalto l' immediatezza della risposta sia da parte degli Stati Membri, in particolare quelli al confine ucraino che hanno messo in atto misure emergenziali per facilitare non solo l'accesso ma anche la permanenza sul territorio UE per i richiedenti asilo, già agevolato dall'accordo UE-Ucraina sulla liberalizzazione dei visti per i cittadini ucraini del 2017; sia da parte dell'Unione Europea, con particolare riferimento alla proposta di attivazione della protezione temporanea, mai avanzata in precedenza.

Nel dettaglio, si evidenzia come tale proposta sia stata presentata dalla Commissione Europea come misura necessaria e, soprattutto, *meritata* dal popolo ucraino in quanto schierato dalla parte della libertà e della democrazia – valori presuntamente indentificati come europei – nella lotta, dunque descritta come comune, contro la Russia. Si richiama

pertanto l'attenzione sulla rappresentazione della potenza russa come una minaccia ai valori europei, mettendo in luce come le considerazioni di tipo identitario, cioè la supposta identità europea degli Ucraini, giochino un ruolo fondamentale nel guidare l'approccio dell'UE alla crisi ucraina.

Successivamente, viene discussa l'effettiva attuazione della protezione temporanea, tramite votazione unanime degli Stati Membri in seno al Consiglio dell'UE. Mettendo in luce come i cittadini non ucraini sfollati a causa dell'invasione russa siano stati deliberatamente esclusi dalle categorie di beneficiari della protezione temporanea designate dagli Stati Membri, ad eccezione di coloro riconosciuti come rifugiati in Ucraina prima dello scoppio della guerra, il capitolo va a rimarcare il ruolo delle sopracitate considerazioni identitarie nel guidare specifiche scelte politiche.

Viene inoltre sottolineato come i leader dei paesi tradizionalmente contrari all'accoglienza dei rifugiati – come il Gruppo di Visegrád – abbiano giustificato la loro politica di apertura sulla base delle similarità tra gli ucraini e i propri cittadini, ne è un esempio la condivisione della matrice cristiana.

Ne segue l'analisi delle misure volte a facilitare l'attraversamento delle frontiere UE-Ucraina, con speciale attenzione agli Orientamenti operativi adottati dall'Unione Europea concernenti l'allentamento dei controlli alle frontiere esterne per garantire il passaggio degli sfollati. Si rileva che nonostante gli Orientamenti prevedessero l'accesso garantito al territorio europeo a *tutti* i cittadini di Paesi terzi sfollati dalla guerra in Ucraina su basi umanitarie, le autorità nazionali degli Stati Membri di confine, tra cui alcuni paesi del Gruppo di Visegrád hanno ostacolato il passaggio dei cittadini non ucraini.

Il capitolo si concentra successivamente sulle iniziative adottate con il fine di favorire l'integrazione, sul lungo termine, dei beneficiari di protezione temporanea nel territorio UE. Tali misure rientrano in tre specifiche aree di intervento: assistenza finanziaria, in particolare, garantendo finanziamenti rapidi e flessibili allo scopo di potenziare le loro capacità di rispondere alle esigenze dei rifugiati ucraini; occupazione, tramite misure volte a facilitare l'accesso ai rifugiati ucraini al mercato del lavoro; ed accoglienza, agevolando nello specifico la disposizione di soluzioni abitative sicure, non segregate e in grado di favorire l'indipendenza e l'integrazione nella società ospitante.

Il quarto ed ultimo capitolo della presente tesi, intende infine illustrare le eclatanti divergenze tra le risposte di *policy* analizzate poc'anzi, mostrando come tale approccio sia stato motivato da fattori identitari.

La prima parte del capitolo discute innanzitutto le principali similarità tra i flussi di richiedenti asilo siriano ed ucraino e i loro rispettivi contesti, prendendo poi in esame le divergenze, con particolare attenzione a quegli elementi sociopolitici che potrebbero aver influenzato le diverse risposte dell'Unione Europea. Si discute, a tal riguardo, sul perché la differente portata degli arrivi nonché composizione di genere ed età dei flussi siano elementi essenzialmente fuorvianti, e si evidenzia come la prossimità geografica sia legata ad una percezione non fattualmente corretta.

Mettendo successivamente in luce il potenziale ruolo dei fattori di tipo geopolitico nel motivare l'approccio contrastante, l'attenzione viene spostata sulla differente percezione della sicurezza europea. Si enfatizza che sebbene la presenza di una minaccia militare nel continente europeo non sia un fattore da trascurare, essa non può essere esaminata in isolamento.

Sottolineando in tal senso come la Russia venga percepita non solo come minaccia militare alla sicurezza dell'UE, ma soprattutto all'identità europea e ai suoi valori, esemplificando dunque il concetto di '*societal threat',* viene richiamata l'attenzione su due aspetti: in primis, come siano stati i processi di appartenenza, cioè la percezione dell'identità ucraina come europea, a motivare la politica di apertura nei confronti dei richiedenti asilo ucraini; e in secondo luogo, come nel suddetto contesto geopolitico, tale politica di apertura rappresenti una riaffermazione dei valori e dei principi europei di fronte all'autocrazia russa.

Sulla base di quanto precede, la seconda parte del capitolo mira ad analizzare le risposte di *policy* dell'UE alle due crisi in chiave comparativa, evidenziando come esse siano influenzate da considerazioni identitarie. Quattro aspetti, illustrati di seguito, vengono in particolare discussi.

Innanzitutto, viene posto l'accento sulle contrastanti misure circa la gestione delle frontiere, le quali riflettono due processi di *securitization* opposti legati a loro volta a processi di alterità distinti. Nel caso siriano, l'UE si è focalizzata sulla militarizzazione del Mar Mediterraneo ai fini di deterrenza, rappresentando i richiedenti asilo come coloro

che *minacciano* le frontiere UE; il richiedente asilo è dunque identificato come l''altro'. Nel caso ucraino, le politiche sono state al contrario volte a facilitare l'attraversamento delle frontiere al fine di offrire rifugio e protezione agli sfollati, rappresentati come coloro che sono *minacciati* dall'invasione della Russia, identificata come l''altro'.

In secondo luogo, vengono messe a confronto le divergenti infrastrutture di 'accoglienza' predisposte dall'UE per i richiedenti asilo siriani e ucraini, rispettivamente, gli hotspot, ubicati in aree isolate al confine esterno di uno Stato membro, e le soluzioni abitative private, situate invece all'interno della società ospitante ed espressamente non segregate. Si evidenzia, in tal senso, la riconfigurazione spaziale che tali strutture apportano, enfatizzando la funzione di esclusione degli hotspot e di inclusione delle soluzioni abitative private.

Il successivo elemento di paragone è la decisione unanime di applicare la Direttiva sulla protezione temporanea in risposta agli oltre 8 milioni di richiedenti asilo ucraini che hanno raggiunto l'UE nel 2022, e il fallimento di dare seguito ai meccanismi di ricollocazione per i 'soli' 160.000 richiedenti asilo siriani nel 2015. In tale contesto, si individuano due aspetti rilevanti: le scelte contrastanti del Gruppo di Visegrád che hanno giustificato la loro posizione di rifiuto nei confronti dei richiedenti asilo siriani e di accoglienza verso gli ucraini sulla base, rispettivamente, di divergenze e similarità culturali, comprese quelle religiose; l'esclusione dei cittadini non ucraini dai beneficiari della protezione temporanea, sottolineando come essa non sia stata concepita per gli sfollati dalla guerra russa in generale, ma piuttosto per gli sfollati ucraini, riflettendo le considerazioni identitarie.

Il penultimo elemento di confronto concerne le politiche di assistenza finanziaria e le loro finalità. Nel caso siriano, gli aiuti finanziari sono stati destinati all' assistenza umanitaria, allo sviluppo e alla stabilizzazione dei Paesi di origine e di transito, con l'obiettivo di esternalizzare le responsabilità dell'UE sia in materia di assistenza dei richiedenti asilo nei propri confini, sia di controllo delle frontiere a Paesi terzi. Mentre, l'assistenza finanziaria dell'UE nel caso ucraino era finalizzata sia ad un supporto umanitario d'emergenza che alla protezione, integrazione e accoglienza nell'UE dei richiedenti asilo ucraini a lungo termine dentro l'Unione Europea, assumendosi piena responsabilità di rispondere a tali bisogni.

In ultima analisi, l'elaborato ha voluto dimostrare che l'identità europea continua ad acquisire significato in opposizione all''altro', fungendo da strumento retorico per giustificare scelte politiche specifiche, tra cui quelle in merito alla concessione della protezione. L'analisi rivela che il cambio di paradigma nell'approccio dell'UE alla concessione della protezione è particolarmente guidato da una solidarietà selettiva basata su considerazioni identitarie, che dunque riflette l'esistenza di "due pesi e due misure" nell'approccio dell'Unione Europea in materia di protezione.

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1 Introduction

1.1 Aim of the thesis and relevance and definition of the research topic

Since the Russian invasion of Ukraine on 24th February 2022, millions of people have been forced to flee. Among the over 8.2 million people recorded across Europe, more than 5.1 million have been guaranteed immediate protection by the EU and Member States via Temporary Protection or other national protection schemes by May 2023 (UNHCR 2023).

The European Council's first ever activation of Directive 2001/55/EC, known as the Temporary Protection Directive (TPD), represents a radical change of direction in asylum practices in the EU in the past two decades and an unprecedented exercise of solidarity among Member States towards asylum seekers since the Bosnian influx of the late 1990s as a result of the Yugoslav wars, after which the TPD was designed.

Notably, in 2020 the European Commission proposed a new Crisis and *Force Majeure* Regulation to repeal the TPD, underlying that the TPD "no longer responds to Member States' current reality" (European Commission 2020a, 10). While the proposal is still under discussion, it is remarkable that within only two years of its presentation, the temporary protection the Commission had proposed to repeal has been activated for the first time ever.

The asylum and immigration policies in the EU have long been featured by a 'Fortress Europe' approach, an expression that has come into common use to indicate the European Union's restrictive asylum and immigration policies intended to establish a heavily fortified external border, with a view to preventing unauthorized entry and limiting the number of migrants who can enter the EU (Geddes 2008, Akkerman 2018; Aris Escarcena 2022).

The 'Fortress Europe' approach, which reflects the underlying securitization of migration, a concept which will be explored in the theoretical chapter of this thesis, can

be traced back, as will be shown, to the creation of the Schengen Area. However, it gained prominence and intensified throughout the twenty-first century in response to the escalation of migration and refugee arrivals in the EU, reaching its peak in 2015-2016 (Benedicto 2019; Aris Escarcena 2022).

In this period, the European Union was confronted with the largest influx of refugees since World War Two. The huge migration movement was the result of the protracted turmoil caused by the uprisings and revolts taking place in the Middle East and North Africa regions in the early 2010s, the so-called Arab Spring. Against this backdrop, the long-lasting civil war in Syria, which began with the rebellion movement against the Assad regime in 2011, caused Syria to become the first among the countries source of migration shortly after. According to UNHCR 2015 Global Trends report, 50% of those who reached Europe in 2015 were Syrians (UNHCR 2016b).

In this context, this thesis intends to compare the EU's differentiated policy responses devised in response to the 2015 Syrian 'refugee' crisis and the 2022 Ukrainian 'refugee' crisis. The aim of the analysis is twofold: spotlighting the contrasting EU policy responses and investigating the sociopolitical factors that may have influenced differing policy decisions, with a special focus on identity factors.

The existing literature lack of a similar project. Most literature on this topic pertains to legal scholarship and primarily focuses of the activation of the TPD (Carrera et al. 2022; De Somer & Neidhardt 2022; İneli-Ciğer 2022c; Thym 2022). As a result, a comprehensive analysis of policy responses in this specific context has been undertaken.

Furthermore, this thesis represents an original contribution as it builds upon the notion of European identity and its role in shaping contrasting policy responses. It serves as an analytical framework of analysis, facilitating a deeper understanding of the processes of belonging and othering. By leveraging this framework, this thesis sets the context for explaining that the adoption of an open-door policy towards Ukrainians should not be interpreted as a paradigm shift in EU asylum policy, but rather as a selective decision guided by identity-driven decision, embedded in specific geopolitical coordinates.

Interestingly, shortly before the imminent submission of my thesis, a noteworthy scholarly contribution by Greta Albertari and Elena Principe was published, providing a thorough examination of the impact of perceived identities of asylum seekers and the

perception of temporariness in the war in Ukraine on the responses of the European Union, Member States and civil society (Albertari & Principe 2023). These authors delve into more recent 'refugee' crises, such as the recent displacement in Afghanistan resulting from the Taliban's takeover (ibid). The significant alignment with my thesis lies in the investigation of how these perceived identities directly influence the responses of the EU. This alignment thus adds substantial value and significance to my research, which specifically focuses on exploring the interplay between perceived identities and the processes of othering and belonging in relation to the actualization of European identity.

1.2 Research questions

The following research questions will be addressed in order to fulfill the overarching purpose of this thesis:

1) What are the policy responses introduced by the European Union in response to the 2015 Syrian 'refugee' crisis and the 2022 Ukrainian 'refugee' crisis?
2) How do these policy responses differ from each other?
3) What are the possible sociopolitical explanations behind differing policy responses, and how do identity considerations play a role in shaping the EU's policy responses?

The decision to address the research topic of this thesis from a sociopolitical perspective arises from the understanding that relying solely on the legal dimension is inadequate to fully grasp the rationale behind EU's adoption of divergent policy responses towards third-country nationals seeking protection within the European Union. Therefore, this research will prioritize the examination of sociopolitical factors, specifically focusing on European identity and the processes othering and belonging associated with it. By emphasizing these aspects, this thesis aims to provide a comprehensive understanding of how identity considerations influence and shape the policy decisions of the European Union in the field of asylum.

The primary objective of this research is to enhance clarity regarding the European Union's approach to the treatment of third-country nationals who have been displaced by conflict and seek safety and protection within its borders. By conducting an emblematic

comparison between EU's policy responses to the influx of Syrian and Ukrainian asylum seekers, my ambition is to offer an insightful picture of who, among third-country nationals, deserves protection in eyes of the European Union and who does not, and why. The ultimate goal is to shed the light on the existence of double standards within the European Union's approach to granting protection.

1.3 Methodology

Regarding the methodology, a comparative approach will be adopted to analyze EU's policy responses to the Syrian and Ukrainian refugee crises. The established timeframe for each crisis will be approximately ten months.

For the Syrian case, the thesis will cover the period from April 2015 to March 2016. This timeframe is significant as it marks the initiation of EU's immediate response plan to the Mediterranean situation, known as the Ten-point Action Plan, which was designed on April 20 2015. Three days later, on April 23, the first special European Council meeting on the refugee crisis took place. This period represents a pivotal moment when the refugee issue in the Mediterranean Sea was recognized as a full-fledged migration crisis by the European Union, with a growing number of shipwrecks demanding immediate attention. As a result, the EU became determined to take concrete, albeit controversial, actions which will be thoroughly discussed in the second chapter.

In the case of Ukraine, the timeframe is less open to debate, and therefore, the period selected for this analysis is from February 2022 to December 2022, coinciding with the Russian Federation's invasion of Ukraine on February 24.

To deepen our comprehension of the implementation and outcomes of EU policies, this study will complement the analysis of the EU's institutional-level policy responses by examining the reactions of selected Member States within the context of specific measures introduced as part of those responses. Specifically, the focus will be on the responses of the Visegrád Group (V4). By incorporating the perspectives and actions of the V4 countries, the research seeks to provide a more comprehensive portrayal of the dynamics of identity factors within the EU's overall approach to the two crises.

To achieve this, this study will rely on an extensive analysis of relevant EU policy documents and existing secondary literature in order to provide a critical snapshot of the policies implemented by the European Union during the specified timeframes. Specifically, a thorough examination of EU policy documents, including communications, strategies, proposals and decisions, will be instrumental in capturing the objectives, desired outcomes, and discourses employed by the European Union to legitimize its policy responses.

Additionally, the incorporation of pertinent secondary literature, where accessible, will enable us to delve deeper into ongoing debates and discussions surrounding this case study, thereby enriching our comprehension of the topic. Overall, this methodology provides a structured approach to the research, employing analysis of primary and secondary sources to support the study's objectives.

1.4 Structure of the thesis

This thesis will be structured over four chapters, with the first chapter dedicated to establishing the theoretical framework. This will lay the conceptual foundations necessary for understanding the subsequent analysis, by conducting a review of relevant literature, including theories and concepts of reference.

The second and third chapters will focus on presenting and critically discussing the main policy responses implemented by the European Union in response to the Syrian and the Ukrainian refugee crisis, respectively. The aim will be to identify the key challenges and issues that arise in each case, providing a basis for our following discussion in the final chapter.

In the fourth and final chapter, the discussion will then delve into the main findings uncovered in the previous chapters, employing a comparative perspective. By examining these findings through the lens of identity literature, the aim is to uncover the identified discrepancies in EU policy responses. The discussion seeks to contribute to a comprehensive understanding of how EU policies and practices in relation to asylum intersect with broader identity considerations and how the latter shape the overall functioning of the EU asylum regime.

1.5 Disclaimers

Before delving into the substance of this thesis, it is important to provide certain clarifications regarding the scope and terminology employed in this study. To begin with, the thesis specifically focuses on the policy responses of the European Union to the influxes of asylum seekers from Syria and Ukraine in 2015 and 2022, respectively. It is important to acknowledge that these policy responses may not cover all aspects of asylum policies or include the perspectives of all relevant stakeholders.

Additionally, it is crucial to clarify the terminology used in this thesis. First, the term 'migrant' will be used following a sociological approach that considers individuals on the move for various reasons, including fleeing conflict and violence, escaping persecution, seeking better economic opportunities and family reunification, among others (Zolberg et al. 1992). (see Zolberg, Suhrke, and Aguayo 1992). While recognizing the legal distinctions between asylum seekers, refugees and economic migrants, these terms will be used to offer more specificity and appropriateness depending on the specific policy contexts under examination.

Secondly, the terms 'migration crisis' and 'Mediterranean crisis' will be utilized to describe the mixed influx of crossings into the European Union via the Eastern, Central and Western Mediterranean routes during the specified timeframe for the Syrian case. These terms are employed because the majority of policy measures introduced by the EU were aimed at addressing the broader migration crisis occurring in the Mediterranean Sea. However, it is important to emphasize that this thesis will specifically examine the impacts of the EU's policy responses on Syrian asylum seekers. Consequently, the preferred term to describe this particular situation will be 'Syrian refugee crisis.'

In this context, it is important to highlight that the term 'refugee crisis,' although not legally accurate, has been used in the title and throughout the thesis for the purpose of directness and to convey the focus on the specific context under examination.

These disclaimers aim to provide a comprehensive framework that enables the readers to gain a thorough understanding of the study's scope and the terminology choices as presented throughout the thesis.

2 Setting the Legal and Theoretical Frameworks

2.1 Introduction

Understanding the EU's differentiated policy responses to the Syrian and Ukrainian 'refugee' crises requires a robust theoretical framework that sheds light on the complexities underlying this multifaceted issue. With this in mind, the following chapter is intended to set the theoretical foundations of this thesis, which will guide our investigation into the research topic.

The first part of the theoretical framework will delve into the emergence of the migration and asylum debate in the EU, offering a personal account that highlights the significance of this topic and the milestones that have shaped the discussion on migration and asylum within the EU.

We will then proceed to critically discuss based on available literature the current EU legal and policy framework on refugees, with a particular focus on the limitations of several key instruments. These include the Convention relating to the status of refugees, commonly referred to as the 1951 Geneva Convention, as well as the 604/2013 Regulation, also known as Dublin III Regulation, and Directive 2001/55/EC, which is recognized as the Temporary Protection Directive.

Lastly, we will introduce the theoretical concepts that will shape our analysis, providing analytical lenses through which our case study can be observed. We will explore the concept of European identity and the intricate processes of belonging and othering processes related. In addition to these concepts, we will delve into other relevant theoretical elements that shed light on the subject matter, including the notion of societal security, the securitization theory and its application in the European Union context, as well as the relation between EU borders and migration.

By integrating these theoretical elements into our analysis, this chapter aims to provide a comprehensive understanding of the theoretical underpinnings that shape our research, which will inform our policy discussions in the next chapters.

2.2 The emergence of the asylum and migration debate in the EU

Migration has emerged as a pressing and contentious issue within the context of the European Union in recent decades, capturing the attention of policymakers, academics and societies across the continent. As I embark on this research journey, I aim to explore the process of 'Europeanization' of migration, understood as a process in which the debate surrounding migration has gained prominence and relevance within the EU.

In this introductionary section, I will delve into two fundamental questions: When did the debate around migration and asylum first emerge in the EU? And can this debate genuinely be discussed in European terms?

To trace the origins of the migration debate in the EU, it is crucial to explore a defining milestone in European integration: the establishment of the European Economic Community (EEC), through the signing of the Treaty of Rome in 1957. Although the primary focus of the Treaty of Rome was economic integration, it also set the stage for discussions on labor mobility, with the introduction of the right to free movement for workers across the EEC (Barnard and Fraser Butlin 2021).

The establishment of the EEC brought forth a renewed emphasis on the concept of free movement, which gained momentum through various regional initiatives within the European context. In 1970, the countries of the Netherlands, Luxembourg and Belgium instituted a common passport area under the Benelux union, setting an important precedent for the facilitation of movement across their borders. Similarly, West Germany and France signed the Saarbrücken Agreement in 1984, aiming to gradually abolishing checks between them (ibid).

The signing of the Schengen Agreement in 1985 marked a pivotal moment in the European integration process, as it set in motion the gradual abolition of internal borders and the establishment of a system that guaranteed free movement for nationals of Member States. Originally signed by the Netherlands, Luxembourg, Belgium, Germany and

France, the Schengen Agreement paved the way for a transformative shift in Europe's approach to border controls (Huysmans 2000).

By dismantling internal borders, Schengen became the world's largest visa-free zone, facilitating the movement of European nationals and fostering closer ties among Member States. This landmark achievement brought several advantages for both State parties and their citizens, promoting economic integration, cultural exchange and enhancing mobility.

However, the creation of Schengen also brought forth the need to address the management of the newly formed common external border. With internal borders became more permeable, ensuring the security of the Schengen area necessitated effective border management at its external front. The imperative to manage the common external border, extended over nearly 50,000 kilometers, effectively became a shared challenge that demanded collective action among States (ibid).

In 1990, the Agreement was further reinforced with the Schengen Convention, which aimed to facilitate its implementation. This Convention encompasses various provisions related to the strengthening of external border checks, harmonization of visa issuance procedures, processing of asylum claims, police cooperation and mutual assistance in criminal matters. In this context, the Schengen acquis, consisting of the Schengen Agreement, the Schengen Convention and other minor agreements and rules, established a common set of rules for cooperation (Barnard and Fraser Butlin 2021).

While the primary objective of the Schengen regime was to ensure internal security within the Schengen Area and guarantee the right to freedom of movement for the citizens of State parties, it likewise led to an increased securitization of migration (Huysmans 2000). The securitization of migration in the EU context will be further explored throughout this chapter.

All these advancements concerning free movement propelled migration issues to the forefront of the European Union's agenda. As a result of the integration of the Schengen rules into the legal framework of the European Union through the Treaty of Amsterdam in 1997, immigration issues entered a new phase of 'Europeanization' thereby gaining greater significance in the European debate. Migration shifted from being a purely national matter regulated by individual sovereign states to a supranational concern that

required collective attention and efforts from the EU Member States (ibid). This development marked the emergence of the migration and asylum debate as a full-fledged European question.

It is important to note that the incorporation of the Schengen regime into the EU structure did not occur in isolation. Several key developments shaped the evolution of the migration debate in this context.

One significant factor that preceded the signing of the Schengen Agreement was the 1973 Oil Shock, which marked a paradigm shift in the significance of migration issues in Western Europe. The increased unemployment rates resulting from the Oil embargo imposed by OPEC (Organization of the Petroleum Exporting Countries) led to the criminalization of immigrants, altering the welcoming environment for guest workers that had characterized post-World War II Europe (Şöhret 2022). Immigration policies shifted towards a control-oriented approach to immigration (Fielding 1993; Hollyfied 1992). This trend continued to evolve, and its impact would be further amplified after the events of 9/11.

Moreover, the conflicts during the Cold War period and processes of decolonization around the world contributed to a rise in forced displacement. Western Europe became a destination for not only economic migrants but also asylum seekers fleeing conflict mainly in Africa and Asia, blurring the distinction between the two categories (Geddes & Scholten 2018; Gökalp Kutlu 2022).

This trend was further exacerbated by the collapse of the Soviet Union and the subsequent dissolution of communist regimes in the late 1990s, which led to a sharp increase in Eastern European nationals seeking refuge in Europe, as well as by the disintegration of Yugoslavia in the same decade, which resulted in the largest influx of refugees in Europe since World War II. These influxes not only shaped the migration landscape but also propelled the migration and, particularly, the asylum debate in the European Union into the spotlight (Castles and Miller 1998).

These circumstances prompted the emerging European Union to recognize the urgency of addressing migration and asylum in a more coordinated and unified manner. Consequently, steps were taken towards the development of a common policy on migration and asylum.

In 1990, the same year the Convention Implementing the Schengen Agreement was signed, another crucial milestone marked the 'Europeanization' of asylum issues: the signing of the Dublin Convention, formally known as the *Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities*. The Convention laid the groundwork for the development of the current Dublin Regime, which will be introduced shortly, and contributed, as will be shown, to the increasingly politicized debate on migration and asylum in the European Union.

With the Treaty of Maastricht finally marking the shift towards political integration in 1992, migration and asylum issues were recognized for the first time as matters of common interest. The Treaty instituted the Third Pillar of Justice and Home Affairs of the European Union, which facilitated cooperation among Member States through intergovernmental procedures on immigration and asylum issues. This cooperation was seen as essential for achieving the EU's objectives; with the preservation of internal security serving as a driving force behind the expansion of cooperation in this area (Lavenex 2001).

As previously mentioned, the Treaty of Amsterdam played a pivotal role in the integration process leading to the 'Europeanization' of migration and asylum. It granted EU institutions the authority to legislate in the field of asylum and migration and called for the integration of the 1951 Geneva Convention and its 1967 Protocol into the EU framework. It is important to note that the European Community's founding treaties did not initially encompass provisions regarding the rights of third-country nationals (TCN) or humanitarian provisions. In fact, the binding nature of the right to seek asylum for Member States only came into effect with the entry into force of the EU Charter of Fundamental Rights in 2009 (see Appendix).

Efforts to harmonize asylum policies and practice in member states eventually concretized in 1999, when the establishment of a Common European System of Asylum (CEAS) was agreed upon by the European Council at the Tampere Summit. The CEAS aimed to ensure fair treatment of asylum applications throughout the Union and recognized the shared responsibility of Member States in this regard. As we will see, the CEAS represents a significant step towards fulfilling the European Union's obligations

under international law to guarantee the right to asylum in accordance with the 1951 Geneva Convention.

Overall, it can be said that the integration process played a crucial role in the Europeanization of migration issues, having its root in the advancements concerning free movement previously underscored. It laid a solid foundation for the migration and asylum debate to emerge as a fully-fledged European issue. As the EU expanded and deepened its cooperation, migration gained more relevance and entered the European debate.

The incorporation of migration and asylum issues into the EU's legal framework, particularly through the Treaty of Amsterdam and the establishment of the CEAS, demonstrated the recognition of the need to address migration and asylum as a shared responsibility. These developments not only reflected the growing prominence of migration concerns within the EU but also aligned with the EU's obligations under international law to guarantee the right to asylum in accordance with the 1951 Geneva Convention.

The 'Europeanization' of migration and asylum was indeed deeply intertwined with broader contextual changes in the migration phenomenon, characterized by a growing number of conflicts leading to forced movements of people. This trend has persisted and continued to shape subsequent decades up until the present day.

In summary, the institutional developments surrounding free movement culminated in the European integration elucidates why the debate on migration and asylum gradually acquired European dimensions and why it can be discussed in European terms. They reflect the evolving understanding of migration as a matter that transcends national boundaries and necessitates collective action at the EU level. As a result, common frameworks, policies and mechanisms have been established to foster cooperation to address these challenges.

2.3 The EU Refugee Legal and Policy Framework

2.3.1 The limitations of the Geneva Convention

The 1951 Geneva Convention, formally known as the Convention Relating to the Status of Refugees, is a fundamental document that establishes the international framework for the protection of refugees. Serving as the cornerstone for the development of numerous regional frameworks, including the EU refugee framework, the Convention provides a universally recognized definition of a refugee, which states that a refugee is any person who:

> As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (United Nations 1951, Art 1A.2).

The Convention emerged during a critical historical juncture, marked by the Jewish persecution, the horrors of World War Two together with the incorporation of central and eastern European countries into the Soviet bloc. These events underscored the urgent need to address, on an international scale, the challenges faced by refugees escaping persecution amidst the evolving political landscape in Europe.

In response to the subsequent waves of displacement triggered by the conflicts of the Cold War era and the decolonization processes in the 'Global South', the Geneva Convention was supplemented with the 1967 New York Protocol. The latter ensured the universal application of the Convention by removing its temporal and geographical limitations.

Given the significance of the Convention in shaping the EU's refugee framework, as previously highlighted, it is imperative to critically examine specific limitations associated with this Convention. This section will particularly delve into two significant aspects highlighted by Sebastian Dempf in his work: the prerequisite for refugees to be outside the country of nationality or habitual residence and the issue of an inadequate

reason interpretation (Dempf 2023). Additionally, this analysis will incorporate a personal account to provide insights into additional constraints.

To begin with, while the requirement for refugees to be situated outside their country of nationality or habitual residence may appear justifiable at first glance, it is important to note that it severely undermines the ability of the most disadvantaged individuals, particularly those who lack the physical capability or financial resources to leave their country of origin or habitual residence, to seek protection (ibid).

Furthermore, this particular aspect of the definition also transforms the asylum-seeking process into a politically charged matter (ibid). Specifically, the ability to access legal pathways for seeking asylum relies, in the absence of other alternatives, on the existence of bilateral agreements between the country of origin and the destination country, particularly with regards to visa-free entry. As a result, asylum seekers who lack the privilege of such favorable treatment find themselves effectively hindered from seeking protection, and their attempts are often met with criminalization. This will be further illustrated through the examination of our case-study.

The second aspect pertains to the emphasis placed on the specific grounds of persecution, namely "race, religion, nationality, membership of a particular social group or political opinion" (United Nations 1951, Art 1A.2). While these grounds were originally designed to be sufficiently broad in encompassing most individuals seeking international protection, the interpretation has become increasingly challenging in contemporary times. Not only does this list fail to account for other forms of persecution that have emerged lately (Dempf 2023), but it also does not provide assurance that individuals fleeing *en masse* due to armed conflicts or generalized violence can demonstrate they are individually persecuted based on these five grounds.

Some authors have noted that, despite the recognition of refugee status under the Geneva Convention being facilitated in non-international armed conflicts of the twentieth century due to the recognized use of deliberate targeting of civilians as a tactic of warfare, there have been instances where situations of generalized violence did not lead to the recognition of refugee status (Gilbert and Rüsch 2018, 816-821).

Historically, individuals fleeing conflict were indeed not considered refugees under the Geneva Convention. Although the 1979 *Handbook on Procedures and Criteria for*

Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees recognized a collective form of status determination defined as *prima facie* recognition of refugees in exceptional cases, it explicitly stated that "persons compelled to leave their country of origin as a result of international or national armed conflicts *are not normally considered refugees* under the 1951 Convention or 1967 Protocol" (UNHCR 1979, para 164)(emphasis added). Only recently has UNHCR provided legal interpretative guidance on the refugee status determination through the issuance of guidelines, such as the *Guidelines on International Protection No. 11:* and *No. 12.*

The *Guidelines No. 11*, issued in 2015 to illustrate the general standards of the *prima facie* approach with a focus on group determination, clarify that the refugee status may be applied based on "readily apparent, objective circumstances in the country of origin or, in the case of stateless asylum seekers, their country of former habitual residence" (UNHCR 2015, 4). This approach recognizes the harm faced by displaced individuals, deeming them fitting within the applicable refugee definition.

Moreover, *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence*, issued in 2016, partly addressed the protection gap for those forcibly displaced by conflict and violence, which may have arisen from the afore-mentioned Handbook. These Guidelines acknowledge that contemporary refugee flows are primarily caused by conflicts and violence, and they establish that the 1951 Geneva Convention and its 1967 Protocol are "directly applicable to civilians displaced by situations or armed conflict and violence" (UNHCR 2016c, 1) as they may give rise to harm accounting to persecution. It is important to note that these Guidelines are not legally binding instruments, adding to the limitations of the Geneva Convention.

2.3.2 Exploring the CEAS: a focus on the Dublin system

Since the Treaty of Amsterdam conferred the powers to EU institutions to legislate in the area of asylum and immigration, the European Union has worked to harmonize its asylum policies among Member States and bring them in line with the standards of international refugee law, which includes the 1951 Geneva Convention and its Optional Protocol.

The integration of the Convention into its legal framework can be observed through the establishment of the Common European Asylum System (CEAS). The CEAS was initiated at the Tampere Summit in 1999 and was part of the broader objective to create "an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity" (European Council 1999, 2).

The primary goal of CEAS was to establish common rules and procedures for handling asylum requests across EU Member States, with a view to ensuring a consistent and fair approach to refugee protection. Since 1999, several legal instruments have been adopted to implement the provisions of the 1951 Geneva Convention within the EU refugee framework as part of the CEAS. These include the Qualification Directive, the Reception Conditions Directive, the Asylum Procedures Directive and the Dublin Regulation, among others.

While a detailed explanation of the primary instruments comprising the CEAS is provided in the Appendix, our focus in this thesis will be on delving into the Dublin system and examining its limitations, particularly concerning the question of burden-sharing and responsibility allocation.

As previously mentioned, the origins of the Dublin system can be traced back to the 1990s, when the Dublin Convention was signed in parallel with the Schengen implementation Convention. The establishment of the border-free area with shared a common external border presented the challenge of determining which State was responsible for processing asylum applications. This was considered necessary not only to ensure effective access to asylum procedures in compliance with the Geneva Convention, but also to prevent the improper use of asylum procedures (The European Parliament and the Council of the EU 2008b).[1]

Originally devised outside the EU framework, the Dublin Convention was later incorporated into the EU framework through Dublin II Regulation and eventually revised as the current Dublin III Regulation (see Appendix.)

[1] Abuses of asylum procedures include the phenomenon of 'asylum shopping'(European Commission n.d.), which refers to the filing of international protection application in several Member States to increase the likelihood of being granted protection, as well as the phenomenon of refugees 'in orbit', that is, when no Member State takes responsibility for processing the application of an asylum seekers.

Under Dublin III Regulation, the State responsible is determined based on a set of criteria that are applied in hierarchical order, which is as follows: if the applicant has a family member legally staying in a Member State (Art. 8,9,10,11), if the applicant has been granted a visa or residence document from a Member State (Art. 12), if the applicant entered the EU illegally (Art. 13), if a Member State has exempted the applicant from a visa requirement (Art. 14), or if the applicant lodge a claim in an international transit area of an airport (Art. 15)(The European Parliament and the Council of the EU 2013a).

The issue of burden-sharing and the allocation of responsibility in the Dublin system have been extensively discussed in academic literature. Scholarly debates surrounding this question have presented diverse perspectives, however, as will be illustrated thereof, there appear to be a consensus that the Dublin system suffers from several shortcomings that undermine the fair distribution of responsibility, contradicting the principle of solidarity enshrined in primary EU law.[2]

According to Hurwitz Agnès and Noll Gregor, the criteria used for the determination of the Member State responsible for processing asylum requests suggest a connection between a Member State's responsibility and its admittance of a third country national within its territory (Hurwitz 1999; Noll 2000). Particularly, they emphasize the fact that the criteria suggest that the more a Member State is open to receiving a non-EU citizen—i.e., it has already admitted an applicant's family member into its territory, has already issued a visa, has 'permitted' the applicant's illegal entry and so on—the greater will be its responsibility for that non-EU citizen, clearly indicating a certain level of culpability for welcoming decisions towards third-country nationals (ibid).

Elspeth Guild concurs with this standpoint and has further emphasized that responsibility is treated both "as a burden and a punishment for the Member State which permitted the individual to arrive in the Union" (Guild 2006, 637). In this respect, Guild

[2] It is expressly stated to be a basic value of the Member States' pluralistic society (Art. 2 TEU), a principle upon which the EU foreign policy is to be built upon (Art. 3 TEU) and which guides Member States support to the EU external and security policy (Art. 21 TEU). Most importantly, specific reference to such principle is made in the TFEU, whereby it is evoked with regard to the construction of a common policy on asylum, immigration and external border control, which is fair towards third-country nationals (Art. 67), with regard to the fair sharing of responsibility among Member States for its implementation (Art. 80), and most in regard to the possibility of adopting provisional measures for the benefit of a Member State in cases where a Member States experiences an emergency situation in connection with sudden arrivals (Art. 78(3)).

underscores that a visible consequence is the handling of applicants as objects rather than rights holders (ibid). These criteria also imply that the applicants cannot choose the preferred EU Member States where to file their asylum applications.

Notably, the European Commission acknowledged in 2007 that the Dublin was not conceived as a burden-sharing tool and that it may have caused additional burdens (European Commission 2007). Such additional burdens eventually became more visible with the intensification of asylum influxes in recent decades, which have further spotlighted the deficiency of the criteria employed in assigning responsibility among Member States.

Recent debates have particularly criticized the 'irregular entry' or 'first entry' criterion, according to which the Member State where the asylum seeker has entered irregularly is responsible for examining their application. This criterion has been the most widely used, especially in times of crisis, given the high number of first-instance asylum applications and the non-applicability of other criteria.

Several authors have highlighted that the Member States on the common external border of the EU, namely Eastern and Southern EU Member States, face the major burden of irregular arrivals, thereby becoming responsible by default of handling asylum applications (Costello 2012; Maiani & Vevstad 2009; Mitsilegas 2012).

Other scholars have further expanded on this perspective, emphasizing that the 'irregular entry' criterion represents a burden-*shifting* mechanism, rather than burden-*sharing* mechanism,[3] towards those Member States that either have less restricted visa policies or difficulty in handling their external border (Garcés-Mascareñas 2015; Lang 2013; Moreno-Lax 2017). However, as Moreno-Lax Violeta has noted, "geographical fortuity" cannot be "determined or controlled" (Moreno-Lax 2017, 16).

As we will see in the chapter dedicated to the Syrian case, the Dublin Regulation indeed proved to have limited, if absent, distributive effect, having its roots in the structuring of Dublin, and especially, the difficulty of conciliating the responsibility of

[3] It should be noted that this argument is not new. Uçarer Emek M. had already anticipated that the emergent European asylum regime built upon the Dublin was rather aimed at burden-shifting rather than burden-sharing (Uçarer 2006).

the Member State of first arrival and the internal open borders in the Schengen Area. Rainer Baübock has specifically underscored that the 'first entry' criterion places a heavy burden on the Member State of first entry, both at the national and supranational level, as it holds the responsibility for the asylum seeker's entry into the entire EU territory (Bauböck 2018).

Additionally, the Member State of first entry is also left to cover the financial cost, as Dublin lacks a mechanism in regard to reception costs (Spataru 2019). Therefore, Dublin places Member States at the EU's external border in a position where they are unable to fulfill their obligations in accordance with EU standards (ibid).

As a recent article further illustrates, the 'first entry' criterion, which was firstly introduced with the 1990 Dublin Convention and has persisted throughout subsequent negotiations aimed at addressing the Dublin system's evident shortcomings,[4] has set the stage for the emergence of burden-sharing issues (Lott 2022). Indeed, the absence of a complementary burden-sharing mechanism alongside the 'first entry' criterion was likely to result in burden distribution challenges (ibid).

Notably, Beirens Hanne et al. had previously emphasized that although Dublin system was devised as a tool for the allocation of responsibility, rather than burden-sharing among Member States, it has become, due to the lack of alternative tools, the sole mechanism for burden sharing.[5] The problem though is that the criteria do not reflect the equitable distribution among Member States (Beirens et al. 2016).

In this sense, it can be argued that although the establishment of the CEAS, as previously highlighted, acknowledged the importance of addressing migration and asylum issues as a shared responsibility, the structure of Dublin system, upon which the CEAS is based, highlights the failure to effectively address those issues as a collective responsibility and the disproportionate burden placed on border Member States.

Ultimately, it is important to highlight a recent development in the academic literature on the Dublin system that is particularly relevant for our case study, which concerns the

[4] See section of recent relevant policy and legislative developments in the Appendix.

[5] Apart from the the relocation proposals, which will be introduced as part of the chapter on the Syrian 'refugee' crisis, which established the temporary derogation of specific provisions of the Dublin Regulation, no mechanism for burden-sharing exists to date. Notably, a group of Member States signed a Declaration on a Voluntary Solidarity Mechanism in June 2022, yet it is not a binding instrument (see Appendix).

impact of the Dublin system in the construction of 'Fortress Europe'. Ashley Binetti Armstrong has recently made the case for 'Fortress Europe' being a consequence of Dublin's failure to fairly distribute burden across the EU Member States (Armstrong 2019).

The author specifically underlines the way in which the overwhelming burden on border Member States, coupled with their inability to effectively handle this burden, prompts other Member States to reinforce their borders as a means of evading responsibility, thereby resulting in the strengthening of a Fortress Europe' approach (ibid). By examining this relationship, Binetti Armstrong's research provides a critical perspective that expands the existing academic literature on burden-sharing and the allocation of responsibility in the Dublin system, offering insights that were previously unexplored.

2.3.3 Supplementary forms of protection in the EU: delving into temporary protection

As previously discussed, the 1951 Refugee Convention and the 1967 New York Protocol set the foundations for an international framework for the protection of asylum seekers, serving as a normative standard for the formulation of other regional frameworks worldwide. Regional organizations, including the European Union, have undertaken efforts to incorporate and enhance the provisions of the Convention within their respective frameworks, based on the specific challenges faced by refugees in their respective regions.

In this regard, the European Union has introduced two supplementary forms of protection, namely the subsidiary protection and temporary protection statuses, in addition to the refugee status provided under the CEAS' instruments in compliance with the Geneva Convention. These additional statuses aim to provide avenues of protection for individuals who may not meet the strict criteria of the refugee definition. While subsidiary protection will be briefly discussed, the primary focus will be on exploring the temporary protection and the scholarly debates surrounding temporary protection in order to provide a deeper understanding of its implications.

The subsidiary protection, introduced through the adoption of Directive 2011/95/EU, also known as the Qualification Directive (see Appendix), is intended to grant protection

to third-country nationals who do not meet the refugee definition outlined in the Geneva Convention, for which the refugee status apply. It may apply to individuals who face "substantial grounds" for believing that they would endure "serious harm" if returned to their country of origin or former habitual residence (The European Parliament and the Council of the EU 2011, Art. 2(f)). The concept of 'serious harm' encompasses, inter alia, "indiscriminate violence in situations of international or internal armed conflict" (ibid., Art. 15).

While acknowledging the value of providing supplementary forms of protection for individuals displaced by conflicts, it should be noted that subsidiary protection, like the refugee protection, relies on the individual processing of applications. Although this characteristic is not inherently restrictive, it can present challenges in cases of massive numbers of arrivals, as it normally happens in cases of conflict and war.

In this context, it is essential to explore the temporary protection as an emergency mechanism specifically designed to address cases of mass displacement and the challenges posed by individual processing of applications in such circumstances. The temporary protection status, introduced through the Temporary Protection Directive (TPD)(see Appendix), was conceived in response to the large-scale influx of displaced individuals in the European Union as a result of conflicts related to the dissolution of former Yugoslavia, particularly, the Bosnian War (1992-1995) and the Kosovo War (1998-1999).

These events highlighted the disparities in protection and rights granted to asylum seekers depending on the EU Member State hosting them, shedding the light on the limits to the harmonization of asylum policies in the EU (Koser and Black 1999). Indeed, while most of those asylum seekers fell within the scope of the Geneva Convention, European States granted them varying forms of temporary protection in accordance with their respective national legislations, in the absence of a common standard across the EU (Kjaerum 1994; Akram 2000).

To address this issue, the TPD established a mechanism that aims to provide, in cases of mass influxes, minimum standards for a unified, group-based standard of protection for displaced third-country nationals, whose situations may align with the persecution criteria outlined in the Geneva Convention, as well as those who seek refuge due to

“armed conflict or endemic violence” and instances of “systematic or generalized violations of their human rights” (European Council 2001, Art. 2(c)).

The primary objectives were to ensure consistent treatment for individuals in need of protection, evenly distribute the pressure among EU Member States, and prevent a potential deadlock in the European asylum system. This was particularly important considering that the existing system relied, as mentioned earlier, on individualized procedures for determining refugee status or subsidiary protection status.

The TPD has been the subject of intense scholarly debates, not least because, as we will see, it has been activated, for the first time ever, after more than ten years since its adoption into law. Moreover, as emphasized in the introduction, the recent proposal by the European Commission to replace it with a new instrument, the Crisis and Force Majeure Regulation, further adds to the ongoing discussions surrounding the future of the temporary protection in the European Union.

The literature surrounding the TPD sheds the light on the lack of its activation and the challenges associated with its implementation. Notably, Karoline Kerber’s research has emphasized the emergence of disagreements among Member States since the inception of the Directive, with a particular focus on critical aspects like solidarity and burden-sharing (Kerber 2002). She has particularly highlighted a significant obstacle posed by the voluntary burden-sharing mechanism foresaw by the Directive, according to which Member States are free to indicate their capacity for the distribution of beneficiaries (ibid).

In fact, the TPD did not gain much attention until recently (Gluns & Wessels 2017). Recent debates have centered on the reasons behind its non-activation, highlighting in particular the arduous process required for its implementation (see figure 1) and the political challenge of achieving agreement within the Council through Qualified Majority Voting (Orchard and Miller 2014; Notarbartolo di Sciara 2015; İneli-Ciğer 2015a; İneli-Ciğer 2015b; Skordas 2016; Gluns and Wessels 2017).

TPD activation: steps of procedure

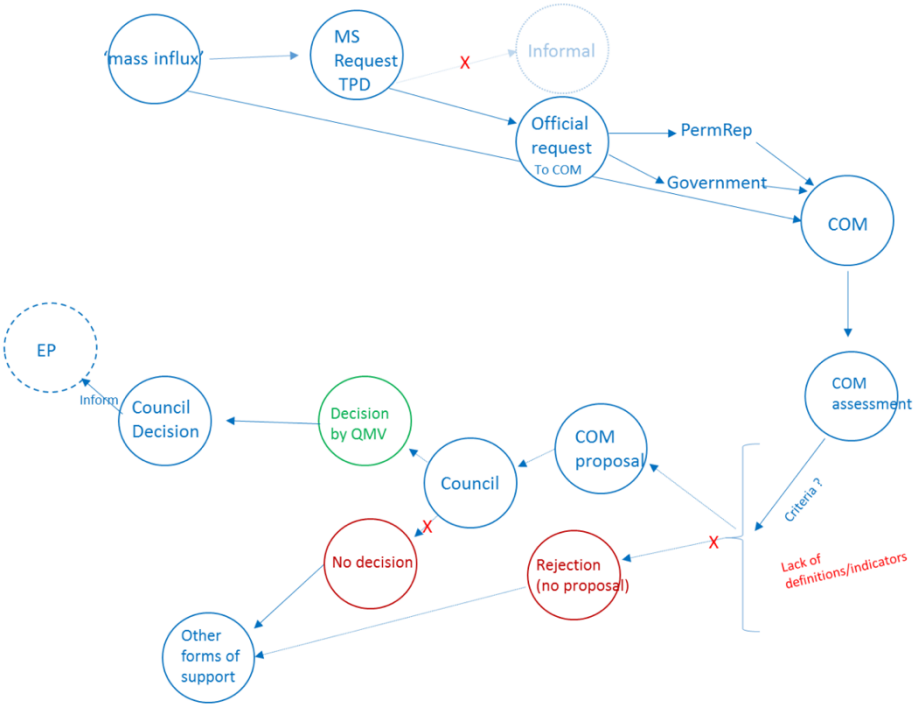

Figure 1 – Source: European Commission, Retrieved May 15, 2023, from https://home-affairs.ec.europa.eu/pages/document/012016-study-temporary-protection-directive_en

In this context, authors concur that the TPD is essentially a mechanism subject to the political will of the Council, and the QMV requirement is considered an exceptionally high threshold (İneli-Ciğer 2015a; İneli-Ciğer 2015b). This will be further illustrated through the analysis of our case study.

These scholars have also underlined the challenge posed by the lack of a legal definition of 'mass influx,' which further complicates the process of reaching consensus within the Council (ibid). Indeed, the Directive defines 'mass influx' as the arrival in the European Union of a "large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme", thereby lacking a clear and quantified notion that can be used to determine the existence of a mass influx exists (European Council 2001, Art. 2(d)).

Notably, according to the European Commission's study on the TPD, the extensive definition was intentionally crafted to encompass various forms of influx and pressure (Beirens et al. 2016). In this context, the study has further clarified that, although TPD was conceived to provide a flexible tool that can be applied to different scenarios, it resulted in stringent interpretation and lack of application (ibid).

Shifting focus to a more political realm, concerns about the TPD serving as a pull factor, i.e. attracting more displaced people, has also been identified as another element explaining the non-implementation of the TPD (Klug 2011; Orchard and Miller 2014; İneli-Ciğer 2015a; Notarbartolo di Sciara 2015; Beirens et al. 2016). Nevertheless, Notarbartolo di Sciara has explained why this aspect is overstated: first, push factors, such as violence and conflict, rather than pull factors, are the main drivers of forced displacement and, second, having the possibility to designate specific groups of persons beneficiaries of the temporary protection status effectively minimize the potential effects of the TPD as a pull factor (Notarbartolo di Sciara 2015).

Drawing on Kerber's research, the European Commission's afore-mentioned study has also brought attention to the divergent positions held by Member States during the negotiation phase of the Directive, highlighting that the primary issue has always been solidarity or burden sharing (Beirens et al. 2016). These differing stances have manifested in the form of ambiguities present in the text of the TPD, which have subsequently posed significant barriers to the activation of the Directive (ibid).

Special reference is made to the unclear formulations surrounding the 'adverse effect' component and the ambiguous notion of 'asylum system,' thereby adding to the above-mentioned ambiguities identified by previous authors, particularly in relation to the term 'mass influx.'

Indeed, the Directive defines temporary protection as a procedure of exceptional character applicable in cases of mass influx, "in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation" (European Council 2001, Art. 2(a)). However, the term 'adverse effect' lacks a definition, and it remains unclear whether 'asylum system' refers to national asylum systems or the CEAS (Beirens et al. 2016).

Finally, Deniz Genç and Şirin Öner have attributed the non-implementation of the TPD to a lack of solidarity, emphasizing the crisis of the EU's fundamental (Genç & Şirin Öner 2019). The view of these authors lay the groundwork for the subsequent analysis of our case study, which will provide additional insights into this topic.

2.4 'Us' vs 'them' in the EU

2.4.1 Belonging and othering in the EU: theorizing European identity

As Dirk Jacobs and Rea Andrea have emphasized, the establishment of an immigration and asylum policy in the European Union as a result of the integration process of the late 1990s have resulted in two crucial processes (Jacobs & Rea 2011). On the one hand, the development of more complex migratory models, with intensified movements as a result of globalization, urbanization and the pursuit of the freedom of movement within the EU (ibid). On the other hand, the formation of a supranational collective identity, the European identity, which has brought about a redefinition of identities in Europe and the shaping of new ones (ibid). [6]

With regard to the latter aspect, Jacobs and Rea have further highlighted that legal instruments, such as the Dublin system or the Schengen Convention previously introduced, as well as institutional and social practices, have redefined the perception of the foreigner, which also encompasses migrants, as the "non-European other" (ibid., 9).

To begin with, it should be noted that while the concept of identity, including collective identities, holds significant relevance in a variety of disciplines, there is no widely accepted definition among scholars (Kaina & Karolewski 2013). Nonetheless, there is a

[6] Notably, the reconfiguration of identities not only affects the image and perception of non-European nationals, but also of European nationals, leading to the re-emergence of national and regional identities (Jacobs & Rea 2011). Several studies on European identity have indeed focused on the relation between European and national identities, underscoring their competitive relationship (Inglehart 1977; Carey 2002; McLauren 2006), mutually reinforcing relationship (Díez Medrano & Gutiérrez 2010; Herb & Kaplan 1999), or their convergence in a 'integrated' identity (Ichijo & Spohn 2005; Risse 2004, 2010). Furthermore, as regards to the relation between European identity and regional identities, Anna Triandafyllidou and Ruby Gropas have highlighted that European identity is often brought forward by secessionist movements to assert their right to independence, indicating that individuals may feel more European if they perceive that such identification will bring them some benefit (Triandafyllidou & Gropas 2023).

relatively wide consensus that the notion of the 'other' plays a crucial role in shaping collective identity (Schlesinger 1992; Hettlage 1999; Delanty 2000; Triandafyllidou and Wodak 2003; Herrmann and Brewer 2004; Kaina and Karolewski 2013).

Anna Triandafyllidou and Ruth Wodak particularly underscore that the formation of an 'in-group' is closely connected to the identification of an 'out-group' to such an extent that that members of an 'in-group' understand their shared identity by differentiating themselves from the 'out-group' (Triandafyllidou & Wodak 2003). Hence, belonging and othering are deeply entrenched (ibid).

Collective identities are shaped internally and externally (R. Herrmann & Brewer 2004; Schlesinger 1992), and they are also "historically situated," thereby occurring within specific social and political coordinates (Triandafyllidou and Gropas 2023, 16).

Acknowledging the vast array of literature surrounding the notion of European identity, it is important to clarify that this sub-section will specifically present the relevant literature that has sought to grasp the content of European identity as a collective identity, thereby disregarding the perspective of the individual's perception.[7]

One of the first scholars who has discussed the concept of European identity is Gerard Delanty, who has argued that long before people started to develop a sort of consciousness about being citizens of the EU, the notion of Europe has served as a cultural frame of reference for both geopolitical settings and identity formation processes (Delanty 1995). In this regard, he clarifies that processes of identification with and belonging to Europe, and by extension to the European identity, did not start with the EU.

In one of his subsequent works, Delanty underscores that the notion of European identity firstly emerged in 1973, year in which the then-Member States of the European Community[8] signed the so-called *Declaration of European Identity.* In this context, however, he casts doubt on the existence of a European collective identity, highlighting that identity "is not a cultural given, but a mode of self-understanding" (Delanty 2003, 77).

[7] For further insights in the multilayered research on European identity, see *EU Governance and European identity* (Kaina and Karolewski 2013).

[8] At the time, the Member of the European Community were 'the Nine': Italy, France, Germany, the Netherlands, Belgium, Luxembourg, Denmark, Ireland and the United Kingdom.

According to Delanty, the European Community came into play to convey a specific notion of European identity, which leveraged common values underpinning European unity and the preservation of national cultures (ibid). In this regard, he explains that the EU's self-understanding is epitomized by the motto "Unity in diversity" (ibid., 81).

The author further problematizes the challenges associated with linking European identity with cultural values such as tolerance, universalism, humanity and so forth, by emphasizing how Europe has functioned as a "rhetorical device" to legitimize different objectives and construct "the alien 'other'" in opposition to the "collective 'we'" (ibid., 82). Overall, Delanty highlights that the challenge associated with Europe and the definition of European identity is politics (ibid).

Similarly, Bo Stråth has then sought to expand on the significance of European identity, taking as point of departure the afore-mentioned Declaration. According to Stråth, European identity serves the purpose of legitimization in a period of first-ever 'Eurosclerosis'[9] featured by stagnation and unemployment, which had generated mistrust in the European integration (ibid). In this context, he argues that European identity can be observed as a phenomenon of disruption and crisis (Sträth 2002).

In a subsequent research, Delanty has further elaborated on this topic, underlying that although the construction of the European Union has provided a more concrete idea of Europe, the contestation over the meaning of Europe and European identity have been growing (Delanty 2006). European identity has features as a fluid identity invoked in multiple contexts for differing purposes (ibid).

Delanty's contributions have served as point of reference for the development of subsequent academic debate on European identity. Drawing upon on his perspective, Luisa Martín Rojo emphasized the centrality of the European identity, with a focus on its cultural significance, as a catalyst for identity formation and the processes of othering embedded. According to Rojo, culture in this context should be regarded as a structure of social representations which is instrumental for legitimizing a certain social order, thereby being functional to specific power interests (Martín Rojo 2008, 281).

[9] The 'Eurosclerosis' actually took place in a wider context of turmoil connected to increased tensions with the United States, the collapse of the Bretton Woods Agreement in 1971 and the 1973 Oil Shock (Stråth 2011).

Another notable contribution to the scholarly discussion on European identity is that of Luisa Passerini. In an effort to trace the evolution of European identity, Passerini has highlighted that "for centuries, forms of European identity were built up through contrasts and oppositions, creating various forms of orientalism and occidentalism" (Passerini 2012, 3). She further underscores that such oppositions were constructed both in relation to 'internal' others, making reference, *inter alia,* to the long-standing history of Western/Christian antisemitism, and 'external orthers', including Islam (ibid).

Overall, the academic debate on the content of European identity sheds the light on European identity as entailing a strong political dimension, serving belonging and othering processes in specific contexts. Although some scholars have likewise unerlined the link between the political dimension and the cultural dimension, they have emphasized that the latter has legitimized political objectives.

2.4.2 Religion and race: converging elements of othering in the EU

In recent decades, the study of othering processes related to the European identity has gained particular importance. While European integration has undoubtedly played a crucial role, it is essential to acknowledge the contextual changes in which the European integration has developed, as discussed in the first section of this chapter. One significant change is the 9/11 attacks perpetrated by the terrorist group of al-Qaeda.

Gerard Delanty has argued that the 9/11 events gave rise to a new anxiety regarding Islam-inspired terrorism, challenging EU's multicultural vision of 'Unit in diversity', which had become a cornerstone of the post-1989 European order (Delanty 2008).

Delanty questions the liberal concepts of tolerance and multiculturalism upon which the EU is believed to be constructed. He underscores that the process of European secularism, understood as the privatization of religion and its consequent disappearance from the European States' domain, has prompted a deeper reflection on how much tolerance should be admitted in Europe (ibid).

In a later publication co-authored with Ruth Wodak and Paul Jones, Delanty has defined the fear of too much tolerance, particularly towards perceived intolerant Muslims communities, as an expression of post-liberal anxiety (Delanty et al. 2011).

They further argue that the changing dynamics in international migration have intensified such post-liberal anxiety, leading to the othering of Muslim migrants who are seen as a challenge to cultural integrity. In this context, they emphasize that a new cultural racism has been "democratized", i.e. normalized, made less explicit compared to biological racism, yet more widespread and difficult to eradicate (Delanty, Wodak, and Jones 2011, 13-14).

Particularly relevant for our discussion is a recent book of entitled *What is Europe,* whereby Anna Triandafyllidou and Ruby Gropas has sought to uncover the evolution and significance of the multifaceted concept of Europe across time. The authors have argued that ideology, religion and race have historically featured as major cultural markers of Europe, driving processes of othering (Triandafyllidou & Gropas 2023).

They note that after the collapse of the Soviet Union, communism was no longer seen as a Europe's 'other', and the period between the 1990s and the early 2000s was marked by increased confidence in multiculturalism, with the European Union aiming to embody this vision (ibid). Furthermore, a new narrative of eastern and central European countries returning to Europe emerged during this period (Triandafyllidou & Gropas 2023).

Acknowledging that the 9/11 terrorist attacks provoked a paradigm shift in attitudes towards pluralism and connected processes of othering, Triandafyllidou and Gropas point out that, in this context, new factors came into play: external factors—the rise of jihadist terrorism—and internal ones, such as the unfolding urban violence in European cities between European native majorities and alien, immigrant minorities (ibid).

In this context, these scholars argue that Islam became the new Europe's 'other' threatening the recently affirmed European values both from the outside and the inside, with Muslims have been increasingly depicted as danger to the public order, national tradition and societal homogeneity by populist parties (ibid).

In this context, they emphasize that although European countries are characterized by multiple religious cultures and varying levels of secularization, a residual Christianity remains evident in Europe (ibid).[10]. Such residual Christianity has been increasingly

[10] Noteworthy an explicit acknowledgement of Christianity and Christian values as part of Europe's legacy was never included in EU official documents. If anything, a crucial document was commissioned by President of the European Commission Romano Prodi in 2005, *the Spiritual and Cultural dimension of Europe*, whereby Europe's different religions and values were acknowledged, yet not only Christianity but

utilized to promote othering processes against non-Christian communities, and especially Muslims, by asserting an alleged contrast with Christian values (ibid).

Notably, Triandafyllidou and Gropas have drawn attention to the complex dynamics emerging from the global increase in mass displacement and the growing presence of Muslim populations in Europe, which have influenced the redefinition of the 'other' within the EU. They argue that religious and racial elements intersect, creating a perception of the black Muslim migrant as the new target (ibid). Additionally, they highlight how contemporary European racism has taken subtle forms, characterized by new dimensions and manifestations.

Liz Fekete has coined the term xeno-racism to indicate a modern racism whereby racism and xenophobia converge in the othering process. It stresses the fact that racism has been no longer portrayed in terms of biological superiority but has rather manifested through rhetoric discourses leveraging xenophobic sentiments, that is, the fear of the other (Fekete 2001).

2.5 Societal security, the securitization theory, and the European Union

In *Identity, Migration and the New Security Agenda in Europe*, Wæver Ole et al. have devised a conceptual framework on security, drawing inspiration from the changes affecting Europe in the late twentieth century, namely European integration and the end of the Cold War era (Wæver et al. 1993).[11] This framework has been defined 'societal security,' a conceptualization that expands upon conventional understandings of security by shifting the focus from the state to societies (ibid).

This work builds upon one of the first seminal work of the Copenhagen School of security studies, entitled *People, State and Fear: the National Security Problem in International Relations* which questions the traditional approach of security studies

also Islam. Nonetheless, the dichotomy religion-secularism/laïcité has featured as a crucial ideological and cultural cleavage in European societies (Triandafyllidou & Gropas 2023).

[11] In general terms, the end of the Cold War paradigm led to a reconfiguration of the world order, political agendas, migration patterns and the overall security landscape. As a result, the traditional military-centered security perspective, the political insecurity, proper to the bipolar world was no longer suitable to the evolving dynamics of the post-Cold War era (Huysmans 2006). These developments brought about a renewed focus on migration from a security perspective (Castels & Davidson 2000).

centered on a military understanding of security focused on the state, by highlighting the importance of non-military aspects, including societal aspects in connection with identity, culture and social cohesion (Buzan 1991).

From the perspective of social security, the communities constituting a society are united by a common sense of belonging and collective identity (Wæver et al. 1993). In this sense, social insecurity exists when a society perceived that its identity is threatened by challenging identities (ibid).

According to Wæver et al., in Europe, societal insecurity has gained more prominence compared to other forms of insecurity, highlighting that the primary concern for Western identities stems from the perception of the threat posed by migration from Eastern and Southern regions (ibid). They highlight that societal threats are posed by the recently established Eastern European States as a result of the disintegration of the Soviet Union as the fall of a "central identity marker" (ibid., 110),[12] on one hand, as well as from the Middle East and the perception of Islam as a cultural shock, on the other (ibid)(see previous section).

This innovative conceptual framework proposed by Wæver et al. thus emphasizes the nexus between identity, security and migration. In this context, the preservation of identity represents a crucial point through which migration issues and the politics of belonging are linked (ibid). It can therefore be said that societal security is deeply intertwined with belonging and othering processes and the perception of the migrant 'other' in Europe.

This framework served as a catalyst for upcoming academic research on securitization, thereby opening new avenues for further exploration of migration in the field of security studies. Subsequent studies have focused on the process of securitization and how this process is performed.

The concept of securitization was firstly coined in Wæver's work *Securitization and Desecuritization* (1995) and was then extensively elaborated in his collaboration with

[12] Notably, Wæver et al. also highlighted the tensions between Russia and the former Eastern bloc countries in connection to the latter's struggle for independence and the difficulty of balancing identity conflicts within their territories, anticipating potential future political implications for the European Union, including the likelihood of "indirect conflicts" in terms of a Russian backing of third-party countries. This will be further underscored in the chapter dedicated to the Ukrainian case study (Wæver et al. 1993).

Barry Buzan and Jaap de Wilde, pioneers of the Copenhagen School, in *Security: A New Framework for Analysis* (1998), who defined 'securitization' as:

> The act of taking policies beyond the established rules of the game, framing an issue as a particular type of policy or supranational policy. The securitization can be seen as an extreme version of politicization. Theoretically, any issue in the public eye can be positioned on a spectrum ranging from 'unpoliticized' to 'politicized' to 'securitized' (Buzan, Wæver, and de Wilde 1998, 23).

To explain the securitization process, the authors further elaborated on security being a speech act, i.e. a discursive practice and a political narration, rather than an objective representation of facts. (ibid.). In their view, security is socially constructed, hence, it only exists when a certain reference object is constructed as a security threat by a security actor, i.e. an entity in a position of power,[13] which serves the purpose of legitimizing extreme response measures to such threat (ibid).

Scholarly research has expanded and integrated the concept of securitization with new perspectives, emphasizing different aspects of the securitization theory in relation to specific security issues. Of particular interest for our analysis is the academic research applying the securitization of migration in the European Union context, which builds upon the understanding of societal security previously illustrated.

One of the major scholars in this field is Jef Huysmans, who has argued that the European integration process, which started as an economic process aimed at the unification of the internal market, has increasingly placed at the centre the question of internal security (Huysmans 2000). As a result, migration issues have been incorporated into a policy framework that establishes and governs security matters after the elimination of internal border checks (ibid).

Huysmans specifically underscores that the Treaty of Maastricht, the Schengen Acquis and the Dublin Convention contributed to the framing of migration into a security

[13] The security actors are commonly identified as governments, bureaucracy political leaders, lobbyists and pressure groups (Buzan et al. 1998).

question, which he defines as "the spillover of the internal market into a European internal security question" (ibid., 751).

Huysmans has further highlighted that a crucial element of securitization practices in the European Union is the representation of migration as a cultural challenge, emphasizing the cultural significance of border control. In this sense, he argues that the security policy, i.e. the policies aimed at protecting internal security, plays a distinct role in mediating belonging, in that when a community faces an existential threat it tends to identify more with the collective identity and its shared values (ibid). Identity is therefore shaped by the perception of the 'outsider' of the internal security area, i.e. the immigrant, asylum seeker or refugee, as threats, thereby actively shaping their politicization (ibid).

2.6 Bordering and othering in the European Union

As underscored throughout this chapter, with the establishment of the European Union, EU's internal borders have been abolished, thereby partly losing their significance; while external borders have been reinforced and acquired a more prominent function. In this context, it is important to introduce the theoretical framework for understanding the significance of borders in the EU for our upcoming analysis.

Scholars have extensively researched how borders relate to migration. In their landmark work *Bordering, Ordering and Othering*, Henk Van Houtum and Ton Van Naersses emphasize the exclusionary function of borders (Van Houtum & Van Naerssen 2002) By problematizing the immobilization of people through borders, Van Houtum and Van Naerssen define bordering as "a practice of spatial differentiation", leading to the marginalization and exclusion of the 'others' (ibid., 126).

In this respect, they further emphasize that bordering should be regarded as a territorial practice of ordering aiming to preserve cohesion of a specific spatially defined society, through which 'others' are created (ibid). In this respect, the study further notes that bordering practices reproduce differences both at the level of space and identity (ibid). Specifically, it emphasizes that social identities within a spatially demarcated society are shaped by processes of bordering and their inherent categorization of others (ibid). It can

be inferred that bordering entails demarcating who belongs to the in-group and who does not. Hence, othering is embedded in the socially constructed practice of bordering.

Van Houtum further expanded on this argument, with a special focus on the European context and the othering of migrants implied by bordering practices in the EU. He notes that by failing to create "a zone of peace and comfort ruled by law and order", the EU has undertaken "a self-proclaimed war on illegal migrants and has created a border industry that constructs more, not less, 'illegality', xenophobia and fear (van Houtum 2010, 957).

Particularly relevant for our case study is how the practice of bordering is embedded in transnational spaces. In this regard, Van Houtum and Van Naerssen argue that the refugee and the asylum seeker represent one 'other' category within the framework of transnational bordering. They highlight how the refugee camp contributes to the creation of spaces of differentiation, specifically, spaces characterized by emotional distance and indifference (Van Houtum & Van Naerssen 2002). The geographical placement of this camps further reinforces this idea; typically situated on the outskirts of cities or countries, they are perceived as "borderlands within society" (ibid., 131).

The othering processes embedded in refugee camps has also been the object of study by more recent scholars. In his article *What is a refugee camp?*, Simon Turner has sheds light on the limits and effects of the camp, with special emphasis on how camps are extraterritorial (placed in isolated areas), exceptional (with reference to the exceptionalism of the rules governing them) and subject to social exclusion (those living in the refugee camp are regarded as not belonging the host society) (Turner 2016).

Additionally, Helena Sagarra has further expanded on Turner's contribution by building on the notion of space in political geography.[14] She has highlighted how camps produce segregated spaces, through which othering is performed by placing the camp outside the centre (Sagarra 2021).

The relationship between border and migration has also been studied from the perspective of the 'border spectacle' by Nicholas De Genova (De Genova 2002; De Genova 2013). The author has defined the 'border spectacle' as a "spectacle of enforcement" (of borders procedures) at the border that makes the illegality of the migrant

[14] See *Making space for law* in *The SAGE Handbook of Political Geography* (Blomley 2008).

strikingly visible, in which illegality should be regarded as a social space of exclusion (De Genova 2002, 437).

De Genova has also noted that the border spectacle, which fits within a broader effort of governing migration, is performed on targeted migration flows (ibid.), thereby underscoring the selective nature of border enforcement.

Ultimately, it is worth highlighting the specific role of certain borders in the context of migration identified by William Walters, which has introduced the concept of the 'humanitarian border' (Walters 2011). According to Walters, humanitarian borders emerge "once it becomes established that border crossing has become, for thousands of migrants seeking, for a variety of reasons, to access the territories of the global North, a matter of life and death" (ibid., 138).

In this context, the author clarifies that migrants are portrayed as both victims in need of rescue and care (ibid). In this respect, he highlights a paradox of humanitarian borders; border crossing has become a question of life and death precisely because of the increasingly securitized external border management (ibid).

Notably, the humanitarian border has prompted a broader reflection among scholars within the realm of humanitarianism (Fassin 2012; Pallister-Wilkins 2015; Ticktin 2016; Pallister-Wilkins 2017a; 2017b; De Genova 2017; Escarcena 2022). Polly Pallister-Wilkins has emphasized that humanitarianism has recently taken the shape of humanitarian border management, a rationality through which specific values about life are conveyed (Pallister-Wilkins 2017a, 89). A new face of humanitarianism has emerged whereby the latter is practiced through two contrasting logics, the politics of control based on a securitarian rationality, and the politics of care, built upon a humanitarian rationality (Pallister-Wilkins 2020; De Genova 2017).

Furthermore, scholars have identified the Mediterranean as a case-study in this context, whereby the portrayal of asylum seekers and migrants as both victims and threats has legitimized the denial of their fundamental rights (Pallister-Wilkins 2015; De Genova 2017; Moreno-Lax 2018; Stepka 2018; Escarcena 2022).

Such ambivalence of humanitarianism, as defined by Simon Reid-Henry (Reid-Henry 2014), has been further explained as a process of victimization. The construction of hierarchies of victimhood contributes to fostering feeling of compassion and marking

boundaries between the self and the other, presenting humanitarianism as a question of feelings, rather than rights, thereby functioning as a trigger for othering processes (Pallister-Wilkins 2020; Ticktin 2016).

2.7 Conclusion

The theoretical framework provided in this chapter has aimed at offering a comprehensive understanding of the main theoretical elements underpinning this study. It has provided a thorough presentation on the 'Europeanization' of the migration and asylum debate, placing special emphasis on its connection with the process of European integration and the advancements concerning free movement at large.

Moreover, the EU refugee legal and policy framework has been critically examined, exposing its flaws and inherent contradictions. This analysis has been structured into four key steps: firstly, the limitations of the Geneva Convention, a core international legal instrument underpinning the EU refugee framework, have been addressed. Secondly, we shifted focus to the Dublin system as a core component of the CEAS, and its inherent burden-sharing flaws. Additionally, supplementary forms of protection for conflict-displaced individuals, specifically the TPD, have been scrutinized, seeking to highlight its limitations.

The subsequent section has been dedicated to theorizing the notion of European identity as a collective identity, encompassing diverse perspectives within the scholarly debate. Particularly, it has been highlighted the intrinsic connection between the European identity and its role in shaping belonging and othering processes in broader contexts. Moreover, it has delved into the elements that underpin processes of othering in the European context, with particular emphasis on the influence of religion and race.

Other theoretical elements have also been introduced, particularly, the notion of societal security within the broader framework of the securitization theory and its prominence in securitization processes in the European Union context.

Lastly, the function of EU borders in relation to migration have been explored, with special attention paid to the concept of bordering as an exclusionary practice and humanitarian borders.

3 The EU's policy response to the 2015 Syrian 'refugee' crisis

3.1 Introduction

The following chapter aims to critically dissect the policy responses introduced by the European Union to cope with the influx of displaced Syrians seeking refuge in the EU between April 2015 and March 2016. To fulfil this aim, an analysis of the specific policy responses devised by European institutions will be complemented with policy implementations, their outcomes and repercussions on Syrian protection seekers. By doing so, I hope to shed the light on the contradictions and tipping points of EU policy response, which will be instrumental for the comparison between the EU differentiated response to the Syrian and Ukrainian refugee crises in the final discussion chapter of this thesis.

3.2 Framing the crisis: figures, routes, composition and causes

In 2015, the European Union experienced a spike in sea arrivals which was labelled as the worst 'migration crisis' since World War Two, with more than one million migrants reaching Europe and nearly 4,000 going missing at sea that same year (Clayton et al. 2015). Compared to the previous year, sea arrivals in 2015 increased by 350 percent (IOM 2016a; Frontex 2015).

Although the European Union has historically been a major destination of mixed influxes, 2015 arrivals were distinctively different from previous flows in composition, as they were mainly constituted by third-country nationals fleeing conflict. Syrian asylum seekers accounted for 50 percent of sea arrivals, followed by the largest refugee producing countries worldwide, across the Middle East, Africa and South Asia: Afghanistan, Iraq, Eritrea, Pakistan, Iran, Nigeria, Somalia, Morrocco and Sudan (UNHCR 2016b). The

Syrian refugee crisis was therefore a major driver of the overall crisis experienced by the European Union in 2015.

Syrian asylum seekers attempted to reach Europe via different routes. The Eastern Mediterranean Route, which consists in crossing the Aegean Sea from Turkey aiming at Greece, was the most widely used by Syrians, who together with Afghans and Iraqis accounted for 90 percent of all asylum seekers reaching Greece in 2015 (IOM 2016a). Syrian asylum seekers constituted roughly 53% of the total crossings of such route that same year (IOM 2023, see figure 2).

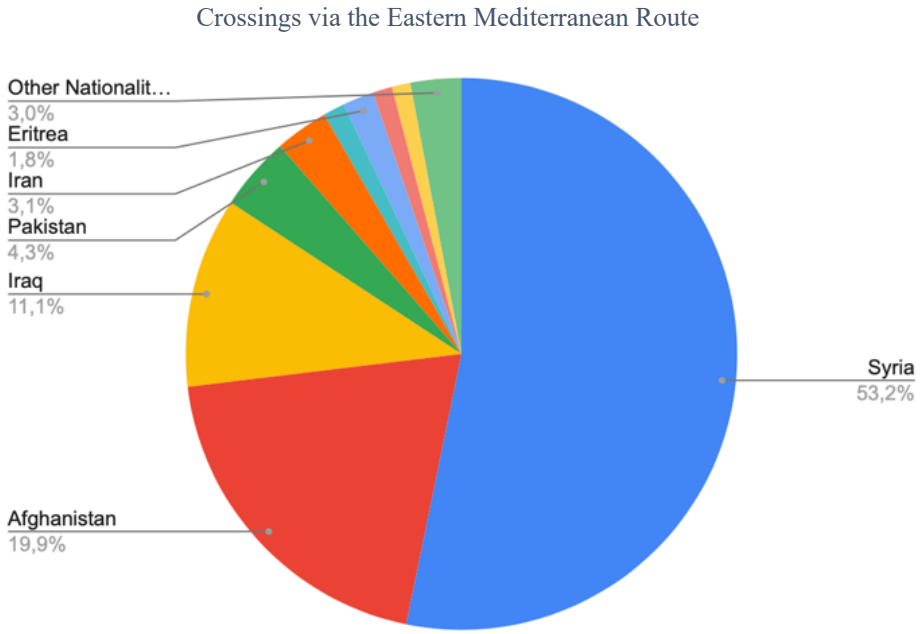

Figure 2 – Source: IOM's Global Data Institute, Retrieved March 28, 2023, from https://migration.iom.int/europe/mediterranean-arrivals

From Greece, most took the Western Balkans Route crossing the Balkan region, usually heading northward through North Macedonia, Serbia, Croatia and Hungary, in order to reach Western European States. Syrians crossing the Central Mediterranean Route. The Central Mediterranean Route remained the most used by Eritreans, Nigerians, Somalis and Sudanese throughout 2015, while Syria represented only the 5 percent of total arrivals (IOM 2016b). The Central Mediterranean route was longer and therefore perceived as more dangerous. Similarly, the Western Mediterranean Route saw few arrivals compared

to the afore-mentioned routes; only 3,845 is the total number of arrivals in Spain in 2015 via the Western Mediterranean Route, with no data available with regard to the percentage of Syrians EU (IOM 2015a).

The gender composition of Syrian asylum seekers reaching Europe varied depending on the time period. In 2015, 39% of Syrian asylum seekers were young men between 18 and 34 years old (Pew Research Center 2016). Looking at the Mediterranean crisis a whole, men constituted 74% of overall arrivals in Greece and Italy in 2015, a percentage that dropped to 40% in February 2016. At the same time, the fraction of adult women grew of eight percentage points (reaching 21%), and the percentage of minors soared from 13% to 39% (UNCHR 2016).

The Syrian refugee crisis was the result of the escalation of the Syrian Civil War which began in the aftermath of the Arab Spring in 2011. The Arab Spring(s) refers to a range of pro-democracy revolts, protests and armed rebellions against a number of Arab regimes that spread throughout the Middle East and North Africa region (MENA) in the wake of the 2010 Tunisia's *Jasmine Revolution*. The latter was the very first demonstration functioning as a catalyzer for uprisings in Tunisia's nearby countries, such as Egypt, Bahrain, Libya, Yemen and most certainly Syria.

In Syria, protests began against the government of President Bashar al-Assad after a group of young boys were arrested and tortured for anti-government graffiti in the southern city of Daraa. Uprisings started to expand across the country, with the Syrian regime responding with violent repression leading to widespread discontent. As any other Arab Spring, the trigger was the combination of multiple factors, including economic stagnation, state corruption, state violence and crackdown on individual liberties (Salih 2013). Another factor was certainly ethnic tensions; the Assad regime, dominated by the Alawite minority, had a long history of suppressing other ethnic and religious groups in the country, including Arab, Christian and Kurdish communities.

Unlike other MENA countries, the Arab Spring in Syria turned into a full-fledged civil war owed to a series interrelated developments, including the emergence of extremist groups, particularly ISIS and the al-Nusra Front, and the wide military and financial support to the Assad government by the Republic of Iran and the Russian Federation as well as the Lebanese militant group Hezbollah, especially during the Aleppo conflict,

with intensified bombardments against the insurgent-held cities and towns. With the escalation of the war in 2015, the widespread destruction and collapse of civil infrastructure and services led to a dramatic surge displacement, with the Syrian civil population seeking refuge in nearby countries (particularly Turkey, Jordan and Lebanon) and most certainly the European Union (Ferris and Kirişci 2016).

3.3 Reacting to the unavoidable: the EU passive response to the growing crisis

An increasing number of Syrians started to reach the shores of Europe shortly after the Syrian Arab Spring and the Syrian Civil War began in 2011. While figures continued to grow exponentially throughout 2012 and 2013, it was only in 2014 that they skyrocketed; it is estimated that the asylum claims registered in the EU soared from 50,000 in 2013 to almost 123,000 in 2014, with Syria being the top one citizenship of applicants, followed by Afghans and Kosovars (Eurostat 2015, see figure 3).

Top 3 citizenship of asylum seekers in 2014 in the EU

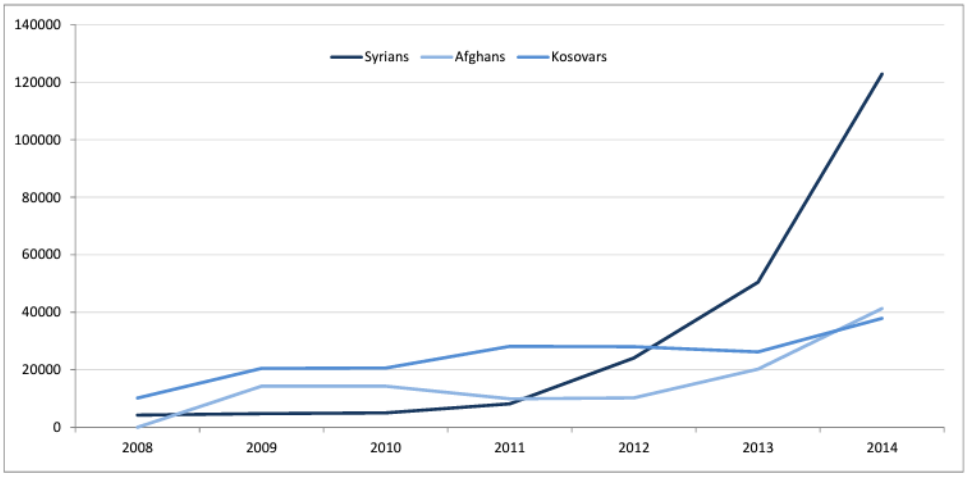

Figure 3 – Source: Eurostat Newsrelease, Retrieved March 29, 2023, from https://ec.europa.eu/eurostat/web/migration-asylum/asylum/database

Despite a clear and significant rise in applications by Syrians, the European Union remained a passive spectator until Spring 2015, when the increased deaths in the Mediterranean Sea could no longer be ignored as mediatic attention began to call for a EU intervention.

To be sure, the issue of deaths at sea, as well as the EU inaction before it, was far from new. With the intensification of crossings via the Central Mediterranean Route departing from North African countries in the wake of the 2011 Arab Spring, Italy had already urged the EU to boost its financial and operational support with few responses (Hornby 2012).

It was only after the shipwreck of 366 migrants, mostly Eritreans and Somalis asylum seekers, off the coast of Lampedusa in October 2013 that the European Commission established the Task Force for the Mediterranean. The latter was supposedly aimed to "prevent such human tragedies from happening again" (European Commission 2013, 2). However, it rather suggested an increased security-oriented approach to sea tragedies whereby human rights of asylum seekers took a back seat, with renewed emphasis on reinforcing cooperation with third countries, border controls and resettlement.[15]

In a similar fashion, EU's reaction to the Syrian refugee crisis was triggered by a major shipwreck occurring in mid-April 2015, when over 800 people lost their lives (Bonomolo & Kirchgaessner 2015). In 2015, the number of fatalities among those attempting to cross the Mediterranean and reach Europe hit a record high of 3,771, with April being the deadliest month of the year (IOM 2016c, see figure 4).

On April 20, a joint meeting of Foreign and Interior Ministers was held in Luxembourg. On this occasion, the then Commissioner for Migration, Home Affairs and Citizenship Dimitris Avramopoulos presented the 10-Point Action Plan, which was conveyed to the European Council three days later during the first emergency meeting held to discuss the ongoing Mediterranean crisis. The Plan outlined immediate actions to be taken by the EU and its Member States to address the ongoing humanitarian crisis (European Commission 2015d):

[15]Rather than proposing integrated solutions to address the issue of deaths in the Mediterranean, the actions outlined in the Communication as well as in the first working document on its implementation clearly show that EU's priorities lied with cooperation with third countries, enhanced resettlement schemes, combating trafficking, smuggling and organized crime and reinforced border surveillance. The documents also underscore the role of the European Border Surveillance System (EUROSUR) in enhancing surveillance and saving lives, as well as the need to strengthen the capacities of Frontex in rescue operations. It is therefore not clear how such approaches especially focused on border control could contribute to saving lives. For further insights see Martin 2014.

1) Boost resources for maritime border patrols in the Mediterranean and Aegean Sea, namely Triton and Poseidon
2) A coordinated strategy to seize and dismantle vessels used by smugglers
3) Strengthen cooperation between Europol, Frontex, EASO and Eurojust to investigate smugglers operations
4) Deployment of EASO teams in frontline States, namely Italy and Greece, to facilitate joint processing of asylum applications
5) EU governments to ensure all migrants are fingerprinted upon arrival
6) Discuss proposals for an emergency relocation mechanism
7) Plan a voluntary pilot resettlement project
8) Devise a new program for the quick return of irregular migrants from frontline Member States to be coordinated by Frontex
9) The Commission and EEAS to engage with countries surrounding Libya and enhanced initiatives in Niger
10) Dispatch of Immigration Liaison Officers (ILO) in relevant third countries to collect migratory data and bolster the capacity of EU Delegations.

This 10-Point Action Plan launched in response to the crisis made it apparent that EU's priorities were not focused on protecting the lives of asylum seekers. Indeed, the discussion for an emergency relocation mechanism put forward by the Commission represented the only measure intended to address the humanitarian aspects of the crisis. Instead, the Plan prioritized preventing unauthorized migration and bolstering border management and security.

The Plan revealed the overall approach the EU would adopt in formulating its response to the Syrian refugee crisis and set the foundations for the development of the European Agenda on Migration in May 2015, which will be introduced in the next section.

Estimated migrant and refugee deaths in 2015 along the Mediterranean Routes

Migration Route	Deaths
Central Mediterranean	2,892
Eastern Mediterranean	805
Western Mediterranean	74
Total	**3,771**
*An additional estimated **32** migrants died en-route to the Canary Islands*	

Figure 4 – Source: IOM News, Retrieved March 30, 2023, from https://www.iom.int/news/iom-counts-3771-migrant-fatalities-mediterranean-2015

3.4 The European Agenda on Migration

Drawing from the 10-Point Action Plan, on May 13 2015 the European Commission launched the European Agenda on Migration, a comprehensive bluebrint aimed at confronting immediate and long-standing difficulties of handling migration flows. As previously mentioned, the EU reaction to the crisis was triggered by a sense of urgency vis-à-vis the growing tragedies in the Mediterranean Sea. In the words of the First Vice-President of the European Commission Frans Timmermans:

> The *tragic loss of life* in the Mediterranean has shocked all Europeans […] That is why the Commission today proposes an agenda which reflects our common values and provides an answer to our citizens' worries about *unacceptable human suffering* on the one hand and inadequate application of our agreed common asylum rules on the other hand (European Commission 2015e)(emphasis added).

Similarly, the Commissioner Dimitris Avramopoulos reiterated that "Europe cannot stand by whilst lives are being lost. The European Agenda on Migration concretely responds to *the immediate need to save lives* and assist frontline countries with bold actions" (European Commission 2015e)(emphasis added). Overall, special emphasis was laid on the humanitarian concerns, a sort of moral imperative the EU and its Member States should live up to based on their common values.

Nonetheless, the steps foreseen by the European Agenda on Migration appear to be driven by rather different considerations. Before explaining why by delving into selected provisions of the Agenda aimed at addressing the refugee crisis, of which a critical analysis will be provided in the following sections, let us briefly introduce the content and structure of the European Agenda on Migration.

The Agenda envisaged a set of immediate actions to address the "human tragedy in the whole of the Mediterranean" (European Commission 2015b, 3). Such actions entailed saving lives at sea, disrupting criminal smuggling networks and combating irregular migration through the triplication of the budget for EU External Border Agency (Frontex) joint operations Triton and Poseidon, a wider coordination network led by Frontex and Europol as well as the setting up of Common Security and Defence Policy (CSDP) operations; a relocation proposal of asylum seekers already on EU soil based on a temporary distribution scheme aimed at alleviating pressure on asylum systems of frontline Member States and a resettlement proposal meant for displaced individuals in need of international protection outside EU soil.

Another domain of intervention regards humanitarian, stabilization and development assistance, including to Syria, and further Regional Development and Protection Programs in the MENA region. At the EU level, the Commission was to provide a 60 million euros pop-up to frontline Member States and announced the so-called 'Hotspot approach' to assist them; EASO, Frontex and Europol were to work together on the ground to identify, register and fingerprint those entering the EU, coordinating returns of irregular migrants and investigating smuggling and trafficking networks (European Commission 2015b).

With regard to medium and long-term actions, the Agenda relied on four main pillars: reducing the incentives for irregular migration through cooperation with third countries of origin and transit as well as effective returns; enhancing border security and saving lives, including through reinforced Frontex's operations and role in supporting to key third country partners to improve border management; establishing a comprehensive asylum policy to guarantee a coherent application of the CEAS' provisions and effective burden-sharing in processing applications across the Union through the development of

guidelines and monitoring mechanisms; and formulating a new policy for legal migration, mainly aimed at attracting needed labor force (European Commission 2015b).

The Agenda was articulated in two complementary implementation packages adopted in May and September 2015 respectively. The First Implementation Package, short-term in nature, regards the immediate emergency measures to cope with the refugee crisis while the Second Implementation Package aimed at laying the foundation for an improved European asylum and migration policy, with a view to better handling migration flows in the medium and long terms. In the table below (figure 5), the critical policy measures adopted by the European Union under each implementation package are outlined.

European Agenda on Migration, Implementation Packages

27 May 2015	Adoption of the First Implementation Package	Triple the capacities and assets of the EU External Border Agency (Frontex) joint border control and surveillance operations *Triton* (in Italy) and *Poseidon* (in Greece) in 2015 and 2016
		Top-up of 60 million euros in EU emergency funding for frontline Member States
		30 million euros for EU Regional Development and Protection Programmes (RDPPs) starting from North Africa and the Horn of Africa in 2015/2016
		Temporary Emergency Relocation Scheme to relocate 40,000 people from Italy and Greece
		Recommendation to resettle 20,000 displaced persons from the MENA and the Horn of Africa
		Hotspot approach in Italy and Greece with deployment of Migration Management Support Teams to support them in identifying, registering and fingerprinting migrants

		EU Action Plan against migrant smuggling
9 September 2015	Adoption of the Second Implementation Package	Relocation Scheme to relocate 120,000 people Member States directly affected, notably Italy (15,600), Greece (50,400) and Hungary (54,000).
		Proposal for amending the Dublin Regulation 604/2013 through a Permanent Crisis Relocation Mechanism under the Dublin system
		A European list of safe countries of origin
		EU Action plan on return + Common Return Handbook
		€1.8 billion from EU budget for an 'Emergency Trust Fund for stability and addressing root causes of irregular migration in Africa'
		€500 million from EU budget for Trust Fund for Syria

Figure 5 – Source: European Commission Press Releases, Retrieved March 30, 2023, from https//ec.europa.eu/commission/presscorner/home/en

3.5 A critical analysis of the European Agenda on Migration

The overview of the policy measures put forward by the European Commission presented above is instrumental for identifying the main domain of intervention the EU decided to act upon. Overall, it can be drawn that the steps foreseen by the Agenda were aimed at pursuing multiple goals, thereby involving different areas of action, particularly, emergency and development funding, cooperation and burden-sharing among-Member States at the CEAS level and, most importantly, border management and security.

The sea operations, the hotspot approach and the prevention of illegal entry through cooperation with third countries altogether represent the backbone of strengthening the EU external border. Overall, although supposedly motivated by humanitarian concerns,

i.e. preventing further loss of life at sea, the Agenda provides us a rather different picture of EU priorities, with border controls being prioritized over protection measures intended to secure the human rights of asylum seekers.

The following sections will show that, except for the relocation and resettlement proposals, which nevertheless faced the resistance of Member States, EU's policy responses contributed to strengthening a Fortress Europe approach, based on a complementary rhetoric of humanitarianism and securitization which contributed to othering processes of asylum seekers.

3.5.1 EU sea operations: the making of the EU humanitarian border

In the European Agenda on Migration, sea operations were presented as an essential part of a comprehensive approach having a dual purpose: saving lives at sea and targeting criminal smuggling networks (European Commission 2015b). To this aim, three key operations were to be implemented: the Frontex joint border policy missions Triton and Poseidon, and a Common Security and Defense Policy counter-smuggling mission, the EU Naval Force Operation Sophia or EUNAVFOR.

The new operational plan for Triton and Poseidon foresaw the triplication of their budget and resources, with a top-up of 26.25 million in emergency funding for Frontex, leading to a total budget for Triton and Poseidon Operations, respectively, of 38 million and 18 million euros (Frontex 2015). Operation Triton provided support to the Italian government in border control and surveillance in the Central Mediterranean as well as search and rescue (SAR) in the Italian and Maltese zones, with an extended operational area to 138 nautical miles south of Sicily. Whereas Operation Poseidon was aimed at enhancing Greek authorities' capacities in border surveillance, SAR operations and registration and identification abilities in the Aegean Sea, as well as assisting in return procedures (European Commission 2016c).

On the other hand, Operation Sophia military mission was mandated with identifying, capturing and disposing "vessels and assets used or suspected of being used by smugglers or traffickers" (Council of the EU 2015a, 2). Through a wider coordination scheme in cooperation with Frontex and Europol, UNNAVFOR's activities were intended to

dismantle criminal networks of traffickers and smugglers in the Southern Central Mediterranean.

Overall, it can be inferred that the approach of EU sea operations envisioned by the European Agenda on Migration suggests a much more pronounced focus on securing EU external borders, rather than saving lives, in spite of a rhetoric biased towards humanitarian concerns (see section 3.3).

This was made evident not only by the repeated references to the situation in the Mediterranean as a crisis to be addressed using security interventions, i.e. the Common Security and Defense Policy (CSDP) operations, and the actual immediate launch of Operation Sophia in June 22 upon Council decision (Council of the EU 2015a). But also by the Operations Triton and Poseidon themselves; although involved in SAR operations, they featured as border control and surveillance missions aimed at combating irregular migration and trafficking and smuggling networks.

As a matter of fact, one year after Frontex's budget was tripled, the number rescues performed by the Agency had decreased in 2016. Such trend was confirmed by data from the Rome Maritime Rescue Coordination Centre (MRCC) with regard to Operation Triton's engagement with SAR operations (Dickson 2020, see figure 6).

Most interestingly, the increased maritime surveillance was legitimized by the EU leaders' humanitarian rhetoric of saving lives at sea. In other words, by portraying asylum seekers and migrants as victims of traffickers and smugglers, the EU's documents emphasized sea operations as indispensable to reach its dual objective of destroying criminal networks and rescuing asylum seekers(Moreno-Lax 2018).

In real facts, sea operations proved to be deeply troubling though. Traffickers and smugglers' vessels are also those used by asylum seekers and, most importantly, they often represent the only one alternative to reach Europe's shores (ibid). This is particularly true for Syrian asylum seekers, who left their country in the amidst of an increasingly deteriorating situation whereby poverty and unemployment had been on the rise before the war began.

Rescues coordinated by Rome MRCC

Agencies performing rescues	2015	2016
Frontex	10%	7.6%
Italian Coast Guard	27	20.1
Italian Navy	19	20.2
Italian Army	–	–
Guardia di Finanza	4	0.9
Carabinieri	–	0.1
Eunavfor Med	–	12.8
NGOs	13	26.2
Commercial Vessels	11	7.8
Foreign Military Ships	16	4.1
Other	–	–
Total number of persons rescued coordinated by MRCC	*152,343*	*178,415*

Figure 6 – Source: Rome MRCC, Retrieved April 1, 2023, from https://journals.sagepub.com/doi/10.1177/2399654420980737#bibr30-2399654420980737

In this regard, it should be recall that, under international refugee law, asylum claims can only be filed once the applicant is on EU's soil; it follows that the destruction of a vessel undermines the ability of a protection seeker to enjoy his or her right to be granted protection.

It is likewise crucial to note that migrants crossing the Mediterranean are at the same time depicted as a danger to border security because of their irregular status; until an asylum claim has not been processed, applicants are stuck in a limbo where their irregularity may indicate an 'undeserving' economic migrant to be returned or a 'deserving' asylum seekers to which a regular refugee status may be granted. In this context, it is evident that the illegality of Syrian asylum seekers was 'spectacularized', reflecting the concept of 'border spectacle' and its othering function.

Moreover, the troublesome blurring of migrant trafficking and migrant smuggling clearly suggests a criminalization of immigration influxes (Ruhrmann & FitzGerald

2016)[16]. As a result, EU's sea operations reflect the otherization of the migrant through both a humanitarian logic, i.e. he or she is categorized as a victim in need of protection, on one hand, and a security logic whereby he or she is presented as an irregular migrant threatening border security, on the other. In other words, the politics of control built upon a securitarian rationality, and a politics of care based on a humanitarian rationality are combined (see section 2.5).

The merging of search and rescue with border control resulted in the consolidation of exclusionary systems through the enactment of borders legitimizing the obstruction of asylum seekers and migrants' rights under the guise of preventing lives at sea. My analysis therefore corroborates the stance of most recent scholarships in the debate around humanitarianism which holds that EU's recent practices in the Mediterranean has suggested the emergence of a the humanitarian border, which reflects a new humanitarianism whereby the portrayal of asylum seekers and migrants as both victims and threats legitimizes the denial of the rights, including the denial of access to protection (see section 2.5).

The reinforcement of border security implemented by EU's sea operations during the 2015-2016 refugee crisis and the reported illegal pushbacks implemented by Frontex played an active role in preventing forcibly displaced individuals from travelling safe routes, thereby consolidating a 'Fortress Europe' approach (Akkerman 2018). Indeed, the interception of vessels prevented migrants to reach EU's soil, thus Italy and Greece did not have to register and fingerprint migrants, deal with asylum claims and possible relocations or returns (Benedicto 2019).

3.5.2 The hotspot approach: the new wall of Fortress Europe

The ever-hardening walls of 'Fortress Europe' throughout the crisis is further exemplified by the 'hotspot approach', which pertains to the immediate actions envisaged by the European Agenda on Migration. The European Council meeting's conclusion of 25 and 26 June 2015 made it crystal clear; the hotspot approach fitted within a broader effort to

[16] See supra note 15 of the European Agenda on Migration suggesting that the phenomenon of migrant trafficking, i.e. "victims coerced into severe exploitation", and smuggling, i.e. those "willing to engage in the irregular migration by paying for the services of a smuggler in order to cross an international border" may not be easily discernible (European Commission 2015b, 8).

"contain the growing flows of illegal migration", including through the "reinforcement of the management of the Union's external borders" (European Council 2015a).

The hotspots are first reception facilities established in a part of a frontline Member State's external border characterized by "specific and disproportionate migratory pressure, consisting of mixed migratory flows, which are largely linked to the smuggling of migrants" (European Commission 2015c, 3); in other words, at disembarkation points.

The hotspot approach was presented as an operational strategy foreseeing the deployment of Migration Management Support Teams in the Italian and Greek territories to assist national authorities on the ground. The Teams comprised experts from EU Agencies with different functions: EASO helped in the processing of asylum claims and the implementation of the relocation scheme, Europol and Eurojust were tasked with carrying out investigations on trafficking and smuggling networks, while Frontex assisted in the identification and collection of information of migrants and coordinated the return of irregular migrants (ibid).

In addition, the hotspot approach was to complement the emergency Temporary Relocation Schemes activated through Council's Decisions of 14 and 22 September 2015, which will be analyzed in the following section. Suffice is to say that the relocation could be enforced only after applicants were properly registered and fingerprinted by Greek and Italy as country of first arrival for migrants crossing the Central Mediterranean Route and the Eastern Mediterranean Route, respectively.

Apart from the above-mentioned procedural indications, no further clarifications were provided by the European Commission as to how hotspots should be set up and handled. Nevertheless, clear reference was made to the treatment of asylum seekers upon arrival under a set of directives which explicitly permit derogations on standard norms on detention of asylum seekers and irregular migrants in the European Agenda on Migration.[17]

It is therefore important to note that hotspots fulfilled a dual function in that they allowed for a quicker identification and separation of those eligible for international

[17] Directive 2013/32/EU on border procedures (Art. 43) and accelerated procedure (Art. 31(8)) as well as Directive 2008/115 on emergency situations (Art. 18) (The European Parliament and the Council of the EU 2008a, 2013b).

protection and those to be returned, on one hand, and for the confinement of asylum seekers who could otherwise engage in secondary movements, on the other (Campesi 2020). Both functions served the overarching purpose of migration control and ultimately resulted in restricted access to asylum procedures.

In the absence of a clear legal and organizational framework, the execution of the hotspot approach was indeed left in the hands of the Member States, with breaches of fundamental human rights being reportedly perpetrated by authorities on the ground ranging from arbitrary detention, coercive measures for biometric identification, lack of access to effective asylum procedures and information provided, to deportations based on nationality (Amnesty International 2016; EU Agency for Fundamental Rights 2019; European Council on Refugees and Exiles 2017).

Syrians, who were recognized as applicants eligible for relocation, were nonetheless victims of a hotspot system with inadequate reception capacities and resources, resulting, *inter alia*, in delayed and insufficient execution of relocations as well as prolonged detentions (Sagarra 2021).[18]

In light of the above, it is evident that the hotspot approach not only represented an emergency response measure, but also as a wider strategy to consolidate migration control (Pallister-Wilkins 2016, 2020). More precisely, the hotspot approach features as a strategy aimed at preventing any migrants from entering the EU territory, *de facto* erecting a new wall of Fortress Europe right at frontline Member States' external border.

Furthermore, hotspots brought a distinctive reconfiguration of space whereby detentions and deportations are legitimized (Campesi 2020). The process of othering of migrants is thus performed through space; like camps, hotspots are located in an isolated area delimited by fences or walls, with exclusionary functions (see section 2.5).

[18] In accordance with relocation decisions of 14 and 22 September, only applicants whose nationality had a first instance recognition rate of 75% or above were eligible for relocation. (Council of the EU 2015c, 2015b).

3.5.3 The resettlement and relocation schemes: a solidarity failure

Departing from the securitarian logic that characterized the EU's policy response as a whole, proposals for resettlement and relocation schemes to be implemented over the next two years were also put forward by the European Commission.

The EU-wide resettlement scheme recommended by the Commission consisted in "the transfer of individual displaced persons in clear need of international protection, on request of the United Nations High Commissioner for Refugees, from a third country to a Member State, in agreement with the latter […]" (European Commission 2015a).

With North Africa, the Middle East and the Horn of Africa identified as priority regions for resettlement efforts, including Syria, 20,000 were the resettlement places pledged by the EU. Asylum seekers were not allowed to choose the country they wished to be relocated and their distribution was based on the following criteria: GDP and size of the population, number of previously resettled refugees and registered asylum claims, as well as the unemployment rate of the hosting country.

The scheme, which was not binding but rather relied on the voluntary participation of Member States, achieved poor results; only 4,555 individuals were resettled as of March 15 2016, before the EU-Turkey statement started to be implemented (European Commission 2016b).

On the other hand, based on the same distribution key and again leaving no choice to relocated asylum seekers as to the preferred hosting country, the relocation scheme was built upon two proposals, adopted into law, respectively, by Council decisions of September 14 and 22 2015.

The first proposal, voluntary in nature, foresaw the relocation of a total of 40,000 asylum seekers from Italy and Greece and was presented by the European Commission as early as May 2015 under the First Implementation Package of the European Agenda on Migration.

Presented in September 2015 under the Second Implementation Package in response to the growing crisis, particularly in the face of intensification of crossings via the Eastern Mediterranean Route throughout the Western Balkans Route, the second proposal comprised a mandatory relocation quota for Member States and consisted in the

relocation of 120,000 asylum seekers from Italy, Greece and Hungary.[19] The latter, however, rejected the scheme, resulting in 54,000 places unassigned.

It should be noted that the unfulfilled relocation commitments paved the way for further externalization of EU's response; indeed, the unallocated places were eventually transferred to the implementation of the EU-Turkey Agreement (European Commission 2016b).

The quota, approved by Qualified Majority Voting, soon saw the emergence of a commitment-compliance gap.[20] Broadly speaking, non-compliance with mandatory relocation quotas was widespread among Member States, with only Ireland and Malta meeting their targets and a few others, such as Sweden and Latvia, coming close (European Commission 2017a).[21]

However, it is important to underscore that whilst most countries backed the quota system yet struggled due to the shortcomings of the emergency relocation mechanism and the EU asylum system at large,[22] a specific group of countries, known as the Visegrád

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[19] The relocation was executed within the framework of an emergency relocation scheme triggered in accordance with Article 78(3) of the TFEU in order to redistribute asylum seekers from the Member States disproportionally affected by influxes to other Member States in emergency situations (European Union 2007). It established the temporary derogation of specific provisions of the Dublin Regulation, particularly, the responsibility of the State of first entry for processing asylum claims Art. (Art.31(1)) as well as the time limits established by Art. 21, 22 and 29 (The European Parliament and the Council of the EU 2013a). In this sense, the country of relocation became the responsible state for processing asylum applications. However, under the hotspot approach previously illustrated, countries of first arrival remain responsible for the biometric identification of all migrants aimed at determining asylum seekers eligible for relocation, i.e. those whose nationality had a first instance recognition rate of 75 percent or above (Council of the EU 2015c, 2015b). Therefore, countries of first arrival not only continued to carry the burden of identification procedures, but were also left alone in processing returns of all non-eligible migrants, i.e. those whose nationality had a first instance recognition rate of less than 75 percent.

[20] By means of the Qualified Majority Voting (QMV) decisions are adopted if 55 percent of the participating Council Member States, constituting at least 65% of the EU population, vote in favor (see European Council n.d.). In the present decision, Hungary, Slovakia, the Czech Republic and Romania voted against whereas Finland abstained,

[21] As of January 2016, only 322 individuals were relocated: 240 people from Italy and 80 from Greece (UNHCR 2016a). Furthermore, according to the 15th report on the progress of relocation as of September 2017, i.e. the timeframe for the two year relocation, only 19,244 displaced individuals were relocated out of the 160,000 places the EU committed to, with further 2,765 applications being refused (European Commission 2017b).

[22] Shortcomings included the lack of administrative structures, resources and coordination as well as the inherent flaws of the hotspot approach mentioned earlier, whereby countries of first arrivals carried the burden of processing identification and fingerprinting of all migrants with relatively low influence of EU Agencies which provided mere operational support.

group or V4, went beyond non-compliance by actively refusing to participate in the mandatory quota scheme in breach of EU law (Shiel 2021).[23]

The "implementation deficit" of Member States indeed reflects a deeper fragmentation their positioning in the crisis (Niemann & Zaun 2018). In V4 countries, fierce opposition to mandatory refugee quota was part of a broader contestation on the reception of refugees at large whereby anti-immigrant xenophobic rhetoric and the othering of asylum seekers therein was paramount.

While the 2015 refugee crisis saw a wide-spread rise of right- and left-wing populism due to its combinations with multiple and overlapping crises—the eurozone crisis, the Brexit, the emergence of the ISIS threat and deterioration of EU-Russia relations (see Heisbourg 2015)—what differentiated V4 from the rest of EU Member States was that populist politicians held positions of political authority (Shiel 2021).

Hungarian Prime Minister Viktor Orban, leader of the right-wing national conservative party Fidesz, had already made evident is positioning as early as July 2015, when he ordered the erection of a a razor-wire fence along its border with Serbia in response to the intensification of crossings along the Eastern Mediterranean Route, triggering a chain reaction in nearby countries along the increasingly used Western Balkans Route.[24]

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[23] Consisting of Hungary, Czech Republic, Slovakia and Poland, V4 is a political and cultural alliance born in 1991 with a view to promoting regional cooperation and integration in the aftermath of the dissolution of the Soviet Bloc and the fall of communism. In April 2020, the Court of Justice of the European Union (CJEU) ruled that Hungary, Poland and Czech Republic had breached their obligations under EU law by refusing to comply with the temporary relocation scheme adopted by the Council (Court of Justice of the European Union 2020).

[24] Following Hungary's example, in August 2015, Bulgaria began to build a new section of fence along its border with Turkey to curb illegal crossings, a project that had been started in 2013. In the same month, Austria bolster border control blocking the passage to Germany, while Macedonia closed its border with Greece, declaring state of emergency. The closure of Greek-Macedonia border lasted few days as crossings along the Western Balkans Route became unmanageable, triggering a domino effect in other countries: in November 2015 Slovenia closed its borders to asylum seekers except for Syrians, Afghans and Iraqis, with Croatia, Serbia and Macedonia following the same example (Santer & Wriedt 2017). It is important to note that in the face of border closure, other Member States, including Germany, let their borders open and facilitated terrestrial border crossing, while at the same time enforcing aerial surveillance, de facto limiting safe, legal routes for asylum seekers (Georgi 2016). Moreover, the completion of the Hungarian fence with its border officially sealed in September 2015, asylum seekers were coerced to deviate towards west, triggering a "politically manufactured humanitarian crisis" at the Serbo-Croatian border, to which Serbia reacted by transferring asylum seekers by bus at the Croatian border (Santer and Wriedt 2017, 146).

The fence as well as the rejection of mandatory quotas were legitimized by discourses portraying the refugee crisis as a clash between Muslim immigrants and Hungarian Christians, whereby the former is structured as a threat, as the invader (Szalai and Gőbl 2015; Vidra 2017; Bocskor 2018).

In a similar vein, Slovakia's stance had strong anti-Islam connotations; the country, led by Prime Minister Robert Fico, leader of left-wing populist party Direction – Slovak Social Democracy, rejected its mandatory quota and only allowed for the relocation of Christians refugees, leveraging fears in the aftermath of the Paris terrorist attacks (Lerner 2016; BBC 2016).

Czech Republic and Poland moved along similar lines, rejecting the relocation scheme, reintroducing temporary border controls and increasingly tightening asylum regulations in the name of preventing a Muslim invasion (Duszczyk et al. 2020).[25]

Although V4 alone cannot be deemed responsible for the failure of the emergency relocation mechanism, it is crucial to note that by leveraging xenophobic sentiments and voicing concerns about security and cultural implications of accepting Muslim refugees—especially males, as they were represented as pontential terrorists, probably due to gender stereotypes which associate men with violent and aggressive behavior—V4 politicians increasingly promoted anti-immigration policies severely undermining the burden-sharing the relocation scheme was aimed at (Shiel 2021).

3.5.4 Consolidating the Fortress: the external dimension of the EU's policy response

Cooperation with third countries was identified as a key component of EU's response to the crisis in the European Agenda on Migration since its launch in May 2015, having its roots in the 10-Point Action Plan (see section 3.3). The Agenda explicitly mentioned that partnerships with third countries were intended to "prevent hazardous journeys" (European Commission 2015b, 5) thereby suggesting once again that EU's action served the overarching purpose of curbing irregular migration in the EU following a Fortress Europe approach.

[25] Poland was led by Prime Minister Beata Szydlo leader of the right-wing populist party the Law and Justice Party (PiS), while Czech Republic was led by Prime Minister Bohuslav Sobotka of the Czech Social Democratic Party (ČSSD).

To this aim, the Agenda envisaged enhanced funding provisions in the area of humanitarian, stabilization and development assistance with a view to tackling the root causes of irregular and forced displacement in third countries, fighting criminal networks of smugglers and improving returns (ibid).

Key actions entailed, *inter alia*, the allocation of 30 million euros in the period 2015-2016 for the establishment and reinforcement of Regional Development and Protection Program intended to assist third countries hosting displaced refugees in the MENA region and the Horn of Africa, as well as the establishment of a multi-purpose centre in Niger to facilitate information exchanges among EU countries, IOM and UNHCR so at to improve protection and resettlement opportunities for those in need in the African region.

Most importantly, the Commission envisaged specific measures to address the Syrian crisis, including the allocation of 3,6 billion euros, which comprised both assistance inside the country and to neighboring countries hosting Syrian asylum seekers, namely, Turkey, Lebanon, Jordan, and Iraq (ibid).

A European list of safe countries of origin, the aim of which was allowing for accelerated asylum and border procedures for applicants from third countries recognized as safe, was also part of the overall efforts of the EU to externalize its response; nonetheless it was never approved amidst heated debates among Member States on which countries were truly able to provide adequate protection, especially those with poor human rights records (AIDA - Asylum Information Database 2015).

The rapid advancement of the external dimension of the European Agenda on Migration in the late 2015 was especially triggered by the events following the summer 2015 previously mentioned, namely, the growing number of crossings on the Eastern Mediterranean Route and consequently the Western Balkans Route, the mounting disagreements among Member States with regard to relocation and their positioning in the crisis at large.

As a result, EU increasingly looked towards neighboring third countries. During an informal meeting of EU heads of state convened in September 2015, strengthening cooperation and dialogue with Turkey was made a priority, *de facto* setting the basis for the future of the EU-Turkey statement in March of the following year. Although the number of crossings along the Eastern Mediterranean Route had surpassed those along

the Central Mediterranean Route, Africa remained a strong concern for the EU as well; the reason behind it is to be found on the particularly high death toll along that route, accounting ¾ of all deaths at sea in 2015 (IOM 2015b) as well as the fact that a third of all irregular arrivals to the European Union came from Africa (Dimitriadi 2015).

Therefore, a top-up in funding for the African Union within the framework of the EU Emergency Trust Fund addressing the root causes of irregular migration in Africa was also set as a priority at the informal meeting of EU heads of states (European Council 2015b). Cooperation with Turkey and African leaders were therefore two important elements of the external dimension of the EU's policy response vis-à-vis the Mediterranean crisis as a whole in 2015, as they allowed the EU to handle migration challenges on both Eastern and Central Mediterranean routes.

The EU Emergency Trust Fund for Africa amounting to 1,8 billion euros was eventually launched at the Valletta Summit in November 2015, a meeting whereby EU and African leaders outlined a Plan of Action on migration. The following priority domains were outlined throughout the Plan: tackling the root causes of irregular migration and forced displacement, whereby EU financial assistance was intended to enhance measures in the areas of, *inter alia*, peace building and conflict prevention, state building, the fight against terrorism and the protection of displaced communities and vulnerable groups; setting up legal pathways for migration, yet it is important to note that regular channels were only made available for enterprising migrants; strengthening the protection of refugees and other displaced persons; fighting human trafficking; and collaborating on the return and readmission of migrants (EU and African leaders 2015).

The actions envisaged under the latter priority domains are further expression of the externalization of borders and the Fortress approach therein. The focus is indeed place on enhancing capacity-building of African partners, including trainings on and the provision of equipment for combating trafficking and smuggling, support in the drafting and implementation of legislative and institutional frameworks on border controls, anti-trafficking and anti-smuggling, the setting out standard procedures for accessing protection and rehabilitation services, as well as seminars on the best practices in return and admission procedures; the need to reinforced return and readmission procedures for irregular migrants was also emphasized (ibid).

It can therefore be drawn that promoting legal pathways for the safe passage of asylum seekers—which was the main question to be addressed amidst growing numbers of deaths at sea and asylum seekers seeking refuge—was simply not a priority for the EU.

As repeatedly highlighted, the growing number of arrivals in Greece along Eastern Mediterranean Route became a core question to be addressed in the Summer 2015. The mounting sense of urgency became evident as most asylum seekers continued their path towards Western Europe via the Western Balkans Route; the situation became unsustainable for countries to manage. It has indeed been mentioned that a series of reaction and border closure followed one another throughout the summer, with the construction of a razor-wire fence being ordered by Hungary at its border with Serbia, followed by border closure and/or tightening of border controls in several countries, including Bulgaria, Croatia Macedonia, Slovenia, Serbia and most certainly the V4.

In this context, few weeks after the afore-mentioned informal meeting of EU heads of state convened in September 2015, a Western Balkans Route conference took place, gathering EU Member States, Western Balkans and the countries hosting most Syrian refugees: Turkey, Lebanon and Jordan. A 17-point Action Plan was agreed upon whereby part of the actions were aimed at supporting countries along the Western Balkans Route, including through the establishment of the Western Balkans Contact Group to facilitate coordination and monitoring of the Plan, as well as making available the EU Civil Protection Mechanism to provide temporary support to asylum seekers, such as shelter, food, health (European Commission 2015i).

Nevertheless, curbing migration coming from Greece strongly emerged as the key priority. Most areas of intervention of the Action plan fell indeed within the broader scope of bolstering border management and security, whereby Turkey was identified as key partner for managing flows from Greece. Due to its geographical position, Turkey was indeed a country of transit for asylum seekers fleeing the Middle East, and especially Syrians, being Turkey right at the Syria's northern border.

The EU-Turkey Joint Action Plan was finalized in November 2015, which revolved around two main elements: supporting Syrian refugees under the temporary protection as well as their host communities in Turkey through a 3 billion euros contribution, which comprised the setting up of a EU Facility for Refugees in Turkey; and reinforcing

cooperation aimed at preventing irregular migration in the European Union (European Commission 2015h).

Under the first point, Turkey was to ensure asylum seekers are registered and have access to public service as well as vulnerable groups are adequately dealt with; while under the second point, Turkey committed to, *inter alia*, reinforcing the interception capacity of the Turkish Coast Guard, enhancing cooperation with Bulgarian and Greek authorities, implementing readmissions of intercepted irregular migrants and accelerating visa liberalization for Turkish citizens. On the other hand, EU's action was primarily focused on the capacity-building in operational areas including trafficking and smuggling as well as joint returns operation.

After three months from the launch of the EU-Turkey Action Plan, inflows across the Eastern Mediterranean Route showed little variation (European Commission 2016a). It is within this context that the Fortress Europe approach and the externalization of EU's policy response reached its height, with EU heads of state and government intensifying the dialogue with Turkey, this time taking action "to end irregular migration from Turkey to the EU", under the false pretense of "offering migrants an alternative to putting their lives at risk" (European Council 2016, 1).

The outcome was the EU-Turkey statement of March 18, 2016, where the only alternative asylum seekers are entitled depends on Turkey's 'performance'; indeed, the Agreement stipulates that "for every Syrian being returned to Turkey from Greek Islands, another Syrian will be resettled from Turkey" (ibid, 1). The agreement also stipulates a new return arrangement of all irregular migrants crossing from Turkey into Greece, depicted as a necessary measure "to end human suffering and restore public order" (ibid, 1).

The problem with the notion of irregular migrant is that, under the Agreement, all those deciding not to apply to for asylum in Greece are considered irregular migrants; in this context, hotspot facilities increasingly served the purpose of readmittances to Turkey, with increased risks of detention and deportations even for Syrian refugees (Ruhrmann & FitzGerald 2016). Overall, the increased reliance on third countries emerged as a by-product of EU's unwillingness to provide safe pathways to access legal protection to asylum seekers.

3.6 Conclusion

This objective of this chapter has been to demonstrate the EU's 'Fortress Europe' approach in response to the influx of Syrian asylum seekers who were fleeing the Syrian civil conflict in the aftermath of the Arab Spring. This was achieved by shedding light on the EU's persistent inaction in the face of increasing deaths in the Mediterranean sea and, notably, the subsequent measures implement under the European Agenda on Migration.

Despite being ostensibly motivated by the humanitarian concerns, the policies put in place by the EU revealed a clear prioritization of bolstering its external borders rather than implementing comprehensive reception and protection measures for Syrian asylum seekers. The expansion of EU sea operations, the adoption of the 'hotspot approach', and the growing reliance on third countries with questionable human rights records collectively indicate the implementation of a deliberate closed-door policy towards Syrian asylum seekers.

One significant finding arising from our analysis is the role played by the othering processes stemming from EU's portrayal of Syrian asylum seekers both as victims of criminal smuggling and trafficking networks, and as threats to EU's border security. This rhetoric was used to justify the militarization of borders, contributing to the criminalization and securitization of immigration influxes, effectively preventing Syrian asylum seekers from accessing safe and legal pathways to protection (see sub-section 3.5.1).

Furthermore, it has been emphasized that the depiction of all arrivals, including Syrians, as if they were a homogeneous group of irregular migrants threatening EU borders was used to legitimize a disproportionate emphasis on policies aimed at preventing unauthorized entry, perpetuating exclusionary practices as well as the marginalization and otherization of asylum seekers. The establishment of the 'hotspot approach' is a glaring example, where Syrian asylum seekers were confined pending relocation, de facto resulting in severe human rights violations such as prolonged detention and constructing yet another wall of 'Fortress Europe.'

Additionally, othering processes that emerged are not solely a consequence of EU policies but also influenced policy decisions, particularly in relation to the perceived

identity of Syrian asylum seekers. This is evident in the failure of solidarity failure between member States to implement relocation schemes (see sub-section 3.5.3). The case of V4 countries is illustrative, as they exploited xenophobic sentiments rooted in perceived cultural and religious differences, particularly through Islamophobic rhetoric linking to terrorism. Such fierce opposition was actively fueled by national policies, such as erecting border fences and implementing stringent asylum and border regulations, all aimed at obstructing Syrian access into the EU.

Another prominent example highlighting the impact of othering considerations on EU action is the fact that EU Member States could only agree on securitization and externalization measures with explicit deterrence purposes (see sub-section 3.5.4). While cooperation with third countries to curb influxes was already an integral part of the European Agenda on Migration, the solidarity deficit among Member States regarding relocation further prompted the externalization of the EU's response, ultimately culminating in the EU-Turkey statement. This reflects a stark lack of commitment to provide safe pathways for asylum seekers to access legal protection.

Overall, the analysis strongly criticizes the consolidation of the 'Fortress Europe' approach evident in the EU's policy decisions and responses, which resulted in severely limited access to asylum procedures and the outright denial of rights for asylum seekers.

4 The EU's policy response to the 2022 Ukrainian 'refugee' crisis

4.1 Introduction

The following chapter aims to analyze the policy responses devised by the European Union in response to the influx of displaced Ukrainians seeking refuge in the EU as a result of the 2022 Russian invasion of Ukraine, covering the period from February 2022 to December 2022. I will focus on EU's policy measures and their impact on asylum seekers, seeking as well to illustrate why EU's policy response as a whole was unprecedented in scale and scope. Central to our analysis will be the notion of belonging, which played a crucial role in legitimizing the de facto open-door policy towards Ukrainian nationals and the solidarity shown by EU underpinning it.

4.2 Framing the crisis

On February 24 2022 "war has returned to Europe", with Russia's President Vladimir Putin ordering the full-scale invasion of Ukraine (European Commission 2022e). The aggression has triggered a mass displacement not seen in the EU for decades, both in terms of scale and speed, vastly outnumbering the peak the EU had experienced in 2015.

By March 1 2022, over 650,000 displaced people had already crossed the Ukrainian border into the EU (İneli-Ciğer 2022b). EU crisis Commissioner Janez Lenarčič estimated that the figure could eventually rise up to 7 million (France 24 2022). However, as the conflict has continued to escalate, waves of displacement eventually proved to be higher, with roughly 7.9 million asylum seekers seeking refuge in the European Union by December 2022 (UNHCR 2022a); this figure has continued to grow until present days.[26]

[26] As of April 2023, more than one year after Russia launched its invasion of Ukraine, the number of refugees from Ukraine recorded across the EU amounts 8.1 million (UNHCR 2023). the number of Internally Displaced Persons (IDPs) has likewise continued to grow, reaching 7.7 million people (ibid).

Ukrainian asylum seekers entered Europe via Ukraine's Western neighboring countries: Poland, Hungary, Slovakia, Romania, Bulgaria, Czech Republic and Moldova (UNHCR 2022c). The number of crossings into the afore-mentioned countries has varied greatly throughout the war. Overall, Poland has featured as the country towards which most crossings from Ukraine have taken place and has likewise become the major hosting country for Ukrainian refugees, with nearly 1.5 million refugees registered under some protection schemes by end of 2022, 65 percent of whom were women and girls (ibid).

Czech Republic, featuring as the third country hosting more Ukrainian refugees after Germany and Poland, has also continued to host most part of displaced individuals crossing into its territory, with over 473,216 Ukrainian asylum seekers (Karasapan 2022).

Other States have instead mainly function as countries of transit, including Moldova; of the over 750,000 asylum seekers crossing into Moldova by the end of the year, it is estimated that only 120,000 remained in the country, while most of them crossed into Romania or continued their journey towards other States (UNHCR 2022c).

The gender composition of Ukrainian asylum seekers reaching Europe was fairly unbalanced during the selected timeframe for this thesis and has continued to be so still today. Over a quarter of the Ukrainian people has been displaced by the Moscow's aggression since February 24; of this, approximately 90 percent are women and children, accounting for roughly 5.1 million individuals (UNHCR 2023).

It should be noted that this trend is the result of a specific policy measure adopted by the Ukrainian government; as early as the war began, President of Ukraine Volodymyr Zelenskyy announced the imposition of the martial law in Ukraine for male citizens aged from 18 to 60 years old, *de facto* prohibiting this category to leave the country, if not under special circumstances (President of Ukraine 2022).

The 2022 Ukrainian refugee crisis has been triggered by one of the worst and largest humanitarian crises worldwide, provoked by the Kremlin's war against Ukraine. In this sense, these events have strong geopolitical connotations. Indeed, the Russian full-scale invasion of 2022 should be regarded as being part of a broader escalation of tensions between Russia, on one hand, and Ukraine and Europe, on the other, that had already begun with the Moscow's annexation of the Crimean peninsula in 2014 (Masters 2023). The latter marked the first time that a sovereign State in the European continent had been

forcibly annexed to another country since World War Two, displacing nearly 1.5 million people (UNHCR 2019), a violation of Ukraine's territorial integrity the European Union strongly opposed (Kruk 2019).

Russia's annexation reflects the country's ambition to maintain its influence on Ukraine which may be regarded as motivated by a complex set of factors, including historical ties and economic factors; yet it is safe to say that it is ultimately triggered by neo-colonial aspirations on a country like Ukraine which, since its independence from the Union of Soviet Socialist Republics (USSR), has sought to pursue closer ties with the West, particularly with the EU and NATO, while trying to balance its relations with Moscow (Masters 2023).[27]

Following the annexation of Crimea, the deadliest European conflict since the Balkans war of the 1990s started in the southeastern part of the country, the Donbass region, where separatists groups began to be provided military aid and support by the Russian Federation. The war went on until Kremlin launched its full-scale invasion of Ukraine last February, thereby marking a pivotal moment in the 8-year-long conflict as well as for EU-Russia relations and European security at large (ibid).

4.3 Europe's proactive stance against Russian invasion of Ukraine

As Russia invaded Ukraine on February 24 2022 claiming to 'denazify' the country and the first waves of asylum seekers started to knock on the doors of Europe, the reaction of the European Union as well as Member States came real fast. A number of government officials immediately announced they would welcome Ukrainians fleeing the invasion with open arms. Polish and Slovakian Prime Ministers Mateusz Morawiecki and Eduard Heger stated that even Ukrainians without valid travel documents would be allowed in their territories (Radio Canada International 2022; Schengen Visa Info News 2022). While the Irish Minister for Justice Helen McEntee declared the immediate lifting of visa requirements between Ukraine and Ireland (Government of Ireland 2022).

[27] The logic behind Russia's actions is pretty much in line with Kremlin's imperial tradition and concern about losing influence and control over former Russian territories (see Kushnir 2018).

It is important to note that with the 2017 EU-Ukraine visa-free travel agreement, Ukrainian nationals with a biometric passport had been allowed to travel to Schengen countries for up to 90 days without a visa, and by 2020 they were the third-greatest group of third-country nationals living in the EU after Morocco and Turkey (Zhou et al. 2022).

Going beyond the already favorable visa regime Ukrainians enjoy in the Schengen area, Ukraine's neighboring States promptly reacted by modifying laws regulating border controls and stay of Ukrainians under emergency measures in order to allow them to extend their stay and be granted some form of protection (see figure 7).

Emergency measures toward refugees by recipient countries

	Ukraine refugees, compared to the total population	Can Ukrainians enter?	Can other refugees enter?	Can Ukrainians extend stays?	Can other refugees extend stays?
Moldova	136 (per 1,000 residents) / 66 (2019 count of Ukrainian migrants, per 1,000 residents)	✓	✓	✓ with an asylum application	✓ with an asylum application
Poland	52 / 6	✓ visa-free up to 90 days	✓ up to 15 days with a temporary permit	✓ can apply for a one-year extendable residence permit, up to three years	No Ukrainian war-specific policies announced.
Slovakia	43 / 1	✓ visa-free up to 90 days	✓ need to report their stay to the police within three days	✓ can apply for "temporary refuge" and stay until Dec. 31, 2022	No Ukrainian war-specific policies announced.
Hungary	30 / 6	✓ visa-free up to 90 days	✓ up to 30 days with a temporary certificate	✓ can apply for EU temporary protection to stay up to three years	No Ukrainian war-specific policies announced.
Romania	26 / 3	✓ visa-free up to 90 days	✓ up to 90 days with a transit visa	✓ with an asylum application	✓ with an asylum application

Data as of March 18, 2022

Figure 7 – Source: Vox, Retrieved April 6, 2023, from https//www.vox.com/22983230/Europe-ukraine-refugees-charts-map

The most unprecedented reaction came from the European Commission, announcing at the European Parliament Plenary on the Russian aggression against Ukraine on March 1

2022, only five days after the war kicked off, that a proposal to activate the Temporary Protection Directive (TPD) for those fleeing the Ukrainian war will be put forward—and it was indeed presented the very next day.

While a proper examination of the TPD will be provided in the next section, it should be recalled that the TPD is a legislative tool especially designed to respond to large-scale arrivals of displaced persons fleeing situations of emergency, including conflict and violence, that had never been activated since its adoption into law in 2001, and which was now presented as something Ukrainians "deserve" in the face of the Moscow's aggression (European Commission 2022e, 1).

The President of the Commission Ursula Von der Leyen made it clear that such alleged deservingness was based on some idea of EU and Ukraine belonging to the same 'in-group' as they share the same values and world view. Citing The Kyiv independent, a Ukrainian online newspaper, she indeed highlighted that "It is not just about Ukraine. It is a clash of two worlds, two polar sets of values", adding that "this is a clash between the rule of law and the rule of the gun; between democracies and autocracies; between a rules-based order and a world of naked aggression" (ibid., 1)

EU reaction to the unfolding crisis thus stemmed from a sense of urgency closely related to the perceived insecurity vis-à-vis Russian invasion and it can therefore be drawn that the reception of Ukrainian asylum seekers was part of a broader effort to face Kremlin's attack on democracy and the rule of law. This also emerges from the kind of policies the EU has put forward not only in response to influx of asylum seekers fleeing Russian war but also to the Moscow's invasion at large, including military assistance to Ukraine, sanctions packages against Russia, efforts to prosecute Russian war crimes, measures to decrease EU dependence on Russian fossil fuels and the advancement of the EU enlargement agenda, among the most important areas of action (The European Council and the Council of the EU 2023a).

It is important to mention that in this context, Ukrainians were portrayed as brave defenders of freedom and democracy, with Von der Leyen concluding its speech with the following remark: "Nobody in this hemicycle can doubt that a people that stands up so bravely for our European values *belongs in our European family"* (European Commission 2022e, 1)(emphasis added).

Although there is no doubt that this statement is imbued with geopolitical significance, the emphasis on European values and European family suggests a deeper sense of belonging and similarity between Ukrainians and Europeans. At the same time, Ukrainian fleeing the war were portrayed as victims in need of "protection and solidarity", something the EU had to provide via the Temporary Protection Regime because of the exceptional character of this war (ibid., 1).

4.4 The Temporary Protection Directive: an historic first

As illustrated in sub-section 2.2.3, the Temporary Protection Directive was introduced in the aftermath of the Kosovo war, which spotlighted the inadequacy of the CEAS to face mass influxes of protection seekers, as it was based on the individual processing of asylum application for the refugee status determination.

To avoid lengthy procedures in the face of emergency situations, the TPD allows the Council to provide to any designated group of third-country nationals fleeing armed conflicts and endemic violence as well as systematic or generalized human rights violations a standardized framework of protection, while preventing a deadlock of the national systems of frontline Member States as well as of the European asylum system at large (see Appendix).

It should be likewise recalled that the TPD entails a voluntary-based mechanism for relocation of beneficiaries which could have potentially posed burden-sharing and internal solidarity issues among Member States. Yet, this was not the case for Ukraine.

Remarking that "Europe stands by those in need of protection. All those fleeing Putin's bombs are welcome in Europe", the President of the European Commission presented its proposal for the activation of the Temporary Protection Directive as early as March 2 2022 (European Commission 2022f, 1).

While the Council had never agreed upon its implementation despite calls by Italy and Malta vis-à-vis Mediterranean arrivals in 2011 (Nascimbene & Di Pascale 2011) and 2015 (İneli-Ciğer 2015a), this time, even those countries traditionally opposing asylum seekers and refugee reception, including the Visegrád Group (V4), agreed on it being the appropriate solution to respond to the mass arrivals in the face of the Russian war against

Ukraine (İneli-Ciğer 2022b). Adopted into law via Council Implementing Decision 2022/382 unanimously, the Temporary Protection Directive and the formulation of its provisions can be interpreted through identity lens, particularly the notion of belonging.

While Von der Leyen had advised Member States to designate as beneficiaries of the temporary protection status all those fleeing the war (European Commission 2022a), the decision adopted unanimously by the Council ultimately reflected a rather reduced personal scope. Under Art. 2 of the Council decision temporary protection only applies to the following three categories: Ukrainian nationals residing in Ukraine on or after February 24 2022 because of the Russian invasion of Ukraine, non-Ukrainian stateless persons and third-country nationals who were granted international protection status of equivalent national protection in Ukraine, and the family members of the afore-mentioned groups already present and residing in Ukraine before February 24 (Council of the EU 2022a).

The exclusion of several other categories from the scope of the Council's decision came as no surprise though. As illustrated in the previous section, the response to Russian war had been represented, since the very beginning, in terms of support to the Ukraine's people in a common fight for freedom and democracy against the Russian autocracy, where standing on the right side (democracies) make the Ukrainian people deserve solidarity and protection (European Commission 2022e).

The speech delivered by the French presidency of the Council on the day of the Council's decision moved along similar lines; the EU response was indeed presented as "support for the Ukrainian government" and "solidarity with the Ukrainian people" (The European Council and the Council of the the EU 2022, 1).

In this sense, it can be drawn that the question of Ukraine belonging to European democracies and Ukrainians belonging to the European people explains not only why the temporary protection was granted primarily to Ukrainians, but also why Member States—traditionally divided along national interests—unanimously voted in favor of its activation.

To be sure, the Council's decision further remarked that the temporary protection status or any adequate national protection scheme under Member States' law should be granted to third country nationals and stateless persons who are unable to return to their

country or region of origin safely and under durable conditions, provided that they can prove to have a valid permanent residence permit issued under Ukrainian law, as well as to those third-country nationals who are legally present in Ukraine on a short-term basis when the war started (Council of the EU 2022a).[28]

Nonetheless, any extension is to be decided upon by each Member State, hence, no legal obligation exists for Member States in neither case. As a result, stateless persons, third-country nationals legally present in the Ukrainian territory, including students or temporary workers, as well as asylum seekers who still do not have their refugee status neither recognized nor denied, fall outside the scope of the temporary protection, with significant room for manoeuvre being left in the hands of Member States.

A number of Member States extended the eligibility for the temporary protection status to other groups of individuals throughout 2022; yet, it can be observed that most of them comprise Ukrainian nationals who left Ukraine before the outbreak of the war—for instance, Sweden (European Union Agency for Fundamental Rights 2022) and Germany (German Federal Ministry of Justice 2022; German Federal Ministry of the Interior 2022) or Ukrainian nationals who were already present in a Member State when the war began and their permits were close to the expiration date, including Poland, Estonia, Lithuania, Finland, Austria, Germany and the Netherlands (European Union Agency for Asylum 2022). The deliberate decision not to grant temporary protection to non-Ukrainians fleeing the same war of Ukrainians shows again the identity and belonging considerations underpinning EU's choices, which has been strongly criticized for its biased outcome based on double standards (Amnesty International 2022; Reilly & Flynn 2022; İneli-Ciğer 2022b; Peers 2022).

Granting the temporary protection to those fleeing war would have been in line with EU's claimed commitment to protecting refugees and would have enabled all those displaced as a result of Moscow's aggression to enjoy, for up to three years, a set of rights in the EU. The rights Ukrainian and the few afore-mentioned categories are granted under the TPD include the right to temporary residence permit covering the entire duration of

[28] The text further remarks that all these categories should be admitted into the EU based on humanitarian grounds. Hence, Member States should ensure safe passage even without a valid visa or proper travel documentations. This is in line with the Operational Guidelines for the simplifications of border controls published by the Commission, which will be presented in the next section.

their stay, access to employment, medical care and social welfare, suitable accommodation, education for persons under 18 years and access to banking service.

Most interestingly, the Council decided not to implement Art. 11 of the TPD limiting the freedom of movement of beneficiaries. The Council indeed established that beneficiaries are allowed to freely move to another EU country before a residence permit is issued, which was undoubtedly facilitated by the fact the Ukrainians already were visa-free travelers. This therefore implied that beneficiaries can freely decide the Member State where they want to enjoy their rights conferred by the temporary protection, thereby being allowed to join family members and friends already present in a given Member State; as mentioned earlier, Ukrainian nationals made up one of the largest-groups of third-country nationals in the EU before the war. The Council further established that, even after the issuance of a residence permit in the host country, temporary protection beneficiaries are likewise entitled with the right to free movement across the Union for 90 days throughout a 180-day period (Migration and Home Affairs 2022).

Overall, it is crucial to underscore that EU's recognition of the benefits of such free choice scheme in balancing efforts among Member States and, particularly, preventing that frontline Member States carry the burden of asylum seekers' inflows alone stands in stark contrast with EU's long-standing position and approach to displaced third-country nationals arrivals, where relocation based on Member States' preferences—rather than those of protection seekers—was the preferred scheme to ensure burden-sharing. Besides, recent data has shown that the temporary protection scheme based on the free choice of asylum seekers, and the secondary movements associated with it, has resulted in an increased distributive capacity compared to any relocation scheme (Küçük 2023; see also figure 8).

Refugees from Ukraine registered for temporary protection in the EU by country
(March 2022-December 2022)

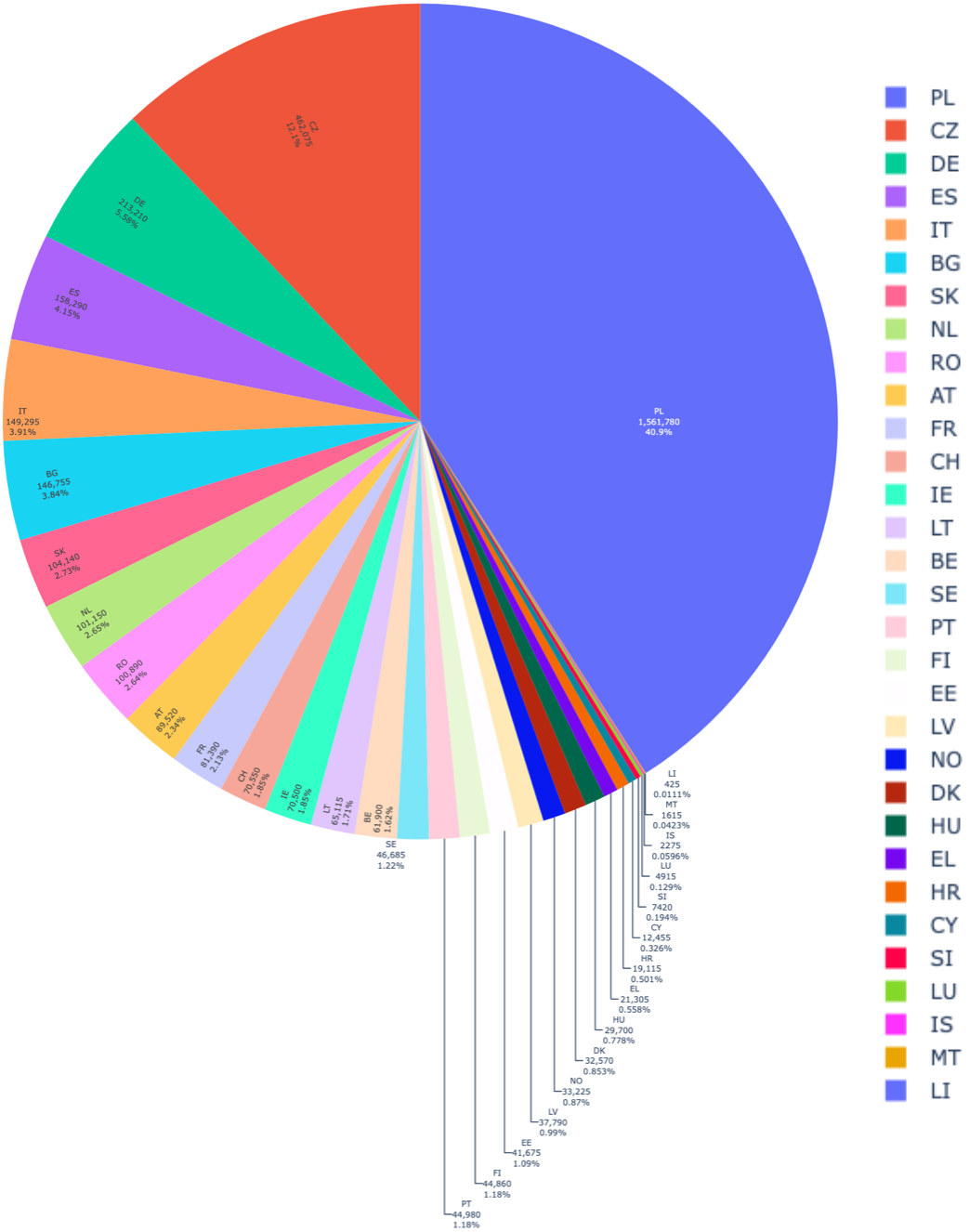

Figure 8 – Source: Elaboration of the author based on Eurostat, Retrieved April 15, 2023, from https//ec.europa.eu/Eurostat/web/migration-asylum/asylum/database?node_code=migr-asytp

4.5 The relaxation of EU border controls

On March 2 2022 along with the proposal for the activation of the Temporary Protection Directive, the European Commission published the Operational Guidelines intended to support Member States' border guards in handling arrivals at the EU-Ukraine borders, hereinafter referred to as 'Guidelines'. The latter were intended to provide guidance for the consistent application of rules at borders in line with the provisions of the TPD.

With regard to the general policy, the Guidelines advised Member States to relax external border checks, which under Art. 9 of the Schengen Borders Code may be simplified in the face of "exceptional and unforeseen circumstances", in this case, the Russian invasion (The European Parliament and the Council of the EU 2016, 13). In this respect, the Commissioner for Home Affairs, Ylva Johansson, further highlighted that lengthy formalities at the borders were to be avoided in order to allow those fleeing Ukraine to reach the EU as fast as possible (European Commission 2022f).

The recommended measures to facilitate border management comprise, *inter alia*, simplified controls for children and other vulnerable groups; special arrangements for the swift crossing of borders by, and the safe access and return of, rescue services, police, border guards and humanitarian aid providers, as well as easing the entry of pet animals (European Commission 2022g). As it can be drawn by the content of its provisions, the Guidelines appear to be especially driven by the willingness to quickly respond to humanitarian needs and ensure protection—including of pets—which reflects a 'humanitarized' approach whereby a strong sense of empathy and solidarity emerges.[29]

A firm commitment towards ensuring a high standard of protection is further exemplified by the European Border and Coast Guard Agency's prompt activation of the so-called VEGA components at EU-Ukrainian borders in order to streamline a child protection mechanism and enhanced children's protection from trafficking. The VEGA

[29] The question of 'pet exceptionalism' (Sandvik 2022) when it comes to granting protection has recently been discussed in relation to the expansion of the subject of humanitarian care during the Ukrainian refugee crisis and the humanitarian racism this has implied. Heidi Mogstag has argued that the unprecedented response to the Ukrainian refugee crisis and willingness of some European governments to receive Ukrainian asylum seekers' pets raises question in regard to hierarchies of protection. She has particularly emphasized that while Ukrainian pets are treated as human worth of protection, asylum seekers from the Middle East and Africa are stuck at EU external border in "prison-like camps" resembling to cages, thereby being treated as animals (Mogstad 2023, p. 1). This has shown how humanitarian care is subjected to hierarchies of protection whereby racism is inherent.

project, which is no longer an independent project yet the activation of its components can be triggered by Frontex to assist in its operations, was launched in European airports in 2015 to identify children who may be victims of trafficking at air borders. In April 2022, VEGA activities were extended to Frontex operations at border crossing points across EU-Ukrainian borders plus Ukrainian border with Moldova to provide assistance in the identification of vulnerable children (JHA Agencies Network 2023).

Frontex's role as envisioned by the Guidelines was also one of assistance to Member States in technical and operational matters, including identification processes, such as nationality screening and travel documents checks, including COVID vaccination certificates, registration and fingerprinting (European Commission 2022g). The Guidelines indeed encourage Member States to reinforce cooperation between national border guards and the Frontex. Following the first dispatch of Frontex teams, which occurred before the TPD activation upon request of Romania, a further agreement was concluded in Moldova (Council of the EU 2022b). Throughout 2022, Frontex had roughly 500 standing corps officers dispatched along the EU eastern border, including over 350 officers at the EU-Ukrainian borders (Frontex 2023).

Most interestingly, the role of the Agency consists of supporting relevant Member States with the handling of "the massive number of people fleeing the war", while no reference was made to protecting borders or curbing irregular migration, which is instead very much in Frontex's tradition, being the Agency primarily involved in border surveillance related tasks, including the return of illegal migrants (Frontex 2022, 1).

To be sure, in the context of the Ukrainian war, Frontex was likewise involved in assisting frontline Member States with the returns of non-Ukrainian third-country nationals not covered by the TPD (European Commission 2022g). Indeed, the Guidelines provided that all third-country nationals should be admitted by Member States in their territory based on humanitarian grounds, further advising Member States to facilitate the transit to their countries or origin or usual residence in order to avoid illegal stays with the support of Frontex (ibid). By March 11, approximately 400 people had been returned; by the end of 2022, this number reached more than one thousand non-EU citizens, mainly Armenians, Azerbaijanis, Kyrgyzi, Tajiks and Uzbeks (Frontex 2023).

Most interestingly though, such return operations were organized flights named as 'voluntary humanitarian returns' (JHA Agencies Network 2023) and 'assisted departures' (European Commission 2022g). The arranged returns in connection with the Ukrainian forced displacement were indeed voluntary in nature, with no deportations being reported to date, which is stark contrast with well-documented history of Frontex's illegal pushbacks (Jones et al. 2020).

Overall, the language and content of both Frontex and the Commission's communications and their policies reflect an approach whereby the humanitarian needs and the willingness to respond to them are placed at the center, which is why the easing of border controls become instrumental "to ensure the effective and efficient management of crossings of persons fleeing Ukraine […] and to avoid congestions at and around borders, while maintaining a high level of security for the entire Schengen area" (European Commission 2022g, 1).

Although no evidence of Frontex's involvement in denials of entry of non-Ukrainian nationals fleeing the war has been documented, discriminatory treatment of non-Ukrainians by national authorities at the EU-Ukraine crossing points, especially in the first stages of the war, have been reported and denounced by multiple sources (Human Rights Watch 2022; European Council on Refugees and Exiles 2022; UNHCR 2022b; IOM 2022; United Nations 2022; Akinwotu and Weronika 2022; Brito 2022). Those countries traditionally opposing asylum seekers and refugee reception are indeed the immediate Western neighboring countries of Ukraine, thereby representing the entry point into Europe, such as Poland, Hungary and Slovakia.

In public discourses those national leaders have motivated their open-door policy towards Ukrainians by making reference to their family ties, Christian roots and even similarities between Ukrainians and their countries' nationals. For instance, in an interview with a Hungarian television channel, M1 News, Orban stated that sheltering Ukrainian refugees is a "Christian instinct" and that Ukrainians will be "welcome by friends in Hungary", which he defined "a good country with good people", further claiming that unlike "masses" arriving from Muslim countries who reach the EU hoping for a better life, Ukrainian asylum seekers are forced to leave their country due to war (About Hungary 2022, 1).

Particularly relevant is the stance of another Ukraine's neighboring country, namely Bulgaria, whose Prime Minister Kiril Petkov publicly asserted that Ukrainian refugees "are not the refugees we are used to […] these people are Europeans", adding that they are not people with unclear past and identities as well as potential terrorists (Brito 2022, 1). It can therefore be seen how belonging has been discursively constructed not only based on a cultural similarity but also against the other and its cultural diversity—here the Muslim, terrorist or person with unclear identity.

4.6 Striving to meet the needs of Ukrainian refugees inside the EU: other policy measures

4.6.1 Easing the access to funding for Member States

Upscaling financial assistance to Member States aimed at boosting their capabilities to respond to the needs of Ukrainian refugees arriving in the EU is one of the key EU's policy measures vis-à-vis Ukrainian inflows. As already mentioned, the Council's implementing decision on temporary protection granted its beneficiaries a set of rights; hence, a quick rollout of funding was needed to appropriately implement the temporary protection mechanism at the Member States level.

Member States could already draw on multiple funds to respond to Ukrainian influx, including the European Social Fund (ESF) and the European Regional Development Fund (ERDF) within the framework of the cohesion policy, i.e. the EU's major investment policy aimed at assisting Member States, as well as the Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU) for initiatives in the domains of health, education and employment, among others (Van Lierop 2022). They could likewise draw on the Fund for European Aid to the Most Deprived (FEAD) to provide basic assistance, including food (ibid).

To face the growing needs of ever-increasing arrivals of Ukrainian refugees, the Commission quickly decided to introduce, as of March 8, a legislative proposal, named Cohesion's Action for Refugees in Europe (CARE), which was adopted unanimously by the Council the following week. CARE introduced the flexibility of cohesion policy

funding, with a view to speeding up and facilitate Member States ability to help Ukrainian refugees, by, *inter alia*, enabling Member States to draw on the ERDF, ESF and FEAD for any sort of initiative to meet the needs of Ukrainians—including housing, food and water supplies, education, social inclusion and employment—allowing as well for simplified reporting procedures (European Commission 2022h).

Furthermore, additional funding was made available by anticipating payments of the REACT-EU, a fund that had initially been created to enhance Member States recovery from the COVID-19 pandemic and which could now be used to face the cost of the reception and integration of Ukrainian refugees in the European Union, with the overall purpose of post-pandemic recovery (Council of the EU 2022d). As a result, a total amount of 17 billion euros was earmarked to assist refugees through the afore-mentioned measures (Council of the EU 2022c).

Home Funds were amended to respond to the growing needs as well; in April 2022, 420 million euros of the 2014-2020 home affairs fund were released, while unused amounts of the Asylum Fund, previously made available for other purposes, were redirected to Member States' response to Ukraine.

Additional efforts to increase the flexibility of funding so as to adequately respond to the needs as inflows continued to grow throughout the summer 2022 were made by the reinforcing the CARE initiative with FAST-CARE, the Flexible Assistance to Territories. Ultimately adopted into law in October 2022, FAST-CARE further enhanced the flexibility of funding for Member States for both the 2014-20 and 2021-27 programming periods by, *inter alia*, making available resources from the Cohesion Fund, thereby adding up to the already available resources under ERDF and ESF for Ukrainian refugees (Council of the EU 2022e).

All these measures were defined as "fast, flexible solutions to finance solidarity" (European Commission 2022i, 1). Indeed, although at the time of writing this thesis there is no information available in regard to the implementation of these measures due to the fact that the first reporting cycles are to be published by the end 2023, EU's financial policy outlined above appears to unequivocally reflect the ambition of EU and its Member States to address both short-term and long-term needs of Ukrainians, with a view to fostering their integration while ensuring a high standard of protection, *de facto*

deprioritizing other policy areas in order to redirect available funding to tackle the demands of the Ukrainian refugee inflow in an extraordinary timely fashion.

4.6.2 Facilitating the access to the labor market

Granting access to the labor market is a critical component of the temporary protection scheme. It is indeed essential for the successful integration and inclusion of refugees into the host society, while being beneficial for the receiving country's economy as a whole.

For this reason, in line with the overall EU's ambition outlined above, following the activation of the TPD the European Union introduced several tools to assist Member States in ensuring that Ukrainian refugees could swift access to jobs as well as learning opportunities, as the latter are instrumental for the former, allowing refugees to gain relevant knowledge and skills to become more employable.

To this aim, the first step the EU took was providing a flexible and swift qualifications recognition mechanism to enable refugees to work in jobs they are qualified for, thereby preventing them from working under poor conditions (European Commission 2022j). Through a Recommendation published on April 5, the Commission advised Member States to facilitate the practice of regulated professions, such as nurses and general practitioners, encouraging them to prioritize job applications from temporary protection beneficiaries—allowing for the deviation from EU law under which a beneficiary of temporary protection can only be recruited if a business proves that they cannot hire a EU citizen—and to minimize the requirements for accessing the job market (European Commission 2022b).

This includes, among others, accepting digital diplomas for evaluating recognition applications and providing translation from Ukrainian and Russian languages. In addition, Member States were recommended, when faced with cases where the mandatory training prerequisites for such professions are not fulfilled, to provide adequate support to address these lacking skills, including language courses (ibid).

It can thus be drawn that the EU has been seeking to maximize Ukrainians' employment, including by derogating EU law provisions and by abolishing all sort of requirements that would have undermined Ukrainian refugees' ability to access the job market, thereby showing an unprecedented solidarity.

EU's ambition to ensure the widest possible access to employment opportunities for Ukrainians was further made evident in June 2022, with the Commission's publishing the Guidelines for accessing the labor market, vocational education and adult learning. Much broader in scope compared to the afore-mentioned Recommendation, the Guidelines outlined best practices for labor inclusion from Member States aimed at granting Ukrainian refugees the same treatment as EU workers. Indeed, Member States were particularly advised to take action in the following respects: cooperating with relevant actors to tackle the risks of exploitation, providing career guidance and protection against discrimination, facilitate their inclusion in the labor market—e.g. setting up entrepreneurship support programs and allowances for startup creation—, hire people in sectors where they can support other refugees arriving from Ukraine, ensuring access to vocational education and training (VET) as well as other upskilling and reskilling opportunities (European Commission 2022k).

Additionally, the European Union has also made available since the summer 2022 specific tools to assist Ukrainian refugees in job and training opportunities searching as well as applications procedures across the Union, including by providing the Ukrainian language option in the Europass platform—a platform especially designed for creating documents such as CVs and cover letters, find jobs and courses across the Union—as well as the EU Talent Pool initiative implemented through the European Cooperation Network of Employment Service (EURES). The latter is specifically intended to match Ukrainian refugees, based on their skills, with employers across the EU.

In this case as well, assessing the results of EU's initiatives in the field of labor market is difficult at this point in time. However, from the few resources available it emerges that, to date, the trend among Member States seems to be encouraging, showing that Ukrainian refugees' entry into the job market has been faster than any other refugee groups and it is likewise increasing (OECD 2023).

Overall then, it appears that EU's policy response in this area and its implementation reflect a remarkable solidarity whereby Ukrainian asylum seekers have been assisted by any possible means in their efforts to access the EU's labor market. Indeed, the EU has put forward strategies aimed at deleting whatever barrier Ukrainian refugees may face when accessing the labor market, for instance, in regard to the recognition of their

qualifications and other requirements that represent the standard norm for all other third-country nationals seeking employment in the EU. In this sense, it can be said that the EU has sought to bring Ukrainian citizens at the same level of EU citizens, paying special attention towards ensuring that Ukrainian refugees transition into Member States' labor markets is fair and supportive, including through programs especially designed for Ukrainian refugees' professional integration, learning and training opportunities and advise for Member States on labor inclusion, non-discrimination and prevention of exploitation.

4.6.3 Supporting Ukrainian refugees in accessing suitable accommodations

EU's solidarity with Ukraine was also extended to meeting the housing needs of Ukrainian refugees, who under the temporary protection regime enjoy the right to suitable accommodation (Council of the EU 2001a).

While private individuals had mobilized since the very beginning to provide temporary accommodation to newly arrived refugees—private hosts accommodated up to 90 percent of those fleeing Ukraine as of March 2022 across the EU (European Commission 2022c)—the increasing number of arrivals as a result of the escalation of the Russian war prompted the EU to take steps in this regard, with a view to providing long-term accommodation solutions and facilitating coordination among all actors involved in the arranging of private housing opportunities, including Member States' institutions, regional and local authorities as well as civil society.

The Safe Home Initiative, launched in March 2022 by the European Commission, was especially established to meet those purposes; complemented with the Safe Home Guidance published in July 2022, the Commission took stock of challenges and good practices to support hosts and coordinating accommodation offers, matching refugees with hosts, developing multi-sectoral partnerships and reinforcing information-sharing across actors involved, ensuring that accommodation places meet the requirements for it being deemed suitable—i.e. they are safe, healthy and hazard-free—and that they are supplemented with vetting, monitoring and supervision mechanisms to prevent exploitation and human trafficking risks ibid).

To this aim, the document further stressed the importance of maximizing the use of available funding (see sub-section 4.6.1), including to combine "non-segregated accommodation" with other key elements of the "integration pathway"—e.g. access to employment, education, health and social care—with a view to enabling refugees to "become independent and well-integrated in the host society" (European Commission 2022c, 19).

The formulation of the Safe Home Initiatives is therefore particularly relevant as it makes evident EU's commitment to going beyond basic accommodation needs and indeed ensuring that accommodation solutions suit the overarching and long-term objective of encouraging both the independence and integration of Ukrainian refugees within the Union, for which the non-isolation of accommodation is identified as crucial.

In addition, it should be noted that in November 2022, the European Commission further announced its commitment to strengthening of the Safe Home Initiative by allocating 5.5 million euros to a new project which will be coordinated by the International Federation of Red Cross and Crescent Societies (IFRC), at the High Level Forum on legal pathways to protection (Directorate-General for Neighbourhood and Enlargement Negotiations 2022). The project is intended to elaborate a needs assessment of refugees in need of accommodation and a guidance for private hosts, with a view to providing refugees with suitable offers.

It can therefore be observed how EU's action in the domain of housing and suitable accommodation further demonstrates EU's timely effort not only to respond to short-term needs of Ukrainian refugees, but especially to set up long-term solutions for their integration in EU's society as a whole. By referring to "non-segregated accommodation" it appears evident EU's intention of creating a space of belonging where integration can be fostered (European Commission 2022c, 19).

4.7 Emergency assistance in Ukraine and humanitarian aid funding

The European Union and Member States' unprecedented mobilization not only concerns the reception and integration of Ukrainian refugees in EU's soil but also the emergency assistance and humanitarian aid to provide immediate relief to Ukrainian civilians.

In the aftermath of the Russian invasion, the Commission promptly announced that at least 500 million euros of the EU's budget would be used to address humanitarian needs (European Commission 2022e). Of this, 90 million for humanitarian aid programs aimed at directly assisting civilians inside Ukraine and Moldova had been already allocated as of February 28 2022, only four days after the Russian invasion of Ukraine (European Commission 2022d), while further contributions for humanitarian aid were announced in April (50 million euros), June (205 million euros) and October (175 million euros), with a total amount of 523 million euros in humanitarian funding (ECHO 2023).

Furthermore, the EU's started to coordinate emergency assistance efforts through the EU Civil Protection Mechanism, which is the largest ever intervention to date, with the total financial value of material assistance and operations amounting to 565 million euros, to which all European Member States plus Iceland, North Macedonia, Norway, Serbia and Turkey contributed (The European Council and the Council of the EU 2023a). Via the mechanism, in-kind assistance, including food and non-food items as well as medical supplies and other equipment, are directly channeled to Ukraine, while also providing emergency assistance for Ukraine's neighboring countries to assist in handling arrivals, particularly, including Moldova, Poland, Slovakia and Czechia (ibid).

The EU likewise scaled up its assistance by complementing the Mechanism with the so-called rescEU reserve with a view to responding to health emergencies—which included medical stockpiles, the total value of which amounted to more than 10 million euros—and by setting up logistics hubs and warehouses to better handle and distribute humanitarian assistance, including in Romania, Poland and Slovakia.

Overall, the EU's humanitarian response should be regarded as being part of a broader solidarity effort towards meeting the needs of Ukrainians both inside and outside the EU. Bringing immediate relief to displaced Ukrainians on the ground was indeed complemented, as illustrated in the previous sections, with long-term solutions and opportunities for displaced refugees, starting from EU's decision to implement an open-door policy, which features as completely different approach compared to the long-standing 'Fortress Europe' approach.

4.8 Conclusion

This chapter has sought to illustrate EU's unprecedented response to the Ukrainian influx of asylum seekers fleeing the Russian invasion of Ukraine, ranging from the immediate welcoming reactions of most Ukraine's neighboring Member States, the first-ever activation of the Temporary Protection mechanism and the relaxation of border controls, to the easing of access to funding for all Member States, policy measures in the areas of labor market and housing to facilitate Ukrainian refugees short- and long-term integration, as well as the massive humanitarian aid. These measures altogether demonstrate that a *de facto* open-door policy has been put in place to respond to the inflow of Ukrainian asylum seekers fleeing Moscow's war.

It has been highlighted how EU's perceived belonging of the Ukrainian people to the European family has played a pivotal role in legitimizing EU's open-door policy, which was made evident via both discourses and practices.

Solidarity towards and protection of Ukrainians fleeing the war was portrayed by the European Commission as a question of deservingness in the face of a common fight for freedom and democracy against the Russian aggressor. Ukrainians stand for European values, hence, the EU must help. Belonging and identity considerations are therefore located in specific geopolitical coordinates, whereby Russia represents a security threat to the claimed European values of democracy and the rule of law.

Belonging considerations emerged even stronger when looking at EU Member States. Those Member States traditionally opposing refugees' reception and integration, such as Poland, Hungary and Slovakia, welcomed Ukrainian refugees with open arms, *de facto* lifting controls and introducing favorable measures to facilitate the entry of Ukrainian refugees, while seeking to restrict the access to their territories to non-Ukrainian asylum seekers. In doing so, they dramatically shifted their rhetoric towards solidarity discourses leveraging cultural similarities—including family ties, Christian root, and some sort of Europeaness—pitting them against the other by making reference to previous Muslim refugee flows and their alleged unclear identities.

It can be said that the most prominent example of belonging considerations underpinning EU's action is the unanimous decision of the Council on the activation of the Temporary Protection mechanism which, indeed, purposedly excluded non-Ukrainian

nationals from its scope, with the only exception being made for beneficiaries of international protection and their family members.

Another crucial element emerging from my analysis is the changed position of Frontex against the backdrop of softened EU border control as a result of the Operational Guidelines published by the Commission (see section 4.5). Departing from its securitized approach aimed at fighting irregular migration, the Agency's role was one of assistance to facilitate crossings of those fleeing Ukraine, including by arranging voluntary repatriation flights for non-Ukrainians.

The last point to be drawn is that EU's decision to supplement the first-ever activation of the Temporary Protection regime with a set of *ad hoc* policy measures to ensure the swift application of its provisions at the national level (see section 4.6) further exemplifies how belonging considerations have led to a comprehensive and consistent strategy whereby the needs of Ukrainian refugees have been increasingly put at the center. Such strategy has gone beyond basic needs by seeking to include and integrate Ukrainian refugees in the host society in the long-term, which was made evident by, for instance, EU's remarkable effort to lift rules normally applying to third-country nationals accessing the EU labor market as well as to provide long-term non-isolated accommodation solutions.

5 EU Policy Responses under Comparison: A Tale of Double Standards

5.1 Introduction

After having addressed the first research question of this thesis by identifying and critically analyzing the main policy responses put forward by the European Union vis-à-vis the 2015 Syrian 'refugee' crisis and the 2022 Ukrainian 'refugee' crisis, the final chapter of this thesis is intended to respond to the second and third research questions outlined in the introduction: how do EU's policy responses differ, what are the possible sociopolitical explanations behind them, and what is the role of identity considerations in this regard.

To accomplish this goal, the chapter will closely look at those policy responses in a comparative perspective, highlighting their blatant discrepancies. This thesis argues that EU's approach has been completely divergent, with the devised policy responses that are totally at odds with one another, revealing EU's double standards for protection seekers.

To support this argument, the second and third chapter of this thesis will be referenced, which respectively demonstrate the *de facto* close-door policy towards Syrian asylum seekers and the open-door policy in response to the Ukrainian asylum inflow.

The comparative analysis will be conducted through the lenses of belonging and othering as reflecting the actualization of the European identity. This chapter will also explore how these concepts intersect with other theoretical concepts introduced in the first chapter, such as societal security, the securitization theory, and borders.

The choice of examining EU policy responses through identity lenses is based on the premise that no socio-political element can alone explain EU's differentiated responses to influxes of third-country nationals seeking protection on its soil. To demonstrate this, the comparative analysis will be preceded by an initial section dedicated to showcasing

similarities and differences between the two flows of protection seekers, which will further reinforce the thesis's argument that identity considerations, deeply intertwined with processes of othering and belonging, played a pivotal role in drawing contrasting policy decisions and implementations.

Throughout this chapter, I will therefore argue that the differentiated policy responses represent a selective and hence discriminatory, identity-driven decision embedded in specific geopolitical coordinates.

5.2 Showcasing differences and similarities in the protection seekers' inflows

The aim of this section is to compare the key characteristics of the Syrian and Ukrainian refugee inflows in order to identify which differences may have influenced the EU's divergent policy decisions. The analysis will take into consideration various factors, including the volume of arrivals, the gender and age composition, the root causes of displacement and the geographical proximity of the crisis regions to Europe, their geopolitical context and, last but not least, the perceived identity affinities and differences between the refugees and Europe.

It is important to note that this thesis does not aim to argue that any of these factors offer a justification for the EU's differential and discriminatory treatment of Syrian and Ukrainian refugees. Instead, it endeavors to investigate how these factors could have influenced different policy choices, ultimately resulting in discriminatory treatment.

This section will lay the foundation for the comparative analysis by presenting the processes of othering and belonging as inherent to European identity, which will be taken as point of departure to cast the light on EU's differentiated policy responses.

5.2.1 Comparing numbers: exploring the ambivalence of scale

When comparing the Syrian and Ukrainian refugee inflows in the European Union, the scale of arrivals is undoubtedly an important factor to consider. As highlighted in the third chapter, Ukrainian arrivals were unprecedented both in terms of scale and speed, with over 1.2 million individuals arriving in the EU as of March 2022. By December 2022, the figure had grown to 7.9 million, making it the largest influx in the EU since World War

Two (see section 4.2). In contrast, the number of sea arrivals during the Mediterranean crisis as a whole was much lower than the Ukrainian influx, with a peak of 'only' one million registered in 2015, of which 50 percent were Syrians (see section 3.2).

It could be argued that the significantly higher scale and speed of Ukrainian arrivals played a role in the EU's decision to adopt an open-door policy. Scholars have indeed pointed out that it could have partially explained why the Temporary Protection mechanism was activated for the first time ever (Garcés Mascareñas 2022; İneli-Ciğer 2022c). Nevertheless, as my analysis has shown, the EU's policy response to the Syrian crisis has been discriminatory, indicating that the EU does not always adhere to its claimed 'moral' and humanitarian obligations under international law.

This raises an important question: would the EU have been more willing to host Syrian asylum seekers had their arrival rate been as high as the Ukrainian influx? This seems unlikely; it is indeed crucial to note that, although the Syrian refugee crisis involved smaller numbers compared to Ukrainian refugee crisis, such numbers were at that time, in 2015, higher than any previous refugee inflow, thereby being the largest refugee influx since World War Two before Ukraine.

Nonetheless, in the face of such humanitarian emergency, the EU decided to virtually close its borders to Syrians. The scale of arrivals, and the emergency rhetoric thereof, has been clearly instrumentalized to militarize borders, rather than providing refuge and respond to the needs of asylum seekers. V4's portrayal of the 2015 'migration crisis' as a invasion (see sub-section 3.5.3) further clarifies the ambivalence of the scale of arrivals; it seems indeed to have functioned in the exact opposite way, revealing its marginal role in prompting an open-door response.

In light of this, I would argue that the huge scale of arrivals, as well as their speed, has not been a discriminating factor in EU's decisions and the EU would have closed its borders to Syrian asylum seekers regardless.

5.2.2 Do gender and age composition matter?

If scale and speed have not determined the EU's differentiated responses, could have gender and age composition had some weight? In order to examine this possibility, let us first compare the two refugee influxes. Based on disaggregated data, Syrian asylum

seekers were, at least throughout 2015, largely young men between 18 and 34 years old (39 percent), with relatively fewer young adult women and children (see section 3.2).

While disaggregated data on the gender composition of Syrian asylum seekers in 2016 are not available, data on the Mediterranean crisis in general suggests a shift in composition. In 2015, men accounted for 74 percent of arrivals, but in the first months of 2016, the share of adult women and minors increased significantly, by eight and tewenty-six percentage points respectively. As a result, they made up approximately 60 percent of the total of Mediterranean arrivals (see section 3.2). Provided that Syria remained the top nationality of asylum seekers in the EU in 2016 (UNHCR 2016b), it can be assumed that this pattern holds true for the Syrian refugee crisis specifically as well.

On the other hand, Ukrainian arrivals were almost entirely women and children, representing roughly 90 percent of all those displaced by the Russian invasion of Ukraine throughout 2022. It can thus be said that, while the gender composition of Syrians appears to have shifted greatly between 2015 and 2016, this does not apply to Ukrainian arrivals, which remain skewed towards women and children throughout the whole Ukrainian refugee crisis.

Could EU's reluctance to host Syrian asylum seekers be based on gender considerations, such as, the fact that Ukrainian arrivals were mostly women and children? There are several indications that contradict this hypothesis. First and foremost, there was no disparate treatment observed among men, women, children or the elderly in the two responses to the crises, with uniform policies towards the different age and gender categories.

Moreover, it should be noted that whilst Ukrainian asylum seekers were mostly women and children, national border agencies at the EU-Ukraine borders, including Frontex, did not oppose the transit of male Ukrainian asylum seekers, although they were prohibited from leaving the country in accordance with the Ukrainian martial law (European Commission 2022g; Gkliati 2022).

To be sure, countries opposing the reception of Syrian asylum seekers, particularly the V4 countries, often promoted gender nationalist discourses, representing male refugees as threats, even throughout 2016, when the flows consisted predominantly of women and children (Hadj Abdou 2017; Hadj Abdou et al. 2022). Nonetheless, it should be noted that

men were not portrayed as threats because of their gender, but rather owed to the stereotyped Islamophobic assumption that Muslim men are potential terrorists (ibid). Thus, in can be inferred that EU's reluctance to host Syrian asylum seekers and willingness to host Ukrainian asylum seekers cannot be attributed to gender considerations, but rather identity considerations.

5.2.3 Similar causes, different reactions: what role for geographical proximity?

EU divergent policy responses towards the influx of asylum seekers from Syria and Ukraine are noteworthy due to the shared characteristics of the displacement crisis. Specifically, both the Syrian and Ukrainian asylum seekers flows were propelled by conflicts, namely the Syrian civil war stemming from the violent rule of President Bashar al-Assad, and the Russian invasion of Ukraine.

One of the elements that EU's institutions leveraged was the infringement of "Ukraine's sovereignty, territorial integrity and independence" by another State (The European Council and the Council of the EU 2023b, 1). An argument which cannot be made for the Syrian case, being the causes of the war of internal character. Nonetheless, it should be noted that the Syrian civil war was not a war of internal character in absolute terms; it is often considered a proxy war involving a number of external powers attempting to expand their presence in the region (see section 3.2).[30]

This is particularly relevant for this study in that one of the external powers involved is the Russian Federation. The latter not only backed the Assad regime via military and financial support to its forces; Moscow directly took action by launching a military intervention in Syria in September 2015. Therefore, not only both the Syrian and Ukrainian displacement are conflict-induced, but they were also fleeing the same Russia's bombing.

In the face of the afore-mentioned similar causes, some analysts have suggested that geographical proximity potentially had a significant impact on EU's policy decisions (Düvell & Lapshyna 2022; Garcés Mascareñas 2022; Hadj Abdou et al. 2022; Petracchin

[30] A proxy war indicates a war fought by groups or countries involved represent the interests of major external powers, by which the latter seek to increase their influence in a certain region through military and financial assistance (Collins English Dictionary n.d.).

& Hadj Abdou 2022). Such stance is supported by the evidence that Ukraine is located in the European continent; in this sense, EU's open-door policy towards Ukrainians evokes similarities with the solidarity demonstrated by the EU towards asylum seekers fleeing the Yugoslav wars, between the late nineties and early twenties.

I would argue that this view is misleading, as the general perception of proximity can be inaccurate. Although Ukraine is located in the European continent, it is crucial to note that Italy is nearer to Libya, a route taken by Syrian asylum seekers travelling the Central Mediterranean Route, than it is to Ukraine. Similarly, when comparing the distance from the Syrian capital, Damascus, and the Ukrainian capital, Kiev, to their closes EU capitals, Nicosia in Cyprus and Warsaw in Poland respectively, it is shorter for Damascus to Nicosia than for Kiev to Warsaw (Bueno Lacy and Van Houtum 2022).

The Mediterranean Sea acts as a natural barrier between Syria and the European Union which can skew perception of proximity. However, as illustrated in this section, geographical proximity is pitfall and does not provide a straightforward explanation for contrasting responses to refugee influxes. In fact, other factors must be taken into account when considering divergent policy responses. Particularly, I would argue that it is important to consider what being located in the European continent signifies in terms of perceived identity, rather than mere proximity. These factors will be examined in detailed shortly and will be further clarified when contrasting EU's policy responses throughout this chapter.

5.2.4 Uncovering geopolitical complexities

To gain a comprehensive understanding of the EU's differentiated policy responses towards Syrian and Ukrainian asylum seekers, it is of utmost importance to examine the geopolitical contexts in which refugee influxes are inserted, in order to analyze their potential role in shaping EU's policy decisions.

The geopolitical circumstances of both cases suggest a scenario reminiscent of the Cold War. In the Syrian civil war, several actors with diverging interests were involved, including the West (Europe and the US), the Islamic State and, most certainly, Russia (see section 3.2). The West was primarily concerned with fighting terrorism as well as containing Russia's influence in the region. On the other hand, the Ukrainian war was

marked by a strong ideological polarization, with the Russian Federation seeking to assert authoritarian and imperialist ambitions over Ukraine, while the EU advocated for the rule of law and democratic values.

Although the European Union overtly condemned Assad's violent authoritarian regime, its role in the Syrian civil war has been defined as one of "diplomatic absence", failing to take significant steps to address the conflict (Pierini 2016). EU's actions and measures remained confined to addressing the consequences of the war, particularly the refugee inflow, which directly affected Europe's core. Paradoxically though, as shown in chapter two, the European Union did not welcome the refugees who were victims of the same governments it opposed, including the Assad and Russian regimes as well as the Islamic State, but rather rejected them.

Notably, Moscow's involvement in the Syrian civil war throughout 2015 came at a time when EU-Russia relations were already deteriorating due to the Russian annexation of Crimea. Russian President, Vladimir Putin, had explicitly asserted its ambition to reshape the international world order right at the UN General Assembly in September 2015, emphasizing that "[…] after the end of the Cold War the world was left with one center of dominance, and those who found themselves at the top of the pyramid were tempted to think that […] (President of Russia 2015, 1). Despite this, the European Union maintained a state of inaction and disengagement.

What could have motivated EU's inaction, which can be identified as the primary difference in the two crises' contexts, is that while Syria constituted a proxy war that took place outside Europe, Ukraine, although not a member of the European Union, was geographically situated on the European continent. In this respect, it could be argued that EU was directly affected in that the Russian Federation was perceived as threatening European security. The dramatic sentence uttered by the Commission's President Ursula Von der Leyen "war has returned to Europe" further exemplifies EU's perception of the Russian threat (European Commission 2022e, 1).

Hence, the geopolitical interests of the European Union cannot be disregarded in this context, as they yielded notable influence over the EU's overall position against Russia. However, this thesis argues that while the perception of Russia as a threat to EU's political security can explain why the EU adopted firm policies in areas such as military assistance

to Ukraine and harsh sanction packages against Russia (see section 4.3), it does not provide a complete picture of why the EU implemented an open-door policy towards Ukrainian asylum seekers.

5.2.5 Beyond geopolitics: the interplay between refugee identity and European identity

I would argue that perceived affinities and divergencies in the identity of refugees constitute the primary determining factor behind EU's swift and cohesive response, as well as its willingness to receive Ukrainian asylum seekers, in stark contrast to the fragmentation and reluctance displayed towards Syrian asylum seekers. As I will illustrate, the actualization of European identity plays a pivotal role in driving distinct policy responses and serves as a catalyst for processes of belonging and othering in this particular context.

As previously discussed (see section 4.3), Ukrainian asylum seekers were consistently portrayed and perceived as integral members of the European family, characterized by their shared values and principles. In this context, it is of utmost importance to recognize that the geopolitical scenario presented in the previous section cannot be analyzed in isolation, as it is intricately connected to European identity. The Russian war was not merely seen as a threat to European security, but especially as a challenge to the very essence of European identity and its underlying values (Hadj Abdou et al. 2022).

EU's decision to implement an open-door policy towards Ukrainians can thus be seen as a reflection of a return to the ideological refugee policy that had characterized the Cold War (Kleist 2022). In this historical context, only politically desirable refugees were accepted, with reception representing a means of asserting Western values and principles over the Eastern bloc. Similarly, the EU's open-door policy for Ukrainians can be understood as a parallel pattern, signifying the reaffirmation of European values and principles in the face of the Russian autocracy.

The rhetoric emphasizing Ukrainians' belonging to the European family and sharing the same values and principles likewise echoes the post-1989 EU narrative of eastern and central European countries returning to Europe (see sub-section 2.4.2). Both discourses act as catalysts for processes of belonging, during two significant periods of geopolitical importance.

It can therefore be said that EU's open-door policy has not been primarily motivated by political insecurity (as discussed in the previous section), but especially societal insecurity. Hence, EU's security concerns illustrated in the previous section should not be regarded in a *vacuum*, as they gain significance in the context of European identity preservation and are particularly rooted in the perceived identity of Ukrainians as European. This analysis thus elucidates how EU's open-door policy to the Ukrainian refugee crisis is first and foremost triggered by a process of belonging driven by European identity considerations, which acquire relevance within specific geopolitical circumstances.

In contrast, the perceived divergence in the identity of Syrian asylum seekers appears to be strongly linked to their non-European categorization, indicating their non-belonging to the European family. While no explicit reference to the non-European identity of Syrian asylum seekers is made in EU institutional discourses, I would argue that the closed-door policy of the EU exposes institutional discrimination that is deeply entrenched in the processes of othering, which stem from the perceived divergence in cultural identity between Syrians and the European identity.

As illustrated in chapter two, unlike Ukrainian asylum seekers, Syrian asylum seekers were positioned within a homogeneous group of irregular migrants threatening EU's borders. The thesis argues that such homogenization and representation of Syrian asylum seekers as a societal security threat contributed to perpetuating a racialized stereotype of all those crossing the Mediterranean.

This becomes evident when examining the reactions of individual Member States, especially the V4, where the perception and depiction of Syrians asylum seekers as a security threat are strongly portrayed in cultural terms, marked by elements such as religion. As will be further discussed, discourses reinforced the notion of a clash of cultures between Muslim and Christians and contributed to the otherization of Syrian asylum seekers.

On the other hand, the V4 countries' perception of Ukrainians is primarily based on cultural similarity, rooted in their shared Christian heritage, history of the Soviet rule and, I would add, the struggle for independence which, for countries of the former Soviet bloc, assumes strong European connotations. In this sense, European identity emerges as

trigger of belonging processes not only from a value perspective, illustrated above, but also at the cultural level.

Overall, the pervasiveness of European identity acts as a driving force behind the EU's policy decisions, highlighting the relevance of belonging and othering dynamics in this context.

5.3 Comparing EU's policy responses: othering and belonging as practices of exclusion and inclusion of Syrian and Ukrainian protection seekers

5.3.1 Passive vs proactive first reactions

Before comparing EU's policy responses, it is worth taking a step back by looking into EU's first reactions to the two crises, as they represent the starting point of the EU's differentiated treatment of Syrian and Ukrainian asylum seekers.

As regards the 2015 refugee crisis, it has been illustrated that the European Union remained a passive spectator until a major shipwreck happened in mid-April 2015. The peak in arrivals, which was reached in October 2015, did not come in isolation though; it was rather the result of an escalation of displacement that had begun in the aftermath of the Syrian civil war in 2011 against the backdrop of the 'Arab Spring' (see section 3.3).

On the other hand, the mobilization of EU's aid and solidarity machinery vis-à-vis the Ukrainian refugee crisis came extraordinarily fast, with a Commission's proposal to activate the TPD being launched less than one week after the Russian Federation invaded Ukraine. Furthermore, it should be noted that not only was the TPD proposal put forward for the first time and in record time, but also its adoption into law by the Council, only two days after it was presented (3.3).

EU's delayed and passive response to the Syrian crisis compared to the fast and proactive response to the Ukrainian crisis therefore represents a huge difference in EU's way of approaching to the two crises. In this regard, it is important to note that the EU completely ignored the first signs of a crisis building up in the Mediterranean in 2015, which had been made evident by the ever-growing numbers of deaths at sea, with April being the deadliest month of that year. Whereas in 2022, the EU demonstrated a firm

political commitment to promptly react. Therefore, it can be argued that EU's first reactions show the different levels of solidarity the EU was willing to provide, and most notably, which refugee in the eyes of the EU deserved help and protection, and who did not.

5.3.2 The selective making and unmaking of the Fortress: othering and belonging through differing securitization practices

I would argue that the most blatant discrepancy exemplifying EU's *de facto* closed-door policy towards Syrian asylum seekers and open-door policy towards Ukrainian asylum seekers, and the identity considerations underpinning them, are the measures put in place which concern the management of external borders. EU's approach in this regard has been strikingly contrasting indeed, with policies aimed at strengthening EU external border—the Mediterranean border—in the Syrian case for well-detailed deterrence purposes (see sub-section 3.5.1), whereas in the Ukrainian case policies were intended to facilitate the crossings of EU-Ukraine borders with a view to offering refuge and protection to those fleeing the Russian invasion (see section 4.5).

In this respect, it should be recalled that in the face of the 2015 refugee crisis, EU's action revolved around the securitization of borders and the criminalization of migratory movements across the Mediterranean. It has been mentioned that, although Mediterranean arrivals were characterized by mixed flows of migrants, Syrian asylum seekers represented the largest nationality of all arrivals in 2015, accounting for over 50 percent. Nonetheless, EU's policy measures in the area of border management addressed all arrivals as if migrants were a homogeneous group, i.e. irregular migrants, with no 'special' measures being introduced to facilitate the crossing for Syrian asylum seekers or any other group of asylum seekers whose countries of origin or residence were in situations of war or conflict.

EU's response was instead focused on enhancing maritime surveillance missions, namely Frontex's operations Triton and Poseidon, as well as introducing counter-smuggling military missions, such as Operation Sophia. Their ultimate purpose was indeed preventing irregular crossings and combating trafficking networks, depicting EU borders as the referent object under threat, thereby actively shaping the securitization of

asylum seekers for their attempt to reach the EU. The ultimate outcome was therefore that legitimate Syrian asylum seekers were prevented from reaching EU's shores and apply for a refugee or international protection status in Italy or Greece. It should therefore be noted Frontex's role in this context, that is, one of patrolling and surveillance intended to prevent irregular migration, which reportedly resulted in illegal deportations and pushbacks of legitimate asylum seekers (see sub-section 3.5.1).

Everything that has been mentioned so far was not the case for Ukrainian asylum seekers. The crossing of Ukrainian asylum seekers into the EU was not only welcomed and encouraged through an unprecedented relaxation of border controls; Ukrainians were also openly admitted when they did not hold valid travel documentation, de facto lifting—both upon EU's initiative (through the issuance of specific guidelines, see section 4.5) as well as Member States' initiative (through the introduction of emergency measures, see section 4.3)—the requirements which had been in place until that very moment in regard to Ukrainian nationals under the 2017 EU-Ukraine visa-free travel agreement, i.e. holding a biometric passport.

Most strikingly though, Ukrainian asylum seekers were never portrayed as irregular migrants; their safe passage into the EU occurred based on their nationality, regardless of the status conferred to them by holding or not holding valid travel documentation. By doing so, the EU and Member States strived to provide refuge and protection to the largest possible number of Ukrainians fleeing the war, with humanitarian concerns and protection needs of Ukrainians being the top priority.

While EU's efforts in this regard must be applauded, they not only unequivocally expose EU's selective solidarity based on identity considerations, but also how the EU has been trying to leverage norms in a blatantly discriminatory fashion; for Syrian asylum seekers, their irregular status was a mode for exclusion and otherization, while for Ukrainian asylum seekers it was simply overlooked.

In this respect, it should likewise be observed the remarkable change of direction of Frontex's support to Member States during the Ukrainian crisis; its operations were no longer aimed at assisting Member States in curbing irregular migration like it was in the Syrian case, but rather in better managing the huge migration flows. No mention was made of returning irregular migrants, but rather helping with voluntary humanitarian

repatriation flights of those who could not stay in the EU as they were not covered by the temporary protection (see section 4.5).

Moreover, Ukrainian asylum seekers were not, as Syrian asylum seekers, depicted as being part of the same homogeneous group; rather, they were even distinguished from any other non-Ukrainian national fleeing the same Russian war, both in discourses—with repeated references to the Ukrainian people—and practices, with the TPD having been actually granted only to Ukrainian nationals and few other categories, as will be discussed shortly.

A crucial element which should be observed when comparing EU's policies in the area of external borders is the rhetoric used by EU institutions to legitimize them. In this regard, it is important to shed the light on how the securitization of different referent objects by the EU was used to justify contrasting responses.

It has been mentioned that Syrian asylum seekers, as part of an allegedly homogenous group of migrants in the eyes of the EU, were not only depicted as threats to EU's borders, but also as victims of the criminal machinery of trafficking and smuggling, for which the securitization of borders through sea operations was portrayed as necessary to save migrants' lives while disrupting such criminal networks (see sub-section 3.5.1).

In this context, it can be said that the otherization of migrants performed through both a securitarian and a humanitarian logic served the purpose of militarizing borders. Thus, contrarily to what one could expect, the victimization of migrants in the face of criminal smuggling networks did not, paradoxically, legitimize protection measures in regard to asylum seekers, but rather borders.

The reinforcement of borders in turn contributed to making EU's borders more deadly and the making of the humanitarian border. It can therefore be drawn by explicitly constructing the crossing of borders as well as trafficking and smuggling criminal networks as dangers for the human life and the human rights of migrants, including Syrian asylum seekers, the EU actively contributed to endanger the lives of migrants even further, with safe passages as well as their right to seek protection being denied.

EU's rhetoric in regard to the Ukrainian refugee crisis revolved around securitization as well; yet, it was constructed around different referent objects. To begin with, Ukrainian asylum seekers were by no means portrayed as a threat to EU borders, indeed, the only

security threat identified by the EU was Russia's bombing. Against this backdrop, Ukrainian asylum seekers were portrayed as the object under threat rather than the threat, for which the crossing through the easing of border controls was depicted as necessary to protect them.

It can therefore be observed that, whereas in the Syrian case the EU humanitarian rhetoric centered around preventing human tragedies at sea and saving lives served the purpose of prompting the securitization of borders, in the Ukrainian case the humanitarian rhetoric was instead used, as it should be for whatever refugee crisis, to enhance the protection of asylum seekers, exposing EU's double standards for asylum seekers.

Noteworthy is that Ukrainian asylum seekers were not the sole referent object under threat; European values of democracy and the rule of law were equally portrayed as referent objects which, most importantly, were depicted as values being shared by Ukraine and Ukrainians. What is more, norms, the rule of law in this case, emerge again, yet not as a mode for exclusion and othering—as it was the irregular status for Syrian asylum seekers—but rather inclusion of Ukrainians, fostering an idea of European belonging (see section 4.3). The construction of belonging here further exemplifies the the perceived similarity with Ukrainians and can be regarded through the concept of societal security, as in the Ukrainian case, elements of collective identities—European values—were leveraged. By contrast, in the Syrian case, Syrian asylum seekers were presented as societal threats.

To sum up, the unprecedented relaxation of borders for Ukrainian asylum seekers stands in stark contrast with Europe's approach to the Syrian refugee crisis focused on the militarization and closure of borders following a 'Fortress Europe' approach, based on the criminalization and securitization of migration whereby the otherization of the refugee is inherent. This analysis not only makes evident EU's selective solidarity for Syrian and Ukrainian protection seekers and how Syrians were blatantly denied their right to seek refuge and protection in the European Union; it also shows that the construction of the Ukrainian asylum seeker as the referent object threatened by Russia's invasion is imbued with identity and belonging considerations leveraging an alleged European belonging and the sharing of European values.

Overall, it is evident here how the securitization of Russia and the question of European identity worked as catalyzers of belonging processes in the Ukrainian case, while the homogenization and the securitization of migrants and borders triggered the otherization of the Syrian refugee.

5.3.3 Segregation vs integration: comparing hotspots and private housing solutions

Another striking difference between EU's policy responses towards the two crises undoubtedly concerns reception infrastructures, with the 'hotspot approach' being implemented towards Syrian asylum seekers and private accommodation and housing solutions being provided to Ukrainian asylum seekers. Space is a crucial element to take into account in this context, as reception facilities bring along a reconfiguration of space with inclusionary and/or exclusionary functions. My analysis provides that the implementation of the two reception solutions follows a contrasting logic whereby othering in the Syrian case and belonging in the Ukrainian case are performed through space.

To begin with, hotspots were not even reception structures conceived as places where Syrian asylum seekers ought to be hosted; they were rather isolated places located at the external border of a frontline Member State whereby Syrian asylum seekers found themselves confined in their attempt to reach the EU. Hotspots were indeed aimed at contrasting irregular flows, thus being conceived as registration centers whereby all migrants were blocked until properly identified, fingerprinted and registered by Member States where the hotspots were located, supported by EU Agencies, in order to determine their eligibility for either relocation to another Member State or returns (see sub-section 3.5.2).

It has been mentioned that Syrian asylum seekers were indeed eligible for relocation (see sub-section 3.5.3); yet, they were still confined as 'any other' migrant, reflecting the afore-mentioned securitization approach where all migrants are put in the same basket, i.e. the homogeneous group of migrants posing a security threat, prompting their otherization (see sub-section 5.3.2).

While putting in place proper hosting facilities for the reception of Syrian asylum seekers was not even an option on the table in 2015, the EU promptly took action to

ensure Ukrainians could access full-fledged accommodation and housing solutions in the face of the Russian invasion of Ukraine in 2022, thereby departing from the conceptualization of registration or reception centers whatsoever functioning as spaces of confinement and othering.

The Safe Home Initiative was indeed intended to provide guidance to ensure all types of private accommodation options provided to Ukrainians were compliant with a set common standard for suitable accommodation, in accordance with the TPD provisions. Noteworthy is that not only were there clear indications on vetting, monitoring and supervising those solutions to ensure they were safe, healthy and hazard-free; it was also emphasized the importance of ensuring that such solutions enabled Ukrainian refugees to *integrate* in the host country, with special mention being made of *non-segregated accommodation* (see sub-section 4.6.3). This reflects how space served the purpose of fostering belonging, thereby functioning as a place of inclusion, intentionally placing Ukrainian refugees inside the host society, with a view to long-term integration.

As regards the hotspot approach, space functioned in the exact opposite way. As already mentioned, hotspots were located at a frontline Member State's external border subject to particular migratory pressure. In this sense, we can say that the geographical location of hotspots speaks volume about their exclusionary function; they featured as isolated and segregated spaces whereby othering processes were reproduced (see section 2.5). Through hotspots, the Syrian asylum seeker was kept 'outside' the well delimited European 'Fortress', reproducing a specific demarcation of space.

Most interestingly is that, unlike the Safe Home Initiative, which was complemented with well-structured and detailed guidance to ensure high standard of protection in accordance to TPD provisions on suitable accommodation, the EU never devised concrete tools to regulate the actual implementation of hotspots, if not by making reference to directives allowing derogations on standard norms on detention of asylum seekers and irregular migrants, *de facto* reducing their standard of protection (see sub-section 3.5.2). EU's double standards are thus self-evident in this context.

It is critical to observe that the exclusionary and othering function of hotspots also passes through its name; 'hotspot' is indeed not a neutral term, but rather indicates a place where intervention is much needed, having it come to symbolize, in the IR discipline, war

and conflict zones, as well as areas of criminal activity which require reinforced policy intervention (Neocleous and Kastrinou 2016). It can therefore be said that EU's choice of using the term 'hotspot' is not accidental and stands in stark contrast with EU's commitment to grant Ukrainians private housing options in the first place.

I would argue that the use of the term 'hotspot' represents a clear securitization attempt which frames hotspots as a space of criminality, thereby suggesting the illegality of all migrants located therein, including of Syrian asylum seekers. This is further exemplified by the fact that, based on EU documents, hotspots are set out in those areas particularly affected by migratory pressure in connection with the smuggling of migrants (see sub-section 3.5.2).

We can thus say that while hotspots allowed for the line between Syrian asylum seekers and irregular migrants being increasingly blurred, *de facto* legitimizing detention practices and human rights violations (see sub-section 3.5.2) in a segregated space where othering is performed through practices of exclusion; private housing and accommodation solutions for Ukrainian asylum seekers prompted processes of identification and belonging performed through practices of inclusion, integration and non-segregation. EU's policies in regard to reception therefore makes evident once again EU's discriminatory solidarity towards third-country nationals seeking refuge in its soil.

5.3.4 How European identity shapes solidarity and political will: successful activation of the TPD vs failed relocation schemes

If contrasting border and reception policies already speak volume about EU's double standards for Syrian and Ukrainian asylum seekers, the successful and unanimous decision to activate the Temporary Protection Directive in response to the over 8 million Ukrainian asylum seekers reaching the EU in 2022, compared to the solidarity failure to relocate 'only' 160,000 Syrian asylum seekers in 2015 leaves no doubt about this disparity. It further illustrates how EU's decisions represent identity-driven choices.

There is a strong consensus among experts that the activation of the TPD would have greatly contributed to the effectiveness of the EU's response to the Syrian refugee crisis (Genç and Şirin Öner 2019; İneli-Ciğer 2015a; Mitrovic 2015; Van Selm 2015). The TPD, specifically designed to address such situations, was deemed particularly relevant in this

context. Notably, the TPD stood out as the only tool that entailed a burden-sharing mechanism, albeit voluntary in nature and lacking clear guidelines (Beirens et al. 2016).

In contrast, Dublin III Regulation, which formed the basis of the EU's refugee framework as discussed in the first chapter, was primarily intended to allocate responsibility for processing asylum claims, rather than establishing a burden-sharing mechanism among Member States. Consequently, in the Syrian context, such shortcoming became particularly evident,

Despite Italy and Greece facing overwhelming arrivals and the constant emphasis on the Mediterranean's increasing human tragedies by EU institutions, the Commission never proposed the activation of the TPD. This was the case even when Italy explicitly called for its implementation (see sub-section 3.4).

The reason behind its non-implementation in the Syrian context is difficult to grasp. The TPD would have not only prevented the congestion of the Italian and Greek systems of asylum; it would have also allowed for a swift differentiation of Syrian asylum seekers from other migrants, including economic migrants or other irregular migrants composing mixed influxes. In this sense, granting temporary protection to Syrians could have been a win-win solution, enabling the EU to pursue its stated well-stated ambition of preventing irregular migration, which had proved challenging in the face of mixed influxes.

The existing literature (as discussed in sub-section 2.2.3) identifies various reasons for the non-implementation of the TPD, including the vague definitions within the TPD provisions, the difficulty in reaching a qualified majority in the Council, concerns among Member States about the potential pull factor, and the broader crisis surrounding the principle of solidarity within the EU's structure.

However, these factors did not manifest in the same way during the two crises. Surprisingly, in the Ukrainian case, the Commission promptly proposed the activation of the TPD without prolonged discussion on whether the Ukrainian inflow could be considered a 'mass influx' or not.[31] Furthermore, Member States swiftly reached a

[31] In has been discussed (see sub-section 5.2.1) that, although the scale and speed of Ukrainian arrivals was much more pronounced than in the Syrian case, partly justifying the activation of the TPD in this instance, the ambivalence regarding scale and speed suggests that this was not the primary factor explaining the EU's implementation of the TPD and its open-door policy towards Ukrainian asylum seekers overall.

qualified majority in the Council, and no significant concerns were raised about the TPD acting as a pull factor.

Notably, the EU appeared to have rediscovered a sense of solidarity that was noticeably absent in its approach to the Syrian case. This development suggests that the EU's policy decisions were guided by a distinct set of considerations. The reasons identified by scholars regarding the non-activation of the TPD are insufficient to explain EU's remarkable shift in activating the TPD for Ukrainian asylum seekers.

Indeed, it should be noted that not only was the TPD not activated for Syrians, but the relocation scheme proposed in its place, which aimed to provide 'only' 160,000 relocation places, was also not successfully implemented. This limited number of places, particularly when considering the individual spots that Member States were required to make available, [32] highlights the evident challenge in granting any form of protection to Syrian asylum seekers.

It can be inferred that these obstacles in providing temporary protection, international protection, or any other national protection scheme to Syrians were fundamentally rooted in the lack of solidarity, not only among Member States but particularly towards Syrians themselves. This thesis argues that the underlying factors behind the political unwillingness and lack of solidarity among Member States towards Syrian asylum seekers can be attributed to a selective solidarity driven by othering processes rooted in identity considerations.

This answer becomes particularly evident when examining the failed implementation of the relocation schemes in 2015 and the strong opposition from V4 countries. Amidst the erection of fences and the tightening of asylum border regulations and controls, V4 countries rejected the mandatory refugee quota of Syrian asylum seekers, portraying them as a security and cultural threat based on their affiliation with the Islam religion and establishing them towards the in-group, i.e. European Christians. Notably, countries like Slovakia, only accepted the relocation of Christian refugees (see sub-section 3.5.3)

[32] As pointed out in section 3.5.3, the distribution of asylum seekers under the relocation scheme was based on a set of criteria, such as GDP and size of the population, number of previously resettled refugees and registered asylum claims, as well as the unemployment rate of the hosting country.

The identity considerations underpinning Member States' selective solidarity becomes even more apparent when examining their stance on the Ukrainian refugee crisis. Despite a slightly changed political configurations within those countries compared to the Syrian refugee crisis—Poland and Hungary are led by leaders of right wing-conservative parties, respectively, the Fidesz and the Law and Justice Party (PiS), and Slovakia by leader of the populist centre-right party Ordinary People group (OLaNO)—their attitudes towards asylum seekers have dramatically shifted, but only towards Ukrainian asylum seekers. Their open-door policy was indeed justified by referring to the Ukrainian people being European, as well as to family ties and Christian roots shared by Ukrainians and their countries' nationals, while pitting the against the out-group, the 'Muslim masses', making reference to the 2015 refugee influx (see section 4.5).

The answer also becomes evident when closely examining the Ukainian case and the first-ever activation of the TPD. Particularly, it is crucial to observe for whom the temporary protection scheme was specifically designed. Despite the initial rhetoric that suggested providing refuge to all those fleeing Moscow's aggression by the Commission, it became clear that the TPD was not designed for individuals escaping the Russian war in general; rather, it was specifically conceived for Ukrainians fleeing the conflict. The explicit designation of beneficiary categories, as outlined in section 4.4., serves as a telling example of this selective approach and the double standards therein.

Overall, the contrasting approaches clearly demonstrate the significant influence of European identity on solidarity and political will, particularly. It is evident that European identity acts as a driving force in both othering and belonging processes. The successful activation of the TPD for Ukrainians, accompanied by unanimous vote and swift action precisely reflect identity and belonging considerations concerning the Ukrainian people. By contrast, the non-activation of the TPD in the Syrian case, coupled with the failed relocation schemes, exposes a lack of solidarity driven by othering processes. These processes stem from the perception that Syrian asylum seekers threaten cultural integrity and are incompatible with European societies. It is crucial to note that while explicit mention of European identity may not be made, the underlying concerns revolved around cultural identity, making explicit reference to what V4 countries perceive as European: shared culture and roots.

Furthermore, within EU institutions, the interplay between European identity and the perceived cultural identity of Syrian asylum seekers becomes even more subtle; their otherization is constructed upon the homogenization and securitization of Syrian asylum seekers, perpetuating racialized stereotypes.

5.3.5 Financial aid policies: taking responsibility vs externalizing responsibility

The comparative analysis presented so far provides compelling evidence that EU's policy responses were significantly shaped by two distinct ambitions grounded in belonging and othering processes in connection to European identity: a strong commitment to actively addressing the needs of Ukrainian asylum seekers, perceived as sharing European identity and values and, and a persistent reluctance to accept 'non-European' Syrian refugees.

As we delve deeper into this examination, it is important to consider another crucial aspect of EU's policy, namely, the objectives and purposes of the financial assistance provided in these respective contexts. Unsurprisingly, they persistently follow the established pattern of employing all available means to impede the arrival of Syrian refugees while providing unwavering assistance and support to Ukrainian refugees.

Regarding the Syrian situation, the EU's financial assistance primarily involved humanitarian, development and stabilization aid to countries of origin and transit (see sub-section 3.5.4). Conversely, in response to the Ukrainian crisis, the EU placed emphasis on humanitarian aid funding to address urgent needs while also enabling Member States to access flexible funding for the purpose of facilitating long-term integration of Ukrainian asylum seekers (see sub-section 4.6.1 and section 4.7).

EU's humanitarian, development and stabilization aid to third countries played a crucial role in a broader strategy aimed at externalizing its responsibility beyond its borders. This strategy involved the transfer of the burden of refugee assistance and border control to third countries. The EU implemented this approach notably through initiatives such as the EU Emergency Trust Fund for Africa, the EU-Turkey Joint Action Plan, and the subsequent continuation of the plan under the EU-Turkey statement.

Through financial aid, the EU sought to address the root causes of migration and displacement, as well as enhance the capacity of third countries to handle refugee influxes. These initiatives aimed to establish a framework of cooperation where third

countries received financial support in exchange for their cooperation in managing irregular migration flows and securing borders.

On the other hand, EU's approach to the Ukrainian crisis showed a different set of priorities and objectives. Rather than externalizing its responsibilities, the EU actively took action to be able to receive Ukrainian asylum seekers at the best of its possibilities. In this regard, it is important to observe that the only country involved in facing the Ukrainian refugee inflow the EU committed to assisting which is not an EU Member State is Moldova, one of Ukraine's western neighboring countries and direct point of entry into the EU through Romania. Yet, EU's financial as well as operational support through the deployment of Frontex's teams was intended to provide emergency humanitarian assistance to Ukrainians temporarily transiting across its territories. Furthermore, it was intended to ensure the safe passage of Ukrainian asylum seekers into the EU—rather than restricting it (see section 4.5).

The funding provided by the EU has therefore the primary objective of meeting the needs of Ukrainians; not only immediate needs, through humanitarian aid funding, but also long-term needs within the territory of the EU. The easing of access to funding for EU Member States, through initiatives such as CARE and FAST-CARE (see sub-section 4.6.1), is a case in point. Via simplified reporting procedures, Member States have been enabled to promptly support the integration of Ukrainian refugees.

To be sure, several Member States—especially frontline Member States such as Greece and Italy, but also those who had activated the EU Civil Protection Mechanism—similarly received financial aid in the context of the Syrian refugee crisis. However, it is crucial to recognize that that this financial aid predominantly served as an imperative emergency response which lacked comprehensive measures aimed at long-term protection and integration objectives. Additionally, a portion of the financial aid was allocated for alternative purposes, including the establishment of hotspots, with well-established migration control purposes resulting in restricted access to asylum (see sub-section 3.5.2)

It has indeed been explained (see sub-section 3.5.4) that the European Union, faced with a growing numbers of displaced Syrians seeking refuge and an inability to reach consensus on solidarity measures, prioritized fortifying its 'Fortress' approach. Instead of

considering the option of providing legal pathways for asylum seekers—as it has been done through the activation of the TPD and the financial contribution to enable its proper implementation later with the Ukrainian refugee crisis—the EU chose a different path. By collaborating with third countries of transit and origin, the EU blatantly 'walked away' from its humanitarian obligations and moral claims vis-à-vis the humanitarian crisis by outsourcing its responsibility to protect those who flee from war to countries with dubious capacity and willingness to uphold humanitarian principles and respect the human rights of asylum seekers.

The EU-Turkey statement is a case in point, illustrating EU persistent framing of the Syrian refugee crisis in securitization terms; justified as measures to end human suffering and restore public order (see sub-section 3.5.4), the right of Syrian asylum seekers was subjugated to Turkey's ability to collaborate for ending illegal migration in the EU.

In light of these findings, it is evident that the EU's financial aid policies as well were influenced by complex dynamics of identity, belonging and othering, as well as securitization, resulting in differential treatment and outcomes for Syrian and Ukrainian asylum seekers.

6 Conclusions

This thesis has shed light on the EU's differentiated policy responses to the 2015 Syrian 'refugee' crisis and the 2022 Ukrainian 'refugee' crisis, with a view to revealing the existence of double standards in the European Union's approach towards protection seekers. Three interrelated research questions have been addressed:

1) What are the policy responses introduced by the European Union in response to the 2015 Syrian 'refugee' crisis and the 2022 Ukrainian 'refugee' crisis?
2) How do these policy responses differ from each other?
3) What are the possible sociopolitical explanations behind differing policy responses, and how do identity considerations play a role in shaping the EU's policy responses?

To provide a structured answer to these research questions, this thesis has been divided in four chapters. The first chapter, aiming at establishing the theoretical foundation of this work, has firstly delved into the emergence of the migration and asylum debate in the EU as a result of the advancements of free movement and the European integration, to then discussed the EU refugee legal and policy framework, with a special focus on its inherent faults and the possible protection avenues for individuals displaced by conflict.

Afterwards, it has discussed relevant literature in connection with the concept of European identity and its actualization through processes of othering and belonging, which have served as an analytical framework for the subsequent analysis of our case study.

This has been complemented with additional conceptual elements that have similarly guide our interpretation of policies throughout this thesis, as they are deeply entrenched with our research topic: the notion of societal security and the securitization of migration in the EU, as well as the relation between EU borders and migration, with a focus on their othering function.

The second chapter has identified and critically dissect the policy responses devised by the European Union in response to the 2015 Syrian 'refugee' crisis. Overall, the analysis has revealed that the European Agenda on Migration, which encompasses the measures devised by the EU to address the general Mediterranean crisis, reflect a *de facto*

close-door policy towards Syrian asylum seekers, consolidating a 'Fortress Europe' approach.

It has emerged that the humanitarization and victimization of Syrian asylum seekers have served the purpose of militarizing borders rather than creating safe legal pathways. In this context, their parallel criminalization and securitization have manifested through exclusionary practices underpinned by, and resulting in, othering processes.

The latter have been actualized through space, as exemplified by the 'hotspot approach' and the making of the humanitarian border through sea operations, through the externalization of responsibility to third countries of origin and transit, as well as the failed implementation of relocation schemes.

With regard to the latter, othering processes have not only emerged as a consequence but especially as a root cause of the failed relocation scheme, with the question of European identity being leveraged by V4 countries to differentiated between the in-group, European Christians, and the out-group, the non-European Muslim alien. In this context, European identity has served the purpose of othering and exclusion, with explicit mention of those traits perceived as inherently European.

The third chapter has instead presented and discussed the policy responses formulated by the European Union to cope with the 2022 Ukrainian 'refugee' crisis. The analysis reveals that the EU has adopted an open-door policy approach, driven by a firm commitment to meeting the needs of Ukrainian asylum seekers.

The EU and V4's institutional discourses made it evident that such commitment was driven by the perceived belonging of the Ukrainian people to the European family, based, respectively, on value and cultural considerations, which acquire specific relevance in the EU ideological struggle against Russia.

Practices consistently reflect such commitment. It has emerged that unanimously voted first-ever activation of temporary protection mechanism, especially devised for Ukrainian nationals fleeing the Russian war, together with the relaxation of borders and a set of *ad hoc* measures to facilitate the integration of Ukrainian asylum seekers—the easing of access to funding for EU Member States, non-segregated housing initiatives, and the facilitation to access labor opportunities—are further evidence of belonging considerations underpinning policy choices. As a result, EU's open-door policy

manifested as a comprehensive and consistent to assist Ukrainian asylum seekers by any means possible, aiming at fostering belonging.

Ultimately, the fourth chapter has further delved into the findings of the previous chapters, discussing the contrasting EU's policy responses in a comparative perspective. As a first step, the chapter has illustrated how the differences in characteristics between the flow of Syrian and Ukrainian asylum seekers, namely, scale and speed as well as gender and age composition, cannot explain EU's remarkable shift in granting protection to asylum seekers. Similarly, it has provided a thorough explanation of why differing geographical proximity and political security perceptions can neither be defined as primary driver of EU's contrasting policy responses.

The chapter has shed light on the blatant discrepancies between policy responses, demonstrating that EU's remarkable shift lies with the perceived divergence in identity of Syrians and Ukrainians with the European identity.

To accomplish this goal, it has particularly highlighted four aspects, in addition to the EU's contrasting reactions to the two 'refugee' crises. The selective open-door policy towards Ukrainians and closed-door policy towards Syrians lies with the EU's discriminate choice to securitize different referent objects: the securitization of Syrian asylum seekers as (societal) threats to EU's borders versus the securitization of the Russian as a (societal) threat to Ukrainians as defenders of the European values, clearly showing that similarity and belonging were the primary drivers of such discriminatory approach.

Most importantly, the successful and unanimous activation of the TPD in response to the over 8 million Ukrainians in contrast to the failure to relocate 'only' 160,000 Syrians scheme provides further evidence of the fact that the issue of solidarity among Member States is especially underpinned by identity considerations, with the emblematic double standards applied by V4 coutries.

Furthermore, EU's reception practices appear to have followed the same line, especially grounded in belonging and othering processes. The hotspots, on one hand, and the private accommodation and housing solutions, on the other, are further evidence of EU's attempt to demarcate space in such a way that it fosters the exclusion and othering of Syrian asylum seekers and the inclusion and belonging of Ukrainian asylum seekers.

On a similar note, financial aid policies reflect EU's willingness to take responsibility for the reception and integration of asylum seekers, on one hand, and to externalize and evade its responsibility as well as to prevent Syrians' arrival, on the other.

The significance of these findings within the broader context of the relevant literature introduced in the initial chapter holds substantial weight. The analysis has demonstrated how European identity continues to acquire significance in opposition to the 'other', serving as a rhetorical tool to justify specific policy choices and objectives.

In examining the two 'refugee' crises, it becomes evident that the 'others' were portrayed as societal security threats, leading to securitization practices. However, a notable change has been observed in EU's securitization practices in the two 'refugee' crises. While the EU actively securitized the Syrian influx, presenting them as a threat to EU's borders, in the Ukrainian case, the societal threat was not posed by the Ukrainian asylum seekers themselves, but rather by Russia. It is crucial to highlight that Russia was perceived not only as a military threat, but especially a societal threat challenging European values.

It is critical to point out that the securitization of EU's borders and the 'spectacularization' of the illegality of Syrian asylum seekers illustrate the othering and ordering function of EU's external borders, exemplifying the concept of 'border spectacle' discussed in the theoretical chapter. Similarly, the parallel rhetoric of victimization and securitization of Syrian asylum seekers provides further evidence of the Mediterranean border as a 'humanitarian' border.

Furthermore, this thesis reveals that the paradigm shift in EU's approach to granting asylum is particularly driven by a selective solidarity grounded in identity considerations. This brings into question the overall scholarly discussion which has attributed the reason behind EU's approach to migration and asylum as a mere issue of burden-sharing between Member States.

Overall, the case study shows that Europe has been constructed as an exclusive in-group, whereby identification is driven by shared values and cultural similarities. This in-group identification is further intensified by the perception of external threats, such as the portrayal of the Muslim illegal migrant in the Syrian case and the Russian Federation in the Ukrainian case, both seen as challenging the very essence of Europe.

In conclusion, this thesis has spotlighted EU's differentiated policy responses to the Syrian and Ukrainian 'refugee' crises, revealing a pattern of double standards which calls into question the integrity of EU's approach to asylum matters. This thesis contends that the shift from a closed-door policy to an open-door policy towards asylum seekers does not represent a paradigm shift in the EU's approach of conflict-induced asylum seekers. Rather, it unveils the deep-rooted challenge of forging a collective response hindered by a lack of solidarity rooted in belonging and othering considerations.

Notably, the activation of the TPD serves as a stark reminder of the paramount role played by political will in shaping policy decisions. These findings not only emphasize the imperative of understanding how identity factors influence policy choices but also underscore the pressing need for future research to delve into the underlying dynamics.

7 Appendix

7.1 Towards a common asylum policy

With the Treaty of Amsterdam, the question of asylum came under title IV of the Treaty, together with issues concerning visas, immigration and questions related to free movement of persons (European Union 1997). Under this Treaty, the Council was to introduce, within five years of its entry into force, measures in a set of areas, which included minimum standards concerning the reception of asylum seekers as well as mechanisms and criteria for the determination of the Member State responsible for dealing with asylum applications of third-country nationals.

They also comprised minimum standards for providing temporary protection to displaced third country nationals who could not return to their country of origin and persons who otherwise need international protection, as well as measures defining conditions of entry and stay of third country nationals and their rights (ibid).

These measures were envisaged as part of the Common EU Asylum system (CEAS), which the European Council committed to establishing on the occasion of the special conference held in Tampere in 1999, with the adoption of the related Tampere Program. The latter is particularly relevant as the need to develop a common EU asylum and immigration policies was reiterated, which were to be built upon the following elements: 1) partnerships with countries of origin of migrants and asylum seekers; 2) a common EU asylum system; 3) the fair treatment of third country nationals; and 4) the management of migration flows (Council of the EU 1999).

The CEAS fitted within the broader scope of constructing "an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity" (ibid., 1).

Moreover, it was to be implemented in two phases: the first one (1999-2004), which foresaw the introduction of common minimum standards, was to pave the way for the second phase, the aim of which was achieving unified policies and practices throughout the Union, whereby asylum procedures and protection status for those granted asylum or subsidiary protection were harmonized.

It is critical to mention that in 2000, the EU Charter of Fundamental Rights was proclaimed and the right to asylum as enshrined in the Geneva Convention and its New York Protocol was recognized, thereby reaffirming the *non-refoulement* principle in the Union, while no mention was made of displaced people or individuals otherwise in need of international protection. Nonetheless, only one year later, the European Council adopted the Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons, which will discussed in more detail below (Council of the EU 2001a).

With the 2004 Hague Program new measures were outlined for the second phase, which originally covered the period 2015-2010 and was eventually conclude in 2013 (Council of the EU 2005a). The second phase was particularly critical insofar as a set of issues emerging in the previous phase had to be tackle, including the recognition rates of asylum for individuals coming from same country of origin differed substantially among EU Member States—which inevitably led to increased movements of asylum seekers across the Union—and the subsidiary protection which was granted at the discretion of each Member State (Peers 2013).

The Treaty of Lisbon, which was signed in 2007 and entered into force in 2009, laid the foundations of the second phase by widening the competencies of the EU in the area of asylum through ordinary legislative procedure. Article 78(2) of the Treaty on the Functioning of the European Union (TFEU) as amended by the Lisbon Treaty, provides the legal basis for CEAS, which should be based on the following elements:

a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
c) a common system of temporary protection for displaced persons in the event of a massive inflow
d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection (European Union 2007, Art. 78(2)).

Another important revision introduced by the Lisbon Treaty is to Article 80 TFEU, which makes explicit reference to the principle of solidarity and sharing of responsibility among the European Member States, including the financial implications stemming from it (ibid).

Additionally, it is important to note that the Lisbon Treaty strengthened the reception of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) into Member States' national systems. Indeed, the European Union's accession to the Convention implied that it acquired binding character for EU institutions and Member States, with direct effects on the latter's internal legislation, including the non-application of internal rules contrary to the Convention.[33]

Last but not least, the agreed Stockholm Program in 2009 and third of its type after the Tampere and Hague Programs, served as an additional guidance towards the building of the CEAS. It set the European Union's priorities in regard to international protection in the period 2010-2014, underscoring the need to reconcile the individual right to seek and enjoy protection from persecution with the right of the State to control its borders (Council of the EU 2009).

The 9/11 terrorist attacks marked an historical shift towards the construction of 'Fortress Europe', severely impacting EU's approach towards the question of immigration at large, with detrimental consequences on international protection. With the Laeken Declaration on the Future of the European Union, adopted by EU's heads of state at the European Council meeting in 2001 in the homonymous city, increased attention was place on protecting external borders, raising questions around protection seekers'

[33] The European Convention was firstly introduced in 1950, with a view to explicitly recognizing the rights enshrined in the Universal Declaration of Human Rights (UDHR) by means of a regional instrument. Even though it did not contain provisions in regard to Art. 14 UDHR on the right to seek and enjoy, the European Convention set the basis for the development of the asylum acquis in the Union thereafter.

ability to enjoy their right to seek asylum as their access to the territory of the Union, a prerogative for filing an asylum claim, has been increasingly undermined (Council of the EU 2001b)

This trend was eventually confirmed by the meeting of the heads of state in Seville (2002) and Salonicco (2003), during which priorities were set in regard to contrasting illegal migration and securing external borders (European Council 2002, 2003). The Salonicco meeting likewise reiterated the need for expediting the setting up of the CEAS that would enable the Member States to easily identify those in need of protection.

7.2 The Common European Asylum System (CEAS)

Within the afore-mentioned context, the Common European Asylum System was formulated in the EU. Let us now look into the specific instruments of CEAS by analyzing its main features and amendments in order to present the current European framework for international protection. By means of the first phase of CEAS, the following legislative tools were introduced: the Temporary Protection Directive, the Qualification Directive, the Reception Conditions Directive, the Dublin II Regulation, the Eurodac Regulation and the Asylum Procedures Directive. The second phase builds upon the enactment of recast secondary legislation, thereby repealing the previous legislation on the same subject. The current CEAS maintains most of the amended secondary legislation of the second phase, apart from the Temporary Protection Directive, which has never been amended.

7.2.1 The Temporary Protection Directive

The question of asylum gained increased relevance in the specificity of the European context of the late twentieth century marked by the end of the Second World War and the unfolding Cold War. The first steps of the European Union towards the formulation of common criteria and standards regulating the protection and reception of asylum seekers were indeed taken with a view to ensuring EU's compliance with the main instruments of international refugee law, i.e. the 1951 Geneva Convention and its Protocol.

The latter, while removing temporal and geographical barriers, was still aimed at protecting refugees as defined in the Refugee Convention, that is, only persons *individually* persecuted on the five specific grounds (race, religion, nationality, membership of a particular social group or political opinion)(United Nations 1951, Art 1A.2). Hence, no assurances were provided for individuals fleeing *en masse* emergency situations in terms of right to seek refuge outside their country of origin under international refugee law (unless they could prove to be individually persecuted), as their protection was limited to international human rights and humanitarian law.

UNHCR only provided clarifications on the extended application of the 1951 Refugee Convention through Guidelines on International Protection No. 11 and 12 quite recently and they are not binding instruments anyhow (UNHCR 2015, 2016c). As a result, the question of protection in relation to emergencies has long been at the discretion of the single States, with different instruments being developed at the regional level around the world.

As regards Europe, the need for developing an emergency mechanism emerged vis-à-vis the increased mass exodus triggered by the growing conflicts, violence and turmoil taken place in the Balkans in the late 1990s. With the dissolution of the former Yugoslavia, a growing number of displaced people sought refuge in Europe. However, their protection and rights associated varied greatly depending on the type of temporary protection granted by each Member State in accordance with their internal legislation.

Against this backdrop, it was decided to design a binding temporary protection scheme, with a view to granting a unified group-based standard of protection to respond to situations of mass displacement triggered by emergency situations, and ensuring pressure is evenly distributed among Member States.

The establishment of a common mechanism serves the purpose of granting immediate protection and standardized rights to those in need, while avoiding a deadlock of the European asylum system, which relied on individualized procedures of status determination by default.

The Temporary Protection Directive, TPD hereinafter, was firstly tabled in 2000 and adopted in 2001 after heated debates around a set of areas, including the criteria for its activation. Although a steady preference for unanimity had been shown in the negotiation

phase, an agreement was finally found on qualified majority voting in the European Council upon a Commission proposal (European Council 2001a, Art. 5).

The Regulation defines 'temporary protection' a procedure of exceptional nature to respond to mass influx or imminent mass influx of displaced third country nationals unable to return to their country of origin, with a view to providing them immediate and temporary protection, particularly if a risk exists that the influx will undermine the efficiency of the system of asylum (ibid., Art. 2 (a)).

Under the TPD, temporary protection beneficiaries are entitled with specific rights throughout the Union, including, *inter alia*, the right to engage in employed and self-employed activities (Art. 12), access to suitable accommodation (art. 13) and education (art. 14) and the right to family reunification (art. 15)(ibid.)

Despite the high standard of protection for beneficiaries of temporary protection status compared to those of international protection, as will be illustrated shortly, the specificity of the TPD triggering mechanism has made it difficult for it to be activated across time.

7.2.2 The Qualification Directive

The main piece of legislation of the CEAS is the Qualification Directive, which was first adopted through European Council decision in April 29, 2004, known as the Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection (2004/83). The Directive established criteria to be a refugee, i.e. to obtain the refugee status as defined in the Refugee Convention, as well as a beneficiary of the subsidiary protection status .

The subsidiary protection was introduced in the Union as an additional tool of international protection, thereby adding to the refugee status and the temporary protection status. It was officially recognized through this Directive, which provides that it may apply to:

> A third country national or stateless person who does not qualify as refugee but in respect to whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless

> person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15 […]" (Council of the EU 2004, Art. 2(e)).

Under Art. 15 'serious harm' entails death penalty or execution, torture or inhuman or degrading treatment or punishment, or individual threat posed by situations of indiscriminate violence, including international or internal armed conflicts (ibid., Art. 5).

In addition, it defines the rights beneficiaries of international protection are entitled with, including protection from refoulement (Art. 21), residence permits (Art. 24), travel document (Art. 25), access to employment (Art. 26), access to education (Art. 27), social welfare (Art. 28), healthcare (Art. 29), freedom of movement within the Member State (Art. 31), access to integration facilities (Art. 32)(ibid.).

To further harmonize protection standards and ensure their full application of relevant international and regional legislative frameworks of protection—which include, but are not limited to, the 1951 Geneva Convention and the New York Protocol, the EU Charter and the ECHR—the 2004 Directive was amended by Directive 2011/95, which is still in force today. Some of the amendments are presented hereafter.

As for the general rules, the definition of family has been widened, with the elimination of the requirement that children must be dependent and the addition of parents of unmarried minor children. Furthermore, the definition of actors of protection has been narrowed down, introducing the requirement that the protection must be effective and non-temporary in nature (The European Parliament and the Council of the EU 2011).

Additionally, tighter rules have been inserted in regard to the internal flight alternative, that is, the fact that a protection seeker could have obtained protection elsewhere within his or her country. As concerns the refugee status, gender identity has been recognized for the purpose of defining membership of a particular social group, thereby introducing legal obligations for State to carry out gender considerations when examining asylum claims (ibid).

Moreover, the recast Directive provides that, if a refugee has been traumatized, he or she will have his or her refugee status retained even if the situation in his or her country of origin improves considerably (ibid).

Ultimately, beneficiaries of subsidiary protection have been entitled with the same rights of refugees under the 1951 Refugee Convention, with the exception for the duration of residence permits and access to social welfare, thereby substantially limiting Member States' ability to provide differentiated treatment, with the overall result of better standards ensured for all beneficiaries of international protection (European Council on Refugees and Exiles 2016; Peers 2013).

7.2.3 Reception conditions directive

The minimum standards for the reception of asylum seekers were laid down by the Reception Conditions Directive 2003/9, which aimed to ensure that all asylum seekers enjoyed the same dignified treatment in accordance with applicable regional and international frameworks of protection in the territory of the EU (Council of the EU 2007).

The European Commission originally tabled the first proposal after the 2001 Council meeting in Laeken. Yet, heated debates around its content led to the adoption of the Directive two years later with substantial amendments, which significantly lowered the previously envisioned reception standards, with increased discretion in the hands of Member States.

Eventually, the Directive was replaced by current Directive 2013/33 laying down standards for the reception of applicants for international protection. It therefore foresaw the broadening of its scope, extending the standards of reception to all beneficiaries of international protection, that is, both refugees and subsidiary protection beneficiaries. Reception standards refers to, *inter alia*, schooling and education of minors (Art. 14), employment (Art. 15), vocational training (Art.16), material reception conditions, such as accommodation (Art.18) and healthcare (Art. 19), including psychological and mental health (The European Parliament and the Council of the EU 2013c).

Overall, the Directive aimed to decrease the wait for access to employment and education—yet with slightly positive results—and to limit Member States' discretion in regard to the reduction or withdrawn of reception conditions as well as the detention of protection seekers. (Peers 2013).

The new clause 6(6) explicitly calls upon Member States not to impose unnecessary or disproportionate documentation requirements in accessing benefits. Moreover, not only cannot reception conditions be revoked in case of a late application anymore, but also, in those cases in which they can be either reduced or revoked, EU States are now obliged to ensure access health care and a dignified standard of living (ibid).

Furthermore, Member States have the obligation to take into account specific situations of vulnerabilities, including of victims of torture and violence (Art. 25) and unaccompanied minors (Art. 24), as well as ensuring that their specific needs are assessed and met (Art. 22), such as ensuring they can access psychological support (ibid).

Concerning the question of detention, the Directive has provided that detained applicants must be informed of the reasons for detention and the national procedures for challenging it and for requesting free legal assistance (ibid., Art. 9(4)).

In addition, the Directive has explicitly indicated that applicants can only be detained in exceptional circumstances defined in the same document, with stricter provisions for minors and unaccompanied minors, and that grounds for detention must be laid down in Member States' internal legislation (ibid., recital 15).

Lastly, detention is defined as a measure of last-resort, whereby alternative measures cannot be applied, provided that an individual assessment of each case is carried out (Art. 8). At the same time, it has provided that any administrative procedures related to them must be carried out with 'due diligence', thereby ensuring that the time needed to verify such grounds is as short as possible (ibid., Art. 9).

7.2.4 The Dublin Regulation

The current system for establishing the Member State responsible for dealing with asylum applications is built upon Regulation 604/2013, known as the Dublin III Regulation. However, the need for an allocation mechanism in Europe is as old as the Schengen regime is.

The first regulation attempt to establish a coherent framework in the newly created border-free area in this respect was the Dublin Convention, signed on June 15, 1990, only four days before the Convention Implementing the Schengen Agreement was signed, on June 19. Its aim was twofold: ensuring that asylum applications were examined according

to properly defined common procedures in accordance with the Geneva Convention and its Protocol, while at the same time preventing the phenomenon of asylum shopping, i.e. when asylum applications are lodged in multiple Member State at the same time .

At the Tampere summit, it was decided to replace the Dublin Convention, which was originally stipulated outside the Union and then introduced in the European system, with a full-fledged European regulation as part of the CEAS with direct effect on national legislations of EU Member States: Council Regulation 343/2003, known as Dublin Regulation II.

A set of objective, hierarchical criteria were established in order to determine the only one State responsible for examining asylum claims under the afore-mentioned Regulation, which were laid down in Chapter III: the principle of family unity (Art. 6,7, 8), the recent issuance of residence permits or visa (Art. 9), illegal entry (Art. 10) or legal entry in a Member State (Art. 11), application in an international transit area of an airport (Art. 12) and the exceptions (Art. 13)(Council of the EU 2003).

As the list is to be intended in a hierarchical order, each principle applies only if the previous one is not applicable. The first principle to be considered is the family reunification, that is, the Member State who has the obligation to deal with an asylum request is the one where a family member is legally located. If this principle is not applicable, then should the asylum seeker be in possession of a valid residence document or visa, his or her application will be evaluated by the Member State who issued such documentation. If an asylum seeker enters illegally into a Member State, the latter is designed as the responsible State for twelve months, while in case of legal entry in a Member State whereby the visa is not required, then that Member State will have to examine the claim (ibid., Chapter III)

The penultimate criterion applies to those third country nationals who file an asylum request in an international transit area or airport, according to which the State where the transit area or airport is located is the one responsible for dealing with the application. Last but not least, if none of the above-mentioned criteria is applicable, then it is the first Member State where the asylum claim was filed the responsible one (ibid.)

It should also be noted that the Regulation introduced a humanitarian clause whereby any Member State, although not responsible under the designated criteria, can accept to

deal with an asylum application for humanitarian reasons based on family and cultural grounds (ibid., Chapter IV).

Moreover, Chapter V contains provisions in regard to the possibility of a Member State who has been designated as responsible for examining an asylum claim to issue a request of taking charge of that application to another Member State it deems responsible for it (ibid).

Eventually, Council Regulation 604/2013 (Dublin III) was adopted and has been in place ever since, thereby replacing the old regime under Dublin II with a view to addressing its shortcomings.

However, Dublin III has not introduced changes with regard to the criteria regulating the allocation mechanism, with the State of first entry remaining the used principle *par excellence*, as the family and the document issuance criteria are often not applicable. This question has continued to be controversial, as responsibility has been increasingly shifted from northern and western EU countries—which were indeed the preferred destinations of protection seekers—to Southern Member States, that are geographically more exposed to refugee inflows from the Middle East and Africa (Peers 2013).

The revised Regulation has rather focused on enhancing procedural aspects and improving the standards of protection for applicants, with reference to both asylum seekers and subsidiary protection seekers.

As to the procedural aspects, the timeframe for submitting and taking charge requests have been reduced (Chapter VI) and there are new rules concerning, among other things, costs (Art. 30), exchange of relevant information before a transfer is carried out (Art. 31), including health information (Art. 32) and a mechanism for early warning, preparedness and crisis management (Art. 33). Further clarifications and rules have been added with reference to data security and protection (Art.38), confidentiality (Art. 39), penalties (Art.40), transitional measures (Art. 41) and repeal (Art. 48)(The European Parliament and the Council of the EU 2013a).

As far as protection standards are concerned, the recast Regulation has established procedural and legal safeguards, including the right to information (Art. 4), which comprises the right to be informed about the right to challenge a transfer decision and to

request a suspension of transfer, the right to an effective remedy (Art. 27) and a new clause has been set out with regard to the right to a personal interview (Art. 5)(ibid.)

Furthermore, concerning detention, it has been established that an asylum seeker can only be detained in case of a risk of absconding (Art. 28). Another important aspect is the addition of new guarantees for minors (Art. 6) as well as the widening of scope of the rules on family reunion (ibid); with the recast Regulation, the latter applies not only to cases whereby a family member has been granted or has applied for the refugee status, but also to subsidiary protection status applicants or beneficiaries.

However, more ambiguous clauses have been set out with regard to dependent persons, to the extent that they are specifically defined as child, sibling or parent—resulting in the exclusion of other categories such as an uncle or mother-in-law—and the fact that Member States should bring together protection seekers and their relatives, "provided that family ties existed in the country of origin" (ibid., Art. 16(1)).

7.2.5 Eurodac Regulation

The CEAS is also based on the Eurodac system, known as the *European Dactyloscopy System*, which is an information system originally introduced by Council Regulation 2725/2000 as a complementary tool to the 1990 Dublin Convention. The increased movements of asylum seekers towards the Union and the emergence of the asylum shopping phenomenon throughout those years spotlighted the need for a coherent system built upon objective criteria for the determination of the State responsible and fair rules on examination of asylum applications.

With this in mind, negotiations started with the aim of creating a system whereby fingerprints of asylum seekers could be gathered and easily compared, that is, the Eurodac system. It was initially conceived as a Protocol to be attached to the Dublin Convention, yet, with the Treaty of Amsterdam revising the new legal basis for as well as the structure of CEAS, the document was adapted and converted into a European Union regulation.

The European database of fingerprints features as huge biometric system shared among a group of countries—27 Member States, UK, Switzerland, Liechtenstein, Norway and Iceland—which was to allow the Union to identify the Member State responsible under the Dublin system; as already mentioned, the illegal crossing of an

external border of a Member State is a determining factor in designing the Member State responsible.

A revised Regulation 603/2013, which is the one in force still today, eventually amended the Eurodac system, conferring new powers to law enforcement authorities. Indeed, whereas the purpose of the previous Regulation was purely the one of improving the efficiency of the Dublin system and its allocation mechanism, the recast Regulation has aimed to extend the access of the fingerprints Database to law enforcement authorities with a view to preventing, detecting investigating serious crimes, including terrorism (The European Parliament and the Council of the EU 2012). Hence, both Member States' law enforcement agencies and the European Police Office (EUROPOL) can, under certain conditions, access information for law enforcement purposes.

Moreover, fingerprints are now to be taken not only of asylum seekers, but also of other applicants for international protection (i.e. subsidiary protection applicants), as well as every third-country national or stateless person who crosses irregularly an external border of any Member State, provided that they are at least 14 years old (ibid., Art. 14). Eurodac therefore widened its scope, thereby becoming a tool serving no longer EU asylum policies only, but also irregular migration and border management, facilitating resettlement (Berthélémy 2021).

7.2.6 Asylum Procedures Directive

The last pillar of the current CEAS is the European Parliament and Council Directive on common procedures for granting and withdrawing international protection (2013/32), also known as the Asylum Procedures Directive. It is the recast of the Directive on minimum standards on procedures in Member States for granting and withdrawing the refugee status (2005/85) and was adopted in 2013 together with the revised Reception Condition Directive, Dublin Regulation III and the recast Eurodac Regulation.

As we have seen with all recast directives adopted in the second phase of the CEAS, the scope of their provisions has been extended to beneficiaries and applicants of subsidiary protection, therefore, the same rules apply for both categories of international protection.

The purpose of the Directive is to establish the conditions for fair and adequate asylum procedures pursuant to the revised Qualification Directive. The very first proposal was tabled by the Commission in 2000 and, after heated negotiations, the draft was officially adopted in 2005 together with three annexes, one of which (Annex II) relates to the designation of safe countries of origin.

The major battlefields were, indeed, the setting out of a common minimum list of safe countries of origin, as well as other aspects such as detention, appeal procedures and legal assistance of applicants (European Council on Refugees and Exiles 2006). Only after several amendments was the text agreed upon by both the Parliament and the Council, with a more balanced approach whereby guarantees to applicants were provided, including the right to remain in the Member State while the application is processed (Art. 7), the right to legal assistance and representation in appeal procedures (Art. 15) and the right to challenge the application of the safe third country concept (Art. 27), among others (Council of the EU 2005b).

Furthermore, a set of procedural rules were better defined and outlined in Chapter III (procedures at first instance), Chapter IV (procedures for the withdrawal of refugee status) and Chapter V (appeal procedures)(ibid).

As regards the list of safe countries of origin, it is important to note that during the negotiation phase the Council approved on the draft under the condition that Member States agreed upon a legally binding list of safe countries, provision which was eventually deleted by a judgement of Court of Justice of the EU for procedural reasons (Court of Justice of the European Union 2008).

Thus, the revised Regulation no longer contains clauses on minimum common list of safe countries of origin, indeed, it is clearly stated that it must be based on multiple relevant sources of information, including from UNHCR and the Council of Europe (ibid., Art 37(3)). The purpose is to avoid substantial differences in the asylum procedures implementation in the EU, which had resulted in diverging treatments of applicants and unfair examination of their claims with the previous Directive.

The designation of third countries as safe country of origin, while being optional, remains at the discretion of Member States though. Nonetheless, derogations from the criteria established in Annex II are no longer possible for Member States, thereby

significantly reducing their room for manoeuvre. All in all, as the concepts of safe countries remain their provision have continued to be controversial.

Another example is Art. 35(b) on first country of asylum provides that a country can be considered as such for an applicant if he or she enjoys sufficient protection (ibid); however, 'sufficient protection' has not a legal definition in EU. Anyway, the recast directive also contains new safeguards for asylum seekers in regard to, for instance, personal interviews, with the applicant being granted the possibility to provide clarifications on the transcript under specific conditions (Art. 17), medical examination regarding signs that might indicate past persecution or harm (Art. 18), legal and procedural information free of charge in procedures at first instance (Art. 19) and the rapid assessment of special procedural guarantees (Art.24)(ibid).

7.2.7 The European Union Agency for Asylum

To support the proper functioning and implementation of the CEAS, the European Union relies on a specialized agency, the so-called European Agency for Asylum (EUAA), which was created by means of Regulation (EU) 2021/2303. The latter only entered into force in January 2022, thereby repealing Regulation (EU) 439/2010 on the establishment of a European Asylum Support Office (EASO).

The main purpose of EASO was supporting practical cooperation among Member States on asylum within the framework of the second phase of CEAS, providing trainings on how to process applications, producing reports on countries of origin of asylum applicants on human rights and security topics, supporting relevant authorities in processes asylum claims in cases of mass influxes.

Building upon EASO's mandate, EUAA features as a full-fledge agency with increased resources and extended functions pursuant to Art. 2 of the recently adopted Regulation (The European Parliament and the Council of the EU 2021). EEUA will thus provide enhanced operational and technical assistance to Member States with a view to ensuring the latter's compliance with their obligations and assessing the implementation of common procedures as laid down in the different directives.

The EUAA is indeed in charge of developing operational standards, indicators, guidelines and best practices in asylum questions and the implementation of EU asylum

law (Art. 13), so as to be able to better monitor and assess the functioning of Member States' asylum and reception systems (Art. 14)(ibid).

It has also acquired a more prominent role in regard to the external dimension of CEAS; it not only gathers and analyzes information on safe countries of origin and safe third countries (Art. 12) and assists with resettlement (Art. 32), but also supports cooperation with authorities of third countries, including in relation to capacity building (Art. 35)(ibid.)

7.2.8 Recent relevant policy and legislative developments

The need for regulating immigration flows, which as its root in the creation of a common external border, has continued to expand as Europe has gradually become a major destination for asylum seekers. For this reason, all the legislative and policy developments described so far have made the formulation and consolidation of a EU common asylum system a top priority. At the same time, following the 9/11 events EU's approach to immigration in a broader sense has been increasingly securitized, with the adoption of new pieces of legislation specifically aimed to combat irregular migration and organized crime, such as the so-called 'Facilitators Package'.

The latter aims at reinforcing the penal framework for the facilitation of unauthorized entry, transit and residence in the territory of the Union; it comprises Council Directive 2002/90 defining the facilitation of unauthorized entry, transit and residence, and the Framework Decision 2002/946 on the criminal sanctions associated with such conduct.

The Package also includes Directive 2011/36 on the prevention and fight against trafficking in human beings and Directive 2004/81, which regulates the issuance of residence permit to victims of trafficking or smuggling who cooperate with relevant authorities.

Another important legislative measure in this context is the so-called Returns Directive 2008/115, which established common procedures and standards for returning third-country nationals illegally staying in the territory of the Union. To effectively implement the Returns Directive and the legislative framework for tackling irregular migration and trafficking in human beings at large, the EU has accomplished readmissions agreements with countries of origin and transit, including with Turkey.

The protection of borders from those illegally entering the Union therefore became the cornerstone of EU immigration policy; with the establishment of FRONTEX by Council Regulation 2007/2004, a European Agency for the Management of Operational Cooperation at the External Borders was created with a view to ensuring the effective and integrated implementation of measures concerning the management of external borders.

After several amendments—in 2007, 2011, 2016 and 2019—the Agency was transformed into a full-fledged European Border and Coast Guard through Regulation 2019/1896, thereby increasing its scope and competencies. The other cornerstone is, as already mentioned, the increased reliance on external cooperation with third countries, both of origin and transit, which was further exemplified by the European Commission's communication on the Global Approach to Migration and Mobility (GAMM) in 2011, which features as the revised version of a Communication published in 2005.

The Global Approach offers a comprehensive plan for EU's external migration and asylum policy, whereby four main thematic priorities are specifically set out: the facilitation of legal migration and mobility, the prevention and reduction of irregular migration and trafficking of human beings, the promotion of international protection and the external dimension of asylum policy, and the maximization of the development impact of migration and mobility (European Commission 2011).

Overall, GAMM builds upon a migration-development nexus through which attracting regular migration of high-skilled labor force while counteracting illegal migration, including through Mobility Partnerships. It also rests on the international protection-development nexus in that it places special focus on cooperation with relevant non-EU countries, including through Regional Protection Programs (RPPs), with a view to strengthening their protection capacities and address protracted refugee situations, in accordance with the 2009-2014 Stockholm Program (European Commission 2011).

After the expiration of the Stockholm Program, a new strategic vision for the area of Freedom, Security and Justice was outlined with the 2014 Communication entitled An open and secure Europe: making it happen, which identified the new European common challenges to be discussed by the Parliament and the Council for the designing of the 2014 Strategic Guidelines.

Building on the Communication, the Strategic Guidelines reiterated the need to enhance regular migration, provide protection to those in need, combat irregular migration and improving the handling of external borders (Council of the EU 2014). The EC Communication had indeed placed a special focus on external challenges such as cybercrime, trafficking in human beings, cross-border organized crime and terrorism.

It likewise emphasized the need to ensure "a more orderly arrival of persons with well-founded protection needs, reducing the scope for human smuggling and human tragedies" and "reducing the numbers of people who make hazardous journeys across the Sahara, the Mediterranean and other routes in the hope of reaching Europe" (European Commission 2014, 1). In a nutshell, the migration- and international protection-development nexuses progressively shifted towards a full-fledge crisis resolution approach to immigration, whereby international protection is increasingly framed as a question fitting into broader frameworks of contrasting illegal migration and protecting external borders (Raineri & Strazzari 2021).

To better understand such securitized approach, it is crucial to note that the 9/11 attacks were not the only motivating factor; indeed, the 2000s were shaken by profound political upheaval throughout the world, and particularly Africa and the Middle East, which provoked a rapid surge of forcibly displaced people and arrivals in Europe.

Already between 2010 and 2012, the crossings through the Central Mediterranean route had increased threefold, with Southern European countries putting in place a set of search and rescue operations (Friebel. Guido et al. 2018). It was not only until 2015 that the flows reached the peak; it is indeed estimated that in 2015, the level of asylum claims registered by EU+ countries have more than double compared to the previous year, with a record of 176,430 requests hit in the month October alone (European Asylum Support Office 2016).

In the face of complex and mixed flows of immigrants, the Commission published, in May 2015, the European Agenda on Migration. The latter was articulated in three complementary implementation packages; the first one, short-term in nature, relates to immediate emergency measures to cope with what is commonly referred to as the 'European migration crisis', definition that is misleading given that the 84% of arrivals in Europe in 2015 came from the world's top ten refugee producing countries: the Syrian

Arab Republic (which accounted for 50% of the arrivals), Afghanistan, Iraq, Eritrea, Pakistan, Iran, Nigeria, Somalia, Morrocco and Sudan (UNHCR 2016d).

The Second Implementation Package instead seeks to lay the foundation for an improved European asylum and migration policy, with a view to better handling migration flows in the medium and long terms. To do so, the Agenda was built upon four pillars: reducing the incentives for irregular migration; managing borders, saving lives and securing external borders; elaborating a stronger common asylum policy; and developing a new policy on regular immigration.

Lastly, a Third Implementation Package was inserted in regard to the replacement of Frontex with a European Border and Coast Guard with enhanced competencies. The proposal was adopted through Regulation 2016/1624 and was eventually amended by Regulation (2019/1896), which provides the legal basis for the current European Border and Coast Guard Agency, as explained above.

Under the First Package it was proposed the activation of the emergency relocation scheme in accordance with Article 78(3) of the TFEU to redistribute asylum seekers from the Member States disproportionally affected by influxes to other Member States. The amount of asylum seekers to be received was based on each Member State's share of the total amount of irregular border crossing of individuals "in clear need of international protection" that same year and was to occur in a two-year timeframe (European Commission 2015g, 2).

Such scheme was aimed at supporting the countries of first arrival of protection seekers—Italy and Greece—which, under the Dublin Regulation, had the responsibility for processing asylum claims in the absence of other applicable criteria, as explained in the section dedicated to the Dublin Regulation. The scheme thus features as a derogation from the Dublin rules and was to be applied to Syrian and Eritrean nationals in need of international protection that arrived in Greece of Italy after April 2015.

By means of Council decision 2015/1523 it was agreed to relocate 40,000 asylum seekers to other Member States, which would thus become responsible for examining their asylum requests (Council of the EU 2015b). If the application was successful, then the applicant would have the right to reside in the Member State he or she had been relocated.

As a complementary measure, the First Package also contained a proposal on a European Resettlement Scheme, which instead applied to displaced individuals in clear need of international protection who found themselves outside the territory of the European Union. It was recommended by the Commission and then agreed among EU co-legislators to resettle 20,000 asylum seekers, according to distribution parameters such as GDP and size of the population of the Member States, to be implemented over the next two years (European Commission 2015a).

In addition, the *EU Action Plan against Migrant Smuggling*, covering the period 2015-2020, was launched. The plan outlined concrete measures to prevent trafficking and smuggling and comprised, *inter alia*, the setting up of dedicated platforms aimed at improving cooperation, including with third countries, and enhancing information systems. Improved police and judicial response as well as assistance to vulnerable individuals were important pillars of the strategy as well (European Commission 2015f).

The Implementation Package likewise foresaw to triple the capacities and assets for Frontex joint operations *Triton* (in Italy) and *Poseidon* (in Greece) in 2015 and 2016 so as to continue interventions at sea with a more consolidated focus on border protection (European Commission 2015b). The new operational plan was also based on extending the geographical area of operation of Triton southwards in order to replace the previous Italian *Mare Nostrum* search and rescue operation (ibid).

Furthermore, Guidelines on the Implementation of the Eurodac Regulation as regards the obligation to take fingerprints were also adopted, with a view to facilitating systematic fingerprints of protection seekers in full respect of fundamental rights—particularly, the right to data protection—with the support of EASO, Frontex and Europol. The three agencies assisted in the identification, registering and fingerprinting of arriving immigrants and assessed those in need of international protection (European Commission 2015b).

The Package also included a public consultation to improve the Blue Card Directive, the directive which set out criteria of entry and residence of highly qualified third-country nationals in the territory of the Union.

Under the Second Package, adopted in September 2015, the relocation of further 120,000 asylum seekers was established through Council Regulation 2015/1601, an EU

Action Plan for returning migrants who were not eligible to asylum was devised, and the *hotspot* approach envisioned by the Agenda was set up. The latter envisaged the establishment of first reception facilities, the hotspots, the functioning of which relied on the joint work of EASO, Europol and Frontex in support to frontline Member States in dealing with mass influxes (European Commission 2015b).

Specifically, EASO assisted in the processing asylum claims, Europol was tasked with carrying out investigations on trafficking and smuggling, while Frontex coordinated the return of irregular migrants (ibid). Further proposals concerned the amendment of Dublin III Regulation through the introduction of a permanent emergency relocation mechanism, with a view to ensuring that an effective relocation mechanism could be triggered to respond to future refugee crisis.

Another proposal was instead aimed at reinforcing the list of safe countries of origin provisions of the Asylum Procedures Directive, the purpose of which was to support the prompt processing of asylum claims from those countries identified as safe. However, after heated negotiations, none of the two reached the support needed by Member States by the end of the legislative period, owing to the inability of Member States to conciliate their interests.

The measures outlined so far were complemented by enhanced allocation of funding—including for the EU Trust Fund for Africa, the EU Trust Fund for Syria, emergency assistance under the Asylum, Migration and Immigration Fund and the Internal Security Fund-Borders—as well as enhanced cooperation with third countries source of asylum seekers, including Western Balkans and Turkey's leaders.

Previously announced by the European Commission through a communication entitled Towards a reform of the CEAS and enhancing legal avenues to Europe, a new CEAS reform package was presented in 2016, providing a set of proposals especially designated to address the faults of the system of asylum, with a view to finding alternatives to those that Member States did not manage to agree upon.

The Package included proposals for regulations to amend the Dublin III and Eurodac Regulations, to replace EASO with an EU Asylum Agency (EUAA), to establish a European Resettlement Framework and to revise the following directives: the Asylum Procedures, the Qualification and the Reception Conditions Directives.

As regards the proposal on the Dublin Regulation, two options were outlined: either the criteria for determining the State responsible for dealing with asylum applications was to remain unchanged yet complemented with a corrective allocation mechanism, whereby the latter was to be triggered whenever a Member State was disproportionally affected by asylum seekers arrivals; or the Dublin system was to be reformed based on a distribution key, with the direct allocation of asylum seekers .

The amended Eurodac foresaw the widening of the fingerprint database so as to include the data of third-country nationals or stateless individuals who do not apply for international protection, thereby allowing for an enhanced usage for law enforcement practices. Moreover, more personal information was to be stored, including identification data and facial images.

Regarding the European Resettlement Framework, it envisaged a unified procedure for processing resettlement and set out common criteria for admission and refusal of third-country nationals eligible for resettlement, thereby supplementing pre-existing resettlement schemes and reinforcing partnerships with third countries.

Furthermore, the revised Asylum Procedures Directive and the Qualification Directive, they provided for, respectively, simplified procedures, and improved and standardized recognition rates and forms of protection, including more severe sanctions for asylum seekers in relation to asylum shopping.

Similarly, the proposed Reception Conditions Directive, while seeking to further harmonize reception conditions, envisaged harsh provisions for asylum seekers found to engage in secondary movements, including the restriction or withdrawal of reception conditions.

A provisional agreement by the Parliament and the Council Presidency was reached on five of the afore-mentioned reform proposals: the Reception Conditions and Qualification Directives, the Eurodac and EUAA Regulations, as well as the Resettlement Framework. Yet, the only proposal adopted in law so far is Regulation 2021/2303 establishing the EUAA, with no further support being provided by Member States to the rest of the proposals. On the other hand, no agreement could be found with the Council on the revision of Dublin III and Asylum Procedures Regulations.

The inability of Member States to agree on a burden-sharing mechanism as well as their implementation gaps in regard to EU legislation already adopted into law led the European Commission to launch in 2020 the so-called New Pact on Migration and Asylum, thereby withdrawing most of the reform proposals of the 2016 Package, except for the Eurodac Regulations and the Asylum Procedures, of which new amendments have been introduced (European Commission 2020b).

The revised Eurodac foresees an enhanced system through which tracking unauthorized movements for return purposes, while the amended Asylum Procedures Regulation envisions a shifted focus towards returns. Building on the 2018 Recast Return Directive proposal, it indeed unifies rules on the asylum and return border procedures under the same Regulation, providing that a single decision shall be issued in relation to both the rejection of an asylum request and return decision. In other words, an asylum seeker whose application is rejected would automatically become a returnee.

The fact that the Pact aims to set up a new EU system centered around returns is further exemplified by the proposed Asylum and Migration Management Regulation, which replaces the 2016 withdrawn proposal on the Dublin III Regulation.

The new legislative tool contains a new solidarity mechanism, the aim of which is ensuring a fair sharing of responsibility among Member States. The novelty under such scheme is that Member States can cooperate with each other in carrying out returns either through relocation, i.e. taking asylum seekers, or return sponsorship, i.e. collaborating with frontline Member States for the return of those who cannot be granted the protection status, thereby creating a "safety net" which ensures the burden of arrivals in particularly exposed UE countries is mitigated (European Commission 2020c, 1).

Deepened cooperation with third countries represents the other pillar of the new return legal framework, with funds allocated to those third countries willing to cooperate and harsh sanctions for those of them who are not disposed to collaborate, including the reduction of Schengen visas.

A new legislative instrument proposed by the Commission is the Regulation concerning the screening of third-country nationals at the external borders, with a view to ensuring that all relevant information of third-country nationals illegally crossing the

external border is stored so that the examination of asylum claims occurs in a faster and more transparent fashion.

The fifth legislative proposal contained in the Pact is the Crisis and *Force Majeure* Regulation, whereby one objective is to repeal the Temporary Protection Directive. Interestingly though, the TPD was activated in the face of the Russian invasion of Ukraine last February 2022 shortly after the new regulation was proposed as the TPD "no longer responds to Member States' current reality" (European Commission 2020a, 10).

The Crisis and *Force Majeure* Regulation envisages the replacement of the temporary protection status with the so-called status of immediate protection, with a simplified activation procedure, a narrower definition of its scope and a restricted duration of only one here with no possibility of extension (İneli-Ciğer 2022a).

The Regulation is to be triggered upon decision of the European Commission—and no longer of the Council as it was with the TPD—based on the assessment of a situation of crisis. The latter is defined as "an exceptional situation of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State or disembarked on its territory following search and rescue operations" (European Commission 2020a, 13), whereby two conditions needs to be satisfied: the scale on the influx must be disproportionate to the population and the GDP of the Member State concerned, and its nature must pose serious risks to the proper functioning of the concerned Member State's asylum, reception or return system, as well as for the CEAS as a whole (ibid., Art. 1.2(a)).

Moreover, the Regulation provides for immediate protection status to be applied to a displaced individuals who face "an exceptionally high risk of being subject to indiscriminate violence in a situation of armed conflict" in his or her country of origin and is, for this reason, unable to return to his or her country (ibid., Art. 10), thereby limiting the use of such scheme in other cases of human rights violations.

The five legislative proposals are complemented with a set of non-legislative initiatives which comprise recommendations on Migration Preparedness and Crisis Blue Print, with a view to establishing relevant necessary measures to build Member States' capacities in case of huge irregular arrivals, on Resettlement and Complementary pathways as well as on Search and Rescue Operations by Private Vessels. Besides, a new guidance on the Facilitators Directive is included, which takes note of the increased

criminalization of humanitarian actors, including NGOs involved in search and rescue operations.

As of today, an agreement was found on multiple aspects of the first stage of the proposed reforms, including the screening of third-country nationals at the common external border and the amended Eurodac, agreed upon in June 2022. A joint roadmap was also agreed upon by EU co-legislators in September 2022, with a view to adopting the legislative reform proposals concerning asylum and migration management before the end of the legislature (2019-2024).

Moreover, although negotiations are still ongoing with regard to asylum procedures and the solidarity mechanism, 18 Member States plus associated States—Switzerland, Liechtenstein and Norway—signed the so-called Declaration on a Voluntary Solidarity Mechanism the same month. The latter is a political, hence non-committal, declaration that, as the name implies, establishes a voluntary mechanism to assist frontline Member States, through contributions of various types, including relocations—the coordination of which are to occur via the so-called Solidarity Platform—and financial funding.

The mechanism is temporary and serves to pave the way for a permanent solidarity mechanism to be set out with the New Pact reform proposals. In view of the 50% increase in arrivals via the Central Mediterranean Route in 2022 compared to the previous year, an Action Plan for Central Mediterranean to address immediate and ongoing challenges was launched in November 2022. Although it is intended to, *inter alia*, expediting the implementation of the voluntary solidarity mechanism, only 207 refugees have been relocated through the voluntary mechanism as of the end of January 2023 (Statewatch 2023).

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