



UNIVERSITY OF PIRAEUS
SCHOOL OF ECONOMICS, BUSINESS AND INTERNATIONAL STUDIES
DEPARTMENT OF INTERNATIONAL AND EUROPEAN STUDIES
PHD DISSERTATION

**The crisis of Europe: differentiated integration as a tool of European governance and political
management in times of crisis**

Eleftheria Markozani

Piraeus 2021

Committee:

Associate Professor Foteini Asderaki (Supervisor)

Professor Aristotle Tziampiris

Professor Maria Mendrinou

«This research is co-financed by Greece and the European Union (European Social Fund- ESF) through the Operational Programme «Human Resources Development, Education and Lifelong Learning» in the context of the project “Strengthening Human Resources Research Potential via Doctorate Research” (MIS-5000432), implemented by the State Scholarships Foundation (IKY)»



Operational Programme
Human Resources Development,
Education and Lifelong Learning
Co-financed by Greece and the European Union



Declaration

I certify that the work of this study has been composed by me and is entirely my own work. No part of this study has been submitted for any other degree or professional qualification.

Eleftheria Markozani

Table of Contents

Declaration	2
Table of Contents	3
Acknowledgments	6
List of Abbreviations	8
List of Diagrams	10
List of Graphs	10
List of Tables	10
Abstract	11
PART 1: Introduction	12
1.1. Defining and categorizing Differentiated Integration	14
1.2. Explaining Differentiated Integration in the EU	22
1.3. Aim of the study	28
1.4. Structure of the study.....	32
PART 2. Research Design	33
2.1. Rationale and research questions	33
2.2. Conceptualization and Hypotheses	39
2.2.1. Politicization, Euroscepticism and Differentiated Integration	39
2.2.1.1. The integration of Core state powers.....	39
2.2.1.2. Politicization and national identities	43
2.2.1.3. Post- functionalism, mobilization and DI.....	47
2.2.1.4. The EU crisis, punctuated politicization and flexibility.....	55
2.3. Operationalization and methodology of the research.....	69
2.3.1. The policy field.....	69
2.3.2. Variables.....	70
2.3.3. Cases, data and methodology	75
2.4. Conclusion of Part 2	80
PART 3. Mapping Integration and Differentiation in the EU Migration Policy	81
3.1. Integration and Differentiation in the EU Migration Policy	81
3.1.1. From Schengen to Dublin	81
3.1.2. From Maastricht to Nice.....	89
3.1.3. From Prum to Lisbon	98

3.2. Towards the crisis	108
3.2.1. The reform of CEAS	109
3.2.2. The overture of the crisis: From internal to external borders	113
3.2.3. The European Agenda on Migration	118
3.3 Mapping differentiated integration in EU measures on irregular migration and asylum	125
3.4. Conclusion of Part 3	129
PART 4. The treaty opt-outs: national identity, politicization and Euroscepticism.....	130
4.1. UK: The frontrunner Euroscepticism.....	130
4.1.1. The Conservative soft Euroscepticism.....	134
4.1.2. The Labour Party and British exceptionalism	138
4.1.3. The Lisbon Treaty, cherry-picking and the “re-negotiation”	144
4.1.4. Hard Euroscepticism, the Referendum and the British identity.....	152
4.2. Denmark: The referendum champion	159
4.2.1 The Reasoning of referendums	160
4.2.2. The rejection of the Maastricht Treaty and the Danish “dualist” approach.....	163
4.2.3. The Lisbon Treaty and Euroscepticism.....	170
4.2.4. The 2015 AFSJ referendum and Danish national identity.....	176
4.3. Conclusion of Part 4	183
PART 5: The crisis and flexibility: More Euroscepticism, more differentiation	184
5.1. The Emergency relocation scheme and Euroscepticism in the transit states of V4	185
5.1.1. Hungary	190
5.1.2. Slovakia	194
5.1.3. Poland	196
5.1.4. Czech Republic	198
5.2. The reintroduction of internal border controls and Euroscepticism within the destination states ..	203
5.2.1. Germany.....	208
5.2.2. France	212
5.2.3. Austria	214
5.2.4. Sweden.....	218
5.2.5. Saving internal and external borders: The EU-Turkey Deal.....	221
5.3. The road to reform: Euroscepticism hits the frontline states and the introduction of flexibility	230
5.3.1. The first Commission’s proposals and the proposal of “flexible solidarity”	230
5.3.2. Italy and Euroscepticism.....	239

5.3.3. The 2020 New Pact on migration and the Incorporation of flexibility	244
5.4. Conclusion of Part 5	256
PART 6. Conclusion	258
6.1. Concluding remarks and contribution of the study	258
6.2. Proposals for future research.....	267
7. References	272
ANNEX I.....	309
List of Interviews.....	309
ANNEX II.....	310
Questions/ structure of Interviews	310

Acknowledgments

The composition of this thesis would not have been possible without the constant supervision and support of my supervisor, Associate Professor Foteini Asderaki. I am thankful for her continuous encouragement and guidance in all academic endeavours since 2015. I am also indebted to Professor Aristotle Tziampiris for his enduring support and academic direction but also the music suggestions from his outstanding knowledge of rock music which kept me company in my long research days throughout this entire period. Many thanks also to Professor Maria Mendrinou for her scientific support all the time of my scholarship.

I am also grateful for the support of the Professors of the UACES Network on Differentiated integration: Benjamin Leruth and Stefan Ganzle. Moreover, I must thank for his valuable help, Professor Panagiotis Grigoriou and his Jean Monnet Network on European Governance through their comments and lessons. I would also like to thank all the officers and employees from European Commission and the Council for offering me their professional views and insights through the interviews. Their contribution has been invaluable for the completion of this thesis. I must also give many thanks to the Secretary of the Department of International and European Affairs for her understanding all this period.

Last but not least, my warmest thanks must go to my family: my mother, my brother, my grandmother and my uncle who have been more than patient and encouraging to my dreams. Many thanks also to my sweet friends who have been more than understanding and supporting to my writing- isolation time. To my late father, who taught me the basics of hard work, I dedicate this thesis.

Relevant publications:

Markozani, Eleftheria. 2019. "Differentiation and the European migration Policy". In *European Governance and Sovereignty*. Edited by Panagiotis Grigoriou. Eurasia Publications.

Asderaki, Foteini and Markozani, Eleftheria. 2020. "European Migration Policy: Frontex, differentiation and Brexit". In *Differentiated Integration and Disintegration in a Post-Brexit Era*. 91-109. Edited by Stefan Gänzle, Benjamin Leruth, Jarle Trondal. Routledge Publications.

Asderaki, Foteini and Markozani, Eleftheria. 2021 (Forthcoming). "The European Asylum Policy: core state powers, flexibility and differentiated integration". In *Routledge Handbook of Differentiation in the European Union*. Edited by Stefan Gänzle, Benjamin Leruth, Jarle Trondal. Routledge Publications.

Asderaki, Foteini and Markozani, Eleftheria. 2021 (Forthcoming). The securitization of migration and the 2015 refugee crisis: from words to actions. In Tziampiris, Aristotle and Foteini Asderaki (eds) "The New Eastern Mediterranean Transformed - Emerging issues and new actors, Springer forthcoming.

Asderaki, F. and Markozani, E. (2016), "Migration crisis, from securitization to militarization: Challenges for EU and the member states" στο Bitzenis, A. & P. Kontakos (eds.), International Conference International Business (ICIB), Thessaloniki, Conference Proceedings 2015 & 2016, 287-302.

List of Abbreviations

AfD	Alternative for Germany
AFSJ	Area of Freedom, Security, and Justice
AMIF	Asylum, Migration and Integration Fund
CDU	Christian Democratic Union of Germany
CEAS	Common European Asylum System
CEE	Central and East European states
CJEU	Court of Justice of the European Union
ČSSD	Czech Social Democratic Party
CSU	Christian Social Union in Bavaria
DI	Differentiated Integration
EASO	European Asylum Support Office
ECHR	European Court of Human Rights
EEC	European Economic Community
EFTA	European Free Trade Association
EMU	Economic and Monetary Union
EP	European Parliament
EU	European Union
EUNAVFOR	EU Naval Force
EURTF	EU Regional Task Forces
FIDESZ	Hungarian Civic Alliance
FN	French Front National
FPÖ	Freedom Party of Austria
GAL	Green/alternative/libertarian camp
GDP	Gross domestic product
JHA	Justice and Home Affairs
JOBBIK	Movement for a Better Hungary

IGC	Intergovernmental Conference
KDU-ČSL	Czechoslovak People's Party
LN	Italian Lega Nord
MS	Member States
M5S	Five Star Movement
PiS	Prawo i Sprawiedliwość/ Law and Justice
UKIP	UK Independence Party
QMV	Qualified Majority Voting
SD	Sweden Democrats
SIS	Schengen Information System
SMER	Direction Social Democracy Party
SNS	Slovak National Party
SPR-RSČ	Rally for the Republic – Republican Party of Czechoslovakia
SPÖ	Social Democratic Party of Austria
TAN	Traditionalism/authority/nationalism camp
TEU	Treaty on European Union
TFEU	Treaty on the functioning of European Union
USSR	Union of Soviet Socialist Republics
ODS	Civic Democratic Party
ÖVP	Austrian People's Party
V4	Visegrad 4
VIS	Visa Information System
WWII	World War II

List of Diagrams

Diagram 2.1. Politicization and Salience

Diagram 2.2. Politicization and Exclusive National Identity

Diagram 2.3. Politicization and Referendums/ Treaty Revisions

Diagram 2.4. Politicization and the crisis

Diagram 3.1. Gradual development of EU migration and asylum policy

Diagram 4.1. The Euroscepticism pyramid of the UK

Diagram 5.1. M5S and LN percentages before and after the crisis

List of Graphs

Graph 4.1. Nationality: UK/ Eurobarometer

Graph 4.2. Most Important Issues: UK/ Eurobarometer

Graph 4.3. Most Important Issues: Denmark/ Eurobarometer

Graph 4.4. Immigration outside EU: Denmark/ Eurobarometer

List of Tables

Table 3.3. Mapping differentiated Integration in EU measures on irregular migration.

Table 4.1. Denmark: National Referendums on EU 1972-2015

Table 5.1. V4 States: Main Eurosceptic parties with anti-immigration claims

Table 5.2. Major refugee receiving states: Main Eurosceptic parties with anti-immigration claims.

Abstract

This study examines the implementation of differentiated integration arrangement on the field of EU policy towards irregular migration. It searches the interrelation between the rise of Euroscepticism and the application of opt-outs and flexibility in core state powers, as the migration policy. The research seeks to deepen the conceptual framework of core state powers and the effects of growing politicization as well as the dynamics of differentiation within the EU. It analyzes the extend of differentiated integration which has been the main mode of integration in this policy field. It focuses on the cases of UK and Denmark, outlining the way that the mobilization of exclusive national identities raises the demand for differentiation. The study, however, advances the research by explaining the introduction of flexibility in the Commission's proposals on the 2020 New Pact on Migration, through the lens of the aggregated level of politicization and the rise of right-wing Eurosceptic parties in many states of EU. While the treaty opt-outs have been related with the Euroscepticism since the Maastricht Treaty through the polarization provoked by referendums, the 2015 refugee crisis resulted to the EU institutions' endorsement of flexibility within the Dublin system, a secondary legal rule.

PART 1: Introduction

In the 'Rome declaration' of March, 2017, the EU leaders stated that *"We will act together, at different paces and intensity where necessary, while moving in the same direction, as we have done in the past, in line with the Treaties and keeping the door open to those who want to join later."*¹ Describing the process of differentiated integration(DI), the EU leaders have accepted that the process of unified integration of the founding fathers of the EU has been replaced by the differences among the speed, objectives and depth of integration among the participant member states (MS). In contrast to unified integration, differentiated integration provides the platform in which states are granted different rights and obligations or levels of participation in specific common policies and EU law (Wareigh 2002). The EU has been developed gradually to *"a multi-layered European Onion"* (De Neve 2007), divided into different policy areas, different levels of governance and decision- making, and, also, different subgroups of participating Member States (MS). Therefore, the EU has formed a polity which consists of *"number of, often overlapping, state groupings established for cooperation in a variety of fields"* (Majone 2009, 205). This European differentiated polity has formed a *"novel post-modern international political form. It is not an ideal term, but it does highlight the fact that the institutionalisation of flexible integration is part of a trend resulting in a complex, multi-dimensional, multilayered collective decision-making system, which has been designed to find common solutions to common problems on all levels of governance"* (Stubb 2002, 163). This *"plurality of different polities"* (Schmitter 2000, 21) incorporates internal and external differentiation, sectoral and geographical, various decision-making processes and the involvement of many institutions and tools for exceptions or closer cooperation, forming the European governance system.

¹ Council of the EU, The Rome Declaration- Declaration of the leaders of 27 member states and of the European Council, the European Parliament and the European Commission, 149/17, 25 March 2017, 2

Indeed, European governance has been evolving to forms of “*accepting of diversity*” and “*more flexible and participatory approaches*” (Mosher and Trubek 2003, 63). DI has entered forcefully the discussion on EU since the Leo Tindemans Report (1975)² who elaborated on the idea of the “a new approach” for Europe, presented carefully as a viable and temporary solution to fragmentation. Tindemans new approach described the establishment of a “multi-speed” EU in which member states capable of proceeding deeper and faster to integration than others will do so while the rest would have joined them gradually. Though limited components of legal differentiation appeared in the EEC Treaty of Rome, differentiated integration (DI) has been actively introduced in European law since the Single European Act (Article 114(4) TFEU). Since then, DI has remained until today a stable characteristic of European governance. From Treaty derogations to transitional period arrangements and specific requirements for the participation in EU integration, DI has served as a means for overcoming the deadlocks in decision-making, especially in policies that require unanimity. Without the application of differentiated provisions, both the enlargements and the deepening of integration would be crushed to the different interests and heterogeneity among member states. The insistence on a one-size-fits-all type of governance in the EU could have been detrimental or lead to stagnation due to the increasing diversity among the member states. Ever since the Treaty of Maastricht, DI has become the *modus operandi* of EU. The EU Treaties have incorporated specific instruments which grant the opportunity for differentiation, either through the non-application and asymmetric implementation of EU legal acts or through the implementation of closer cooperation. For instance, Member states that had not fulfilled the criteria for joining the Euro area were considered as states “with a derogation” (Article 139.1) while states like the UK and Denmark requested an opt-out to vote in favor of its establishment. In this framework, the UK and Denmark have gained exemptions from the Euro Area, the AFSJ, the EU citizenship (repealed de facto in 1999), and the CSDP; Sweden a single de facto opt-out from the Euro Area; Ireland has opt-outs from the AFSJ and the

² Commission, Text of Mr Leo Tindemans letter to his European Council colleagues sent on 29 December 1975, Bulletin of the European Communities Supplement 1/76

Schengen Area, a result of the British-Irish Common Travel Area (CTA); Poland has a single opt-out from the Charter of Fundamental Rights; The Schengen Area has stimulated more complex exemptions with the opt-outs of northern and eastern European countries and the attachment of states outside the EU.

In this way, the EU's governance system has been turned to one of "*overlapping authorities, divided sovereignty, diversified institutional arrangements and multiple identities*" (Zielonka 2001, 5 09). The theorization of differentiated integration has been moving around the heterogeneity and diversity of interests and capabilities of member states while the aspect of protecting national sovereignty remains central to the demand for differentiated arrangements. Nevertheless, policy externalities and the "pull effect" act as a magnet to unwilling outsiders for participating in the integration of policies that began as differentiated. Every enlargement round and every treaty deepening integration results in a more differentiated EU (Schimmelfennig and Winzen 2020). Besides, the recent multiple crises in the EU have generated a new generation of studies trying to explain the future of European integration through the framework of DI (Stubb 1997; Warleigh 1998; Kolliker 2001; Andersen and Sitter 2006; Emmanouilidis 2007; Dyson and Sepos 2010; Holzinger and Schimmelfennig 2012; Chopin and Lequesne 2016; Leuffen et al. 2013; Thym 2017 a.o.). Differentiated integration has not been just a response to a crisis such as the Empty Chair Crisis (1965/6) or the 'Euro-sclerosis' of the 1970s but as a durable attribute of integration (Leruth et al. 2017). Thus, differentiation has emerged a "variation" of integration (Leruth et al. 2021, forthcoming). What variation exactly describes the term of differentiated integration?

1.1. Defining and categorizing Differentiated Integration

As a "polysemous concept" that incorporates a variety of mechanisms and have gain different characterizations and categories, the European Parliament (EP) in its Resolution of 17 January 2019 acknowledged the fact that DI has been the necessary "evil" for "*the deepening and widening of the EU*" and the "*pragmatic solution to drive European integration forwards*". Nevertheless, the EP stated clearly that DI "*should be used sparingly and within narrowly defined limits*" in order to avoid fragmentation of

the already complex institutional and political structure of EU.³ The academic scholarship has produced several typologies and definitions on Differentiated Integration, a fact that confirms its durable nature as a feature of the EU. The term of flexibility or flexible integration has been commonly used for the use of mechanisms that do not conform with the principle of uniformity in institutional and practical level and describe the functional regimes and sectoral DI. In other words, it is the general term applied to describe the exceptions from a set of obligations or/and the application of special rights for certain member states. Contrary, the terms of “hard core”, “nucleus”, “vanguard group” or “pioneer group”, “avantgarde Europe” have been often used as synonyms for outlining a group of member states, establishing and driving the deepening of integration in greater vigor than the other member states, which follow a different speed or level of integration, while they also pursue closer cooperation in specific matters. This concept is related to the establishment of a central group of states in the EU, dividing in core and non-core groups of member states (Philippart and Edwards 1999; Tocci and Faleg 2013). Usually, this hard core of member states includes the six founding members of the EU, but its political and geographical identification depends on the specific policy area under study. In the same framework, the concept of a “Directory” refers to the establishment of such a group of states that will impose their willing on others. The concept became relevant during the Euro crisis when the idea of the “Franco- German directory”. The concept of the “Federal Core Europe” came on the scene of the debates under the light of asymmetries, enlargements and negative referenda in states such as Ireland and Denmark on the Treaties of Maastricht and Nice. Instead of changing the route of integration, the member states decided to grant opt-outs to those states who wished to stay behind. (Thym 2017). The debate on a core group of states that drive integration was initially launched in 1994, when Schäuble and Lamers supported the further deepening of integration by a ‘hard core’ and capable group of states. An example of this concept was provided by Jacques Delors in 2000 who supported the idea of the creation of an “avant garde” group of

³ Differentiated integration, European Parliament resolution of 17 January 2019 on differentiated integration (2018/2093(INI)), P8_TA-PROV (2019)0044, points A-L

member states for guiding integration with a special council, parliament, and president. After the crisis, similar proposals emerged. One of those had been the one uttered by François Hollande who upheld the composition of an “avant garde” group for the administration of the Euro area.

The European Commission defined DI as “*a process of integration in which the Member States [potentially joined by non-EU members,] opt to move forward at different speeds and/or towards different objectives, in contrast to the notion of a monolithic bloc of states pursuing identical objectives at a single speed*”. Whereas the emergence of Differentiated Integration as a feature of European Integration stimulated scholars of European Studies to elaborate on a variety of names and categories describing the phenomenon and the resulting structure of the EU, most of them are based on the classification elaborated by Stubb (1996). On the basis of time, space and matter, Stubb distinguished between i) “multi-speed” integration (time) which responds to the differentiated measures applied for a temporal time and results to same level of integration for all MS but in different times, ii) “variable geometry” (space) which refer to permanent territorial differentiation between a core of MS and groups of less developed MS which do not participate in all integrated policies, iii) “a la carte” (matter) which concern sectoral differentiation and describes the practice implemented by MS of picking in which policy area and up to what integration level they wish participate. Stubb (1996) supported that à la carte Europe has been advantaged by the United Kingdom, multi-speed Europe has been accepted as an option by most member states apart from Greece, and, finally, variable geometry has been favored by states such as France, Germany, Belgium, the Netherlands, Luxembourg, Italy, Finland, and Austria. The concept of flexibility a la carte has many similarities with the DI described in the core Europe. However, the two concepts differ in their final objectives. In the framework of Core Europe, the final objective has usually federalist elements whereas the concept of the flexibility a la carte aims at protecting national interests within the scheme of the EU, promoting, therefore, intergovernmental cooperation. The concept of flexibility a la carte has been supported by the British state, firstly formulated by John Mayor, as a

counterproposal for overcoming the deadlocks of the ratification of Maastricht Treaty while David Cameron proposed the dropout of the “ever closer union” scheme (Thym 2017). The model of “multiple speeds” emerged during the 1970’s when many MS were not willing or were not capable to proceed to the deepening of economic integration (Tindemans Report). Within the concept of multiple speeds, the member states are committed to the same final objective but attend it at different times (Piris 2012 ,66-67). In this case, DI is classified as a transitional phenomenon due to economic protectionism and political differences, a fact that was reflected in the Treaty of Maastricht (Thym 2017).

The difference of the variable geometry with the concept of Multi-speed Europe or Abgestufte Integration is that the latter does not describe a permanent situation but the difference in the rhythm and timescale for attaining integration objectives for the member states (Wallace and Wallace 1995). One well-known example of this notion was given by Joschka Fischer in 2000 who supported the establishment of a federal union on the basis of “centre of gravity” with separate institutions. The idea Variable Geometry or Multi-Tier, resembling the concept of Concentric Circles,⁴ represents the cooperation of European states within and outside the EU and other organizations. The concept includes the establishment of various circles of policy cooperation consisted of different participating member states and/ or in different types of cooperation.

Like Stubb, Tuytschaever (1999) supported that DI is characterized by four main aspects: source, time, immediacy, and specificity. However, DI can range between temporary or permanent. At the enlargement of 2004, the free movement of workers from new MS was restricted for a maximum of seven years. In

⁴ The term concentric circles were firstly uttered by Christopher Tugendhat (1985) who described the economic and market policies as the inner core circle of EU integration while other policy areas are moving around them, with more relaxed forms of cooperation.

the same mode, a rule can be potentially or differentiated. If the DI is immediately applied by MS, it is differentiated. Contrary, if the MS need to take further action before the differentiation applies, it is potentially differentiated. The restrictions to the free movement of workers of the new MS at the 2004 enlargement was an example of potential differentiation. Moreover, a legal rule is specifically differentiated if the DI is applied on one or two member states (as the British or Danish opt-outs). On the contrary, if the DI concerns all member states (meaning that all member states can make use of it), the rule is generally differentiated. Both Tuytschaever's and Stubb's classification has been questionable since the three categories often overlap and co-exist (Duttile 2016, 32). Moreover, it has not defined what kind of differentiation matters the most at a given integration problem (ideational, material, societal or governmental) (Holzinger and Schimmelfennig 2012).

Stubb himself admitted (2002,55) that the differentiation of time and space, on one hand, and matter, on the other are equivocal since all the three categories involve matter (policy areas). In the same mode, both multi-speed and variable geometry involve space (member states). Stubb (2002, 31) has also attempted to bridge his policy research with legal analyses. In this scheme, he linked his three defined categories to three legal instruments of the Treaties of Amsterdam (1999) and Nice (2003): 1) the transitional clauses, 2) the enabling clauses, 3) case-by-case and predetermined flexibility clauses. On this work, Emmanouilidis (2007) detected six macro-political categories of possible DI: a) the creation of a supranational union, in which a group of MS decide to move on with more integration than the traditional EU b) differentiation through fixed instruments and procedures, in which MS use the established legal instruments for DI such as the enhanced cooperation clause c) intergovernmental cooperation outside EU, in which a group of MS decide to proceed with intergovernmental cooperation outside the legal framework of EU, and d) differentiation through opt-outs, which is exploited by MS that disagree with the deepening of integration in certain policy areas e) differentiation via EU enlargement, which is realized in specific policy areas due to the restrictions applied to the new MS temporarily until

they fulfill all the necessary criteria f) differentiation through withdrawal, which takes place with the continuation of cooperation of EU after the exit of one or many MS (ibid). Nonetheless, both categorizations of Tuytschaever and Emmanouilides coincide to a large extent with the analysis of Stubb.

In the same context, Holzinger and Schimmelfennig (2012, 297) tried to ameliorate Stubb's categorization by outlining that differentiation has always both territorial and sectoral aspects that Stubb had not included in his analysis. They endorsed that multiple-speed Europe characterizes the present situation of the EU. They categorized DI in six groups: i) permanent and temporary differentiation, ii) territorial and functional (sectoral) differentiation, iii) cross-national and multi-level differentiation, iv) differentiation inside and differentiation outside the EU treaties, v) differentiation through decision-making at the EU level and at the regime(intergovernmental) level, vi) differentiation of member states and of non-member states (internal vs external). Temporal differentiation coincides with the concept of multi-speed integration while it is higher in cases of EU enlargements. It also suggests, by its definition, that at some point the integration will become uniform (Schimmelfennig and Winzen 2020). These categories include common criteria but differentiate in at least one factor. Nevertheless, this complex categorization is high impracticable to be applied to general studies (Duttle 2016, 32). In the same scheme, Rittberger et al (2014 ,191-194f.) categorized territorial differentiation in EU primary law to: a) uniform integration, b) external differentiation, c) internal differentiation, d) the combination of external and internal differentiation.

Zhelyazkova (2014) took the scope of the research a step forward by outlining that the regulatory framework of EU rules offers a great level of *flexibility* to the member states which results in differentiation in the practical implementation of EU law by the national authorities. This kind of differentiation originates from the difference between the motives of participation in an EU policy, which mainly lies on the

avoidance of being left out, and the actual willingness of national leaders to comply with the letter of EU rules, which may bear greater national (or political) costs from the costs of non-compliance. Besides, the fact that the time (and the persons) of the decision to participate and the decision to implement the rules may vary (and thus the national governments) create a platform of potential differentiation. Nevertheless, her elaboration resounds to a certain degree the work made by Sitter and Andersen (2005,12) who used the term differentiated integration to *“to capture the empirical variation in the impact of EU decisions at the national level. These variations may be the product of formal or informal arrangements, and they may be either intended or unintended consequences. We thus widen the term ‘differentiated integration’ compared to its narrower use to cover only formal arrangements and their intended consequences, i.e., beyond merely referring to multi-speed or variable geometry EU integration. In this wider sense, differentiated integration is a common and normal phenomenon. A degree of variation in the impact of EU legislation across member states is commonly observed in many, if not most, sectors”*. In this context, they laid out that EU policies are scarcely implemented in a uniform way by member states since the EU “regulatory space” offers them the opportunity for a degree of difference. The variation among the MS’ institutions and national perception of common objectives, Andersen and Sitter constructed a four-fold typology of integration: imposed integration which describes the rare phenomenon of uniform and alike implementation of EU rules in MS, aligned integration in which the variation of implementation of an EU rule depends on the alignment of national interests with its specific parts (overlapping interests), autonomous integration refers to the cases when MS exploit the discretion and flexibility of an EU directive and maneuver against its proper implementation and, finally, deviant integration which takes place when MS are confronted with local resistance against the implementation of EU rules. Thus, policy integration in MS can be greatly differentiated since EU directives may be included in national law but not being implemented strictly in terms of resources, activities or penalties.

Bellamy and Kröger (2017) defined DI as *“EU member states having different rights and obligations regarding specific EU policies, as some member states agree to cooperate on a specific policy or conform to a given standard, whilst others either opt out or adopt different standards. These forms of differentiation can be time limited or permanent and operate inside or outside the treaties”*. This definition resembles a lot one of the of the most eminent definition of differentiated integration, and the one used by our study, has been elaborated by Dyson and Sepos (2010,4) who defined DI as *“the process whereby European states, or sub-state units, opt to move at different speeds and/or towards different objectives with regard to common policies. It involves adopting different formal and informal arrangements (hard and soft), inside or outside the EU Treaty framework (membership and accession differentiation, alongside various differentiated forms of economic, trade and security relations). In this way relevant actors come to assume different rights and obligations and to share a distinct attitude towards the integration process- what it is appropriate to do together and who belongs with whom”*. Dyson and Sepos developed the definition of DI by including informal forms of differentiation such as informal cooperation of states or non-compliance with EU measures and law. While the definition of Dyson and Sepos offers the adequate framework for the research, it does not offer a categorization. We find the necessary categories in the work of Leuffen et al. (2013). Leuffen et al. (2013; and Schimmelfennig et al. 2015) defined EU as an enduring system of differentiated integration, or *“one Europe with a single organizational and member state core and a territorial extension that varies by function”* (Schimmelfennig et al. 2015, 767). They outlined two main parameters of DI: the variation in the centralization of each policy (vertical) and the variation in the territorial extension of each policy (horizontal). Based on this definition, they determined four categories of horizontal differentiation: a) no horizontal differentiation (e.g. pre-Maastricht Europe); b) External differentiation, in which EU rules apply uniformly to all MS, but non-member states can also opt-in these rules (e.g. the European Economic Area); c) Internal differentiation, in which EU rules do not apply uniformly to all MS; d) Internal and external differentiation, where EU rules from which some MS opted out, while non-member states opted in (e.g. Schengen). The categorization offered by Leuffen

et al. delineates clear distinctions among the categories of DI and is incorporated in our study which focus on internal differentiated integration.

1.2. Explaining Differentiated Integration in the EU

In 1995, Wallace and Wallace underscored that uniformity in the EU is a myth while the management of diversity through differentiated policy implementation should be the realistic goal for EU. Indeed, different national needs and interests form the basis of diversity which is accommodated through selective exclusion or inclusion to the variety of policy areas, especially in policies in which matters of sovereignty are highlighted. Warleigh (1998, 374) elaborated a rather pessimistic assessment of DI in the *European Law Journal*, “[c]ontingency, ambiguity and disagreement, rather than design, certainty and consensus, are key motifs in the composition of the new differentiated structure”. Some years later, Warleigh (2002, 2) supported that “flexibility offers the most useful means of balancing different (national) interests and thereby allowing progress to be made for (and in) the EU as a whole”. He suggested that functionalism can explain better DI and enhanced cooperation. He specified that DI refers to the “establishment of a core Europe, a *directoire* in which the heavyweight member states develop a joint hegemony” (Warleigh 2002, 33). However, this account did not clarify why the weaker states allow the stronger to proceed and why the UK, which is needed for the establishment of a *directoire*, opposes this idea. In the functionalist scheme, DI has not been regarded as a subprime measure but instead as a means for preserving balance and peace in Europe and driving integration, through creating functional tendencies towards EU centralization. Flexibility, in this scheme, is a tool to accommodate the divergent state preferences in order to move integration further (Warleigh 2002, 38).

DI as a driving force of more integration has been also regarded by Kolliker (2001). For Kolliker, DI has been the outcome of state preferences, the peculiarities of each policy area and flexible institutional settings. Within the prism of public goods theory, he used the taxonomy of goods for collective action

issues. He, then, argued that the specificities of each policy and its offered public good may explain the reasons why the reluctant states result in joining policies which began under differentiated arrangements. He explained that DI provisions on specific policy areas are likely to produce intense centripetal forces driving to more integration while others are characterized with feeble centripetal effects, promoting the establishment of differentiation. The intensity of the centripetal forces depends on the kind of the public good. Kolliker distinguished six types of public goods on the basis of two criteria: their excludability, whether or not non-participants are excluded from the benefits, and rivalry in consumption. Excludable network goods generate the strongest centripetal effects since they have high levels of excludability and are complementary in consumption (ex. Eurozone and Schengen). Private goods have a high level of excludability and rivalry of consumption and create fair centripetal effects (ex. EU cohesion policy) while public goods and non-excludable network goods spawn rather low centripetal effects. Public goods cannot achieve exclusion when consumption is neutral (ex. the preservation of peace). Club goods are characterized with low rivalry of consumption while exclusion is possible and, thus, create strong centripetal effects (ex. free movement of persons in the EU). Common pool resources (CPRs) are non-excludable, with rival consumption, and are the goods that create the least centripetal effects. Instead, they may create centrifugal effects (ex. environmental policies of cross-national pollution). Non-excludable network goods have low possibility of exclusion and their utility increases from additional participants. Thus, *“the smaller the core of co-operating member states necessary to give initially unwilling outsiders the incentives to join in, the stronger the centripetal effects of the respective policy”* (Kolliker 2001, 131). Specifically, Kroll and Leuffen (2014) supported that the implementation of enhanced cooperation has depended on the institutional framework, the preferences of MS and the externalities of the public goods and policies. In this framework, enhanced cooperation in a policy emerges under the unanimous decision making, among MS with heterogeneous preferences and with neutral external effects of the public goods. The emergence of enhanced cooperation is determined by the cost and benefit structures of the MS. Kolliker’s analysis, however, is valid in cases when further

integration cannot be blocked by a veto in unanimity decision-making and differentiation is provisioned by EU institutions. Nevertheless, it has been the most nominal work in understanding how differentiation drives the deepening and expansion of integration.

Kolliker's contribution in explaining how DI can drive the expansion of integration as well as outlining the significance of centripetal effects and externalities has given grounds to the analysis of many other scholars. Based on Kolliker, De Andrade (2005) supports that the "pull-effect" and interdependence will stimulate greater participation while De Neve (2007) divided the centripetal effects that act as "carrots" and those that act as "sticks". To the latter, the centripetal effects that act as "carrots" refer to the process in which the prospect of participating in a cooperation of an "avant-garde" group, coincides with the interest of a state and generates beneficial convergence results. This is the case of Italy or Spain, which, due to their desire to insert the Eurozone, introduced vast domestic economic reforms beneficial for the state. Another example of "carrot" centripetal effect has taken part in Schengen which from an Agreement of six countries has expanded to 26 over the time. Contrary, the centripetal effects that act as "sticks" refer to the threat of exclusion from a more developed level of cooperation that stimulate the participation of states which were reluctant at first (Kölliker 2005: 19). The threat of being excluded was one of the main reasons for the participation of the UK in the EU and the solution for the gridlock on the negotiations of the Single European Act in 1985. On the other hand, the Eurozone, the most important example of differentiation, has not yet indicated any centrifugal effects that turnoff the outsiders. Instead, many MS have expressed their desire to participate in it due to the resulting interdependence.

Hvidster and Hovi (2015) were again based their analysis on Kolliker's approach and regarded European integration as an excludable good with complementary consumption which triggers the participation of states. Through these rationalist lenses, they used game theory to enhance Kolliker's model in including

not just an explanation of integration but also differentiation. They based their analysis on an assumption of disagreement over the direction and not the depth of integration. They proved that European integration has been a single-track procedure in which differentiation is not the common rule but the common exception since member states follow the same direction of integration. Excludable benefits and positive network externalities push the member states to take up with the integration process in each policy area, even if they feel discontent towards the direction of integration. In other words, strong centripetal effects generated by the process of integration are capable of gradually accommodate heterogeneity and discontent among the member states. The effect of externalities has also been central to the normative analysis of Christopher Lord (2015) who suggested that differentiated integration serve member states in the management of externalities and avoid the imposition of costs. Within EU, decisions and actions of member states directly affect all EU. To Lord, these externalities are better managed and controlled by the states collectively but also selectively, including some member states and excluding some others, according to the type of the public good and the standards of democracy and obligations towards their publics. Within this framework, differentiated integration provides the route for political management and continuation of integration.

Liberal intergovernmentalism was also used in Tekin's (2012) analysis who combined it with historical institutionalism (Pierson 1996) and public good theory (Kolliker 2001). She argued (2012: 54-70) that the bargaining among rational but heterogeneous MS justified the emergence of DI provisions and opt-outs. Moreover, following historical institutionalism, the insistence on DI arrangements is the result of path-dependencies (ibid) In a similar scheme, Tanja Borzel (2005) followed a neofunctionalism approach and she defined the expansion of European integration as 'task expansion' (Haas 1958). In this context, close cooperation in economic areas will stimulate the expansion of cooperation to new areas reducing national sovereignty concerns. Therefore, DI is perceived as a means to propel more integration through spillovers and growing, interdependence.

Schimmelfennig and Winzen (2014, 360) engaged the intergovernmentalist argument that integration and differentiation are the result of different constellations of MS preferences and bargaining (also in Schimmelfennig 2014; Duttler 2016). Examining Treaty based DI, they pointed out that the more European integration deepens, and the number MS proliferates, the more MS' preferences and capabilities differentiate. This is supported by the fact that until 1992 differentiated integration was hardly the case in the EU. Moreover, the more integration expands to more policy areas, the more possible that these will include normative or (re) distributive policies that are likely to fire up competition among the MS. Finally, the more supranationalisation increases in policymaking and state autonomy decreases the more likely is to provoke national disagreements. They also found correlation between wealth (GDP per capita) and material heterogeneity and differentiation resulting from enlargements, with poor new member states to engage in DI arrangements commonly for transitional periods to deal with capacity and redistribution of funds problems. Due to uneven interdependence, prospective new MS have weak bargaining power as they have more to gain from EU membership (Schimmelfennig 2014, 684-688; Schimmelfennig and Winzen 2016). In the same framework, Duttler (2016) claimed that DI has been the result of contradicting and asymmetrical bargaining or decision-making process (also Kolliker 2001) and he recognized two main characteristics of DI. Firstly, DI is based on formal rights and duties derived from EU rules in primary and secondary law. Thus, DI refers to de jure differentiation and not de facto differentiation resulting from noncompliance or non harmonisation with EU rules (Andersen and Sitter 2006,314). Secondly, DI touches upon the geographical scope of the MS implementing and the MS not implementing a legal rule.

Bellamy and Kröger (2017) argued that in a heterogeneous EU, differentiated integration offers flexibility and makes decision-making more efficient and effective. Thus, they contradicted the argument that opt-outs and DI arrangements undermine the unity and the legal uniformity of EU (De Burca and Scott 2000).

Instead, DI is a “democratically justifiable” measure, covering the three *democratic* values gaps of fairness, impartiality and equity which exist in heterogeneous political systems. In this “*democratic perspective*”, DI is perceived as a tool that removes bias against specific values or groups and avoid the possibility of cultural partiality imposed by the majority group in decision-making processes. For them heterogeneity has been the most important factor of DI and has two forms. They supported that high level of economic and social heterogeneity entails that MS have different interests or expected benefits in specific collective goods, specifically non-excludable public goods or excludable club goods. This means that the more heterogeneous is the economic and social construction of the MS, the more possible the EU will abstain from producing a public good or that a group of MS will move on to setting up a club that excludes the other MS. The second form of DI refer to the heterogeneity of values lies on cultural, and often religious, differences which drive the governments to opt-out from measures that contradict the cultural values of their people. In this perspective, DI has been a vehicle to accommodate in a fair way the structural heterogeneity of member states within EU.

As a result, DI has been perceived as a viable institutional tool for adjusting the heterogeneity and possible asymmetry in gains and costs of integration of member states in an enlarged EU. Heterogeneity refers to both MS’ s preferences and capabilities that may generate integration deadlocks due to the necessary consensus in decision-making (Stubb 1997; Andersen and Sitter 2006; Emmanouilidis 2007; Dyson and Sepos 2010; Holzinger and Schimmelfennig 2012; Chopin and Lequesne 2016; Thym 2017). Ergo, differentiated integration has served as a means for overcoming deadlocks (Moravcsik 1993, 502–3) or as a leverage to push certain member states to cooperate (Wallace 1985, 44–5) or finally, a tool to manage diversity in EU (Wallace 1985, 90; Holzinger and Schimmelfennig 2012). Notwithstanding, the most relevant work to our study is the one produced by Leuffen et al (2013) (and Schimmelfennig et al 2015). They borrowed two elements of the grand theories of integration, namely interdependence (from liberal intergovernmentalism- Moravcsik 1998- and neofunctionalism or supranationalism- Stone Sweet

and Sandholtz 1997) and politicization. Interdependence is perceived as the main driver of integration due to the pursuit of economic or security benefits, spillovers or avoiding negative externalities while politicization and Eurosceptic opinions as its main barrier. The constellations of these variables define the level of vertical and horizontal differentiation. They argued that vertical DI is the result of different levels of interdependence while horizontal differentiation is the result of politicization. In this framework, internal DI is provoked by the integration driven by high interdependence and asymmetric politicization across MS. On the opposite, external DI is produced by non-MS in which the EU is highly politicized, opt-in in highly interdependent but lowly politicized policies.

1.3. Aim of the study

European integration has been more politicized in policy areas encompassed in the core state powers which more commonly present internal differentiation, as integration deepens, since they stimulate resistance by anti-European parties and public masses (Rittenberg et al 2014,190). While legislative DI related to the market has gradually decreased, the integration in *core state powers* has provoked new and constant DI arrangements (Rittenberg et al 2014, 196; Genschel and Jachtenfuchs 2014; 2018). Indeed, integration in core state powers follow a pattern of lower level of supranational centralization than in non-core state powers while supranational actors play a limited role (Rittenberg et al 2014,19,5). Scholars have claimed that national identity of both political parties and public, instead, consist of a durable constraint to integration (Carey 2002; Hooghe and Marks 2004, 2005; McLaren 2002). Politicization and mobilization of national identity issues in elections or referendums form a potential restriction to integration and change the terms of the political conflict nationally (Hooghe and Marks 2019). Until the 2000's the Europeanized elites have driven integration contributing to the built-up of the permissive consensus of EU people. Notwithstanding, the last 15 years we have observed the shift to the constraining dissensus stimulated by the mobilization of nationalist identities, led by populist political groups (Hooghe and Marks 2009; Debomy 2016, 16). Politicization of public opinion steals the power from the pro-integration elites. As a result, public preferences intervene in the EU decision-making

composed by nationally elected state leaders. This process can turn the permissive consensus of citizens to proceed with integration to the constraining dissensus. Politicization takes the form in polarized parties and electorates on national level, usually driven by populist challenger parties, and conflicting debates of EU member states on European level (Schmidt 2019; Hodson and Puetter 2019). Migration and asylum policies, as core state powers par excellence, has been a policy field characterized by increased political salience which can lead to politicization and mobilization of the mass publics (Givens et al 2004). In policy areas, such as migration and refugee policy, values and beliefs are emerging as determining factors of national interests (Lavenex 2018). The EU has tried to accommodate the contradicting policy preferences originated in politicization and Euroscepticism with arrangements of DI. Therefore, the EU migration policy has turned into a highly differentiated policy area with specific member states declaring their opt-outs from the continuous deepening of supranational cooperation. The fact that migration policy touches upon the very essence of state policies was manifested in both the opt-outs of Denmark, UK and Ireland and the partial communitarization of the JHA (Monar 1998, 137; Niemann 2012).

Besides, the crisis that shook the EU migration policy in 2015 raised the politicization of the issue area to almost unprecedented levels. As the Commission described *“Europe experienced the largest number of arrivals of refugees and migrants since the end of the Second World War...Migration, asylum and border management systems were put under huge pressure. The Union and its Member States were not sufficiently prepared to respond effectively. The scale of the crisis had a powerful impact across the EU. The integrity of both the Common European Asylum System and of the Schengen area of free movement for European citizens was put into question”*. As a result, the refugee crisis⁵ has developed as a form of governance crisis and an indication of the limits of European political integration (Lavenex 2018).

⁵ The choice for using the term “refugee” crisis, instead of migration crisis, does not entail any legal characterization. The terms are equal in the approach of this study.

Increased politicization has been the main characteristic of this crisis. Political salience of the crisis was intensively manifested in both local and European level. Eurobarometer has indicated that migration has been moved in the top apprehensions of the European people. Political contestation contaminated both national governments and publics, manifested through elections and exploited by Eurosceptic parties (Schimmelfennig 2017). In fact, during the refugee crisis, the Eurosceptic parties were reinforced in many states such as the Alternative for Germany, the Freedom Party of Austria, French Front National or the Italian Lega Nord. Challenger/protest and Eurosceptic parties (see PART 2 of this study) gained great resonance during the crisis as well as electoral success (Schuette 2019). Besides, domestic political competition and polarization among parties, brought in the front of the political arena mainly from challenger and Eurosceptic parties, challenged the predominance of mainstream parties (Whitefield 2015). Their influence pushed mainstream parties to more nationalist, restrictive and uncompromising positions in EU intergovernmental negotiations (Powell and Tucker 2014; Schuette 2019). From the 26 MS that realized elections after 2015, in more than half Eurosceptic parties had met with considerable success (Kneuer 2019). This political environment across and within EU MS have created an increased demand for the use of differentiated arrangements, which has yet to be studied.

This study aims at examining the application of differentiated integration in EU policy towards irregular migration.⁶ We focus, specifically, in the DI originated by the growing politicization of the issue area within the states and the mobilization of the public by Eurosceptic parties and/or referendums. The objective of this research is, after indicating that EU migration policy is an increasingly differentiated area, to prove that the rise of the politicization and the reinforcement of Eurosceptic parties results in the introduction of DI within the EU secondary law of asylum policy, as it is indicated in the treaty opt-outs but also after

⁶ Irregular migration is defined by the European Commission as the “Movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries”. In https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/irregular-migration_en, Accessed 30 March 2021

the refugee crisis. Treaty-based DI driven by Euroscepticism and national identity concerns has been manifested in the opt-outs of the UK and Denmark from the AFSJ measures. Scholarly work has already explained the UK has been an EU member state with exclusive national identity and highly Eurosceptic party system, resulting in becoming the greater supporter of differentiated integration in the EU. Additionally, Denmark has been a champion of referendums, with the national political parties passing almost every major EU decision to the public, provoking the augmentation of politicization and contradiction between the national and the European identity (Hooghe and Marks 2009, Leuffen et al 2013, Ritterberg et al. 2014, Schimelfennign et al. 2015, Borzel and Risse 2018).

Nevertheless, there is nary any study outlining that the crisis contributed to the introduction and incorporation of flexibility within the Dublin system and EU asylum measures by EU institutions as it is manifested in the New Pact on Migration, presented by the Commission in September 2020. This fact has been the outcome of the strengthening of right wing and Eurosceptic parties within the domestic political arenas of the member states which pushed for restrictive measures and promoted the idea of flexible solidarity or solidarity a la carte in the EU. Besides, domestic political fermentations define the national positions taken in the intergovernmental negotiations and bargaining on EU level, as the domestic and the European political arenas are interconnected and often overlapping. Therefore, the national politicization of migration issues of aggregated level and in many member states affected the EU negotiations and response over the refugee crisis. In this framework, the introduction of DI measures has been considered as the sole way of overcoming the political deadlocks. We, thus, document through qualitative analysis of primary (semi-structured interviews to EU officials and official governmental and EU documents) and secondary sources (media reports and scholarly literature), that DI has been a valuable tool of political management even in times of crisis and the only way for the deepening of EU migration policy, a highly politicized policy area.

1.4. Structure of the study

The study is structured into six parts. After the first introductory part (**PART 1**), the second part (**PART 2**) delineates the research design of the study by outlining the research questions; analyzing the theoretical framework drawn from the scholarly research on core state powers, post-functionalism and politicization; the hypotheses; and laying out the operationalization of the variables, cases and methodology of qualitative analysis.

The third part (**PART 3**) documents the trail of integration in EU migration policy by focusing on the milestones of application of differentiated integration within it. It adds to the research by performing a mapping exercise of differentiated integration on the policy field.

The fourth part (**PART 4**) focus on the first hypothesis of the study and analyses the increased Euroscepticism and politicization, originated in the elements of the national identities, that have characterized the states of UK and Denmark.

The fifth part (**PART 5**) examines the chronicle of the member state reactions and Council negotiations after the outbreak of the 2015 refugee crisis by focusing on the rise of Eurosceptic parties within nine of member states which played a leading role in the EU response to the crisis.

The thesis ends with the sixth part (**PART 6**) which underlines the concluding remarks and the notes for future research on the subjects raised.

PART 2. Research Design

2.1. Rationale and research questions

The policies of migration, asylum, and border checks⁷ are incorporated in the Area of Freedom, Security, and Justice (AFSJ), alongside the policies of judicial cooperation in civil and criminal matters as well as police cooperation. Nevertheless, those policy fields are separated into two different Titles or “pillars”: the fields of asylum, migration, border controls, and judicial cooperation in civil matters are placed in the communitarized Title IV TEC while the fields of police cooperation and judicial cooperation in criminal matters are found in the intergovernmental pillar of the Title VI TEU. As a result, the governance of the AFSJ has been split between national governments and European institutions. Besides, member states possess the competency of implementation of the agreed rules even in the communitarized parts of migration policy, such as the asylum policy (El Enany 2017; Trauner 2016). The migration and asylum policy has been a field of multilevel governance⁸ since “diffused across multiple territorial levels or contexts” which entails that both supranational and national political arenas coexist and contribute to the policy outcome (Hooghe and Marks 2003, 2). Indeed, the EU holds the competencies of regulatory integration and coordination while the member states hold the authority of implementation. In this form, EU governance has developed to a multi-level structure that accommodates both the functional tendencies generated by interdependence and willingness of the member states to preserve the main aspect of their national sovereignty (Shakel et al 2014). The notion of multilevel governance entails that decision-making is subject to different levels such as sub-national, national, transnational, and supranational level (Hooghe and Marks 2001). Certain decisions are taken by the supranational bodies while governments and national elites and bureaucracies participate in the decision-making and the

⁷ European Asylum System and Migration policies have been based on the Art. 67 TFEU.

⁸ Governance is defined as the “binding decision making in the public sphere” (Hooghe and Marks 2009, 2). Governance is distinct from ‘government’ which embodies hierarchy and centralization, the notion of governance is ‘marked by a proliferation of modes of organization, levels and decision-making authorities’ (Smouts 1998, 87)

implementation (Guiraudon 2000). Thus, the development of migration policy has been the result of intergovernmental bargaining between MS governments, shaped by domestic preferences (Givens and Luedtke 2004). Therefore, EU decision-making is formed in different arenas: the domestic and the European (Hooghe and Marks 2003; 2009).

Most European integration theories agree that transnational interdependence is the actuating power of integration. From the moment that national governments realize that unilateral policies are not efficient, they seek cooperative solutions through multinational coordination and integration. Interdependence can be generated through a variety of procedures such as transnational exchanges in economic or security considerations which raise the demand for both horizontal and vertical integration (Leuffen et al 2013). In this framework, the development of European integration in the fields of migration, asylum and external borders has been regarded as the result of increased interdependence generated by the establishment of the internal market and historical events such as the plethora of migrants from Eastern Europe after the demise of USSR which led to the foundation of the Schengen Area (Moravcsik 1998, 452). Indeed, business, and economic elites acting within the internal market pushed forward for the contraction of the time-consuming border controls which obstructed European trade (Lavenex and Wallace 2005, 460). Besides, the Schengen Convention stated as an objective the facilitation of “the transport and movement of goods”. The abolition of internal border controls and the prospect of the Eastern Enlargement underscored the need for closer cooperation in the field of migration, justice, and cross-border crimes. Internal security was exposed, a fact that led to demands for closer cooperation for controlling transborder activities but also reinforced external border controls. Therefore, the Schengen Agreement paved the way for the establishment of the Dublin system and the European coordination of external border controls and internal security systems (Niemann 2012; Leuffen et al 2013). Besides, the institutionalization of cooperation can diminish to a great extent transaction costs in these areas (Keohane 1984). Therefore, the formulation of the European coordination on the field of migration is

considered a result of growing interdependence between the member states of the European Community that gradually developed to what we name today, the EU Migration Policy that includes measures on legal and illegal migration, asylum, and external border controls.

Nevertheless, the development of migration policy in the EU has not been unhindered within the course of 25 years since its first inception. Interdependence has been the main driver of integration but other factors such as the contradicting preferences and interests of member states, sovereignty concerns or politicization of policies have generated important obstacles to its unified development (Leuffen et al. 2013). Instead, the European Migration Policy has been a policy area that displays various forms of differentiated integration: non-EU member states participate in the Schengen Area, the Dublin and asylum system, the coordination of external border controls while EU member states do not participate in the Schengen Area and migration management rules. In this context, heterogeneity refers to both MS' s preferences and capabilities and may create integration deadlocks due to the necessary consensus in decision-making. DI accommodates the heterogeneity and asymmetry in gains and costs of integration while has formed a tool for the political management of integration both on domestic and European level. Therefore, DI has been the institutional instrument that solves the mismatch between the will for further integration and the threat for an institutional deadlock by veto players (Stubb 1997; Kolliker 2001; Emmanouilidis 2007; Dyson and Sepos 2010; Holzinger and Schimmelfennig 2012; Chopin and Lequesne 2016; Schimmelfening and Winzen 2016; Thym 2017 etc.). In general, European leaders, EU institutions and scholars have agreed that DI has been the viable means to overcome the stalemates stemming from contradicting national interests and preferences⁹ and has been the main way of leading

⁹ Ibid, Points 1-11

integration forward. **But what has provoked the discrepancy of national preferences and how differentiation has accommodated them in the internal of the EU?**

Besides, the difference among national preferences in migration policy integration has been evident during the 2015 refugee crisis which generated an intense crisis within the EU governance of migration. The crisis found the EU unprepared to deal with the unprecedented numbers of asylum seekers and migrants entering the EU soil illegally after the 2013 Arab uprisings and the civil wars in Syria, Iraq, and Afghanistan. The crisis highlighted not only the endogenous defects of the European migration policy but also the opposing preferences of the member states (Scipioni 2018). On the one hand, both the systems of external border controls and the asylum regime were not properly equipped to receive increased migration flows. The external border controls have remained at a great extent a competency of the member states and lack strong supranational coordination (Schimmelfennig 2017). While the asylum system has been communitarized, the harmonization of its rules and proper implementation reaches a very low level in terms of reception, recognition and procedures among Schengen states. Neither the Asylum system nor the Schengen Area have a burden-sharing system. In the case of the refugee crisis, the regulatory system of CEAS proved inadequate to absorb the ramifications of the external shock (Biermann et al 2019). Notwithstanding, this kind of incomplete structure has been expected to stimulate functional spillovers in case of crisis, which generate spillovers as '*byproducts of incomplete governance institutions*' (Jones et al. 2016, 1028). Since the declaration of German Chancellor Angela Merkel that the review and reinforcement of European migration policy would be 'the next major European project'¹⁰, have passed 5 years, yet no major changes have occurred.

¹⁰ Merkel, A. Summer interview with ZDF, 16 August 2015, <https://www.bundesregierung.de/breg-en/news/refugee-policy-finding-common-answers-443560>, Accessed 10 June 2019

On the other hand, while the functional pressure of the crisis was relatively high and in cases of external shocks interdependence increases (Biermann et al 2019) , the crisis was not translated to policy change and integration, especially in the area of asylum due to significant disagreements among the member states (Trauner 2016).The European response to the crisis failed to distribute responsibility and burden sharing equally to the member states while erratic legal measures in the field of asylum were crashed to delays and refusal by member states to implement them, underscoring their conflicting preferences. While in the period 2015-6, the Commission announced some ambitious measures, these supranationalizing attempts crashed over the lack of compromise among the member states (Börzel and Risse 2018). In 2015, the Commission promoted three packages of measures and reforms (May, September and December 2015): the voluntary relocation of 160,000 refugees from Greece and Italy¹¹, a permanent relocation mechanism inserted to the Dublin system,¹² and the reinforcement of Frontex.¹³ Nevertheless, the scheme proposed by the Commission was greatly opposed by the Eastern European states. Instead, the MS favored the reintroduction of border controls, the erection of fences, the suspension of many asylum laws such as restricting the refugee status or taking back the right to family reunification of beneficiaries of subsidiary protection (Lavenex 2018). Thus, a basic element of European

¹¹ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration, Brussels, 14.10.2015, COM (2015) 510 final.

¹² European Commission (2016) 'Member states' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 23 et seq. of the Schengen Borders Code

¹³ European Commission, Proposal for a regulation of the European parliament and the council on the European border and coast guard and repealing regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC, Strasbourg, 15.12.2015, COM (2015) 671 final

integration, the freedom of movement, was suspended.¹⁴ As a result, the refugee crisis unsettled the “foundation of the European integration project”.¹⁵

Alas, the inefficiency of the existing policy measures was not the sole problem accentuated by the external shock of the crisis. Instead the crisis provoked great divisions among the member states with contradicting preferences, resulting to intergovernmental conflicts, and failing to proceed to a solid solution over the migration problem internally (Schimmelfennig 2017; Lavenex 2018; Scipioni 2018; Biermann et al 2019). While the EU had decided a number of financial and technical measures internally, the management of the migration crisis has been characterized by externalization, lack of implementation of agreed measures and failure of sharing of responsibility and solidarity. The discontent and distrust among member states and between member states and EU institutions created a “sclerotic” environment (Hampshire 2016) of stalemates and disagreements. In this environment, DI measures, such as flexibility in ways of contributing to the burden sharing, was regarded as a way to accommodate the intrinsic heterogeneous preferences of member states and support the finding of a golden solution among the member states in another form of “united in diversity”. Indeed, DI is “*the general mode of integration strategies which try to reconcile heterogeneity within the European Union*” (Stubb 1996, 283) and is perceived as a valuable mechanism for accommodating heterogeneity and contributing to the stabilization of European integration, especially in times of nationalist/ populist reshuffling (Bellamy and Kröger 2017). Thus, the New Pact on Migration, presented by the Commission in September 2020, includes fundamental elements of differentiation and flexibility. **Nevertheless, which has been the main**

¹⁴ Council Implementing Decision (EU) 2016/894 of 12 May 2016 setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk

OJ L 151, 8.6.2016, 8–11

¹⁵ Juncker, C.J., State of the Union Address, 13 September 2017, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_17_3165

variable that incited the contradicting national preferences (thus conflict among the MS) and generated the use of DI within the EU asylum system?

We try to answer these questions in looking into one common variable in both, namely the politicization of migration policy and the subsequent rise of Euroscepticism. We turn to scholarly theoretical works of the integration of core state powers, differentiated integration, post-functionalism, politicization and Euroscepticism. The narrative review¹⁶ of scholarly works will help us build the suitable analytical framework for this study and the specific policy area (Bryman 2012).

2.2. Conceptualization and Hypotheses

2.2.1. Politicization, Euroscepticism and Differentiated Integration

2.2.1.1. The integration of Core state powers

Politicization is mainly triggered in the policies of core state powers (Winzen 2016; Schimmelfennig and Winzen 2016). Genschel and Jachtenfuchs (2014) defined core state powers as those the state sovereign competencies and monopoly over legitimate coercion and management of vital resources such as the military and police forces, the public revenue, internal security, and migration. The AFSJ policies, and especially, the migration management fall into within the essential parts of national sovereignty and constitute core state power *spar excellence* (Monar 2005; Rittenberg et al 2014,203; Niemann 2012). The national sovereignty is manifested in the possession of the coercive power, the right to issue money and implement taxation policy and enforce legislation within national borders (Genschel and Jachtenfuchs 2016, 42-3). Fundamental political science scholars such as Thomas Hobbes included

¹⁶ In contrast to systematic literature, the narrative review incorporates “the literature relevant to the researcher’s area of interest is always reviewed as a means of establishing why the researcher conducted the research and what its contribution is likely to be” (Bryman 2012,111).

migration in the national internal and external security and compose a vital part of core state powers, the legitimacy and national sovereignty of the state. Ergo, the delegation of parts of the policies of the AFSJ to EU has been regarded as an important development since member states have been more eager to give some specific competences to EU in the area of non-core state powers such economic and market policy than on the core state powers of migration control, external border controls or police (Monar 2001; Kaunert 2005; Rittberger et al 2014). This analysis resounds the claim of Stanley Hoffmann (1966) that integration in high politics is characterized by high autonomy costs.

The integration of core state powers comes as an outcome of the same causes as market integration: interdependence and the effects of integration externalities and spillover results (Genschel and Jachtenfuchs 2018). An alarming difference between market integration and core state powers integration is that distribution of costs and benefits in the market are more equally shared than in core state powers, since market trade is usually beneficial for all the participants. Possible conflicts in market integration can easily be accommodated by additional regulatory arrangements by market actors on EU level which supersedes any contradictions of national legislations. However, resources on core state powers are limited and, as a result, conflicts over the distribution of costs and benefits arise more commonly. For instance, the number of border guards and the time they can be exploited are finite. As a result, core state powers are integrated in a multi-level system of governance in which member states pool competencies on the European level (Hooghe and Marks 2015). Nevertheless, the states still preserve the decision-making and implementation powers. Genschel and Jachtenfuchs (2016,42-3) defined integration of key core state powers as *“the increasing involvement of EU institutions in key functions of sovereign government including money and fiscal affairs, defence and foreign policy, migration, citizenship and internal security”*. The integration of core state powers is characterized by high autonomy costs since they have high ‘institutional significance for state building’. Consequently,

integration of core state powers is more challenging for states than in non-core state powers (Genschel and Jachtenfuchs 2014, 10) .

According to Genschel and Jachtenfuchs (2014;2016), the integration of core state powers expresses three fundamental characteristics that differentiate them from the integration of other policy sectors. Firstly, integration in core state powers develops mainly through regulatory coordination and cooperation and not through common capacity building while the role of supranational institutions is restricted compared to other policy fields. Regulatory competency is exercised through secondary law instruments such as regulations and directives, aiming at the harmonization of national legal systems with EU policies and objectives but not joint and integrated capacity-building (Genschel and Jachtenfuchs 2016). However, the EU's policies in core state powers are mainly implemented through the mobilization of national powers. Indeed, states have protected their authority over the implementation of common policies in core state powers. Regulatory integration has been perceived as a national subject, since states decide how to implement the agreed rules, while capacity-building integration creates discontent on losing national resources for others (Genschel and Jachtenfuchs 2016). Even more, the EU has not established a common and centralized institution to control and exercise the integration of core state powers, such as the Central European Bank in EMU. Ergo, the expansion of formal authority in European treaties was not followed by an expansion of capacity building for the implementation of such authority. The absence of resources for the exercise of core state powers by central institutions is a central characteristic in most policy areas apart from the EMU (Borzel 2005; Genschel and Jachtenfuchs 2016). Instead, the EU has recouped the minimal capacity building competences with an extensive use of regulatory powers.

Secondly, in core state powers the main actors are the state, bureaucratic, and political elites instead of business or transnational elites that play preeminent role in market integration. State elites are constituted by professionals delegated to manage and work in public services (diplomats, civil servants, military officers, central bankers, policy advisers etc.) who favor integration up to that point that it supports their institutional and functional interests (Scharpf 1988). Institutional interests involve the will for supporting and reinforcing the governmental institutions while functional interests are concerned with the effectiveness of state policies. If integration threatens their interests, state elites will push back (Genschel and Jachtenfuchs 2016) in case they regard the supranational institutions reducing their political capital. Contrary, state actors will embrace supranational institutions if the latter contribute favorably to their national goals (Guiraudon 2000; Lavenex 2001). This is the main reason why they usually support European regulatory integration, which promotes their role as managers, but not capacity building, which reduces their power. Therefore, the power and authority of supranational institutions tends to be lower in core state powers than in non-core state powers, such as the internal market (Rittenberg et al 2014,196). This argument is lined up with the state-centrist approach that considers state autonomy to increase in integration in which decisions are dependent on negotiations among state executives and, thus, EU policy making is totally controlled by member states, responding to pressures of national politics (Marks 1996).

The third, and most important for this study, typical feature of the integration of core state powers has been the high political salience and politicization. Once integration touches upon state powers interrelated with the nucleus of national sovereignty and collective national identity, it can stimulate discords between Eurosceptic and Europhile citizens. De Wilde (2011,2) defined politicization as an expression of the *“polarization of opinions, interests or values and the extent to which they are publicly advanced towards the process of policy formulation within the EU”*. Adding to this, Zürn et al. (2012, 71) described the process of politicization as the increasing *“public awareness of international institutions*

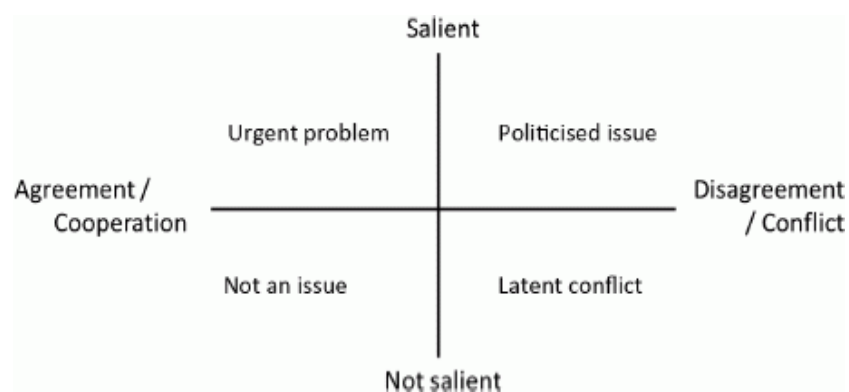
and increased public mobilisation of competing political preferences regarding institutions' policies or procedures". Thus, different political actors represent conflicting political claims in the national and EU public scene (Grande and Hutter 2016; Kriezi 2016). De Wilde (2011) distinguished among the politicization of EU institutions, decision-making and specific issues. Both the politicization of institutions and decision-making process refer to the emergence of national party politics and contradicting ideological cleavages as determinants of the conflict over the course of integration. Indeed, "*politicization of issues refers to an increase in salience and diversity of opinions on specific societal topics*" (De Wilde 2011, 3). Thus, the rising political salience and public contestation can politicize a certain policy issue. Politicization entails that a matter is gradually coming up as a matter of public interest and electoral significance in the national party preferences. Thus, a politicized issue gains public interest and attracts party debates as a matter of contestation (Green-Pedersen 2012; De Wilde 2011; Hurrelmann et al 2015; Wilde et al. 2016).

2.2.1.2. Politicization and national identities

Many scholars have debated the specific elements of politicization. Most of them agree that fundamental aspects of politicization of European integration are: (a) the increase of salience of European governance, based on the (b) polarization of opinions, and (c) the expansion of actors and audiences committed (De Wilde 2011; Green-Pedersen 2012; Hutter and Grande 2014; Zürn et al. 2012; Wilde et al. 2016; Grande and Hutter 2016, 8; Börzel and Risse 2018,85). Increased salience of a policy issue is the first and foremost element of politicization (Green-Pedersen 2012, 117; Guinaudeau and Persico 2013). The visibility of an issue in the public arena is the first and more important aspect of politicization (De Wilde 2011; Green-Pedersen 2012; Zürn et al. 2012; Kriesi 2016; De Wilde et al. 2016; Hutter and Grande 2014; Hutter and Kriesi 2019). Salience can be defined as the importance an actor ascribe to a matter (Warntjen 2012; Beyers et al. 2018). It is determined by the level of emphasis given to the issue

by the public in their agenda and debates at a specific time and has the power to redefine political conflict and the political landscape (Hutter and Grande 2014). A topic turns into a political issue when it attracts public attention and contestation over the kind of political action that is required (Van der Brug et al. 2015, 5-6). The increased salience of an issue makes information more accessible while parties' opinions gain attention on the political and public scene (Dennison and Geddes 2019). Salience has been proven to have a positive relationship with the increase of political conflict and affect the position taken by national governments (Hutter and Grande 2014; Thomson 2011). Grande and Kriesi (2016, 283) supported that salience but also the consequent polarization of opinions among elites and the publics are the main indicators of politicization (Van der Brug et al. 2015, 1-18). As Van der Brug et al. (2015, 5) put it "*When political actors have different positions they are in conflict – the issue is polarised*". Polarization refers to the growing difference of positions on national or European level (Hoeglinger 2016). Ergo, politicization occurs when the salience of an issue is high and the opinions of the political actors, especially, are polarized.

Diagram 2.1.



Politicization and Salience

Source: Van der Brug et al. (2015, 5)

The driving factors of politicization may vary (Grande and Hutter 2016, 20-25), from the socio-economic challenges of globalization to the fear of the loss of national identity (Gidron and Hall 2017). For instance, public attention on European integration can be increased if elites try to supranationalize more national competencies than the masses want (De Wilde 2011). As the EU authority expands, the politicization grows since citizens start questioning on who and where decisions on their lives are taken (De Wilde and Zürn 2012). In core state powers such as the migration policy, the mobilization of national identity¹⁷ sentiments have been the main source of politicization (Genschel and Jachtenfuchs 2016). Without degrading the functional demands and interdependencies that lead to integration, identity concerns and public mobilization are significant factors of European integration. However, they can act either supporting integration or opposing it. As Ernst Haas (1958, 16) supported that integration entails the drift of common loyalties on the European level. Public identification with the EU facilitates the public reliance to elites and contributes to the support of regional integration (Borzel and Risse 2020). National identity has played an important role in forming the individuals' attitude towards the EU. Social interactions and movements across state borders and the intervention of EU decision-making in matters of national sovereignty facilitate the public awareness and may undermine aspects of national identity. However, individuals may hold more than one identity, varying from territorial and regional elements to social and political. On one hand, it is important how a group identifies themselves in relation to others. If the group holds ***an exclusive national identity***, then other groups, such as the people of other EU states or third country nationals, are considered as unfamiliar and other territorial identifications are precluded. Accordingly, individuals with exclusive identities tend to be Eurosceptic once they believe that their ethnic predispositions are incompatible with European integration.

¹⁷ Borzel and Risse (2020,20) defined collective identities "as the way in which individuals relate to social groups, including imagined communities such as the nation-state or Europe...Social identities are composed of two ingredients, namely the special characteristics of the group, and the delineation of borders between the in-group and the outgroup."

On the other hand, if a group holds an ***inclusive national identity***, it embraces additional identifications, such as the one of the EU citizens. Strong feelings over national identity and national sovereignty can hinder public endorsement of European integration since they regard the EU as a threat to their national identity, language and culture (Carey 2002; Kaltenthaler and Anderson (2001). On the opposite, feelings of familiarity, openness and attachment to Europe are pushing individuals to support EU integration. In the words of Marks and Hooghe (2003, 6) stated “*the EU is a polity in the making, and as such it threatens not only the decisional autonomy of national institutions, but core values of national sovereignty and national identity*”. As a result, national identity can be associated with Euroscepticism in states where people hold exclusive national identity. The more strongly an individual identifies itself with its national society, the more it perceives EU integration as a threat to the national community (Kriesi and Lachat 2004). Therefore, national identity aspects can curb public support for integration.

As McLaren (2002, 553) explained “*Antipathy toward the EU is not just about cost/benefit calculations or about cognitive mobilization ...but about fear of, or hostility toward, other cultures*”. In this view, individuals degrade their economic costs or benefits and upgrade of their national pride (in-group) in which EU (out-group) is regarded as a dangerous encroachment (McLaren 2002, 564; Marks and Hooghe 2003; 2005). The reason is the deepening of integration to non-economic policies and core state powers which produce the tendency of homogenizing the cultures of member states. Indeed, people’s political preferences “*derive from deep historical or cultural identities such as nationality, religion or language*” (Hix 1999, 133). For the migration policies particularly, “*EU citizens have been resistant to the idea of granting Brussels control over immigration not because of instrumental calculations regarding perceived strategic gains or losses from immigration cooperation, and not because of their opinions of immigrants themselves, but because the proposed supranationalization of immigration control clashes with historically rooted national identities*” (Luedtke 2005, 84-85). Migration policy has been a “ special” policy area since functional pressures and economic interests are not the sole determinant factors.

Contrary, feelings of identity shape migration policy since it is correlated with the idea of the nation and the relationship between the ingroup and the outgroup. Losing control of the decision of who can stay and who cannot in national territory is a fundamental part of national determination and sovereignty (Luedtke 2005). This fact makes the public vulnerable to political mobilization (Harteveld et al.2017). Besides, people with exclusive national identities are normally against migration and deepening of integration and develop xenophobic beliefs (McLaren 2001;2002; Hainmueller and Hiscox 2007). As a result, people dispute integration if they hold exclusive national identities, and support it if they hold the European identification complementary to their national (Genschel and Jachtenfuchs 2016). Furthermore, hostility towards migration has proven to be linked with Euroscepticism (De Vreese and Boomgaarden 2005) while Europhiles have positive attitudes towards migrants (Curtis 2014). Eurosceptic and anti-migration feelings are based on identity issues and negative sentiments for out-group individuals and insecurity and, as a result, are critical towards more integration (Vreese and Boomgaarden 2005; De Vries and Edwards 2009,9; Curtis 2014; McLaren 2001; Dunn 2015; Lucassen and Lubbers 2012; Werts et al. 2013). Exclusive national identity coincides with Euroscepticism and vice versa (Marks and Hooghe 2003; 2005).

2.2.1.3. Post- functionalism, mobilization and DI

This analysis has been linked to the post-functionalist theory of European integration. While post-functionalist agrees with the neo-functionalists and intergovernmentalists that “regional *integration is triggered by a mismatch between efficiency and the existing structure of authority*”, they disagree that “*the outcome will reflect functional pressures, or even that the outcome will reflect these pressures mediated by their distributional consequences. Political conflict makes all the difference...*” (Hooghe and Marks 2009,2). For them, political conflict can be understood through the spectrum of communal identities. In the nucleus of the post-functionalist theory lies the conviction that identity issues can define

European governance and integration. For post functionalists, functional and economic demands can only explain integration up to a certain level, whereas *'Mass politics trumps interest group politics when both come into play'* (Hooghe and Marks 2009, 18) and determine the outcome of integration. As a result, the process of European integration is decided in two arenas: firstly, on the national public arena and party competition and secondly, on the intergovernmental arena of the EU. Decision-making is taken on European level but government preferences are formed nationally based on political parties, ideology and public opinion. In this context, European politics are intertwined with domestic politics which are intertwined with public opinion (Marks and Hooghe 2003; 2005). Thus, once national identity issues are mobilized, the issues of integration slip from the hands of elites to the hands of the public. Until the late 1980's, public masses had given their **permissive consensus** (Hooghe and Marks 2005; 2009) to elites to proceed with integration since they felt no excessive implications from market integration. Hooghe and Marks claimed that the period of gradual **constraining dissensus** started after 1991, during which elites (party leaders and authorities) cannot proceed to integration without considering the opinion of the public. In this framework, *"Elites were always likely to be more favourably oriented to integration than the public as a whole; a fact that has become politically combustible as European integration...In short, Leon Lindberg's permissive consensus has been transformed into something approximating to its opposite, a constraining dissensus"* (Hooghe and Marks 2005,208).

However, identities per se cannot circumvent integration. Instead, politicization and mobilization of identities from political parties can grow the "constraining dissensus" (Börzel and Risse 2018; Grande and Hutter 2016, 8). Political mobilization of identities refers to the exploitation of identity issues in political discourse to advocate in favor or against European integration by parties and politically segmented media (Borzel and Risse 2020), since *"public opinion on Europe is particularly susceptible to construction: i.e. priming (making a consideration salient), framing (connecting a particular consideration to a political object) and cueing (instilling a bias)"* (Hooghe and Marks 2009, 13). Public opinion is affected

from the way political elites mobilize their identities and construct them (Hooghe and Marks 2009). Since the EU has moved to the integration of core state powers, Hooghe and Marks (2009) has supported that individuals do not base their opinion on economic benefits alone but also on cues. Cues can be defined by ideological factors, social or political groups. Political cues explain individual attitudes beyond utilitarian interests. Individuals form their opinion on European integration based on cues, formed domestically, and derived from political ideology and parties. As Hooghe and Marks (2005, 215) explained “*The connection between a person’s identity and her attitude toward European integration is constructed in political debate...Where the political elite is more or less united on Europe, national identity and European integration tend to coexist; where it is divided, national identity feeds Euro-scepticism*”.¹⁸

Indeed, politicization depends on which party picks the issue and what position chooses to support (Kriezi 2016). Parties mobilize public opinion on a European issue if they suspect potential electoral benefits, depending on its ideological commitment towards party members, the position of other parties on the issue, and the unification of the party over a specific position. On European issues, division between left wing and right wing is fused, depending on the debated issue. Once integration has moved to other sectors than the liberalization of the common market, the traditional left/ against integration and right/ pro integration cease to apply (Marks 2004, 240-42, Hooghe 2007, Marks and Hooghe 2003). According to Hooghe and Marks, political parties are divided in line with the green/alternative/libertarian (or GAL) camp and traditionalism/authority/nationalism (or TAN) camp which do not respond solely to economic considerations but also on identity issues (Hooghe and Marks 2006; 2009). TAN parties are recognized as Eurosceptics, regarding the EU as diminishing national sovereignty and identity. Conservative parties are placed in the moderate TAN area while radical right parties are placed at the extremes of the TAN

¹⁸ Euroscepticism can be defined as “*an attitude of doubt or a disposition of disbelief*” and skeptical feelings towards European integration (Hooghe and Marks 2007:120) Thus, Euroscepticism is the critical attitude up to straight opposition to the European integration (Taggart, 1998, Lubbers and Scheepers, 2005). See more in the next section.

area. Conservative parties are protective towards national sovereignty. Extreme TAN parties of the radical right oppose both migration and EU integration since they believe it degrades national sovereignty and uniformity. The position of the extreme TAN parties influences Conservative parties to engage in more nationalist positions against political integration and migration. Nevertheless, their nationalism co-exists with neoliberalism and support for economic integration. The British Conservative party is an example of this peculiar relationship while Merkel's Christian Democratic Union of Germany (CDU) which commonly recouples the ideas of the TAN group Christian Social Union in Bavaria (CSU) such in the case of opposing Turkey's membership on the basis a Muslim state is not European. On the other side, Green parties favor the cultural diversity of European integration. However, left- gal parties find themselves to fluctuate between favoring European social policies and resisting extreme market liberalism.¹⁹ Consequently, the role of the political parties' elites is pivotal in mobilizing identities (Marks and Hooghe 2003; 2005).

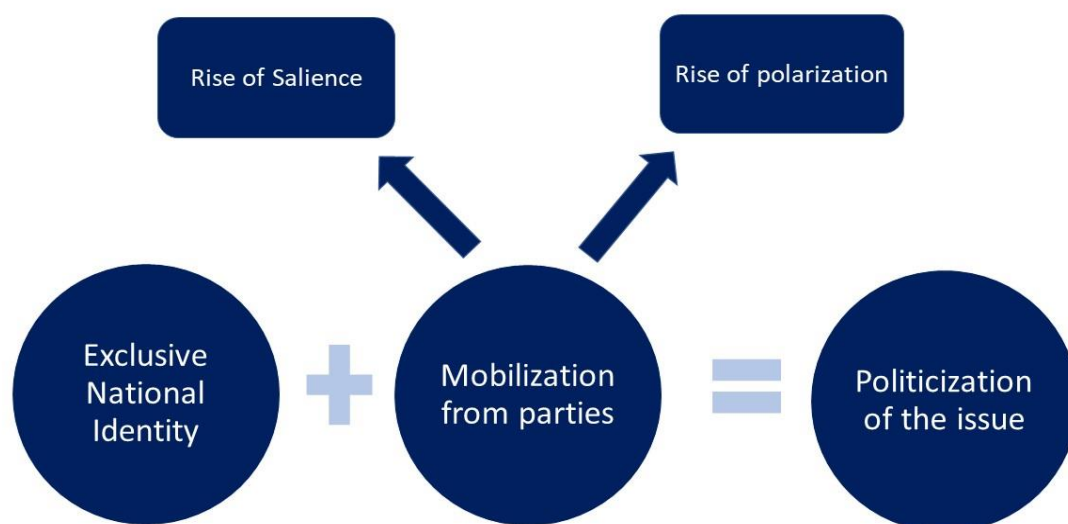
If national identities are mobilized by the TAN parties, the first are most likely to reinforce the constraining dissensus since they are recognized exclusive nationalists and Eurosceptics²⁰ (Hooghe and Marks 2009; Börzel and Risse 2019). Scholars have proven that populist right parties mobilize individuals with exclusive identities towards Euroscepticism (de Vries and Edwards 2009). The idea of the supremacy of the nation is used as the bedrock against integration in Eurosceptic terms (Hooghe and Marks 2005). In this scheme, Euroscepticism has moved away from the opposition to market integration to the protection of national community (Hooghe and Marks 2009; Hooghe 2007). National identity is the name on which

¹⁹ The party competition in Eastern and Central Europe is different from the West, with the left parties to lean towards tan positions and the right parties to engage gal positions (Hooghe and Marks 2009).

²⁰ The word Eurosceptic was firstly publicly used in 1986 as a characterization of the British Prime Minister Margaret Thatcher in *The Times* (30 June 1986, 9/1). *The Economist* used it first in 26 December 1992 in printed studies for the public in Germany after the need for change by German business of the purity of beer to adopt to the rules of the internal market (Oxford English Dictionary online). The term started to be widely used after the signing of the Maastricht Treaty.

TAN of radical right parties oppose integration and migration. Moreover, national identity issues can spark Euroscepticism in conservative parties with strong traditional national parts that support national sovereignty in combination with market integration and liberalisation such as UK, France and Spain (Hooghe and Marks 2005). As Mudde explained, extreme right-wing parties base their ideology on nativism and nationalism while defending the homogenous society of people against a “corrupt” elite (Mudde 2007, 21–23). In other words, “They oppose European integration for the same reasons that they oppose immigration: it undermines national community” (Hooghe and Marks 2009, 17). Thus, “The more the finalite´ politique of European integration becomes politicized in domestic arenas, the more we would expect populist parties on the fringes of either the left or the right to pick up the anti-European tan vote which is primarily motivated by identity concerns of the exclusive variety” (Borzel and Risse 2008, 219). It is expected both radical right and conservative parties to resist to integration of core state powers and migration and stimulate the increase of politicization of EU issues (Hooghe and Marks 2005).

Diagram 2.2.



Politicization and Exclusive National Identity

Source: Author's design

Moreover, De Wilde (2011) highlighted that politicization of an issue, its intensity and duration, is determined by the time and space as '**episodes of contention**' (De Wilde 2011). Time dependency is an indicative feature of politicization. Politicization emerges on certain periods responding to a specific source (Kriesi 2016). Indeed, scholars such as Hutter et al. (2016) have proved that politicization does not usually follow a uniform pattern of emergence or intensity. Instead, it is usually restricted to specific member states and it is country specific (Kriesi 2016). Thus, the variation of politicization differs both over time and over countries (De Wilde et al.2016). Indeed, politicization mounts over during extraordinary events and critical times, such as national referendums, elections, or treaty revisions. These episodes of contention, however, sparkle questions on the nature of the EU and how much sovereignty states should pool in its institutions. This is related to the hypothesis that incidents of "authority transfer" contribute to the politicization of an issue (De Wilde and Zürn 2012; Hutter et al. 2016). In the post-Maastricht period, pollicization increased whenever the matter of more sovereignty pooling to EU surfaces, such as in treaty revisions. Any step that forwards integration is more likely to lead to a politicized issue and political conflict (Grande and Hutter 2016, 12-17).

Pivotal integration steps that move towards deepening and expanding EU authority are main events generating politicization since they cause political contestation and controversies. Apart from elite conflict they stimulate intense public attention also around the question of the future and the course of EU decision-making over the issues of sovereignty, identity, and solidarity (Grande and Hutter 2016:23-24). The public are expected to actively participate in the politicization, directly through elections and referenda, or indirectly through opinion polls, protests or online public discussions. In this way, the conflict of opinions is socialized (Hutter and Grande 2014). Referenda, elections, and treaty revisions trigger the salience of the contested issues and the polarization of opinions that re-surface issues of national identity

and, thus, politicization (Schimmelfennig 2017). Referendums are fundamental events that generate high levels of politicization since they directly put a European issue into the public debate, proposing two opposing opinions, dividing citizens into two camps, raising political contestation over a policy outcome. At the same time, *“Referendum campaigns might be instrumentalized by parties in their battles for political offices”* (Grande and Kriesi 2016, 289). Ergo, events such referenda and treaty revisions play a pivotal role in integration, mobilizing public opinion and contributing to the politicization of EU integration (Vreese and Boomgaarden 2005).

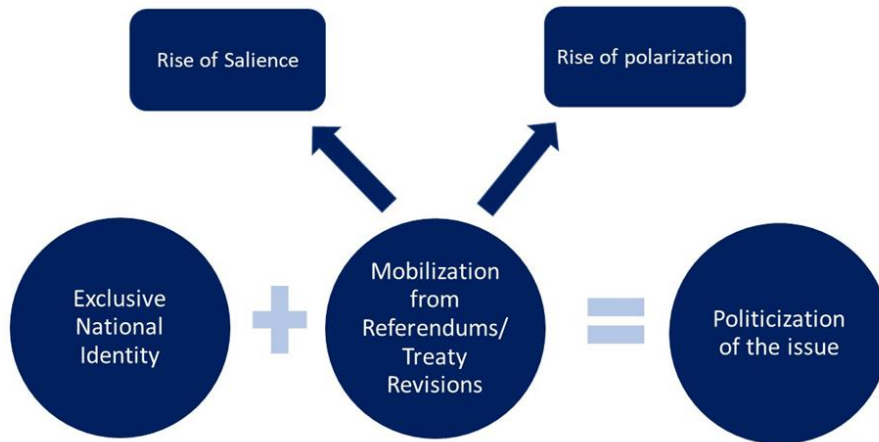
Notwithstanding, the politicization aroused from a treaty revision, ratification and referenda can be accommodated through differentiated integration. Rittenberg et al (2014) agreed that integration of core state powers touch upon issues of national identity and increase politicization. They supported that the more politicized is a policy area, the more differentiated it tends to be internally and horizontally. Politicization is the main explanatory variable of the correlation between integration in core state powers and differentiated integration. If the integration remains on an intergovernmental level in which unanimity prevails and supranational institutions are restricted, integration tends to be more uniform. In that case, politicization is likely to be at a low level. However, if a policy of core state powers moves to supranational pillars, where unanimity is not the main mode of decision-making, then politicization tends to be high due to its correlation with national identity (Rittenberg et al 2014, 196). Similarly, Schimmelfennig and Winzen (2014; 2016) found out that strong national identity and ideological heterogeneity can clarify differentiation that stems from the deepening and expansion of integration and opposition to further supranationalisation that undermine national sovereignty. Schimmelfennig and Winzen (2014, 360) named this kind of differentiation as constitutional. Constitutional differentiation (in contrast to instrumental which occurs after the widening of EU membership) is based on treaty revisions which increase EU competences and deepen integration, stemming from sovereignty and national identity concerns, usually of governments that are constrained domestically or ideologically, which oppose

supranational centralization during treaty negotiations or during referendums. Strong national identity feelings mobilize Eurosceptic tendencies in people, opposing further integration and increase the demand for DI. The supply of DI from EU institutions is interpreted as the result of the strong bargaining positions of the MS that contradict further integration since the treaty revisions require unanimity. Therefore, DI has been a tool to resolve stalemates resulting from politicization of specific policy areas and identity concerns. Indeed, states that are characterized with strong autonomy sentiments and national identities are keen to ask for opt-outs and promote differentiated integration (Leuffen et al 2013; Rittenberg et al 2014,195-6).

In this context, variation in the preferred mode of integration is dependent on national identity issues and politicization that define Euroscepticism. In this framework of analysis, internal differentiated integration is an expression of societies with exclusive national identities, expressed in either party-based Euroscepticism and/ or public Euroscepticism triggered by the use of referendums. States with strong national identities either demand an opt-out due to electoral reasons or they are offered one after failed referendums and treaty ratifications that raise public Euroscepticism (Winzen and Schimmelfennig 2014; 2016; Leuffen et al 2013). Opting out has been a common practice of member states which deny European involvement in core state powers, such as the policies of borders and migration which are constitutive of national sovereignty and identity (Rittenberg et al 2014,196; Genschel and Jachtenfuchs, 2014; 2018). We, thus, conclude that:

H1: Differentiated integration accommodates the politicization of core state powers, such as the migration policy, originated in exclusive national identities mobilized by Eurosceptic (TAN) parties and/ or the excessive use of referenda.

Diagram 2.3.



Politicization and Referendums/ Treaty Revisions

Source: Author's design

2.2.1.4. The EU crisis, punctuated politicization and flexibility

However, the mobilization of exclusive national identities is not the only source of politicization. Specific societal events may spark discontent among citizens and raise as their main concern at a specific time, increasing the salience and polarization over specific issues. External shocks are also pivotal events that fire up politicization. Their time-specificity acts as triggering mechanisms. Critical events and crises are fundamental forces leading to politicization (Van der Brug et al. 2015, 9-12). External shocks provoke intense public debate and contestation and, thus, politicization (Schmidt 2019). The refugee crisis has constituted such an external shock of a core state power (Kriesi 2016; Hutter and Kriesi 2019). Besides, the salience of migration and the focus of migration and integration in the domestic area can mobilize anti-migration and anti-integration opinions (Vreese and Boomgaarden 2005). Hutter and Kriesi (2019) argued that during the refugee crisis the systemic level of politicization and the partisan divides nationally were increased. As they admitted, the scholars of European integration “*need to incorporate not only*

questions of 'more or less' politicization, but also strong regional and crisis-related varieties in politicization when assessing the relative impact of domestic conflicts on the future course of European integration" (Hutter and Kriesi 2019, 999).

The politicization of migration, in particular, is affected by three factors: the amount of the incoming migrants, the cultural differences between the migrants and the natives, and the level of unemployment (Van der Brug et al. 2015, 8-16). The refugee crisis augmented both the number of the incoming migrants and the accentuation of the cultural divide between the in-group of the Europeans and the outgroup of the refugees from the Middle East and African states. The cultural divide, however, has not been limited to the issue of third country migration but also to the whole process of European integration (Hutter and Kriesi 2019). Furthermore, political conflict arose from issues of distribution and redistribution of resources and responsibilities that unmask problems of solidarity in the EU. In policies in which mutual benefits exceed mutual obligations, integration usually proceeds smoothly. However, EU policies have not been based on a balanced plan of equal redistribution of resources and obligations (Van der Brug et al. 2015). In their research, Hutter and Kriesi (2019) explained that the salience and polarization of EU integration has been gradually increased since the Euro Crisis in 2010 and reached a high level in the period 2015-2017. In fact, during the refugee crisis EU integration and migration was politicized as a twin-issue (Hoeglinger 2016). Besides, scholars have proven that the number of asylum applications to EU affects the level of Euroscepticism (Harteveld et al. 2018) while increased migration flows can lead people to vote for right- wing parties and reinforce Euroscepticism (Stockemer et al 2018).

While the Euro crisis may have been also a similar case since its visibility surpassed the closed rooms of politicians and bureaucrats. However, the Euro crisis was not transferred to mass politics in most European states. Instead, the actors involved remained within the executive and political spectrum. As a

result, politicization was limited and constrained to specific states which were more affected such as Greece (Kriesi 2016). While the EU succeeded in partially silencing the politicization of the Euro crisis, it failed to do so in the refugee crisis. Instead, the refugee crisis built on an already politically mobilized public opinion from the economic crisis (Börzel and Risse 2018). Besides, the Euro crisis put EU integration in the public arena. While the effects of this salience did not appear during the euro crisis, they became evident during the migration crisis (Statham and Trenz 2015). In comparison to previous years, the years 2015/6 saw an unprecedented response from the people estimating migration to be the main problem in their country, confirming that the salience of migration policy reached high levels (Scipioni et al 2019). However, due to consequent crises, European affairs and migration have been progressively politicized even more (De Wilde et al. 2016; De Wilde and Zürn 2012). While the Euro crisis was resolved, it left a legacy in European politics: the successful ascendance of right Eurosceptic parties such as the Alternative for Germany or the Five Star Movement in Italy. People disregarded mainstream parties as a response to bad economic management nationally and supported the challenger parties as a reaction to the crisis. The reinforcement of right Eurosceptic parties during the euro crisis provided fertile ground for their success to reclaim national control in migration (Hobolt and Tilley 2016).

As in the case of national identities, external shocks do not augment politicization by their own. They need political actors to mobilize them in the public arena (Van der Brug et al. 2015, 12). Public scrutiny of migration has been increased as migration flows increased (Van der Brug et al. 2015; Grande et al 2019) while treaty obligations have been confronted with domestic resistance through politicization exploited by right Eurosceptic parties using nationalist-identarian convocations. In their research of media data and manifesto data, Grande et al (2019) contradicted the view that politicization of migration is driven by socio-economic factors such as unemployment or annual migration intake or economic grievances. Instead, parties and governments mobilize public opinion strategically against migration challenges in specific events, elections, or referendums. Politicization can be initiated if political actors

recognize an opportunity, such as a crisis, in the political context of an issue in a specific period which incite them to exploit the situation in their favor (Van der Brug et al. 2015, 14-15). As Grande and Hutter (2016, 6) put it “This *politicisation is the product of new structural conflicts over national sovereignty, national identity and transnational solidarity. These conflicts have created the potential for the formation of new political oppositions that provide the basis for an increasing and lasting politicisation of the European political process...we interpret the conflicts over European integration as part of a new ‘demarcation– integration’ cleavage brought about by broader globalisation conflicts over economic reforms, cultural identity and national sovereignty.*” While right wing Eurosceptic parties failed in politicizing nationalist feelings completely in Euro-crisis they succeeded in doing so during the refugee crisis (Meijers and Rauh 2016).

Eurosceptic challenger parties²¹ exploit circumstances to politicize European issues to turn party competition to their benefit (Dolezal and Hellström 2016 ,158; Pirro and Taggart 2018). As Grande and Kriesi (2016,291) stated “*politicisation must be conceived as a set of strategic options for political actors rather than as an inherent property of the European integration process*”. As Hobolt and Tilley (2016, 971) explained that challenger parties provide “*a rejection of, and an alternative to, the mainstream response to the crisis*”. Opposition parties are prone to defend non-mainstream positions and act as issue entrepreneurs²² in their quest for popular support (Dolezal and Hellström 2016, Hobolt and de Vries 2015, Meijers 2017). A party will choose strategically to mobilize an issue if it recognizes potential electoral attraction and a point to prevail in party competition within the framework of their ideational

²¹ Mainstream parties are conceived as those that are or have been held a government position. On the opposite, challenger parties are parties without an experience in governance (Hobolt and Tilley 2016)

²² Hobolt et al (2015) introduced the term of issue entrepreneurship to name the strategy in which a party chooses strategically a different position from the mainstream on an issue that it had mobilized public opinion on. Such a strategy potentially reforms the party competition and be electoral successful. Issue entrepreneurs play an important role in politicization and it is adopted usually from losing parties that have never occupied a government office

positions and commitments to their activists and members (Hooghe and Marks 2012). The refugee crisis formed this kind of strategic opportunity. The crisis has formed a critical juncture²³ for European political conflict, raising the salience of EU and migration, contributing to division within mainstream parties and supporting the popularity of Eurosceptic radical right parties (Hobolt and Tilley 2016; Hooghe and Marks 2018). The refugee crisis came as a welcomed advent to the “comfort zone” of radical right and Eurosceptic parties (Pirro et al. 2018). For populist actors, the crisis has been the “perfect storm” (Brubaker 2017). Indeed, both the Eurozone and the refugee crises have been “transformative” occasions and have provoked significant changes in both policy and institutional level in EU and domestic structures. The crisis put migration in the center of the political cyclone in the EU, a policy area that had been stably not in the first places of the EU agenda for change or more integration (Pirro and Taggart 2018).

People across the EU were greatly concerned about the crisis, offering a chance to exploit by nationalist and right parties. The crisis has been exploited by Eurosceptic parties claiming for the Fortress Europe and mobilizing publics transnationally focusing on nationalist and security arguments. In this scheme, the crisis mobilized identity matters which was exploited by radical right wing populist parties and resulted to the increase of negative politicization, emphasizing on cultural-identitarian aspects (Kriesi 2007; Hooghe and Marks 2009; de Vries and Hobolt 2015; Grande and Hutter 2016, Börzel and Risse 2018; Hutter and Kriesi 2019). Radical right parties usually share a common denominator: anti-immigration and Eurosceptic feelings (Ivarsflaten 2008; Dolezal and Hellström 2016,159) while acting as issue entrepreneurs and lead the politicization of migration, framing it in nationalist and identity context (Hobolt and de Vries 2015, 1161; Hooghe and Marks 2009; Green-Pedersen and Otjes 2017). The stronger the

²³ A crisis is a “critical juncture” that is characterized by important changes “which typically occurs in distinct ways in different countries (or in other units of analysis) and which is hypothesized to produce distinct legacies” (Collier and Collier 1991, 29).

presence and the success of such political actors, the greater the negative effect on integration (Schuette 2019). Hooghe and Marks (2006,215) explained '*politicisation is powerfully shaped by nationalist reaction to perceived loss of community and national sovereignty*'. The latter was supported by parties such as Front National, the FPÖ, the Polish PiS or the German AfD which invested on cultural insecurity and advocated the return of national sovereignty to the state (De Vries and Edwards 2009, 9). The rise of right-wing parties and movements in Europe, which despite their disparities all agree against migration and the EU has been an expression and a catalyst of people's dissatisfaction and their mobilization increased public skepticism against the Europeanisation of migration policy (Hampshire 2016). Dennison and Geddes (2019) traced the reasons for the overall rise of Eurosceptic parties to the growing salience of migration brought up by the crisis. They supported that migration salience can have an important effect on voting for parties engaging anti-immigration claims since actual attitudes of peoples were not transformed during the crisis. As they explained, the factor that changed was the salience of the issue, which has been a primary cause of politicization. They proved that when the salience of migration issue increases, the support for anti-immigration parties also rises (Dennison and Geddes 2019). Thus, "*the resulting politicization narrowed the options for mainstream parties seeking an EU-wide response to the flow of refugees. Nationalist challengers across Europe impelled governments to introduce restrictions, not only in the Visegrad countries but also in Germany, Austria, and Sweden where the public response was initially positive*" (Hooghe and Marks 2019,1122). In these means, national governments were constraint to reach the compromise in the negotiations over more integration.

However, mainstream parties also contribute to the rise of politicization. They play a major role parties such as moderate right (of the TAN pole) even if they do not act as issue entrepreneurs which add up to the electoral competition (Van der Brug et al. 2015; Meyer and Rosenberger 2015; Green-Pedersen and Krogstrup 2008). Mainstream parties participate in the politicization for strategic and electoral reasons too, trying to contradict or adopt views on the issues of their competitors. If a challenger party does not

put great emphasis on a European issue, mainstream and pro-European parties will avoid taking any clear position on it since they fear internal divisions and the loss of voters due to the multidimensionality of the issue. Mainstream parties tend to de-emphasize European issues, supporting European integration and focusing on economic and utilitarian aspects (Taggart and Szczesniak 2013). Meijers (2017) argued that the interplay and electoral competition between mainstream and challenger parties has been a major factor for spreading Euroscepticism in mainstream parties to compensate any possible electoral losses. Mainstream parties tend to adjust their positions in case they realize that people are moving towards the extremes due to emphasis on an issue.

The higher the success of a challenger party, the higher the possibility of the mainstream parties to co-opt their position. The party competition can be more vigorous if a challenger party claims a comparative advantage over an issue and try to change the political equilibrium. Scholars have outlined two main political routes on mobilization of politicization: one that is provoked by the populist right and one in between the mainstream parties of government and opposition (Grande et al 2016, 182-3). The mobilization strategy of the populist right parties is to challenge the positions taken by mainstream parties and create political divides among, such as between government and opposition, and within other political parties, such as within the streams of the same party (Grande and Hutter 2016: 24-25; Hutter and Kriesi 2019). As Meijers (2017; Meijers and Rauh 2016) suggested "*contagious Euroscepticism*" can turn mainstream parties to co-opt the positions of the radical right due to electoral reasons. Indeed, if extreme parties mobilize public opinion on an issue, the remaining parties will also pick it up. In these means, the systemic salience and polarization of the issue is increased (Dolezal and Hellström 2016, 161-162). The TAN center right parties are keener to be influenced by success of the radical right parties and the issues that the latter put emphasis on (Meijers 2017). Once the voters are mobilized against migration, the mainstream parties cannot ignore them due to electoral competition and turn towards more restrictive positions, trying to co-opt some of the positions of radical parties (Van Spanje 2010; Akkerman

2015; Lutz 2019). As a result, the more reinforced are the right Eurosceptic parties in the national arena, the more other parties are also propelled towards Euroscepticism. In the words of Dennison and Geddes (2019,110), the later years many large states of western Europe *“have all at some point experienced a significant increase in support for anti-immigration parties. This phenomenon has had grave ramifications in terms of the policy responses of existing parties, election outcomes, transformed party systems and government coalitions across western Europe”*.

The intense criticism and exclusionist position towards migration of radical right parties is one of the main factors of their electoral success (Vreese and Boomgaarden 2005; Lutz 2019). Their success exerts considerable pressure to the mainstream parties to engage more restrictive positions towards migration (Green-Pedersen and Krogstrup 2008; Van Spanje 2010; Meyer and Rosenberger 2015; Hainmueller and Hopkins 2014; Grande et al 2019; Lutz 2019). As Van der Brug et al. (2015, 187-188) claimed mainstream conservative parties are prone to engage in anti-migration positions if they are challenged electorally (also Meyer and Rosenberger 2015; Hooghe and Marks 2018; Lutz 2019). Issues of migration have indeed an effect on the success of Eurosceptic parties (Nicoli and Kathrin 2019). The increased level of salience of migration during the crisis has contributed to the reinforcement of opinions embraced by Eurosceptic and anti-immigration political actors and their support by the public. Moreover, the issue was linked to security, sovereignty and tradition, values defended also by mainstream conservative parties (Dennison and Geddes 2019). The growth of radical parties in East Europe and UK, radical left in the South, and conservative parties internal conflicts in states such as Germany, Portugal, Spain and Ireland and Slovakia spread Euroscepticism all over Europe (Alonso and Kaltwasser 2015; Hooghe and Marks 2018). Right wing Eurosceptic parties marked an overall and relative growth during the latest years, in major EU states such Germany, France, UK and Italy. The role of the Eurosceptic parties and their framing as an identitarian issue had gradually dominated the political discourse and acted as contagious forces (Rheindorf and Wodak 2018). Indicative has been also the success of AfD in Germany

which influenced successfully the the Bavarian Christian Social Union (Schuette 2019). What has been greatly significant, is that there was not a strong opposite cosmopolitan narrative presented by pro-European parties. Instead, mainstream parties of the center right co-opted the nationalist frames of Eurosceptic parties (Hutter et al. 2016; Schuette 2019; Taggart and Szczepiński 2018). On the contrary, the Eurosceptic parties were in government office in Eastern and Central Europe (Krzyzanowski 2018).

Indeed, the resurface of Euroscepticism through the radical right has not limited to some specific states but was apparent in many more European states, constituting a “**pan-European phenomenon**” in this period (FitzGibbon et al. 2017). After the Eurozone crisis Euroscepticism re-emerged in an alarming number of member states which placed their leaders under pressure (Usherwood and Startin, 2013, Brack and Startin 2015). The Commission’s biannual reports and scholars have agreed that Euroscepticism has now contaminated almost every member state, in contrast to the past (Brack and Startin 2015). Moreover, scholars have started to discuss Euroscepticism as a dominant transnational and pan-European approach (FitzGibbon 2016). Indeed, Euroscepticism from a marginal has turned into a mainstream phenomenon. EU integration and policies have gained salience and have been greatly contested. Since the Maastricht Treaty, Euroscepticism has gradually emerged as a constant element of EU politics but, during the crises, it has dominated the European political scene. This has been accounted in both public opinion but also in the rise of Eurosceptic parties, especially from the radical right, which exploited both the Euro and the refugee crisis to boost their anti-EU and anti-immigration discourse (Brack and Startin 2015). The success of radical right parties over their position on migration issues is not a new phenomenon (Van Spanje 2010, Meijers 2017). However, the later years and the EU’s multiple crisis, right wing parties have come into governing positions in states of the EU while many centrist parties have turned into Euroscepticism creating a “*changed landscape of Euroscepticism*” (Taggart and Szczepiński 2013,17). The participation of Eurosceptic parties to governments in Europe or control a large

part of parliamentary votes has grown considerably over the past few years (Taggart and Szczerbiak 2013).

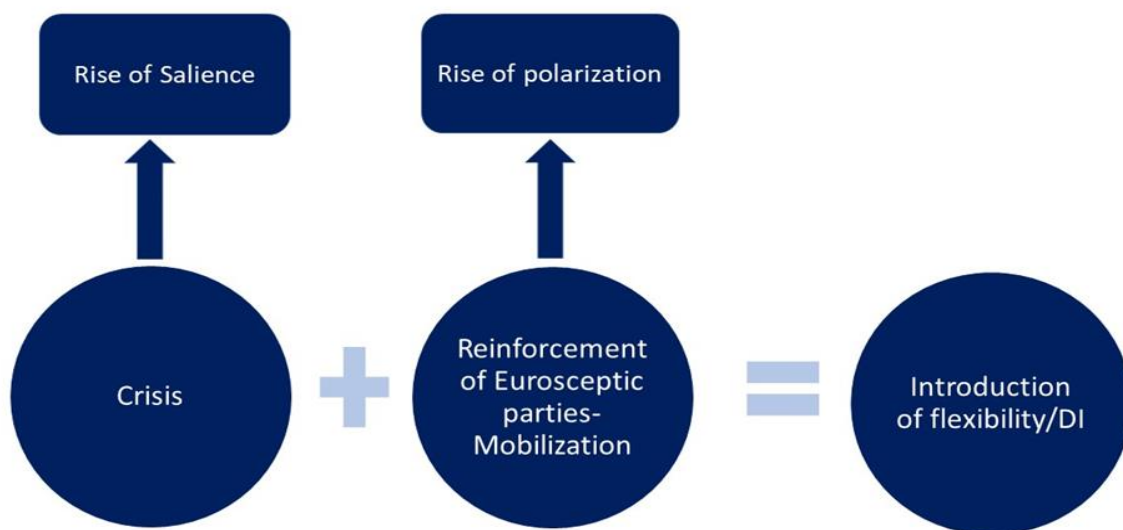
Before the migration crisis, there were no common pattern in politicization in all or a group of states in EU (Grande and Hutter 2016, 74). Nonetheless, the crisis resulted to political fragmentation and politicization in more than one or two EU member states (Zeitlin et al 2019). The EU “polycrises” increased the strength of right Eurosceptic parties in many EU states and the salience of both the debated issues and EU integration per se, instilled the polarization of actors on both national and European levels and augmented political mobilization. These phenomena took place on both European and national level as a multilevel ‘polycleavage” with the European feeding the domestic level (Zeitlin et al 2019). This new cleavage has gained different names from different scholars, such as the GAL/ TAN division from Hooghe and Marks, the integration/ demarcation from Kriesi et al. (2006), the cosmopolitanism/ communitarianism division from Zürn and de Wilde (2016). This cleavage “ *counters liberal ideas of Europe embodied by the values of enlightenment, such as human rights, democracy, rule of law, and market economy, with nationalist and xenophobic ideas of Europe based on an essentialist interpretation of the continent’s Christian heritage*” (Borzel 2016,16).

Some scholars have rejected politicization as the main explanatory variable on the basis that politicization was also present in the Euro crisis which resulted to more integration. Instead, they investigated the possible economic costs of a dead end which were unbearable for the Eurozone (Schimmelfennig 2018; Biermann et al. 2019). Nevertheless, this approach regards politicization as a one-dimensional approach while it actually is a multifaceted phenomenon dependent on its extent and mobilization dynamics. While politicization has been present in both crises its scale and its influence on government’s preference was different, “*During the Euro crisis, governments marginalised Eurosceptic parties, framed politicisation in*

economic terms more than those of identity and hence effectively limited the constraining influence of politicisation. Conversely, Eurosceptic parties were not only electorally stronger but were also in government in several key states during the Schengen crisis. Politicisation, concomitantly, was framed in exclusive nationalist terms premised on a principled opposition to delegating further sovereign powers to the European level” (Schuette 2019,382).

In this framework, during the refugee crisis, politicization and Euroscepticism followed an aggregated pattern (Schuette 2019), its influence was extended in many EU member states that cut across party divisions (Lubbers and Scheepers 2005; Halikiopoulou et al. 2012; Pirro and Taggart 2018). To conceptualize this new kind of politicization Grande and Kriesi (2016, 283) worked on the term **punctuated politicization**. The refugee crisis was the pivotal event that stimulated punctuated politicization which *“It looks more like a patchwork of politicising moments across European countries than a uniform trend which can be located more or less precisely in time. This overall pattern can best be characterised as a process of punctuated politicisation, in which a significant but limited number of singular events produce high levels of political conflict for shorter periods of time.... The pattern of punctuated politicisation can only be recognised when politicisation is observed over an extended period of time in a large number of member states and across several political arenas”* (Grande and Kriesi 2016: 283).

Diagram 2.4.



Politicization and the crisis

Source: Author's design

This punctuated politicization and the rise of rise of Eurosceptic and anti-immigration parties has affected the policy outcome on the European level (Pirro and Taggart 2018). Indeed, the theory of two-level games (Putnam 1988; Evans et al. 1993) suggests that politicization stifles national governments and diminishes the possibility of the win-win intergovernmental negotiations. National preference formation is subject to the domestic political dynamics before they are bargained at the European level (Moravcsik 1998). Besides, decision making on EU level acts similar to the national level. National governments and parties carry the same partisan and ideological stances they carry nationally, influencing both EU institutions and the course of integration. As a result, political parties will support and promote those legislation that coincides with their ideology and the greatest part of their partisan base (Horl et al 2005). National partisan framework has not directed but an important indirect influence on intergovernmental debates since they form government's preferences. Thus, the influence that Eurosceptic parties have in domestic level are a pivotal variable to predict the policy outcome. Given the current continuing power of

Eurosceptic parties in EU in combination with the restricted power of supranational institutions in migration policy, the possibility of win-set intergovernmental negotiations has been increasingly restricted (Grande and Kriesi 2016, 295-6). Besides, politicization makes the intergovernmental bargaining “*that remains behind closed doors within institutions, and between governments*” visible to the public which take a stand to the debate (Statham and Trezn 2012, 3). In non-contested issues, intergovernmental bargaining is mostly depoliticized since the public plays no role at all in their outcome. Instead, they are based on bargaining powers and diplomatic interactions. Politicized issues instead are present in public conversations and party conflicts (Hutter and Grande 2014). Nevertheless, while people elect politicians on national level, they take decisions on European technocratic framework. In this way national politicization levels up on European level (Schmidt 2019; Hodson and Puetter 2019). Therefore, politicization is channeled on the European level is expressed through intergovernmental conflict among national governments. Indeed, supranational decision-making on politicized issues also becomes politicized once the politicians of member states, which are elected and are constrained by public opinion, pull on strings (Schneider 2019). That effect is what Schmidt (2019) named as ‘politics without policy’. While the politicization of an issue on national level may cause inter-party conflict, on the European level it can result to intergovernmental conflict and stalemate (Hutter and Kriesi 2019). Scholars have proven that bargaining in Council does not depend only to interests but also states’ mentality on integration in general, political policy doctrines and partisan positions (Hayes-Renshaw and Wallace 1995).

Euroscepticism and the contentiousness of issues result in specific political demands that intervene in the EU policy making while polarization of opinions will ensue political and intergovernmental conflict. Besides, the Euro crisis has reinforced Eurosceptic sentiments which limited the ability of EU governments to make concessions or comply with joint rules (Borzel 2016). Member states can threaten with vetoes for imposing their preferences since they more concerned about their electorates than reaching consensus on EU level (Hooghe and Marks 2009). Consensus seeking member states are,

then, obligated to try to accommodate extreme positions like the ones of Hungary and Poland in the migration crisis (Hodson and Puetter 2019). The extension of the political conflict, thus, the politicization can have permanent structural consequences on the course of integration and result to permanent differences among the actors or coalitions of actors (Grande and Hutter 2016, 26). In this framework spill-over effects by the supranational institutions of EU, the EP, and the Commission, are diminished once politicization is framed in a Eurosceptic manner. In this form, politicization can contaminate EP through its elections while the efforts of the Commission are stopped in the decision-making that involves the EP and the Council. Indeed, the proposals of the supranational institutions during the crisis, such as the Commission, were not adopted fully.

On the other hand, national governments' preferences in the Council can be constrained due to electoral reasons (Schuette 2019). Politicization strengthened the conflict over the distribution of burdens and resulted in stagnation. The ad hoc and erratic reforms did not fix the deficits of EU migration policy. Instead, the extensive use of the reintroduction of border controls (with no proof of threat against public order and security) degraded the previous level of integration reached (Schimmelfennig 2017). Then, it was the aggregated politicization and Euroscepticism that caused the inability to conclude fundamental reforms in the Dublin system, restricted progress in external border controls, the unwillingness to implement decisions such as the relocation scheme and, finally, the stalemate in migration policy (Schuette 2019). In such context, the proposal for the introduction of flexibility and differentiated integration was firstly confronted with hesitation. In cases of such increased Euroscepticism and politicization, compromises in favor of more integration are generally obstructed (Hutter and Grande 2014; de Wilde et al. 2016) and while the probability of no integration is augmented (Bremer et al 2019). Nevertheless, DI was gradually regarded as a solution to accommodate the aggregated Euroscepticism which provoked a standstill among the different camps within the Council negotiations. In this way, the

concept of “**Solidarity à la carte**” was inserted in the EU asylum policy (Kazharski 2018). Based on the previous analysis, we assume

H2: The reinforcement of Eurosceptic parties in many states (either in government or in strong opposition) caused politicization of an aggregated pattern at such a degree (punctuated politicization) which flexibility has been introduced by EU institutions after the refugee crisis in the legislative proposals.

2.3. Operationalization and methodology of the research

2.3.1. The policy field

Our research is concerned with the EU policy towards irregular migration and the refugee crisis. A single policy study is a form of case study that considers the policy as an integrated area. It applies an explorative in-depth search in the specific policy, contributing to outline the specific dynamics and factors applying in the particular policy (Kronsell and Manners 2015). In this same framework, a case is “*an instance of a class of events*” (George and Bennett 2005, 17). Nevertheless, the migration policy, as a part of AFSJ, is a large policy area with many sub-policies. For our study, we delineate EU policy towards irregular migration in:

- Measures concerning internal border controls and the Schengen Area
- Asylum policy measures
- External border controls measures
- Illegal migration measures

We, thus, apply our research questions to this policy area to layout our research and we, then, single out specific cases to test our hypotheses. Before testing our assumptions, we perform a mapping exercise of the existing internal and external differentiation within the main legal and regulatory frameworks of primary and secondary laws of EU policy towards irregular migration in the first part of our empirical research (**PART 3**). The main purpose of this part is to delineate and document in detail the specific EU policy under research and the application of DI within it.

For the mapping, we use the framework developed by Lavenex and Križić (2019) who distinguished between the regulatory and organizational aspects of differentiation. For the measurement of horizontal differentiation, we need to determine how many states participate in each policy area and/or sub-policies at a specific period. We, thus, include in the mapping the differentiation in the regulatory framework and the legal quality, meaning the member states that participate in each legal rule, and the level of integration (intergovernmental/ supranational), as well as the member states that participate in the decision taking and policy implementation to outline the differentiation in the organizational framework. We follow the evolutionary timeline of the history of the gradual development of integration in EU migration policy and we stop in the beginning of the 2015 refugee crisis.

2.3.2. Variables

The analytical framework of DI developed by EU scholars has been based on empirical observation of the trajectory of integration and DI for the last decades. DI, as the ***dependent variable***, has been already analyzed in the previous section (**PART 1**). The specific kind of differentiation that we focus on is the **internal horizontal differentiation** (Leuffen et al. 2013), firstly, in the form of treaty derogations (opt-outs). Horizontal differentiation does not respond only to EU member states but also third countries who get attached to EU policy regimes. If a policy is not uniformly applied but some EU member states do not

participate, then the policy is internally differentiated. Opt-outs and the implementation of the clause of Enhanced Cooperation (see Part 3) are tools of internal differentiation. If the EU acquis has been externalized and some third countries are aligned to a policy, then it is externally differentiated. The most well-known example is the Schengen Area in which EU member states such as Bulgaria, Cyprus, Ireland, UK and Romania do not participate but non-EU member states such as Iceland, Liechtenstein, Norway and Switzerland do participate. Secondly, ***we extend the definition of internal horizontal differentiation in the incorporation of flexibility within the proposals for the reform regulatory secondary rules of the EU in asylum.*** In other words, we add to the conceptualization and operationalization of internal differentiation the possibility of member states to opt-in specific measures and opt-out of other measures of the same legal rule, as parts of the same regulatory framework, corresponding to their interests and preferences, is another expression of horizontal internal differentiation.

The ***independent variable*** of our research is the level of ***Euroscepticism*** caused by the rise of politicization in specific member states, originated either on subjects of identity (according to our H1) or the salience of the crisis (according to our H2), which contributed to the use of DI (**PART 2**). For a positive relationship to be present, the independent variable must be a precedent of the dependent (Buttolph-Johnson et al. 2016, 169-170). Relatively, Taggart (1998, 366) viewed Euroscepticism as the idea of “*contingent or qualified opposition, as well as incorporating outright and unqualified opposition to the process of European integration*”. He later distinguished between hard and soft Euroscepticism. **Hard Euroscepticism** refers to the “*there is a principled opposition to the EU and European integration and can be seen in parties who think that their countries should withdraw from membership, or whose policies towards the EU are tantamount to being opposed to the whole project of European integration*”. Hard Eurosceptic parties are scarcer since the category includes single issue anti-EU parties and parties that frame opposition against EU “*in language that stresses that it is too capitalist /socialist/ neo-liberal/*

bureaucratic, depending on ideological position (communist/ conservative/ socialist/ populist), and calls for a fundamental re-casting of the terms on which their country is an EU member that is incompatible with the present trajectory of the European project. This is sometimes expressed as conditional support for EU membership but on conditions so unattainable that it is tantamount to being *de facto* opposed to EU membership” (Taggart and Szczerbiak 2002, 27–28). Hard Euroscepticism entails a total opposition to the very existence of the EU and its institutions, not only to specific policies. Actors of hardline Euroscepticism wish to diminish EU competences let alone to increase them (Nicoli and Kathrin 2019; Mair 2007).

On the other side, **soft Euroscepticism** is defined as “*where there is not a principled objection to European integration or EU membership but where concerns on one (or a number) of policy areas lead to the expression of qualified opposition to the EU, or where there is a sense that ‘national interest’ is currently at odds with the EU’s trajectory*” (Taggart and Szczerbiak, 2002, 27–28). Soft Euroscepticism is a rather large category that includes every party that embraces the rhetoric of opposition against the way EU integration is moving, especially when it moves towards the deepest form of supranational integration. Soft Euroscepticism usually corresponds to criticism and opposition to the integration or its range of specific policies (Nicoli and Kathrin 2019). Mainstream parties are not excluded from positions expressing soft Euroscepticism. Indeed, it is “*increasingly complex to disentangle “soft” Euroscepticism from issue-specific opposition within the system*” (Nicoli and Kathrin 2019, 3). That is to say, soft Eurosceptics do not oppose EU per se but contradict further integration in specific policies that defy their idea of national interest and welfare (Taggart and Szczerbiak, 2002, 27–28). However, this distinction between the two poles does not mean that there are no parties that move from one to the other category or find themselves in the area between. For Szczerbiak and Taggart Soft Euroscepticism can be:

a) "Policy Euroscepticism is opposition to measures designed to deepen significantly European political and economic integration and is expressed in terms of opposition to specific extensions of EU competencies [which] is very much a time- and country-specific phenomenon and depends on the particular issues at stake at any given time and the particular stage of the integration process that has been reached or is the subject of debate in any particular country."

b) "National-interest Euroscepticism, on the other hand, involves employing the rhetoric of defending or standing up for 'the national interest' in the context of internal debates within the EU. Again, this kind of soft Euroscepticism is compatible with support in principle for the European project. Indeed, it can also (theoretically, at least) encompass those who feel sympathetic towards deepening European integration, but who also feel the need to employ 'national-interest Eurosceptic' rhetoric to shore up their domestic political support base". (Szczerbiak and Taggart 2000, 6-7).

These two forms, nevertheless, can co-exist and overlap.²⁴ Euroscepticism is not an element solely embraced by extreme or protest parties. Instead, mainstream parties adopt soft Euroscepticism if they see an electoral or political opportunity, as the British Conservative Party. On the other hand, extreme parties may drop out of hard Euroscepticism in case they want to become mainstream or be included in a coalition government, such is the case of the Austrian Freedom Party (Szczerbiak and Taggart 2000). While there has been academic criticism of this definition (Kopecky and Mudde 2002, 302-3), it suits this study since it includes the soft Euroscepticism adopted by mainstream parties and public resistance to the deepening of integration. Szczerbiak (2020,4) stated that "*particularly the European migration crises,*

²⁴ Heinisch et al (2020,3) introduced the term equivocal Euroscepticism to describe those political actors that embrace "an inherently ambivalent stance that, in terms of rhetoric and behavior, includes aspects that are both hard and soft Eurosceptic...In particular, equivocal Eurosceptics criticize European integration, the EU, its officials and policies in ways that are often as harsh in tone and even substance as that of hard Eurosceptics. Nonetheless, like soft Eurosceptics, equivocal Eurosceptics shy away from expressing an unequivocally principled objection to EU membership and deny that this is their objective. Furthermore, and again like soft Eurosceptics, while they criticize some policies, they praise others and even call for reforms strengthening the European project. At the same time, like hard Eurosceptics, many of their demands for reform represent little less than a complete transformation of the EU in its current configuration." (FPÖ, LN, UKIP)

did help to bring about a sharpening of the so-called the ‘Soft’ Euroscepticism: political actors who did not oppose their country’s EU membership per se, but did question the kind of EU that they wanted their countries to be members of and called for the Union to change or reform, or (although this is stretching the definition, probably to breaking point), in some cases, questioned the kind of EU members that they want their countries to be (generally more assertive in promoting their national interests) (Szczepiak and Taggart 2008)”.

Nevertheless, the recent increase of Euroscepticism led the scholars to add a relatively new category, namely the **populist Euroscepticism**. Indeed, Euroscepticism met populism in many cases. Though not identical concepts, both have gained similar scholarly explanations such as economic aspects and cultural issues. That is not to say that each populist party endorses Euroscepticism and vice versa. However, under the circumstances of the crises the two streams have in many cases overlapped (Kneuer 2018; Pirro and Taggart 2018). Euroscepticism may be based in three main axes: i) on economic arguments, against the neo-liberal financial management of the Eurozone, ii) cultural arguments focusing on the perceived threat of migration, iii) sovereignty arguments against the concession of state competences to EU and distrust towards EU institutions (e.g. Hooghe and Marks 2007; Helbling et al. 2010). Nevertheless, these are the axes that populist parties base their arguments against the corrupt elite (Borriello and Brack 2019). Scholars have shown that most populists movements share a clear Eurosceptic stance (Kneuer 2018). That does not mean that all populist parties are Eurosceptic but that Eurosceptic parties endorse populist attitudes (Nicoli and Kathrin 2019). However, not all Eurosceptic parties apply populist tactics, examples of the opposite are the British Conservatives and the Czech ODS. Nevertheless, the coincidence of Eurosceptic actors with populist attitudes have grown since the Euro Crisis. In these cases, Euroscepticism intersects with populism in claims of cultural uniformity, national economic independence, and anti-elitism. The recent crises contributed to the rise of both populism and Euroscepticism, both based on nationalist claims, cross cutting their ideological basis.

Indeed, the consequential crises offered a great opportunity for populism with Eurosceptic elements to rise, nevertheless, not as the cause but as a stimulation (Kneuer 2019). This Euroscepticism has been based on a nationalistic protection of identity and national sovereignty (Börzel 2016). The populist Euroscepticism of nativist and nationalist parties was increased after the outburst of the migration crisis since it was within their ideological “comfort zone” (Pirro et al. 2018). In our search for anti-immigration and populist Euroscepticism in the period of refugee crisis, we follow the logic of Dennison and Geddes (2019,109) that these parties *“have variously been called the ‘populist radical right’, ‘right-wing populist’ or ‘national populists’. We acknowledge that grouping together the parties that we do in this paper as we do is contestable. However, put simply, they are each the primary party in their country that gives high prominence to anti-immigration policies and their supporters tend to be in accordance with those attitudes. To varying extents, they also combine euroscepticism with their anti-immigration message”*. For this, we take as a valuable measure the vote share of the parties as an indicator of their relevance in the system (Lauka et al. 2018).

2.3.3. Cases, data, and methodology

The production of hypotheses has been the result of deductive thinking based on these existing theoretical accounts and these are the drivers of the collection of our data (Bryman 2012). On the methodology of research, John Stuart Mill (1843, vol. 1, 428-429) explained that *“If two or more instances of the phenomenon under investigation have only one circumstance in common, the circumstance in which alone all the instances agree is the cause (or effect) of the given phenomenon”*. In this framework, the rise and expansion of Euroscepticism, in specific states at the first case, and in many member states at the same time at the second case, have been the circumstance that has a causal relation to the use of DI arrangements such as opt-outs and flexibility.

The research tries to outline the strong association and correlation, even causation, between the rise of Euroscepticism and the use of differentiated integration. The covariation of Euroscepticism with the stalemate in uniform integration has been greatly studied but not its effects on the refugee crisis solution. We want to prove that the use of DI is both time-dependent (such as in treaty ratification) but also occasion-dependent (such as in the occasion of crisis). We focus on the estimation of party positions since we can trace the preferences of the governments in their positions in Council meetings, we cannot measure (by ourselves) the level of public Euroscepticism. We can only collect some data from EU-wide surveys, such as Eurobarometer, to outline the level of exclusive national identities and the public salience of the crisis (Blomgren 2015; Lawson, 1980: 3). In both cases that we outlined, the common “circumstance” is the strength of Eurosceptic parties that mobilize public opinion, either based on national identities or an external shock and increase the politicization while DI is used to accommodate the conflict arising from them. Once EU is a multi-level construction, multilevel analysis is appropriate (Marks and Hooghe 2003; 2005).

For the H1, we concentrate our research on the opt-outs of the UK and Denmark (**PART 4**). Since our focus has been on internal differentiation, the UK and Denmark have been the sole EU member states that have applied differentiated arrangements in the area of migration policy. The example of Britain stands as a very indicative example. The special characteristics of the national community as well as cultural homogeneity are in the center of these conflicts. Furthermore, the rejection of the Maastricht Treaty in Denmark has been a clear example of public dissensus towards the deepening of integration (Grande and Hutter 2016, 12-17).

H1: Differentiated integration accommodates the politicization of core state powers, such as the migration policy, originated in exclusive national identities mobilized by Eurosceptic (TAN) parties and/ or referenda.			
Dependent variable	Independent variable	Period	Data
Differentiated integration (opt-outs/ treaty based)	Euroscepticism originated in exclusive national identity	Until 2015	<ul style="list-style-type: none"> • National governmental and European official documents • Interviews • Media Reports • Scholarly literature

Notwithstanding, it is not self-evident which member states should we include in the test of our refugee crisis hypothesis and the rise of Euroscepticism in most EU member states (**PART 5**). The refugee crisis has been an important outcome in the course of history or a “critical juncture” (Pierson 2000). Kriesi (2016) distinguished the political conflict and politicization of the current crisis among the three main regions of Europe: The North, the South and the Central- East, in which find similar pattern of politicization of the crisis (Hutter and Kriesi 2019). Borzel and Risse (2018) also agreed that the politicization over the refugee crisis has variegated regionally while making clear that politicization in this case refer to national boundaries. In their research of the reasons why the negotiations on the refugee crisis did not result in more integration as the euro crisis, scholars such as Schimmelfennig (2017) and Biermann et al (2019) distinguished between the affected and the non-affected states by the refugee flows and asylum applications. For Biermann et al (2019), the states that were not as much affected have tried to hinder any attempt for permanent supranational solutions (Biermann et al 2019). In this context, members states’ preferences were differentiated by the intensity of migratory pressure and interdependence has been asymmetrical. After the outburst of the crisis, the states entered a period of intense intergovernmental conflict. The governmental positions were formed based on the exposure they had to the mass migration influx (Schimmelfennig 2017). Frontline states that were more pressed by

migration flows demanded the reform of the current system and the establishment of a burden-sharing system. However, those states that did not receive increased inflows demanded the implementation of the current system, the preservation of the status quo and not further integration or differentiated integration. Schimmelfennig (2017) recognized four groups of states: destination, transit, and bystander states. Frontline states such as Greece and Italy were the most influenced from the intense migration flows while destination states received secondary refugee movements due to economic welfare status. Transit states include the group of the Visegrad states such as Hungary and Slovenia and were placed in between the two previous groups as far as affection rates are concerned. Off-route states were not affected by the crisis. Based on this primary distinction, he observed two intergovernmental positions in which frontline and destination states supported the redistribution of burdens while transit and transit states opposed this solution.

While the level of the incoming refugees and exposure to the crisis of each state consists inevitably of factors that shape governmental preferences, our hypothesis supports that the most important variable has been the rise of Eurosceptic parties and the consequential politicization of migration and integration nationally. Based on the distinction made by the Schimmelfennig and Biermann et al, we focus on the mostly affected states which are defined by the number of asylum applications received in the period 2015-2016 but also characterized by strong Eurosceptic presence in their party politics. We will not deep into the societal or the partisan reasons of the success of the Eurosceptic parties, but we will focus on the fact that their success restrains the possibility for more integration (Nicoli and Kathrin 2019). Inter-party fermentations fall outside the scope of this study. Instead, the number and the vote share, the success, of the Eurosceptic parties serve as indicators of the politicization (Von Sydow 2013). Considering the main developments during the crisis, we distinguish among the:

- Transit states, for which we focus on the cases of the Visegrad 4

- Destination states, for which we focus on the cases of Germany, France, Austria and Sweden
- Frontline states, for which we focus on the case of Italy

The reinforcement of Eurosceptic parties in many states (either in government or in strong opposition) caused politicization of an aggregated pattern at such a degree (punctuated politicization) which flexibility has been introduced by EU institutions after the refugee crisis in the legislative proposals			
Dependent variable	Independent Variable	Period	Data
Differentiated integration (flexibility/secondary law based)	Euroscepticism fired up from the refugee crisis	2015-2020	<ul style="list-style-type: none"> • Interviews • National governmental and European official documents • Media reports • Scholarly literature

In this context, we apply a **qualitative analysis of positions** of each of these states which portray to their national beliefs and the strength Eurosceptic party actors, adopted in their bargaining positions in the Council. We will analyze and interpret the positions of these member states in the Council (Warntjen 2012). Qualitative research of the bargaining has many benefits while it is considered the best method for analyzing governmental positions and negotiations in Council since it can highlight the factors that formed their preferences instead of merely their preferences (Heisenberg 2008, 270- 275; Hagemann 2015). Indeed, we seek to estimate the level of Euroscepticism that formed the national preferences and resulted in the application of differentiated arrangements. The need for this multi-level analysis has been originated in the multi-level of EU integration (Hooghe and Marks 2002).

While governments' positions in the Council were formerly estimated from only the official documents representing the final stage of negotiations (Heisenberg 2008), after the 1996 transparency reform that

made the voting of the Council negotiations are subject to both informal and formal bargaining procedures (Hagemann 2015). As data official documents of EU institutions and national governments are valid representations of the political reality (Bryman 2012). Specifically, we empirically assess them in a qualitative manner the official documents derived from ***the Registers of the Council and the Commission but also from national governmental sites***. We have also conducted ***fourteen (14) original semi-structured interviews*** from officials of the Commission, the Council and delegations of national governments during the period of November 2019 to March 2021. The interviews cover an important gap of the study, offering the unpublicized insights from the Council and Commission negotiations during and/or after the crisis. Due to the disclosure provisions bound by their professional status, they named by the characterization of their position (**ANNEX**). Finally, the study is enriched by trustful media reports and relevant scholarly works.

2.4. Conclusion of Part 2

This part had been dedicated to the layout of the specific design of our research. Based on our research question, we conducted a narrative literature review starting from the concept of the integration of core state powers, explaining the fundamentals of postfunctionalism and deepening into the subject of politicization of EU integration and migration. Through this analytical framework, we drawn our research hypotheses. Based on these, we outlined the particular policy field of research, our dependent (DI) and independent (Euroscepticism) variables, and data. Finally, we clarified the specific cases we focus in order to test our hypothesis through qualitative analysis.

PART 3. Mapping Integration and Differentiation in the EU Migration Policy

The aim of this part is to document the EU integration and differentiation in the field of migration policy by mapping the use of internal differentiated arrangements and the gradual deepening of integration. Indeed, the variation of the level of interdependence and state preferences have led integration to move forwards through differentiation (Leuffen et al 2013). Besides, EU migration policy was initiated outside EC/EU, through the Schengen Area, and since then migration policy has been characterized by both internal and external differentiation and has emerged as the sole way for EU integration to develop.

3.1. Integration and Differentiation in the EU Migration Policy

3.1.1. From Schengen to Dublin

The foundation EU migration policy has been built upon an initiative of differentiated integration, originally released outside the framework of EC. Indeed, one of the first instance of DI²⁵ and the basis of EU migration policy was expressed through the introduction of the Schengen Area. Primary efforts of cooperation in the field of security and migration were begun in 1976 when the Interior Ministers of the European Community assembled the ad hoc Trevi Group. The Trevi group had neither a tight institutional framework nor legal competences. Instead, it was formed outside the EC framework and was based on

²⁵ Nevertheless, the Schengen Agreement was not the first instance of differentiated integration in the EU. Contrary, the concept was planted in the EU primary law since the Treaty of Rome (1957). An indicative example was the inclusion of differentiated arrangements for the Benelux states in the Treaty of Rome. Specifically, the Article 233 of the Treaty of Rome provided the Benelux states the freedom to proceed with the integration of their regional union while participating in the European Community (Article 233, Part Six, 77, Treaty of Rome, 25 March 1957) Following Tindeman's proposal, the concept of DI occurred clearly in the EC law in 1986 in the Article 8c of the Single European Act and Article 100A of SEA set up the possibility for a member state to withdraw from a policy and implement " national provisions". Along these lines, the concept of temporary differentiation through the offer of transitional periods and special allowances penetrated the European primary law.

the European Political Cooperation. Typical meetings were realized on ministerial, intergovernmental level, aiming at information exchange and operational cooperation in the fight against organized crime, trafficking, and terrorism²⁶. Proposals from the Commission on the introduction of Community legislation for the harmonization of national laws against illegal migration since 1976 and an European passport union²⁷ had stumbled upon opposition from states such as the UK, Denmark, Ireland and Greece (Monar 2001). The supporters of the establishment of a borderless area, France and Germany agreed on bilateral cooperation for facilitation on border controls through the Saarbrücken Agreement in 1984²⁸ while the Benelux states had already a system of abolished border checks since the 1960's (Monar 2010b). To circumvent resistance from opposing states, the five signatory states introduced a flexible mode outside the EC law (Kolliker 2001).

The Schengen Agreement (1985) on the abolition of internal border checks, enacted outside the EC Treaties, was initially composed by Belgium, France, Germany, Luxembourg, and the Netherlands²⁹. After the signing of the Schengen Agreement and the Single European Act in 1986, the UK promoted the introduction of the Ad Hoc Group on Immigration in 1986 which was realized in 1988, as a sub-group of the Trevi group. At that time, the main objective of these intergovernmental initiatives were *“to progressively work towards a system for visas which is as unified as possible... to contribute to better controlling the problems which result from immigration in general... strengthening of controls at the*

²⁶ The Trevi group played an important initial role in promoting cooperation in the AFSJ. For instance, the elements of the Europol Convention were negotiated within the Trevi framework. The group was active until 1993 (Monar 2001).

²⁷ Proposal for a Council Directive on the harmonization of laws in the Member States to combat illegal migration and illegal employment. COM (76) 331 final, 3 November 1976

²⁸ Agreement between France and the FRG on the gradual abolition of checks at the Franco-German border. Saarbrücken, 13 July 1984.

²⁹ Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders

external borders of the Community” and coordinating national asylum systems.³⁰ In 1989, the Palma-Document specified even more the goals of EC on the “*the strengthening of checks at external frontiers, the conditions governing entry into the Community of nationals of third countries, establishment of a common list of countries whose citizens are subject to a visa requirements, a European visa, determining the State responsible for examining the application for asylum*”.³¹ The need for managing migration and facilitating the transnational trade and transactions of the common market was acknowledged by EU leaders.

Through protracted negotiations and after the fall of the Berlin wall,³² the Schengen Implementation Agreement was signed in 1990 and entered into force in 1995³³ and clearly stated as its objective” *The Contracting Parties shall facilitate the movement of goods across internal borders*” (Title V, Article 120). The demand of integration in Schengen was high by both governmental and non-governmental actors since internal border controls were time-consuming for free movement of goods and persons. Thus, the establishment of Schengen has been regarded as a spillover of the gradual launch of the internal market which intrigued the states to abolish internal border controls (Lavenex and Wallace 2005, 460; Niemann 2012). For example, the realization of the internal market necessitated the access of individuals to the judicial systems of other member states (Monar 2001). We observe that in the Preamble of the 1990 Schengen Convention, the EC objective of the establishment of the internal market and the preeminence of the Community law are prevalent (Article 134). Indeed, the liberalization of border controls embellished the economic and trade transactions (McCallum 1995). However, the establishment of the internal

³⁰ Declaration of the Belgian Presidency: Meeting of Justice and Interior Ministers of the European Community, in Brussels, on 28 April 1987

³¹ Coordinators Group, 'The Palma Document' Free Movement of Persons. A Report to the European Council by the Coordinators' Group (Madrid). 1989.

³² House of Lords, Schengen Agreement: A Short History, 07 March 2016

³³ The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders OJ L 239, 22.9.2000, p. 19–62

market, the development of cross-border transactions and financial activities and the four freedoms necessitated close cooperation in other fields such as migration and cross border crime. The Schengen Convention enacted the common rules on the abolition of internal border controls and external border controls (Title II), visas (Title II, Chapter 3), asylum (Title II, Chapter 7), police, security, and criminal cooperation against cross border crimes (Title III), and the established of the Schengen Information System (Title IV). The creation of a common migration policy and cooperation in organized crime were considered as compensatory measures of the establishment of the Schengen zone to control the negative externalities and security deficit of the abolition of internal border controls (Kolliker 2001; Monar 2001; Kaunert 2005; Borzel 2005; Guild and Carrera 2010; Niemann 2012). Thus, interdependency generated by economic integration and supported by differentiated integration has been the foundation of the EU's migration policy. Besides, transnational phenomena such as migration necessitate transnational solutions.³⁴

The initiation of Schengen through differentiated integration created significant centripetal effects and expanded integration beyond the five founding members but also elucidated spillovers which resulted in the establishment of the policies of AFSJ, of which migration policy is a big part (Kolliker 2001, Monar 2001). The Schengen area has been a prime example of internal and external differentiation. Internal differentiation has declined gradually, with more states joining Schengen. In the case of Schengen, differentiation functioned as an instrument of deepening and expanding integration (Monar 2010b). The decrease of transaction costs from the abolition of internal border controls and positive externalities from the creation of a borderless area but also the threat of negative security externalities attracted the participation of more states. Besides, the Schengen Agreement and the following growing number of migrants from Eastern Europe after the demise of USSR, increased the interdependence among the

³⁴ Interview with Commission Officer- External Relations, December 2019

member states (Moravcsik 1998: 452). Especially the activation of the Schengen Information System (SIS) of the Schengen Convention which pooled on shared platforms data gathered at national level created centripetal force to more MS to join Schengen to access and provide information (Kolliker 2001). Until 1995, Portugal, Spain, Italy, Greece, and Austria had joined the founding members and signed the Schengen Agreement.³⁵ Denmark, Finland and Sweden signed the Agreement in 1996 and began its implementation in 2001.³⁶ Nevertheless, the UK and Ireland refused to grant control of their borders and have abstained from participating in Schengen. The British and Irish Schengen opt-outs do not consist of a mechanism available to be applied for future member-states. Instead, new member states are obliged to fully accept and incorporate the Schengen acquis through national arrangement to fulfil the criteria for accessing the area. In fact, the new member states must apply the Schengen acquis which have to be confirmed by positive evaluations in relation to all Schengen aspects (external borders, police cooperation, data sharing and protection, visa requirements, SIS). That procedure was followed by the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia ³⁷ in 2007 which alongside their membership in the EU were associated with the Schengen Area. Contrary, Bulgaria, Romania and Croatia have not authorized to participate in the Schengen Area if they do not fulfil the criteria.³⁸ A very separate case is Cyprus which cannot join Schengen due to the partition of the island. An introduction of the Greek Cypriot part of the island to Schengen would establish a “hard border” within the island and alienate the Turkish Cypriots (Peers 2018, 254). While Schengen has presented higher de facto and temporal differentiation (Luetgert and Vezbergaitė 2015), the primary internal differentiation gradually diminished by the reinforcement of transactions in the European region and promoted further horizontal integration in the Schengen Area (Alec Stone and Sandholtz, 1997).

³⁵ See the Schengen Area <https://www.schengenvisa.info.com/schengen-visa-countries-list/#austria>

³⁶ Ibid

³⁷ Ibid

³⁸ Op.cit.15

However, external differentiation has increased over time since non-EU states have joined Schengen. Interdependence of areas of trade and everyday transactions and positive externalities motivated Iceland and Norway in 2001 to access Schengen. In 2008 Switzerland also concluded an Association Agreement to Schengen while Liechtenstein became the latest member of Schengen in 2011.³⁹ The participation of Iceland and Norway in Schengen has been an outcome of the accession of Denmark, Finland, and Sweden since they wanted to avoid the division of the Nordic Passport Union. Both Norway and Switzerland participated in the internal market. Their adherence to Schengen diminished transaction costs. Besides, these countries are surrounded by Schengen countries and their alienation would have important transnational costs and negative externalities (Leuffen et al 2013). Nevertheless, their status as Associated Members deprive them the right to participate in the decision-making processes. While they are obliged to apply the entire Schengen acquis, they can only participate in mixed committees of the EU Council meetings that deal with Schengen measures and just outline their opinions (Monar 2010b; Leuffen et al 2013).

Whereas Schengen has had as an objective the abolition of internal border controls, it formed the base for the development of all the other areas of AFSJ such as the asylum policy. The Schengen Implementation Agreement in 1990 set up a working group on asylum and paved the way for the establishment of the Dublin system (Monar 2001). The primary core of the CEAS has been inserted in the Articles 28- 38 of the Schengen Convention on the Responsibility for processing asylum application (Title II, Chapter 7). Specifically, the Article 30 of the Convention states “the *Contracting Party across whose external borders the asylum seeker entered the territories of the Contracting Parties shall be*

³⁹Ibid

responsible” which has been the cornerstone of the Dublin system ever since. The Dublin Convention was introduced in 1990 among Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, Netherlands, Portugal and UK while its implementation of which began in 1997.⁴⁰ The Dublin Convention diminished the supply of asylum from its member states, reduced the asylum applications and the phenomenon of the “refugees in orbit”⁴¹ of asylum shopping. Indeed, the Convention intended “ *to ensure that applicants for Asylum are not referred successively from one Member State to another without any of these States acknowledging itself to be competent to examine the application for asylum*”.⁴² The twelve signatories of the Dublin Convention were joined by Austria, Sweden, Finland in 1997 and 1998.⁴³ However, the Convention created negative external effects for non-participating countries and surrounding states, accepting more applications as an alternative to the Dublin system states. The Dublin system expanded the interdependence among all European states since the limitation imposed by the Dublin system could increase asylum applications to states outside this system (Kolliker 2001). The de-linkage of the Dublin Convention from the Schengen Acquis made possible for more states to participate in order to reduce these negative externalities (Niemann 2012). In 2003 the Dublin Convention was replaced by the Dublin Regulation II⁴⁴ which was adopted by all the accession states of 2004 and 2007. Again, states outside the EC were attached to the Dublin system through differentiated

⁴⁰ Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention

OJ C 254, 19.8.1997, 1–12

⁴¹ Press Release: At their meeting in Dublin on 15 June 1990, Ministers concerned with immigration adopted the following declaration. 7169/90 (Presse 96), 15 June 1990: <http://aei.pitt.edu/93366/1/16.pdf>

⁴² Dublin Convention, 1

⁴³ Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Deposited with the Government of Ireland), Ratification Details

⁴⁴ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national OJ L 50, 25.2.2003, 1–10

arrangements. In fact, Norway and Iceland joined the Dublin system in 2001,⁴⁵ Switzerland in 2008⁴⁶ and Liechtenstein in 2011.⁴⁷ As a result, the cornerstone of the EU asylum system has been established on differentiated integration which elucidated more integration across Europe. In this scheme, DI has been beneficial for deepening and developing the cooperation in asylum and migration policies, it is a way “to achieve more integration”.⁴⁸

The integration caused by the introduction of the Schengen Area stimulated additional interdependence and internal centripetal factors to the European states and multiplied the level of vertical and horizontal integration of the AFSJ policies and the European Asylum policy (Ripoll Servent and Trauner 2014). Nonetheless, up until the late 1990s all the initiatives of cooperation among European states on the field of migration and transnational movement of persons had been built up on an intergovernmental base while until the Maastricht Treaty, they remained outside the EC legal framework. The Treaty of Maastricht (1992)⁴⁹ introduced the policies of Justice and Home Affairs into EU treaties and initiated the legal existence of JHA within the EU (Guild and Carrera 2010). At that time, the Area of justice and home affairs remained at the intergovernmental level of the third pillar and the policies of migration were recognized “as matters of common interest” (Article K1, Title VI TEU). Under the Maastricht Treaty, the

⁴⁵ Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Iceland or Norway - Declarations OJ L 93, 3.4.2001, 40–47

⁴⁶ Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland - Final Act - Declarations OJ L 53, 27.2.2008, 5–17

⁴⁷ Protocol between the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Community and the Swiss Confederation concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland OJ L 160, 18.6.2011, 39–49.

⁴⁸ Interview Commission Policy Assistant- Asylum, December 2019

⁴⁹ Treaty on European Union (Consolidated Version), Treaty of Maastricht, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002

intergovernmental nature of the third pillar restrained the development of a common migration policy since the decision-making in the Council required unanimity, the EP participated just as a consultative body, the ECJ had no jurisdiction, and the Commission was sharing its right of initiative with the member states (Kaunert et al 2014). Although it was not exploited, the *passerelle* provision embedded in the Article K.9 offered the possibility of transferring any AFSJ matter policies from the third pillar (Title VI TEU) to the first communitarized pillar (Title IV EC Treaty). Indeed, the leaders of the member states were not ready to hand over core state power competencies to the EU and lose sovereignty other than market policies (Nieman2012). Moreover, the Article K.7 of the Treaty normalized the initiation of DI initiatives such as the Schengen Agreement by providing that multilateral and bilateral cooperation outside the EU law was permitted as long as it did not contradict the cooperation of MS within the third pillar (Peers 2018, 253). However, the member states acknowledged the common interest in coordinating their actions in the areas of migration and asylum policy, external border controls, fight against drugs and international crime, judicial cooperation in civil matters and criminal matters, and police cooperation (Kaunert 2005). Moreover, the Maastricht Treaty included the *rendez-vous* clause which guaranteed that the states will review the institutional level of justice and home affairs in the next IGC (Guild and Carrera 2010).

3.1.2. From Maastricht to Nice

At the time of Maastricht, the objective of the European cooperation has been that “*harmonization has not been regarded as an end in itself but as a means of reorienting policies where such action makes for efficiency and speed of intervention*”.⁵⁰ Notwithstanding, the lack of consistency, integrity or strength of policy cooperation generated from obstacles of unanimity and proper coordination due to absence of

⁵⁰ Ministers Responsible for Immigration (1991) Report to the European Council, WGI 930, SN 4038/91 of 3 December

institutional structures were soon recognized especially by the Commission and the European Parliament (Kostopoulou 2000). As the EP verified there was a “ *lack of and failure to implement cohesive and effective common foreign and security and justice and home affairs policies, shortcomings that are so much the more evident...A more broadly based, flexible approach should be brought to bear as soon as possible as regards applying the 'passerelle' procedure provided for in Article K.9 of the Treaty, extending it, in particular, to cover all the areas listed in Article K.1 and providing for the Council to act by a qualified majority. Existing restrictions on the Commission's right of initiative and implementation should be removed. The roles of the Court of Justice, Court of Auditors and European Parliament should be strengthened, and the legislator should be able to adopt directives without unanimity being required.*”⁵¹

Indicative of the challenges of the intergovernmental cooperation has been the fact that during the five of the Maastricht Treaty, the Council agreed on just one joint position concerning the definition of the refugee status and on five legal joint actions on school travel for children of third country nationals, airport transits, a common form of resident permits, and burden-sharing for displaced persons and human trafficking (Guiraudon 2000). Aiming at instituting uniform minimum standards on asylum procedures and harmonization of migration policies, the Community method was regarded as indispensable given that the structure of the third pillar hindered the realization of this objective. In fact, the third pillar was marked by ambivalent characteristics such as the unanimity requirement, the inconsistency of legal effect of its instruments, the absence of judicial monitoring and the coinciding competence of the third and first pillar. These obstacles were expected to be overcome by the introduction of JHA “*fully under Community competence*”.⁵²

⁵¹ European Parliament Resolution on the functioning of the Treaty on European Union with a view to the 1996 Intergovernmental Conference - Implementation and development of the Union (17 May 1995), 3-5

⁵² Council of the Union, Reflection Group's Report, Messina 2nd June 1995, Brussels 5th December 1995

Nevertheless, certain member states, such as the UK, resisted the idea of the communitarization of JHA policies and Schengen. As a result, the issue of differentiated integration entered more forcefully the political debate with the Minister Balladur (1994)⁵³ who upheld the idea of an EU of *concentric circles* and Prime Minister Major (1994)⁵⁴ who supported *flexibility in an a la carte mode*. Differentiated integration has been the medium for attending the deepening of integration, leaving the unwilling states outside the process (Monar 2010; Rittenberg et al 2014). In fact, the Maastricht Treaty institutionalized differentiation using opt-outs,⁵⁵ included in Protocols attached to the Treaties. The initiation of the Economic and Monetary Union (EMU) in the Treaty resulted to the opt-out of UK and Denmark from its third stage: the introduction of the single currency of Euro, through distinct protocols,⁵⁶ propelled the multi-speed way of integration to the monetary policy based on political interests and economic capabilities of the member states (Koller 2012).⁵⁷ Besides, specifically the UK also opted-out from the Social Policy Agreement⁵⁸ (Murphy 2003, European Parliament 2015). Ergo, DI provided with a pragmatic solution, with only marginal implications, over the lack of consensus for the direction and the depth of integration on core state policies.⁵⁹

⁵³ Balladur, E. (1994) Le Figaro, 30 August, as cited in Stubb (1997)

⁵⁴ Major, J. (1994) 'A Future that Works', speech at University of Leiden, 7 September, <http://www.ukpol.co.uk/john-major-1994-leiden-speech-on-the-european-union/>

⁵⁵ Opt-outs are formal treaty derogations and consist the principal expression of differentiated integration (European Parliament 2015)

⁵⁶ Maastricht Treaty, Protocol on Certain Provisions Relating to the United Kingdom of Great Britain and Northern Ireland; Protocol on Certain Provisions Relating to Denmark, Feb. 7, 1992 O.J. (C 191)

⁵⁷ Indeed, the Eurozone has been the *primus inter pares* example of DI, consisted of 12 out of 27 EU MS and initiated the centralization of monetary policies, the coordination of fiscal policies among the members through the Stability and Growth Pact.

⁵⁸ Maastricht Treaty, Agreement on Social Policy Concluded Between the Member States of the European Community with the Exception of the United Kingdom of Great Britain and Northern Ireland, 1992 O.J. (C 191)91 and Maastricht Treaty, Protocol on Social Policy, 1992 O. J. (C 191) 90

Nonetheless, the Social Policy Agreement and Protocol was later integrated to the text of the Treaty of Amsterdam and UK engaged to it (Title II of the TEU, par. 58, p.56, Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts, 10 November 1997, O.J.(C340) 1

⁵⁹ Interview with Commission Officer- Irregular migration and Return, December 2019

The Treaty of Amsterdam (1997)⁶⁰ incorporated the Schengen acquis into the EU primary law through the Schengen protocol,⁶¹ which augmented the DI and institutionalized the concept of 'variable geometry' (Shaw 1998; Philippart and Edwards 1999). The Treaty of Amsterdam promoted the objective of the creation of an Area of Freedom, Security and Justice by moving the policy cooperation of JHA to the first communitarized pillar (Title IV) apart for justice cooperation in criminal matters which remained in the third pillar (Title VI). In this way, the member states partially pooled sovereignty in the EU for the management of asylum and migration (Kaunert 2005). The Amsterdam Treaty directed the establishment of measures in the field of "visas, asylum, immigration and other policies related to free movement of persons" within the period of five years since the entry of force of the Treaty (Article 73i). As a result, the legal instruments of directives and regulations were introduced to AFSJ policies while the Commission gained the power to confront a member state in case of inadequate or the absence of application of EU legislation. After the five-year transitional period, during which the decisions in the Council had to be made by unanimity and the Commission shared the right of initiative with the member states, the Commission acquired the exclusive right of initiative, an important step of the per se supranational body in a politically sensitive area. The ECJ had to accept rulings of the highest national courts but it gained jurisdiction to issue rulings over enforcement actions, annulments and failure to act (Kostakopoulou 2000). Therefore, the integration of migration policy was generally promoted in the Amsterdam Treaty compared to the prior practice while the Treaty maintained the differentiated arrangements of the Maastricht Treaty.

⁶⁰ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, OJ C 340, 10.11.1997, 1–144

⁶¹ Protocol No 2, Treaty on European Union, integrating the Schengen acquis into the framework of the European Union, OJ C 340.10 November 1997.

At the time of the Amsterdam Treaty, DI offered a pivotal solution to disagreement between the Franco-German preference for a deeper and larger EU and the British position for intergovernmental cooperation, a pick and choose mode of integration, with slow steps forward (Shaw 1998; Murphy 2003). As a result, the UK and Ireland preserved the two Protocols⁶² excluding them of the Schengen acquis, the abolition of internal border controls and the JHA measures of migration and asylum policies. Nevertheless, both states were entitled to opt in measures “*may at any time request to take part in some or all of the provisions*” of the Schengen acquis and opt in after the unanimous agreement of the Council.⁶³ Similarly, both the UK and Ireland had the option to opt in in any measure of AFSJ after notifying the Council within the period of three months (Part III.a.)⁶⁴. In addition to UK and Ireland, Denmark had also assured a special protocol excluding it from rules of III.a.(TEC)⁶⁵ while the state has participated in the Schengen Agreement. However, Denmark was not offered the opt-in possibility such as the UK and Ireland. Denmark was, though, given the possibility to engage to any measure built on Schengen acquis in its national law within the period of 6 months but as subject to international and not EU law.⁶⁶ Therefore, the integration created by the adoption of Denmark of a Schengen acquis measure has not incorporated to EU acquis and there is no reciprocity provision.⁶⁷ Besides, the Amsterdam Treaty built the foundation for the use of more arrangements of differentiated integration through the introduction of the provision of enhanced cooperation (or closer cooperation in the Amsterdam Treaty) in the Article

⁶² Protocol on Application of Certain Aspects of Article 7a of the Treaty Establishing the European Community to the United Kingdom and to Ireland, 1997 O.J. (C 340) 97 and Protocol on the Position of the United Kingdom and Ireland, 1997 O.J. (C 340) 99.

⁶³ Protocol integrating the Schengen acquis into the framework of the European Union, Article 4

⁶⁴ Article 3, Protocol on the Position of the United Kingdom and Ireland, Treaty of Amsterdam, 1997, O.J. (C 340) 99.

⁶⁵ Protocol on the Position of Denmark, 1997 O.J. (C 340) 101.

⁶⁶ Article 5, Protocol on the Position of Denmark, 1997 O.J. (C 340)

⁶⁷ Ibid

K.15. Enhanced cooperation consists of an instrument of institutional flexibility that allows the majority member states to pursue closer cooperation in a policy matter by endorsing secondary legislation in which unwilling states have the possibility to abstain. Clearly, the Amsterdam Treaty stated that closer cooperation between MS should be “*aimed at furthering the objectives of the Union and at protecting and serving its interests*” (Article 43.1 (a) EU Treaty Amsterdam). Enhanced cooperation was offered in the third pillar of the police and judicial cooperation in criminal matters ⁶⁸and the first pillar, the community pillar, which also incorporated the visa, asylum, migration policies ⁶⁹and the Schengen acquis⁷⁰(under specific restrictions).⁷¹ The Article 73(k) bound the Council to adopt in a period of five years the specific measures for the Member State responsible for examining an asylum application, the minimum standards of refugee reception of refugees, the asylum procedures governing the asylum process, the minimum standards for temporary protection to displaced persons as well as burden-sharing measures. Within this transitional period, the foundational measures of the CEAS were settled (Kauert and Leonard 2012).

Besides, certain propulsive factors contributed to the forceful development of the ASFJ at the end of the 1990's. The fall of the Iron Curtain and the growing numbers of migration and the increase of organized crime from Eastern Europe had triggered closer cooperation among EU member states on these fields.

⁶⁸ Title VI, Treaty of Amsterdam

⁶⁹ Title IIIa, Treaty of Amsterdam

⁷⁰ Protocol Integrating the Schengen Acquis into the Framework of the European Union, 1997 O.J. (C 340) 93

⁷¹ Specifically, article 43 invited member states to sign on enhanced cooperation using the institutions and procedures of the EU instead of extra Union initiatives, in subject areas that coincide with the Union's interests. Any action in the framework of the Article 43 of Title VII TEU has to agree with the criteria set to the Article 11 TEC of the first pillar which secured at the introduction of EU institutions at any initiative of flexible cooperation and the guarantee that the Communities laws and policies are not undermined. The activation of an initiative of enhanced cooperation has been subject to the authorization of the Council. The Article 11 TEC also established the QMV as the means to authorize the initiation of enhanced cooperation and offered a pivotal role to the Commission by providing the opportunity to refuse to submit a proposal for the action. Nevertheless, if the procedure was stuck to the unwillingness of the Commission or the failure of agreement through the QMV, the issue is elevated to the Council of the Heads of State or Government which has to decide unanimously, thus, giving the possibility of the veto. In this way, the procedure confirmed the primacy of national interests over the acceleration of integration (Philippart and Edwards 1999).

More specific examples on how transnational challenges shaped the EU cooperation in AFSJ include the Kosovo crisis (Monar 2001). The growing number of refugees in 1999 stimulated the adoption of the joint action on reception and repatriation of refugees.⁷² Thus, the European Council of Tampere of October 1999 under the Finnish presidency boosted the European efforts on AFSJ and tried to exploit the legal opportunities offered by the Amsterdam Treaty. Its Conclusions illustrated the EU objectives “to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes”.⁷³ Particularly, it exemplified the principles for the creation of a Common European Asylum system which should have included “a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection”.⁷⁴ It was entailed that the elucidation of minimum standards of asylum procedures by providing the discretion to member states to implement them. In this vein, the Seville European Council of 2002 singled out the provision for the readmission of illegal immigrants should be included to all association or cooperation agreements with third countries (Zapata-Barrero 2013). The primary reasons for the recognition of such a need were the lifting of the internal border controls and the ineptitude of internal migration policies. The abolition of internal border controls elevated the significance of external border controls and the cooperation between EU and neighboring countries for the supervision of the

⁷² Joint Action of 26 April 1999 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing projects and measures to provide practical support in relation to the reception and voluntary repatriation of refugees, displaced persons and asylum seekers, including emergency assistance to persons who have fled as a result of recent events in Kosovo OJ L 114, 1. May 1999, 2–6.

⁷³ Council of the European Union, Presidency Conclusions, Tampere European Council, 15-16 October 1999, 16 October 1999

⁷⁴ Ibid

arrival of third country nationals (Del Sarto 2010). Besides, the Tampere Council urged the Community to engage in agreements with third countries of origin and transit for the purposes of readmission and return of illegal migrants.⁷⁵ In this way, the European Migration Policy acquired an external dimension which demanded close cooperation with third countries of origin and transit of migrants. Indeed, the Commission since 2005 promoted the Global Approach to Migration to boost cooperation with third countries of origin and transit using a variety of EU instruments such as the Mobility Agreements, the European Neighborhood Policy, return and readmission agreements (Article 78(2)(g) and Article 79(3) TFEU)⁷⁶

The foundations of the EU asylum system were built in the period 1999-2005 when the decision-making in the Council required unanimity and the EP was only consulted and the supranational institutions were deprived of any substantial enforcement power. As a result, this initial effort of regulatory integration has resulted in an important degree of discretion in the implementation of EU asylum rules while the harmonization and communitarization was minimal (Kauert and Leonard 2012; Ripoll Servent and Trauner 2014; El-Enany 2017).⁷⁷ The main structure of the Common European Asylum System (CEAS) included the Qualification Directive⁷⁸, the Asylum Procedure Directive,⁷⁹ the Reception Conditions

⁷⁵ Until today, EU has concluded Readmission Agreements with Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, FYROM, Bosnia & Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Armenia, Azerbaijan, Turkey and Cape Verde

⁷⁶ Communication from the Commission to the Council and the European Parliament - The global approach to migration one year on: towards a comprehensive European migration policy, COM/2006/0735 final

⁷⁷ An example of the lack of harmonization can be found in the recognition rates for instance, the recognition rates of Iraqis in 2007 were 87.5 % rate in Cyprus, 85% in Germany, 82% in Sweden, 30% in Denmark, 13% in the UK and 0% in Slovenia and Greece. More information ECRE, Five years on Europe is still ignoring its responsibilities towards Iraqi refugees, March 2008, 15.

⁷⁸ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers OJ L 31, 6.2.2003, 18–25

⁷⁹ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status OJ L 326, 13.12.2005

Directive⁸⁰, the Dublin II Regulation⁸¹ and the EURODAC Regulation.⁸² These five legal instruments have been considered the main pillars of the Common European Asylum system. Notwithstanding, this system has been also characterized by differentiation. Apart from all EU MS, UK, Ireland and Denmark, and EFTA states are also bound by the Regulations of Dublin and Eurodac, they do not participate in the rest of CEAS legislation. Additionally, the supranational institutions lacked the enforcement power to impose the right application of EU laws or Court rulings which has resulted in an important degree of flexibility in the implementation of EU Asylum system rules (El-Enany 2017). Nevertheless, the differentiation within the asylum system has not created a “gap” on implementation. Instead, it has formed a way for “new acquis” and deepen integration gradually within the asylum area. Since asylum is a policy area of great political sensitivity, European integration has had to proceed ‘step by step’.⁸³ In the field of asylum, in particular, all MS are bound by the Geneva Convention so there are not real imbalances.⁸⁴

The Treaty of Nice expanded the use of Qualified Majority Voting (QMV) and co-decision in migration policies which were, finally, applicable after the 5-year transitional period set out by the Amsterdam treaty (2004). Whereas not many other changes were made in the Treaty, the Treaty of Nice (2001)⁸⁵ added new provisions on asylum measures (Article 63, 1) and refugees of temporary protection (Article 63, 2a). Indeed, the EU focused on measures on illegal migration and until it produced, through co-decision: The

⁸⁰ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers OJ L 31, 6.2.2003, 18–25

⁸¹ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national OJ L 50, 25.2.2003, 1–10

⁸² Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention OJ L 316, 15.12.2000, 1–10

⁸³ Interview with Commission Policy Assistant- Asylum, December 2019

⁸⁴ Interview with Commission Policy Coordinator- Asylum, December 2019

⁸⁵ Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts OJ C 80, 10.3.2001, p. 1–87

Temporary Protection Directive,⁸⁶ the Facilitation Directive⁸⁷ and the Carriers Sanctions Directive⁸⁸ and the Trafficking Victims Directive (Residence Permits).⁸⁹ The 2001 Council Directive on Temporary Protection⁹⁰ in the Case of Mass Influx has been based on a voluntary relocation scheme and has required a prior agreement between the sending and the recipient MS on the basis of “*double voluntarism*” of solidarity. The identification of a case as a “mass influx” was decided in the Council by qualified majority voting after the proposal of the Commission. While the decision was expected to be obligatory for all member states, there was no binding on a specific number of persons that each MS should accept. Besides, the Directive cannot be automatically activated but instead needs a Council decision (Thielemann 2018). In the two latter Directives (Carriers Sanctions and Trafficking Victims), except for the abstention of UK, Ireland, and Denmark due to their opt-outs from the JHA policies, external differentiated integration was provoked from the participation of two non-EU states (Norway and Iceland).

3.1.3. From Prum to Lisbon

However, the terrorist attacks of 2001 in USA and 2004 in Madrid stimulated the prioritization of internal and external security policies and the combat against terrorism. This fact gave grounds to numerous

⁸⁶ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7.8.2001, p. 12–23

⁸⁷ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence OJ L 328, 5.12.2002, p. 17–18

⁸⁸ Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data OJ L 261, 6.8.2004, p. 24–27

⁸⁹ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities OJ L 261, 6.8.2004, p. 19–23

⁹⁰ The Temporary Protection Directive has remained inactive since its adoption and it was not used during the refugee crisis

scholarly studies outlining the development of security practices at the expense of humanitarian concerns (Monar et al 2003; Balzacq and Carrera 2006; Huysmans 2006; Lavenex and Wagner 2007; Guild and Geyer 2008; van Munster 2009; Kostakopoulou 2010). The Hague Program of November 2004 under the Dutch Presidency had also prioritized security and underscored the need for maintaining a balance between the protection of the fundamental rights and preserving internal and external security of the Union (Guild and Carrera 2010; Kostakopoulou 2010). Indeed, the program outlined that *“A key element in the near future will be the prevention and suppression of terrorism.... Freedom, justice, control at the external borders, internal security and the prevention of terrorism should henceforth be considered indivisible within the Union as a whole”*⁹¹

In the spectrum of protecting internal security, the European Council supported the establishment of the Agency for the Management of Operational Cooperation at the External Borders (Frontex)⁹² as the main EU instrument for reinforcing external border controls and interrupt illegal crossings.⁹³ The first European attempts to form an external border control system were, the establishment of a border guard in the framework of the ODYSSEUS program,⁹⁴ and the harmonization of national legislation and administrative cooperation on border controls, visa and asylum through funding, research and staff

⁹¹ Council of the European Union, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, 13 December 2004, 2005/C 53/01, Introduction. Available at <https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:053:0001:0014:EN:PDF>, Accessed 21 October 2019

⁹² Apart from Frontex, in the field of AFSJ, the EU institutions are upheld by several EU agencies in the implementation of AFSJ policies, such as the Europol, the European Police College (CEPOL), the Eurojust, the EU Fundamental Rights Agency (FRA), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA); the European Asylum Support Office (EASO), and the EU Agency for the management of large-scale IT systems (eu-LISA).

⁹³ Ibid, par. 1.7.1.

⁹⁴ European Commission (2001), Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration, COM/2001/0672 final, 15.11.2001, Available at [http://aei.pitt.edu/38176/1/COM_\(2001\)_672.pdf](http://aei.pitt.edu/38176/1/COM_(2001)_672.pdf)

exchanges, in the scheme of ARGO program.⁹⁵ Nevertheless, the main European instrument of external border controls has been, since 2004, the Agency of Frontex.⁹⁶ Until recently, the role of Frontex was supportive and auxiliary, and intended to increase the efficiency of border controls, through the cooperation between Member States in order to implement an Integrated Management System of proper supervision, control and protection of the EU's external borders.⁹⁷ Frontex responsibilities lie on the monitoring of migration flows and the management of the external border controls, conducting risk analysis, organizing joint operations and interventions for the protection of EU's external borders, fighting cross-border crimes and provide the MS with specialized expertise, training and risk analysis and contribute to the confrontation of operational emergency problems, such as a mass influx of illegal immigrants, through its Rapid Response Teams.⁹⁸ The focus of the European leaders on internal security has been also indicated in the demand of the European Council for the advancement of the Europol⁹⁹, the European Agency of police cooperation, and its transfer from the intergovernmental to the Community pillar.¹⁰⁰

⁹⁵ Council Decision 2002/463/EC of 13 June 2002 adopting an action programme for administrative cooperation in the field of external borders, visas, asylum and immigration (ARGO), *OJ L* 161, 19/6/2002.

⁹⁶ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union *OJ L* 349, 25.11.2004, p. 1–11 amended in Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, *OJ L* 251, 16.09. 2016.

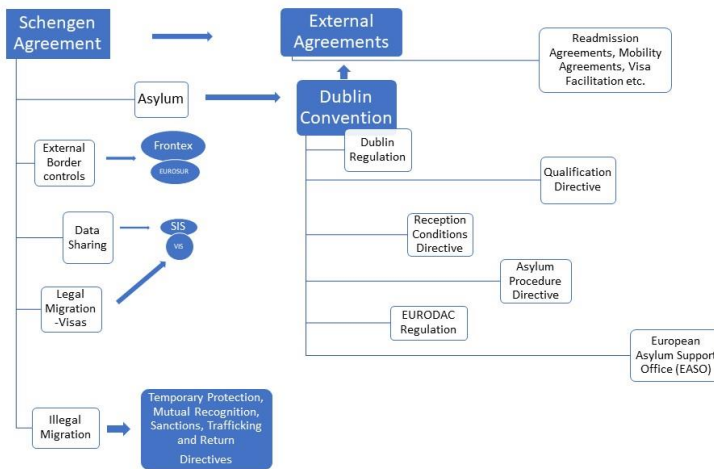
⁹⁷ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, *OJ L* 349, 25.11.2004

⁹⁸ *Ibid* and Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers, *OJ L* 199, 31.7.2007.

⁹⁹The Europol was established through Europol Convention in 1995 in the framework of the Maastricht Treaty. Council Act of 26 July 1995 drawing up the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention), *OJ C* 316, 27.11.1995, 1–32

¹⁰⁰Council of the European Union, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, 13 December 2004, 2005/C 53/01, par. 2.3.

Diagram 3.1.



Gradual development of EU migration and asylum policy.

Source: Author's elaboration.

The impact of the terrorist attacks on the need of cross-border stronger cooperation was manifested in the signing of Prüm Convention on 27 May of 2005¹⁰¹ for the fight against terrorism, cross-border crimes and irregular migration between Belgium, Germany, Spain, France, Luxembourg, Netherlands, and Austria. The main objective of the Prüm Convention was the reinforcement of the cross-border cooperation between these Schengen states for the exchange of information (such as DNA, dactyloscopic and vehicle data) and operational coordination of police in the fight against terrorism and cross-border crimes. The Prüm Convention was an intergovernmental venture, a satellite treaty, outside the EU framework which, at that time, augmented the external differentiation in AFSJ.¹⁰² Satellite Treaties

¹⁰¹ Convention between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, The French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration (Prüm Convention), 27/05/2005

¹⁰²The EU has developed tools that integrate third countries to specific parts of policies, provoking external DI and integrating third countries to specific policies such as the Association Agreements(SAA), the European Economic Area (EEA), the European Neighbourhood Partnership, specific customs agreements, agreements for third country participation to EU

have been a common phenomenon and are conducted in the framework of international, not European, law. Commonly, the group of the member states wish to integrate gradually their initiative to EU law as well as they promote the involvement of EU institutions. Besides, these initiatives do not usually aim at circumventing the EU law. Instead, they state explicitly the primacy of EU law. For example, the Article 47 of the Prüm Convention state “...provisions of this Convention shall only apply in so far as they are compatible with European Union law ... [EU law] should take precedence in applying the relevant provisions of this Convention”. Satellite Treaties are usually preferred by states since they are easier and faster to get into force than amending EU Treaties which have strict constitutional requirements and general national consents. At the same time, of course, this means that these Treaties do not enjoy the protection of European institutions such as the Commission and the ECJ. Nevertheless, international satellite Treaties cannot be set up in policy areas where the EU has gained exclusive competence or do not respect the fundamentals of European Treaties. The latter originates from the supremacy of the European law over national law (Thym 2017). Notwithstanding, during the phase of the ratification of the Prüm Convention other states such as Finland and Portugal in June of 2006 expressed their willingness to join. Under the light of this general interest among the member states, the German Presidency took the initiative to present the inclusion of the biggest part of the Prüm Convention (the information exchange on DNA, fingerprints and vehicle number plates) into EU legal scheme in the Council of June 2007 which was adopted by a Council Decision in 23 June 2008.¹⁰³ As a result, the main content of the Prüm Convention, which was initiated as a differentiated arrangement, is today applicable to all EU MS.¹⁰⁴

Agencies and other bilateral agreements which can be seen as a form of variable geometry outside EU borders(Koller 2012, European Parliament 2015).

¹⁰³ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime OJ L 210, 6.8.2008, 1–11

and Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime OJ L 210, 6.8.2008, 12–72

¹⁰⁴ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008, p. 1–11

The Lisbon Treaty (2007) ¹⁰⁵ ended the pillar divide and based the AFSJ in the article 3(2) TEU: “ *The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime....It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals...The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities*” . The Title V of the TFEU (Articles 67 to 89) elaborate on the specific chapters for policies border checks, asylum and immigration, judicial cooperation in civil matters, judicial cooperation in criminal matters and police cooperation. Institutionally, the Lisbon Treaty integrated migration policies and judicial cooperation in civil matters in one part and police and judicial cooperation in criminal matters in another part. In this way, the AFSJ was upgraded to a distinct part of European integration, not strictly connected to the internal market and Schengen. Moreover, the ordinary legislative procedure turned into the main decision-making procedure (Article 63, Title V) while consultation and consent procedures became the special legislative procedures.¹⁰⁶ Furthermore, the qualified majority voting in the Council became the main voting process. The legal measures on border checks, the asylum system and migration policy have not required unanimity anymore¹⁰⁷ while the Commission has exclusively the right of initiative. Furthermore, the national

¹⁰⁵ Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Official Journal of the European Union, C 306, 17 December 2007

¹⁰⁶ Consultation has been still required in measures on passports and other documents (Article 77(3) TFEU), temporary measures in case of an emergency caused by a sudden influx of third country nationals (Article 78(3) TFEU), rules on family law (Article 81(3) TFEU), operational police cooperation and rules on the conditions and limits of the operation of law enforcement and judicial authorities in other MS. The procedure of consent has been used for the determination of new areas of Euro-crime (Article 83(1) TFEU), the establishment of a EPP's Office and the extension of its powers (Article 86 TFEU), laws concerning operational police cooperation (Article 87(3) TFEU), decisions on the conditions and limitations under which law enforcement and judicial authorities may operate in the territory of another MS (Article 89 TFEU).

¹⁰⁷ Unanimity has been still required in the adoption of rules on passports, identity cards, residence permits and other documents necessary for the free movement of persons (Article 77(3) TFEU), family law (Article 81(3) TFEU), the

parliaments are implicated in the monitoring of Europol and the evaluation of Eurojust and can take part in the evaluation of the implementation AFSJ policies and the monitoring of the conformity of AFSJ legislation with the subsidiarity principle (Article 63- 69 TFEU).

Additionally, the Lisbon Treaty introduced solidarity as a binding principle in migration policy. It has stated that *“The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States”* (Chapter 2, Article 63b). In contrast to the Amsterdam Treaty which offered the EU the right to legislate on minimum standards, the Lisbon Treaty (Article 78 TFEU) provided the Union with the competencies to apply rules for a uniform status of asylum in the EU and subsidiary protection, a common system of temporary protection and procedures for granting and withdrawing asylum and subsidiary protection, the criteria for determining the State responsible for examining an application for protection, the standards on reception conditions, and, finally, the cooperation with third countries (Kauert and Leonard 2012).

Besides, through the Article 6 TEU, the Lisbon Treaty attached the Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms to the Treaty and introduced full jurisdiction of the ECJ which has now the power to deliver preliminary rulings on migration and asylum issues (Niemann 2012; Leuffen et al 2013). The Charter of Fundamental Rights became binding for all MS apart from UK, Poland and the Czech Republic which have acquired an opt-

establishment of a EPP and the future extension of its powers (Article 86 TFEU), rules concerning operational police cooperation (Article 87(3) TFEU), decision on the conditions and limitations under which law enforcement and judicial authorities may operate in the territory of another MS (Article 89 TFEU).

out from the Charter.¹⁰⁸ In addition to the preservation of the opt-out protocols of UK, Ireland and Denmark from AFSJ, the Lisbon Treaty had not changed the opt-out measures but added the possibility of opt-outs in the area of police and criminal matters cooperation as a counterbalance measure of the extension of the Community method to this policy area (Leuffen et al. 2013). Moreover, the Lisbon Treaty facilitated the use of the provisions on enhanced cooperation. Specifically, the Article 329 TFEU anticipates that only the participating states in the enhanced cooperation initiative shall take part in the vote of the Council. As a result, the QMV has been defined by the number of the states participating in this initiative, leaving outside the procedure the MS that do not wish to participate in the enhanced cooperation. Thus, the Lisbon Treaty abrogated the possibility for the non-participating states to exert veto through the establishment of the requirement of a vote by qualified majority instead of unanimity.¹⁰⁹ The Lisbon Treaty facilitated to a great extent the procedures of enhanced cooperation and made its implementation possible. Indeed, after the enforcement of the Lisbon Treaty the clause started being actually implemented.¹¹⁰ Besides, the Lisbon Treaty introduced the mechanism of Permanent

¹⁰⁸ Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the UK, Treaty of Lisbon C306, 17 December 2007.

¹⁰⁹ While the initiative of the enhanced cooperation is generated by the participated member states, the authorization for the implementation of the clause should have the support of the Commission, the consent of the Council (through qualified majority) and the European Parliament (Article 20(2) TEU and Article 329(1) TFEU). Furthermore, the necessary participating states to an enhanced cooperation action have been augmented from eight in the Treaty of Nice to nine in the Lisbon Treaty. The participating states may define some “condition of participation” but still the initiative has to be open to the other member states (articles 328.1; 333.1, Lisbon Treaty). While the clause of the enhanced cooperation offers some flexibility, the requirements depicted in the Articles 20 TEU and 326- 334 TFEU assure that the supranational EU law, the *acquis*, the fundamental freedoms and equality among the member states are not thwarted or fragmented.

¹¹⁰ The concluded cases that enhanced cooperation has been applied are: i) The jurisdiction for divorce of different nationality couples which was enforced in 2012 with the participation of 17 member states, after the block of Sweden to the ordinary procedure within the framework of EU judicial cooperation (Council Regulation (EU) No 1259/2010), ii) the European Unitary Patent which resulted to the production of two Regulations binding 26 member states, after the block from Italy and Spain to the ordinary legislative procedure due to their disagreement of the treatment of their languages (Regulation (EU) No 1257/2012), iii) the Rules on Property Regime of international couples among 18 member states (Council Regulation (EU) 2016/1103), iv) the European Public Prosecutor Office on frauds against the EU budget, launched in 2017, after the “yellow card” of 14 national parliaments (Council Regulation (EU) 2017/1939). At the same time, there are two enhanced cooperation procedures that are under negotiations: i) the enhanced cooperation procedure initiated by 10 states Financial Transaction Tax (FTT), after the block from Sweden and UK, but not yet concluded, ii) the initiative of the Commission on the European supercomputers infrastructure among 25 member states and Norway.

Structured Cooperation (Articles 42(6), 46 and Protocol 10).¹¹¹ Still, the Lisbon Treaty inaugurated additional tool of flexibility and differentiation: the so-called “brake” clauses (Articles 48, 82 and 83

¹¹¹ PESCO consists of an extension of enhanced cooperation for member states that wish to proceed to military cooperation when unanimity cannot be accomplished. However, permanent structured cooperation refers to states with the necessary military capabilities and can fulfill specific commitments such as harmonization of military capabilities, building up of synergies, military systems development, coordination of and integration forces in operations and participation in EU joint military operations or the European Battle Group (Protocol 4 of Lisbon Treaty). The generation of PESCO necessitates an agreement of the Council through a qualified majority. PESCO has been generally regarded as a headrest of the unwillingness to reinforce EU military capabilities. Besides, Articles 43 and 44 describe the procedure according to which the Council may confide in a group of member states the realization of a military mission (Flexibility in the area of defense include also provisions such as the cooperation and coordination among their administrations responsible for the national security of Article 73 and the establishment of the European Defence Agency in the Article 45.2).The first time that PESCO was activated was on 13 November 2017 when 23 member states informed the High Representative and the Council on their willingness to initiate PESCO, listed possible projects and their military capabilities as requested by the Protocol No10. Apart from being open to all the member states that wish to participate, the initiative also offers the possibility to third states to participate. While PESCO imbricate both EU and NATO, the initiative does not aim at undermining but respects the obligations to NATO (Art. 42 (2) TEU). Besides, three member states that are members of NATO (Denmark, Portugal and United Kingdom) do not participate in PESCO while four states that took part in PESCO are not NATO members (Austria, Cyprus, Finland, Sweden). Except for common military missions, the PESCO framework of cooperation includes common investments on defense expenditures, harmonization of defense operations and deplorability, participation in the EDA equipment programs as well as the creation of a joint Foreign and Defence Affairs Council to draw the direction of PESCO activities. The projects of PESCO must be decided on a unanimous basis in Council based on Art. 46 (6) TEU. For PESCO to be established, a qualified majority vote in the Council is sufficient since neither a minimum number of states is required nor the involvement of the Commission and the EP. Just like the mechanism of enhanced cooperation, PESCO is considered as a temporary measure on the road of unitary integration (Wolfstädter and Kreiling 2017).

TFEU),¹¹² the Flexibility Clause (Article 352 TFEU),¹¹³ the "accelerator" clause (Articles 82, 86 and 87 TFEU)¹¹⁴ and the passerelle clauses of the Article 48.7(TFEU).¹¹⁵

The European Pact on Immigration and Asylum of 2008¹¹⁶ outlined that "*considerable disparities*" were persistent in the process of harmonization of national asylum systems and underscored the need for "new" initiatives. In the same year, the first legislative framework for the return of illegal immigrants was adopted through the Return Directive ¹¹⁷ which set up the common standards and procedures for the return in accordance with fundamental rights and the Community law. The Return Directive has been the

¹¹² These clauses can be used as a "stopper" of ordinary legislative procedure by a member state which perceives the proposed legislation as a threat to its social security and/or justice system. The member state may appeal to the European Council which may either return the legislation to the Council for changes to be made or interrupt the procedure and ask the Commission for a new proposal. Notwithstanding, the brake clauses can be applied solely in three cases: a) Rules for the coordination of social security systems on the rights of migrant workers (Article 48 TFEU), b) In cases of judicial cooperation in criminal matters (Article 82 TFEU), c) In pre-defined cases of criminal offenses (Article 83 TFEU). In general, the brake clauses have resulted in the endorsement of the ordinary legislative procedure to these areas where previously a unanimous vote was necessary (op.cit 15).

¹¹³ This new provision of the Lisbon Treaty empowers the EU to take action beyond the powers that have been delegated to it if the objective demands so. This mechanism was used several times in the past for serving better the objectives of the single market. The Lisbon Treaty expands the use of the Flexibility Clause to all EU objectives apart from the area of CSFP. The implementation of the clause requires a Commission proposal, the consent of the EP and the unanimous agreement of the Council (European Parliament 2015)

¹¹⁴ The accelerator clause involves specific issues of the ASFJ in which the decision-making procedure through the ordinary legislative procedure comes to a deadlock. In these cases, the accelerator directly activates the procedure of enhanced cooperation if at least nine states wish to proceed to the engagement of secondary legislation. The subject areas in which the accelerator applies are the mutual recognition of sentences, the judicial and cross-border police cooperation (Article 82.3 TFEU), the foundation of common rules for certain criminal offences (Article 83 TFEU), the establishment of a European Public Prosecutor's Office (Article 86 TFEU) and the measures of police cooperation (Article 87.3 TFEU). The EP, the Commission and the Council are just notified for the activation of the enhanced cooperation in these cases. The accelerator clauses, however, can be interrupted by a unanimous negative vote of the European Council. The procedure of the accelerator has been designed to surmount possible vetoes in home affairs from member states.

¹¹⁵ This mechanism aims to circumvent the indomitability of the unanimity rule in the decision-making, especially for the changes of the treaties. The passerelle procedure offers the opportunity to alter from unanimity to qualified majority or from the special to the ordinary legislative procedure after the unanimous approval of the European Council (member states with an opt-out and those who do not participate in an enhanced cooperation initiative may not take part in the vote), the acceptance of the European Parliament by qualified majority and the notification of the national parliaments. National parliaments are given a period of six months to object and if any rejects it the proposal results in a failure (Article 48) .

¹¹⁶ Council of the European Union, European Pact on Immigration and Asylum, 24 September 2008, 13440/08, Available at <https://data.consilium.europa.eu/doc/document/ST%2013440%202008%20INIT/EN/pdf>

¹¹⁷ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals OJ L 348, 24.12.2008, p. 98–107

first legal rule on migration that was passed through the co-decision procedure (Acosta 2009; Ripoll Servent 2011). Moreover, In the framework of the Stockholm program, the Council decided the formation of a “European support office” for the assessment of asylum applications practices.¹¹⁸ The European Asylum Support Office (EASO) was established in 2010 *“in order to help to improve the implementation of the Common European Asylum System (the CEAS), to strengthen practical cooperation among Member States on asylum and to provide and/or coordinate the provision of operational support to Member States subject to particular pressure on their asylum and reception systems”* (Article 1).¹¹⁹ Nevertheless, the European Asylum Support Office (EASO) has had no actual executive powers of acting on behalf the MS but only functions as a monitoring assistant to MS.¹²⁰ The governance of EASO is intergovernmental, with national representatives to compose its management boards and formed by national contributions on personnel and equipment, and is strictly related to national authorities.¹²¹ Furthermore, in the same year, the EU founded the European Border Surveillance System, EUROSUR, to monitor and inspect the external borders in order to prevent illegal crossings, cross-border crime and prevent sea accidents of illegal immigrants. ¹²²

3.2. Towards the crisis

¹¹⁸Council of the EU, Presidency Conclusions of the Brussels European Council, 4-5 November 2004, Annex I, 17.

¹¹⁹Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office OJ L 132, 29.5.2010, p. 11–28

¹²⁰ Regulation (EU) No 439/2010 of the European Parliament and Council of 19 May 2010 of 19 May 2010 establishing a European Asylum Support Office, O.J. 2010, L 132/11

¹²¹ European Commission, Commission Staff Working Document on the internal Evaluation of the European Asylum Support Office (EASO), Brussels, 27.3.2014, SWD (2014) 122 final

¹²² Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur), OJ L 295/11, 6.11.2013

3.2.1. The reform of CEAS

The Stockholm Program of 2009 under the Swedish presidency reinstated the goal for the reinforcement of the common European framework on asylum procedures and protection of refugees and summarized that “[t]here are still significant differences between national provisions and their application...Common rules”.¹²³ On the field of asylum, in particular, the Commission outlined the imbalances and the lack of harmonization in regard with the reception conditions, with the procedural and qualification asylum arrangements which differentiate the asylum criteria and level of protection provided.¹²⁴ Thus, the Commission promoted the review of the asylum rules, basing its arguments on the responsibility for the establishment of a common asylum system embedded in the TFEU and in 2008 promoted a package of “recast” of EU asylum rules.¹²⁵ Indeed, the Stockholm program stated that “*All opportunities offered by the Lisbon Treaty to strengthen the European area of freedom, security and justice for the benefit of the citizens of the Union should be used by the Union institutions*”.¹²⁶ Besides, in contrast to the Amsterdam Treaty which offered the EU the right to legislate only on minimum standards, the Lisbon Treaty (Article 78 TFEU) provided the Union with the competency to introduce rules for a uniform system of asylum. Moreover, the Article 80 TFEU required the inclusion of the “*solidarity and fair sharing of responsibility*” in the asylum measures. However, the slow progress of the negotiations between the three institutions

¹²³ The Stockholm Programme, An Open and Secure Europe – Serving and protecting Citizens, OJ C 115/1 4.5.2011.

¹²⁴ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions: Policy Plan on Asylum, An integrated approach to protection across the EU. Brussels 17.6.2008 COM (2008) 360 final, section 1.2.

¹²⁵ Recasting is a legislative technique used in the EU context whereby in cases where a substantive amendment needs to be made to an existing legal act. See for more European Parliament, Council and Commission, Interinstitutional Agreement on a more structured use of the recasting technique for legal acts of 28 November 2001 (2002/C 77/01) OJ C 77/1 28.3.2002.

¹²⁶ The Stockholm Programme, An Open and Secure Europe – Serving and protecting Citizens, OJ C 115/1 4.5.2011., p.4.

on the amendment of the main five asylum legal acts moved the deadline for the establishment of the CEAS from 2010 to 2012.¹²⁷

The attempts of both the Commission and the EP for the introduction of a more uniform asylum system were crushed by the persistence of the Council in nominal changes and legislation of just the minimum standards in asylum procedures. While the EP contradicted the restricting stance of the Council and supported a uniform framework, “initial proposals such as the creation of a single authority responsible for examining applications or the creation of a three-tier system for appeals were quickly questioned in favour of full national discretion” (Ripoll Servent and Trauner 2014,1146). For example, a refugee in Germany could work after three months, in France after nine months, in the Netherlands after six months and in Sweden immediately (EPRS 2015). The overall amendment of the asylum measures was portrayed by Peers (2013b) as a ‘lipstick on a pig’.

The lack of harmonization has been also accompanied with non-compliance or mal implementation often, such as the case of the Dublin rules. This has been manifested in the 2011 conviction of Greece for poor reception conditions and violation of human rights as well as Belgium for, being aware of the conditions in Greece, sending back an Afghan refugee to as his first state of entrance.¹²⁸ The European Court of Human Rights (ECHR) expressed the reasonable concern that frontline states were accepting a great burden over the reception of refugees. Specifically, it mentioned that this burden “...is exacerbated by the transfers of asylum seekers by other MS in application of the Dublin Regulation. The Court does not underestimate the burden and pressure this situation places on the States concerned...The Court regards the Dublin system as aggravating the situation by increasing pressures on border states such

¹²⁷ Council of the European Union, European Pact on Immigration and Asylum, 24 September 2008, 13440/08, para. 11

¹²⁸ MSS v Belgium and Greece, 2 January 2011, Application No. 30696/09, par. 34-37

as Greece...¹²⁹ In the same year, the CJEU also ruled against the transfer of an asylum seeker back to Greece from the UK on the basis that it would violate the EU Charter of Fundamental Rights.¹³⁰ Nevertheless, the CJEU denied to support either the suspension or the amelioration of the Dublin system, advocating in favor of the mutual trust among the member states and regarding these cases as extraordinary (Peers 2013b). The denial of the CJEU shattered the hopes raised after the Lisbon Treaty that the Court rulings are expected to contribute to the policy change (Trauner and Ripoll Servent 2014). Both the Commission and the EP supported the suspension of the Dublin rules in cases of breach of the terms of the Procedures Directive or the Qualifications Directive or a state is under great pressure, considering the Court rulings. Nevertheless, the Dublin III Regulation (2013) did not incorporate these changes apart from the early warning mechanism and the ad hoc support to states under stress. While the new Dublin Regulation has codified the CJEU ruling on the case NS and Others,¹³¹ the Commission was unsuccessful in passing its proposal for an official suspension procedure in cases of human rights abuses (El-Enany 2017).

The inadequacy of the Dublin Convention was also apparent in the absence of provisions on solidarity on burden sharing which has already been a point of dispute within the Council. After the outbreak of Arab Spring, both Italy and Greece promoted a suspension of the Dublin transfers back to the first entry state. Both states required a provision for mass inflows to be included in the amendment of the Dublin system. The Commission had already suggested such a mechanism¹³² but was opposed by

¹²⁹ Ibid, par. 343 and 348

¹³⁰ Joined Cases C-411/10 and C-493/10 C-411-10 and of N.S. v United Kingdom and M.E. v Ireland

¹³¹ Dublin Regulation, Article 3 (2)

¹³² European Commission, Proposal for a regulation of the European Parliament and the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person. Brussels, 3.12.2008, COM (2008) 820 final

Northwestern states such as Sweden, France, Germany, Netherlands, and Austria¹³³ on the basis that it was a responsibility of the frontline states to guard the EUs external borders to interrupt massive inflows. The Northern European states had the support of the Central European states once the proposed suspension mechanism would increase their intake of refugees. In 2013 the presidency of the Council proposed an early warning mechanism as an act of compromise.¹³⁴ According to this mechanism, in cases of mass inflows, the Council would discuss solidarity measures towards frontline states.¹³⁵ As a result, the frontline states were marginalized with just Greece voting against the Dublin III Regulation.¹³⁶ By 2013, the five main asylum legal rules¹³⁷ were amended with no substantial differences to the previous acts (Peers 2013, Ripoll Servent and Trauner 2014; El-Enany 2017). Indeed, *“in 2013 when, despite the absence of a real crisis, the issues on the table were still very difficult to find agreement on. (In the end,*

¹³³ Council of the EU, Outcome of Proceedings of the Asylum Working Party, Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), Brussels, 8 October 2010, 14648/10

¹³⁴ Council. (2012, February 20). Note from the Presidency to the JHA Counsellors, Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, Brussels, 20 February 2012, 6586/12

¹³⁵ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31–59

¹³⁶ Council of the EU, Note, voting result on regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (First reading), Brussels, 7 June, 20130716/13

¹³⁷ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection OJ L 180, 29.6.2013; Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection OJ L 180, 29.6.2013; Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted OJ L 337, 20.12.2011; Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (applicable from 1 January 2014), OJ L 180/31, 29.6.2013; Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice OJ L 180, 29.6.2013

*everyone simply gave up on having a real reform and settled for a few tweaks to the existing, then Dublin II, system)*¹³⁸.

3.2.2. The overture of the crisis: From internal to external borders

The tension between Northern and Southern states over the Dublin System and Schengen firstly resulted in an open disagreement in 2011 between France and Italy. Italy allowed 25,000 undocumented Tunisian migrants to pass to France, offering them six-month residence permits. The response of France responded with the reintroduction of internal border controls and the block of trains coming from the Italian town of Ventimiglia. Soon, the Commission reacted underscoring that reintroduction of border controls had to be decided in the European institutions and not unilaterally, as a last resort measure (Hampshire 2016, Ferruccio and Giulia 2016). These tensions developed as disputes between the Council, which requested the revision of the Schengen Code allowing the MS to re-introduce border checks without consent of the Commission or the EP, on the one hand, and the Commission and the EP which disagreed with the no consent proposal, on the other. During the next year, the EP suspended its cooperation over migration rules to guarantee that EU institutions would not lose control over Schengen. This protest ended in 2013, with a compromise over the new Schengen Code which allows national governments to re-introduce border controls and the Commission to monitor Schengen rules and recommend suspension if necessary. The amended Schengen Borders Code¹³⁹ and the Regulation (EU) 1051/2013 (the Schengen Governance Package 2013) expanded the period of temporal reintroduction of border controls by the member states from thirty days to six months while in exceptional circumstances

¹³⁸ Interview with Former Assistant of the President of the Council, February 2021.

¹³⁹ Consolidated text: Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

offered the possibility for the maintenance of the border controls for up two years, for cases of lack of external border controls and dangers to security and public order.¹⁴⁰ Temporal reintroduction of internal border controls were already provisioned and specified in the Schengen Code of 2006.¹⁴¹ As the Commission outlined “ *The main novelty of the 2013 modification of the Schengen Borders Code consisted on introducing the special procedure allowing for temporary reintroduction of border controls at internal borders in view of the serious deficiencies at the external borders putting the overall functioning of Schengen area at risk*”.¹⁴² The amended Schengen Borders Code augmented temporal differentiation in EU migration policy and proved what Stefan Auer (2017) called “*sovereignty bites back*” since the member states maintain constitutionally their right to re-introduce their border controls.

Following the crisis in Libya, from the beginning until the fall of 2013, more than 400 migrants had lost their lives in the Mediterranean trying to reach the European soil, while the flows to the EU had been steadily increased from both the Central and the Eastern Mediterranean routes.¹⁴³ Indeed, 155% increase of the refugee flows was observed, compared to the first quarter of 2013.¹⁴⁴ In October 2013, one of the most important tragic events reached the coasts of the Italian island of Lampedusa when more than 100 refugees died in a trafficker’s boat sinking.¹⁴⁵ The crisis in Libya was one of the key elements generating a momentous wave of irregular migration and smuggling through the Mediterranean sea

¹⁴⁰ Regulation (EU) No 1051/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, OJ L295, 6.11.2013, Article 23 par 4.

¹⁴¹ Ibid

¹⁴² Interview with Commission Officer-Borders and Schengen, January 2021

¹⁴³ EEAS, Cover Note, Migration Flows in the Southern Neighborhood, and their External Relations

Perspective –Possible Avenues for Dialogue and Cooperation with Partner Countries, including Options for a CSDP Operation, 19 November 2013, 16394/13, <https://data.consilium.europa.eu/doc/document/ST-16394-2013-INIT/en/pdf>

¹⁴⁴ Report from the Commission, Fourth bi-annual report on the functioning of the Schengen area 1 May - 31 October 2013, COM (2013) 832 final

¹⁴⁵ BBC, Italy boat sinking: Hundreds feared dead off Lampedusa, 3 October 2013. <https://www.bbc.com/news/world-europe-24380247>

routes and was considered as a serious threat to the internal security of the Union.¹⁴⁶ Nevertheless, the first response was national, not European. Italy introduced the sea border controls operation Mare Nostrum in October 2013 “as a *military and humanitarian operation aimed at tackling the humanitarian emergency in the Strait of Sicily, due to the dramatic increase in migration flows*”.¹⁴⁷ The real costs of Mare Nostrum reached € 9 million per month and, as a result, the country requested the EU to undertake these costs since it was a matter of European borders. In 2014, the EU Home Affairs Commissioner Cecilia Malmström declared that it was impossible to include the operation in the framework of Frontex, stating “*to just replace it with a Frontex operation isn't possible. We don't have the money*”.¹⁴⁸ In addition to emergency funding for the ERF allocated to Italy,¹⁴⁹ in 2014, the EU merged two Frontex operations, the operation Hermes and the operation Aeneas, to replace the Italian Mare Nostrum with the smaller Frontex-led Operation Triton.¹⁵⁰

Operation Triton was the next part of the initiation of the EU Task Force Mediterranean.¹⁵¹ The composition of this Task Force has been rather special since it incorporates different institutions the limits of which extend of the EU Home Affairs institutional framework. In fact, the operations of the Task Force are supported by member-states missions, EU agencies (EASO, FRONTEX, FRA, EMSA and

¹⁴⁶ Frontex (2015), Annual risk analysis, Risk Analysis Unit, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Warsaw-Poland, Available at http://Frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2015.pdf Accessed 30 June 2020

¹⁴⁷ Ministero Della Difesa, Mare Nostrum Operation, <https://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx>

¹⁴⁸ EUobserver. EU will not commit more funds to migration policies. 26 June 2014. <https://euobserver.com/tickers/124756>

¹⁴⁹ European Commission, Communication from the Commission to the European Parliament and the Council, 5th Annual Report on Immigration and Asylum (2013), COM/2014/0288 final

¹⁵⁰ Council of EU, Presidency Note, State of play in the orientations set out by the European Council in the area of the Union of freedom, security and justice, 14 October 2014, 14208/14

¹⁵¹ European Commission, Communication from the Commission to the European Parliament and the Council on the work of the Task Force Mediterranean, 4.12.2013, COM (2013) 869 final.

EUROPOL) and the EU External Action Service (EEAS), as well as missions associated to EU states. The Task Force Mediterranean has supported the mobility partnerships programs, the protection and resettlement of refugees, the patrolling and monitoring activities of Frontex and Europol and undertakes operative action plans for the fight against organized crime and illegal immigration. Assisting the Task Force, the EU installed the Seahorse Mediterranean network, a marine communication system for the identification of irregular immigrants.¹⁵² Again, the Task Force initiated a special Assistance Mission in Libya for the support of border management (EUBAM Libya), which was incorporated into the Common Security and Defense Policy.¹⁵³ Therefore, the first response from the EU was limited to the reinforcement of external border controls and the discussion on including the CSDP mission in the fight against irregular migration.¹⁵⁴ At this point, however, the upcoming refugee crisis has not gained ground in the EU agenda as a priority while the Commission did not include the matter in its work program for 2014¹⁵⁵ and the European Council of December 2013 stated in its Conclusions that “ *It will return to the issue of asylum and migration in June 2014 in a broader and longer term policy perspective*”¹⁵⁶

In 2014, the Stockholm Program had come to an end and in March 2014 the Commission submitted its proposals for the next five-year program. The 2014 Communication had not the same prestige and enthusiastic tone of the previous documents and included only a few new elements. Instead, the

¹⁵² European Commission, Communication from the Commission to the European Parliament, the Council on the work of the Task Force Mediterranean COM (2013) 869 final, 4 December 2013

¹⁵³ EU Integrated Border Assistance Mission in Libya (EUBAM Libya), Common Security and Defense Policy, January 2015, EEAS, factsheet.

¹⁵⁴ EEAS, Cover Note, Migration Flows in the Southern Neighbourhood and their External Relations

Perspective –Possible Avenues for Dialogue and Cooperation with Partner Countries, including Options for a CSDP Operation, 19 November 2013, 16394/13, <https://data.consilium.europa.eu/doc/document/ST-16394-2013-INIT/en/pdf>

¹⁵⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Commission Work Programme 2014, 30 October 2013, COM (2013) 739 final

¹⁵⁶ European Council, Conclusions, 10/20, December 2013, EUCO 217/13, p21

Commission underlined the need to support the existing tools and scheme that were not fully realized in previous years¹⁵⁷. In September 2014, the Italian Presidency presented a plan under the title "*Taking action to better manage migratory flows*" which focused on the strengthening of the external border controls, cooperation with third countries, as well as the implementation of EU legal rules from MS.¹⁵⁸ Italy had pushed for more initiatives in tackling irregular migration through the Central Mediterranean since in 2014, the flows had presented a five-fold increase¹⁵⁹

Additionally, the EU established new EU Asylum, Migration, and Integration Fund (AMIF)¹⁶⁰ which incorporated the European Refugee Fund (ERF)¹⁶¹ and added up more than 3.1 billion for the period 2014–20. This program provided the 20% of the budget for measures of legal migration and 20% for measures of asylum. These funds financed the EU support to the frontline states, the hotspots, and the upcoming relocation scheme. Until September 2015, Italy had received more than €19 million from AMIF and Greece almost €5 million. At the same time both states had received EU funding for their external border controls (Greece €33 million and Italy €39.2 million).¹⁶² Moreover, EU piped funds towards third

¹⁵⁷European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An Open and Secure Europe: Making it Happen, Brussels, 11.3.2014COM (2014) 154

¹⁵⁸ Council of EU, Presidency Note, State of play in the orientations set out by the European Council in the area of the Union of freedom, security and justice, 14 October 2014, 14208/14, <https://data.consilium.europa.eu/doc/document/ST-14208-2014-INIT/en/pdf>

¹⁵⁹European Commission, Report from the Commission to the European Parliament and the Council, Sixth bi-annual report on the functioning of the Schengen area 1 May - 31 October 2014, COM (2014) 711 final

¹⁶⁰ Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC OJ L 150, 20.5.2014, p. 168–194

¹⁶¹ Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme Solidarity and Management of Migration Flows and repealing Council Decision 2004/904/EC

¹⁶² European Commission, Communication to the European Parliament, the European Council and the Council, Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration, Brussels, 23.9.2015 COM (2015) 490 final

countries to reduce migration flows. Since 2014, the EU established the Bêkou Trust Fund for Central African Republic¹⁶³ and the Madad Trust Fund for Syria.¹⁶⁴

3.2.3. The European Agenda on Migration

On 19 April 2015, a second incident in Lampedusa incident was repeated in higher extent with more than 600 dead refugees.¹⁶⁵ In the aftermath of this incident, the EU produced the “ Ten point action plan on migration”, the Commission of Foreign and Interior Ministers, chaired by High Representative / Vice-President Federica Mogherini agreed the reinforcement of the Frontex Joint military Operations Triton and Poseidon in the Mediterranean, a special effort to capture and destroy smuggling vessels, the deployment of Immigration Liaison Officers (ILO) who will be responsible for collecting intelligence on migratory flows, the escalation of the participation of Europol, Frontex, Easo and Eurojust in the fight against the smugglers.¹⁶⁶ On this plan, the Commission based the **European Agenda on Migration in May 2015** since it criticized the EU’s response as “ *immediate but insufficient. This cannot be a one-off response. Emergency measures have been necessary because the collective European policy on the matter has fallen short*”.¹⁶⁷ The Agenda was composed of five parts, including the relocation of refugees

¹⁶³ European Commission, Bêkou Trust Fund, https://ec.europa.eu/international-partnerships/programmes/bekou-trust-fund_en#related-documents, Accessed 4 February 2020

¹⁶⁴ European Commission, Agreement Establishing the European Union Regional Trust Fund in Response To the Syrian Crisis, “The Madad Fund”, Ref. Ares (2016)1329575 - 16/03/2016

¹⁶⁵ BBC News, Mediterranean migrants: Hundreds feared dead after boat capsizes, 19 April 2015, <https://www.bbc.com/news/world-europe-32371348>, Accessed 13 February 2020

¹⁶⁶ European Commission, Joint Foreign and Home Affairs Council: Ten-point action plan on migration, 20 April 2015, http://europa.eu/rapid/press-release_IP-15-4813_el.htm, Accessed 5 March 2019

¹⁶⁷ European Commission, A European Agenda on Migration, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2015) 240 final, Brussels, 13.5.2015., 2

according to the principle of responsibility sharing, the cooperation and support of third countries of origin and transit, the reinforcement of external border management and the discussion for amendment of the Dublin system. The Agenda also included the emergency funding for frontline states in addition to the establishment of hotspots in which both Frontex and EASO, Europol and Eurojust would support the frontline states in screening, identifying as well as returning the refugees.¹⁶⁸

Indeed, at this first stage until the first months of 2015, the EU focused on the reinforcement of external border controls and return of irregular migrants.¹⁶⁹ In the immediate actions, the 2015 Agenda included the tripling the budget of Frontex, the renewal of the Operations Triton in Italy and Poseidon in Greece (in Greek-Turkish borders since 2010) and the Commission suggestions for the further empowerment of the Agency.¹⁷⁰ In fact, the Commission had already proposed since 2014.¹⁷¹ Until 2016, the role of Frontex was only supportive and auxiliary, and intended to increase the efficiency of border controls, through the cooperation between Member States in order to implement an Integrated Management System of proper supervision, control and protection of the EU's external borders.¹⁷² However, the EU advanced the gradual reinforcement of Frontex as a result of the unprecedented rise of illegal border

¹⁶⁸ Annex 2 to the Commission Communication, Managing the refugee crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration, COM (2015) 490 final, 23.9.2015.

¹⁶⁹ Council of the European Union, Presidency to the Delegations, Migratory pressures: trends and further actions, Brussels, 27 February 2015, 6565/15, <https://data.consilium.europa.eu/doc/document/ST-6565-2015-INIT/en/pdf>, Accessed 22 January 2020

¹⁷⁰ Annex 2 to the Commission Communication, Managing the refugee's crisis: Immediate operational, budgetary and legal measures under the European Agenda on Migration, COM (2015) 490 final, 23.9.2015.

¹⁷¹ European Commission 2014. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An Open and Secure Europe: Making it Happen, COM (2014) 154 Final. Brussels: European Commission

¹⁷² Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 349, 25.11.2004

overpassing since 2013.¹⁷³ Indeed, in 2016 the Union reinforced re-launching of Frontex, under the name of European Border and Coast Guard, aiming to “...address migratory challenges and potential future threats at the external borders, ensure a high level of internal security within the Union..”.¹⁷⁴ Besides, the 2016 Frontex Regulation provided the Agency with the right to intervene in emergency circumstances which jeopardize the integrity and security of the Schengen Area,¹⁷⁵ aggrandizing the Agency’s autonomy.¹⁷⁶ Even more, Frontex is granted the right to send liaison officers and organize joint operations with third countries, including operating on their territory.¹⁷⁷ Frontex has expanded its competences with the responsibilities to assist the Commission’s support groups, organizing return and rescue operations, estimate the border control capacity of each state and safeguard the internal security of the EU. In 2019, the European Border and Coast Guard’s autonomy was further fortified with the right to recruit and acquire its own human resources, delinking from its dependency on the MS national guards.¹⁷⁸ In addition to its mission, Frontex activated its Rapid Border Interventions Teams to reinforce its capacity in dealing with illegal crossings.¹⁷⁹ Indeed, Frontex has emerged as the most important player

¹⁷³ Frontex (2016) Annual Risk Analysis, Risk Analysis Unit, European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Warsaw-Poland, Available at http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf

¹⁷⁴ Article 10, Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, *Official Journal of the European Union*, L 251/1, 16.9.2016

¹⁷⁵ Article 19, *ibid*.

¹⁷⁶ The regulation states that “In cases where there is a specific and disproportionate challenge at the external borders, the Agency should, at the request of a Member State or on its own initiative, organize and coordinate rapid border interventions and deploy both European Border and Coast Guard teams...”Article 24, *ibid*

¹⁷⁷ *Ibid*

¹⁷⁸ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 PE/33/2019/REV/1, OJ L 295, 14.11.2019, p. 1–131

¹⁷⁹ European Commission, Communication to the European Parliament, the European Council and the Council, Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration, Brussels, 23.9.2015 COM (2015) 490 final

during the crisis.¹⁸⁰ Besides, the Council and the EP had adopted the proposal of the Commission (2013) for the implementation of a Smart Borders Regulation for the monitoring and filling of all entry/exit movements on the Union's borders.¹⁸¹

Exuding from the fear of terror and its interrelation to irregular migration, the 10 points Action Plan and the Agenda on Migration included the proposal for the unfolding of the military operation in the Mediterranean for the destruction of the vessels of smugglers and the implementation of an operation of the European marine body EUNAVFOR, similar to the Operation Atalanta, aiming at locating and destroying the boats used by smugglers.¹⁸² The Council adopted all of the Commission's proposals and, in May 2015, the Decision of the Council (CFSP) 2015/778 launched the military initiative of the EU Naval Force body, EUNAVFOR Mediterranean operation "Sophia".¹⁸³ The objective of the decision was the EU commitment to cease the ongoing tragedies in the Mediterranean, but also the disruption of smugglers' operation model through the strengthening of EU maritime presence.¹⁸⁴ Placed institutionally and officially irregular migration under the auspices of militarization and defence policy, the Commission stated that " *migration will become a specific component of ongoing Common Security and Defence Policy*

¹⁸⁰ Interview with Commission Officer- External Relations, December 2019

¹⁸¹ Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011 OJ L 327, 9.12.2017, p. 20–82

¹⁸² European Commission, Joint Foreign and Home Affairs Council: Ten point action plan on migration, 20 April 2015, http://europa.eu/rapid/press-release_IP-15-4813_el.htm

¹⁸³ Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED) OJ L 122/31, 19.5.2015. The aim of the operation has been "the disruption of the business model of human smuggling and trafficking networks in the Southern Central Mediterranean (EUNAVFORMED), achieved by undertaking systematic efforts to identify, capture and dispose of vessels and assets used or suspected of being used by smugglers or traffickers", Article.1

¹⁸⁴ Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED) OJ L 122/31, 19.5.2015.

(CSDP) missions.”¹⁸⁵The EUNAVFOR MED operation “Sophia” is based on a military strategy aiming specifically at “to the disruption of the business model of human smuggling and trafficking networks in the Southern Central Mediterranean (EUNAVFORMED), achieved by undertaking systematic efforts to identify, capture and dispose of vessels and assets used or suspected of being used by smugglers or traffickers”.¹⁸⁶ In the same militarized scheme, the Operation Sophia which has been deployed in the Central Mediterranean, in the sea borders of EU with Libya has cooperated in the exchange of information with the NATO fleet which operated in the Greek-Turkish borders in the Aegean. NATO fleets committed to support the Greek and Turkish authorities and Frontex in their mission for the identification and surveillance of illegal crossings.¹⁸⁷ At the same time the Commission published the EU Action Plan against migrant smuggling (2015 - 2020) in which it announced the strengthening of Europol’s Joint Operational Team (JOT) MARE for tracking and informing on migration smuggling by the sea.¹⁸⁸ As a result, the MS have been ‘more willing’ to apply security measures against migration than to solve the long lasting problems of the internal system.¹⁸⁹ Indeed, it has been more “easy” for the MS politically to proceed to security measures and “sell” them to the public as major achievement of the EU.¹⁹⁰

The terrorist attacks in Paris turned the negotiations over refugees to discussions over security (Zaun 2018, Asderaki and Markozani 2021). Indeed, the reinforcement of external border controls and the strengthening of cooperation with third countries had been the two specific policy areas that the EU MS

¹⁸⁵ European Commission (2015), A European Agenda on Migration, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM (2015) 240 final, Brussels, 13.5.2015., p.5

¹⁸⁶ Article.1, *ibid.*

¹⁸⁷ NATO, Warsaw Summit Communique, 8-9.7.2016, http://www.nato.int/cps/en/natohq/official_texts_133169.htm, Accessed 12 December 2019

¹⁸⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions, EU Action Plan against migrant smuggling (2015 - 2020), Brussels, 27.5.2015, COM (2015) 285 final, <https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-285-EN-F1-1.PDF>

¹⁸⁹ Interview with Commission Policy Assistant- Asylum, December 2019

¹⁹⁰ Interview with Commission Officer- Irregular migration and Return, December 2019

unanimously accepted and supported. Thus, the integration of the area of external border controls was further promoted since the crisis created additional functional pressures on the external border controls regime. Besides, the crisis helped the Commission to pursue its proposals on bracing EU instruments of external border controls against the preservations of MS which wished to maintain EU competences limited in operating within their borders. The crisis and the unstoppable migration flows contributed to re-estimation of the need for more integration in the area of external border controls against concerns of protection of national sovereignty (Niemman and Speyer 2017). Moreover, all the MS agreed on speeding up actions for externalizing the crisis. Under the European Agenda on Migration, the High Representative Mogherini and the European Commission presented the New Partnership Framework of 2016. The New Partnership Framework on cooperation with third countries again aims at combating the root causes of migration, such as poverty, war and social injustice, and the return of illegal migrants. The intrinsic instruments of the new Partnership Framework for Mediterranean have been the EU-Turkey Statement, the revised European Neighbourhood Policy and Regional Development and Protection Programs, the Mobility and Readmission Agreements and the European Migration Liaison Officers¹⁹¹, the EU Cooperation Platforms on migrant smuggling and cooperation on border controls. The main objectives of the use of these tools are the management of migration before it touches the European land as well as the return of those who entered the EU illegally and have no right to international protection. This new EU structure aspired to build a tailor-made cooperation framework of “compacts” with every single country of origin and transit.¹⁹² Its interdependency with third countries incited the EU to apply a preferential framework on migration control with third countries, using financial sanctions and

¹⁹¹ See more Frontex Liaison Officers to non-EU countries, <https://frontex.europa.eu/we-build/other-partners-and-projects/liaison-officers-network/>

¹⁹² European Commission, Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank on establishing a new Partnership Framework with third countries under the European Agenda on Migration, Strasbourg, 7.6.2016, COM (2016) 385 final.

rewards as a negative and positive motivation, in a “carrot and stick” mode, for them to control properly their borders and manage migration in their countries. ¹⁹³

¹⁹³ Interviews with Commission Officer- External Relations and Commission Policy Coordinator- Asylum, December 2019

3.3 Mapping differentiated integration in EU measures on irregular migration and asylum

Policy measure	EU members	Differentiated EU members			EFTA states	Legal Quality	Decision taking	Policy implementation	
		UK and Ireland	Denmark	MS transitional non-participants					
B O R D E R S	Schengen Convention	All	Opt-out	Opt-in	Romania, Bulgaria, Croatia, Cyprus	All	Intergovernmental until the introduction of the Amsterdam Treaty when supranational	EU members	Full for all Schengen members
	SIS II Regulation (EC) No. 1987/2006 amended by Regulation (EU) 2018/1860 and Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862	All	Partial opt-in	Opt-in	Cyprus	All	Intergovernmental until the introduction of the Amsterdam Treaty when supranational	EU members	Full for all Schengen members
	Schengen Borders Code (Regulation (EC) No. 562/2006) amended by Regulation (EU) No. 1051/2013 and Regulation (EU) 2016/399	All	Opt-out	Opt-in	Romania, Bulgaria, Croatia, Cyprus	All	Supranational	EU members	Full for all Schengen members
	Web-based Information and Coordination Network for Member States' Migration Management Services	All	Opt-in	Opt-in	Romania, Bulgaria, Croatia, Cyprus	All,	Supranational	EU members	Full for all Schengen members

(Council Decision 2005/267/EC) (Built-up on Schengen)									
Immigration liaison officers network Regulation 377/2004 amended by Regulation (EU) No 493/2011 amended by Regulation (EU) 2019/1240 (Built-up on Schengen)	All	Opt-in	Opt-in		All	Supranational	EU members	Full for all Schengen members	
Frontex Regulation (EC) No 2007/2004 amended by Regulation (EU) 2016/1624 and Regulation (EU) 2019/1896 (Built-up on Schengen)	All	Opt-out	Opt-in	-	Norway, Iceland	Supranational	EU members (Limited voting rights for other)	Full for all members	
Prüm Convention(2005) and Prüm Council Decision (2008)	All	Opt-in	Opt-in	-	All	Intergovernmental and Supranational in 2008	EU members	Full for all members	
EUROSUR Regulation (EU) No 1052/2013	All	Opt-out	Opt-in	-	All	Supranational	EU members	Full for all members	
Dublin Convention (1990)	Belgium, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, Austria, Sweden,	Opt-in	Opt-in	-	Norway, Iceland	Intergovernmental until the introduction of the Amsterdam Treaty when supranational	Official members	Full for all members	

ASYLUM		Finland							
	Dublin Regulation II Council Regulation (EC) No 343/2003 amended by Dublin III Regulation (EU) No 604/2013	All	Opt-in	Opt-in (through international agreement)	-	All	Supranational	EU members	Full for all members
	Eurodac Council Regulation (EC) No 2725/2000 and Regulation (EU) No 603/2013	All	Opt-in	Opt-in (through international agreement)	-	All	Supranational	EU members	Full for all members
	Asylum Procedures Directive: Council Directive 2005/85/EC and Directive 2013/32/EU	EU MS	Opt-in/ Opt-out in 2013 Directive	Opt-out	-	-	Supranational	EU members	Full for all members
	The Reception Conditions Directive: Council Directive 2003/9/EC and Directive 2013/33/EU	EU MS	UK Opt-in/ Opt-out in 2013 Directive Ireland opt-out	Opt-in	-	-	Supranational	EU members	Full for all members
	The Qualification Directive: Council Directive 2004/83/EC and Directive 2011/95/EU	EU MS	Opt-in/ Opt-out in 2013 Directive	Opt-out	-	-	Supranational	EU members	Full for all members
	European Asylum Support Office Regulation 439/2010	EU MS	Opt-in	Opt-out	-	All	Supranational	EU MS (A representative from Denmark and EFTA states participate as observers)	Full for all members

	Asylum and Migration Fund Regulation Regulation (EU) No 516/2014	EU MS	Opt-in	Opt-out	-	-	Supranational	EU members	Full for all members
I L L E G A L M I G R A T I O N	Temporary Protection Directive (2001/55/EC)	EU MS	Opt-in	Opt-out	-	-	Supranational	EU members	Full for all members
	Mutual recognition of decisions on the expulsion of third country nationals Directive 2001/40/EC	EU MS	Opt-in	Opt-out	-	Iceland and Norway	Supranational		
	Carriers Sanctions Directive 2004/82/EC	EU MS	UK Opt-in Ireland Opt-out	Opt-in	-	Norway, Iceland	Supranational	EU members	Full for all members
	Returns Directive 2008/115/EC	EU MS	Opt-out	Opt-in	-	All	Supranational	EU members	Full for all members
	Employer Sanctions Directive 2009/52/EC	EU MS	Opt-out	Opt-out	-	-	Supranational	EU members	Full for all members
	Facilitation Directive 2002/90/EC	EU MS	UK opt-in Ireland Opt-out	Opt-in	-	Norway, Iceland	Supranational	EU members	Full for all members
	Human Trafficking Directive 2011/36/EU	EU MS	Opt-in	Opt-out	-	-	Supranational	EU members	Full for all members
	Trafficking Victims Directive (Residence Permits) 2004/81/EC	EU MS	Opt-out	Opt-out	-	-	Supranational	EU members	Full for all members

3.4. Conclusion of Part 3

After the establishment of the common market and the consequent of the abolition of the internal border controls of the Schengen Area, the EU recognized the growing interdependence and moved on enacting gradually the common migration policy which has included measures on legal and irregular migration as well as rules of external border controls. The establishment of EU migration and asylum policy has been considered by scholars as a spillover of the Schengen acquis which contributed to the convergence of MS preferences (Luedtke 2005; Niemman 2012; Leuffen et al. 2013). Indeed, the abolition of internal border controls necessitated the reinforcement on the cooperation of external border controls, the establishment of common visa policies, the information sharing through common databases such as the Schengen Information System (SIS) and the Visa Information System (VIS), but also the harmonization of asylum policies among the MS. As indicated in this part, the integration pathway of EU policy towards irregular migration has been built upon several milestones and elements of differentiated integration. This mapping exercise has helped us understand the dynamics of integration and differentiation in this policy field. While the 2015 refugee crisis had already reached EU, the member states had found consensus in reinforcing the external border controls and externalizing the crisis. Nevertheless, cooperation among MS during the crisis was not that unmitigated in other aspects of European Agenda on migration. In fact, the rise of Euroscepticism shuttered the foundations of EU migration policy and promoted the use of differentiated arrangements (see next Part 5).

PART 4. The treaty opt-outs: national identity, politicization and Euroscepticism.

Except for the contribution of DI in developing and expanding integration on migration policy, DI has been the management tool through which the politicization and Euroscepticism of specific member states have been accommodated allowing the integration to progress. The origins of such Euroscepticism can be found in issues of exclusive national identities, the mobilization of public by national political parties and the extensive use of referendums. The lack of Europeanized identities in the UK and Denmark has led people to turn to constraining dissensus on the matter of integration of core state powers such as the migration and asylum policies (Hooghe and Marks 2005; 2009). Euroscepticism driven by political parties in UK, provoking party-based Euroscepticism, but also the extensive use of referendums in Denmark, causing public Euroscepticism, had driven to polarization of the public and the politicization of the issues of migration, limiting integration options for these states (Lynch and Whitaker 2013; Schraff and Schimmelfennig 2020). Besides, the mobilization of national identity to deactivate the force of economic interests (Winzen 2016). DI has been the solution of these integration impediments, applying the two most important opt-outs to EU migration law.

4.1. UK: The frontrunner Euroscepticism

In 1953, Winston Churchill gave a speech in the British parliament on world affairs and the place of the UK in them. When he spoke about Europe, he stated *“Where do we stand? We are not members of the European Defence Community, nor do we intend to be merged in a Federal European system. We feel we have a special relation to both. This can be expressed by prepositions, by the preposition “with” but not “of”—we are with them, but not of them. We have our own Commonwealth and Empire”*.¹⁹⁴ The

¹⁹⁴ Foreign Affairs, HC Deb 11 May 1953 vol 515 cc883-1004, Col. 891, https://api.parliament.uk/historic-hansard/commons/1953/may/11/foreign-affairs#column_891, Accessed 20 September 2020

words of Churchill have mirrored the "instinctive and entrenched Euroscepticism" of the UK since the first instance of European integration (Goodwin and Milazzo 2015). UK's Euroscepticism has been based on the primacy of the Anglosphere over the European integration. This Eurosceptic Englishness has been situated on the strong feelings over national identity, tradition and history which generates a political dilemma for both the political parties and the public (Wellings and Baxendale 2015; Kenny 2015). The geographic position of UK and the islandic origin has played a fundamental role for British regarding themselves as separate from the rest of Europe (Daddow 2015). The 'imperial preference' and the strong ties with Commonwealth countries as well as the USA reduced the importance of establishing closer links with the EU. Besides, while the UK participated in WWII, the country was never occupied, not sharing the same grievances with the rest of Europe (Startin 2015; Daddow 2015). In addition to the sense of Britishness, the UK's entrance to EC was regarded through the prism of the Franco- German antipathy and national prejudices and the grievances of the war. Historically, British national identity has been defined in opposition to the French one since the Hundred Years War. Thus, the French influence in EC was considered as a way of French occupation of Britain. Moreover, the German involvement was seen through the prism of WWII and the German alleged tendency for domination of other countries (George 2000). As a result, politicization of European issues has been a constant in the UK while the salience of European integration has been high in every national election in the UK since the 1970s (Grande and Hutter 2016, 93-97). Political elites in UK have been the main mobilizers of Euroscepticism (Bevir et al 2015). The elite conception of the pre-eminence of the state authority over the European, the executive independence of governance and the support for intergovernmental cooperation has been the foundation of the British soft Euroscepticism. As a result, the political elite in the UK had never tried to create a popular base for the UK's part in European integration (Gifford 2014). The belief that the British parliament should have '*absolute sovereignty*' has been fundamental to both British elites and people (Baldini et al. 2019). National sovereignty was extensively related to the notion of British national identity, history and culture which has played a fundamental role in the British political right (Dorey 2017).

The UK's membership in the EU was influenced by both the memory of the war, the economic restraints of the period and the gradual loss of the empire. However, the first two applications of Harold Macmillan in 1961 and 1967 were vetoed by President De Gaulle.¹⁹⁵ In 1973, after the signing of the Treaty of Rome in 1972, the British application was accepted alongside the ones of Ireland and Denmark which formed the first enlargement of the EC.¹⁹⁶ The Labour party fervently criticized British entrance to the EC realized by the Conservative party, a position kept until the end of the 1980's (Evans 2002; Startin 2015). The Labour Party was, at that point, the main opponent of the UK membership to the pro-business and capitalist EC and the protection of trade among the Commonwealth countries as well as the EFTA cooperation. In 1974, the Labour party announced that, if it won in the next elections, it would renegotiate the terms of accessing EC and conduct a referendum on the membership.¹⁹⁷ Thus, Harold Wilson, as soon as he won the elections with the Labour party, held a referendum in 1975. The anti-capitalist and anti-marketeer concerns were not the sole reason for opposition, parliamentary sovereignty was promoted also. Nevertheless, the referendum aimed more at silencing the opposition to the EC within the Labour party than assessing the concerns of the people (Wellings 2010; Fontana and Parsons 2015). While in the 1975 referendum British people expressed their will to stay in EC, they have never developed common sense of belonging with their fellow Europeans. Depoliticization by pro-European elites of the EC based on economic and trade benefits was successful in the first referendum (Gifford 2014; Goodwin and Milazzo 2015; Wellings and Baxendale 2015; Usherwood 2018). However, the referendum led to the mobilization of nationalist concerns of national sovereignty and identity (Wellings 2010). During the

¹⁹⁵ Introduction to the Fonds of the Central Archives relating to the First Enlargement of the European Economic Community, 1961-73, <https://www.consilium.europa.eu/media/29665/archives-enlargement-1.pdf>, Accessed 17 September 2020

¹⁹⁶ Documents concerning the accession to the European communities of the Kingdom of Denmark, Ireland, the kingdom of Norway and the united kingdom of Great Britain and Northern Ireland OJ L 73, 27.3.1972, 5–204

¹⁹⁷ House of Commons, The 1974-75 UK Renegotiation of EEC Membership and Referendum, Briefing Paper Number 7253, 13 July 2015, <https://commonslibrary.parliament.uk/research-briefings/cbp-7253/>, Accessed 26 September 2020

referendum, the speech of the nationalist Enoch Powell reflected the considerations that the European integration posed to the English parliamentary sovereignty, as a guarantee of national independence, national identity, and its incompatibility with the EU. ¹⁹⁸

British national identity has been described by *“We have the character of an island nation – independent, forthright and passionate in defence of our sovereignty. We can no more change this British sensibility than we can drain the English Channel”*.¹⁹⁹ Besides, the islanding origin and position of the UK was the basis of its unwillingness to join the Schengen Area (Wiener 1999). Their isolated geographic position decreased the interdependence while the abolition of border controls would not diminish the costs and the time of goods transportation. Instead, border controls are regarded as an important security component (Leuffen et al 2013). As Robin Cook, the then Secretary of State for Foreign and Commonwealth Affairs, presented in the House of Commons *“because Britain is an island, it is sensible for us to retain controls at the point of entry, and that, because of our long historical and cultural ties with other parts of the world, it is important to retain control of our own immigration policy”*.²⁰⁰ Contrary, Ireland has not presented a high level of politicization and issues of national identity. Ireland maintained the agreement of a Common Travel Area ²⁰¹ with the UK which is Ireland’s most important economic and

¹⁹⁸ Powell, E. 1975. ‘The great debate’. BBC Radio Three, 4 May 1975.

¹⁹⁹ Cameron, D. ‘Speech on Plans for a Referendum on British Membership of the EU’, 23 January 2013. <http://www.guardian.co.uk/politics/2013/jan/23/david-cameron-eu-speech-referendum>, Accessed 19 September 2020

²⁰⁰ House of Commons Hansard, 12 November 1997, col 910. https://publications.parliament.uk/pa/cm199798/cmhansrd/vo971112/debtext/71112-22.htm#71112-22_head1, Accessed 17 October 2020

²⁰¹ Since the establishment of the Irish Free State in 1922, the UK and Ireland maintain a Common Travel Area (CTA). UK Home Office, Common Travel Area, last updated on 14 April 2020, See more, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/879600/common-travel-area-v7.0ext.pdf, Accessed 2 October 2020

trade ally and shares a peace agreement with the UK²⁰² which stimulates many times the harmonization of Ireland with the UK in international politics (Emerson 2011). As a result, the Irish state recognized high negative costs of its potential adherence to Schengen (Leuffen et al 2013; Rittenberg et al 2014,204-5). The UK wished to maintain internal border controls aiming to have “*control of immigration to prevent illegal immigrants from entering the UK*” and “*ensure national security, preventing organised crime and terrorism*”.²⁰³ Against the elimination of the costs of travelling, trade and tourism, the UK had maintained that the preservation of its border controls protects its national security.²⁰⁴

4.1.1. The Conservative soft Euroscepticism

Since the end of 1980's, the main constant Eurosceptic force in the UK has been the Conservatives once the Labour party had turned more pro-European (Evans 2002; Evans and Mellon 2019). The entry of the UK to EC was primarily abetted by the Conservatives and Margaret Thatcher, who regarded EC as an opportunity to enhance the national trade revenue. Thatcher had taken the wheel of the Conservative party a little before the first referendum on EC in the UK at the time when the discussion on Europe was based on technocratic and neoliberalism of free market and economic interests. She supported the expansion of the single market, lining up with the Conservatives' objectives on the free market (George 2000). Her opposition to EC was first expressed in the UK's contributions to the EC budget which she supported was higher than the other MS and pledged for the return of the British money back. She later stood in favor of the liberalization of the single market and, in 1986, she compromised with SEA's

²⁰² The Belfast or Good Friday Agreement, 1998, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf. Accessed 7 November 2020

²⁰³ HM Government, Review of the Balance of Competences between the United Kingdom and the European Union- Asylum and non-EU Migration, Review of the Balance of Competences between the United Kingdom and the European Union, Asylum & non-EU Migration, February 2014.6, <https://www.gov.uk/government/consultations/asylum-and-non-eu-migration-review-of-the-balance-of-competences>. Accessed 10 November 2020

²⁰⁴ Ibid

expansion of QMV which undermined British right to veto decisions (Fontana and Parsons 2015; Dorey 2017). Besides, it was the Conservative party under Margaret Thatcher that first promoted the intergovernmental cooperation with European states on asylum and migration through the establishment of the Ad Hoc Group on Immigration in 1986 (Geddes 2005). Nevertheless, progressive expansion of EC integration on social and employment rights generated the strong reaction of Thatcher's neoliberalism, accusing EC for "*spreading socialism*" (Thatcher 1988). Indeed, Thatcher's perception of the free market did not include European institutional authorities over national (Fontana and Parsons 2015). Her opposition to European centralization was explicitly defined in her 1988 Bruges speech when she declared that "*To try to suppress nationhood and concentrate power at the centre of a European conglomerate would be highly damaging and would jeopardise the objectives we seek to achieve...We have not successfully rolled back the frontiers of the state in Britain, only to see them re-imposed at a European level with a European super-state exercising a new dominance from Brussels*".²⁰⁵ In her view, the supremacy of the British national identity had to preside over the constraints of European integration and centralized lawmaking (Wellings and Baxendale 2015, Kenny 2015, George 2000, Black 2019; Daddow 2015). Without any hesitation, she stood against political and legal integration as well as the reinforced supranational bodies such as the Commission. In her words, "*A Community of sovereign states committed to voluntary cooperation, a lightly regulated free market and international free trade does not need a Commission in its present form...The work of the Commission should cease to be legislative in any sense. It should be an administrative body, like any professional civil service, and it should not initiate policy, but rather carry it out*" and supporting that "*We should aim at a multi-track Europe in which ad hoc groups of different states — such as the Schengen Group — forge varying levels of co-operation*

²⁰⁵ Margaret Thatcher, Speech to the College of Europe ("The Bruges Speech"), 1988 Sep 20, <https://www.margarethatcher.org/document/107332>, Accessed 18 November 2020

and integration on a case-by-case basis".²⁰⁶ Actually, the deepening of EU integration was regarded by the Conservatives as a decline of the preeminence of the Englishness and British imperial tradition (Wellings 2010; Daddow 2015).

Undeniably, Thatcher's Euroscepticism laid the foundations of the Conservatives' stance towards the EU (Wellings 2010). Nevertheless, her fervent Euroscepticism accentuated even more the split within the Conservative party (Startin 2015). While she increased Euroscepticism both politically and publicly, she lost support of many of party colleagues who accused her of obsession against Europe. Inter-party criticism resulted in Thatcher's resignation (Fontana and Parsons 2015; Dorey 2017). However, the end of Thatcher's service in Downing Street was not followed by a decrease of Euroscepticism. Instead, the Thatcherites continued to play a pivotal role in driving the Conservative party to more Eurosceptic positions. The Conservative MP's that were the minority under Thatcher, after her demise became the majority within the party opposing the expanding competencies of the EU (Dorey 2017). Thatcher's legacy elicited the emergence of the state as the protector of the free market and liberalization of the economy, the opposition against anything that would diminish the parliamentary sovereignty and national autonomy such as the introduction of the QMV in EC decision-making and the reinforcement of the UK's special relationship with US. Besides, the ties with US and the Commonwealth are considered as part of the British national identity (George 2000; Fontana and Parsons 2015; Daddow 2015). As perceived by Thatcherites, the pooling of sovereign competencies to EC and supranationalism were seen as undemocratic since EC institutions were not accountable to British people. Consequently, the Conservative Eurosceptics sponsored intergovernmental instead of supranational cooperation (Fontana

²⁰⁶ Margaret Thatcher, Speech in the Hague ("Europe's Political Architecture"), 1992 May 15, <https://www.margarethatcher.org/document/108296>, Accessed 22 November 2020

and Parsons 2015; Dorey 2017). The political tradition left by Thatcher was based on the idea of the “outsider” in the EU (Fontana and Parsons 2015; Daddow 2015).

The Eurosceptic voices within the Conservative party greatly influenced the Maastricht Treaty negotiations (Startin 2015). In 1992, the advent of the Economic and Monetary Union in the Maastricht Treaty re-emerged the difference of preferences among European states, with France and Germany to support the single currency and the UK to oppose it. In contrast to Chancellor Kohl who regarded the introduction of the Euro as the signal of peace, the Conservatives defended the pound as part of the British identity (Borzel and Risse 2020). While the deepening of European integration was regarded by France and Germany as a way to overcome past grievances, for the British portrayed the acceptance of a “defeat” since it had to concede vital parts of its national sovereignty and supremacy. Based on this perception, politicians such as Boris Johnson resembled the EU as the domination of Hitler or Napoleon (Daddow 2015; Black 2019). The party had been increasingly divided but won the elections in 1992, when the Maastricht Treaty was criticized as establishing the United States of Europe (Fontana and Parsons 2015; Dorey 2017). The Conservative Party, which, being divided after Thatcher’s demise, won the elections under the leadership of John Major, regarded the advent of Maastricht Treaty (1992) as promoting the establishment of the United States of Europe (Fontana and Parsons 2015; Dorey 2017). Within the Conservative party the clash was between soft and hard Eurosceptics. Hard Eurosceptics were supporting the disengagement by German and French intentions to deepen EU integration while soft Eurosceptics, such as Major, upheld the conditioned engagement (Gifford 2010). While John Major, Thatcher’s successor, had more pro-European intentions, he was confronted with opposition from within the Conservatives (George 2000). Indeed, he supported the UK’s “...future is as a European power, albeit as one with continuing responsibilities in many parts of the world. The balance of national interests lies

clearly in making a success of our membership of the Community....”²⁰⁷ The sturdy negotiation of the British opt-outs of the Maastricht Treaty, in the EMU and the social chapter,²⁰⁸ and the successful endorsement of cooperation “... *in a legally binding but intergovernmental framework in the three key areas of law and order, foreign policy, and defence policy*”²⁰⁹ helped Major in gaining some support from Eurosceptics, gaining positive endorsement of Thatcher herself (Fontana and Parsons 2015). Actually, the opt-outs were the only way of Major succeeding in the ratification of the Maastricht Treaty. Therefore, it “*was not that the Party was too Thatcherite, but that it was no longer Thatcherite enough*” (Dorey 2017,31) that led to the Conservative loss of 1997 elections by Tony Blair’s New Labour. The Euroscepticism of the Conservatives continued under the next leaders (Hague, Duncan Smith and Howard), using at times populist anti-European and anti-immigration positions (Fontana and Parsons 2015).

4.1.2. The Labour Party and British exceptionalism

Having ascended as the leader of the Labour Party in 1994, the election of Tony Blair as Prime Minister in 1997 resulted in the re-launch of the party as the “New Labour” (Evans and Mellon 2019). The Labour Party maintained a kinder position towards EU and supported internationalism with Blair to be characterized as a Euroenthusiast (Snapper 2015). Indeed, he believed “that this new extreme anti-Europeanism has no economic logic, is damaging to Britain’s economic interests today and must be

²⁰⁷ Mr Major’s Commons Statement on Maastricht – 18 December 1991, <http://www.johnmajorarchive.org.uk/1991/mr-majors-commons-statement-on-maastricht-18-december-1991/>, Accessed 29 November 2020

²⁰⁸ Protocol (No 25) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland (1992), annexed to the Treaty establishing the European Community

²⁰⁹ Op.cit. 204

firmly resisted".²¹⁰ Blair himself was the less Eurosceptic British Prime Minister, supporting that "strengthening the Commission's authority in making sure Europe's rules are obeyed".²¹¹ However, he still sided with the protection of national identity and opposed the over-centralization of state powers to the EU "Europe of sovereign nations, countries proud of their own distinctive identity, but cooperating together for mutual good. We fear that the driving ideology behind European integration is a move to a European superstate, in which power is sucked into an unaccountable centre".²¹² For Blair's New Labour, the preservation of Englishness and support of the EU were regarded as complemented notions. Notwithstanding, Blair also accentuated the value and importance of the UK-US relationship, especially after 11/9 and the consequent American invasion of Iraq in 2003 in which the UK participated supporting its Atlantic ally (Wellings 2010). Blair viewed the UK as the bridge between US and Europe (Snapper 2015), believing that British identity was tied to the European continent and that Britain could be great again working closely with the EU.²¹³ The Labour party maintained the role of the UK as a global actor rather than as a merely European one. The meaning of the UK as an open international power was regarded as a part of British national identity by Brown and Miliband too, Tony Blair's successors.²¹⁴ Therefore, they supported EU in the framework of globalization which demanded international and multilateral coordination and international organizations mainly for reaping the benefits of the global

²¹⁰ Tony Blair: Making the case for Britain in Europe, 27 Jul 1999, <https://www.theguardian.com/business/1999/jul/27/emu.theeuro2>, Accessed 30 November 2020

²¹¹ Tony Blair, A Clear Course for Europe, Speech delivered at Cardiff, 28 November.2002, <http://www.astrid-online.it/static/upload/protected/A.TO/A.TONY-BLAIR-Speech-on-Europe--Cardiff-28.11.2002.pdf>, Accessed 5 December 2020

²¹² Ibid

²¹³Speech by the Prime Minister Tony Blair about Britain in Europe - 14 October 1999, <https://webarchive.nationalarchives.gov.uk/20041012020341/http://www.pm.gov.uk/output/Page1461.asp>, Accessed 8 December 2020

²¹⁴ Brown's Mansion House speech, at the Mansion House, London, 17 Jun 2004 and Miliband, E. 'One Nation in Europe'. Speech to the CBI annual conference, 19 November 2012, <http://www.ukpol.co.uk/ed-miliband-2012-speech-to-the-cbi-conference/>, Accessed 12 December 2020

market that would be undermined by applying an isolationist policy (Gifford 2014; Snapper 2015) .²¹⁵For instance, migration was regarded from Miliband mainly as a consequence of globalization.²¹⁶ In this framework, the EU was conceived as another international organization promoting British trade and security. They both supported the UK's participation in the UK as a means of reinforcing their economy and security. In contrast to Blair, Brown opposed UK participation in the Eurozone (Snapper 2015). Tony Blair was a pro-European leader aspiring to generate pro-European feelings in the UK (Gifford 2014). While he failed this goal, he did manage to normalize UK-EU relations (Daddow 2013).

Since 1997 and the Amsterdam Treaty the EU kept acquiring more competencies in core state powers, deepening integration, and enlarging towards Eastern Europe which triggered more Euroscepticism within the Conservatives accusing it of becoming the European Super-state that would threaten MSs sovereignty (Fontana and Parsons 2015). The Amsterdam Treaty constitutionalized the internal differentiation of the Schengen of the UK and Ireland which succeeded in controlling their participation in JHA measures according to their wishes.²¹⁷ Nevertheless, the Treaty of Amsterdam included the possibility for the UK and Ireland to opt in to Schengen measures at any time in the future, in some or all policy arrangements as soon as the unanimous acceptance of the Council, expanding in this way the horizontal differentiation.²¹⁸ This partial participation of the UK to Schengen rules was accepted by the

²¹⁵Brown's Mansion House speech, at the Mansion House, London, 17 June 2004
<http://www.theguardian.com/politics/2004/jun/17/economy.uk>, Accessed 13 December 2020

²¹⁶ Miliband, E., Speech to the Labour Party conference, 28 September 2010.
<http://www.independent.co.uk/news/uk/politics/full-text-of-ed-milibands-speech-2092068.html>, Accessed 15 December 2020

²¹⁷ Protocol No 4, Treaty on European Union, on the position of the United Kingdom and Ireland,
OJ C 340 (10 November 1997).

²¹⁸ Specifically, the Treaty stated "Ireland and the United Kingdom of Great Britain and Northern Ireland, which are not bound by the Schengen acquis, may at any time request to take part in some or all of the provisions of this acquis. The Council shall decide on the request with the unanimity of its members referred to in Article 1 and of the representative of the Government of the State concerned.", Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 2 October 1997, Article 4, 95. House of Lords, Schengen Agreement: A

Council in 2000.²¹⁹ This favorable treatment, and horizontal differentiation, gave the opportunity to Ireland and the UK to choose the most beneficial combination of integration in a la carte mode (Monar 1998, 137, Geddes 2005). Indeed, the UK had managed to participate “*in measures selectively, deciding on a case-by-case basis whether opting in would be in its best interests*”.²²⁰ The conditional engagement of the UK with EU cooperation has been dependent on whether the latter coincides with the objectives of the domestic policy agenda and the principle that the British parliamentary democracy remains unhurt. In other words, it has been a vital need for the UK to compensate for the differentiated integration with the EU with the British political tradition in which political elites and parliamentary government have the final say in every political move and is the sole source of sovereignty and central authority. In this scheme, differentiated integration and mainly intergovernmental cooperation have been the instruments of British engagement to EU in such ways to avert major modifications in UK positions. Moreover, the exceptionality of UK, as understood by the British, has been that significant to “*to get the best out of it, we must make the most of our strength and influence within it*”;²²¹ as Blair put it.

In the field of migration, Tony Blair explained that the opt-out-opt-in protocol offered the British state “*the best of both worlds*”²²² especially in the field of migration. Indeed, the UK had built a mix of British and European migration rules and had succeeded in externalizing migration control without any concessions

Short History, 07 March 2016, <https://lordslibrary.parliament.uk/research-briefings/ln-2016-0013/>, Accessed 16 December 2020

²¹⁹ 2000/365/EC: Council Decision of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis, OJ L 131, 1.6.2000, 43–47

²²⁰ House of Commons, Leaving the EU, Research Paper 13/42, 1 July 2013, 67, <https://commonslibrary.parliament.uk/research-briefings/rp13-42/>, Accessed 16 December 2020

²²¹: Blair, Tony, "Full text of Blair's speech – The full text of Tony Blair's speech to the European Research Institute" https://www.cvce.eu/en/obj/speech_by_tony_blair_at_the_european_research_institute_on_the_future_of_europe_birmingham_23_november_2001-en-a6ad7629-9e6f-43cb-9a9a-9c65ab918501.html, Accessed 19 December 2020

²²² Blair defends new EU asylum plans, 25 October 2004, BBC News, http://news.bbc.co.uk/2/hi/uk_news/politics/3950015.stm, Accessed 20 December 2020

in its border controls. The UK had promoted a dual policy on migration that lied on two main axes. Firstly, protecting the core of the policy, sovereignty, and national border controls and, secondly, cooperating with the EU for the forms of migration that were considered as unwanted. Thus, its policy had been placed in between the interdependence with other MS and an exceptionalist stance for protecting its basic sovereign rights. In this framework, most of the EU rules on asylum, return and readmission had coincided with UK objectives. This pick-and-choose position had increased differentiated integration. Whereas the UK opted-in most civil law, asylum and illegal migration measures but rejected any measure of legal migration and visas (Leuffen et al 2013). Measures with strong security elements on data control, such as the Schengen Information System II, or EU external border controls and Frontex operations²²³ also fell within the British interests.²²⁴ Moreover, its opt-ins in the seven EU asylum measures²²⁵ of the first asylum package has been regarded as a result of the failed attempts of UK governments' legislation to reduce the number of asylum seekers in the period 1993 to 2002 (Geddes 2005). For the British government, the Dublin System has been an important beneficial measure for the wished reduction of asylum application. However, protective measures such as the rules on family reunification or the protection of the trafficking victims have not been in line with British goals on migration (Geddes 2005). In fact, the Dublin system was separated from the original Schengen Agreement because of the British influence and preference to participate in Dublin rules but not in Schengen.²²⁶

²²³ The UK has sought for full participation in Frontex. It was denied full membership by the Council on the basis that it was not a Schengen member. The UK challenged the decision of the Council in CJEU which supported the Council's denial of accepting the UK as a full member. See *United Kingdom v Council*, Case C-77/05 [2007] E.C.R judgment.

²²⁴ Council Decision (EC) 2000/365 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis, OJ L 131/43 and 2004/926/EC: Council Decision of 22 December 2004 on the putting into effect of parts of the Schengen acquis by the United Kingdom of Great Britain and Northern Ireland OJ L 395, 31.12.2004, 70–80

²²⁵ The Dublin II Regulation EC No. 343/2003; the Eurodac Regulation EC No 2725/2000; the Temporary Protection Directive 2001/55/EC; the Reception Conditions Directive 2003/9/EC; the Qualification Directive 2004/83/EC; and the Asylum Procedures Directive 2005/85/EC

²²⁶ Interview with Former Assistant of the President of the Council, February 2021

From 1997 to 2004 the British migration policy became more liberalized especially towards labour migration as a part of the modernization of British economy by Blair's New Labour. During this time, concern over migration was on medium levels (Somerville and Sriskandarajah 2009; Ford et al. 2015). However, anti-migration feelings were heightened after 2004 the EU enlargement due to the big numbers of Eastern European migrants arriving in the UK. In fact, the UK did not apply the transition arrangements (for eight of the ten new MS) which all the MS had the right to implement for seven years after the entrance of the accession states. This resulted in immediate increased flows of EU migrants towards the UK. The British decision was the result of a wrong measurement of the incoming migrants by the Labour government based on a Home Office report that estimated that incoming migration flows would fluctuate between only 5,000 and 13,000 immigrants per year based on the assumption that most of these migrants would have moved towards Germany. However, Germany did implement the transition arrangement of controlling migration from the accession party (Home Office Online Report 25/03).²²⁷ Only Ireland and Sweden applied the same policy, all the other MS implemented the transitional arrangements. This estimate had been not only wrong but a very lower than the actual flows. It was very late when Tony Blair realized how strategically harmful was the decision of his government.²²⁸

The relation between the concerns about migration and anti-EU sentiment was channeled in party competition which raised the politicization of migration and EU integration (Evans and Chzhen 2013). As a result, just before the 2005 elections, the politicization of migration raised to the point that the

²²⁷Home Office Online Report 25/03, The impact of EU enlargement on migration flows. Preparation of this report has been directed by Christian Dustmann, with the participation of Maria Casanova, Michael Fertig, Ian Preston and Christoph M Schmidt. Report commissioned by the Immigration and Nationality Directorate of the UK Home Office. https://www.ucl.ac.uk/~uctpb21/reports/HomeOffice25_03.pdf, Accessed 5 December 2020

²²⁸Tony Blair admits he did not realise how many migrants would come to the UK after EU expanded, The Telegraph, https://www.telegraph.co.uk/news/2017/03/19/tony-blair-admits-did-not-realise-many-migrants-would-come-uk/?WT.mc_id=tmgliveapp_androidshare_AnjSzsdxpSsP, Accessed 16 December 2020

Conservative party announced its willingness to impose migration quotas and withdrawal from the Geneva Convention²²⁹ while Tony Blair to support stricter controls on asylum and migration.²³⁰ Indeed, the decision not to impose the transition arrangement of control of the free movement towards the accession countries has been regarded as the catalyst in mounting Euroscepticism and anti-migration in the UK (Evans and Mellon 2019). The problems were not identified strictly in the migration rates, since people have not a clear perception of rates, but how people perceived migration was influenced by political parties and the media (Dennison Geddes 2018). Therefore, the British exceptionalism based on the British tradition and identity have been mingled with opposition to migration flows (Hawkins 2012).

4.1.3. The Lisbon Treaty, cherry-picking and the “re-negotiation”

In the Lisbon Treaty, the Brown government entered the negotiations with the EU including the necessary opt-outs as well as “red lines” which were announced even before the beginning of the negotiations, staying loyal to the approach of flexibility (Gifford 2010). Besides, none of the Labour leaders have ever supported the idea of a federal Europe on the basis of the protection of British identity and national interest. Conditioned participation based on EU weaknesses, false priorities and “inwardness” of internal integration contradicted Euroscepticism based on sovereignty of the Conservatives (Snapper 2015). As Brown disclosed the British values are important to drive “*a global Europe that the only way forward is inter-governmental, not federal; mutual recognition, not one-size-fits-all central rules; tax competition, not tax harmonisation, with proper political accountability and subsidiarity, not a superstate*”.²³¹ As a result,

²²⁹Howard calls for asylum cap, 24 Jan 2005, The Guardian, <https://www.theguardian.com/society/2005/jan/24/asylum.immigrationasylumandrefugees>, Accessed 5 August 2020

²³⁰Tony Blair's speech on asylum and immigration, 22 Apr 2005, The Guardian <https://www.theguardian.com/politics/2005/apr/22/election2005.immigrationandpublicservices>, Accessed 5 August 2020

²³¹ G. Brown, ‘British Values can help shape Europe for the 21st century’. <https://www.telegraph.co.uk/news/uknews/1539367/We-need-a-United-Kingdom.html>

the opt-outs of UK and Ireland from the Title V TFEU of the supranationalised AFSJ policies and Schengen have been included in two distinct protocols, consisting of a conglomerate set of rules, in the Lisbon Treaty.²³² Still, both the UK and Ireland extended the right to opt-in to all of their preferred measures of the Title IV TEC within three months of their proposal. They can opt-in later under the condition that their application is approved by the Commission (Article 4 of the Protocol on the Position of UK and Ireland). The votes of the UK and Ireland (and Denmark) in the Council are considered only if they have opted in the measure discussed. The Schengen Acquis and the members participating in it is contained in the Protocol 197 of the Lisbon Treaty. The UK and Ireland can request to participate in all or some Schengen measures (Protocol 197, Article 4). After the adoption of a Schengen provision, the state must notify the Commission about its request to participate in the measure and the Council shall vote to accept it (Article 331(1)) if the conditions from participation are not fully fulfilled.

Moreover, a distinct protocol offered the UK the right to implement a massive opt-out from 130 AFSJ measures until 2014 in case the state did not agree with the advanced role of CJEU after the entry into force of the Lisbon Treaty.²³³ This right was possible to be implemented as a “block opt-out” from all the third pillar rules and had to be applied at least six months before the end of the five years transitional period.²³⁴ Indeed, the UK had decided to make use of the block opt-out as the state notified the Council in July 2013.²³⁵ The UK declared opt-outs from all the post-Lisbon Treaty measures of migration

²³² Protocol No. 20 on the relationship between the common travel area of Ireland and the UK and their right to conduct border checks; Protocol No. 21 on the position of Ireland and the UK in respect of the AFSJ, TFEU

²³³ Protocol No 36, Article 10, Treaty on European Union, on transitional provisions , OJ C 115 (consolidated version of 9 May 2008)

²³⁴ Protocol no. 36 on Transitional Provisions, [2008] OJ C 115/322, Article 10(4), Lisbon Treaty

²³⁵ Decision pursuant to Article 10 of Protocol 36 to the Treaty on the Functioning of the European Union, Cm 8671 July 2013, pp 9–12: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235912/8671.pdf, Accessed 9 August 2020

policy.²³⁶ Thus, in November 2014, the Council adopted the Decision for the transitional measures of UK's opt-outs. However, on December 2014 the Commission and the Council adopted relevant Decisions allowing UK to opt-back-in specific third pillar measures (35 measures in total such as the European Arrest Warrant, Eurojust and Europol),²³⁷ a right given to the UK since the signing of the Lisbon Treaty in the Protocols 19, 20 and 21 (the procedure described in article 331.1). Veritably, the stance of the UK and Ireland had changed in the second phase of asylum and migration legislation and applied a cherry-picking attitude. For instance, the UK government succeeded in partially participating in the SIS II in 2015 which gives it access to an enormous information database, whether not participating in Schengen.²³⁸ In the field of asylum, one of the main reasons is that by opting-out from the very essence of protection rules, the stance of the UK undermined the substance of the principle of mutual recognition (El-Enany 2017). Ergo, the possibility of negative external effects provoked by the introduction of the Common European Asylum policy generated the participation of the UK and Ireland in the Dublin regime and the other CEAS' provisions firstly adopted in 2005 but, in the amendments of 2013, opted out except for the Dublin Regulation (Guild 2016). The Dublin Regulation and the Eurodac Regulation²³⁹ were regarded from the British government as beneficial measures in the management of incoming asylum seekers and, thus, they perceived their participation. On the contrary, the rest of the asylum directives were considered as invading and less constraining measures than national protection rules (El-Enany 2017). The British Government believed that "*opting into the recast directives has helped the UK's interests by*

²³⁶ HM Government, Decision pursuant to Article 10 of Protocol 36 to The Treaty on the Functioning of the European Union, July 2013, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235912/8671.pdf, Accessed 10 August 2020

²³⁷ Commission Decision of 1 December 2014 on the notification by the United Kingdom of Great Britain and Northern Ireland of its wish to participate in acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon and which are not part of the Schengen acquis, 2014/858/EU, OJ L 345, 1.12.2014, 6–9

²³⁸ HM Government, The UK's cooperation with the EU on justice and home affairs, and on foreign policy and security issues, Background Note, 9 May 2016, <https://www.gov.uk/government/publications/the-uks-cooperation-with-the-eu-on-justice-home-affairs-foreign-policy-and-security-issues-background-note>, Accessed 12 August 2020

²³⁹In addition, the UK had opted in the Regulation establishing the EASO.

*reducing unfounded asylum intake in comparison with other Member States, and that opting in was unnecessary because UK standards on asylum are much higher than many Member States who are signed up to the EU Asylum Directives”.*²⁴⁰ While UK did not participated in the second generation of Directives on qualification, procedures and reception conditions (and the extension of the long-term residents’ Directive) , it continued to apply the first generation of the Directives on qualification and procedures and Reception conditions. Neither UK nor Ireland participates officially to readmission agreements while UK and Ireland also abstain from border controls agreements. The opt-out protocols include international agreements realized in the framework of Title V Part Three TFEU.²⁴¹ Notwithstanding, this rule is not dogmatically implemented since procedural flexibilities have been usually practiced.²⁴²

The anti-immigration attitudes had been gradually rising since 2004 which turned to a growing anti-EU sentiment. The growing concern over EU migration was deteriorated by the 2008 economic crisis,, favoring the Conservatives’ policies who promised more restrictive policy (Dennison Geddes 2018). The British government used to restrict its migration policy every time the public showed dissatisfaction over migration flows, functioning in a “thermostatic” way. However, the UK government was deprived of any policy restricting the EU migration, once the latter was based on the four freedoms of the internal market. This generated an increasing feeling of dissatisfaction among the people (Evans and Mellon 2019). David Cameron was elected as a leader of the Conservatives in 2005 and tried to depoliticize the EU and

²⁴⁰ HM Government, Review of the Balance of Competences between the United Kingdom, and the European Union- Asylum and non-EU Migration, 6,

²⁴¹ Article 2 of Protocol 21 on the Ireland and the UK

²⁴² UK had participated in the Readmission Agreements with Albania, Bosnia and Herzegovina, Georgia, Hong Kong, Macao, North Macedonia (fYRoM), Moldova, Montenegro, Russia, Serbia, Sri Lanka, Ukraine. More information on UK’s participation on AFSJ external Agreements: European Parliament LIBE committee, Brexit and Migration, October 2018, [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608835/IPOL_STU\(2018\)608835_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608835/IPOL_STU(2018)608835_EN.pdf), Accessed 30 July 2020

migration matters and try to be more progressive, supporting the EU as a “*flexible union*” (Gifford 2014). However, his Conservative colleagues and EU developments did not allow him to promote this agenda (Dorey 2017). In this framework, his government withdrew its MEP’s from the center-right EPP in 2009 EP elections,²⁴³ declaring that “*it is not standing up for Britishness when you undermine our Houses of Parliament by passing more and more power to Brussels*”.²⁴⁴ His hard Eurosceptic turn should be seen through the spectrum of UKIP’s crescent success in EP elections. For instance, UKIP gained 15,6% in 2004 EP elections, 16.5% in 2009 and until the 2014 EP elections UKIP had reached 27% of the vote. Thus, the Conservatives joined UKIP in the Eurosceptic rhetoric gaining the main position in the two Eurosceptic political groups in the European Parliament (Startin 2015).

From 2005 until 2009, Cameron was calling for a referendum prior to the ratification of the Lisbon Treaty. Surprisingly, he declared in 2009 that “*We cannot hold a referendum and magically make...the Lisbon treaty...disappear, any more than we could hold a referendum to stop the sun rising in the morning*” but promised that “*Never again should it be possible for a British government to transfer power to the EU without the say of the British people*”.²⁴⁵ His decision was met with great criticism in his party which resulted in his yielding that any further transfer of sovereignty right to the EU should be subject to a referendum. In 2010, just seven of the elected Conservative MPs were listed as pro-Europeans while the rest were divided between soft and hard Eurosceptics, indicating that Eurosceptic ideas had spread to the public (Dorey 2017). This fact contributed to the even forceful shift towards populist Euroscepticism (Fontana and Parsons 2015). The Conservative decision not to proceed to a referendum before the

²⁴³ The End of a Loveless Marriage: Cameron plans EPP exit, April 21, 2009, European Foundation, <https://europeanfoundation.org/the-end-of-a-loveless-marriage-cameron-plans-epp-exit/>, Accessed 29 July 2020

²⁴⁴ David Cameron MP: Proud to be British, July 10, 2009 <http://conservativehome.blogs.com/platform/2009/07/david-cameron-proud-to-be-british.html>, Accessed 21 July 2020

²⁴⁵ Cameron speech on EU, 4 November 2009, BBC News, <http://news.bbc.co.uk/1/hi/8343145.stm>, Accessed 20 July 2020

ratification of the Lisbon Treaty was used by the hard Eurosceptics to mobilize the public against EU authority and shatter the fragile foundations of the coalition government and fed the rising UKIP. Cameron's government was significantly pressed to live up to the Conservative Eurosceptic expectations which resulted in the 2011 European Act²⁴⁶ and the declaration of the referendum for any further transfer of state competency to the EU. Nevertheless, the Conservative party kept pushing him to declare a referendum anyway. In the same context, in October 2012, eighty-one Conservatives grouped filing a motion calling for repatriation of powers from the EU and a referendum on EU membership (Lynch and Whitaker 2013). Therefore, the UK Government started putting together a Review of the Balance of Competences in July 2012 until 2014,²⁴⁷ outlining the impact of the EU in the UK. Subsequently, in his Bloomberg speech in January 2013, stated that flexibility should be a long-lasting principle of European integration, explaining that *"We need a structure that can accommodate the diversity of its members - North, South, East, West, large, small, old and new. Some of whom are contemplating much closer economic and political integration. And many others, including Britain, who would never embrace that goal"*.²⁴⁸ In the same speech he explained that the UK opposes further centralization of supranational organs such as the CJEU and work and social decisions to be made in Brussels, instead of nationally, just because they are based on the single market. At the end of his historical speech, Cameron called for the realization of a referendum on EU membership after 2015 when the new parliament would have been composed.²⁴⁹ Dorey clarified that *"Cameron's promise of such a plebiscite was not motivated by a sudden desire for direct democracy, but by the urgent need to manage the issue inside the Conservative Party"* (2017, 32). His risky decision gambled with the electoral pressure the Conservatives felt by the

²⁴⁶ European Union Act 2011, UK Public General Acts, Available at <https://www.legislation.gov.uk/ukpga/2011/12/contents>

²⁴⁷ Foreign and Commonwealth Office, Review of the balance of competences, Published 12 December 2012- Last updated 18 December 2014, <https://www.gov.uk/guidance/review-of-the-balance-of-competences>

²⁴⁸ EU speech at Bloomberg, Prime Minister David Cameron discussed the future of the European Union at Bloomberg, Published 23 January 2013, <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>, Accessed 15 July 2020

²⁴⁹ Ibid

anti-European and anti-immigrant UKIP. In fact, the Conservatives feared the loss of hard Eurosceptic voters by the rising UKIP. In the 2010 elections, the Conservatives lost 21 constituencies by losing voters turning to UKIP, giving the space to candidates from Labour or Liberal Democrats to win (Dorey 2017). In the local elections of 2013, UKIP won 139 seats representing 23% of the total vote (Gifford 2014). Between 2010 and 2013, UKIP doubled its popularity (Tournier-Sol 2015; Lynch and Whitaker 2013).

Cameron's intention, however, was the re-negotiation and re-claim of some competencies from the EU. Cameron never defended Brexit, instead his goal was to 'restore key powers to Britain'.²⁵⁰ Using the referendum as a leverage, Cameron announced that he will pursue a "new settlement" with the EU aiming at securing even more flexibility.²⁵¹ Influenced by the growing Euroscepticism, Cameron announced his intention to negotiate a reform of UK-EU relation and a referendum. The change of Cameron's stance can be indicative of the fluidity of the level of Euroscepticism of the Conservative party (Gifford 2014). Cameron started negotiations with EU on financial regulations, aiming at gaining the right to veto, but was regarded by most of the EU MS as bargaining again a special relationship. The European Council offered to UK a '*New Settlement for the United Kingdom within the European Union*'.²⁵² in February 2016. The New Settlement had a special chapter on Sovereignty starting with "*It is recognised that the United Kingdom, in the light of the specific situation it has under the Treaties, is not committed to further political integration into the European Union*".²⁵³ It also underlined the primary value that the UK is committed to the protection of national sovereignty and security and the preeminence of the British parliament and

²⁵⁰ Cameron, D. A European policy that people can believe in. Speech, London, 4 November 2009, <https://conservative-speeches.sayit.mysociety.org/speech/601249>, Accessed 11 July 2020

²⁵¹ Prime Minister David Cameron discussed the future of the European Union at Bloomberg. Published 23 January 2013, <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg>, Accessed 23 June 2020

²⁵² A New Settlement for the United Kingdom within the European Union, OJ C 69I, 23.2.2016, 1–16

²⁵³ Ibid, 6

laws over the European.²⁵⁴ The New Settlement took into account the British concerns and urged the Commission for slight changes in the secondary legislation of the social benefits of EU workers but resisted any provision that would promote discrimination among EU citizens. In the renegotiation of UK membership Cameron intended to withdraw work and social benefits for EU migrants for four years after arriving in the UK. Being totally incompatible with the principles of the internal market, the EU conceded in offering Cameron an 'alert and safeguard' mechanism which would be activated in case of uncontrolled migration flows for a long time to a member state which could jeopardize the solidity of the social security system. Nevertheless, the Commission would have been responsible for initiating this mechanism while its activation would have been subject to unanimous agreement of the Council.²⁵⁵ However, it was not enough for the British Eurosceptics, once the EU membership had been correlated with the pressing migration flows since 2008 His efforts were not satisfied and was estimated by the government as diminishing the British influence in the EU. At the same time, people have started being increasingly mobilized by both the Conservatives but especially from UKIP which promoted intensely hard Euroscepticism (Gifford 2014; Dennison Geddes 2018; Curtice 2017).

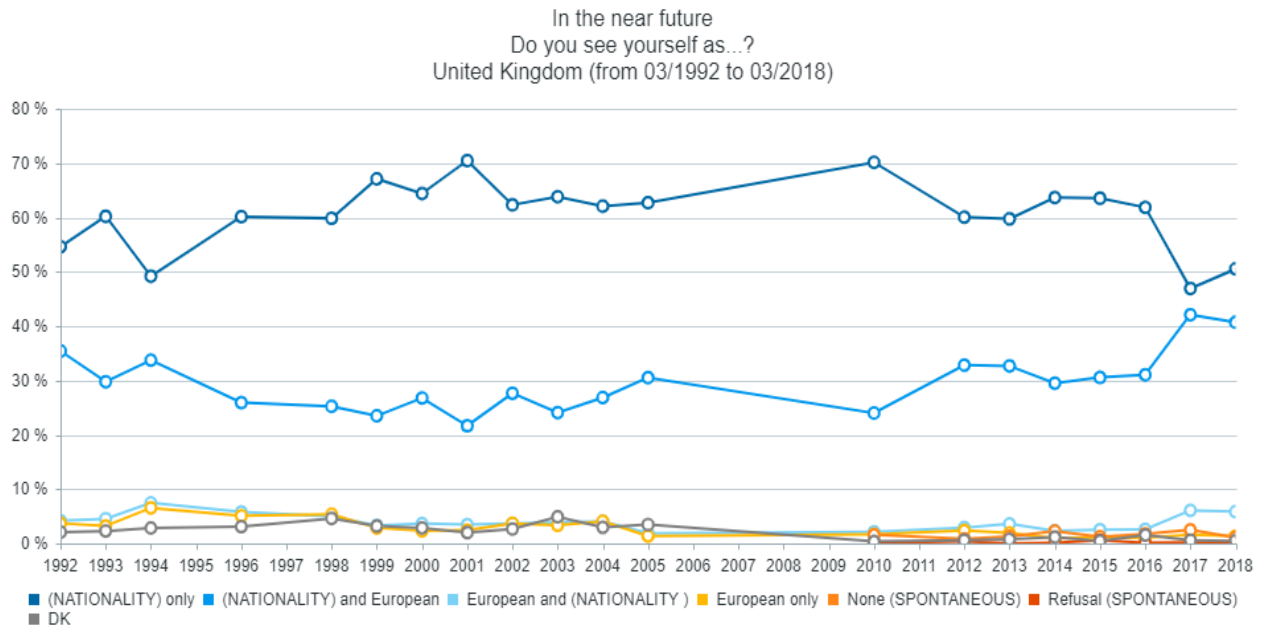
²⁵⁴ HM Government, The best of both worlds: the United Kingdom's special status in a reformed European Union, Presented to Parliament pursuant to section 6 of the European Union Referendum Act 2015, February 2016, Available at <https://www.gov.uk/government/publications/the-best-of-both-worlds-the-united-kingdoms-special-status-in-a-reformed-european-union>

²⁵⁵ The European Council's Conclusions stated, specifically, " in order to take account of a pull factor arising from a Member State's in-work benefits regime, a proposal to amend Regulation (EU) No 492/2011 of the European Parliament and of the Council (1) on freedom of movement for workers within the Union which will provide for an alert and safeguard mechanism that responds to situations of inflow of workers from other Member States of an exceptional magnitude over an extended period of time, including as a result of past policies following previous EU enlargements. A Member State wishing to avail itself of the mechanism would notify the Commission and the Council that such an exceptional situation exists on a scale that affects essential aspects of its social security system, including the primary purpose of its in-work benefits system, or which leads to difficulties which are serious and liable to persist in its employment market or are putting an excessive pressure on the proper functioning of its public services. On a proposal from the Commission after having examined the notification and the reasons stated therein, the Council could authorize the Member State concerned to restrict access to non-contributory in-work benefits to the extent necessary. The Council would authorize that Member State to limit the access of newly arriving EU workers to non-contributory in-work benefits for a total period of up to four years from the commencement of employment. The limitation should be graduated, from an initial complete exclusion but gradually increasing access to such benefits to take account of the growing connection of the worker with the labour market of the host Member State. The authorization would have a limited duration and apply to EU workers newly arriving during a period of 7 years", Ibid, 9.

4.1.4. Hard Euroscepticism, the Referendum and the British identity

The failure of David Cameron to deliver a substantial restriction of EU competencies in the field of migration but also to reduce considerably EU migration flows contributed to the move of the Conservatives more extreme Euroscepticism and nationalism in the name of popular and not parliamentary sovereignty (Gifford 2010). This failure offered UKIP a political opportunity which they exploited gaining many voters which in the 2015 national elections gained the 13% of the vote. In the 2015 national elections the primary subject of controversy was migration, portrayed as an outcome of the EU freedom of movement (Baldini et al. 2019). UKIP's contagious Euroscepticism pushed David Cameron to promise that upon the victory of the Conservatives in the 2015 elections, he will realize a referendum on EU membership. The 2015 elections brought the victory of the Conservatives, which formed the coalition Government, and Cameron was obliged to deliver his promise (Dorey 2017) The salience of migration was even raised after the outburst of the refugee crisis and the episodes in the French port of Calais with refugees trying to reach the UK (Goodwin and Milazzo 2015). Scholars had proven that the concern over migration was the main lever for voters switching from the mainstream parties towards UKIP (Evans and Mellon 2019). The coalition of Conservatives with the Liberal Democrat positioned themselves more to the center. This fact gave ground to UKIP to attract the more right-wing voters. As a challenger party, UKIP has been a fundamental lever in polarizing the political system and firing up party competition (Evans and Mellon 2019).

Graph 4.1.



Nationality: UK/ Eurobarometer

Source: Eurobarometer, 1992-2018

Nevertheless, UKIP called upon the lack of European common sense of belonging of the British people. Traditionally, the British have never felt European enough. Instead, the majority of them identify themselves with their national identity (Eurobarometer, 1992-2018). The UKIP had based its success in both low and middle classes and has been regarded as a response to the national opening up to the 2004 accession states which fomented the migration debate and increased its salience and the incompetence of the consecutive governments to control the concern of the people on migration, besides their restrictive efforts (Dennison Geddes 2018; Evans and Mellon 2019). UKIP was established on 1993, as a single-issue party, by members of the Anti-Federalist League under the leadership of Dr Alan Sked from LSE, claiming the rejection of the Maastricht Treaty. Dr Alan Sked himself was a member of the Bruges Group founded in support after the Bruges speech of Thatcher. Its main aspiration has been to resurrect the British self-governing parliamentary democracy and restore the history of the national

identity.²⁵⁶ In this scheme, the UKIP's main message was "the *withdrawal from the European Union (EU) political superstate*"²⁵⁷ The UKIP, under Nigel Farage, has been a single issue right populist extreme party which exploited anti-European and anti-immigration feelings of the public especially after the 2008 financial crisis. UKIP supported the withdrawal from the EU, as a means of reducing and controlling migration, against the "liberal elite" of the political establishment who supported EU integration and multiculturalism. The support of Brexit by UKIP provoked the status quo of the "current political elite - 'the LibLabConsensus'" who were conceived to have realized a "massive surrender of power from the voters" and "routinely serve EU interests before those of their own country".²⁵⁸

Farage himself attacked the leadership of the three main parties as elite leaders²⁵⁹ in favor of the working people who UKIP wanted to empower again and stop being " *governed by an undemocratic and autocratic European Union or ruled by its unelected bureaucrats, commissioners, multiple presidents and judges*".²⁶⁰ Exploiting the political opportunity of people's dissatisfaction on migration, UKIP promoted uniculturalism.²⁶¹ Hence, as Tournier-Sol defended " *UKIP therefore stands in the Eurosceptic tradition as a 'hard Eurosceptic' party, characterized by principled opposition to the EU*" (2015,142). Without considering the opt-outs, UKIP supported that the British national sovereignty was harmed since the Maastricht Treaty. Using a populist narrative on hard Euroscepticism attacked the deepening of

²⁵⁶UK Independence Party, Manifesto 2005 http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/UKIP_uk_manifesto.pdf, Accessed 6 June 2020

²⁵⁷ UK Independence Party, Manifesto 2010 <https://general-election-2010.co.uk/ukip-manifesto-2010-general-election/>, Accessed 7 June 2020

²⁵⁸ Ibid

²⁵⁹ UKIP conference: Nigel Farage's full speech, 20 September 2013. <https://www.bbc.com/news/av/uk-politics-24177511>, Accessed 9 June 2020

²⁶⁰ UK Independence Party, Manifesto 2010 <https://general-election-2010.co.uk/ukip-manifesto-2010-general-election/>, Accessed 11 June 2020

²⁶¹ Ibid

European integration as an elite plot to steal the power from the people. Invoking the British national identity, Farage revealed “*The fact is we just don’t belong in the European Union. Britain is different. Our geography puts us apart. Our history puts us apart. Our institutions produced by that history put us apart. We think differently. We behave differently.*”²⁶² The distinctive feature of Farage’s narrative is that he has supported the dismantle of Eu altogether by every state leaving the EU and, thus, he supports that UKIP has not been anti-European but anti-EU (Tournier-Sol 2015). Drawing inspiration from Margaret Thatcher, as Farage had admitted, UKIP claimed political space from the Conservative party, as the true descendants of Thatcherism. Nevertheless, UKIP tried to distinguish itself by the Conservatives by adopting extreme positions and became the political entrepreneur of Brexit (Lynch and Whitaker 2013).The overfocus on migration has been a fundamental part of the party’s identity as the most important national problem and strongly connected this issue to the EU.²⁶³ UKIP asked to ‘*regain control of UK borders*’, stop the intra-EU migration from Eastern Europe and pause for at least five years the entries in the UK.²⁶⁴ Under Lord Pearson, the leader of UKIP between 2009-2010, the party supported the ban of burqas placing the party in radical right parties (Lynch and Whitaker 2013). As a result, the extreme right views on migration and same sex marriages entered the political mainstream which has been one the more important challenges in the contemporary British politics (Gifford 2014). Besides, in their 2005 manifesto, they declared that permanent residence will be granted only after passing the “*tests of Britishness*”.²⁶⁵ As a result, UKIP had placed itself in extreme right wing but incorporated many aspects of the Conservative agenda. Besides, the coalition of the Conservatives with the Liberal Democrats but also Cameron’s modernization placed the Conservatives more to the center. UKIP assembled voters

²⁶² Op.cit.256

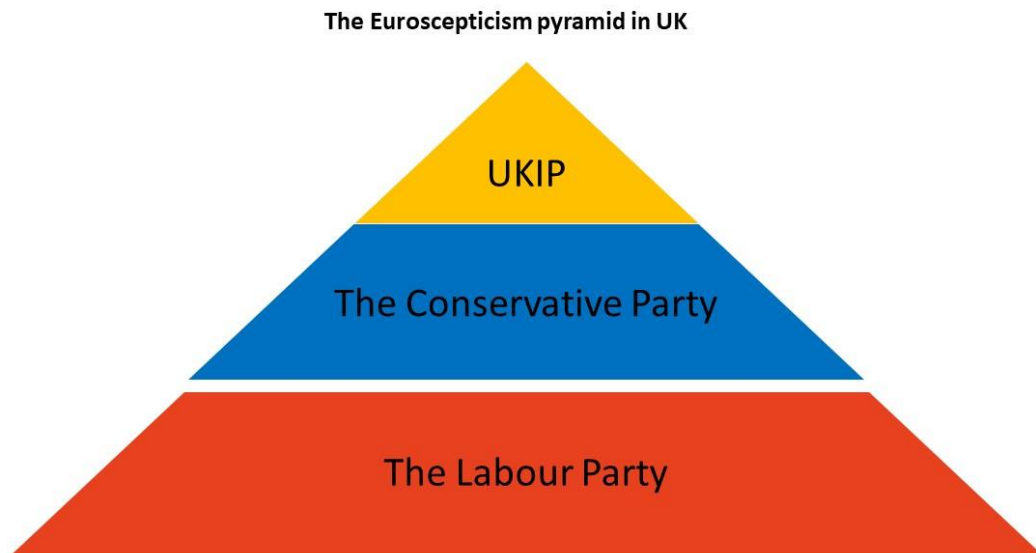
²⁶³ Ibid

²⁶⁴ UKIP Manifesto 2010 General Election

²⁶⁵ Op.cit. 253

among both the xenophobes and the hard Eurosceptics who dislike both migration and mainstream political parties (Tournier-Sol 2015; Lynch and Whitaker 2013).

Diagram 4.1.



Source: Author's compilation

Identities in the UK have never been Europeanized while its party system has been greatly marked by Euroscepticism (Graph 1). The Labour party has been the least Eurosceptic party in the UK, promoting EU integration and the continuation of UK membership in the EU but on an intergovernmental basis with differentiated arrangements for the UK. For instance, Tony Blair recognized his nation as an 'island race' while he promoted the EU as "a union of nations not a superstate subsuming national sovereignty and national identity".²⁶⁶ However, the Conservatives have been an indicative example of soft Euroscepticism while the UKIP of hard Euroscepticism (Fitzgibbon 2013). The Conservative party has been divided

²⁶⁶ Tony Blair, A Clear Course for Europe, Speech delivered at Cardiff, 28 November 2002, <http://www.astrid-online.it/static/upload/protected/A.TO/A.TONY-BLAIR-Speech-on-Europe-Cardiff-28.11.2002.pdf>, Accessed 9 September 2020

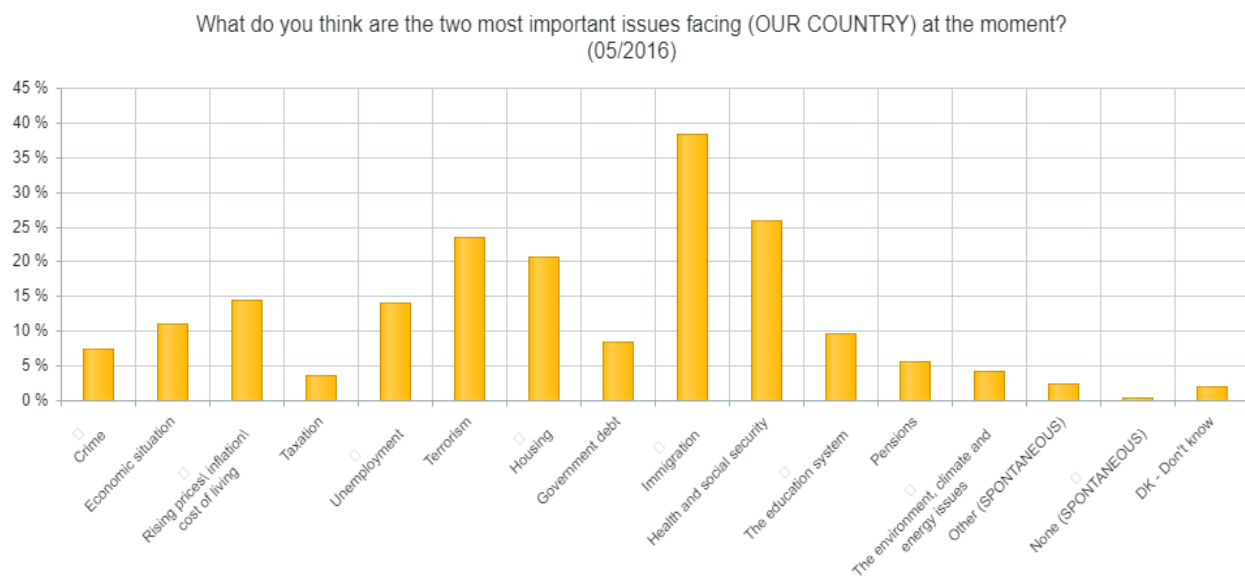
between soft and hard Eurosceptics since the 1980's. The hard Eurosceptics have been the minority, however, being enough strong to push the party in many hard Eurosceptic choices, framing EU issues according to their views and include them in the party's agenda. Besides, the electoral competition between the Conservatives and the extreme UKIP urged the party to lean towards more Eurosceptic positions (Dorey 2017). Besides, the Eurobarometer from 1992-2016 documented that UK people had scored the lowest level in identifying themselves as Europeans. The UK had ever enjoyed a generalized public consensus for its European track (Bevir et al 2015). Indeed, most European people had held a Europeanized identity apart from the UK (Hooghe and Marks, 2005; Curtice 2017). The feelings of the Britishness and sense of individualism were exploited by the populists in the UKIP and hard Eurosceptics within the UK, sparking anti-Europeanism. In fact, Euroscepticism and exceptionalism of the UK is strictly related to British history and parliamentary sovereignty and its differences with the cultures in the EU. (Wellings and Baxendale 2015; Kenny 2015; George 2000; Black 2019; Daddow 2015).

As Kenny (2015, 35) manifested "*the English have gradually returned to a more Anglocentric...sense of identity*". Their exclusive national identity in correlation with the growing number of EU migrants resulted in an outburst of British Euroscepticism. Indeed, from 1993 to 2017 EU migration was tripled (Dennison Geddes 2018). Scholars have indicated that just before the referendum almost three-quarters of the British wished a cut-down of migration (Blinder 2020). After the European Union Referendum Act 2015²⁶⁷ took the approval of the Queen, the Leave campaign was based on the aspects of identity, sovereignty, and migration. Research has outlined that the bulk of the Brexit voters thought that Brexit would reduce migration and support the prevalence of British national identity (Dennison Geddes 2018; Curtice 2017). Indeed, the vote in favor of Brexit was driven from anti-migration and issues of identity rather than

²⁶⁷ European Union Referendum Act 2015, UK Public General Acts, 2015 c. 36, <https://www.legislation.gov.uk/ukpga/2015/36/contents/enacted/data.htm>, Accessed 9 August 2020

economic concerns. Antithesis to migration and vote to Leave EU has been proven to have the most important correlation (Hix 2018). The salience of migration reached unprecedented levels before the Brexit referendum.²⁶⁸ Just before the referendum, the British considered migration to be the most significant challenge in the UK (Eurobarometer, May 2016). Brexit has been regarded by scholars as a resurgence of English nationalism and nostalgia of the imperial past (Barry 2016; Daddow 2015; Black 2019). The relation of the imperial past to the British national identity serves “as the guardian of powerful national myths [...by drawing] on assumptions about British political identity that appeared to further the process of post-imperial decline” (Gifford 2008, 10). Feelings of post-imperial decline and nostalgia of the past, against the political elites who supported the Europeanization and globalization of UK, were exploited in the Brexit campaign (Daddow 2015; Black 2019). As a result, the outcome of the June 2016 referendum was by 54,9% in favor of exiting EU.²⁶⁹

Graph 4.2.



²⁶⁸ The Migration Observatory, UK Public Opinion toward Immigration: Overall Attitudes and Level of Concern, <https://migrationobservatory.ox.ac.uk/resources/briefings/uk-public-opinion-toward-immigration-overall-attitudes-and-level-of-concern/>, Accessed 17 July 2020

²⁶⁹ House of Commons, Briefing Paper- Number 07213, 26 August 2016 “Brexit: impact across policy areas”, <https://commonslibrary.parliament.uk/research-briefings/cbp-7213/>, Accessed 1 September 2020

Most Important Issues: UK/ Eurobarometer

Source: Eurobarometer, May 2016

The arguments on migration dominated the Brexit referendum campaign. Migration was accused of falling workers' wages, housing shortages, and the sprain of the National Health Service and public education services, all of which plagued the British economy in recent years (Tilford 2016). Brexit has been the result of political exploitation of specific circumstances of the 2008 financial crisis and the 2015 refugee crisis (Curtice 2017). It was centered around the nationalist idea of "*take back control*" from Brussels. Still, after Brexit the 44% of the UK public supports a further reduction of migration flows towards their country. Compared to the 77% of the people asking for a reduction, it seems that Brexit lowered the number of people arguing for a reduction. The Conservatives support the Remain campaign but, at the same time, promote a Globalist outlook of the UK. The Labour party, under Corbyn, appeared more protectionist, anti-globalist, refusing to take a clear stance towards Leave or Remain (Baldini et al. 2019). While more than 90% Labour MPs wanted to stay in the EU Jeremy Corbyn opposed remaining in the Common market (Curtice 2017). The realization of Brexit, however, diminished UKIP's success and Britain returned to its two-party competition politics (Evans and Mellon 2019).

4.2. Denmark: The referendum champion

Denmark's willingness to join the EC was connected to the UK, one of its most important trade partners. Indeed, since the 1950s, Denmark backed the UK's proposal on the establishment of a free trade area in Europe (Archer 2000). The first application of Denmark to join the EU was launched alongside the UKs in 1961 which took back when De Gaulle expressed his veto over the British participation. While De

Gaulle vetoed the British entry in EC, he wished to continue the negotiations with Denmark.²⁷⁰ Since the Danish membership was tied up to the British membership and the negotiations for its membership were realized at the same time with the UK and Ireland, the state withdrew its application in 1963 and applied again in 1967 alongside the British. During the second round of negotiations, the public opinion was divided whether EC membership was beneficial (Buch and Hansen 2002). Besides, the previous Danish governments were reluctant in cooperating with the union of the six. Nevertheless, the Luxembourg Agreement of 1966 had contributed to a great extent in silencing national preoccupations of losing vital parts of sovereignty.²⁷¹ The Danish state was more interested in binding trading ties with the UK and the Nordic states (Toś and Tabaszewski 2012). Indeed, Denmark was first and foremost interested in the internal market and free trade (Archer 2000; Sørensen 2004; Rasmussen and Sorensen 2016). The application was finally promoted when the EC also accepted the UK as a member in 1969.

4.2.1 The Reasoning of referendums

The Danish Parliament voted in favor with 141 and 34 against the EC membership. Thereafter, the Social Democratic minority government supported by the Socialist People's Party realized the first referendum on EC membership on 2 October 1972 (Svensson 2002). The call for the referendum was originated on the Article 20²⁷² of the Danish state's constitution which dictates that any new law transferring sovereignty

²⁷⁰ Lizaveta Dubinka-Hushcha.2020. An overview of Denmark and its integration with Europe,1940s to the Maastricht Treaty in 1993, Aarhus University, <https://nordics.info/show/artikel/denmark-and-the-european-union-1940s-2000s/>, Accessed 24 December 2020

²⁷¹ Jonas Langeland Pedersen (2020), European Community law in Denmark, 1973-1993, Aarhus University, <https://nordics.info/show/artikel/european-community-law-in-denmark-1973-1993/>, Accessed 24 December 2020

²⁷² The Article 20 of the Danish Constitution (1953) states "On the delegation of sovereign powers to international organizations in order to promote the development of international law and order and cooperation". See Lizaveta Dubinka-Huscha(2020) Denmark's relationship with Europe since 2000, <https://nordics.info/show/artikel/denmarks-relationship-with-europe-since-2000-1/>In Danish <https://www.retsinformation.dk/eli/ta/1953/169>

must be subject to a referendum in case it is not approved by the 5/6 majority of the parliament.²⁷³ Most national parties had reached an agreement in 1971 that EC membership should be decided through a referendum even if the majority 5/6 was attained (Buch and Hansen 2002). The activation of Article 20 has also been a political decision formed by the parties of the Danish parliament to pass the decision to the people (Buch and Hansen 2002; Svensson 2002). For pro-European parties such as the Liberals (Venstre) and the Conservatives, Article 20 was a way for muting internal political opposition.²⁷⁴ For instance, the Social Democratic Party supported the referendum in 1972 to avert the success of Eurosceptic candidates of their party entering the Parliament in the elections. Through the realization of the referendums most parties have been trying to disassociate national with European politics, accommodate internal conflicts and discount the different views of their voter. At last, the extensive use of referendums in EU issues has established a tradition on realizing them. Nevertheless, this practice has also resulted in the politicization of EU issues once the final decision has been passed over to the public which is invited to get implicated (Buch and Hansen 2002). The majority of Danish parties are pro-European “*but it is like a love affair without love*” since most political parties in Denmark believe that “*federalism is the same as centralism*”, resulting in not comprehending “*how to deal with two chambers*”, the national and the European.²⁷⁵ Thus, they pass the decisions to the public as “*referendums can be used as a political instrument as well*”.²⁷⁶ The public has been in a stronger position than the elites since each new Treaty needs to be accepted through a referendum places (Leuffen et al 2013).

²⁷³ The Constitutional Article 20 has been the base for the referendums in 1972, 1992, 1998, and 2000 (Law No. 322 of 6 June 1998; Law No. 288 of 2 May 2000) On the instance of the Nice Treaty for example, the strongest parties in the Danish Parliament supported that Article 20 was not necessary to be applied (Law No. 179 of 2 March 2001; Justice Department 2001)

²⁷⁴ Op.cit. 267

²⁷⁵ Interview with Denmark-EU spokesman of Political Party in Denmark, December 2020

²⁷⁶ Interview with Denmark-High-Level diplomat, November 2020

Indeed, the realization of referendums on EU “has been used as both legal and political decision. In 1972 it was a clear legal decision. As for the referendum about the Single Market in 1986 it was a political decision”.²⁷⁷ The Danish people voted 63.4% in favor for their country to enter the EC, with one of the highest turnouts of 90,1%.²⁷⁸ As a result, Denmark entered the EC in January 1973. Based on economic benefits, in the 1970's and 1980's people were supportive of the EC membership (Buch and Hansen 2002). Being considered, then, as a mainly economic venture, the entry was disputed mainly by the left-wing parties such as the Socialist People's Party, the Denmark's Communist party, and the right-wing Justice party (Archer 2000). In addition to the political parties, the coalition of groups of the People's Movement Against the EC had campaigned against the EC, drawing upon communist and Marxist lines,²⁷⁹ which was created after the entry of Denmark to EC (Sørensen 2004). The People's Movement has emerged from civil society groups which have also contributed to the mobilization of Eurosceptic voices since the first and consecutive referendums. At its beginning, the People's Movement voiced the anti-capitalist demands of the extreme left parties against EC and the common market as a threat to national welfare. The People's Movement Against the EC was rather successful in electing four MEPs in the 1979 EP elections (Archer 2000).²⁸⁰ The second referendum in Denmark was realized for the Single European Act in 1986 under an elite coalition government consisting of the Conservatives, the Liberals (Venstre), Centre Democrats and the Christian People's Party, all of which are considered pro-EU parties. However, the government was defeated in the vote over the SEA in the parliament with the Social Democrats, the Radical Liberals, the Socialist People's party and the Left Socialists voting against it. The government requested a consultative referendum, but all parties acknowledged that they would respect the result of

²⁷⁷ Interview with Denmark-EU spokesman of Political Party in Denmark, December 2020

²⁷⁸ Folketinget, European Union referenda, EU Information Center, <https://www.eu.dk/da/english/eu-referenda>. Accessed 9 April 2019

²⁷⁹ Klaus Riis, Denmark: The People's Movement against the European Union, <https://www.revolutionarydemocracy.org/icmlpo/US28/denmark.htm>, Accessed 10 April 2019

²⁸⁰ The People's Movement elected four MEPs in 1984 and 1989, two MEPs in 1994. Its child group the June Movement elected also two in 1994. In 1999 the June Movement elected three MEPs and one the People's movement (Archer 2000).

the referendum (Svensson 2002). The Danish people voted in favor of the SEA with 56.2% with a total turnout of 75.4%.²⁸¹

4.2.2. The rejection of the Maastricht Treaty and the Danish “dualist” approach

After the positive response of the Danish people to the SEA in 1986 and the fall of the Berlin wall in 1989, the parties of the center were concentrated towards a pro-European consensus which has still survived. However, the elite pro-European consensus has been restricted by the public dissensus for further integration since the Maastricht Treaty (Rasmussen and Sorensen 2016). Indeed, the Maastricht Treaty (1992) was brought into the Folketing by a weak minority coalition government of Conservatives and the Liberals. The Government was greatly dependent on the assistance of the soft Eurosceptics Social Democrats, which was skeptical on EU integration on political matters such as defence, or the right Eurosceptic Progress Party. The Maastricht Treaty passed with 130 votes, with the support of the Social Democrats and the center parties and the opposition of the Socialist People's party and the right-wing Progress party which had started spreading the right-wing Euroscepticism to the public. The Progress Party was founded in 1972 focusing on anti-tax, anti-elitist and radical neoliberal policies and met with great success in the 1973 elections when it gained 15,9% of the votes and continued getting above 10% in the following elections. Their success started eliminating when the Conservative and the Liberals presented a radical bourgeois option influenced by Reagan and Thatcher. The Progress party had started taking xenophobic anti-immigrant positions especially after the rise of the asylum applications in the mid-1980s (Andersen 2003). Since the voting majority was under the 150 votes the referendum was mandatory (Toś and Tabaszewski 2012). The third referendum in Denmark took place in the event of the

²⁸¹ Op.cit 275

Maastricht Treaty on 2 June 1992 which resulted in 50.7% vote against the Treaty and 49.3% in favor, with a total turnout of 83.1% (Svensson 2002). Most of the people that voted against it had declared reservations against integration on JHA and EMU (Archer 2000). In this scheme, the June Movement, the child-movement of the People's Movement Against the EC, was founded during the referendum advocating against the EU.²⁸² During the referendum campaign of the Maastricht Treaty, the parties at the extreme right and left advocated for the rejection of integration on matters of AFSJ as danger to the Danish national identity (Leuffen et al 2013).

The case of Denmark has represented the divide between the elite and the masses since the Danish people have voted against most of the parliament. As indicated by the support of its European membership and the resistance towards any aspect that diminish its sovereignty, Danish Euroscepticism is based on national identity concerns (Sørensen 2004). Retrospectively, in Denmark, the pro-European argument has been based on the economy while the anti-European argument has nudged on the loss of sovereignty and identity (Buch and Hansen 2002). The Danish people are keener to identify themselves with their national community than with Europe. The more the European integration was moving deeper towards core state powers the more the right-wing voters contradicted them, while they had previously supported economic integration. On the other hand, the left-wing voters that opposed the capitalist venture of EC in the 1970's, were more supportive of the non-economic issues (Buch and Hansen 2002). While the Danes have supported the economic integration of the EU, they have demonstrated a high level of Euroscepticism in the integration in core state powers such as Justice and Home Affairs, the monetary policy (Euro), and Defence. As a result, Denmark is characterized by a Euroscepticism in favor of the protection of national identity and cultural homogeneity²⁸³but support for EU membership mainly

²⁸² Op.cit. 267

²⁸³ Interview with Denmark-EU spokesman of Political Party in Denmark, December 2020

in economic affairs or to put it otherwise a pragmatic Euroscepticism (Rasmussen and Sorensen 2016). The Danish willingness to participate in EC and not on Justice and Home Affairs measures can be summed up *“First and foremost membership of the EC in 1973 was presented as only a trade issue. Secondly Denmark is a small state. Since the year of 1864 Danes have always felt some kind of threat from the outside. Third: we have a very homogeneous society, and finally: Our borders are far away from the ones, being really challenged over many years”*.²⁸⁴

Following the rejection of the Maastricht Treaty, it was agreed between Denmark and MS that any further transfer of power would have to pass through a referendum (Peers 2014). The rejection of the Maastricht Treaty provoked great political turmoil among the parties of the parliament which resulted in the same autumn in a “National Compromise” on the four main opt-outs of Denmark: from the common defence policy, the eurozone, the EU citizenship provisions and finally, the JHA.²⁸⁵ Moreover, Denmark had opted-out from the characterization of European citizenship included in the Treaty of Maastricht, indicating that the abstention of Denmark has been based on issues related to national identity and its contradiction to the European citizenship (Hansen 2002, 69). The compromise was promoted by the pro-European parties of the Socialist People’s Party, the Social Democrats and the Radical Liberals. The government (of Conservative- Liberal) began negotiations with the EU in the Edinburgh European Council of December 1992.²⁸⁶ The Edinburgh Agreement granted the Danish state the opt-outs and the Maastricht Treaty was put under a referendum once more. Both the compromise among the main political parties and the opt-outs from the core state powers were decisive in changing the public opinion in favor of the Treaty. Indeed, 56,7 % voted in favor of the Treaty and the Edinburgh Agreement with a total

²⁸⁴ Ibid

²⁸⁵ Denmark and the Treaty on European Union, Official Journal C 348 , 31/12/1992 P. 0001 - 0001

²⁸⁶ European Council in Edinburgh, Conclusion of the Presidency, 11-12 December 1992.

turnout of 86.5%. However, in 1993 the political parties had agreed that the removal of the opt-outs had to be subject to another referendum (Buch and Hansen 2002; Svensson 2002). The signing of the amended Maastricht Treaty caused fervent public demonstrations of the opponents against which was used ammunition resulting in injuring of 50 people (Toś and Tabaszewski 2012). As indicated in the negative vote of the Danish referendum for the Maastricht Treaty, the concept of European integration has been conceived as opposite to the Danish national identity (Hansen 2002). Indicative has been the legal motion of a group of Danish lawyers against the government in 1996 for ratifying the Maastricht Treaty on the grounds that it violates the constitutions since it provides possibilities for greater transfer of sovereignty to the EU. In 1998, the Danish Supreme Court dismissed the case on the basis that the transfer of political competencies was defined and not unlimited.²⁸⁷ Politicization of the European integration in Denmark has been the main driver for its unique opt-out regime. Keep supporting their participation in the EU but opposing any kind of political integration is what characterizes the Danish approach as “dualist” (Wivel 2014).

The intergovernmental foundation of Schengen was a fundamental reason for Denmark to join the Area in 1996. Denmark’s initial unwillingness to join Schengen was justified by its national interest to remain in the Nordic Passport Union, the members of which have been the most significant partners of the country. However, when Sweden and Finland joined Schengen and Norway and Iceland were asked to participate, this hurdle was abolished (Leuffen et al 2013). The introduction of Schengen in the Amsterdam Treaty resulted in the Danish opt-out from its communitarization. Indeed, Denmark began the implementation of the Schengen acquis on an intergovernmental basis since 2001.²⁸⁸ However, the protocol on Denmark included the guarantee that the state could opt-in any future Schengen related

²⁸⁷ Lizaveta Dubinka-Huscha(2020), Denmark’s relationship with Europe since 2000, Available at <https://nordics.info/show/artikel/denmarks-relationship-with-europe-since-2000-1/>, Accessed 3 December 2019

²⁸⁸ Interview with Denmark-High-Level diplomat, November 2020

measure but abstain from any supranational procedure.²⁸⁹ Notwithstanding, in any case that Denmark decides not to join the future measures, the MS have the right to take “*appropriate measures*” to compensate for this situation. That means that the MS and the Council could even decide to exclude Denmark from past Schengen measures. Nevertheless, Denmark has introduced most Schengen measures into its national law until today (Adler-Nissen and Gammeltoft-Hansen 2010). Being a Schengen member, Denmark participates in Schengen measures such as the Schengen Information System (SIS II), common visa rules and Frontex.

Besides, the initial opt-outs from the Maastricht Treaty had not any substantial importance since Denmark did endorse most of JHA measures. As a result, the main significance of the opt-out was actually to avert the binding of Denmark to any future developments of the Area’s measures and, especially, under supranational rule. Denmark joined the UK in the efforts of the latter to maintain the intergovernmental cooperation in JHA and not the pending supranationalisation in the Amsterdam Treaty. The advent of the Amsterdam Treaty in 1997 found Denmark with a Social Democratic-Radical Liberal coalition government, depending on the support of the Socialist People’s Party and the left Unity List, a mainly anti-European party. The five-sixths majority was not achieved by the government for the ratification of the Treaty since the right-wing Progress Party, the Danish People’s Party and the Unity List voted against. In the referendum that followed both left wing and right-wing Eurosceptic parties were grouped against the Treaty, the main center parties supported it and the Socialist People's party was split. The No campaign was also fervently supported by the People's Movement and the June Movement, demanding the exit of Denmark from the EU (Archer 2000, Svensson 2002). Nevertheless, again with a

²⁸⁹ According to the Protocol “Denmark shall decide within a period of 6 months after the Council has decided on a proposal or initiative to build upon the Schengen acquis under the provisions of Title IV of the Treaty establishing the European Community, whether it will implement this decision in its national law” Art. 4 and 5 of the Schengen Protocol.

marginal difference the Danes voted in favor of the Treaty with 55.1%.²⁹⁰ Again the Amsterdam Treaty granted Denmark opt-outs from the communitarized AFSJ measures that were moved to the first pillar through an attached protocol.²⁹¹ Therefore, Denmark only participated in the intergovernmental arrangements of judicial cooperation and police cooperation from the AFSJ which, at that time, remained at the third pillar (such as Europol, EAW, Eurojust etc.)(Leuffen et al 2013). Furthermore, since the Treaty of Amsterdam, Denmark has acquired an opt-out from decisions and actions of defence policies²⁹² which has been preserved until the present day (Protocol 22, Lisbon Treaty).

However, Denmark has not had the flexibility to opt-in freely to AFSJ policies not founded on the Schengen Agreement. For example, Denmark has not been committed to Readmission Agreements since institutionally Readmission and Return Agreements are not a formal part of the Schengen acquis. Nevertheless, Denmark usually proceeds to the completion of bilateral agreements on readmission with each third country that cooperates with the EU on this issue. Moreover, most Readmission Agreements include a specific provision inviting Denmark to conclude a bilateral agreement with the third country, a procedural practice used also for Schengen associated states (Iceland, Liechtenstein, Norway and Switzerland).²⁹³

²⁹⁰ Op.cit.275

²⁹¹ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community - Protocol on the position of Denmark OJ C 340, 10.11.1997, 101

²⁹² For measures adopted by the Council pursuant to Article 26(1) Article 42 and Articles 43 to 46 of TEU

²⁹³ See for example the EU-Cape Verde readmission agreement of 18 April 2013 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/136840.pdf, Accessed 13 June 2019

Whereas preserving the opt-out, Denmark has been participating in several AFSJ measures through international law of parallel agreement and not through EU law as the other MS. These agreements are negotiated by the Council offered the delegation by the Commission. While the result is no different, Denmark preserves its autonomy since its parliament have the final say and the right to the latter to veto. However, the willingness of the Union to conclude a parallel agreement with Denmark is based on certain criteria. Such agreements must be considered as an exceptional and temporal solution given the intention of Denmark to abandon the Protocol in the future and, of course, there should be a clear interest for the Union to conclude such an agreement (Adler-Nissen and Gammeltoft-Hansen 2010). One of these parallel agreements between EU and Denmark on AFSJ law concerns the Dublin regime (including Eurodac).²⁹⁴ Actually, Denmark has participated in the Dublin rules since its intergovernmental inception while since its supranationalisation the participation of Denmark is subject to international law and Denmark has no legal right in any EU decision-making procedures concerning AFSJ measures. Denmark is also obliged to accept any further changes on the Dublin rules or withdraw in total from the system.

While the opt-outs diminish Denmark's influence and participation in important EU rules, it safeguards the support of the Danish people and the stricter national rules on asylum and migration and especially on family reunification. The Danish opt-out from the EU directives on the minimum standards on the protection of refugees, asylum procedures and the reception conditions do not change much the standard of differentiation in asylum policy once the great discrepancy for national maneuvers in implementing the directives differentiates almost most MS (Elany 2017). Besides, the Danish asylum law is based on the 1951 Refugee Convention as is most the European asylum law. Nevertheless, some EU asylum law

²⁹⁴ Council Decision of 21 February 2006 on the conclusion of the Agreement between the European Community and the Kingdom of Denmark extending to Denmark the provisions of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national and Council Regulation (EC) No 2725/2000 concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention OJ L 66, 8.3.2006, p. 37–37 and OJ L 335M , 13.12.2008, 72–74

goes beyond this scope. For instance, the Qualification Directive extends beyond the definition of political refugees in the 1951 Refugee Convention and the European Convention on Human Rights, to include refugees escaping from random violence due to armed conflict (Article 15c).²⁹⁵ As a result, this category has not been recognized by the Danish Asylum law which is translated to the impracticality that another MS cannot return a refugee of such a category to Denmark. Concerning the procedures on family reunification which are stricter in Denmark than the EU rules, Denmark has been pressed to abandon its tight requirements especially for EU citizens in the framework of free movement.²⁹⁶

4.2.3. The Lisbon Treaty and Euroscepticism

The politicization of European integration in Denmark has provoked internal horizontal differentiation of the AFSJ policies and, thus, the European policy towards migration. The political confrontation over integration of migration policy in Denmark has been revolved around the possible loss of national identity and sovereignty (Adler-Nissen 2011) For both mainstream and extreme right-wing parties, the opt-out from EU migration and asylum policy is vital towards both their program and voters (Adler-Nissen 2011; Wivel 2014). Right wing parties in Denmark have supported restrictionist policies on migration while they have contributed to its high salience in state politics (Green-Pedersen and Odmalm 2008). The two dominant center right parties in Denmark, the Liberals (Venstre) and the Conservatives, have had considerable strength but their participation to government has been unstable. As a result, both of them

²⁹⁵ European Court of Justice, Judgment of the Court (Grand Chamber) of 17 February 2009. Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie. Case Number: C-465/07

²⁹⁶ The basic constitutional law of asylum and migration in Denmark has been the 1983 Aliens Act, including the 1951 Geneva Convention, which has been characterized as liberal at the moment from the scholars since it was founded on the values of the protection of legal rights of refugees and non-discrimination (Mouritsen & Tore Vincents Olsen 2013, Gammeltoft-Hansen 2017) Nevertheless, the Act has been amended many times with an overwhelming rate, mainly aiming in introducing restrictions in its provisions. As Gammeltoft-Hansen (2017) supported that the asylum and migration policy of Denmark can be characterized as a deterrent aiming to discourage asylum seekers to reach Denmark. Indeed, the Danish rules on asylum and family reunification are stricter than the EU rules (Gammeltoft-Hansen 2017).

have relied many times on the support of right-wing parties which have had a stable presence in the parliament. Both extreme right parties the Progress Party and its descendant, the Danish People Party (DPP), which split from the Progress Party in 1995,²⁹⁷ have consistently advocated an intense restrictive migration policy and took the lead of xenophobic campaign since the 1970s, maintaining a stance that regarded migration as a possible threat to national identity and the support of restrictive migration policies (Green-Pedersen and Krogstrup 2008). After the 1998 elections and the success of the populist extreme right (the DPP had succeeded in winning 7,4% of the vote), center right parties such as the Liberals have concentrated also on restricting migration, changing their compensatory attitude towards migrants promoting the tightening of migration rules. This fact induced a confrontation between the right block of the parliament and the center-left government which was pushed to accept tighter rules on migration. Moreover, the change of the right-wing parties towards migration and the rising politicization of the matter provoked the split between the voters of the center left Social Democrats which blurred their position on the issue and the limited restriction of government policies. The more the center right parties entered the political competition against radical right parties, the more the issue of migration was politicized (Green-Pedersen and Krogstrup 2008).

Besides, at that time, the migrants arriving from fleeing the wars in Yugoslavia and Iran-Iraq stimulated consideration on their different cultural roots and their economic dependency on the state which resulted in the decrease of positive support for migration. Thus, since 1999 the Danish government had begun introducing respective laws promoting the migrants' cultural integration to Danish fundamental values and economic self-reservation through the restrictions on family reunification and citizenship programs promoting the homogeneity of citizens (Mouritsen & Olsen 2013). Thereafter, the Danish migration policy

²⁹⁷ In 1995, the then leader of the Progress Party with three MPs seceded from the party and founded the DPP after a period of civil conflicts within the party (Andersen 2003).

started being gradually restrictive based on the idea that residence should be granted to those adopting Danish values and culture. The turn towards more nationalist policies was based on the reinvention of national identity and the protection of the Danish welfare state. In this form, Danish nationalist feelings have been “modernised” based on liberal ideas but also on civic perfectionism and cultural uniformity based on the Danish language and history (Mouritsen & Olsen 2013). As Mouritsen & Olsen (2013, 696-7) explained important parts of the Danish national identity has been the “*smallness, cultural homogeneity and tight-knit ‘cosiness’ of Danish society...remains a staple of recent discourse on national cohesion, the valuation of sameness and the mistrust of cultural pluralism per se...homogeneity and smallness tie in with egalitarianism and democracy...These also entered the post-war construction of a civic nationalism... these are resurfacing in debates on the civic (in)capacity of newcomers..and closely related,pride in a welfare society (not state) in which solidarity is conditioned (if one is not sick, handicapped, retired or temporarily unemployed) on working and paying taxes*”. Besides, the importance of culture is demonstrated in the fast-track procedure for migrants from other Nordic states who are considered culturally close (Mouritsen and Olsen 2013). Thus, anti-immigration and Eurosceptic sentiments originated in feelings of the supremacy of national identity and cultural uniformity (Lubbers 2008).

In the referendum of the Euro in September 2000 under the Social Democratic- Radical Liberal minority government, the No camp was led again by the extreme parties of the left-wing Socialist People’s Party and the right-wing Danish People’s Party resulted in the success of the No campaign (Svensson 2002). The 53.2% of the Danes voted against the introduction of the euro²⁹⁸ since it was perceived that “*our fixed exchange rate policy to the euro facilitates the security and stability of the Danish currency*” .²⁹⁹

²⁹⁸ Op.cit 284

²⁹⁹ Interview with Denmark-High-Level diplomat, November 2020

While Euroscepticism was growing in Denmark, in the elections of 2001, the parties of the right bloc politicized the issues of migration at a great extent which resulted in their success in gaining the government by a coalition of the Conservatives and the Liberals supported by the DPP. In 2001 the DPP succeeded in emerging from the marginal party to a mainstream, getting 12% of the votes and participating in government coalitions, while the Progress Party broke down (Andersen 2003). It had been a strategic choice of the DPP to preserve the political salience of migration on high levels and pushing the consecutive governments to implement restrictive migration policies (Mouritsen and Olsen 2013) Indeed, the Conservatives- Liberal government proceeded in stiffening the rules on asylum such as the family unification directions (Green-Pedersen and Odalm 2008).

The main parliamentary parties (Venstre, the Conservative People's Party, the Social Democratic Party, the Socialist People's Party, the Danish Social Liberal Party, and the New Alliance) agreed to adopt the Lisbon Treaty without a referendum since the Danish opt-outs had remained intact and no further transfer of sovereignty would have been realized.³⁰⁰ This decision was met with intense criticism. Indicative was the legal motion of a group of Danish citizens who wanted to sue the Danish Prime Minister Lars Lokke Rasmussen against his decision to avoid conducting a referendum on the Lisbon Treaty.³⁰¹ Denmark's opt-outs have been preserved in the Protocol 22 of the Lisbon Treaty³⁰² which has offered Denmark a complete opt-out from AFSJ policies of the Title V TFEU and the supranationalisation of Schengen (Protocol 197).³⁰³ However, Denmark continued to take part in EU measures of criminal law and police

³⁰⁰ Folketinget, EU Information Center, Danish EU policy, Available at <https://www.eu.dk/da/english/danish-eu-policy>, Accessed 15 December 2019

³⁰¹ EU Observer, Danish PM sued over Lisbon Treaty, 11 January 2011, Available at <https://euobserver.com/political/31622>

³⁰² Consolidated version of the Treaty on the Functioning of the European Union, Protocol (No 22) on the position of Denmark, OJ C 326, 26.10.2012, p. 299–303, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FPRO%2F22>

³⁰³ Denmark also preserves the opt-out from the Common Security and Defence Policy (CSDP), Folketinget, The Danish Opt-outs, <https://www.eu.dk/da/english/the-danish-opt-outs-from-eu-cooperation>, Accessed 11 December 2019

cooperation which lingered in the intergovernmental pillar and was adopted prior to the Lisbon Treaty (Article 2 of Protocol 22). But it has not participated in any measure introduced after the Lisbon Treaty (Adler-Nissen and Gammeltoft-Hansen 2010). Still, Denmark has the right to opt-in only on measures built up on Schengen-based rules of the Title IV TEC, having notified the Council within six months after the proposal has been submitted that the state wishes to include this measure in its national legislation and constitutional mechanisms (Protocol 22, Article 4). For instance, in 2008 Denmark opted-in the Return Directive³⁰⁴ and accepted a reduction to the detention limit of asylum seekers to eighteen months according to EU rules. If the state decides it will not, Denmark has no possibility of opting back in. Furthermore, Denmark still takes part in Schengen-based measures and the third pillar measures adopted prior to the Lisbon Treaty, which Denmark has applied through parallel agreements subject to international law (still valid even if these measures are amended within EU law). Thus, Denmark has been still bound by the older version reflected in the parallel agreement with the EU (Herlin-Karnell 2013). Besides, the Article 8 of the Protocol 22 provides Denmark with the possibility to annul part or all the Protocol and participate fully to all AFSJ measures. The vote of Denmark in the Council (alongside the UK and Ireland) is taken into consideration only if they have opted in the measure discussed. Moreover, the Council may act upon it by excluding the state entirely from Schengen. However, this provision has never been used in practice (Herlin-Karnell 2013).

In the period after the Lisbon Treaty, right wing Euroscepticism disseminated by the DPP and concentrated on migration issues was increased even more. In the 2009 EP elections the DPP gained two seats while by the 2014 EP elections, it had already reached the 26,6% of the vote in defence of the welfare state and national identity. As the party's unchanged program since 2002 states "*The country is*

³⁰⁴ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals OJ L 348, 24.12.2008, 98–107.

*founded on the Danish cultural heritage and therefore, Danish culture must be preserved and strengthened” and that “Denmark is not an immigrant-country and never has been. Thus, we will not accept transformation to a multiethnic society”*³⁰⁵ From the very beginning the DPP had two main political axes: the opposition to the EU and migration and presented themselves as protectors of the people’s interest (Hervik 2011, 62-63) Their narrative rounds around anti- immigration and anti-Islamic rhetoric.

³⁰⁶The DPP has also opposed the low-skilled labour migrants from Eastern Europe and the Baltic based on the pressure they exerted on the national welfare and social system. After the recommendations of the Commission and the CJEU, the Danish government was compelled to conform with the requirements of the Single Market and grant the same work rights as nationals. This development was widely exploited by the DPP and resulted in its significant electoral success in 2015(Nannestad 2004, Borring 2015). In fact, *“The development of the DPP could also be a result of a certain public sentiment caused by other factors such as the salience of the immigration issue”*.³⁰⁷ While the Danes have been favorable towards the single market and the four freedoms, they have not been supportive towards the sharing of national social benefits with people of other countries. The Liberal minority government in 2014 supported the British Prime Minister David Cameron in his endeavor to apply stricter rules on social benefits for non-nationals. In 2014 the radical right party of the Danish People’s Party was the second largest party in Denmark has been very successful in pursuing a Eurosceptic agenda which pressed mainstream parties such as the Liberals and the Social Democrats to become receptive to Euroscepticism and more restrictive positions on the issue of sharing social benefits with non-nationals (Rasmussen and Sorensen 2016). Indeed, the argument that the requirement of the single market undercuts the national welfare state was resonated in the DPP’s electoral success in 2015 when it became the second more powerful

³⁰⁵ The Party Program of the Danish People’s Party as established October 2002, <https://danskfolkeparti.dk/politik/in-another-languages-politics/1757-2/>

³⁰⁶ Erlanger S., Rise of Far-Right Party in Denmark Reflects Europe’s Unease, June 19, 2015, The New York Times, <https://www.nytimes.com/2015/06/20/world/europe/rise-of-far-right-party-in-denmark-reflects-europes-unease.html>, Accessed 4 December 2019

³⁰⁷ Interview with Denmark-High-Level diplomat, November 2020

party in the Danish parliament winning 21,1% of the votes.³⁰⁸ Through its electoral success the DPP accomplished in pushing the other parliamentary parties to adopt elements of its agenda. For example, the Liberals, a generally pro-European party, concentrated also on migration before the 2015 elections, supporting more restricting policies to suppress refugee flows and putting as a prerogative the good command of the Danish language and permanent work to gain permanent residence as well as the decrease of the social benefits of migrants (Deloy 2015).

4.2.4. The 2015 AFSJ referendum and Danish national identity

For Denmark, the opt-out from Home Affairs in 1992 has still found popular support since in December 2015 the Danish people voted against the introduction of their country to the Justice and Home Affairs (Sørensen 2015). Indeed, the Treaty of Lisbon provided Denmark the opportunity to turn the previous regime of opt-out to a UK-alike mode of opting in, in a case by case mode.³⁰⁹ In the end of 2014, the parties of the center (the Social Democrats, the Socialist People's Party, Venstre, the Conservative People's Party and the Danish Social Liberal Party) agreed to realize a referendum in turning the Danish opt-out to an opt-out-opt-in agreement similar to UK's on 3 December 2015.³¹⁰ The 2015 referendum was instigated by the adoption of the Regulation (EU) 2016/794 of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol)³¹¹ which was decided through the ordinary legislative procedure in accordance with the Lisbon Treaty requirements and, as a result, the Agency of

³⁰⁸ The Danish Parliament, Results of the Danish election 2015, https://www.thedanishparliament.dk/en/news/2015/06/2015_eng_results, Accessed 9 December 2019

³⁰⁹ Protocol on the Position of Denmark, preamble, Lisbon Treaty

³¹⁰ Op.cit. 297

³¹¹ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA OJ L 135, 24.5.2016, 53–114

Europol became communitarized. While Denmark could participate in the Agency in its intergovernmental form,³¹² the state had to exit the Agency by 2017 once the latter was officially established as an Agency of AFSJ from which Denmark has an opt-out. It was then that the Danish government decided to launch a referendum in changing the status of the opt-out and gain the opportunity to opt-in in some measures, particularly in the gulled of EU police cooperation and judicial cooperation in criminal matters (Lessing 2017).

Nonetheless, Danish people declined the opt-in model proposed by the government with 53 % voting for a No with the total turnout reaching 72%.³¹³ The 2015 referendum was realized in a context of political changes with the mainstream parties, such as the governing Liberals, having lost many of their supporters and the reinforcement of the right-wing party of DP. The No campaign was led by the DPP arguing against the liberal EU migration and asylum policy and promoting the idea of a parallel agreement with Europol, but it was supported by the left-wing Unity List and the liberal New Alliance (Larsen 2015). The far-left wing party Red-Green Alliance (Enhedslisten) supported the decline of further integration of the “conservative” EU against the progressive Denmark. The remaining left parties argued in favor of the Yes campaign mainly based on the continuation of the Danish participation in Europol. Based on the same argument, the Yes campaign was supported by the governing Liberals party and the Conservative party and the Social Democrats. They were supported by the Social-Liberal Party and the Socialist People’s Party and smaller parties (Jorgensen and Chirico 2015). Even if the 2015 referendum had been

³¹² Europol was founded through an intergovernmental agreement outside EU law in 1995. It became officially an EU agency funded through Council Decision 2009/371/JHA. Council of the European Union, Council Decision (2009/371/JHA) of 6 April 2009 establishing the European Police Office (Europol)

³¹³ Nevertheless, a special agreement on strategic and operational cooperation has been agreed between Denmark and EU for the participation of the former in Europol, See more <https://www.europol.europa.eu/publications-documents/agreement-operational-and-strategic-cooperation-between-kingdom-of-denmark-and-europol>

positive, the Danish government did not intend to opt-in any EU measure of asylum and migration (Peers 2015).³¹⁴

Table 4.1. Denmark: National Referendums on EU 1972-2015				
No	Referendum	Year	Vote Yes %	Vote No%
1	Accession to the EEC	1972	63.4%	36.6%
2	Single European Act	1986	56.2%	43,8%
3	Maastricht Treaty	1992	49.3%	50.7%
4	Edinburgh Agreement	1992	56,7 %	43,3%
5	Amsterdam Treaty	1997	55.1%	44,9%
6	Accession to the Single European Currency	2000	48.6%	53.2%
7	Opt-in Protocol in AFSJ	2015	47%	53 %

Source: Author's compilation of data found in : <https://www.eu.dk/da/english/eu-referenda>

In total, Denmark has realized seven national referendums, making the country with the most referendums on EU issues (Table 1). The plethora of them has contributed to the rise of politicization and public Euroscepticism within the state. As a supported by an interviewee “...it is far too easy for the populists to turn referendums into a question of sovereignty. They claim we have this sovereignty despite

³¹⁴ Apart from Europol and police cooperation, the Danish Government intended to opt-in to measures of criminal law and civil, family, and commercial law. The detailed list can be found here: <https://um.dk/en/news/newsdisplaypage/?newsID=85867E49-B075-4425-97D5-D6FCF73F4BF4>, Accessed 1 December 2019

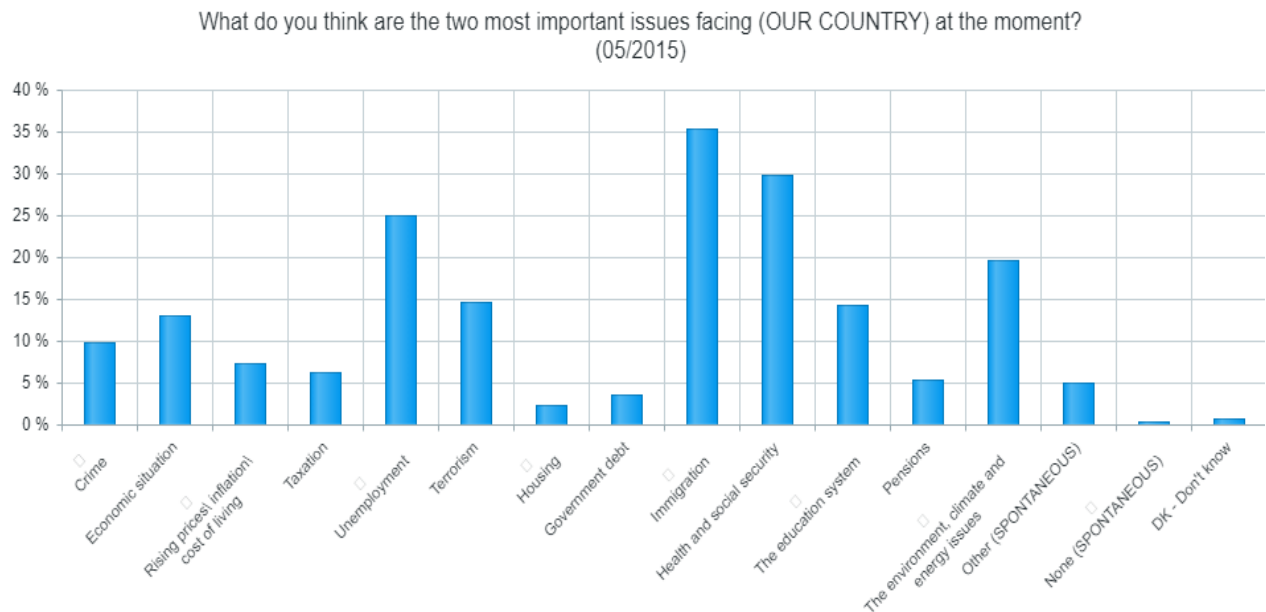
the fact that with the four free movement stated in the treaty there is no sovereignty".³¹⁵ Through the eyes of Danish people, the opt-outs protect their sovereignty from supranational decision-making. Indeed, the relation of Denmark with the EU can be seen as the aversion of supranational cooperation but embracement of intergovernmental one. This reflects the high level of politicization of EU integration in Denmark, with Eurosceptic parties supporting the opt-outs and pro-European politicians to outline the benefits of opting-in (Adler-Nissen and Gammeltoft-Hansen 2010). The fear of losing sovereignty is vital for Denmark while any integration step that is considered to threaten the "Dannishness" is opposed (Archer 2000; Toś and Tabaszewski 2012). Indeed, the Danish attitude towards integration has been fluctuated between strong support of economic integration, institutional engagement, and protection of the core of national identity and sovereignty issues. Issues of core state powers such as citizenship and migration, included in the AFSJ, activate the Danish exceptionalism. The protection of national identity, cultural homogeneity but also the neoliberal structure of the EU are the main sources for Danish public Euroscepticism.³¹⁶ The result of the referendum indicated that the protection of national sovereignty and European integration are mutually annulled. For the Danes, the Folketing must have the last say in policies of core state powers. The salience of AFSJ policies due to the refugee crisis was a decisive factor for the No vote of the people who did not trust the promise of the government that it would not opt-in asylum and migration measures (Sørensen 2015). Public Euroscepticism has not allowed Danish politicians to succeed in depoliticizing matters of EU. However, a significant axe of the negative vote lies on the possibility of letting their parliament opt-in to EU laws of the AFSJ without asking the Danish people through a referendum. While the Danish parliamentarians promised to the people that migration would not be an area of opting-in, people's distrust dominated *"In 2015 the highest level of mistrust in 25 years was recorded among the Danish voters. The decision to keep the opt-out clause in 2015 may – at least partially – be explained by this high level of mistrust towards the Danish politicians...Also, the*

³¹⁵ Interview with Denmark-EU spokesman of Political Party in Denmark, December 2020

³¹⁶ Interview with Denmark-High-Level diplomat, November 2020

question of refugees and migration is believed to be a part of the explanation. Since the referendum was held the 3rd of December 2015 – a few months after the 2015 refugee crisis - the inefficient handling of the situation could very easily be part of the explanation for the outcome”.³¹⁷ The implementation of differentiated integration has actually helped in accommodating the Danish politicization and Eurosceptic and solve the state’s integration dilemma (Miles 2013).

Graph 4.3.



Most Important Issues: Denmark/ Eurobarometer

Source: Eurobarometer, May 2015

Besides, in the period just before the referendum the Danish people estimated migration as the most important problem of their country (Eurobarometer, 2015). The refugee crisis staggered people’s trust in European integration and especially towards integration in matters of AFSJ since people blamed the

³¹⁷ Interview with Denmark-High-Level diplomat, November 2020

EU for not handling the issue effectively.³¹⁸ In September 2015, the Danish Prime Minister visited the British Prime Minister to discuss the refugee crisis. Both of them shared the same restrictive views against the refugee flows and protect their welfare systems.³¹⁹ The 2015 refugee crisis affected greatly the state of Denmark which received more than 20,000 asylum applications in 2015.³²⁰ The incoming refugees created social tensions between the western Scandinavian culture and the Muslim culture which were even underscored from officials such as the Danish Minister of Culture.³²¹ A local example has been the proposal for introduction of pork in the school lunch in the city of Randers as a traditional part of Danish national identity.³²² The rise of the asylum demands following the 2015 refugee crisis raised the anti-immigration and Eurosceptic sentiments. Apart from the re-introduction of its national border controls, the government proceeded in restricting asylum laws in Denmark to avert further asylum seekers.³²³

³¹⁸ Interviews with Denmark-High-Level diplomat and Denmark-EU spokesman of Political Party in November- December 2020

³¹⁹ The Local, Løkke and Cameron find common ground on refugees and welfare, 22 September 2015 <http://www.thelocal.dk/20150922/lkke-and-ameron-find-common-ground-on-refugees-welfare>, Accessed 22 December 2019

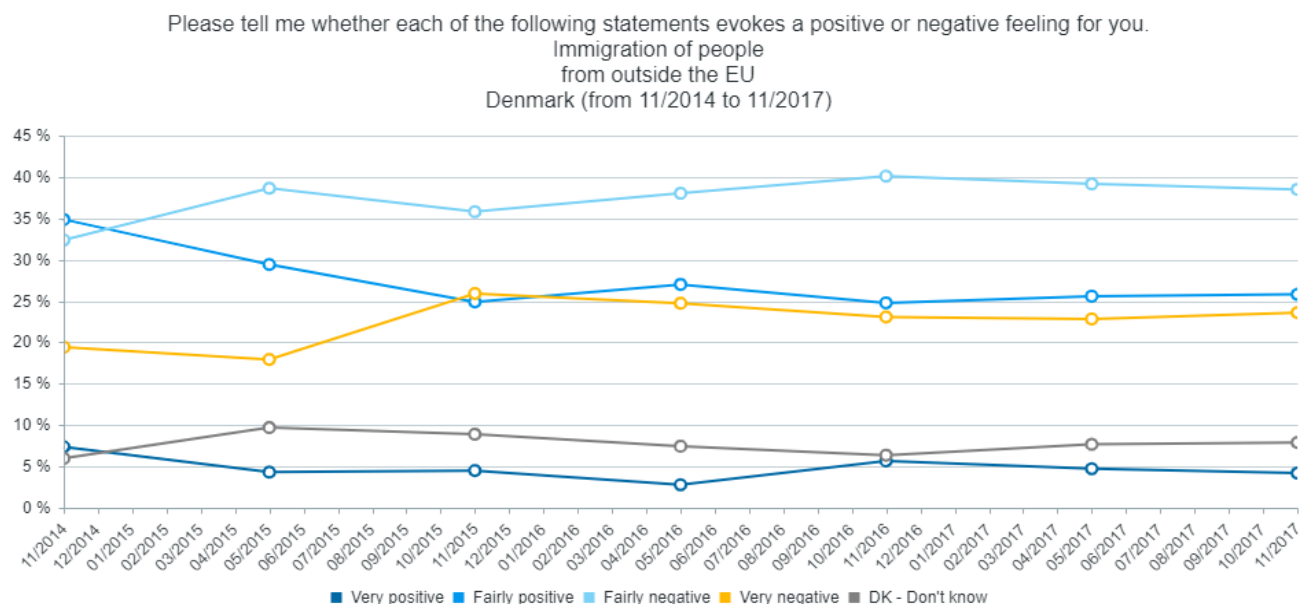
³²⁰ OECD, International Migration Outlook 2016, OECD, 252, http://dx.doi.org/10.1787/migr_outlook-2016-en, Accessed 10 January 2019

³²¹ David Zucchino, "I've Become a Racist: Migrant Wave Unleashes Danish Tensions Over Identity," The New York Times, September 5, 2016, <https://www.nytimes.com/2016/09/06/world/europe/denmark-migrants-refugeesracism.html>, Accessed 8 November 2019

³²² Dan Bilefsky, "Denmark's New Front in Debate Over Immigrants: Children's Lunches," The New York Times, January 20, 2016, <https://www.nytimes.com/2016/01/21/world/europe/randens-denmark-pork.html>, Accessed 23 November 2019

³²³ Hugh Eakin, "Liberal, Harsh Denmark," The New York Review of Books, March 10, 2016, <http://www.nybooks.com/articles/2016/03/10/liberal-harsh-denmark/>, Accessed 5 November 2019

Graph 4.4.



Immigration outside EU: Denmark/ Eurobarometer
Source: Eurobarometer, November 2014-November 2017

Ergo, the restrictions on migration laws reflected the negative perception of the Danish people of the migrants arriving in their country from outside the Union (Eurobarometer, 2014-2017). The changes including the cut off almost 45% of refugee social benefits and rights such as childcare or pensions has been dependent on the time length of the migrant’s stay in Denmark. At the same time, the Danish law offers the possibility to the police to search and seizure of refugees’ valuables³²⁴ to cover costs of their accommodation. Moreover, the granting of permanent residence has been subject to additional requirements on language and work while the period of waiting had been increased to six years³²⁵ while by the end of 2015 new regulations for detention. Relatively, the Prime Minister Lars Løkke Rasmussen

³²⁴ Arwa Damon and Tim Hume, “Denmark adopts controversial law to seize asylum seekers’ valuables,” Cable News Network, 26 January 2016, <http://www.cnn.com/2016/01/26/europe/denmark-vote-jewelry-bill-migrants/>

³²⁵ The Local, Denmark enacts cuts to refugee benefits, 26 August 2015, <http://www.thelocal.dk/20150826/denmark-passes-controversial-refugee-benefit-cuts>, Accessed 3 January 2020

proposed the revision of the 1951 Refugee Convention in 2016³²⁶ while discussed the possibility of decreasing the influence of ECHR in its Presidency of the Council of Europe in 2017(Gammeltoft-Hansen 2017).

4.3. Conclusion of Part 4

This part has indicated the way in which the exclusive national identity that drives Euroscepticism and results to internal differentiation and even to disintegration. The case of UK forms an illuminating case of party-based Euroscepticism, evoking on aspects of the country's islandic origin, that has forcefully supported the European integration in an a la carte mode. The UK has been even susceptible to hard Euroscepticism, the driving leverage of Brexit. In the case of Denmark, the constant repetition of referendums on treaty ratifications and EU issues has been keeping EU integration to high levels of politicization which stimulates national identity concerns and, thus, Euroscepticism. Besides, while EU has been shocked by the crisis, the Danish opt-outs has still enjoyed popular support

³²⁶ The Guardian, UN backlash against call to scale back Geneva convention on refugees, 6 January 2016, <https://www.theguardian.com/world/2016/jan/06/un-backlash-against-call-to-scale-back-geneva-convention-on-refugees>., Accessed 17 January 2020

PART 5: The crisis and flexibility: More Euroscepticism, more differentiation

During 2015, the EU registered 1.35 million asylum applications, a momentous double increase compared with 627 thousand in 2014, while most of the immigrants were originated from Syria and Afghanistan where war and conflicts have been outburst (Frontex Risk Analysis 2016). From the beginning until November 2015, more than 1.5 million migrants had crossed illegally EU' s borders, a tremendous increase since for the total period of 2009 until 2014 the illegal crossings were almost 800.000.³²⁷ As the Commission reported *“the European Union is facing, for the first time in its history, the potential of wide ranging humanitarian consequences on its own territory”*.³²⁸ Nevertheless, the EU failed to act dynamically internally and resolve the crisis. The main impetus has been the growing divisions among the MS and the political turmoil within the states, triggered by the vast number of incoming refugees. Genschel and Jachtenfuchs (2018,179) highlighted that the crisis manifested a moment in need of *“a strong demand for integration, coupled with tight political constraints on supply”*. Indeed, the rise of populist Eurosceptic parties and politicization within most of EU MS had turned the finding of a consensus over the necessary actions to manage internally migration, an impossible task and *“tested the migration and asylum policy to its limits”*.³²⁹ Nevertheless, the reinforcement of Euroscepticism has provoked the normalization of flexibility and differentiation within the EU Asylum system, as means to accommodate the contradicting state preferences as expressed in the negotiations for the resolution of the crisis from the beginning of 2015 to October 2020.

³²⁷ European Commission, Communication from the Commission to the European Parliament and the Council, A European Border and Coast Guard and effective management of Europe's external borders, Brussels, 17 December 2015, COM (2015) 673 final

³²⁸ European Commission, Communication from the Commission accompanying the proposal for a Council Regulation on the provision of emergency support within EU, Brussels, 3 March 2016, COM (2016) 116 final, 2

³²⁹ Interview with Commission Policy Coordinator- Asylum, December 2019

5.1. The Emergency relocation scheme and Euroscepticism in the transit states of V4

Within the framework of the 2015 Agenda on Migration, the Commission proposed as “*provisional measures*” the activation of the Article 78(3) of the Treaty on the Functioning of the European Union (TFEU) and the relocation of the 40.000 from Greece and Italy as well as the resettlement³³⁰ of 20.000 refugees within two years, according to which the examination of the asylum application will be realized by “*The other Member States, defined in the proposal as the “Member States of relocation” become responsible for examining the application of the person to be relocated*”.³³¹ The proposal of relocation³³² was based on the Article 80 of TFEU which provisioned that the EU migration policy should “*be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States*” while the resettlement initiative referred to the responsibilities of the Union under the 1951 Refugee Convention (Saatçioğlu 2020). The Resettlement Scheme that was adopted in consensus by the Justice and Home Affairs Council in July 2015 encompassed the resettlement of 22,504 migrants in need of international protection on voluntary bases and the relocation of 32,256 refugees.³³³ While the decision was taken in consensus, the course of EU cooperation for the management of the refugee crisis was not welcomed by the states of the Visegrad 4 (V4). The V4 firstly organized their coordinated response on the refugee crisis under the Czech V4 Presidency. They underscored their reservations

³³⁰ In contrast to the relocation of migrants from one MS to another, “*‘Resettlement’ means 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, with the objective of protecting against refoulement and admitting and granting the right to stay and any other rights similar to those granted to a beneficiary of international protection*” in European Commission, Recommendation of 8.6.2015 on a European resettlement scheme, Brussels, 8.6.2015 C(2015) 3560 final, 4

³³¹ European Commission, Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece, Brussels, 27.5.2015 COM (2015) 286 final

³³² The first pilot relocation program was realized in 2009 in Malta under the name EUREMA. More information: <https://homeaffairs.gov.mt/en/MHAS-Information/EUREMA/Pages/EUREMA-I.aspx>

³³³ Council of the European Union, Outcome of the Council Meeting, 3405th Council meeting Justice and Home Affairs, Brussels, 20 July 2015, 11097/15

against the 2015 Agenda on Migration since the latter did not include in their any measure for the transit states as themselves and the West Balkans.³³⁴ Most importantly, they fervently opposed the emergency relocation system based on quotas. Thus, the V4 expressed their opposition to the, stating that “*We also recall the voluntary options when emergency relocation and resettlement are concerned. We do not deny the spirit of solidarity but we firmly argue the contradictory effects and pull factors of a possible mandatory redistribution scheme for asylum seekers*”.³³⁵ They supported their right to decide on their own the amount of refugees and migrants they wanted in their country and not the calculated quotas of the EU (Bauerova 2018).

Unable to stop the flows, the southern frontline states bore a heavy burden in dealing with high numbers of migration and, most of the time, the Dublin system was inoperative. Within this context, the EU decided to step in since, as highlighted by the Council ‘*the situation requires additional demonstration of solidarity on the ground*’³³⁶. In addition to the rise of the resources of the Madad Fund for Syria,³³⁷ on 14 and 22 September 2015, the EU’s Justice and Home Affairs Council agreed, again as a provisional measure, the relocation of additional 120.000 refugees from Greece, Hungary, and Italy in addition to the previously foreseen 40.000 until 16 September 2017.³³⁸ Under the priority of the vulnerable persons, the number of refugees of each MS was accounted based on the population (40%), its GDP (40%), the average of

³³⁴ Joint Statement of the Heads of Government of the Visegrad Group Countries, Bratislava, June 19 2015, <https://www.visegradgroup.eu/calendar/2015/joint-statement-of-the>, Accessed 6 February 2021

³³⁵ Ibid, parag. on Migration

³³⁶ Council of the European Union, Presidency Note, Migration: EU action, state of play and next steps, Brussels, 11 September 2015 11782/1/15, 2

³³⁷ Council of the European Union, Presidency conclusions, Brussels, 14 September 2015, 12002/1/15

³³⁸ Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, 14 September 2015, OJ L 239, 15.9.2015. Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248, 24.9.2015 amended by Council Decision (EU) 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 268, 1.10.2016

asylum applications of the previous four years (10%), and the rate of unemployment (10%).³³⁹ The relocation scheme was expected to interrupt the secondary movements towards the Northern European states, since the redistribution of refugees based on quotas aims to diminish inequalities of burden sharing (Thielemann 2018). The relocation of the migrants had as main objective the elimination of secondary movements, thus, the migrants were expected to “*remain where they are, once relocated*”.³⁴⁰ The EP had also supported solidarity and the amendment of Dublin system criticizing the Council for stalling an efficient and humanitarian solution.³⁴¹ Moreover, the necessary funds for the relocation were drawn from the AMIF finance which provisioned a lump sum of EUR 6,000 for each person relocated.³⁴² As the Commission highlighted, the support to the southern member states depended on their proper implementation of registration of the migrants with the support of the European Agencies Frontex, Europol, Eurojust and EASO as provisioned by the Eurodac Regulation Nr. 604/2013.³⁴³

Under the anticipation for the Council Decision on 22 September 2015 on the mandatory relocation, the V4 identified the need to strengthen their unified reaction. Thus, in their joint declaration of their summit in September 2015, they openly expressed their refusal to the mandatory quota system and the gradual

³³⁹ In detail the quota system was based on: (a) The size of the population (40%), as it reflects the capacity to absorb a certain number of refugees; (b) total GDP (40%), as it reflects the absolute wealth of a country and is thus indicative for the capacity of an economy to absorb and integrate refugees; (c) average number of spontaneous asylum applications and the number of resettled refugees per 1 million inhabitants over the period 2010-2014 (10%), as it reflects the international protection efforts made by Member States in the recent past; and (d) unemployment rate (10%), as an indicator reflecting the capacity to integrate refugees. More information https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/backgroundinformation/docs/communication_on_the_european_agenda_on_migration_annex_en.pdf

³⁴⁰ European Commission, Communication to the European Parliament, the European Council and the Council, Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration, Brussels, 23.9.2015 COM(2015) 490 final

³⁴¹ European Parliament, Resolution of 10 September 2015 on Migration and Refugees in Europe, https://www.europarl.europa.eu/doceo/document/TA-8-2015-0317_EN.pdf, Accessed 10 February 2021

³⁴² op.ft.6

³⁴³ Communication from the Commission to the European Parliament, the European Council and the Council Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration, Brussels, 14.10.2015, COM (2015) 510 final

development of a voluntary distribution system based on a quota system, stating “ *Preserving the voluntary nature of EU solidarity measures – so that each Member State may build on its experience, best practices and available resources; principles agreed at the highest political level, including in European Council conclusions must be respected; any proposal leading to introduction of mandatory and permanent quota for solidarity measures would be unacceptable*”.³⁴⁴ Thus, Czech Republic, Hungary, and Slovakia plainly disputed the Council Decision of 22 September 2015. The V4 grounded publicly their objection in receiving their refugee quota on the bad national economy and their opposition to non-Christian refugees (Heisbourg 2015). In the Eastern European states, the relocation scheme was perceived as an EU effort to impose multiculturalism in their countries against their conception of “*East European cultural distinctiveness*” (Szczerciak 2020). The adoption of a nationalist stance by the East European states against a more universalist view by the Western European states has accentuated the division between east and west within the EU (Kazharski 2018). Besides, all of them took a stand against Greece claiming that the state aimed to break down Dublin rules.³⁴⁵ On the other side, the relocation was backed in the proceedings by “*the Med-6 countries plus Germany, France, the Benelux countries plus Sweden and Finland*”.³⁴⁶

Besides, the decision of the Council to back the Commission and the EP on the relocation of 120.000 refugees from Greece and Italy through QMV was not welcomed by the V4 (Smeets and Zaun 2020). The V4 required the decision to be taken in unanimity and tried to veto the decision. In fact, since the MS consider migration and asylum as core state powers, there is an informal habit in the Justice and

³⁴⁴ Joint Statement of the Heads of Government of the Visegrad Group Countries, Prague, September 4 2015. <https://www.visegradgroup.eu/calendar/2015/joint-statement-of-the-150904>, Accessed 12 February 2021

³⁴⁵ Financial Times, Central Europe states keep migrant heat on Athens, February 16 2016 <https://next.ft.com/content/c15b28f2-d425-11e5-8887-98e7feb46f27>, Accessed 18 February 2021

³⁴⁶ Interview with Former Assistant of the President of the Council, February 2021

Home Affairs Council that decisions in core state powers to be decided in consensus rather than qualified majority (Trauner 2016) but there is no official agreement. Besides, it is considered a high risk to reach an agreement in QMV in such a sensitive area, against the will of some MS.³⁴⁷ After the decision, the Minister for Immigration and Asylum of Luxembourg, Jean Asselborn, commented that *“We have an agreement in the Council by a very large majority, a majority going beyond that required by the Treaties. Today’s decision reminds us that the European Union is founded on solidarity between member states....”*³⁴⁸ However, the V4 were not the only ones against the relocation system. While the frontline and the traditional refugee hosting states (such as Germany and Sweden) supported by the Benelux states were in favor of a permanent relocation system, the Visegrad states backed by the Baltic states, and Spain opposed the proposal, which could lead to a higher number of asylum applications (Bauerova 2018). Within this divided environment, the Council did not accept the Commission’s proposal which included the provision for a Permanent Relocation Mechanism which would allow the Commission to activate a quota relocation system in case a MS is confronted with extraordinary flows, as a part of an amendment of the Dublin Regulation.³⁴⁹ The emergency relocation scheme of 2015, aspired to be the basis for a permanent relocation mechanism since emergency and provisional measures did not provide a long-term solution to the inadequacies of the Dublin system (Niemann and Zaun 2018). However, the voluntary relocation schemes are, indeed, less politically contentious but they lack effectiveness in reducing inequalities among the MS (Thielemann 2018). Frontline and Northern European states were more affected by the refugee crisis whereas the CEE countries were mainly affected through transit. The hosting states pressed for the discussion of the quota system in the Council of October 2015, but it was

³⁴⁷ Ibid

³⁴⁸ Council of the European Union, Justice and Home Affairs Council, 22 September 2015- Main results, www.consilium.europa.eu/en/meetings/jha/2015/09/22/, Accessed 6 March 2021

³⁴⁹ European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person, Brussels, 9.9.2015, COM(2015) 450 final

not included.³⁵⁰ Therefore, the discussions of the two camps resulted to a rather antagonistic environment in the European Councils of October and November 2015 (Biermann et al 2019). The disagreement on the amendment of the asylum system and the permanent mechanism of refugee quota resulted to a 'non-decision' (Zaun 2018). The relocation-opposing group of states threatened with a non-agreement and blocked the initiation of a permanent refugee quota system. The most vocal states against the refugee quota system had been the Visegrad states which historically have been countries of very low levels of refugee intake but also have been governed by Eurosceptic right-wing governments (ibid). The majority of the parties in the V4 have engaged an anti-immigrant and Eurosceptic stance and supported that "*the EU should find an unequivocal solution which should include a viable and constructive alternative to measures imposing relocation of migrants*".³⁵¹ The narrative used by the V4 countries places the EU and the West European states as the responsible for the crisis (Braun 2020; Csehi and Zgut 2021). Instead, the V4 claimed that "*any overall solution for the crisis must therefore be constructed with the objective of **not to distribute but to prevent** the migratory pressure on Europe*".³⁵²

5.1.1. Hungary

Taggart and Szczerbiak (2002) suggested that, almost traditionally, in Central and East European states (CEE), Eurosceptic and right-wing parties are stronger due to long nationalist past. In CEE, Euroscepticism has started growing rightly after their EU accession (Whitefield 2015). The political conflict within these states is expressed in cultural terms with the conservative part of electors and electorates to be characterized by a defensive nationalism (Coman 2017). Party leaders may strategically opt for attributing to the European integration a cultural identification against the position of the defensive

³⁵⁰ Council conclusions on Migration - Council conclusions (12 October 2015), Luxembourg, 12 October 2015, 12880/15

³⁵¹ Visegrad Group, Joint Statement of V4 Interior Ministers on the Establishment of the Migration Crisis Response Mechanism, Warsaw, November 21 2016, paragr. 7, <https://www.visegradgroup.eu/calendar/2016/joint-statement-of-v4>, Accessed 21 February 2021

³⁵² Visegrad Group, V4 Statement on the Future of Europe, Budapest, January 26 2018, paragr. 6, emphasis added https://www.visegradgroup.eu/documents/official-statements#_2016, Accessed 22 February 2021

nationalism that they promote. This is the case for Orbán's Fidesz in Hungary, the country which reached the higher politicization rates (Hutter and Kriesi 2019). The government of the Fidesz Party under Victor Orban has often criticized the role of EU and chased the centralization of powers in his hands at the expense of democratic rules³⁵³ but the peak of his disagreement with the EU was reached in the event of the relocation scheme in 2015. The Prime Minister of Hungary endorsed the Hungary-first approach and in June 2015, he suspended the application of Dublin Regulation (Luetgert and Vezbergaitė 2015; Saatçioğlu 2020). In these premises, the Prime Minister of Hungary claimed that the relocation plan has been “mad and unfair”³⁵⁴ and a “life-changing decision”,³⁵⁵ portraying the refugees as a cultural, economic and security threat (Bocskor 2018). He rallied against EU interference in national migration policy within his country supporting that the refugee crisis should be dealt nationally and unilaterally, accusing Germany for “moral imperialism”.³⁵⁶ After the Paris terrorist attacks the securitization of migration reached extraordinary levels with Orbán claiming that “all the terrorists are migrants”.³⁵⁷ In an effort to gain public support, the government of Fidesz initiated a campaign of national consultation using a questionnaire connecting refugees with terrorism while announcing the construction of a fence in its borders with Serbia as well as the use of tear gas against the migrants.³⁵⁸ Within this framework, the government of Orbán changed the national asylum laws, restricting any possibility of acceptance of the

³⁵³ Deutsche Welle, 'Hungary is no longer a democracy,' says Hungarian legal scholar, 14 Mat 2020 <https://www.dw.com/en/hungary-is-no-longer-a-democracy-says-hungarian-legal-scholar/a-53442394>, Accessed 1 March 2021

³⁵⁴ Hungary's PM Orban calls EU refugee quota plan 'mad', 8 May 2015, www.euractiv.com/section/all/news/hungary-s-pm-orban-calls-eu-refugee-quota-plan-mad/, Accessed 3 March 2021

³⁵⁵ Deutsche Welle, Hungary's Orban slams Germany for 'rude' tone over refugees, 25 February 2016, <https://www.dw.com/en/hungarys-orban-slams-germany-for-rude-tone-over-refugees/a-19072608>, Accessed 12 March 2021

³⁵⁶ Deutsche Welle, Orban: 'No moral imperialism' in refugee crisis, 25 September 2015, <https://www.dw.com/en/orban-no-moral-imperialism-in-refugee-crisis/a-18734103>, Accessed 23 April 2020

³⁵⁷ Politico, 'All the terrorists are migrants' Viktor Orbán on how to protect Europe from terror, save Schengen, and get along with Putin's Russia, 25 November 2015, <https://www.politico.eu/article/viktor-orban-interview-terrorists-migrants-eu-russia-putin-borders-schengen/>, Accessed 20 April 2020

³⁵⁸ Euractiv, Hungary to build fence at Serbian border, 17 June 2015, <https://www.euractiv.com/section/justice-home-affairs/news/hungary-to-build-fence-at-serbian-border/>, Accessed 11 April 2020

mandatory relocation system, through a dubious recommendatory referendum. The turnout in the referendum was extremely low but its result was positive towards Orban's proposal.³⁵⁹ While the people's turnout did not surpass the 40%, and boycotted by the opposition, 98% of the people voted for the rejection of the EU's relocation scheme.³⁶⁰ Orban equated the refugees with a foreign army.³⁶¹ The Commission reported that *"The installation of fences for the purposes of border control is not as such contrary to EU law. However, the applied measures must be proportionate and must comply with the respect of fundamental rights and the rights resulting from the EU asylum acquis, in particular the non-refoulement principle"*.³⁶² In his speech in 10 January 2016, Orban claimed that *"The migrant situation – the refugee crisis, the mass arrival of new peoples in Europe – raises the most important questions of the nation, the most important questions of the existence of European nations...We may remember that the first attempts at dismantling the Europe of free nations came from within. The first step – or at least the first time alarm bells started ringing in our heads – was when reference to our Christian roots going back thousands of years was removed from the draft EU constitution...This is why today they attack and brand as exclusionist anyone who respects this tradition – a tradition which I think is closely related to the survival of the Hungarian nation and our existence today...The second step they took against the existence of nations was the withdrawal of an increasing number of Member State powers from the realm of national sovereignty and their delegation to Eurocrats...We have now reached the third attempt to weaken nations within Europe, and to many this seems to be a reasonable and expedient next step*

³⁵⁹ Hungary's refugee referendum not valid after voters stay away, 2 October 2016
<https://www.theguardian.com/world/2016/oct/02/hungarian-vote-on-refugees-will-not-take-place-suggest-first-poll-results>,
Accessed 13 March 2021

³⁶⁰ Reuters, Hungarians vote to reject migrant quotas, but turnout too low to be valid, 2 October 2016, <https://www.reuters.com/article/us-europe-migrants-hungary-referendum-idUSKCN1213Q3>, Accessed 9 March 2021

³⁶¹ The Guardian, 'Refugees "look like an army", says Hungarian PM Viktor Orban', 23 October 2015, <http://www.theguardian.com/world/2015/oct/23/refugees-look-like-an-army-says-hungarian-pm-viktor-orban>, Accessed 16 March 2021

³⁶² European Commission, Communication from the Commission to the European Parliament and the Council, Eighth biannual report on the functioning of the Schengen area 1 May - 10 December 2015, Brussels, 17 December 2015, COM (2015) 675 final, 4

towards creating a United States of Europe. We call this the migrant crisis.”³⁶³ Therefore, Orbán interpreted any kind of criticism as an attack on the people and the nation of Hungary, supporting the ethnic, cultural and religious uniformity in Hungary (Bocskor 2018). Besides, Orbán’s new migration law includes the punishment with three years’ imprisonment for the illegal passing of the border fence he built (Stojarová 2018).

Hargitai (2020:193) explained that “According to Fidesz, the transfer of competences to the EU puts the European institutions against the will of the people”. Nevertheless, Fidesz was firstly established as a liberal party against the communist regime and until 2010, it was not clearly Eurosceptic, supporting Hungary’s accession to the EU and convergence with EU standards (Bocskor 2018; Hargitai 2020). The position of Fidesz has been influenced by the radical right party Jobbik which until 2014 advocated for the exit of Hungary from the EU. The growing success of Jobbik led Fidesz to embrace more nationalistic stance to attract public support and entered a period of almost continuous conflict with EU related to specific policy measures and questionable national measures adopted by Orbán (Duro 2016, Hargitai 2020). Jobbik has been an extreme right-wing party, focusing on xenophobic and anti-European mobilization since its foundation in 2003 (Stojarová 2018). In the 2010 elections the party had succeeded in doubling its force while it continuously grew. As a protest party, Jobbik has declared that they would not accept one refugee in their countries’ territory (Duro 2016). In fact, Jobbik had close relations with the Hungarian Guard, an organization with Neo-Nazi appearances, raiding in villages and towns where roma populations were concentrated and end the ‘Gypsy crime’. Since its formation, it has also had a close relation with MIEP, the anti-Semite political party which was strong during the 1990’s (Szabados 2015). The party used hate speech against Roma which since 2015 it has turned towards refugees

³⁶³ About Hungary, PM Orbán: Hungary Will Challenge the European Commission's Migrant Resettlement Quota in the European Court, 10 January 2016, <http://abouthungary.hu/speeches-and-remarks/prime-minister-viktor-orbans-speech-at-the-14th-plenary-session-of-the-hungarian-standing-conference/>

(besides the party's previous pro-Islamic stance) (Szabados 2015). While Jobbik moderated its positions to attract the medium voter, Fidesz approached the extremes even more (Duro 2016, Hargitai 2020). Therefore, Fidesz adopted Jobbik proposals for the criminalization of NGOs supporting migrants. In 2018, the Hungarian Government initiated the 'Stop Soros' legislative package, again after a National Consultation questionnaire in 2017, which criminalized any kind of assistance to undocumented migrants by persons or organizations (Hargitai 2020). Orban's centralization of power included the appropriation of public institutions and the control of media (Bocskor 2018).

5.1.2. Slovakia

Therefore, it was not surprising that Hungary decided to challenge the validity of the Council's decision on relocation in the CJEU in addition with a resonant denial to implement the Council's decision.³⁶⁴ Nevertheless, Hungary was not alone in the legal complaint to the CJEU since Orbán found support in the Slovak Prime Minister Fico (Stojarová 2018). Whereas Slovakia's Prime Minister Robert Fico has had a leftist background, he joined Orban and characterized the decision on relocation as 'diktat' while engaging an anti-Muslim rhetoric, ³⁶⁵ accusing Germany of 'forcing others to pay' ³⁶⁶ its pro-refugee policy. Though Slovakia was also not a target country, the state refused fervently the relocation scheme, embracing anti-muslim rhetoric (Bauerova 2018). In this framework, Prime Minister Fico refuse the intake of 802 migrants that was Slovakia's quota and accused EU of violating its national sovereignty. He claimed that "*The only way to eliminate risks like in Paris and in Germany is to prevent the creation of a*

³⁶⁴ Slovak Republic and Hungary v Council of the European Union, C-643/15 and C-647/15, European Union: Court of Justice of the European Union, 6 September 2017

³⁶⁵ BBC News, Migrants crisis: Slovakia 'will only accept Christians', 19 August 2015, <https://www.bbc.com/news/world-europe-33986738>, Accessed 15 February 2021

³⁶⁶ Deutsche Welle, 'Visegrad Group opposes Germany's refugee policy', 15 February 2016, <http://www.dw.com/en/visegrad-group-opposes-germanysrefugee-policy/a-19048816>, Accessed 26 February 2021

*compact Muslim community in Slovakia.*³⁶⁷ Slovakia preferred the voluntary scheme in which it can select the refugees it wants. Again, Slovakia accepted only the resettlement of 149 Christian Syrians from Iraq in September 2015 since Fico had undertaken a hard stance against multiculturalism and opposed the quota of Muslim refugees. Nevertheless, Slovakia did not adopt the anti-establishment rhetoric against the EU as Hungary (Duro 2016; Kazharski 2018).

The party of Social Democratic (SMER) Prime Minister Fico has been engaged in extreme right positions for electoral reasons after the success of right-wing parties in the Slovak political scene. The most reinforced right-wing party has been the Slovak National Party (SNS, Slovenská národná strana) which managed to participate in the coalition government of March 2016 since it gained 15 seats in the parliament.³⁶⁸ The Slovakian National Party joined Farage's Europe of Freedom and Democracy (EFD) group in EP in 2009 (Duro 2016). Considering the growing success of SNS pushed the Social Democratic Prime Minister Fico to endorse declaring that t 'Islam ha[d] no place in Slovakia'.³⁶⁹ Moreover, 14 members of the Kotleba-People's Party Our Slovakia (KPPOS), a radical right and hard Eurosceptic party, had entered the Slovakian parliament. In sum, the right nationalist parties, controlling the 1/5 of the parliament, contributed greatly to the increase of the politicization and mobilization of the public against the EU. As in most of the Eastern European states, the nationalist parties that had gradually gained attention in the recent decade have won the election race due to the exploitation of the refugee crisis. Their success led the mainstream parties to co-opt their positions on electoral grounds. This is indicated

³⁶⁷ Politico, 'We protect Slovakia', 10 February 2016, <https://www.politico.eu/article/slovakia-fico-migrants-refugees-asylum-crisis-smer-election/>, Accessed 28 April 2020

³⁶⁸ Politico, 5 takeaways from Slovakia's election, 6 March 2016 <https://www.politico.eu/article/slovakia-fico-asylum-migrants-elections-nazi-nationalists/>, Accessed 17 April 2020

³⁶⁹ Politico, Robert Fico: 'Islam has no place in Slovakia', 26 May 2016, <https://www.politico.eu/article/robert-fico-islam-no-place-news-slovakia-muslim-refugee/>, Accessed 28 February 2020

by Robert Fico's Social Democracy party, which has been the strongest party in Slovakia, winning 49 seats in the 2016 elections. Whereas the party has been self-identified as a left-wing party, its positions have reached the right wing more than often. Besides, it agreed in forming a ruling coalition with the radical right wing and anti-minority SNS (Mihálik and Jankoľa 2016; Kazharski 2018). SMER by its side supported SNS nationalist initiatives and interpretation of national identity and identifying refugees as parasites. SNS promoted the concept that migration poses a threat to the national identity and national security while engaging to xenophobic and anti-EU rhetoric (Mihálik and Jankoľa 2016; Kazharski 2018). Nevertheless, the governmental positions against the relocation scheme had gained political support by other opposition parties such as the Freedom and Solidarity (SaS) and SIET (Mihálik and Jankoľa 2016).

5.1.3. Poland

Nevertheless, the primary complaint submitted by Slovakia and Hungary to the CJEU against the relocation scheme was joined by Poland in 2017. Poland also actively supported Slovakia in the proceedings of its complaint against the mandatory relocation (Stojarová 2018). After September 2015 and under the lead of the pro-European Civic Platforms' Ewa Kopacz (the party of Donald Tusk), Poland agreed with EU proposals. The change of her stance was demonstrated in their declaration of solidarity and their commitment to construct ten new refugee centers in Poland.³⁷⁰ Despite the alignment of V4 positions, Poland was persuaded to agree with the relocation scheme. Nevertheless, after its national election in October 2015, Poland begun resisting the mandatory relocation schemes (Bauerova 2018). In the elections of October 2015, the conservative Eurosceptic party of Law and Justice which gained almost 37% of the vote and all the cabinet positions. In the peak of the refugee crisis, the Law and Justice

³⁷⁰ Deutsche Welle, Poland abandons promise to take in refugees after Brussels attacks, 23 June 2016, <http://www.dw.com/en/poland-abandons-promise-to-take-in-refugees-after-brussels-attacks/a-19137258>, Accessed 2 May 2020

party (PiS, Prawo i Sprawiedliwość) adopted a clear anti-immigrant stance. Therefore, the newly elected prime minister Beata Szydło and her party declined the relocation system and connected the incoming refugees with terrorists and viruses.³⁷¹ She exploited the commemoration of the Auschwitz-Birkenau Nazi German death camp to outline the righteousness of her policy not to accept the refugees.³⁷² In the same framework, the government of the Polish Law and Justice Party capitalized the migration crisis to back up its anti-European stance, embracing the right wing motto of “Refugees not welcome” (Krzyzanowski 2018). In Poland, the PiS has warmly engaged xenophobia, nationalism, and strong opposition to migration. It successfully stimulated the polarization within the party system and public promoting its anti-German and Eurosceptic agenda and succeeded in “mainstreaming” nationalism and Euroscepticism (Stojarová 2018). Generally, the PiS has never been hesitant in expressing its Eurosceptic feelings while before its accession the state’s party system included many hard Eurosceptic parties such as League of Polish Families (LPR) and Self-Defence of the Republic and the Catholic-national LPR (SRP) (Szczurbiak, 2008). The PiS started to harden its Eurosceptic stance since the EP elections of 2004 when the hard Eurosceptic League of Polish Families gained far more seats, when the party began engaging a policy to eliminate party competition from the right. The party has supported the exit of Poland from the Eurozone and the protection of national sovereignty against EU federalism which has not changed since its participation in the government (Duro 2016). The PiS also introduced controversial legal changes in the judicial powers and law of media on the basis that the judicial “elite” had been corrupted. Indeed, Kaczyński followed a position analogous to Orbán’s, attacking the EU’s political elite that disregarded the will of Polish people but imposing an unfair policy. Nevertheless, he underscored the Christian values against the refugees (Csehi and Zgut 2021).

³⁷¹ Szczurbiak A., How is the European migration crisis affecting Polish politics?, 6 July 2017, <https://blogs.lse.ac.uk/europpblog/2017/07/06/european-migration-crisis-affecting-polish-politics/>, Accessed 9 May 2020

³⁷² Deutsche Welle, Polish Prime Minister Beata Szydlo uses Auschwitz speech to defend refugee reticence, 15 June 2017, <https://www.dw.com/en/polish-prime-minister-beata-szydlo-uses-auschwitz-speech-to-defend-refugee-reticence/a-39263465>, Accessed 10 May 2020

The opposition was further reinforced after the securitization of migration following the attacks in Paris and Brussels. As a result, the country was also referred to the CJEU alongside Hungary and Czech Republic by the Commission (Styczyńska 2018). In fact, the proposed resolution of Polish parliament that deems the emergency relocation as violating the Article 5 TEU on the principle of subsidiarity. Taking it on region at a great level, the narrative of opposing the refugees was based on the need of protection of Christian identity against Islam (Styczyńska 2018). In the words of Narkowicz (2018, 358), the win of the Law and Justice signaled that the *“incoming Eurosceptic right-wing government promoting Catholic patriotic values became the latest addition to the populist current in the region, ideologically following in the footsteps of Orban’s Hungary...The populist narrative, promoted by the Law and Justice party, sees the EU as well as the refugees as invaders”*. Nationalist rhetoric in the Polish political scene was also embraced by the Kukiz’15 movement founded in 2015 by members of the National Movement and the All-Polish Youth, both of which were identified as nationalist. The party came third in the presidential elections of 2015, gaining 20,8% of the votes and 30 seats in the Sejm. The Kukiz’15 defended forcefully the refusal to accept any refugee while asking for a referendum on the matter, defending the ethnic uniformity and Catholicism of the Polishness (Styczyńska 2018).

5.1.4. Czech Republic

Alongside Hungary, Slovakia and Poland, the Czech Republic has also refused to admit the relative quota of refugees.³⁷³ In the Czech Republic, the government was formed by a coalition of parties the Czech Social Democratic Party (ČSSD), ANO 2011 and the Christian and Democratic Union

³⁷³ EUobserver, Czech Republic, Hungary, Poland face EU sanctions on migrants, Brussels 13 June 2017, <https://euobserver.com/migration/138216>, Accessed 5 May 2020

Czechoslovak People's Party (KDU-ČSL). The Prime Minister adopted an uncongenial stance towards migrants characterizing the crisis as an "organized invasion".³⁷⁴ After being outvoted in the Council, the not Eurosceptic ČSSD tried to contain the tension. However, since 2016 the party joined ANO 2011 and its leader Andrej Babiš, which supported the closing of borders. As a Prime Minister in 2018, Andrej Babiš rejected any cooperation with Germany in accepting refugees, stating "*my government does not even plan to join an agreement that would involve the systematic reception of illegal migrants.... There is no reason to do so. We categorically reject it*".³⁷⁵ The KDU-ČSL also agreed with its governmental partners fiercely claiming that the decision violated the state's national sovereignty, equating the Council decision with the events in Munich 1938, when the allies of Czechoslovakia had left the country to Germany (Hrabálek and Đorđević 2017). Apart from ANO 2011 which forms the main Eurosceptic force within the government (accessed the parliament in 2013), the Czech parliament has also Eurosceptic opposition from ODS (Civic Democratic Party), the Dawn and SPR-RSČ (formed after the breakout of the refugee crisis in June 2015), opposing the integration of core state powers. In the Czech Republic, the clearly Eurosceptic ODS and its president Václav Klaus contradicted the protection of national identity and uniform culture against the integration of migration, a view that found general support in most political actors. The ODS was pushing the government to make the Council decision illegal. Moreover, the SPR-RSČ (Rally for the Republic – Republican Party of Czechoslovakia) embraced a forceful nationalist stance claiming on anti-European, anti-German and anti-immigration feelings. Similar anti-Islamic and fierce anti-Europeanist rhetoric in the name of the nation's independence and religious uniformity was followed by the Dawn (and the subsequent SPD), the Block against Islam, or the Freedom and Direct

³⁷⁴ The Telegraph, Wave of refugees "an organized invasion", 27 September 2015, <https://www.telegraph.co.uk/news/worldnews/europe/czechrepublic/12070377/Wave-of-refugees-to-Europe-an-organised-invasion-says-Czech-PM.html>, Accessed 3 June 2020

³⁷⁵ Government of the Czech Republic, Declaration by the Prime Minister on the alleged agreement with Germany on returning of migrants, 30 June 2018, <https://www.vlada.cz/cz/clenove-vlady/premier/projevy/revize-1-en-prohlaseni-predsedy-vlady-k-udajne-dohode-s-nemeckem-o-navraceni-migrantu-167612/>, Accessed 19 June 2020

Democracy movement, in the event of the 2016 local elections. The Dawn, specifically, was even more extreme asking for the realization of a referendum to exit the EU. Thus, all the parliamentary parties supported the government's decision to oppose the relocation quota (Hrabálek and Đorđević 2017).

At first, the two largest governmental parties ČSSD and ANO 2011 were against pursuing the lawsuit against the EU with Hungary and Slovakia, basing their argument on the fear of isolation in the EU. From the government only the KDU-ČSL agreed to participate in the lawsuit. Nevertheless, since November 2015 ANO 2011 was also placed in favor of the lawsuit. All the opposition parties, apart from the TOP 09, criticized the governmental decision not to take part in the lawsuit (Hrabálek and Đorđević 2017). The Czech Republic has been characterized with Euroscepticism originated in issues of history and identity of a "small" Central European state. EU integration has been regarded as necessary due to economic interdependence but unintentional event and, especially, in core state powers, is seen as dangerous to national sovereignty and identity and, as a result, they see differentiation as necessary in these fields (Aydın-Düzgüt et al 2020). The Czech President Miloš Zeman has also expressed anti-muslim ideas.³⁷⁶ President Zeman greatly contributed to the normalization of the right wing ideology among the Czech society and Euroscepticism since he actively criticized EU actions in general and not only in its migration policy (Stojarová 2018) .The elections of 2017 fired up again the anti- immigration discourse as the one used by the Freedom and Direct Democracy party (SPD) which after the elections emerged as the fourth strongest party in the Chamber of Deputies. Still after the 2017 elections, the Prime Minister Babiš refused any possible relocations of refugees from Italy and Greece. Instead, they have backed up the externalization of migration control to third countries through financial aid (Bauerova

³⁷⁶ The Guardian, Miloš Zeman: the hardline Czech leader fanning hostility to refugees, 14 August 2016, <https://www.theguardian.com/world/2016/sep/14/milos-zeman-czech-leader-refugees>, Accessed 20 June 2021

2018). The Czech Republic has also upheld that “Given the sensitivity of this particular policy area, the political agreement by the Council on the key aspects must be, however, unanimous”.³⁷⁷

Table 5.1.

V4 states: Main Eurosceptic parties with anti-immigration claims				
State	Party	Vote % before refugee crisis (latest elections)	Vote % in the period of crisis (2015-2018)	Parliamentary position during the crisis/seats
Hungary	Fidesz	44,9 (2014)	49,3 (2018)	Government/117 seats
	Jobbik	20,2 (2014)	19,1 (2018)	Opposition/26 seats
Slovakia	Slovak National Party (SNS)	4,6 (2012)	8,6 (2016)	Participation in coalition Government/ 15 seats
	Kotleba-People’s Party Our Slovakia (KPPOS)	1,6 (2012)	8,0 (2016)	Opposition/ 14 seats
Poland	Law and Justice (PiS)	29,9 (2011)	37,6 (2015)	Government/ 235 seats
	Kukiz’15	-	8,8 (2015)	Opposition/42 seats
Czech Republic	ANO 2011	18,7 (2013)	29,6 (2017)	Participation in coalition Government / 78 seats
	ODS	7,7(2013)	11,3 (2017)	Opposition/ 25 seats
	SPD	-	10,6 (2017)	Opposition/ 22 seats

Source: Author’s compilation of data found in <http://www.parties-and-elections.eu/countries.html>

All the V4 states have been characterized with highly Eurosceptic party systems since in both governmental and opposition places, Eurosceptic and anti-immigration parties hold the primary seats (Table 2). The response of these MS towards the crisis corresponded to “*the political principles of their governments*”.³⁷⁸ As a result, they have resisted any attempts by the EU to resolve the crisis internally while defying the agreement on the relocation. Nevertheless, the CJEU dismissed the “entirety the actions” against the relocation scheme³⁷⁹ by the three of the V4 states. While Czech Republic, Hungary and Poland are still resisting EU law. Besides, the Commission has launched an infringement procedure

³⁷⁷ Interview with Czech Republic- Permanent Representation in the Council, March 2021

³⁷⁸ Interview with Administrator of Secretariat of the Council - Justice and Home Affairs Unit, January 2021

³⁷⁹ Judgment in Joined Cases C-643/15 and C-647/15 Slovakia and Hungary v Council

against Poland, the Czech Republic, and Hungary for not accepting their quota of relocation.³⁸⁰ On April 2020, the CJEU announced its judgement on the cases of European Commission against Poland, Hungary, and Czech Republic (Cases C 715/17, C718/17 and C719/17) which did not fulfill their legal obligations in the framework of the emergency relocation Decisions 2015/1523 and 2015/1601. In these means, the Commission is legally obliged to impose sanctions to the three states. Besides, since 2013, the EP had adopted a resolution outlining the impeachment of fundamental rights in the new laws of Orban's government³⁸¹ and called for the activation of Article 7 and the procedure against Hungary.³⁸² Since December 2015, the Commission has opened an infringement procedure against Hungary for the violations of EU rules in its new asylum law.³⁸³ The EP has also adopted relevant resolutions on the state of the rule of law in Poland while the Commission also initiated the procedure of Article 7 against Poland at the end of December.³⁸⁴ Hungary's backsliding of democratic rule has been the motive of the EU to introduce the monitoring mechanism of the Rule of Law. The second state that was put under EU scrutiny was Poland after the changes of the Pis government to the Constitutional Tribunal (Nič2016). Besides, while the EU Associated MS, had fulfilled their obligation on relocations, Hungary and Poland had

³⁸⁰ European Commission, Press release, Relocation: Commission launches infringement procedures against the Czech Republic, Hungary and Poland. 14 June 2017, Brussels http://europa.eu/rapid/press-release_IP-17-1607_en.htm, Accessed 22 June 2020

³⁸¹European Parliament resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) (2012/2130(INI)), Texts adopted, 3 July 2013 – Strasbourg.

³⁸² European Parliament, Report on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded, (2017/2131(INL)), Committee on Civil Liberties, Justice and Home Affairs,, 4 July 2018

³⁸³ European Commission. Press release, Commission opens infringement procedure against Hungary concerning its asylum law Brussels, 10 December 2015, <http://www.statewatch.org/news/2015/dec/eu-com-infringement-hungary-10-12-15.pdf>, 2 July 2020

³⁸⁴European Commission, Press Release, Rule of Law: European Commission acts to defend judicial independence in Poland, 20 December 2017, http://europa.eu/rapid/press-release_IP-17-5367_en.htm, Accessed 12 July 2020

rejected all relocations pledges until the end of the program in 2017.³⁸⁵ Similarly, the Czech Republic relocated only a few migrants (almost 1% of its allocation) while Slovakia agreed to relocate refugees according to their preferences, applying a “cherry-picking” approach (almost 2% of its allocation).³⁸⁶ Nevertheless, until September 2017 only 28,500 migrants were relocated from Italy and Greece.³⁸⁷ The negotiations were rearranged to be repeated after the elections in Poland ³⁸⁸outlining the significance of the subject for domestic politics in the MS but also that solidarity has been a ‘complicated’ matter among them.³⁸⁹ In fact, the subject of relocation and solidarity has created a “division” instead of a “solution” since it has segregated the MS into two camps.³⁹⁰

5.2. The reintroduction of internal border controls and Euroscepticism within the destination states

The aspect of solidarity pertaining the European Asylum system is not a new question (Thielemann and Dewan 2006). Nevertheless, the refugee crisis turned the issue into a major problem alongside the non-compliance and the failure of EU rules proper implementation. In 2016, the Commission highlighted that *‘the track record of implementation of EU law in the field of asylum is poor’*.³⁹¹ Besides, non-compliance

³⁸⁵ European Commission, Report from the Commission to the European Parliament, the European Council and the Council, Thirteenth report on relocation and resettlement, Brussels, 16 June 2017, COM (2017) 330 final

³⁸⁶ Ibid and European Commission, Report from the Commission to the European Parliament, the European Council and the Council, COM (2017) 212 final

³⁸⁷ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Delivery of the European Agenda on Migration, Brussels, 29 September 2017, COM (2017) 558 final

³⁸⁸ Council Of the EU, Cover Note from the Sejm of the Republic of Poland.14 October 2015 Doc. No. 13047/15.

³⁸⁹ Interview with Commission Officer- External Relations, December 2019

³⁹⁰ Interviews with Commission Policy Assistant- Asylum and Commission Officer- Irregular migration and Return, December 2019

³⁹¹ European Commission, Proposal for a Regulation of the European Parliament and of the Council Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection

increases the antagonism and politicization between the compliant and non-compliant states (Börzel 2016). Apart from the reception conditions, several deficiencies were documented in the domain of fingerprinting in the frontline states, a fact leading the Commission to proceed to infringement procedure against them. Until the half September 2016 the Commission counted 40 infringement decisions of EU asylum rules of which it pursued 8 against Greece, Croatia, Italy, Malta, and Hungary.³⁹² In the middle of the crisis, the Commission documented that *“The track record of implementation of EU law in this area is poor. The Commission is determined to use all its powers to ensure that EU asylum and migration law is transposed and enforced and is today launching another series of infringement procedures to that effect – 40 new decisions on infringement cases (see Annex VII). The reality is that this year’s crisis has been made worse by the failure to implement existing laws in areas like reception conditions, fingerprinting and return”*.³⁹³ In the same context, it recapitulated that *“Recognition rates and duration of procedures are divergent in Member States and create as such push and pull factors for movements of people seeking protection. The EU needs a swift and full implementation of the Common European Asylum System and a mechanism for the enforcement of a decision process based on truly convergent standards, including common rules as far as the length of the procedures and the recognition rates are concerned”*.³⁹⁴ Concomitantly, the Commission has proposed to initiate a monitoring mechanism of the implementation of EU asylum measures.³⁹⁵ These weaknesses were meant to be rectified by the

Lodged in one of the Member States by a Third-country National or a Stateless Person (Recast)’, COM (2016) 270, 21 August, 4, Accessed 13 July 2020

³⁹² European Commission, Press release, Implementing the Common European Asylum System: Commission escalates 8 infringement proceedings, 10 December 2015, Brussels, https://ec.europa.eu/commission/presscorner/detail/en/IP_15_6276, Accessed 20 July 2020

³⁹³ European Commission, Communication to the European Parliament, the European Council and the Council, Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration, Brussels, 23.9.2015 COM (2015) 490 final, 11

³⁹⁴ Council of the European Union, Presidency Note, Migration: EU action, state of play and next steps, Brussels, 11 September 2015, 11782/1/15, 5

³⁹⁵ A European Agenda on Migration, COM (2015) 240 final

establishment of the hotspots and the support of EU agencies within them,³⁹⁶ in which EU bodies were expected to be involved in capacity building integration if the asylum system was to function satisfactorily (Scipioni 2018) .Indeed, the EU proceeded to the establishment of hotspots in Greece and Italy. ³⁹⁷ The hotspots³⁹⁸ have included the representatives of the EU Agencies (Frontex, EASO, Europol and Eurojust) of the EU Migration Management Support Teams on ground and their coordination through the EU Regional Task Forces (EURTF) under the general coordination of the Commission.³⁹⁹ Italy has chosen to establish the hotspots areas in Augusta, Lampedusa, Porte Empedocle, Pozzallo, Taranto and Trapani while the Regional Task Force of EU Agencies officers has been set in Sicily. Greece pointed out five of its islands Lesvos, Chios, Leros, Samos and Kos with the Regional Task Force to be based in Piraeus.⁴⁰⁰ Through the hotspots, the EU tried to share personnel and expertise with the frontline states in identifying, checking and registering the incoming migrants. As the Commission explained “ *The aim of the hotspot approach is to provide a platform for the agencies to intervene, rapidly and in an integrated manner, in frontline Member States when there is a crisis due to specific and disproportionate migratory*

³⁹⁶European Commission, Press release, Implementing the European Agenda on Migration: Commission reports on progress in Greece, Italy and the Western Balkans,10 February 2016, Brussels, https://ec.europa.eu/commission/presscorner/detail/en/IP_16_269, Accessed 24 July 2020

³⁹⁷ Council of the European Union, Council Decision [...] establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248, 24.9.2015, 80-94,2015/1601, 22 September.

³⁹⁸ A hotspot is defined by the Council as a place which is “ characterized by specific and disproportionate migratory pressure consisting of mixed migratory flows, which are largely linked to the smuggling of migrants, and where the Member State concerned might request support and assistance to better cope with the migratory pressure...In principle an external border section should be considered to be a ‘Hotspot’ for the limited period of time during which the emergency or crisis situation subsists...” in Council of the European Union, Dimitris Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship, -"Hotspot" approach - FRONTEX support to return of irregular migrants - "Safe countries of origin", Brussels, 15 July 2015, 10962/15, 3

³⁹⁹ European Commission, Communication to the European Parliament, the European Council and the Council, Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration, Brussels, 23.9.2015 COM (2015) 490 final

⁴⁰⁰ European Commission, Communication from the Commission to the European Parliament, The European Council and the Council, Managing the refugee crisis: State of Play of the Implementation of the Priority Actions under the European Agenda on Migration, Brussels, 14.10.2015, COM (2015) 510 final, 4

pressure at their external borders...".⁴⁰¹ In other words, the EU Agencies assist the member state in taking the necessary steps for the needed procedures of each case, such as registration and screening, debriefing and investigating the claims of the refugees and interpretation. For instance, Frontex assists in managing the return of an illegal migrant while EASO will contribute to the asylum procedures. Notwithstanding, the Agencies have no jurisdiction in intervening in the work of the national authorities (Carrera et al 2015). In fact, measures, such as the hotspots, have been inaugurated as additional layers of the same system, aiming at responding to the situation of the crisis (Trauner and Ripoll Servent 2016; Trauner 2016). Despite the Commission's efforts, the hotspots were not successful in immediately relieving both Italy and Greece due to slow procedures and not enough human resources.⁴⁰² However, the communitarization of the migration has followed the pattern of the internal market of negative integration. In this scheme, the main foundation has been the removal of national restrictions for the free movement in the EU, regulatory legal frameworks for harmonizing national asylum laws and implementation competencies on the member states. As a result, neither EASO nor Frontex had the supranational competencies to cover the gaps of administrative procedures in member states (Schimmelfennig 2017).

In 2015, due to the large amount of migration flows the Dublin rules were largely abandoned by the southern frontline states which could not control the flows or manage the asylum applications accurately (Ferruccio and Giulia 2016). Both Italy and Greece implemented a wave through approach, creating secondary movements towards Northwestern states. Given the extreme pressure on Greece and Italy, the Court confirmed that the Dublin transfers back to the states of first entry should be withdrawn if there

⁴⁰¹ Council of the European Union, Dimitris Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship, - "Hotspot" approach - FRONTEX support to return of irregular migrants - "Safe countries of origin", Brussels, 15 July 2015, 10962/15, 2

⁴⁰² European Commission, Communication from the Commission to the European Parliament and the Council, Progress Report on the Implementation of the hotspots in Italy, Brussels, 17 December 2015, COM(2015) 679 final

is a risk of violation of fundamental rights of the refugees (EASO 2017). The collapse of the Dublin system led to the de facto suspension of the Schengen area with several MS reintroducing internal border controls using the Articles 25-27 of the Schengen Borders Code due to the extensive migratory flows for a period of two months.⁴⁰³ Despite the detailed procedures predicted by the new Code, a de facto abolition of the free movement within the Schengen Area was introduced by the member states aiming at the immediate aversion of refugees from their territories. Officially, it was not long before the Commission endorsed and proposed the reintroduction of internal border controls to compensate for the weaknesses of the external border controls of Greece.⁴⁰⁴ Besides, Greece was called upon several times to correct its “serious deficiencies” in the management of its external borders and commit to its responsibilities according to the Schengen acquis.⁴⁰⁵ On the reintroduction of internal border controls, the Commission explained that it should have been regarded as a temporary measure *“In recent weeks some Member States have invoked the temporary reintroduction of border controls under the Schengen Border Code. This can be justified in exceptional crisis situations. But it can never be more than a short-term measure before the situation is stabilised. It should be seen as a signal of the urgency for all to act to restore the normal process of migration management as quickly as possible. Should these measures be prolonged or additional measures be requested, the Commission will formalise its assessment on the situation by adopting an opinion on the basis of the Schengen Border Code. Full implementation of the*

⁴⁰³ European Commission, Communication from the Commission to the European Parliament and the Council, Eighth biannual report on the functioning of the Schengen area 1 May - 10 December 2015, Brussels, 17 December 2015, COM (2015) 675 final and Communication from the Commission to the European Parliament, the European Council and the Council, First report on relocation and resettlement, Brussels, 17 March 2016, COM(2016) 165 final

⁴⁰⁴ European Commission, Proposal for a Implementing Decision setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk, Brussels, 4.5.2016, COM (2016) 275 final

⁴⁰⁵ Council of EU, Draft Council Implementing Decision setting out a Recommendation on addressing the serious deficiencies identified in the 2015 evaluation of the application of the Schengen acquis in the field of management of the external borders by Greece, Brussels, 11 February 2016, 5877/2/16

*Relocation Scheme and Support Teams working in 'hotspot' areas should allow for the lifting of controls in the month to come.*⁴⁰⁶

5.2.1. Germany

The first MS that reintroduced border controls was Germany, on 13 September 2015, stimulating other Schengen states to imitate its reaction⁴⁰⁷ as a domino. In the beginning of the crisis, Germany applied an “open door” policy and propelled the other MS to prove their solidarity while it announced the dropout of Dublin legislation for refugees from Syria (Monar 2016). The non-compliance of Hungary with international and EU standards on migration and the poor humanitarian situation in Greece stimulated Germany to open its borders to considerable flows (Zaun 2018). Germany’s liberal stance towards the refugees and its open-door policy at the beginning was not met with popular support. Internally, this decision was greatly criticized although the majority recognized that it was a rather realistic decision.⁴⁰⁸ As a result, Germany became the EU MS with the higher increase in asylum seekers.⁴⁰⁹ In August 2015, the drop-off of the Dublin rules for the Syrians who at that time represented the half of the refugees entering EU⁴¹⁰ had a negative outcome in Merkel’s popularity and provoked fierce criticism by CSU (CSU

⁴⁰⁶ European Commission, Communication to the European Parliament, the European Council and the Council, Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration, Brussels, 23.9.2015 COM (2015) 490 final, 6

⁴⁰⁷ European Commission, Commission Opinion of 23.10.2015 on the necessity and proportionality of the controls at internal borders reintroduced by Germany and Austria pursuant to Article 24(4) of Regulation No 562/2006 (Schengen Borders Code), Brussels, 28 October 2015, C (2015) 7100 final

⁴⁰⁸ Financial Times, The end of the Merkel era is within sight. Financial Times, 26 October 2015, <https://www.ft.com/content/477cdd7a-7997-11e5-933d-efcdc3c11c89>, Accessed 3 August 2020

⁴⁰⁹ European Commission. A European agenda on migration. COM (2015) 240 final.

⁴¹⁰ Deutsche Welle, Germany Suspends “Dublin Rules” for Syrians, 25 August 2015, <http://www.dw.com/en/germany-suspends-dublin-rules-for-syrians/a-18671698>, Accessed 7 August 2020

a sister-party to Merkel's CDU)⁴¹¹ based not only on right wing rhetoric but also the growing budget spent for refugees (more than 14bn in 2015-2016) (Heisbourg 2015). The CSU has been a long-lasting Eurosceptic force in Germany, based in Bavaria (Taggart and Szczerbiak 2013). After the arrival of migrants in Bavaria, the CSU demanded the closure of the borders and agreed with Orbán's claims. Orban visited Bavaria in September 2015 when he was welcomed by Horst Seehofer, CSU's leader, who characterized his suggestions as most valued for the management of the crisis.⁴¹² At the same time Merkel was measuring electoral costs in 2015-16, Seehofer was successfully mobilizing the public against her and against migrants (Zaun 2018). Indeed, by 2016, Merkel's open-door policy has lost popular support.⁴¹³

Furthermore, Merkel's decision to welcome Syrian refugees pushed the voters towards the Alternative für Deutschland (AfD) which rebranded itself as an anti-migration party (Arzheimer and Berning 2017). The AfD was established in September 2012 as a soft Eurosceptic, conservative, actively supporting economic liberalism against the governmental economic and financial policies. The party has consisted of German right wing elite members, politicians and high-profile academics (Arzheimer 2015). Its composition had led observers to characterize it as a challenger party to the CDU/CSU, before the leadership of Merkel. In 2015 after the outbreak of the refugee crisis, its leader withdrew, and the party was divided between its moderate members and its radical right wing. That was the time when the party began leaning towards populism and radicalised their positions, focusing on anti-immigration and anti-Islamic rhetoric (Arzheimer 2015; Grimm 2015). The next leader of the party, Frauke Petry, realised

⁴¹¹The Economist, Merkel at her Limit, 10 October 2015, <https://www.economist.com/europe/2015/10/10/merkel-at-her-limit>

⁴¹² Deutsche Welle, Hungary's Orban criticizes Merkel's 'moral imperialism', 23 September 2015, <https://www.dw.com/en/hungarys-orban-criticizes-merkels-moral-imperialism/a-18736240>. Accessed 7 July 2020

⁴¹³ The Local, Polls show most Germans fear refugee burden too great, 15 January 2016, <http://www.thelocal.de/20160115/poll-shows-most-germans-fear-refugee-burden-too-great>. Accessed 26 August 2020

alliances between the AfD and its counterparts from other EU states such as the Austrian FPÖ, the Italian Lega, and the French FN. Their rhetoric included proposals of shooting the refugees before passing the German borders (Arzheimer and Berning 2019). The AfD supported the complete closure of EU's borders and the creation of refugee camps in third countries while it advocated in favor of the German cultural primacy (Arzheimer 2015). In this manner, the AfD from a neo-liberal right and soft Eurosceptic party became a successful anti-immigration extreme right wing party (Lees 2018). The success of the Eurosceptic AfD, known from its opposition to the common currency, turned it to a "*into a more typical anti-immigration far right wing party*" (Schuette 2019). This turn, as a political choice, was aiming at attracting voters by exploiting Merkel's decision to suspend the Dublin system for Syrian refugees and the entry of an increased number of Syrians in Germany (Arzheimer and Berning 2019). The AfD strategic change of political locus has been evident in election results. The party was rather unsuccessful in the 2013 elections, it became a considerable force in 2014 but it has only started growing tremendously after 2015, exploiting the refugee crisis in any possible way to gain public support.⁴¹⁴

Indeed, the party claimed the political ownership of the migration issue and successfully mobilized a considerable part of the public. In the German local elections in March 2016, the AfD succeeded in gaining the 17%⁴¹⁵ Merkel's CDP lost control of two states while the AfD had the greater victories, gaining representation in three more regional assemblies in addition to the five in which had already seats.⁴¹⁶ Considering its fail to enter the parliament in the 2013 federal elections when it attained only the 4.7% of

⁴¹⁴ The Guardian, The AfD is gaining strength in Germany. A reformed EU can stop it, 3 September 2019, <https://www.theguardian.com/commentisfree/2019/sep/03/afd-germany-reformed-eu-immigration-parties-europe>, Accessed 3 September 2020

⁴¹⁵ Independent, Germany local elections: Far-right groups make huge gains, 7 March 2016 <http://www.independent.co.uk/news/world/europe/germany-local-elections-far-right-groups-merkel-afd-mpd-huge-gains-a6917246.html>, Accessed 30 August 2020

⁴¹⁶ Reuters, German voters batter Merkel over migrant policy, 13 March 2016, <http://www.reuters.com/article/us-germany-election-idUSKCN0WE0ZQ>, Accessed 26 August 2020

the vote, AfD's xenophobic policy was met in success in the 2017 federal elections when it gained more than the 12,6% of the vote and became the third largest party in the Bundestag.⁴¹⁷ It's great success, though, signaled that its claims were not irrelevant to the feelings of the German public (Kemper 2015). Accusing Merkel of accepting illegal migrants, the mobilization of the voters resulted in the reduction of support to Merkel and her policy of "Wir schaffen das" ("We'll manage").⁴¹⁸ The public was engaged and expressed its opinion through anti-immigration protests led by Patriotic Europeans against the Islamisation of the Occident (Vollmer and Karakayali 2018). The mobilization of the AfD against the migrants found great support in the demonstrations of PeGIDA (Patriotic Europeans against the Islamisation of the Western World) followed by attacks to refugees. In 2011 these attacks were not more than 11 while by October 2015 they reached the 580 (Kemper 2015). While the coalition of the Merkel's Christian Democratic Union (CDU) and its Bavarian sister party CSU was still the strongest political force but with considerable losses, indicating a road of decline/ As Lees (2018,301) explained "*This shift in tactics paid off in state elections and eventually forced Merkel to change her approach and admit that her government had 'made mistakes' in handling the crisis*". Thus, Merkel proceeded to the adoption of restriction through the amendment of national asylum law (Asylpaket II) (Zaun 2018) and reintroduced internal border controls in its border with Austria on the grounds of the preservation of internal security and public order. The state requested a prolongation of internal checks for more than three times since 5.000 to 10.000 migrants per day entered Germany through its borders with Austria.⁴¹⁹

⁴¹⁷ The Guardian, German elections 2017: full results, 25 September 2017, <https://www.theguardian.com/world/ng-interactive/2017/sep/24/german-elections-2017-latest-results-live-merkel-bundestag-afd>, Accessed 5 September 2021

⁴¹⁸ Politico, The phrase that haunts Angela Merkel, 19 August 2016, <https://www.politico.eu/article/the-phrase-that-haunts-angela-merkel/>, Accessed 7 September 2020

⁴¹⁹ European Commission, Commission Opinion of 23.10.2015 on the necessity and proportionality of the controls at internal borders reintroduced by Germany and Austria pursuant to Article 24(4) of Regulation No 562/2006 (Schengen Borders Code), Brussels, 28 October 2015, C(2015) 7100 final, p.4

5.2.2. France

One day later than Germany, on December 14, France also reinstated internal border controls and requested an extension of the period of the reintroduction of internal border controls until 2017.⁴²⁰ Alongside Germany, French government of Francois Hollande urged for the relocation scheme to lift the burden of hosting refugees from their countries⁴²¹ since France was accepting a high number of asylum applications.⁴²² While Hollande's government cannot be characterized as Eurosceptic, the effect of the Front National (FN) in the French public area and the growing discomfort over the refugee camp in Calais (as well as the terrorist attacks in Paris by Muslim fundamentalists) generated increased politicization and discontent over EU and migration policy. Even the center right proposal of Sarkozy to reintroduce internal border controls in Schengen has been regarded as a reaction to the growing success of radical right Front National. This has been a manifestation of "contagious" Euroscepticism that had generated to a mainstream centrist party by a radical right party (Meijers 2017) and, specifically, the FN. The FN was established in 1972 by Jean-Marie Le Pen as a nationalist-patriotic anti neo-liberal party, depicting its position in favor of the people against the established elite. The FN had many times engaged in anti-immigration, welfare chauvinism and anti- gay declarations. While FN succeeded in increasing the vote percentage, the party has not managed to have a considerable presence in parliament and have never participated in government (Hobolt and Tilley 2016; Morini 2018). The FN has been one of the most successful radical right parties in Europe which has mobilized people against migrants sans-papiers (Castelli Gattinara and Zamponi 2020). Being a party defending national identity and sovereignty against

⁴²⁰ European Commission, Communication from the Commission to the European Parliament and the Council, Eighth biannual report on the functioning of the Schengen area 1 May - 10 December 2015, Brussels, 17 December 2015, COM(2015) 675 final, and Austrian Delegation, Prolongation of the temporary reintroduction of border controls at the Austrian internal borders in accordance with Article 29(2) of Regulation (EU) No 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), Brussels, 6 June 2016, 8947/16 FRONT 211 COMIX 369

⁴²¹ The Guardian, Germany and France demand binding refugee quotas for EU members, 3 September 2015, <https://www.theguardian.com/world/2015/sep/03/germany-france-eu-refugee-quotas-migration-crisis>, Accessed 20 September 2021

⁴²² Interview with Administrator of Secretariat of the Council - Justice and Home Affairs Unit, January 2020

EU and globalization (Borriello and Brack 2019). Mari Le Pen, the leader of FN, had attacked Germany for “imposing” the refugee quotas and rejected any possible participation of France in the relocation scheme,⁴²³ claiming that the refugees fled their countries for economic and not violence reasons.⁴²⁴ The FN had managed to channel its Euroscepticism in the crisis to mobilize the people based on economic and cultural grievances. Its rhetoric attacks to migration were further fired up after the terrorist bombings in Paris when Le Pen criticized Germany’s policy as irresponsible ⁴²⁵

In the European elections of 2014, the FN gained 25% (almost the double number of the 2009 elections) of the vote becoming one of most important political powers in France. ⁴²⁶Le Pen’s victory was greatly attributed to the laïcité followed in her rhetoric, as the defender of the French people and national sovereignty, focusing in the anti-Islamic and “ethno-exclusivist ideology” (Mondon 2015). In its program of 2002, the FN describes EU as a “jail for its people” while migration is portrayed as a ‘Euro-globalist magma’. It wished for the interruption of Euro and the transformation of the EU to the “Europe of Nations”.⁴²⁷ In response to the 2015 refugee crisis, the FN described the crisis as an “invasion”⁴²⁸ while

⁴²³ Financial Times, France’s National Front taps into rising anti-immigrant mood, 6 September 2015, <https://www.ft.com/content/62131206-5473-11e5-8642-453585f2cfcf>, Accessed 10 September 2020

⁴²⁴ Huffington Post, Marine Le Pen Decides 99 Percent of Incoming Refugees Are Men, Opposes Giving Them Political Refugee Status, 9 September 2015, https://www.huffpost.com/entry/marine-le-pen-refugees_n_8110376, Accessed 15 October 2020

⁴²⁵ Le Monde, Marine Le Pen, une féministe à la mémoire courte, 15 janvier 2016 https://www.lemonde.fr/les-decodeurs/article/2016/01/15/marine-le-pen-une-feministe-a-la-memoire-courte_4848295_4355770.html, Accessed 17 July 2020

⁴²⁶ The Guardian, Marine Le Pen's confidence vindicated by Front National election triumph, 25 May 2014, <https://www.theguardian.com/world/2014/may/25/marine-le-pen-confidence-proves-vindicated-front-national>, Accessed 14 September 2020

⁴²⁷ Programme du front National, 2002, <http://h16free.com/wp-content/uploads/2011/11/prg-fn-2002.pdf>, Accessed 10 August 2021

⁴²⁸ Le Figaro, Marine Le Pen compare la crise des migrants à la chute de l'empire romain, 15 Septembre 2015, <https://www.lefigaro.fr/politique/le-scan/citations/2015/09/15/25002-20150915ARTFIG00111-marine-le-pen-compare-la-crise-des-migrants-a-la-chute-de-l-empire-romain.php>, Accessed 3 October 2020

she feared that they would erode the French “national identity”.⁴²⁹ During the general elections in 2017, the FN promoted the exit of France from Schengen and closure of all mosques in France. The contagious beliefs of FN were also reflected in Sarkozy’s and Fillon’s anti-immigration positions and support for restrictions in Schengen and asylum benefits (Ivaldi 2018). However, the French national identity and self-determination is linked with the idea of solidarity drawn from the French revolution. The French views support a uniform EU migration policy with both solidarity and responsibility (Aydın-Düzgüt et al 2020). Thus, the French government has expressed its willingness to discuss a permanent relocation scheme later than 2015.⁴³⁰ Nevertheless, President Emmanuel Macron since 2019 has begun a reform of the French asylum policy aiming at imposing restrictions, emptying the informal refugee camps, and promoting the idea that France “shouldn’t be too attractive a country” for refugees and migrants.⁴³¹

5.2.3. Austria

Following France, Austria re-introduced internal border controls on 15 September 2015, on its border with Hungary, Italy, Slovakia and Slovenia.⁴³² Austria was affected as both a destination and a transit state by a sharp increase in migration flows in September, given that in only 3 days, between 18-21

⁴²⁹Le Monde, Les détestables obsessions de Marine Le Pen, 7 Septembre 2015
https://www.lemonde.fr/politique/article/2015/09/07/les-detestables-obsessions-de-marine-le-pen_4747977_823448.html,
Accessed 4 October 2020

⁴³⁰Migration crisis: Germany presses Europe into sharing refugees, 3 September 2015,
<https://www.theguardian.com/world/2015/sep/03/migration-crisis-germany-presses-europe-into-sharing-refugees>, Accessed
1 November 2020

⁴³¹ The New York Times, France Announces Tough New Measures on Immigration, 7 November 2017,
<https://www.nytimes.com/2019/11/06/world/europe/france-macron-immigration.html?auth=link-dismiss-google1tap>,
Accessed 19 November 2020

⁴³² Council of European Union, Austrian delegation, Temporary reintroduction of border controls at the Austrian internal borders in accordance with Article 25 of Regulation (EC) No 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), Brussels, 17 September 2015, 12110/15

September, almost 33 000 migrants crossed its borders.⁴³³ Having opened its borders in the beginning of the crisis,⁴³⁴ in 2015, the EU supported Austria with almost €6.3 million in emergency assistance in order to help the country increase its hosting and receiving capacities.⁴³⁵ Actually, from that point the political debate started hitting up.⁴³⁶ However, it was not enough to ease the creeping populist Euroscepticism in the state politics. When the coalition government of the Social Democrat SPÖ (Sozialdemokratische Partei Österreichs) and the conservative ÖVP (Österreichische Volkspartei) opened the borders for the refugees from Hungary, the extreme right-wing FPÖ (Freiheitliche Partei Österreichs, Freedom Party of Austria) raised up as the strongest party in public opinion 2015 and increased considerably the Euroscepticism in the country (Zaun 2018). The Austrian freedom Party has not played any substantial role in Austrian politics until 1980. It was established in 1955 while the first of its chairmen were former SS officers. FPO has always embraced an anti-immigrant, anti-Muslim and Eurosceptic stance, claiming their views in the name of “native Austrians” which offered the party important electoral gains (Taggart and Szczerbiak 2013; Hobolt and Tilley 2016). In 2015, the party gained 30.8% of the vote from the 20,5% of the 2013 general elections (Liebhart 2020). Considering the public support to the FPÖ, the coalition government started supporting stricter policy lines on migration, building border fences and imposing asylum caps. The change of policy of Chancellor Faymann from protective towards refugees to restrictive diluted its position and resigned in May 2016 (Zaun 2018).

⁴³³ European Commission, Commission Opinion of 23.10.2015 on the necessity and proportionality of the controls at internal borders reintroduced by Germany and Austria pursuant to Article 24(4) of Regulation No 562/2006 (Schengen Borders Code), Brussels, 28 October 2015, C(2015) 7100 final

⁴³⁴ Reuters, Austria and Germany open borders to migrants offloaded by Hungary, 5 September 2015, <https://www.reuters.com/article/us-europe-migrants-hungary-idUSKCN0R40FO20150905>

⁴³⁵ European Commission, Report from the Commission to the European Parliament and the Council on the follow-up to the Leaders' Meeting on refugee flows along the Western Balkans Route, Brussels, 17 December 2015, COM(2015) 676 final

⁴³⁶ Interview with Austria- Permanent Representation in the Council, March 2021

In the 2016 presidential elections FPÖ's Norbert Hofer, though defeated in the final round, managed to gain 31.1% of the vote. In the 2017 general elections the party acquired 26% with only a slight difference from the Social democrats (26.9%) and became the third party in Austria.⁴³⁷ The Austrian People's Party (ÖVP) which came first with 31.5% of the vote. The ÖVP also engaged in anti-immigration rhetoric, a new attribute for this party. In such a way, the nationalistic and anti-immigration claims made it to the center of the political mainstream. Sebastian Kurz, who undertook the leadership of ÖVP six months before the elections, fired up a strong anti-immigration populist discourse while he tried to personalize the party by renaming it 'Sebastian Kurz List – the New People's Party', marking a new era for the party and following a right wing and xenophobic program. Kurz portrayed Islam as a threat to Austrian and European democracy and supported fiercely the closure of the Balkan route. He indeed succeeded in moving ÖVP to the right wing, even some of them engaging anti-semiticism, but had great success in the general elections of 2017 and resulted in a right-wing coalition government with FPÖ with Kurz on the Head of the government and FPÖ leader, Heinz-Christian Strache, as the deputy chancellor while controlling the internal and foreign affairs, ministries. Kurz rejected the relocation scheme claiming that *"Every country can decide on its own"* about the number of the refugees that it can accept⁴³⁸ while he also refused taking any refugees after the burndown of the Greek refugee camp of Moria.⁴³⁹ Instead, he proposed the creation of "safe zones" in third countries which EU could "back it militarily"⁴⁴⁰ while he attacked Germany for upholding "Operation Sophia" since he believed the rescue missions actually

⁴³⁷ Politico, Austria heads for right-leaning coalition, 15 October 2017, <https://www.politico.eu/article/austria-heads-for-right-leaning-coalition-early-projections/>, Accessed 5 November 2020

⁴³⁸ InfoMigrants, Kurz: Opening Europe's borders was a mistake, 2 September 2020, <https://www.infomigrants.net/en/post/26993/kurz-opening-europe-s-borders-was-a-mistake>, Accessed 5 November 2020

⁴³⁹ Reuters, Austria's Kurz reiterates opposition to taking in asylum seekers from Moria, 12 September 2020, <https://www.reuters.com/article/us-europe-migrants-austria-idUSKBN2630JH>, Accessed 15 September 2020

⁴⁴⁰ Deutsche Welle, Austria's Sebastian Kurz suggests military option to stem migration crisis, 24 December 2017, <https://www.dw.com/en/austrias-sebastian-kurz-suggests-military-option-to-stem-migration-crisis/a-41920125>, Accessed 15 September 2020

supported the migration flows.⁴⁴¹The coalition government of the FPÖ with ÖVP used populist and nationalist rhetoric in the name of the people(Liebhart 2020).

This government led Austria to even more Eurosceptic pavements, establishing close ties with Hungary and Poland and applying strict migration rules and expelling migrants with no documents (Liebhart 2020). Austria had actively joined the V4 opposition and established with them in 2018 a mechanism for supporting the border controls of the Western Balkans.⁴⁴²One of the most important unilateral actions had been the meeting between Austria and nine Western Balkan countries in Vienna on February 24, 2016 in a conference- meeting under the title “Managing Migration Together”. The meeting excluded both Greece and the EU. The measures agreed in this meeting included the reintroduction of border controls, fences, daily caps on asylum applications and minimum reception capacities. The participants also agreed that the migrants that do not fulfill the provisions of the European law have “no rights”. Besides, Austria had already started to closely cooperate with the V4, sending, for instance, asylum seekers to Slovakia.⁴⁴³ There are a plethora of issues on the migration policy that the positions of the V4 and Austria coincide. The geographical proximity of the states is indeed a bonding point on the issue.⁴⁴⁴ Therefore, the priority promoted by Austria has been the strengthening of external border controls, the relations of Eu with third countries on control of migration and the enhancement of the return rates. In contrast, measures such as mandatory relocation schemes are believed to be counterproductive, since they may send a distorted measure and many people use illegal migration

⁴⁴¹ Deutsche Welle, Germany and Austria disagree over refugee rescue mission, 3 February 2020, <https://www.dw.com/en/germany-and-austria-disagree-over-refugee-rescue-mission/a-52246444>, Accessed 12 September 2020

⁴⁴² Visegrad Group, Visegrad Group and Austria Summit Declaration on “Setting up a Mechanism for Assistance in Protecting the Borders of the Western Balkan Countries’. Budapest, June 21, 2018

⁴⁴³ Council of European Union, Conference “Managing Migration Together”, Vienna, 24 February 2016, Brussels, 25 February 2016, 6481/16

⁴⁴⁴ Interview with Austria- Permanent Representation in the Council, March 2021

routes to reach their EU MS of preference. In other words, the stance kept by Austria relies on how to prevent not how to accept them.⁴⁴⁵

5.2.4. Sweden

Despite its small population size, Sweden has been an open country with a liberal migration policy which also implemented an open-door policy towards Syrian refugees,⁴⁴⁶ claiming its “Swedish exceptionalism”. This open-door policy was maintained until November 2015 when 80.000 asylum seekers accessed Sweden in only the two months of October- November 2015. In 2015, Sweden received the highest number of asylum seekers in its history (Krzyzanowski 2018). Sweden followed in reintroducing border controls on 12 November 2015⁴⁴⁷ and in December 2015 announced the prolongation of these controls.⁴⁴⁸ Sweden has been one of the states that actively supported the distribution of refugees and the relocation scheme among the EU MS.⁴⁴⁹ They have supported that “The system must provide for a fair distribution of responsibility for asylum seekers. All Member States must show solidarity with each other in this regard. Member States under migratory pressure should be ensured of support”, relocation has been indeed considered a beneficial measure by Sweden “in order

⁴⁴⁵ Ibid

⁴⁴⁶The Telegraph, How Sweden the most open country in the world was overwhelmed by migrants, 12 November 2015

<https://www.telegraph.co.uk/news/worldnews/europe/sweden/11992479/How-Sweden-the-most-open-country-in-the-world-was-overwhelmed-by-migrants.html>. Accessed 1 October 2019

⁴⁴⁷ European Commission, Temporary reintroduction of internal border controls by Sweden at selected harbors in the South and West and the Öresund Bridge, 13 November, 2015, https://ec.europa.eu/home-affairs/what-is-new/news/news/2015/20151113_2_en. Accessed 14 December 2019

⁴⁴⁸ European Commission, Communication from the Commission to the European Parliament and the Council, Eighth biannual report on the functioning of the Schengen area 1 May - 10 December 2015, Brussels, 17 December 2015, COM (2015) 675 final

⁴⁴⁹ The Guardian, Sweden slams shut its open-door policy towards refugees, 24 November 2015, <https://www.theguardian.com/world/2015/nov/24/sweden-asylum-seekers-refugees-policy-reversal>. Accessed 11 November 2019

to achieve a more even and fair distribution of asylum seekers between the Member States as well as alleviate the migration pressure on affected Member States”.⁴⁵⁰ Given the increase of 60% of asylum applications, Sweden, on 8 December 2015, sent a letter to the Commission and the Council requesting urgently the suspension of its obligations under the Council Decisions for the emergency relocation from Italy and Greece. Indeed in 2015, Sweden had the most asylum applicants per capita in the EU.⁴⁵¹ Therefore, the stinging increase of migration flows in the country created a political opportunity for right wing Eurosceptics and changed its long-lasting liberal policy over the external shock of the refugee crisis (Emilson 2018).

Migration has never been increasingly politicized in Sweden before the refugee crisis. The country is a greatly multicultural state and extreme right-wing parties had not succeeded in mobilizing the public (Krzyżanowski 2018). Aiming at de-politicizing the issues of migration, the rapprochement of the conservative parties with the right-wing party of Sweden Democrats (Sverigedemokraterna, SD) in 2014 against Social Democrat/Green minority coalition government’s budget policies led to a deal between the government and the conservatives that ruling the right-wing Sweden Democrats out of government. Nevertheless, SD since 2014 has been one of the strongest parties, maintaining the 14% of seats in the Swedish parliament. The party was established in 1988 and had maintained relations to the Neo-Nazi movements.⁴⁵² The SD has started growing since 2010, when they first entered the parliament 5.7% of the vote, using an intense anti-immigration rhetoric, presenting migration as a threat to national identity

⁴⁵⁰ Interview with Sweden- Permanent Representation in the Council, February 2021

⁴⁵¹ European Commission, Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Sweden in accordance with Article 9 of Council Decision (EU) 2015/1523 and Article 9 of Council Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, Brussels, 17 December 2015, COM (2015) 677 final

⁴⁵² Independent, Sweden Democrats: How a nationalist, anti-immigrant party took root in a liberal Nordic haven, 8 September 2018, <https://www.independent.co.uk/news/world/europe/sweden-democrats-election-results-nationalist-populist-party-anti-immigrant-refugees-a8515576.html>, Accessed 11 November 2019

and security (Hobolt and Tilley 2016 Emilson 2018). The party has claimed the expulsion of refugees and a national referendum for EU membership, like Brexit. Besides, the SD's mobilization, spreading their narratives mainly through social media (Lee Thomson 2020), reached the level that it normalized the anti-immigration and Eurosceptic views in the public.⁴⁵³ Despite its efforts to outcast Neo-Nazi members of the party since 2005, SD leader Jimmie Akesson declared that "*Most of the immigrants haven't had a chance to become part of Swedish society and of course many of them have been Muslims and many segregate in suburbs around the big cities and build parallel societies*".⁴⁵⁴ They advocated for the interruption of offering asylum but instead sending financial aid to third countries to deal with migration. Portraying Islam as the main national threat, the support of the people's will against the elites has offered to the party important electoral victories (Lee Thomson 2020). In view of the large numbers of asylum seekers in the country and the success of the SD',⁴⁵⁵ the government proceeded to the introduction of more restrictive asylum measures in November 2015, aiming at decreasing the number of incoming refugees, making Sweden less attractive to migrants but also limiting their welfare benefits (Krzyzanowski 2018; Emilson 2018). As it was put by the Swedish Representation in the Council "*The political shift, including new temporary legislation in the field of asylum (which i.a. reduced the possibilities to grant permanent residence permit to persons in need of protection or those eligible for subsidiary protection status), aimed at harmonizing Swedish legislation more with the legislation in other EU Member States and thereby contribute to a more even distribution of application (by making it less attractive to apply for asylum in Sweden in comparison with other Member States)*".⁴⁵⁶ Besides, the success of right-wing populist parties which mobilize anti-immigration sentiments push mainstream

⁴⁵³ Ibid

⁴⁵⁴ BBC News, Sweden Democrats tap into immigration fears, 25 September 2018, <https://www.bbc.com/news/world-europe-29202793>, Accessed 19 November 2019

⁴⁵⁵ Global Risk Insights, Sweden's Identity Crisis and the Rise of the Far Right, January 2, 2021, <https://globalriskinsights.com/2021/01/swedens-identity-crisis-and-the-rise-of-the-far-right/>

⁴⁵⁶ Interview with Sweden- Permanent Representation in the Council, February 2021

governments in restrictive migration policies (Howard 2010). The anti-EU and anti-immigration campaign of the SD has been so successful that in the national elections of September 2018, the party won 62 seats from the 349 of the Swedish parliament, becoming the third largest party, but still the mainstream parties keep SD out of the government.⁴⁵⁷

Table 5.2.

Major refugee receiving states: Main Eurosceptic parties with anti-immigration claims				
State	Party	Vote % before refugee crisis (latest elections)	Vote % in the period of crisis (2015-2018)	Parliamentary position during the crisis/seats
Germany	Christian Social Union in Bavaria (CSU)	7,4 (2013)	6,2 (2017)	Participation in coalition Government/ 46 seats
	Alternative für Deutschland (AfD)	4,7 (2013)	12,6 (2017)	Opposition/ 94 seats
France	Front National (FN)	13,6 (2012)	13,2 (2017)	Opposition/ 8 seats
Austria	Austrian People's Party (ÖVP)	24,0 (2013)	31,5 (2017)	Participation in coalition Government/ 46 seats
	Freedom Party of Austria (FPÖ)	20,5 (2013)	26,0 (2017)	Participation in coalition Government/ 51 seats
Sweden	Sweden Democrats (SD)	12,9 (2014)	17,5 (2018)	Opposition/ 62 seats

Source: Author's compilation of data found in <http://www.parties-and-elections.eu/countries.html>

5.2.5. Saving internal and external borders: The EU-Turkey Deal

Eurosceptic parties, either in government or in opposition, have urged the major refugee receiving states to move towards restrictive policies towards migration (Table3). Their rise affected both the national migration policies but also the European in a down-top pestiferous way. By November 2015, Denmark and, Norway, Belgium, Slovenia had also reinstated internal border controls and requested an extension

⁴⁵⁷ BBC News, Sweden Democrats tap into immigration fears, 25 September 2018, <https://www.bbc.com/news/world-europe-29202793>, Accessed 22 November 2019

of the period of the reintroduction of internal border controls until 2017.⁴⁵⁸ The Commission endorsed the necessity of internal border controls that *“Although in 2013 the legislators agreed that migratory flows cannot per se justify the reintroduction of checks at internal borders, the Commission takes the view that the uncontrolled influx of high numbers of undocumented or inadequately documented persons, not registered upon their first entry to the EU, may constitute a serious threat to public policy and internal security and thus may justify the application of this extraordinary measure available under the SBC”*.⁴⁵⁹ In the first weeks of 2016, Donald Turk warned openly that EU had to immediately resolve the constraints in the proper functioning of Schengen otherwise EU would have failed as a political project⁴⁶⁰ The response of the member states lied on the maintenance of the status quo and self-help while jeopardizing the unity of the Schengen Area and the internal market. Based on independent research, the Commission outlined that *“Another study (Bertelsmann Stiftung Study on Departure from the Schengen Agreement. Macroeconomic impacts on Germany and the countries of the European Union, February 2016) has shown that, in the case of a reintroduction of border controls, over a period of 10 years, the economic performance of the EU as a whole would be between €500 billion and €1.4 trillion lower than without such controls”*.⁴⁶¹ Besides, the costs to just the travelers of Schengen would have reached €1.3 and €5.2 billion in time lost.⁴⁶² Moreover, the aspect of the freedom of movement along Schengen states has still been a very popular development for European people (Börzel and Risse 2018). Even the Visegrad

⁴⁵⁸ European Commission, Communication from the Commission to the European Parliament and the Council, Eighth biannual report on the functioning of the Schengen area 1 May - 10 December 2015, Brussels, 17 December 2015, COM (2015) 675 final

⁴⁵⁹ European Commission, Communication from the Commission to the European Parliament and the Council, Eighth biannual report on the functioning of the Schengen area 1 May - 10 December 2015, Brussels, 17 December 2015, COM (2015) 675 final, 6

⁴⁶⁰ Euronews, Tusk gives the EU two months to “save Schengen”, 19 January 2016 <http://www.euronews.com/2016/01/19/tusk-gives-the-eu-two-months-to-save-schengen/>, Accessed 6 May 2019

⁴⁶¹ European Commission, Communication from the Commission to the European Parliament, the European Council, and the Council, Back to Schengen - A Roadmap, ft.5

⁴⁶² ibid

states agreed that the preservation of Schengen is a 'the key strategic objective'.⁴⁶³ Indeed, at that point the Schengen Area was put in a great risk.⁴⁶⁴

Considering her electoral losses and the fragmentation of the Schengen Area, Germany and Angela Merkel personally took the initiative to reach an agreement with Turkey, as an attempt to deal with the growing number of incoming refugees. Involving just the Heads of MS and the Commission, Merkel realized two summits with Turkey. The first in November 2015 aiming at coordinating their actions for the management of the refugee crisis through a Joint Action Plan.⁴⁶⁵ Following the closure of the Balkan route (FYROM, Slovenia, Croatia, Hungary), in March 2016, the EU and Turkey concluded on a reinforced deal. Another Statement of the EU Heads of States was followed in March 2016 which resulted in the final EU-Turkey statement of the Members of the European Council and Turkey on 18 March 2016.⁴⁶⁶ Only in the intensification of the EU-Turkey negotiations, Germany was joined by the Dutch Presidency of the first half of 2016 and the Commission she left the other MS outside the negotiations (Bialasiewicz and Maessen, 2018). As a result, the outcome cannot be considered as an EU-instrument or be subject to the CJEU. It is considered an intergovernmental agreement instead of a supranational one (Smeets and Zaun 2020). The EU- Turkey Agreement has been an irregular external policy instrument. It is the first time that EU externalizing efforts and funds has not been based on an official agreement but on extraordinary measures. The Court manifested that the Statement was not an EU rule

⁴⁶³ Visegrad Group, 'Joint Statement on Migration', 15 February, <http://www.visegradgroup.eu/calendar/2016/joint-statement-on>, Accessed 19 May 2019

⁴⁶⁴ Interview with Commission Officer- Irregular migration and Return, December 2019

⁴⁶⁵ European Council, Meeting of heads of state or government with Turkey - EU-Turkey statement, 29 November 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/11/29-eu-turkey-meeting-statement/>, Accessed 8 May 2019

⁴⁶⁶ European Council, EU-Turkey statement, 18 March 2016 <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>, Accessed 8 May 2019

but a Member states initiative⁴⁶⁷ which puts it outside CJEU jurisdiction. The Joint Action Plan was based on a public statement, indicating the emergency and convulsive actions to preserve European security. The EU-Turkey statement has maintained the character of EU third country cooperation in migration since it included the European assistance in creating detention centers and militarizing the external border controls (Özerdem and Hunter 2013). The externalization of migration crisis has been the least politically contentious solution (Saatçioğlu 2020). As a result of the inability to resolve the issue internally, the Plan A for resolving the crisis became the externalization of migration management. Turkey became the lifejacket of the EU. EU intended to keep migrants in Turkey to “*stay there, find a job, and wait for the situation in Syria to improve*”, as Francois Hollande put it.⁴⁶⁸ Besides, the conclusion of an EU-Turkey Statement in comparison to an EU formal agreement outcasted the EP’s scrutiny and CJEU’s jurisdiction (Lavenex 2018). Since it is non-legally binding, the deal has been a product of soft law (Slominski and Trauner 2021). Nevertheless, the EP got along with the Deal outline its deficiencies in terms of human rights.⁴⁶⁹ For the EU, the refugee crisis underscored the significance of Turkey and the interdependence between the neighboring actors in managing regional migration flows. Recognizing the inability of the EU asylum system to manage the vast amount of the asylum seekers, EU relied its efforts on externalizing their control to Turkey. Increasing its dependency on Turkey through the EU-Turkey Deal, the EU has been exposed to blackmail by a disputed Turkish government (Niemann and Zaun 2018). While it had no actual humanitarian objective, the Deal has proven to be a valuable “working solution”, though

⁴⁶⁷CJEU, Order of the Court, Joined Cases C-208/17 P to C-210/17 P, 12 September 2018.

⁴⁶⁸ Politico, What Erdoğan wants from Europe, October 4 2015, <https://www.politico.eu/article/what-erdogan-wants-from-europe-turkey-migration-refugee-crisis/>, Accessed 18 June 2019

⁴⁶⁹ European Parliament, Report on the situation in the Mediterranean and the need for a holistic EU approach to migration – Committee on Civil Liberties, Justice and Home Affairs, March 23 2016, https://www.europarl.europa.eu/doceo/document/A-8-2016-0066_EN.html

informal, for diminishing the flows for Turkey. In fact, it has been a pragmatic response to the internal problems of the EU on migration and the lack of consensus among them.⁴⁷⁰

The EU-Turkey Deal was based on the “*one in, one out*” policy according to which for every irregular migrant Turkey would readmit, the EU would resettle one Syrian refugee from Turkey. Within the framework of the European Statement with Turkey, readmission agreements have been signed with Greece, Bulgaria, and Romania. According to the statement Greece and Turkey have agreed «*to return all new irregular migrants crossing from Turkey into the Greek islands with the costs covered by the EU; to resettle, for every Syrian readmitted by Turkey from Greek islands, another Syrian from Turkey to the EU Member States, within the framework of the existing commitments*”.⁴⁷¹ For the resettlement of Syrians to MS the Commission designed a humanitarian admission scheme.⁴⁷² The concessions of the EU to Turkey were augmented from the EU-Turkey Joint Action Plan of 15 October 2015 to the EU-Turkey Statement of 29 November 2015 between the Heads of EU States with Turkey. The deal agreed in March 2016 was even bigger.⁴⁷³ That is indicative of Turkey’s beneficial negotiating position and the emergency on the shoulders of the EU (Greenhill 2016).⁴⁷⁴ Since the beginning of the negotiations of the

⁴⁷⁰ Interview with Commission Officer- External Relations and Commission Officer- Irregular migration and Return, December 2019

⁴⁷¹ European Council, EU-Turkey statement, 18 March 2016

⁴⁷² European Commission, Recommendation of 11.1.2016 for a voluntary humanitarian admission scheme with Turkey, Brussels, 14 January 2016, C(2015) 9490 final

⁴⁷³ Financial Times, Angela Merkel takes big gamble on migration deal with Turkey ,8 March 2016, <https://www.ft.com/content/f6c982ec-e54e-11e5-ac45-5c039e797d1c>, Accessed 30 June 2019

⁴⁷⁴ In the framework of EU-Turkey Deal, Turkey until 2017 has received €2.9 billion out of the €3 billion for the humanitarian and development needs of refugees and the creation of host centers in Turkey through the program Facility for Refugees in Turkey. Apart from the financial assistance for the needs of refugees, Turkey has received almost 20 million for the improvement of the capacity of the Turkish Coast Guard to carry out search and rescue operations and 40 million through the Instrument for Pre-Accession Assistance for the support of the Border Surveillance Capacity at the Eastern Borders of Turkey. In Gaziantep (Southern Turkey), the EU has established an EU office to coordinate its initiatives in the region, including the Rapid Reaction Mechanism for cross border operations for the support to the Syrian borders. Frontex has been present in Turkey through its Liaison Officer in Ankara for operational cooperation. The European Commission monitors the implementation of EU- Turkey Joint Plan and reports to the member states. More information in European Commission,

readmission agreement, Turkey had underlined that its ratification would have been conditional to the creation of visa liberalization for Turkish citizens in the Schengen Area. However, this process has yet to be completed.⁴⁷⁵In the framework of EU-Turkey Deal, the EU committed to the advancement of negotiations on visa liberalization, accession talks and upgrading of the Customs Union, including the opening of Chapter 17(accession talks had been stuck to the Chapter 16).⁴⁷⁶ From the 72 requirements listed in the Roadmap for visa liberalization, Turkey had fulfilled almost 67 of them until May 2016.⁴⁷⁷ Actually, the Visa liberalization has been the greatest motivation for Turkey and the one that it has pushed, though unsuccessfully, the EU.⁴⁷⁸ In the same framework, both partners agreed in the EU-Turkey High Level Political Dialogue in July 2017 that they will open negotiations on an upgraded bilateral trade and economic framework.⁴⁷⁹ The EU- Turkey Deal made the EU susceptible to threats by the Turkish President Erdoğan as the one he made to Jean-Claude Juncker that Turkey could ‘open the doors to Greece and Bulgaria anytime and put the refugees on buses’.⁴⁸⁰ The overall success of the Statement in diminishing migration flows to almost 97%⁴⁸¹ provoked the Commission’s proposal to “*inspire cooperation with other key third countries and point to the key levers to be activated*” in such a

Decision of 24.11.2015 on the coordination of the actions of the Union and of the Member States through a coordination mechanism – the Refugee Facility for Turkey -, Brussels, 27 November 2015, C(2015) 9500 final

⁴⁷⁵ Fifth Report on the Progress made in the implementation of the EU-Turkey Statement, (COM (2017) 204 final

⁴⁷⁶ European Council, EU-Turkey statement, 18 March 2016

⁴⁷⁷ European Commission, Turkey’s progress on the visa liberalization roadmap, 4 May 2016 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160504/turkey_progress_visa_liberalisation_roadmap_en.pdf, Accessed 28 June 2019

⁴⁷⁸ Interview with Commission Officer- External Relations, December 2019

⁴⁷⁹European Commission, Report from the Commission to the European Parliament the European Council and the Council, Seventh Report on the Progress made in the implementation of the EU-Turkey Statement, Brussels, 6.9.2017. COM (2017) 470 final

⁴⁸⁰ The Guardian, Turkish president threatens to send millions of Syrian refugees to EU, 11 February 2016, <https://www.theguardian.com/world/2016/feb/12/turkish-president-threatens-to-send-millions-of-syrian-refugees-to-eu>, Accessed 21 June 2019

⁴⁸¹European Commission, The EU-Turkey Statement

way.⁴⁸² The implementation of the EU-Turkey Deal acted favorably for Merkel in the long-run against the anti-immigrant AfD (Zaun 2018). Besides, the humanitarian ramifications of the Deal have been regarded as “marginal”.⁴⁸³

Nevertheless, the EU-Turkey Joint Action Plan has stimulated several considerations on the legal issue of which country is considered by the EU a “safe country” for refugees, backsliding the violations of democracy in the country. The EU–Turkey Statement of 18 March 2016 which provides Turkey with the status of a safe third country, a title that, according to EU legislation, does not deserve due to the geographic limitation of the Geneva Convention that Turkey applies. Indeed, the Asylum Procedures Directive requires that an immigrant should be readmitted in a country which can provide him international protection in accordance with the provisions of Geneva Convention. However, the protection of human rights in Turkey is a rather questionable issue since several legal cases have been reported on violation of refugees’ and immigrants’ rights (Ulusoy 2016). Being informed about the context of the Commission’s report on Turkey’s accession mentioning the breaches of democracy, Erdoğan asked Donald Tusk to delay its publication after the Turkish elections on November 1, 2015. This report signaled the disassociation of the Commission with the policies of the Heads of states. The same stance was kept by the EP which opposed the delay of the report claiming that this move “*gave the impression that the EU is willing to go silent on violations of fundamental rights in return for the Turkish Government’s cooperation on refugees*”⁴⁸⁴ The EU proceeded to the re-definition of the list of safe countries for returning the refugee to a country of transit that may have granted legitimate protection in accordance

⁴⁸² European Commission, Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank on establishing a new Partnership Framework with third countries under the European Agenda on Migration, Strasbourg, 7.6.2016, COM (2016) 385 final, 3

⁴⁸³ Interview with Commission Officer- Irregular migration and Return, December 2019

⁴⁸⁴ European Parliament, European Parliament Resolution of 14 April 2016 on the 2015 Report on Turkey. P8_TA-PROV(2016)0133.

with the Geneva Convention. In the same framework, the Commission intended to adopt a Regulation for a common list of safe third countries⁴⁸⁵ after the relative countenance in the Council conclusions.⁴⁸⁶ The Regulation intended to recognize as safe third countries the prospective EU candidate states of Western Balkans (Bosnia-Herzegovina, Macedonia, Montenegro, Kosovo, Serbia and Turkey) and, thus, the procedures for their nationals to be facilitated.⁴⁸⁷ Moreover, the Commission promoted the EU Action Plan on Return aiming at coordinating the return of illegal migrants to their countries of origin and transit with the support of Frontex, which includes the voluntary and imposed returns, the enforcement of the Return Directive and readmission agreements, as well as the implementation of a specialized 'Return Handbook'.⁴⁸⁸ Besides, as a Commission Coordinator commented on the externalization what means more for the EU is that "at the end of the day, it works".⁴⁸⁹

Almost immediately after the realization of the EU-Turkey Statement, the European Council of 18/19 February stated in its Conclusions *"It is important to restore, in a concerted manner, the normal functioning of the Schengen area, with full support for Member States which face difficult circumstances. We need to get back to a situation where all Members of the Schengen area apply fully the Schengen Borders Code and refuse entry at external borders to third-country nationals who do not satisfy the entry conditions or who have not made an asylum application despite having had the opportunity to do so,*

⁴⁸⁵ European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU, Brussels, 9.9.2015, COM (2015) 452 final

⁴⁸⁶ Council of the EU, Council Conclusions on safe countries of origin, Brussels, 22 July 2015/1133/15, <http://data.consilium.europa.eu/doc/document/ST-11133-2015-INIT/en/pdf>, Accessed 3 January 2019

⁴⁸⁷ Nevertheless, the legislative negotiations on the safe third countries Regulations were interrupted by the Council in April 2017, More details <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-european-list-of-safe-countries-of-origin>

⁴⁸⁸ European Commission, Communication from the Commission to the European Parliament and to the Council, EU Action Plan on return, Brussels, 9.9.2015, COM (2015) 453 final

⁴⁸⁹ Interview with Commission Policy Coordinator- Asylum, December 2019

while taking into account the specificities of maritime borders, including by implementing the EU-Turkey agenda".⁴⁹⁰ On that basis, the Commission's Communication of March 2016 announced the end of the acceptance of the wave through approach by the frontline and the transit MS. It was estimated that until the end of 2016 the Schengen Area should be free of border controls again, considering the proper implementation of the emergency measures.⁴⁹¹ Nevertheless, it was not until 2017, that Greece began again the partial implementation the Dublin system.⁴⁹² Trying to obviate similar situations and encapsulate these procedures in a coordinated approach, the Commission submitted a proposal for a Council implementing decision for temporary internal border control in exceptional circumstances, offering a prolongation of internal border controls up to 6 months, which the Council adopted.⁴⁹³ Notwithstanding, the unilateral actions of the MS have cost a lot to the primary EU achievement, the Schengen Area⁴⁹⁴ while " *it helped fuel the narrative that frontline MS were not registering entries adequately and was in line with the positions of MS "of destination"*.⁴⁹⁵ Thus, it has opened a wound in the trust among the MS.⁴⁹⁶

⁴⁹⁰ European Council, European Council meeting (18 and 19 February 2016)– Conclusions, Paragraph 8 e., <https://www.consilium.europa.eu/media/21787/0216-euco-conclusions.pdf>, Accessed 9 January 2019

⁴⁹¹ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Back to Schengen - A RoadMap, Brussels, 4.3.2016 COM (2016) 120 final

⁴⁹² European Commission, Proposal for a COUNCIL IMPLEMENTING DECISION setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk, Brussels, 30 January 2017, COM (2017) 40 final/2

⁴⁹³ European Commission, Proposal for a Council Implementing Decision setting out a recommendation for temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk, Brussels, 4 May 2016, COM (2016) 275 final and European Commission, Proposal for a Council implementing Decision setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen

area at risk, Brussels, 26 October 2016, COM (2016) 711 final

⁴⁹⁴ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Commission contribution to the EU Leaders' thematic debate on a way forward on the external and the internal dimension of migration policy, Brussels, 7 December 2017, COM (2017) 820 final

⁴⁹⁵ Interview with Commission Policy Coordinator- Asylum, December 2019

⁴⁹⁶ Interview with Administrator of Secretariat of the Council - Justice and Home Affairs Unit, January 2021

5.3. The road to reform: Euroscepticism hits the frontline states and the introduction of flexibility.

5.3.1. The first Commission's proposals and the proposal of "flexible solidarity"

Whereas the proposal of a separate permanent legal instrument of distribution of refugees did not find the necessary support from the MS,⁴⁹⁷ the voluntary emergency relocation scheme had moved extremely slowly and did not bring the anticipated results.⁴⁹⁸ The Commission incorporated the mechanism in its proposal for the amendment of the Dublin Regulation and promoted the reform of the whole CEAS, stating that *"There are significant structural weaknesses and shortcomings in the design and implementation of European asylum and migration policy...The overall objective is to move from a system which by design or poor implementation places a disproportionate responsibility on certain Member States and encourages uncontrolled and irregular migratory flows to a fairer system which provides orderly and safe pathways to the EU for third country nationals in need of protection ..."*⁴⁹⁹ Besides, it was outlined that the Dublin system has been very problematic since it *"was not designed to ensure a sustainable sharing of responsibility for asylum applicants across the EU... especially in situations of mass influx along specific migratory routes, the current system places responsibility, in law, for the vast majority of asylum seekers on a limited number of individual Member States...This also partly explains why over the past years there has been an increasing disregard of EU rules... the current system would*

⁴⁹⁷ European Commission, Communication to the European Parliament, the European Council, and the Council, Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration, Brussels, 23.9.2015 COM (2015) 490 final

⁴⁹⁸ European Commission, Report from the Commission to the European Parliament, the European Council and the Council, Second report on relocation and resettlement, Brussels, 14 April 2016, COM (2016) 222 final

⁴⁹⁹ European Commission (2016), Communication from the Commission to the European Parliament and the Council, Towards a reform of the Common European Asylum System and enhancing legal Avenues to Europe, 6 April 2016, COM(2016) 197 final, 2-3

remain unsustainable in the face of continuing migratory pressure".⁵⁰⁰ Indeed, the CEAS has failed to construct a fair distribution system based on socio-economic standards of both refugees and member states and has suffered from "inherent weaknesses".⁵⁰¹ In 2016, the EU began negotiations over the amendment of the CEAS, based on five priorities: a) the establishment of a sustainable and fair system within the Dublin system, b) the reinforcement of the Eurodac system, c) the improvement of MS' convergence in the EU asylum system, d) the prevention of secondary movements, e) the strengthening of the mandate for the EU's asylum Agency "so it can play a new policy-implementing role".⁵⁰²

Thereafter, Commission forwarded two packages of proposals to reform CEAS. The amendment was based two fundamental axes. The first was the introduction of a solidarity scheme for the frontline states and the accentuation of responsibility measures towards the states that were accepting secondary movements. Due to concerns on reduced rule convergence, the proposals included the establishment of the EU Asylum Agency (EUAA) the main responsibility of which would be the proper implementation of CEAS rules by the MS, reinforcing it with competences of intervening in the implementation of EU rules.

⁵⁰³ The long term goal of this ambitious proposal has been "*consideration could be given to the possibility of transferring responsibility for the processing of asylum claims from the national to the EU level, for instance by transforming EASO into an EU-level first-instance decision-making Agency, with national branches in each Member State, and establishing an EU-level appeal structure*".⁵⁰⁴ The proposed EU Asylum Agency which, apart from operational, would have had an implementation role, enriched with an

⁵⁰⁰ Ibid, 4

⁵⁰¹ Ibid

⁵⁰² Ibid, 6

⁵⁰³ Ibid

⁵⁰⁴ European Commission, Communication from the Commission to the European Parliament and the Council, towards a reform of the Common European Asylum System and enhancing legal Avenues to Europe, 6 April 2016, COM (2016) 197 final, 8-9

evaluation mechanism. Indeed, the Commission's proposals intended to turn the EU rules on asylum more binding (Thielemann 2018). For the reform of the Dublin system and the introduction of a solidarity scheme,⁵⁰⁵ the Commission proposed the introduction of a binding "*corrective allocation mechanism*" which would be activated automatically in any case that a member state is confronted with extraordinary pressure. Nevertheless, the final proposal decreased this ambitious statement to a '*fairness mechanism*' established on an estimation of admission capacity quotas based on a distribution key (calculated based on size and wealth) applied in the case of reception of asylum application more than 150% of the reference number by a country. The proposal elaborated that if a state refused its proportionate intake of refugees it would have to pay €250,000 for each refugee it refused to accept. The Commission also proposed the amendment of the Eurodac regulation⁵⁰⁶ and the establishment of an Entry/ Exit information database which would help identifying illegal migrants.⁵⁰⁷ In an effort to eliminate "*the current disparate arrangements in the Member States*"⁵⁰⁸ in the field of asylum rules, the Commission promoted the replacement of the Asylum Procedures Directive with a new Regulation.⁵⁰⁹ It applied the same approach with the Qualification Directive⁵¹⁰ to augment uniformity in the rights offered to the migrants by the MS in

⁵⁰⁵ European Commission, Proposal for a Regulation of the European Parliament and the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 4 May 2016, COM (2016) 270 final.

⁵⁰⁶ European Commission, Proposal for a Regulation of the European Parliament and the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast), 4 May 2016 COM(2016) 272 final

⁵⁰⁷ Proposal for a Regulation of the European Parliament and the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011, Brussels, 8 April 2016, COM (2016) 194 final

⁵⁰⁸ European Commission (2016), Communication from the Commission to the European Parliament and the Council, towards a reform of the Common European Asylum System and enhancing legal Avenues to Europe, 6 April 2016, COM (2016) 197 final, p. 10

⁵⁰⁹ European Commission, Proposal for a Regulation of the European Parliament and the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 13 July 2016, COM (2016) 467 final.

⁵¹⁰ European Commission, Proposal for a Regulation of the European Parliament and the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for

its efforts for greater harmonization. The recast of the Reception Conditions Directive⁵¹¹ aimed at the guarantee of safe and humane living conditions for the migrants. Finally, the Commission intended to officialize the resettlement scheme by establishing a Regulation of common approach to minimize illegal entries but make legal migration to the EU more feasible.⁵¹² In addition to the Commission's efforts, the EP supported the proposed reform and especially the introduction of a binding relocation mechanism in the Dublin system.⁵¹³

The proposal of a permanent relocation system fired up the reaction of the V4. The Joint Statement of V4 Interior Ministers of November 2016 stated that "*...we must reject mandatory relocations of illegal migrants or a similar permanent mechanism becoming a part of the EU's response to the migration crisis....This is why we agree to promote a flexible common policy framework corresponding with the main challenges*".⁵¹⁴ As an alternative to the Commission's proposal, the V4 proposed the idea of **'flexible solidarity'** in the European Council at Bratislava in September 2016 based on a voluntary distribution of refugees.⁵¹⁵ The Slovak Council President Fico claimed the quota system as finished in

refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, 13 July 2016, COM(2016) 466 final.

⁵¹¹ European Commission, Proposal for a Regulation of the European Parliament and the Council laying down standards for the reception of applicants for international protection (recast), 13 July 2016 COM (2016) 465 final

⁵¹² European Commission (2016), Communication from the Commission to the European Parliament and the Council, towards a reform of the Common European Asylum System and enhancing legal Avenues to Europe, 6 April 2016, COM (2016) 197 final

⁵¹³ European Parliament, Resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095(INI)).

⁵¹⁴ Visegrad Group, Joint Statement of V4 Interior Ministers on the Establishment of the Migration Crisis Response Mechanism, Warsaw, November 21, 2016, <https://www.visegradgroup.eu/calendar/2016/joint-statement-of-v4>

⁵¹⁵ Council of the EU, Third Ministerial Conference of the Prague Process "Addressing challenges together" (Bratislava, 19-20 September 2016), Brussels, 6 October 2016, 12487/16

October 2016.⁵¹⁶ On the one hand, Hungary and Poland wanted to engage in more aggressive behavior against their EU partners. On the other hand, the Czech Republic and Slovakia wanted to adopt a more reconciliatory stance in order, in view of the Slovak EU presidency, to reach an agreement (Nič 2016). Being the sole V4 state participating in the Eurozone, Slovakia undertook the EU Council presidency in June 2016, which entailed that the state needed to represent the EU as a union and not just promote its national interests. Slovakia did support Orban's views on the relocation scheme but after the undertaking the EU Presidency it adhered to a more moderate stance (Kazharski 2018). The Slovak Presidency proposed the preservation of the Dublin system complemented by a system of "effective solidarity" according to which each state would choose to contribute (or not) according to its wishes in case of mass migration influx.⁵¹⁷ The Slovak program was built on three axes of different migratory pressures (normal, medium and high) while MS were supposed to be given the freedom to choose the way they would contribute to solidarity in worse situations, choosing from measures of financial or technical assistance or relocation. This proposal did not incorporate any actual sovereignty transfer to the EU while it integrated the idea of "flexible solidarity" of a voluntary relocation scheme according to which MS will not be obliged to accept more refugees but paying their quota with financial means or expertise (Zaun 2018), backed by the Visegrad states in the European Council of Bratislava in September 2016⁵¹⁸. However, their proposal was not accepted by the other member states.

⁵¹⁶ EUobserver, EU migrant quota idea is finished, Fico says, 27 September 2016, <https://euobserver.com/migration/135245>, Accessed 18 January 2021

⁵¹⁷ Programme of the Slovak Presidency of the Council of the European Union, 1 July - 31 December 2016, https://www.eukn.eu/fileadmin/Files/Presidencies/2016_Slovakia/SK_Programme.pdf, Accessed 10 January 2021

⁵¹⁸ European Council, The Bratislava Declaration, Bratislava, 16 September 2016, <https://www.consilium.europa.eu/media/21250/160916-bratislava-declaration-and-roadmapen16.pdf>, Accessed 13 January 2021

Since then, this proposal has been a subject of controversy in the Council. The Council has promoted the preservation of the status quo while the proposals of the Commission have been regarded as too liberal (Zaun 2020). The European Council of December 2016 stated “*The effective application of the principles of responsibility and solidarity remains a shared objective. Sustained efforts over the past months to review the Common European Asylum System have shown some areas of convergence, while other areas require further work. Building on this work, the Council is invited to continue the process with the aim of achieving consensus on the EU's asylum policy during the incoming Presidency*”.⁵¹⁹ The negotiations were stalled again until 2017 when there were “remaining outstanding points”⁵²⁰ of disagreement on the reform discussions. The Maltese Presidency continued to underscore that the reformed Dublin system should “*deliver solidarity effectively and efficiently when and as needed, in particular when a Member State faces a disproportionate migratory pressure*”.⁵²¹ The Estonian Presidency, which took the responsibility of the negotiations during the first reading, and after the Dutch, the Slovak and the Maltese Presidencies, had tried to reach consensus on bilateral level with several delegations but its effort was unsuccessful, especially for the Dublin Regulation.⁵²² Migration was only the previous from the last subject of the European Council of the June 2017 which focused mainly on the external dimension of the migration management and remained outlining that the Council should find the necessary balance between “*solidarity and responsibility*”.⁵²³ Nevertheless, the objective of the European

⁵¹⁹ European Council, European Council meeting (15 December 2016) – Conclusions, Brussels, 15 December 2016, EUCO 34/16

⁵²⁰ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the Delivery of the European Agenda on Migration, Brussels, 29 September 2017, COM (2017) 558 final

⁵²¹ Presidency of the Council, Reform of the Common European Asylum System and Resettlement-Progress report, Brussels, 1 December 2017, 5057/17, 3

⁵²² Ibid

⁵²³ European Council, European Council meeting (22 and 23 June 2017) – Conclusions, Brussels, 23 June 2017, EUCO 8/17

Council was to reach a consensus in the first half of 2018.⁵²⁴ However, the subject of migration was not included in the Agenda and the Conclusions of the European Council meeting of March 2018.⁵²⁵

The European Council further pushed for a “speedy” consensus on the reform of the Dublin system.⁵²⁶ While for the Qualification and the Eurodac Regulation there have been several trialogues and technical negotiations, the Council and the EP disagreed on the duration of the status of international protection and the provisions on no-compliance with Eurodac rules. Whereas for the EUAA the negotiations were moving forward on a stable pace since December 2016, for the Reception Directive, the first trialogues took place in December 2017. Nevertheless, the consensus came for the resettlement Framework only as soon as all the MS agreed that it would be *“more flexible, as it also includes the humanitarian admission. Taking into account the concerns frequently expressed by some delegations, the voluntary nature of resettlement has also been clearly reflected in the text.”*⁵²⁷ In this way, the proposal of the V4 had gradually started to gain ground in the negotiations.

The Bulgarian Presidency proposed a compromise on the solidarity scheme, proposing that a MS that receives 140% of their capacity (based on its GDP and population size) refugees would be relocated to other MS up to the point that they fill the 50% of their capacity.⁵²⁸The Proposal of Presidency in April

⁵²⁴ European Council, Meeting of the European Council held on 19 October 2017, Brussels, 17 January 2018, EUCO 21/17

⁵²⁵ European Council, European Council meeting (22 March 2018) – Conclusions, Brussels, 23 March 2018, EUCO 1/18

⁵²⁶ European Council, European Council meeting (28 June 2018) – Conclusions, Brussels, 28 June 2018, EUCO 9/18

⁵²⁷ Presidency of the Council, Reform of the Common European Asylum System and Resettlement-Progress report, Brussels, 1 December 2017, 5057/17, p.7

⁵²⁸ Council of the EU. Note from the Presidency to the Delegations Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection by a

third-country national or a stateless person registered in one of the Member States by a third-country national or a stateless person (recast). Brussels, 17 May 2018, 8895/18

2018 did not include such propositions but a crisis scenario with the European Council in its lead, and legal provisions which strengthened the existing system.⁵²⁹ For instance, the proposed amendment of changing the Asylum Procedures Directive to a Regulation reinforces the Dublin system since it further legalizes the necessity of the first to register the asylum seeker and offer residence.⁵³⁰ The next presidency was Austrian with the right-wing FPÖ showing no interest in trying to reach a compromise on the issue.⁵³¹ Therefore, the Presidency of Austria has proceeded to negotiations on the basis of flexible solidarity with “different forms of solidarity to be made available”.⁵³² In the same spirit, the divisions over the Procedures Regulation still persisted while the Resettlement Framework had succeeded in getting only a general “political agreement” between the Council and the EP since June 2018.⁵³³ However, the negotiations in the Council have proven to be “a tough exercise”.⁵³⁴

While the Council Presidencies have endorsed the flexibility and differentiation on the aspect of solidarity with the MS to be able to choose the kind of support they want to offer to frontline states, the EP insisted on a mandatory relocation scheme.⁵³⁵ Indeed, by the end of 2018, the idea of flexible solidarity with differentiated measures had gained ground and the Commission had started showing that it will endorse

⁵²⁹ Council of EU, Presidency Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) - New Dublin: Reversing the Dynamics, Brussels, 9 April 2018, 7674/18

⁵³⁰ European Commission, Proposal for a Regulation of the European Parliament and the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 13 July 2016, COM (2016) 467 final.

⁵³¹ Financial Times, Austria vows EU migration revolution amid deadlock, 5 June 2018, <https://www.ft.com/content/c4e01fc2-68b2-11e8-8cf3-0c230fa67aec>. Accessed 14 April 2021

⁵³² Presidency of the Council, Reform of the Common European Asylum System and Resettlement= Progress report, Brussels, 4 October 2018, 12826/18

⁵³³ Ibid

⁵³⁴ Interview with Administrator of Secretariat of the Council - Justice and Home Affairs Unit, January 2021

⁵³⁵ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Commission contribution to the EU Leaders' thematic debate on a way forward on the external and the internal dimension of migration policy, Brussels, 7 December 2017, COM (2017) 820 final

it officially. Even the Minister of Interior of Germany, a country which strongly supported the relocation of refugees, Horst Seehofer, had accepted the concept of flexible solidarity that could entail “*sending more staff to the borders or giving money for joint border security. We should be more flexible and rely on flexible solidarity.*”⁵³⁶ As the Commission supported, by the end of 2018, “*the European Parliament adopted its position in November 2017, taking that fairness mechanism a step further by transforming it into a compulsory system of allocation that would apply generally regardless of the migratory pressure. In the meantime, successive Presidencies of the Council, including the current Austrian Presidency with its work on the notion of “mandatory solidarity”, have worked towards shaping a solidarity mechanism, balanced by a responsibility component. A lot of ground work has been done in the Council on the broad contours of a solidarity mechanism including financial and material support to Member States under pressure and those taking part in solidarity efforts...However, more than two years after the Commission put its proposal on the table, Member States' divergent positions continue to persist and have prevented the Council from adopting a mandate to start negotiations with the European Parliament...* ”.⁵³⁷ Nevertheless, the divisions and the disagreements among the MS were well- embedded in five specific points “*The core issue is the burden sharing between Member States of first entry and Member States of final destination of the (majority of the) migrants: i.e., how wide and how long is the responsibility of the MS of first entry (usually referred to as "responsibility", relating e.g. to registration) vs how strong and of what nature are the obligations of other MS (usually referred to as "solidarity", relating e.g. to relocation). The handling of secondary movements is another divisive issue, as is (to a lesser extent) the*

⁵³⁶ Politico, EU ‘patronizes’ Eastern members on migration, says Seehofer, March 18 2018, <https://www.politico.eu/article/eu-patronizes-eastern-members-on-migration-says-seehofer/>, Accessed 1 February 2021

⁵³⁷ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Managing migration in all its aspects: progress under the European Agenda on Migration, Brussels, 5 December 2018, COM (2018) 798 final

*duration of various steps in the procedures. How to approach return and readmission aspects, prerogatives of EU-level agencies (vs national competence) ...”.*⁵³⁸

5.3.2. Italy and Euroscepticism

Whereas the Commission pushed for the reforms to be passed separately according to their progress in negotiations,⁵³⁹ the MS were stuck for the “all in all” approach. Indeed, most of the MS had already agreed in measures of responsibility, such the further reinforcement of external borders controls.⁵⁴⁰ However, the southern states stayed loyal to their demand over a mandatory solidarity mechanism and maintained the stance that “nothing is agreed until everything is agreed”.⁵⁴¹ As a result, they contradicted the prior adoption of the responsibility package for more harmonization, the introduction of the EUAA and the amendment of Eurodac in 2018, playing their bargaining card of vote me to vote you.⁵⁴² The Visegrad states, on the other hand, have been the proponents of the status quo while opposing the capacity building initiatives like the EUAA and anything like the “automatic quotas” also voting against the first responsibility package. Besides, the Heads of the Visegrad states insisted on adding in the conclusions of the he European Council of June 2018 that decisions over the Dublin system should be taken in the spirit of consensus.⁵⁴³ While they will lose much from a possible collapse of Schengen, the Central and Eastern European (CEE) states denied any undertaking of responsibility and insisted on parting the

⁵³⁸ Interview with Officer of Secretariat of the Council - Communication and Information Unit, January 2021

⁵³⁹ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Commission contribution to the EU Leaders' thematic debate on a way forward on the external and the internal dimension of migration policy, Brussels, 7 December 2017, COM (2017) 820 final

⁵⁴⁰ Interview with Commission Officer- Irregular migration and Return, December 2019

⁵⁴¹ Interview with Commission Officer- Asylum, January 2021

⁵⁴² Council of the European Union - Presidency, Reform of the Common European Asylum System and Resettlement= Progress report, Brussels, 26 February 2019, 6600/19

⁵⁴³ European Council, European Council meeting (28 June 2018)–Conclusions, Brussels, 28 June 2018, EUCO 9/18

problem between the southern states as the first states of entry and the northern states as the main destination states. In this framework, differentiation and flexibility is conceived as a perfect solution (Aydın-Düzgüt et al 2020). While the Commission and the EP have abandoned their liberal principles in their effort to reach a compromise,⁵⁴⁴ the divisions in the Council have made this impossible. As an Officer of the Council Secretariat clarified the amendment was discussed “*in the context of high migratory pressure and lingering political tensions*”, a fact that led “*all sides having more radical positions*”.⁵⁴⁵ While it had passed through the EP, the negotiations over Dublin IV were driven to a deadlock in 2018 when the opposition of the V4 was joined by Italy.⁵⁴⁶ Hence, the group of MS opposing the amendments became big enough to block the procedures.⁵⁴⁷ The Italian disapproval was founded on the fact that the Dublin IV changed very little since it preserved the core of the Dublin system and the principle of the first entry state, but also the compromise presented by the Bulgarian Presidency would not benefit a country with a large population, such as Italy. However, neither the governments of V4 or Italy would benefit from the solution or a compromise over the refugee crisis since they would lose their nationalist point of reference of public support. For them, the incapacity of the EU to reach an agreement and be efficient proves their Eurosceptic claims (Zaun 2020). No reform of the CEAS can be attained without the acceptance of the one of the most important, for EU migration policy, MS, which opposed the reinforcement of border procedures “*Italy remains the golden key to Dublin reform; only a proposal that can both the northern Europeans and Italy can live with will succeed in the Council and become legislation... Italy and the V4 joined forces to block the Commission’s proposals on border procedures in*

⁵⁴⁴ Euractiv, Verhofstadt threatens to take Council to court for ‘failure to act’ on asylum reform, 13 June 2018, <https://www.euractiv.com/section/justice-home-affairs/news/verhofstadt-threatens-to-take-council-to-court-for-failure-to-act-on-asylum-reform/>. Accessed 16 January 2021

⁵⁴⁵ Interview with Officer of Secretariat of the Council - Communication and Information Unit, January 2021

⁵⁴⁶ ANSamed, Italy-Visegrad axis leads to rejection of Dublin reform- EU still divided over asylum, Salvini calls it a victory, 5 June 2018, http://www.ansamed.info/ansamed/en/news/sections/politics/2018/06/05/italy-visegrad-axis-leads-to-rejection-of-dublin-reform_707892b6-daa9-4ef1-8e6c-ec0300f648ae.html, Accessed 20 January 2021

⁵⁴⁷ Interview with Administrator of Secretariat of the Council - Justice and Home Affairs Unit, January 2021

its 2016 CEAS reform.⁵⁴⁸ Indeed, since the 2018 Italian elections, the country has embraced Eurosceptic politics.

The election of March 2018 resulted in the great victory of the M5s (32,22%) and LN (17.69%)⁵⁴⁹ but the government under Conte was formed after many rounds of negotiations. The newly formed government has been a defender of national sovereignty and identity while it was the first time that an Italian government attacked EU and integration, as this was the main point of convergence in their coalition (Quirk 2020).⁵⁵⁰ The Conte government has been a fundamental change in Italian politics since it was very different from the Europeanist governments of Paolo Gentiloni (December 2016-May 2018) and Matteo Renzi, the latter fell apart after the referendum of 4 December 2016.⁵⁵¹ The opposition led by the LN and Salvini was based on xenophobic, anti-immigration, anti-European and anti-Islamic rhetoric, asking for reinforced border controls and reform of the Dublin regulation since 2013. The regional Italian party LN was established in 1982 as an autonomist party, the protection of the Italian people against the corrupt elite, and most scholars explain the success of the party based on its anti-immigration agenda. When Salvini came in power the party turned right wing and began to concentrate its agenda to anti-Europeanism, especially in migration matters, implementing populist strategy (Taggart and Szczerbiak 2013; Mammone 2015; Molle 2019; Quirk 2020). The LN started attacking the EU and its austerity policies, picturing it as a dictatorship (Morini 2018). The party opposed the emergency relocation scheme

⁵⁴⁸ Interview with Former Assistant of the President of the Council, February 2021

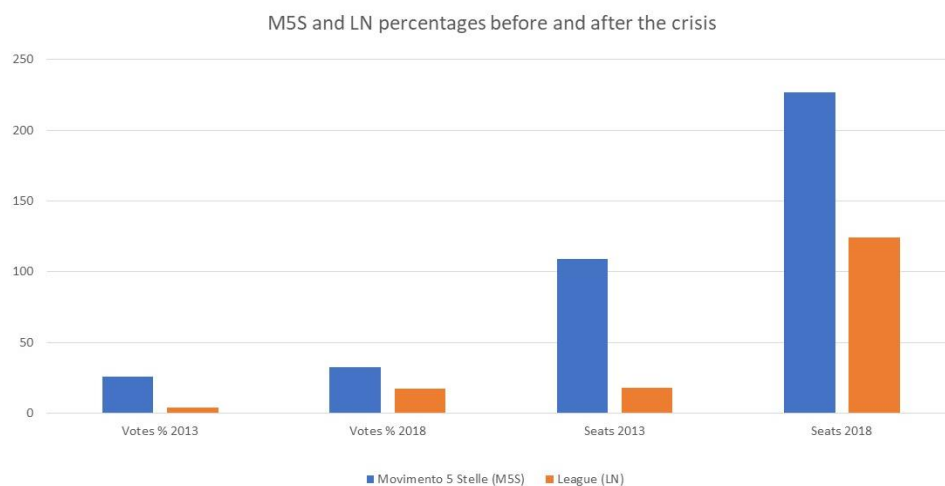
⁵⁴⁹ The Guardian, Italian elections 2018 - full results, 5 March 2018, <https://www.theguardian.com/world/ng-interactive/2018/mar/05/italian-elections-2018-full-results-renzi-berlusconi>, Accessed 29 January 2021

⁵⁵⁰ Foreign Affairs, Italy's Revolt Against the EU Populism Reaches Rome, May 24, 2018, <https://www.foreignaffairs.com/articles/italy/2018-05-24/italys-revolt-against-eu>, Accessed 29 January 2021

⁵⁵¹ The Guardian, Italy referendum: all you need to know about Renzi's crunch vote, 30 November 2016, <https://www.theguardian.com/world/2016/nov/30/italy-referendum-all-you-need-to-know-about-renzis-crunch-vote>, Accessed 28 January 2021

and applauded Hungary's policy of closing borders (Pirro and van Kessel 2018). The LN requested the abandonment of the Schengen Agreement and the Dublin Regulation (Fabbrini and Zgaga 2019; Quirk 2020). In the same framework, the M5S claimed that the EU is making Italy its refugee camp. The party supported the externalisation of migration control to third countries of origin and transit and the forced repatriation of asylum seekers (Pirro and van Kessel 2018). The 5 Star Movement (M5S) was formally founded in 2009 and founded its political program to the European crises. While the M5S has started as a left anti-establishment party, it greatly endorsed nationalist and nativist positions (Hobolt and Tilley 2016). Its leader, Bepe Grillo has attacked the established caste and supported the power of the people and direct democracy. These has been mingled with anti-immigration and nativist lines and gradually growing Euroscepticism (Pirro and van Kessel 2018; Quirk 2020). The M5S has asked for a referendum any time an EU integration step is taken while the LN has asked for the return of EU competences to the national government (Fabbrini and Zgaga 2019; Quirk 2020).

Diagram 5.1.



Source: Author's compilation of data found in <http://www.parties-and-elections.eu/countries.html>

The anti-immigrant discourse applied from the League (LN) of Matteo Salvini in Italy, one of the front-line states, resulted to the win of 17% of the parliamentary seats (in 2013 they had just the 4%) and formed a coalition government with the Five Star Movement (M5). The Conte government attacked the EU on migration policy with the leader of LN in the center of conflicts with EU as the Minister of Interior of Italy.

Salvini promoted the closure of borders and the militarization of external border controls. He also refused the landing of many NGOs in Italian ports as an indication that Italy had no more patience in waiting for its EU partners to act in solidarity (Fabbrini and Zgaga 2019). The interior Italian minister Salvini has based his election in mobilizing the public against the EU that tried to turn Italy to EUs refugee camp.⁵⁵² The LN found support in the populist party of Five Stars- M5 (Cinque Stelle) which had started gaining public trust at the end of 2015, attacking the EU for its management of the refugee crisis, and claimed financial sanctions to those MS refusing the intake of refugees.⁵⁵³ In the same context, the deputy PM, Luigi Di Maio, the head of the M5S, threatened EU that Italy would veto the EU budget if EU left Italy alone in dealing with the refugee crisis (Fabbrini and Zgaga 2019). In the name of the protection of national sovereignty and anti-immigration, the Conte government made alliances with its thinking-alike states such as Hungary and the V4. As proven in the European Council of June 2018, these alliances did not profit Italy since it was the V4 that pushed for the preservation of the Dublin Regulation as it was and the distribution of refugees from Italy and Greece solely on a voluntary basis. This had led the Conte government to attack the EU as an elitist organization. Moreover, the government threatened to suspend the Italian contribution to the structural funds in response to the opposition of the V4 to the redistribution of refugees (Fabbrini and Zgaga 2019) while refusing the entrance into their ports of the rescue ship Aquarius Médecins Sans Frontières Spain filled with hundreds of refugees as an action of protest against EU management of the crisis.⁵⁵⁴ These measures were rather successful in diminishing the migration

⁵⁵² Deutsche Welle, Italian Interior Minister Matteo Salvini: Italy not 'Europe's refugee camp', 3 June 2018, <https://www.dw.com/en/italian-interior-minister-matteo-salvini-italy-not-europes-refugee-camp/a-44062004>, Accessed 27 January 2021

⁵⁵³ The Telegraph, Italy calls for EU funding to be cut to Eastern European countries that refuse to accept refugees, 12 October 2016 <https://www.telegraph.co.uk/news/2016/10/12/italy-calls-for-eu-funding-to-be-cut-to-eastern-european-countries/>, Accessed 18 January 2020

⁵⁵⁴ BBC News, Italy's Matteo Salvini shuts ports to migrant rescue ship, 11 June 2018, <https://www.bbc.com/news/world-europe-44432056>, Accessed 24 January 2021

flows by 81% in 2018 in comparison to 2017 .In fact, since the EU-Turkey Deal, the main migration flows were once again channeled through the Central Mediterranean, from Libya to Italy. ⁵⁵⁵

5.3.3. The 2020 New Pact on migration and the Incorporation of flexibility

By March 2019, the Commission had stopped estimating progress on the negotiations of each proposal but asked for some deliverables before the 2019 EP elections.⁵⁵⁶ However, this objective was not attained since it was not much time left.⁵⁵⁷ The negotiations over the amendment from 2016 to 2019 can be summed up *“Subsequent Council Presidencies have sought different approaches - either to work on the legal texts at expert level, to reach agreement on most elements pending a solution on the main political disagreements; or to start from a political discussion on the key elements which would then translate into technical work. In both cases, two sides (each representing a blocking minority in voting terms) continued having opposing views: on the one hand, the South and East (an improbable alliance in this context) and on the other, the Central and Nordic countries”*. ⁵⁵⁸The Romanian Presidency of 2019 did not include the subject as a priority in its agenda and the negotiations were postponed for after the EP elections and the composition of the new Commission.⁵⁵⁹ Under the light of the Covid-19 pandemic, the special meeting of the European Council on 17-21 July 2020, mentioned nothing for the CEAS reform.

⁵⁵⁵ European Commission, Joint Communication to the European Parliament, the European Council and the Council, Migration on the Central Mediterranean route Managing flows, saving lives, Brussels, 27 January 2017, JOIN (2017) 4 final

⁵⁵⁶ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Progress report on the Implementation of the European Agenda on Migration, Brussels, 8 March 2019, COM(2019) 126 final

⁵⁵⁷ Council, Slovenian delegation, Salzburg Forum Ministerial Meeting (27 – 28 May 2019, Portorož, Republic of Slovenia) - Joint declaration, Brussels, 28 May 2019, 9779/19,

⁵⁵⁸ Interview with Officer of Secretariat of the Council - Communication and Information Unit, January 2021

⁵⁵⁹ Council of the European Union- Presidency, Reform of the Common European Asylum System and Resettlement= Progress report, Brussels, 26 February 2019, 6600/19

⁵⁶⁰ Nevertheless, the resolution over the asylum policy has been the main challenge for the new Commission.⁵⁶¹ The Commission President von der Leyen at her Opening Statement in July 2019 reported the upcoming publication of the Commission's proposal on the New Pact on Migration and Asylum, trying to promote an agreement of amendments on EU migration and asylum rules. The critical point activating the Commission's initiative was the offensive actions of Turkey in its borders with Greece in Evros and the outbreak of Covid 19 pandemic in Europe in March 2020. When the President Recep Tayyip Erdoğan decided to send almost 13.000 migrants in Evros borders Greece, greatly supported by the EU, closed its borders, and suspended the right to asylum for almost a month.⁵⁶² Just before the publication of the New Pact Commission Vice-President Schinas announced that the previous Commission's proposal on the amendment of Dublin Regulation has been withdrawn.⁵⁶³ The strike of the pandemic highlighted the emergency for the restoration of migration policy. In view of high health risks of detention states such as Spain, Netherlands and France proceeded to release migrants while temporary residence was granted to migrants in Portugal and Italy (Dimitriadi 2020). In 23 September 2020, the Commission re-launched an effort to resolve “ *the inter-institutional debates*” and push for the amendment through the publication of a New Pact on Migration and Asylum aiming at addressing “ *the most fundamental concerns expressed in the negotiations since 2016 – in particular in relation to solidarity – and tackles the implementation gap*”.⁵⁶⁴ The key of the New Pact is that it aspired to be ‘a fresh start’, considering the time passed and the positions in the inter-institutional negotiations since the

⁵⁶⁰ European Council, Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – Conclusions, Brussels, 21 July 2020, EUCO 10/20

⁵⁶¹ Interview with Commission Policy Assistant- Asylum, December 2019

⁵⁶² European Commission, Statement- Remarks by President von der Leyen at the joint press conference with Kyriakos Mitsotakis, Prime Minister of Greece, Andrej Plenković, Prime Minister of Croatia, President Sassoli and President Michel, 3 March 2020 https://ec.europa.eu/commission/presscorner/detail/en/statement_20_380, Accessed 1 February 2021

⁵⁶³ EUobserver, Commission bins 'Dublin' asylum-reform proposal, 20 February 2020, <https://euobserver.com/migration/147511>, Accessed 1 February 2021

⁵⁶⁴ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on a New Pact on Migration and Asylum, 23 September 2020, COM (2020) 609 final, 3

2016 Commission proposals and the consultation of the Commission with the MS and the EP.⁵⁶⁵ Besides, the latter has pushed for a more protective approach which the Commission tried to reconcile with the pragmatist stance of the Council,⁵⁶⁶ to reach a “fair balance” and build consensus among the groups of the MS.⁵⁶⁷ Thus, the Commission withdrew its previous proposal on the Dublin system.⁵⁶⁸

Just like the 2016 Commission’s proposals, the New Pact includes again a new comprehensive approach of an Asylum and Migration Management Regulation, replacing the Dublin Regulation, which includes a holistic approach comprehensive approach of all the CEAS measures but elevates the ones that are based on Directives through a Regulation. Whereas the New Pact characterizes the expression of solidarity as mandatory, it embraces the concept of **flexible solidarity**, normalizing the use of differentiation in asylum policy. The proposal describes the solidarity scheme: *“This solidarity concept should be compulsory in nature in order to be able to respond predictably and effectively to the changing realities with an increasing share of mixed migration flows towards the Union, and to ensure fair sharing of responsibility in line with the Treaty. Support from one Member State to another is necessary not only in the form of relocation of applicants that are not in the border procedure but also in certain cases of other groups, such as applicants that are in the border procedure and also beneficiaries of international protection. In addition, Member States should have the possibility to benefit from solidarity in the field of return to be better able to manage the increasing share of mixed migration flows. The evidence further suggests that solidarity between Member States that have taken the form of contributions to capacity building and other areas of support have proved effective in assisting a Member State facing migratory pressure. Lessons learned from previous and ongoing solidarity schemes, highlight that solidarity should*

⁵⁶⁵ Interview with Commission Policy Assistant- Asylum, December 2019

⁵⁶⁶ Interview with Commission Officer- Irregular migration and Return, December 2019

⁵⁶⁷ Interview with Commission Officer- Asylum, January 2021

⁵⁶⁸ Ibid

also be available on a constant basis in the context of disembarkations following SAR operations".⁵⁶⁹

The solidarity mechanism, which enriches the Dublin system, is expected to be activated in 'situations of migration pressures'. The Article 45 of the proposal provisions that MS should participate in "*solidarity contributions*" choosing freely from the palette of measures defined by the Commission. These measures include firstly the participation in the relocations of asylum applicants based on the quota determined by the state's population (50%) and GDP(50%). The relocation would also be accompanied by financial support by the EU (10.000 per relocated individual).⁵⁷⁰ In the case that a MS does not wish to intake any migrants, it can opt for contributing through 'other measures to facilitate returns' and specifically by 'return sponsorships' including the dialogues with third countries for identification and readmission of irregular migrants as explained in the Article 55 of the Proposal. In case of failure of the return sponsorship in a period of 8 months, the MS will be obliged to relocate the migrant in its territory.⁵⁷¹ In this way, a MS could help the pressed frontline state by using its diplomatic ties with third countries and return any illegal migrants.⁵⁷² The third option for MS is the contribution through capacity and operational support as included in the Article 56 of the proposal. The solidarity mechanism would be activated by the request of the MS and the construction of a solidarity plan by the Commission.⁵⁷³ Whereas mandatory, the new pact maintains the flexibility offered to member states on the kind of solidarity intent to provide either sponsorship or relocation. Indeed, flexibility persists in the implementation of EU rules. Besides, the proposal does not change the main principle of the Dublin system for the responsible state of first entry explained in the Article 21, except for migrants subject to relocation due to family links or humanitarian bases. In contrast, the first entry states become also responsible officially for people rescued in SAR

⁵⁶⁹ European Commission, Proposal for a Regulation of the European Parliament and of the Council, on asylum and migration management, Brussels, 23.9.2020, COM (2020) 610 final.12

⁵⁷⁰ Ibid

⁵⁷¹ Ibid

⁵⁷² Interview with Austria- Permanent Representation in the Council, March 2021

⁵⁷³ Op.cit. 579

operations. In this way, the recognition of human rights and protection of refugees becomes a project left to the EU's periphery (Carrera 2020).

Nevertheless, the Commission has gone a step further than just enriching the Dublin System and proposed the establishment of a specialized procedure for “situations of crisis and force majeure in the field of migration and asylum”⁵⁷⁴ which accompanied with its Recommendation on an EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint).⁵⁷⁵ In these situations, relocation of asylum seekers or return sponsorships are the only options and they are mandatory as *“this proposal does not include solidarity measures in the field of capacity building, operational support and cooperation with third countries, since such measures which are of a longer-term nature, are more adapted to situations of pressure”*.⁵⁷⁶ The crisis situations as defined by the Commission refer to cases of *“ exceptional situations of mass influx of third-country nationals or stateless persons arriving irregularly in a Member State, being of such a scale and nature that it would render a Member State’s asylum, reception or return system non-functional and which risk having serious consequences for the functioning of, or result in the impossibility of applying, the Common European Asylum System and the migration management system of the Union...For this purpose, a simplified procedure and shortened timeframes are set out for triggering the compulsory solidarity mechanism*

⁵⁷⁴European Commission, Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum, Brussels, 23.9.2020

COM (2020) 613 final

⁵⁷⁵ European Commission, Commission Recommendation of 23.9.2020 on an EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint), Brussels, 23.9.2020, C(2020) 6469 final

⁵⁷⁶ European Commission, Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum, Brussels, 23.9.2020

COM (2020) 613 final, 14

*provided for situations of pressure in the Regulation on Asylum and Migration Management.”*⁵⁷⁷ As concealed by the Commission, this instrument has widely been the result of the Covid-19 pandemic and the events in Evros. In crisis cases, the MS are granted with a considerable level of flexibility in the measures taken according to the “crisis migration management procedure”. These include the decision on asylum application during the borders control procedures, the expansion of the length of border screenings, extending the usage of detention, the use of a suspensive procedure on the appeals for return and applying expulsions to third countries of origin and transit.⁵⁷⁸

In this scheme, *“Flexible solidarity as a form of differentiation was promoted in order to not have to participate in a specific initiative (the relocation scheme) while not preventing others from doing so, again in a bid to assume the identity of a constructive actor”* (Aydın-Düzgüt et al 2020,19). The Commission’s proposal supports differentiation and flexibility to national governments to decide the level of asylum procedures and solidarity they want to proceed, opting out from measures incompatible with their interests (Carrera 2020). The Commission has tried to compromise the need for a more uniform asylum system with member states’ interests in controlling the ways of implementation of EU rules and interpreting EU law. This is the reason why it has suggested that the Directives of Procedures and Qualifications be turned into Regulations to enhance harmonization among the MS asylum practices.⁵⁷⁹ Nevertheless, about the Asylum procedures the Council has already express its opposition on turning the Directive into a Regulation.⁵⁸⁰ The proposal of **“mandatory flexible solidarity”** cuts across the rejection

⁵⁷⁷ European Commission, Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum, Brussels, 23.9.2020

COM (2020) 613 final, 2-3

⁵⁷⁸ Ibid, Articles 3 to 5

⁵⁷⁹ Interview with Commission Officer- Asylum, January 2021

⁵⁸⁰ Interview with Administrator of Secretariat of the Council - Justice and Home Affairs Unit, January 2021

of a mandatory scheme by the V4 and the rejection of a voluntary scheme rejected by the southern and traditional receiving states. Alongside Germany, Sweden had also accepted flexibility as *“the best way to handle this policy field...this could be one key that could enable the Member States to find a compromise. It is important to achieve a balance between solidarity and responsibility and also to reduce secondary movements”*.⁵⁸¹ Besides, the definitions used by the Commission in the proposal are deliberately vague and broad since the numerical frameworks of the previous proposals provoked a great level of disagreement by the MS.⁵⁸² However, the aspect of flexibility *“has been successfully built-in”*⁵⁸³ and *“necessary”*.⁵⁸⁴ It is evident that the Commission’s proposal has included many national priorities since it tried to find the medium solution between the extreme positions of the MS presented since 2016 since there is *“a little bit for everyone”*.⁵⁸⁵ Besides, the need of constructing consensus was incorporated in the Pact, acknowledging the stagnation and divisions among the MS. As a result, the *“most likely scenario is to continue trying for an agreement among all MS and building in the legislation the flexibility required to this end”*.⁵⁸⁶ However, *“The risk here is that currently applicable and debatable national policies will be reshaped into ‘EU’ ones”* (Carrera 2020,3).

Furthermore, the Pact provisions the foundation of a “fully-fledged” EU Asylum Agency which *“would respond to Member States’ growing need for operational support and guidance on the implementation of the common rules on asylum, as well as bringing greater convergence”*.⁵⁸⁷ The current structure of

⁵⁸¹ Interview with Sweden- Permanent Representation in the Council, February 2021

⁵⁸² Interview with Commission Officer- Asylum, January 2021

⁵⁸³ Interview with Administrator of Secretariat of the Council - Justice and Home Affairs Unit, January 2021

⁵⁸⁴ Interview with Austria- Permanent Representation in the Council, March 2021

⁵⁸⁵ Ibid

⁵⁸⁶ Interview with Officer of Secretariat of the Council - Communication and Information Unit, January 2021

⁵⁸⁷ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on a New Pact on Migration and Asylum, 23 September 2020, COM (2020) 609 final, 6

EASO has no right to be involved in the asylum procedures of the MS, instead, it has had only competences of monitoring and sharing expertise. The proposal of its new regulation strives to make EASO a true European asylum Agency, participating in the procedures⁵⁸⁸ which will support the MS in all the procedures apart from the final decision but not intervening in the work of the national authorities.

⁵⁸⁹ The new pact has included the provision for fast screening and mandatory procedures at external borders, supported by the northern states and incorporated in German's Presidency agenda.⁵⁹⁰ Indeed, both Germany and Sweden had pushed hard for the responsibility package of the EUAA and the pre-border screening to pass speedily in the Council while at the same time both of these destination states have supported the solidarity package as well.⁵⁹¹ The idea behind the proposals for improvement and reinforcement of external border controls has been the establishment of also the responsibility pillar in addition to solidarity, aimed *"to develop a new effective process allowing for better management of mixed migration flows. In particular, it is important to create a tool allowing for the identification, at the earliest stage possible, of persons who are unlikely to receive protection in the EU"*⁵⁹². In this context, the Commission proposed the compulsory pre-border screening⁵⁹³ to identify which persons will be granted entry to the EU *"applicable to all third-country nationals who cross the external border without*

⁵⁸⁸ Interview with Commission Policy Assistant- Asylum, December 2019

⁵⁸⁹ Interview with Commission Officer- Asylum, January 2021

⁵⁹⁰ Programme for Germany's Presidency of the Council of the European Union, 1 July to 31 December 2020, <https://www.eu2020.de/blob/2360248/e0312c50f910931819ab67f630d15b2f/06-30-pdf-programm-en-data.pdf>

⁵⁹¹ Interview with Commission Officer- Asylum, January 2021

⁵⁹² European Commission, Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, Brussels, 23.9.2020, COM (2020) 612 final, 1

⁵⁹³ Specifically, the pre-border screening would include *" (a) A preliminary health and vulnerability check;(b) An identity check against information in European databases;(c) Registration of biometric data (i.e. fingerprint data and facial image data) in the appropriate databases, to the extent it has not occurred yet; and(d) A security check through a query of relevant national and Union databases, in particular the Schengen Information System (SIS), to verify that the person does not constitute a threat to internal security "*ibid, p2.

authorisation".⁵⁹⁴ In this way, the application for asylum would not authorize "*an automatic right to enter the EU*". The specific way for this to be attained is the identification of border crossing points across EU's external borders where the decision of entry is designed to be taken in an accelerated manner for all persons arriving in EU's borders, even for those that have been rescued through SAR operations.⁵⁹⁵ The procedure of screening and deciding whether one will be granted entry in the EU is considered to take five days when migrants will remain in the specific border points facilities. This period can reach the 12 weeks in case the migrant appeals against the decision for granting asylum (it may be extended more for the preparation of return procedures according to EU Returns Directive). These procedures are provisioned to be assisted by both Frontex and EASO.⁵⁹⁶ Actually, the proposal "*should lead to enhancing the synergies between external border controls, asylum and return procedures. It is expected to add value to the current procedures at the external borders in particular by: creating uniform rules concerning the identification of third-country nationals who do not fulfil entry conditions and submitting them to the health and security checks at the external borders, thus increasing the security within the Schengen area; clarifying that entry is not authorised to third-country nationals unless they are explicitly authorised entry; creating a uniform tool of channeling screened third-country nationals to the appropriate procedure: either a procedure that respects the Return Directive or, in case of an application for international protection, the normal asylum procedure, an accelerated procedure, the asylum border*

⁵⁹⁴ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on a New Pact on Migration and Asylum, 23 September 2020, COM (2020) 609 final, 4

⁵⁹⁵ European Commission, Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, Brussels, 23.9.2020, COM (2020) 612 final

⁵⁹⁶ European Commission, Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, Brussels, 23.9.2020, COM (2020) 612 final and European Commission, Amended proposal for a Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, Brussels, 23.9.2020 COM (2020) 611 final

procedure or relocation to another Member State or refusal of entry”.⁵⁹⁷ The pre-entry border screenings and the reinforcement of EUAA have been greatly promoted by Germany⁵⁹⁸ and initially opposed by the Southern states based on the resources needed, considering that these states have already reached their limits, and the fact that this system may result in mass detentions for considerable periods of time (Neidhardt and Diez 2020). The new procedure of pre-entry screenings make the granting of asylum even more difficult and may result to refoulement.⁵⁹⁹

The new pact also summarizes the external instruments used for the externalization and control of migration flows under the title of ‘Migration Partnerships’. These partnerships include both legal frameworks as the readmission agreements but also non-legal as the EU-Turkey Deal. The partnerships include tools of financing third countries, such as Trust Funds, capacity building cooperation, networking and coordination for readmission and return.⁶⁰⁰ The focus on the readmission is related to the application of conditionality on visa facilitation, trade agreements and investments. The increase of trade and investments are considered also measures for fighting the root causes of migration. Moreover, the Pact includes the provision of developmental help to states with problematic migration control.⁶⁰¹ Nevertheless, the Pact does not include a measurement of effectiveness of past partnerships, initiatives and agreements or any concern for the protection of human rights in third countries (Carrera 2020).

⁵⁹⁷ Interview with Commission Officer-Borders and Schengen, January 2021

⁵⁹⁸ “Food for Thought: Outline for Reorienting the Common European Asylum System,” Berlin, November 13, 2019 <https://www.statewatch.org/media/documents/news/2019/dec/eu-asylum-FoodForThought-GermanNoPaper.pdf>, Accessed 21 February 2021

⁵⁹⁹ ECRE, Joint statement: The new Pact on Asylum and Migration: An Opportunity Seized or Squandered?, 14th February 2020 <https://www.ecre.org/joint-statement-the-new-pact-on-asylum-and-migration-an-opportunity-seized-or-squandered/>, Accessed 13 February 2021

⁶⁰⁰ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on a New Pact on Migration and Asylum, 23 September 2020, COM (2020) 609 final,

⁶⁰¹ Ibid

Right after the publication of the New Pact, the V4, alongside Estonia and Slovenia, proceeded to the release of a non-paper establishing their position on this. All of them agreed with the reinforcement of the external border controls and the Partnerships with third countries. They, however, underscored that *“The internal dimension of the new asylum and migration management system should focus on responsibility...there is a common acceptance for mandatory solidarity in crises, the flexibility and use of a wide and open catalogue of instruments are crucial. Furthermore, it should be underlined that the actions on the external dimension and the external borders protection should be considered as solidarity measures...The proposed distribution key taking into account solely the simple algorithm based on population and GDP is not acceptable...The relocation or other forms of admission of migrants have to be of voluntary nature. Member States must not be forced to implement any particular instruments that could be considered as violation of their sovereignty...In this context, we feel obliged to voice our concerns also on the concept of return sponsorship as the only equivalent to relocation...the Member States should be able to choose freely from a wide range of tools, taking into account their capacities, possibilities and preferences, given the possible political implications...”*.⁶⁰² In other words, while they agreed with the responsibility pillar and the reinforcement of the external dimension,⁶⁰³ they disagreed with almost any aspect of the solidarity issues, which in fact they requested to turn them into responsibility aspects. Even though the new proposal incorporated their preferences on flexibility and differentiation, they disagreed on the suggestions of return sponsorships, instead of relocation, due to their possible lack of diplomatic ties with third countries. Specifically, as the representative of member of the V4 explained *“The initial COM proposals specifically on the solidarity mechanism have been built around concepts that in our opinion have proven to be problematic and dividing in the past. Specifically, the*

⁶⁰² Visegrad Group, Non-paper- New Pact on Migration and Asylum, Joint Position of Poland, Hungary, Slovakia, Czech Republic, Estonia and Slovenia, December 10th, 2020, <https://www.visegradgroup.eu/download.php?docID=457>

⁶⁰³ Interview with Austria- Permanent Representation in the Council, March 2021

*central role of automatic redistribution of migrants (both for asylum and return) in the solidarity mechanism will remain unacceptable for the Czech Republic. Any mandatory redistribution scheme is in its nature in a conflict with the principle of subsidiarity and, to certain level, with national competences in the area of asylum.... For that reason we believe that certain level of flexibility and adaptability to new circumstances in the upcoming system is indeed needed. In the same time, different realities in various Member States may sometimes also require a differentiated approach”.*⁶⁰⁴

Almost at the same time, Cyprus, Greece, Italy, Malta and Spain publicized their non-paper on the New Pact. In this, they characterized the current system as “unfair” and asked for system of “shared responsibility” aimed “to set up a mandatory system providing for a fair and rapid distribution of asylum seekers arriving irregularly to the EU among Member States, in compliance with Articles 78 and 80 TFEU. Distribution criteria should include links that exist between an asylum seeker and a Member State (e.g.enhanced family reunification, previous residence/visa, previous issue of academic or professional diplomas),as requested by the European Parliament, with a view to minimizing the incentives for secondary movements. Then, a complementary distribution mechanism based on an automated central system (DAS) should be established to manage the remaining cases where the criteria cannot be applied.... calculated on objective and predefined criteria, including GDP, GDP per capita, population and territory...”⁶⁰⁵. Moreover, their ideal mechanism could be activated also in normal cases and not only during crisis and without any time limits on the allocations. Indeed, it has been understood that “some governments are less flexible in agreeing to anything relating to migration if it jeopardizes their position

⁶⁰⁴ Interview with Czech Republic- Permanent Representation in the Council, March 2021

⁶⁰⁵ Cyprus, Greece, Italy, Malta and Spain, Non-paper on the reform of the Common European Asylum System in the perspective of an EU migration and asylum policy, <https://www.statewatch.org/media/documents/news/2020/apr/eu-ceas-cy-el-es-it-mt-non-paper-4-20.pdf>

in the next national election. So, they insist to make sure the agreement is good for their government”.⁶⁰⁶ Considering the two extreme positions and the political sensitivity of the policy area the Commission has added DI within the framework of solidarity.⁶⁰⁷ However, the distrust among the MS is still very solid.⁶⁰⁸ At the same time, the need for a wide consensus undercuts the need for progress on the amendment. Nevertheless, as it was pointed out *“assuming one of these groups would split and only one or two MS remain isolated against a compromise, a QMV agreement is not excluded”*.⁶⁰⁹ However, the Council is still confronted with the same difficulties and divisions as it was in 2016, since the points of departure among the MS are still different and they have not found the Commission’s proposal sufficient.⁶¹⁰ Still, differentiation *“could facilitate an agreement. But the system itself would probably benefit from being more integrated”*.⁶¹¹ Besides, *“flexibility has characterised the EU’s migration architecture from the beginning and pretty much worked, albeit suboptimally”*.⁶¹²

5.4. Conclusion of Part 5

This part indicated that the rise and strength of Eurosceptic parties in many MS, exploited the salience of the refugee crisis, increasing polarization and resulting to the politicization of migration in EU member states. The success of this parties, in either governmental or either opposition offices, has fortified the lack of understanding and consensus in the Council negotiations. The MS were divided in two camps mainly about what kind of solidarity the EU can endure. In this framework, the Commission endorsed DI

⁶⁰⁶ Interview with Commission Officer- Asylum, January 2021

⁶⁰⁷ Interview with Commission Policy Coordinator- Asylum, December 2019

⁶⁰⁸ Interview with Commission Officer- Irregular migration and Return, December 2019

⁶⁰⁹ Interview with Officer of Secretariat of the Council - Communication and Information Unit, January 2021

⁶¹⁰ Interview with Administrator of Secretariat of the Council - Justice and Home Affairs Unit, January 2021

⁶¹¹ Interview with Sweden- Permanent Representation in the Council, February 2021

⁶¹² Interview with Former Assistant of the President of the Council, February 2021

and the concept of flexible solidarity, promoted by the states of V4, as a solution to disentangle the deadlock on the negotiations of the third reform of CEAS. Thus, the rise of Euroscepticism resulted in the rise of DI within the secondary EU legal framework.

PART 6. Conclusion

6.1. Concluding remarks and contribution of the study

After the establishment of the common market and the consequent of the abolition of the internal border controls of the Schengen Area, the EU recognized the growing interdependence and moved on enacting gradually the common migration policy which has included measures on legal and irregular migration as well as rules of external border controls. The establishment of EU migration and asylum policy has been considered by scholars as a spillover of the Schengen acquis which contributed to the convergence of MS preferences (Luedtke 2005; Niemman 2012; Leuffen et al. 2013). Indeed, the abolition of internal border controls necessitated the reinforcement on the cooperation of external border controls, the establishment of common visa policies, the information sharing through common databases such as the Schengen Information System (SIS) and the Visa Information System (VIS), but also the harmonization of asylum policies among the MS. While the European Migration Policy has been built upon the Schengen acquis, the Schengen Agreement has been a pivotal example of flexible integration since it was established outside the EC Treaties and progressively developed up to the point to include both EU and non-EU members, at the same time when EU members have opted-out. The opt-out practice was firstly introduced in the Maastricht Treaty to override national resistance to the deepening of integration (Piekutowska and Kuzelewska 2015). After the Treaty of Maastricht and as the integration moved to core state powers, it touched economic and welfare policies of the state and, as a result, it raised the public awareness and the politicization. Whereas the development of the Schengen Area and the common market augmented the external differentiated integration in the EU, the progress of EU integration in policies of core state powers increased internal differentiation. Integration follows different modes in core and non-core state powers. Integration in non-core state powers is usually more uniformly applied and it provokes functional attractions to non-EU member states to participate.

The politicization is channeled in elections and referenda which constrain the actions of national governments and supranationalization possibilities. A politicized issue gains great salience and attracts controversial attention domestically (Schuette 2019). Indeed, politicization brings the public into the process of integration through the public articulation of positions and views of parties, politicians, and EU institutions. The increased salience of politicized issues underscores the importance of EU politics for the everyday lives of member states' citizens. Displeasure of EU policies, formulated by national politicians, may be directed by the citizens to the EU and its legitimacy. If national politicians cannot put forward efficiently to the public the reasons and bases of legitimacy of the EU, the public masses will challenge the latter in certain instances of referenda and elections (Fossum and Trenz 2006; De Wilde 2011). Besides, politicization at domestic and European level are interconnected and have fluid borders between them (Zürn 2019). Politicization on European level has its origins in the national political conflict (Hutter and Kriesi 2019; Schmidt 2019). In core state powers *"European integration is no longer determined by insulated elites. Public opinion, party competition, and the mass media are vital ingredients"* (Hooghe and Marks 2007,119). Integration and internal differentiation in AFSJ can be explained by the equation of interdependence and Euroscepticism driven by national identity issues. Interdependence can explain external differentiation while protection of national identity and sovereignty explains internal differentiation (Leuffen et al 2013). On one hand, deep integration can stimulate EU members to opt-out while provoke, by negative externalities, the integration of non-EU members such as the EFTA states (Rittenberg et al 2014,204-5). The deepening of EU integration provokes higher levels of politicization than its widening (Grande and Hutter 2016, 68-69).

Besides, this kind politicization mobilizes cultural aspects of identity (Hooghe and Marks 2009). Identity issues had played an important role in public decision regarding European integration in core state

powers (Wivel 2014). Especially on the policies of migration, identity is activated a prior and more profoundly than instrumental and economic calculations and can form one's attitude towards individuals of other ethnicities and cultures. In other words, "*If national identity means self definition and belonging in the national polity, then immigration cuts to the heart of this concept, because it raises political questions about how the nation-state should be defined. Immigration policy determines who should belong to the nation-state (and who should be excluded) ...*" (Luedtke 2005,88-89) In this framework, if people feel strongly about the exclusiveness of national identity, they support the national control of migration no matter how the integration process dictates (Luedtke 2005).

Once the national identity is mobilized and the level of politicization is raised the people turn the 'permissive consensus' towards integration to 'constraining dissensus' since it increases Euroscepticism (Hooghe and Marks 2009). Eurosceptic parties are successful in mobilizing public opinion against the EU and diffuse anti-European sentiment. Especially extreme right-wing parties have defended national identity and sovereignty (De Vries and Edwards 2009). While often radical right parties often mentions the possibilities of negative economic effects of migration, the mobilization of public opinion against migration is not usually based on utilitarian (in which support for integration is conditional to economic gains of individuals (De Vries and Edwards 2009) but on identity and cultural issues (Carey, 2002; Hooghe and Marks, 2005; McLaren, 2002; Hobolt and Tilley 2016). Politicization and activation of national identity issues also poses a challenge to mainstream parties while facilitates the rise of parties at the extremes (Hooghe and Marks 2019). This process results to the "*systemic effect is to polarize societies on a cultural divide that arguably takes the form of a durable socio-political cleavage*" (Hooghe and Marks 2019, 1117) .

The development of this 'constraining dissensus' within the MS has been accommodated by the use of differentiated integration in the EU internally. Up until the refugee crisis, differentiation had appeared in core state powers in the form of permanent opt-outs of member states unwilling to grant policy decision-making to the supranational level and it is guaranteed through the official agreements of the EU Treaties. Since treaty revisions require unanimity, conflict about supranationalization of core state powers may result in failure of further integration. Those states possess an increased bargaining power in treaty revisions since they possess the power of the veto and defend the status quo against the deepening of integration (Schimmelfennig and Winzen 2019). The resulting options are usually two: either they are granted with an opt-out or they proceed with an intergovernmental agreement outside EU such the primary agreement of Schengen (Schimmelfennig and Winzen 2016). DI offers a solution to such conflicts and overcomes the possibility of a veto to further integration by granting an opt-out (Schimmelfennig and Winzen 2014). These have been the cases of the UK and Denmark.

Indeed, the first politician openly declaring Euroscepticism was James Callaghan who in this letter to the General Secretary of the Labour Party, in 1977 against the expansion of EC and EP competencies. The British political and bureaucratic elites had found it explicitly difficult to cooperate with their colleagues in Brussels. They had become used to the individualism of the British government with no power-sharing and compromises (George 2000). The Eurosceptic forces within the Labor party or right anti-migration voices of the Conservative party they did not find strong support in the 1975 referendum for the entrance of UK in the EEC but the channeling of anti-migration feelings in Eurosceptic attitudes had been a common phenomenon in UK since the late 1990's (Blinder 2020; Balch and Balabanova 2017). Besides, the decision of the Blair's government not to implement the transitional measures for the intra-EU immigration after the Great enlargement acted as a catalyst for the escalation of Eurosceptic and anti-immigration feelings. In this respect, the slogan of taking back control of the Brexit campaign had an emotional realm while the protection of national sovereignty and identity, explained in terms of its imperial

supremacy and indicated in the Crown and the Parliament (Daddow 2015; Black 2019). Until the 2000's, the main soft Eurosceptic political party was the Conservatives while the anti-EU concerns of the Labour party had gradually left its opposition to the EC. Nevertheless, both of the parties supported only the conditional participation to the EU and the British opt-outs from core state powers, such as AFSJ policies, on the name of national identity and sovereignty. The UK's domestic political arena had changed when the UKIP entered it. The UKIP did split the Eurosceptic vote (Lynch and Whitaker 2013). The choice for being harder Eurosceptics than the Conservatives has been a strategic choice. As Evans and Mellon (2019,80) supported it was *"the key issue to have shaped this new cleavage – EU immigration - as it became more salient and more firmly connected with opposition to the EU itself, before translating into substantial support for UKIP and eventually the calling of the referendum"*. UKIP's hard Euroscepticism involved xenophobic, anti-EU and populist promises such as lower taxes, a decrease of the public sector, strict laws and increase on defense expenses but against military intervention. In this way, the *"intense form of Eurosceptic politics"* (Gifford 2014, 516) reached its peak point, resulting in the 2016 referendum and the exit of the UK from the EU.

In contrast to the UK's Eurosceptic political system, politicization in Denmark has been heightened by the excessive use of referendums on important EU decisions. Referenda have a pivotal role of politicization in public spheres (Grande and Hutter 2016, 86-7). While it has had a legal base in the national Constitution, the decision of the Danish political elite has certainly been a political one. Political parties in Denmark had tried to protect their electoral basis by passing on the decisions on EU issues to the public. In this way, the politicization of the EU has reached high numbers in Denmark. As Hooghe and Marks (2012) asserted that an issue becomes politicized only if a party chooses it to do so for electoral reasons. However, when a large number of individuals are included in decisions tend to adopt positions based on specific idiosyncratic elements. Referendums and elections express opposite positions on what political parties and governments have chosen to ask, mobilizing the public opinion.

Indicative of the Euroscepticism shared by Danish people, has been the fact that while turnout in the elections of the EP has been low in Denmark, the total turnout in the referendums of EC/ EU has been higher than 80% (Buch and Hansen 2002). The distance between elites and the public was firstly expressed in the Maastricht Accord (1992) which was rejected in Denmark. Generally, public support for Eurosceptic parties and movements in Denmark has been higher than 20% as indicated in the six referendums on EC/EU, the highest number of referendums in a member state. The Danish People's Party, with a straightforward focus on migration issues, has been a dominant power in Danish politics since 1998 (Green-Pedersen and Krogstrup 2008). Since then, the DPP have been a right, nationalist and Eurosceptic party focusing on anti-immigration which has been decisive in the party's success (Andersen 2003). Up until today, Euroscepticism in Denmark is indicated in the growing success of the anti-European Danish People's Party (DPP), reaching the 21.1% of the vote, turning into the second most powerful party in the country (Sørensen 2015). Denmark is included to the countries which their national identity offer space for the success of Eurosceptic parties declaring their national sovereignty as more important comparing to the concept of integration (De Vries and Edwards 2009, 6). Thus, European integration has been increasingly politicized in the Danish national political and public space, as it was manifested in the 2015 JHA referendum, inhibiting further integration and promoting differentiation. Besides, the concurrence of the referendum with the refugee crisis augmented its politicization. In this context, it had been greatly unlikely a state with exclusive national identity to vote in favor of more integration, especially in AFSJ.

The mobilization of national identities and popular Euroscepticism became a matter of right-wing politics during the "*populist moment of Europe*". The refugee crisis sparked the politicization of migration and EU integration arguments on the cultural and economic integration capabilities of states. In the politicized framework, the refugee crisis played upon the perception of EU and how Europe is regarded by people: as an open and liberal multicultural polity as reflected in the European Treaties or the nationalist union

“Fortress Europe” (Börzel and Risse 2018). The growing visibility of radical right parties has contributed to the increase of politicization of migration and European integration (Grande and Hutter 2016, 85-86). In recent years we have observed a considerable increase of the success of Eurosceptic parties in national and European elections (Szczerbiak 2020). In the framework of the refugee crisis, the arguments were constructing the contradiction of the national with the European identity. The contradiction was constructed between the idea of a liberal multicultural and tolerant Europe against the nationalist Europe which is xenophobic and against other cultures. The discourses have been built based on us against the other for Eurosceptic parties. (De Vries and Edwards, 2009; Dunn, 2015; Lucassen and Lubbers 2012; Werts et al. 2013). The extreme parties, however, brought Euroscepticism on the scene (Zürn 2019) while the mainstream parties had to respond relatively to the success of the radical right-wing parties. Indeed, *“Governments that see rising support for right-wing populist parties are likely to consider asylum policies more salient and adopt a stronger positions on this issue If right-wing populists come to power, very different substantive positions are brought to the EU negotiating table, including on asylum, one of the main issues around which they mobilize their voters”* (Zaun 2020,6).

The Eurosceptic parties in East Europe and V4 have raised *“the idea that ‘Europeanness’ and national identity were no longer obviously complementary, and possibly even conflicting, notions*” (Szczerbiak 2020, 5). The populist rhetoric of the protest parties and anti-Islamic were engaged by the Fidesz in Hungary, the PiS in Poland, the SMER in Slovakia and the ANO of Czech Republic (Stojarová 2018.). Besides, the Eurosceptic governments in Hungary and Poland have openly challenged EU’s legitimacy. As the EP stated in its resolution in September 2015, *“the leaders of some Member States and the far-right parties are using the current situation to fuel anti-migration sentiments while blaming the EU for the crisis”*. States such as Czech Republic, Slovakia or Poland reject the idea of a fair and formal burden system in EU claiming on cultural arguments. The peak moment of the effects of populism against EU has been Brexit as well as the Italian elections of 2018 (Hodson and Puetter 2019).Nevertheless,

cultural-identification has also been present in the politicization in North Europe used by the right wing politicians (Hutter and Kriesi 2019). States such as Austria, France, Germany, the Netherlands, and Sweden. Moreover, Hungary, Czech Republic, Romania and Slovakia expressed their unwillingness to accept more migrants from Muslim states.⁶¹³ Indeed, the effect of opposition by parties such as the AfD in Germany or the FN in France, has pushed mainstream governments to restrictive positions against migration. In this framework, most MS acted unilaterally (Dagi 2017). Politicization has affected also the states that are-introduced internal border controls, namely Austria, Denmark, Germany and Sweden and France (Taggart and Szczerbiak 2018). Just before the peak of the refugee crisis more than the 70% of the asylum applications were directed just to five states (Germany, Sweden, Italy, France and Hungary). Member states such the UK, Spain, Portugal and the Eastern European states were less influenced than states like Greece, Italy, Germany and Sweden (Zaun 2018).

In addition to the asymmetries of the exposure to the crisis among the MS, the extreme politicization and the rise of Euroscepticism in both the transit and destination states lead to a long-lasting intergovernmental conflict within the Council negotiations over the management of the crisis. The frontline and the destination states promoted their preference for joint burden sharing initiatives or the strengthening of supranational agencies, such as the European border guard Agency and the EASO, to deal with the situation. The other camp of transit states advocated the preservation of the status quo, stricter rules, and the externalization of the crisis. The destination states wanted to cooperate on EU level, but the non-host states threaten non-agreement since they wish to maintain the low level of refugees intake (Zaun 2018). The two camps entered a zero-sum conflict ('Rambo' or 'suasion game' in game theory) since the same amount of relief of one state would mean the same amount of burden to

⁶¹³ Financial Times, Stefan Löfven rebukes eastern Europe over refugee crisis. 3 November 2015. <https://www.ft.com/content/108f9de6-8209-11e5-a01c-8650859a4767>, Accessed 15 March 2021

another (Schimmelfennig 2017; Biermann et al 2019). The agreement on lowest common denominator was manifested in the decision for the reinforcement of external border controls and externalization of the crisis (Biermann et al. 2019: 258–60; Hooghe and Marks 2019). Indeed, due to the inability to resolve the problem internally, the EU proceeded to the enforcement of external policy instruments, such as the EU-Turkey Agreement in 2016, as a last effort to diminish the numbers of the incoming refugees. The externalization of migration management has compensated the problems of the internal policies on migration and the intergovernmental conflict of the member states (Parkes and Schwarzer 2012, 6). From 2016 until 2020, the Council could not find a common ground to agree about the reform of CEAS and any negotiations resulted in a deadlock (EASO 2020).

The states advocating the preservation of the status quo and the implementation of the already agreed had more bargaining power (Schimmelfennig 2017), as it is manifested in their success in promoting flexibility and differentiation within the Commission's legislative proposals. As Bailer (2004, 102-3) explains *"A member state that chooses to take an extreme position is more able to draw the outcome towards its position in situations of unanimity voting. Such a veto player can strongly influence the negotiation result, ensuring that an outcome is only slightly different from the status quo"*. The need for amendment has been recognized by most MS. What still divides the MS has been the issue of solidarity in relocating the refugees among the MS. While both Northern and Southern MS have agreed on the necessity of mandatory redistribution system, the idea of the "flexible solidarity" has been promoted by the V4 and Austria and presented by the Slovak Presidency. *'Migration policy should be based on the principle of the "flexible solidarity". This concept should enable Member States to decide on specific forms of contribution taking into account their experience and potential'*.⁶¹⁴ Besides, the Joint Declaration

⁶¹⁴ Visegrad Group, Joint Statement of the Heads of Governments of the V4 Countries, 16 September 2016, Bratislava

of the V4 underscored that the system should not only be flexible but also voluntary.⁶¹⁵ Whereas mandatory, flexibility has been an important part of the 2020 New Pact on Migration and, specifically, of the amendment of the Dublin Regulation. In this way, differentiation has entered the EU secondary law on migration and asylum. Thus, differentiated integration has been emerging, once more, as an elemental part of EU law (Thym 2017).

Besides, this has been the main contribution of this study on the empirical level: it underscored that Euroscepticism can provoke differentiation beyond the times of treaty revisions and referendums. While scholars have already indicated that Euroscepticism can lead to treaty opt-outs, this study proved that it can cause differentiation in the secondary EU law also. On the conceptual level, the study has contributed to the study of core state powers integration, through its interrelation with the scholarly work on politicization. In this way, it assisted in the deepening of knowledge of the dynamics of politicization and Euroscepticism in these policies, as well as their correlation with the level of application of differentiated integration.

6.2. Proposals for future research

In fact, the asylum regime had fallen apart because it has been built on unstable foundations (Den Heijer et al. 2016). Member states have failed to completely comply with the rules of the CEAS for which in 2015 the Commission accused the member states that failed to apply the directives and regulations.⁶¹⁶ While communitarized, the implementation of migration measures is a case left to the national

⁶¹⁵ Visegrad Group, Joint Statement of the Prime Ministers of V4 Countries on migration, 19 July 2017, Budapest

⁶¹⁶ European Commission, Communication from the Commission to the European Parliament and the Council on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration, COM (2016) 85 final, 10 February 2016

governments. The greatest problem is the non-compliance with the European standards which circumvents its effectiveness (Treib 2014). The mis-implementation was identified by the Commission repeatedly.⁶¹⁷ For instance, since 2008, the Commission had commented that *'poor reception conditions could even lead to a distortion of the system for determining responsibility in respect of an asylum claim (Dublin system)'*.⁶¹⁸ Indeed, the restriction to regulatory integration has led to vulnerability to exogenous shocks due to compliance failure and regulatory deficiencies (Genschel and Jachtenfuchs 2018). In cases of exogenous shocks, state abilities are even more scarce, magnify asymmetric interdependence and are translated to endogenous shocks. As a result, the regulatory integration of core state powers needs to be supported by capacity-building integration, with centralized institutions, and burden-sharing mechanism to distribute equally compliance costs (Genschel and Jachtenfuchs 2018). As a result, the low level of harmonization and solidarity as well as the absence of strong central institutions contributed to the policy failure during the 2015 refugee crisis (Scipioni 2018). The effect of the role of strong institutions in a crisis can be indicated in the case of the 2008 economic crisis. The role of the Commission was advanced by the Stability and Growth Pact and the Six and Two Pack which gave her monitoring powers (Bauer and Becker 2014). During and after the economic crisis, the institutions had gained additional competences in EMU, a fact that was not applied in AFSJ (Peers 2013). This is the reason why the Euro crisis resulted in deepening fiscal and financial integration while in the refugee crisis the Commission only succeeded in strengthening the European Border Agency (Börzel and Risse 2018). As a result, future research is necessary on the consequences of the limitation to regulatory integration for the field of EU migration policy and the limited- often just playing the role of the mediator among different camps of MS- role of the supranational. The history of the integration of the European

⁶¹⁷ European Commission, Report on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, COM (2007) 745, European Commission, Report on the application of Directive 2003/86/EC on the right to family reunification, COM (2008) 610, European Commission, On EU Return Policy, COM(2014) 199 final

⁶¹⁸ European Commission, Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers, Impact Assessment. SEC (2008) 2944

Communities has indicate that the stronger the supranational institutions, the more the Treaties are properly implemented. The Lisbon Treaty clearly states the objective on the creation of 'a common policy on asylum, immigration and external border control, based on solidarity between the MS, which is fair towards third country nationals' (Article 67(1) TFEU). The 2020 New Pact on migration has been in the direction of trying to accommodate national preferences rather than the strict provisions of the Treaties and promoting the progress of integration. It creates, thus, a question for both policy makers and scholars: how effective can be the EU cooperation of a communitarized policy area, if it keeps getting more intergovernmental attributes?

European integration has been marked by 'a patchwork of politicizing moments'(Hutter et al., 2016) that involves also matters of sovereignty, identity and solidarity (Grande and Kriesi 2016, 292-3). The crisis highlighted that European integration does not lie just to the institutional progress but also the establishment of common values and beliefs (Lavenex 2001). The crisis proved that there has been a noticeable gap between available capabilities and the expectations of EU law (Lavenex 2018) and 'incompleteness' of EU governance of CEAS (Scipioni 2018). The standstill in member states' negotiations prior, during and after the crisis, has contributed to a specific pattern of European integration which has been present. As James Hampshire (2016) stated, currently, European migration policy has entered a period of sclerosis and discontent among the member states about how much centralization can accept. Still, the MS state preferences are polarized about how much integration they wish to achieve in EU migration policy. While DI can accommodate the increased Euroscepticism, it cannot intervene on the actual will of the MS to proceed to integration and, the national preferences are primarily constructed in the public arena in which the EU should find ways, tools and means to contain radical right-wing politicization beyond the use of DI.

Besides, the event of Brexit opened a new chapter on the study of differentiated integration and disintegration. According to the Section of the Withdrawal Act of 2018, the EU and UK must reach at

least an agreement on unaccompanied child refugees and family reunification by the end of the transition period.⁶¹⁹ In the framework of the Brexit negotiations, the British Government proposed the establishment of a pact, similar to the Dublin System, outside the framework of the EU which would permit the state the readmission of persons residing without authorization to other EU MS. The proposed agreement was meant to replicate the Dublin system and give the UK the right to return to the EU MS any irregular migrant that “illegally and directly entered the territory of the United Kingdom after having stayed on, or transited through, the territory of the requested Member State”.⁶²⁰ Nevertheless, the EU rejected this proposal.⁶²¹ In the area of migration, the UK has also expressed its interest in participating in measures such as the European Border Agency(Asderaki and Markozani 2020). Therefore, the UK has been engaged in continuing its cooperation with the EU in selected policy areas. This new phenomenon of a state’s continuation of cooperation in some policy fields after disintegration, was named by scholars as *differentiated disintegration* (Schimmelfennig 2018). Differentiated disintegration offers the medium solution between the sheer interruption of cooperation between the EU and a former member state by giving the latter the opportunity to participate in some policy areas at a lesser degree than the one of the official member state. The concept has been derived specifically from the British experience since the UK, while declaring its intention of leaving the EU, it has still maintained its will to participate in limited EU policy areas.⁶²² Whereas the subject of DI has been clearly defined by the academic

⁶¹⁹ House of Commons Library, Insight, What is the Dublin III Regulation? Will it be affected by Brexit?, 4 November 2019, <https://commonslibrary.parliament.uk/what-is-the-dublin-iii-regulation-will-it-be-affected-by-brexite/>

⁶²⁰ Draft Working Text For an Agreement between the United Kingdom of Great Britain and Northern Ireland and the European Union on the Readmission of Persons Residing Without Authorization, page 8, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886021/DRAFT_Agreement_on_the_readmission_of_people_residing_without_authorisation.pdf, Accessed 10 March 2021

⁶²¹ The Guardian, EU rejects British plan for post-Brexit return of asylum seekers, 20 August 2020, <https://www.theguardian.com/politics/2020/aug/20/eu-rejects-british-plan-for-post-brexite-return-of-asylum-seekers>, Accessed 12 March 2021

⁶²² Council of the European Union. 2018. Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom, XT 21095/18, Brussels, 22 November 2018

scholarship, the subject of differentiated disintegration needs to be further examined (Ganzle et al. 2020). Besides, the practice of disintegration has been actively introduced after the British decision to exit the Union, while the practice of DI has been vigorously practiced since the 1970's.

7. References

Adam, Silke, Antl-Wittenberg, Eva-Maria, Eugster, Beatrice, Leidecker-Sandmann, Melanie, Maier, Michaela and Schmidt, Franziska. 2017. "Strategies of Pro-European Parties in the Face of a Eurosceptic Challenge." *European Union Politics* 18(2): 260–82. doi.org/10.1177/1465116516661248.

Adler-Nissen, Rebecca. 2011. "Opting Out of an Ever-Closer Union: The Integration Doxa and the Management of Sovereignty", *West European Politics* 34(5): 1092-1113, doi: 10.1080/01402382.2011.591102

Adler-Nissen, Rebecca and Gammeltoft-Hansen, Thomas. 2010. "Straitjacket or Sovereignty Shield? The Danish Opt-Out on Justice and Home Affairs and Prospects after the Treaty of Lisbon" in Nanna Hvidt and Hans Mouritzen. *Danish Foreign Policy Yearbook*. Danish Institute for International Studies, DIIS

Akkerman, Tjitske. 2015. "Immigration Policy and Electoral Competition in Western Europe: A Fine-Grained Analysis of Party Positions over the Past Two Decades." *Party Politics* 21 (1): 54–67. doi.org/10.1177/1354068812462928.

Andersen, Svein S. and Sitter, Nick. 2006. "Differentiated Integration: What is it and How Much Can the EU Accommodate?". *Journal of European Integration* 28(4):313-330, doi: 10.1080/07036330600853919

Andersen, Jørgen Goul. 2003. The Danish People's Party and new cleavages in Danish politics. Working paper, Aalborg University, Available at: https://vbn.aau.dk/ws/portalfiles/portal/14109015/widfeldt_-_FINAL.pdf

Asderaki, Foteini and Markozani, Eleftheria. 2021-forthcoming. "The securitization of migration and the 2015 refugee crisis: from words to actions". In *The New Eastern Mediterranean Transformed: Emerging Issues and New Actors*. Edited by Tziampiris, Aristotle and Asderaki, Foteini. Springer Nature publications.

Asderaki, Foteini and Markozani, Eleftheria. 2020. "European Migration Policy: Frontex, differentiation and Brexit". In *Differentiated Integration and Disintegration in a Post-Brexit Era*. 91-109. Edited by Stefan Gänzle, Benjamin Leruth, Jarle Trondal. Routledge.

Archer, Clive. 2000. "Euroscepticism in the Nordic region", *Journal of European Integration* 22(1): 87-114, doi: 10.1080/07036330008429080

Arzheimer, Kai and Berning, Carl C. 2019. "How the Alternative for Germany (AfD) and their voters veered to the radical right, 2013–2017". *Electoral Studies* 60(102040).

doi.org/10.1016/j.electstud.2019.04.004.

Arzheimer, Kai. 2015. "The AfD: finally, a successful right-wing populist eurosceptic party for Germany?". *Western European Politics* 38: 535–556. doi.org/10.1080/01402382.2015.1004230.

Auf dem Brinke, Anna. 2016. "The economic costs of non-Schengen: what the numbers tell us". *Policy Paper Jacques Delors Institute* 162.

Aydın-Düzgit, Senem, Kovář, Jan and Kratochvíl, Petr. 2020. "How Does Identity Relate to Attitudes Towards Differentiation? The Cases of France, Germany, Czech Republic and Turkey". EU IDEA Research Papers No. 6.

Balch, Alex and Balabanova, Ekaterina. 2017. "A deadly cocktail? The fusion of Europe and immigration in the UK press", *Critical Discourse Studies* 14(3) 236-255, DOI: 10.1080/17405904.2017.1284687

Bale, Tim, Christoffer Green-Pedersen, AndréA Krouwel, Kurt Richard Luther, and Nick Sitter. 2010. "If You Can't Beat Them, Join Them? Explaining Social Democratic Responses to the Challenge from the Populist Radical Right in Western Europe." *Political Studies* 58 (3): 410–26. <https://doi.org/10.1111/j.1467-9248.2009.00783.x>.

Bailer, Stefanie. 2004. "Bargaining Success in the European Union: The Impact of Exogenous and Endogenous Power Resources." *European Union Politics* 5 (1): 99–123. doi.org/10.1177/1465116504040447.

Baldini, Gianfranco, Bressanelli, Edoardo and Gianfreda, Stella. 2020. "Taking back control? Brexit, sovereignty and populism in Westminster (2015–17)". *European Politics and Society* 21(2): 219–234, doi: 10.1080/23745118.2019.1632584

Balzacq, Thierry and Carrera, Sergio. 2006. *Security versus freedom? A challenge for Europe's future*. Aldershot, UK: Ashgate

Barry, John. 2016. "Brexit in Northern Ireland: Through the Looking Glass where British Unionists

want 'Brits out' and Nationalists want 'Brits in.'" openDemocracy, Available at: <https://www.opendemocracy.net/uk/john-barry/brexit-in-northern-ireland-through-lookingglass-where-british-unionists-want-brits-ou>.

Bauer, Michael W. and Becker, Stefan. 2014. "The Unexpected Winner of the Crisis: The European Commission's Strengthened Role in Economic Governance". *Journal of European Integration* 36(3): 213-229, doi: 10.1080/07036337.2014.885750

Bauerová, Helena.2018. "Migration Policy of the V4 in the Context of Migration Crisis". *Politics in Central Europe* 14 (2): 99-120. doi.org/10.2478/pce-2018-0011

Bellamy, Richard and Kröger, Sandra. 2017. "A democratic justification of differentiated integration in a heterogeneous EU". *Journal of European Integration* 39(5): 625-639, doi:10.1080/07036337.2017.1332058

Bevir, Mark, Daddow, Oliver and Schnapper, Pauline P. 2015. "Interpreting British European policy". *JCMS: Journal of Common Market Studies* 53: 1-17. doi.org/10.1111/jcms.12201

Beyers, Jan, Dür, Andreas and Wonka, Arndt. 2018. "The political salience of EU policies". *Journal of European Public Policy* 25(11): 1726-1737, doi:10.1080/13501763.2017.1337213

Bialasiewicz, Luiza and Maessen, Enno. 2018. "Scaling rights: the 'Turkey deal' and the divided geographies of European responsibility". *Patterns of Prejudice* 52(2-3):210-230, doi: 10.1080/0031322X.2018.1433009

Biermann, Felix, Guérin, Nina, Jagdhuber, Stefan, Rittberger, Berthold and Weiss, Moritz. 2019. "Political (non-)reform in the euro crisis and the refugee crisis: a liberal intergovernmentalist explanation". *Journal of European Public Policy* 26(2):246-266, doi: 10.1080/13501763.2017.1408670

Bickerton, Christopher J., Hodson, Dermot, and Puetter, Uwe. 2015. "The New Intergovernmentalism: European Integration in the Post-Maastricht Era". *JCMS: Journal of Common Market Studies* 53: 703-722. doi: 10.1111/jcms.12212.

Black, Jack. 2019. "From mood to movement: English nationalism, the European Union and taking back control". *Innovation: The European Journal of Social Science Research* 32(2): 191-210, doi: 10.1080/13511610.2018.1520080

Bocskor, Ákos.2018. "Anti-Immigration Discourses in Hungary during the 'Crisis' Year: The Orbán Government's 'National Consultation' Campaign of 2015." *Sociology* 52 (3): 551–68. doi.org/10.1177/0038038518762081.

Bohman, James. 2004. "Constitution Making and Democratic Innovation The European Union and Transnational Governance". *European Journal of Political Theory* 3: 315-337. doi 10.1177/1474885104043586.

Borring, Olesen, T. 2015. "Denmark in Europe 1973-2015: Processes of Europeanization and 'Denmarkization'". *Journal of Contemporary European Research* 11 (4): 312-329.

Börzel, Tanja A. and Risse, Thomas. 2020. "Identity Politics, Core State Powers and Regional Integration: Europe and beyond". *JCMS: Journal of Common Market Studies* 58: 21– 40. doi.org/10.1111/jcms.12982.

Börzel, Tanja A. and Risse, Thomas. 2018. "From the euro to the Schengen crises: European integration theories, politicization, and identity politics", *Journal of European Public Policy* 25(1): 83-108, doi: 10.1080/13501763.2017.1310281

Börzel, Tanja A.2016. "From EU Governance of Crisis to Crisis of EU Governance: Regulatory Failure, Redistributive Conflict and Eurosceptic Publics". *JCMS: Journal of Common Market Studies* 54: 8– 31. doi: 10.1111/jcms.12431.

Börzel, Tanja A. and Risse, Thomas.2009. "Revisiting the nature of the beast – politicization, European identity, and postfunctionalism: a comment on Hooghe and Marks", *British Journal of Political Science* 39(1): 217–20. doi:10.1017/S000712340800046X

Börzel, Tanja A. 2005. "Mind the gap! European integration between level and scope". *Journal of European Public Policy*. 12 (2): 217-236. doi: 10.1080/13501760500043860

Brack, Nathalie, and Nicholas Startin.2015. "Introduction: Euroscepticism, from the Margins to the Mainstream." *International Political Science Review* 36 (3): 239–49. doi.org/10.1177/0192512115577231.

Braun, Mats. 2020. " Postfunctionalism, Identity and the Visegrad Group". *JCMS: Journal of Common Market Studies* 58: 925– 940. doi.org/10.1111/jcms.12994.

Bremer, Björn, Genschel, Philipp, and Jachtenfuchs, Markus. 2020. "Juncker's Curse? Identity, Interest, and Public Support for the Integration of Core State Powers". *JCMS: Journal of Common Market Studies* 58: 56–75. doi.org/10.1111/jcms.12980.

Brubaker, Rogers. 2017. "Why populism?". *Theory and Society* 46: 357–385. doi.org/10.1007/s11186-017-9301-7

Bryman, Alan. 2012. *Social Research Methods*. Fourth edition. Oxford University Press.

Buch, Roger and Hansen, Kasper M. 2002. "The Danes and Europe: From EC 1972 to Euro 2000 – Elections, Referendums and Attitudes". *Scandinavian Political Studies* 25: 1-26. doi.org/10.1111/1467-9477.00061

Buttolph Johnson, Janet, Reynolds, H. T. and Mycoff, Jason D. 2016. *Political Science Research Methods*. Eighth Edition. SAGE Publications: University of Delaware

Borriello, Arthur and Brack, Nathalie. 2019. "I want my sovereignty back! A comparative analysis of the populist discourses of Podemos, the 5 Star Movement, the FN and UKIP during the economic and migration crises" *Journal of European Integration* 41(7)833-853, doi: 10.1080/07036337.2019.1665658

Castelli Gattinara, Pietro and Zamponi, Lorenzo. 2020. "Politicizing support and opposition to migration in France: the EU asylum policy crisis and direct social activism". *Journal of European Integration* 42(5) 625-641, doi: 10.1080/07036337.2020.1792459

Carrera, Sergio. 2020. "Whose Pact? The Cognitive Dimensions of the New EU Pact on Migration and Asylum". *CEPS Policy Insights*. Available at: <http://aei.pitt.edu/103354/1/PI2020-22-New-EU-Pact-on-Migration-and-Asylum-1.pdf>

Carrera, Sergio, Blockmans, Steven, Gros, Daniel and Guild, Elspeth. 2015. "The EU's Response to the Refugee Crisis: Taking Stock and Setting Policy Priorities". *CEPS Essay* 20/16.

Carrera, Sergio and Guild, Elspeth. 2010. "The area of freedom, security and justice, ten years on: successes and future challenges under the Stockholm programme". Centre For European Policy Studies.

Carey, Sean.2002. "Undivided Loyalties: Is National Identity an Obstacle to European Integration?" *European Union Politics* 3(4): 387–413. doi.org/10.1177/1465116502003004001.

Curtice, John. 2017. "Why Leave Won the UK's EU Referendum" *JCMS: Journal of Common Market Studies* 55: 19– 37. doi: 10.1111/jcms.12613.

Curtis, K Amber.2014. "Inclusive versus Exclusive: A Cross-National Comparison of the Effects of Subnational, National, and Supranational Identity." *European Union Politics* 15(4): 521–46. doi.org/10.1177/1465116514528058.

Csehi,Robert and Zgut, Edit. 2021. "We won't let Brussels dictate us': Eurosceptic populism in Hungary and Poland". *European Politics and Society* 22(1):53-68, doi 10.1080/23745118.2020.1717064

Chirico, Jorgensen Alessandra. 2015."The Danish No to EU Justice and Home Affairs opt-in. The reasons behind". Available at:

https://www.researchgate.net/publication/302386963_The_Danish_No_to_EU_Justice_and_Home_Affairs_opt-in_The_reasons_behind, Accessed 5 February 2020

Chopin, Thierry and Lequesne, Christian. 2016. "Differentiation as a Double-Edged Sword: Member States' Practices and Brexit". *International Affairs* 92 (3): 531–45.doi.org/10.1111/1468-2346.12608

Collier, R.B., and D. Collier. 1991. *Shaping the Political Arena: Critical Junctures, the Labor Movement, and Regime Dynamics in Latin America*. Princeton, NJ: Princeton University Press.

Coman, Emanuel.2017. "Dimensions of Political Conflict in West and East: An Application of Vote Scaling to 22 European Parliaments." *Party Politics* 23(3): 248–61. doi.org/10.1177/1354068815593454.

Daddow, Oliver.2015. "Interpreting the outsider tradition". *JCMS: Journal of Common Market Studies* 53: 71-88. doi.org/10.1111/jcms.12204

Daddow,Oliver.2013. " The Eurosceptic Tradition in Britain". *The British Journal of Politics & International Relations* 15: 210-227. doi.org/10.1111/j.1467-856X.2012.00534.x

Dagi, Dogachan. 2017. "Refugee Crisis in Europe (2015-2016): The Clash of Intergovernmental and Supranational Perspectives". *International Journal of Social Sciences* VI(1): 1-8. , doi: 10.20472/SS2017.6.1.001

De Andrade, Nuno Gomes, N.2005. "Enhanced Cooperation: the Ultimate Challenge of Managing Diversity in Europe". *Intereconomics* 40: 201–216. doi.org/10.1007/s10272-005-0151-6

Debomy, Daniel. .2016. "The EU, despite everything? European public opinion in the face of crisis (2005–2015)". *Studies & Reports, Berlin: Notre Europe. Jacques Delors Institute.*

Dennison, James, and Geddes, Andrew. 2019. " A Rising Tide? The Salience of Immigration and the Rise of Anti-Immigration Political Parties in Western Europe". *The Political Quarterly* 90: 107-116. doi.org/10.1111/1467-923X.12620

Dennison, James and Geddes, Andrew. 2018. "Brexit and the perils of 'Europeanised' migration". *Journal of European Public Policy* 25(8):1137-1153, doi: 10.1080/13501763.2018.1467953

De Búrca,Gráinne and Scott,Joanne.2000. *Constitutional Change in the EU: From Uniformity to Flexibility*.Hart Publishing.

De Vreese,Claes H. and Boomgaarden.Hajo G.2005. "Projecting EU Referendums. European Union Politics". *European Union Politics* 6 (1):59-82. doi: 10.1177/1465116505049608

De Vries, Catherine E., and Sara B. Hobolt. 2012."When Dimensions Collide: The Electoral Success of Issue Entrepreneurs." *European Union Politics* 13 (2): 246–68. <https://doi.org/10.1177/1465116511434788>.

De Vries, Catherine E., and Erica E. Edwards.2009. "Taking Europe To Its Extremes: Extremist Parties and Public Euroscepticism." *Party Politics* 15(1): 5–28. doi.org/10.1177/1354068808097889.

De Wilde, Pieter, Leupold, Anna and Schmidtke, Henning .2016. "Introduction: the differentiated politicisation of European governance". *West European Politics* 39(1):3-22, doi: 10.1080/01402382.2015.1081505

De Wilde, Pieter, and Zürn, Michael.2012. "Can the politicization of European integration be reversed?". *JCMS: Journal of Common Market Studies* 50(1): 137–53. doi.org/10.1111/j.1468-5965.2011.02232.x

De Wilde, Pieter. 2011. "No Polity for Old Politics? A Framework for Analyzing the Politicization of European Integration". *Journal of European Integration* 33(5): 559-575, doi: 10.1080/07036337.2010.546849

De Witte, Bruno, Hanf, Dominik, Vos, Ellen. 2001. *The Many Faces of Differentiation in EU Law, Antwerpen*. Intersentia

Deloy, Corinne. 2015. "The populists become Denmark's leading right-wing party". Fondation Robert Schuman.

Den Heijer, M., Rijpma, J. J., & Spijkerboer, T. P. 2016. "Coercion, Prohibition, and Great Expectations. The continuing failure of the Common European Asylum System". *Common Market Law Review* 53: 607-642.

Dimitriadi, Angeliki. 2020. "Looking for a bridge over troubled waters: the forthcoming New Pact on Migration and Asylum". ELIAMEP | Policy Brief.

Dolezal, Martin, Grande, Edgar and Hutter, Swen. 2016. "Exploring politicisation: design and methods". In *Politicising Europe Integration and Mass Politics*. 32-60. Edited by Swen Hutter, Edgar Grande and Hanspeter Kriesi. Cambridge University Press

Dolezal, Martin and Hellström, Johan. 2016. "The radical right as driving force in the electoral arena?". In *Politicising Europe Integration and Mass Politics*. 156-180. Edited by Swen Hutter, Edgar Grande and Hanspeter Kriesi. Cambridge University Press

Dorey, Peter. 2017. "Towards Exit from the EU: The Conservative Party's Increasing Euroscepticism since the 1980s," *Politics and Governance/ Cogitatio Press* 5(2):27-40. doi.org/10.17645/pag.v5i2.873

Dunn, Kris. 2015. "Preference for Radical Right-Wing Populist Parties among Exclusive-Nationalists and Authoritarians." *Party Politics* 21 (3): 367-80. doi.org/10.1177/1354068812472587.

Duro, Jozsef .2016. "Becoming Mainstream? Euroscepticism among established parties in V4 Countries". *Eurasian Journal of Social Sciences* 4(4): 35-4. doi: 10.15604/ejss.2016.04.04.003

Duttler, Thomas, Holzinger, Katharina, Malang, Thomas, Schäubli, Thomas, Schimmelfennig, Frank and Winzen, Thomas. 2017. "Opting out from European Union legislation: the differentiation of secondary law". *Journal of European Public Policy* 24(3):406-428. doi: 10.1080/13501763.2016.1149206

Duttler, Thomas. 2016. *Differentiated Integration at the EU Member State Level*. Studies on European Union: Nomos

EASO. 2020. *Annual Report on the Situation of Asylum in the European Union*, Available at: <https://easo.europa.eu/sites/default/files/EASO-Asylum-Report-2020.pdf>

EASO. 2017. *Annual Report on the Situation of Asylum in the European Union*, Available at: <https://www.easo.europa.eu/sites/default/files/Annual-Report-2017-Final.pdf>

Easton, David. 1965. *A Framework for Political Analysis*. Englewood Cliffs: Prentice-Hall.

El-Enany, Nadine. 2017. "The Perils of Differentiated Integration in the Field of Asylum". In *Between Flexibility and Disintegration: The Trajectory of Differentiation in EU Law*. Edited by Ott, Andrea and De Witte, Bruno. Edward Elgar Publishing.

Emmanouilidis, Janis A. 2007. "Institutional Consequences of Differentiated Integration". CAP Discussion Paper. Bertelsmann Group for Policy Research.

Emilsson, Henrik. 2018. "Continuity or Change? The refugee crisis and the end of Swedish exceptionalism". MIM Working Paper Series 18(3). doi.org/10.24834/2043/25232

European Parliament Research Service. 2015. "Work and Social Welfare for Asylum-seekers and Refugees: Selected EU Member States." December 2015. Available at: [https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/572784/EPRS_IDA\(2015\)572784_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/572784/EPRS_IDA(2015)572784_EN.pdf)

Evans, Geoffrey, and Jonathan Mellon. 2019. "Immigration, Euroscepticism, and the Rise and Fall of UKIP." *Party Politics* 25 (1): 76–87. doi.org/10.1177/1354068818816969.

Evans, Geoffrey and Chzhen, Kat. 2013. "Voters' Defection from Labour." *Political Studies* 61: 138-157. <https://doi.org/10.1111/1467-9248.12009>

Evans, Geoffrey and Mellon, Jon. 2016. "Working class votes and Conservative losses: solving the UKIP puzzle". *Parliamentary Affairs* 69 (2): 464-479. doi.org/10.1093/pa/gsv005

Evans, Geoffrey.2002. "European integration, party politics and voting in the 2001 election". *British Elections & Parties Review* 12(1) 95-110, doi: 10.1080/13689880208413072

Fabbrini, Sergio and Zgaga, Tiziano. 2019. "Italy and the European Union: the discontinuity of the Conte government". *Contemporary Italian Politics* 11(3): 280-293, doi: 10.1080/23248823.2019.1642657

Ferruccio. Pastore and Giulia, Henry.201. Explaining the Crisis of the European Migration and Asylum Regime, *The International Spectator* 51(1):44-57, DOI: 10.1080/03932729.2016.1118609

FitzGibbon, John, Leruth, Benjamin and Startin, Nicholas. 2016. "Euroscepticism as a Transnational and pan-European Phenomenon: Introduction". In *Euroscepticism as a Transnational and Pan-European Phenomenon: The Emergence of a New Sphere of Opposition*. Edited By John FitzGibbon, Benjamin Leruth, Nick Startin. Routledge.

Fitzgibbon, John. 2013. "Citizens against Europe? Civil Society and Eurosceptic Protest in Ireland, the United Kingdom and Denmark". *JCMS: Journal of Common Market Studies* 51: 105-121. doi.org/10.1111/j.1468-5965.2012.02302.x

Fontana, Cary and Parsons, Craig. 2015. "One woman's prejudice". *JCMS: Journal of Common Market Studies* 53: 89-105. doi.org/10.1111/jcms.12205

Ford, Robert, Jennings, Will and Somerville, Will. 2015. "Public Opinion, Responsiveness and Constraint: Britain's Three Immigration Policy Regimes". *Journal of Ethnic and Migration Studies* 41(9): 1391-1411, doi: 10.1080/1369183X.2015.1021585

Ford, Robert, and Goodwin, Matthew J. 2014. *Revolt on the Right: Explaining Support for the Radical Right in Britain*. Taylor & Francis.

Fossum, John E. and Trezz, Hans.J. 2006. "When the people come in: constitution-making and the belated politicisation of the European Union". In *European Governance Papers* No. C-06-03

Gammeltoft-Hansen, Thomas.2017. "Refugee policy as 'negative nation branding': the case of Denmark and the Nordics". *Danish Foreign Policy Yearbook*. Danish Institute for International Studies

Geddes, Andrew. 2005. "Getting the best of both worlds? Britain, the EU and migration policy". *International Affairs* 81: 723-740. doi.org/10.1111/j.1468-2346.2005.00481.x

Genschel, Philipp and Jachtenfuchs, Markus.2018. "From Market Integration to Core State Powers: The Eurozone Crisis, the Refugee Crisis and Integration Theory". *JCMS: Journal of Common Market Studies* 56: 178– 196. doi: 10.1111/jcms.12654.

Genschel, Philipp and Jachtenfuchs, Markus.2016. "More integration, less federation: the European integration of core state powers". *Journal of European Public Policy* 23 (1): 42-59. doi: 10.1080/13501763.2015.1055782

Genschel, Philipp and Jachtenfuchs, Markus.2014. "Conclusion: the European integration of core state powers. Patterns and causes". In *Beyond the Regulatory Polity? The European Integration of Core State Powers*.249– 70. Edited by Genschel, Philipp and Jachtenfuchs, Markus. Oxford: Oxford University Press.

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

George, Stephen. 2000." Britain: Anatomy of a Eurosceptic state". *Journal of European Integration*, 22(1)15-33, doi: 10.1080/07036330008429077

George, Stephen. 1998. *An Awkward Partner. Britain and the European Community*. Oxford: Oxford University Press

Gidron, Noam and Hall, Peter A. 2017. "The politics of social status: economic and cultural roots of the populist right". *The British Journal of Sociology* 68: S57-S84. doi.org/10.1111/1468-4446.12319

Gifford, Chris.2014. "The people against Europe". *JCMS: Journal of Common Market Studies* 52: 512-528. doi.org/10.1111/jcms.12112

Gifford, Chris. 2010." The UK and the European Union: Dimensions of Sovereignty and the Problem of Eurosceptic Britishness". *Parliamentary Affairs* 63(2):321–338, doi.org/10.1093/pa/gsp031

Gifford, Chris. 2008. *The Making of Eurosceptic Britain: Identity and Economy in a Post-Imperial State*. Aldershot: Ashgate Publishing Limited.

Givens, Terri and Luedtke, Adam. 2004. "The Politics of European Union Immigration Policy: Institutions, Saliency, and Harmonization". *Policy Studies Journal* 32: 145-165. doi.org/10.1111/j.0190-292X.2004.00057.x

Greenhill, Kelly M. 2016. "Open Arms Behind Barred Doors: Fear, Hypocrisy and Policy Schizophrenia in the European Migration Crisis". *European Law Journal* 22: 317– 332. doi: 10.1111/eulj.12179.

Grimm, Robert. 2015. "The Rise of the German Eurosceptic Party Alternative Für Deutschland, between Ordoliberal Critique and Popular Anxiety." *International Political Science Review* 36 (3): 264–78. doi.org/10.1177/0192512115575384.

Guild, Elspeth. 2006. "The Europeanisation of Europe's asylum policy." *International Journal of Refugee Law* 18 (3–4): 630–51. doi.org/10.1093/ijrl/eel018

Guinaudeau, Isabelle and Persico, Simon. 2013. EU politicization through the lens of saliency: How the EU enters the French, British and German electoral agenda (1986–2009)." *French Politics* 11: 143–168. <https://doi.org/10.1057/fp.2013.9>

Guiraudon, Virginie. 2000. "European Integration and Migration Policy: Vertical Policy-making as Venue Shopping". *JCMS: Journal of Common Market Studies* 38: 251-271. doi.org/10.1111/1468-5965.00219

Grande, Edgar, Schwarzbözl, Tobias and Fatke, Matthias. 2019. "Politicizing immigration in Western Europe", *Journal of European Public Policy* 26(10):1444-1463, doi: 10.1080/13501763.2018.1531909

Grande, Edgar and Hutter Swen. 2016. "Introduction: European integration and the challenge of politicisation". In *Politicising Europe Integration and Mass Politics*. 3-32. Edited by Swen Hutter, Edgar Grande and Hanspeter Kriesi. Cambridge University Press.

Grande, Edgar and Hutter Swen. 2016. " The politicisation of Europe in public debates on major integration steps". In *Politicising Europe Integration and Mass Politics*. 63-89. Edited by Swen Hutter, Edgar Grande and Hanspeter Kriesi. Cambridge University Press

Grande, Edgar and Kriesi, Hanspeter. 2016. "Conclusions: the postfunctionalists were (almost) right". In *Politicising Europe Integration and Mass Politics*. 279-300. Edited by

Swen Hutter, Edgar Grande and Hanspeter Kriesi. Cambridge University Press

Grande, Edgar and Hutter Swen. 2016. "Is the giant still asleep? The politicisation of Europe in the national electoral arena". In *Politicising Europe Integration and Mass Politics*. 90-111. Edited by Swen Hutter, Edgar Grande and Hanspeter Kriesi. Cambridge University Press

Green-Pedersen, Christopher. 2012. "A Giant Fast Asleep? Party Incentives and the Politicisation of European Integration." *Political Studies* 60: 115-130. doi.org/10.1111/j.1467-9248.2011.00895.x

Green-Pedersen, Christophe and Krogstrup, Jesper. 2008. "Immigration as a political issue in Denmark and Sweden" *European Journal of Political Research* 47(5): 610-34. doi.org/10.1111/j.1475-6765.2008.00777.x

Green-Pedersen, Christopher and Odmalm, Pontus. 2008. "Going different ways? Right-wing parties and the immigrant issue in Denmark and Sweden". *Journal of European Public Policy*, 15(3):367-381, doi: 10.1080/13501760701847564

Goodwin, Matthew J. and Milazzo, Caitlin. 2015. "Britain, the European Union and the Referendum: What drives Euroscepticism?" Chatham House.

Guild, Elspeth and Geyer, Florian. 2008. *Security versus justice? Police and judicial cooperation in the European Union*. Aldershot, UK: Ashgate

Haas, Ernst B. 1958. *The Uniting of Europe*. Stanford: Stanford University Press

Hagemann, Sara. 2015. "Studies of Bargaining in the European Union". In *Research Methods in European Union Studies*. Edited by Kennet Lynggaard Ian Manners Karl Löfgren. Palgrave.

Hainmueller, Jens and Hopkins, Daniel J. 2014. "Public Attitudes Toward Immigration". *Annual Review of Political Science* 17(1): 225-249, doi.org/10.1146/annurev-polisci-102512-194818

Hainmueller, Jens and Hiscox, Michael J. 2007. Educated Preferences: Explaining Individual Attitudes Toward Immigration in Europe. *International Organization* 61 (2):399-442. doi: 10+10170S0020818307070142

Hansen,Lene. 2002. "Sustaining Sovereignty: The Danish Approach to the EU". In *European Integration and National Identity: The Challenge of the Nordic States*. 50-88. Edited by Hansen,Lene and Ole Wæver.London: Routledge.

Hargitai, Tibor.2020. "How Eurosceptic is Fidesz actually?". *Politics in Central Europe* 16 (1): 189-209. doi.org/10.2478/pce-2020-0009

Harteveld, Eelco, Schaper, Joep, De Lange, Sarah L., and Van Der Brug, Wouter. 2018. "Blaming Brussels? The Impact of (News about) the Refugee Crisis on Attitudes towards the EU and National Politics". *JCMS: Journal of Common Market Studies* 56: 157– 177. doi: 10.1111/jcms.12664.

Hayes-Renshaw, Fiona and Wallace, Helen.1995. "Executive power in the European Union: The functions and limits of the Council of Ministers". *Journal of European Public Policy* 2(4): 559-582, doi: 10.1080/13501769508407007

Hawkins, Benjamin. 2012." Nation, Separation and Threat: An Analysis of British Media Discourses on the European Union Treaty Reform Process". *JCMS: Journal of Common Market Studies* 50: 561-577. doi.org/10.1111/j.1468-5965.2012.02248.x

Heinisch, Reinhard, McDonnell, Duncan, and Werner, Annika. 2020. "Equivocal Euroscepticism: How Populist Radical Right Parties Can Have Their EU Cake and Eat It". *JCMS: Journal of Common Market Studies* 59: 189– 205. doi.org/10.1111/jcms.13055.

Heisbourg,François. 2015. "The Strategic Implications of the Syrian Refugee Crisis" . *Survival* 57(6):7-20, doi: 10.1080/00396338.2015.1116144

Helbling,Marc and Kalkum, Dorina. 2018. "Migration policy trends in OECD countries". *Journal of European Public Policy* 25(12):1779-1797, doi: 10.1080/13501763.2017.1361466

Helbling, Marc, Hoeglinger, Domonic and Wüest, Bruno. 2010. "How political parties frame European integration". *European Journal of Political Research* 49(4) : 495-521. doi.org/10.1111/j.1475-6765.2009.01908.x

Herlin-Karnell E., 2013. "Denmark and the European Area of Freedom, Security and Justice: A Scandinavian Arrangement". *Amsterdam Law Forum* 5(1): 95–105. doi.org/10.37974/ALF.243

Hervik, Peter. 2011. *Neoracism, and Populism in the Post-1989 World*. Berghahn Books

Hix, Simon. 2018. "Brexit: Where is the EU–UK Relationship Heading?". *JCMS: Journal of Common Market Studies* 56: 11– 27. doi.org/10.1111/jcms.12766.

Hix, Simon.1999. "Dimensions and alignments in European union politics: Cognitive constraints and partisan responses". *European Journal of Political Research* 35: 69-106. doi.org/10.1111/1475-6765.00442

Hobolt, Sara B. and de Vries, Catherine E. 2016. "Public Support for European Integration"
Annual Review of Political Science 19(1):413-432. doi.org/10.1146/annurev-polisci-042214-044157

Hobolt, Sara B. and Tilley, James. 2016. "Fleeing the centre: the rise of challenger parties in the aftermath of the euro crisis". *West European Politics* 39 (5): 971-991, doi : 10.1080/01402382.2016.1181871

Hobolt, Sara B.2015. "The 2014 European Parliament Elections: Divided in Unity?". *JCMS: Journal of Common Market Studies* 53: 6– 21. doi: 10.1111/jcms.12264.

Hobolt, Sara B., and Catherine E. de Vries.2015. "Issue Entrepreneurship and Multiparty Competition."
Comparative Political Studies 48(9): 1159–85. doi.org/10.1177/0010414015575030.

Hodson, Dermot and Puetter, Uwe. 2019. "The European Union in disequilibrium: new intergovernmentalism, postfunctionalism and integration theory in the post-Maastricht period", *Journal of European Public Policy* 26(8):1153-1171, doi: 10.1080/13501763.2019.1569712

Hoeglinger, Dominic. 2016. "The politicisation of European integration in domestic election campaigns".
West European Politics 39(1): 44-63, doi 10.1080/01402382.2015.1081509

Holzinger, Katharina and Schimmelfennig, Frank. 2012. "Differentiated Integration in the European Union: Many Concepts, Sarse Theory, Few Data". *Journal of European Public Policy* 19:2, 292-305. doi: 10.1080/13501763.2012.641747

Hooghe, Liesbet and Marks, Gary.2018. "Grand theories of European integration in the twenty-first century". *Journal of European Public Policy* 26(8): 1113-1133, doi: 10.1080/13501763.2019.1569711

Hooghe, Liesbet and Marks, Gary.2018. "Cleavage theory meets Europe's crises: Lipset, Rokkan, and the transnational cleavage". *Journal of European Public Policy* 25(1): 109-135, doi: 10.1080/13501763.2017.1310279

Hooghe, Liesbet and Marks, Gary. 2016. "Europe's Crises and Political Contestation. Theory meets Crises". *Robert Schumann Centre* EUI, June 30-July 1,

Hooghe, Liesbet and Marks, Gary. 2015. "Delegation and Pooling in International Organizations". *Review of International Organizations* 10 (3):305–28. doi.org/10.1007/s11558-014-9194-4

Hooghe, Liesbet, and Gary Marks. 2009. "A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus." *British Journal of Political Science* 39 (1): 1–23. doi:10.1017/S0007123408000409.

Hooghe, Liesbet. 2007. "What Drives Euroskepticism?: Party-Public Cueing, Ideology and Strategic Opportunity." *European Union Politics* 8 (1): 5–12. doi.org/10.1177/1465116507073283.

Hooghe, Liesbet, and Gary Marks. 2006. "The Neofunctionalists were (Almost) Right: Politicization and European Integration". in *The Diversity of Democracy*. 205–222. Edited by Colin Crouch and Wolfgang Streeck. Cheltenham: Edward Elgar.

Hooghe, Liesbet, and Gary Marks. 2005. "Calculation, Community and Cues: Public Opinion on European Integration." *European Union Politics* 6 (4):419–43. doi.org/10.1177/1465116505057816.

Hooghe, Liesbet, and Gary Marks. 2004. "Does Identity or Economic Rationality Drive Public Opinion on European Integration?" *PS: Political Science and Politics* 37 (3): 415-20.

Hooghe, Liesbet. 2003. "Europe Divided? Elites vs. Public Opinion on European Integration". *IHS Political Science Series* 88 [Working Paper]

Hooghe, Liesbet, Marks, Gary and Wilson, Carol J. 2002. "Does Left/Right Structure Party Positions on European Integration?". *Comparative Political Studies* 35(8): 965–989. doi: 10.1177/001041402236310

Howard, Marc Morjé. 2010. "The Impact of the Far Right on Citizenship Policy in Europe: Explaining Continuity and Change". *Journal of Ethnic and Migration Studies* 36(5): 735-751, doi: 10.1080/13691831003763922

Hrabálek, Martin and Đorđević, Vladimir. 2017. "The "Heretic" debate on European asylum quotas in the Czech Republic: A content analysis". *Kontakt* 19(4):296-303. doi: 10.1016/j.kontakt.2017.09.010.

Hutter, Swen and Grande, Edgar. 2014. Politicizing Europe in the national electoral arena. *CMS: Journal of Common Market Studies* 52: 1002-1018. doi.org/10.1111/jcms.12133

Hutter, Swen and Kriesi, Hanspeter. 2019. "Politicizing Europe in times of crisis". *Journal of European Public Policy* 26(7):996-1017, doi: 10.1080/13501763.2019.1619801

Hutter, Swen, Grande, Edgar and Kriesi, Hanspeter. 2016. *Politicizing Europe. Integration and Mass Politics*. Cambridge: Cambridge University Press.

Huysmans, Jef. 2006. *The politics of insecurity: fear, migration and asylum in the European Union*. London: Routledge

Huysmans, Jef. 2000. "The European Union and the securitization of migration." *JCMS: Journal of Common Market Studies* 38 (5): 751–77, doi.org/10.1111/1468-5965.00263

Hvidsten, Andreas H, and Jon Hovi. "Why No Twin-Track Europe? Unity, Discontent, and Differentiation in European Integration." *European Union Politics* 16 (1): 3–22. doi.org/10.1177/1465116514557964.

Jensen, Christian B., and Slapin, Jonathan B. 2012. "Institutional hokey-pokey: the politics of multi speed integration in the European Union", *Journal of European Public Policy* 19(6): 779-795, doi: 10.1080/13501763.2011.610694

Jones, Erik. 2018. "Towards a theory of disintegration", *Journal of European Public Policy* 25(3): 440-451, doi: 10.1080/13501763.2017.1411381

Jones, Erik, R. Daniel, Kelemen and Meunier, Sophie. 2016. "Failing Forward? The Euro Crisis and the Incomplete Nature of European Integration." *Comparative Political Studies* 49(7): 1010–34. doi.org/10.1177/0010414015617966.

Ivaldi, Gilles. 2018. "Contesting the EU in Times of Crisis: The Front National and Politics of Euroscepticism in France." *Politics* 38 (3): 278–94. doi.org/10.1177/0263395718766787.

Ivarsflaten, Elisabeth. 2008. "What Unites Right-Wing Populists in Western Europe? Re-Examining Grievance Mobilization Models in Seven Successful Cases." *Comparative Political Studies* 41 (1): 3–23. doi.org/10.1177/0010414006294168.

Kaltenthaler, Karl C. and Anderson, Christopher J. 2001. "Europeans and their money: Explaining public support for the common European currency" . *European Journal of Political Research* 40: 139-170. doi.org/10.1111/1475-6765.00593

Karnell, Herlin S. E. M. 2013. "Denmark and the European Area of Freedom, Security and Justice: A Scandinavian Arrangement" . *Amsterdam Law Forum* 5(1): 95.

Kazharski, Aliaksei. 2018. "The End of 'Central Europe'? The Rise of the Radical Right and the Contestation of Identities in Slovakia and the Visegrad Four". *Geopolitics* 23(4): 754-780, doi: 10.1080/14650045.2017.1389720

Kaunert, Christian, Occhipinti, John D. and Léonard, Sarah. 2014. "Introduction: supranational governance in the Area of Freedom, Security and Justice after the Stockholm Programme". *Cambridge Review of International Affairs* 27(1): 39-47, doi: 10.1080/09557571.2014.877261

Kaunert, Christian and Léonard, Sarah. 2012. "The European Union Asylum Policy after the Treaty of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?". *Refugee Survey Quarterly* 1(4): 1–20, doi.org/10.1093/rsq/hds018

Kaunert, Christian. 2010. "The area of freedom, security and justice in the Lisbon Treaty: commission policy entrepreneurship?". *European Security* 19(2):169-189. doi:10.1080/09662839.2010.531705

Kaunert, Christian. 2005. "The Area of Freedom, Security and Justice: The Construction of a 'European Public Order'" . *European Security* 14 (4): 459-483, doi: 10.1080/09662830500528161

Kemper, Andreas. 2015. "AfD, Pegida and the New Right in Germany". In *The European Far Right: Historical and Contemporary Perspectives*. Edited by Charalampous Giorgos. 43-48. PRIO Cyprus Centre, Friedrich-Ebert-Stiftung, Report 2

Kenny, Michael. 2015. "The return of 'Englishness' in British political culture". *JCMS: Journal of Common Market Studies* 53: 35-51. doi.org/10.1111/jcms.12203

Keohane, Robert O. 1984. *After hegemony: cooperation and discord in the world political economy*. Princeton, N.J.: Princeton University Press

Kneuer, Marianne. 2019. "The tandem of populism and Euroscepticism: a comparative perspective in the light of the European crises". *Contemporary Social Science* 14(1): 26-42, doi: 10.1080/21582041.2018.1426874

Knill, Christoph and Bauer, Michael W. 2016. "Policy-making by international public administrations: concepts, causes and consequences". *Journal of European Public Policy* 23 (7): 949-959, doi: 10.1080/13501763.2016.1168979

Kölliker, Alkuin. 2005. *Flexibility and European Unification: The logic of differentiated integration*. Lanham: Rowman & Littlefield.

Kölliker, Alkuin. 2001. "Bringing together or driving apart the union? Towards a theory of differentiated integration". *West European Politics* 24(4): 125-151, doi: 10.1080/01402380108425468

Kopecký, Petr, and Cas Mudde. 2002. "The Two Sides of Euroscepticism: Party Positions on European Integration in East Central Europe." *European Union Politics* 3(3): 297-326. doi.org/10.1177/1465116502003003002.

Kostakopoulou, Dora. 2010. "An open and secure Europe? Fixity and fissures in the area of freedom, security and justice after Lisbon and Stockholm", *European Security* 19(2): 151-167, doi: 10.1080/09662839.2010.526938

Kostakopoulou, Dora. 2000. "The 'Protective Union'; Change and Continuity in Migration Law and Policy in Post-Amsterdam Europe". *JCMS: Journal of Common Market Studies* 38: 497-518. doi.org/10.1111/1468-5965.00232

Kriesi, Hanspeter. 2016. "The Politicization of European Integration". *JCMS: Journal of Common Market Studies* 54: 32-47. doi: 10.1111/jcms.12406.

Kriesi, Hanspeter and Grande, Edgar. 2016. "The euro crisis: a boost to the politicization of European Integration?" In *Politicising Europe: integration and mass politics*. 240-76. Edited by Kriesi, Hanspeter and Grande, Edgar and S. Hutter. Cambridge: Cambridge University Press.

Kriesi, Hanspeter. 2007. "The Role of European Integration in National Election Campaigns." *European Union Politics* 8 (1): 83-108. doi.org/10.1177/1465116507073288.

Kriesi, Hanspeter and Lachat, Romain. 2004. "Globalization and the Transformation of the National Political Space: Switzerland and France Compared". *CIS Working Paper 1*. Paper prepared for a Workshop on the Analysis of Political Cleavages and Party Competition, Duke University, 16–17 April.

Kronsell, Annica and Manners, Ian. 2015. "Single Policy Study: Three Variations". In *Research Methods in European Union Studies*. Edited by Kennet Lynggaard Ian Manners Karl Löfgren

Palgrave.

Krzyżanowski, Michał. 2018. "We Are a Small Country That Has Done Enormously Lot": The 'Refugee Crisis' and the Hybrid Discourse of Politicizing Immigration in Sweden". *Journal of Immigrant & Refugee Studies* 16(1-2),97-117, doi: 10.1080/15562948.2017.1317895

Larsen, Henrik.2015. What the Danish 'no' vote on Justice and Home Affairs means for Denmark and the EU. Available at: <https://blogs.lse.ac.uk/europpblog/2015/12/10/what-the-danish-no-vote-on-justice-and-home-affairs-means-for-denmark-and-the-eu/>, Accessed 4 March 2021

Latorre, Maria and Somerville,Will . 2009. "United Kingdom: A Reluctant Country of Immigration". Migration Policy Institute. Royal Commonwealth Society. Institute for Public Policy Research. available at: <https://www.migrationpolicy.org/article/united-kingdom-reluctant-country-immigration>

Lauka, Alban, Jennifer McCoy, and Rengin B. Firat. 2018. "Mass Partisan Polarization: Measuring a Relational Concept." *American Behavioral Scientist* 62 (1): 107–26. doi.org/10.1177/0002764218759581

Lavenex, Sandra and Križić, Ivo. 2019. "Conceptualising Differentiated

Integration: Governance, Effectiveness and Legitimacy". EU IDEA Research Papers (2). Available at:<https://euidea.eu/2019/12/02/conceptualising-differentiated-integration-governance-effectiveness-and-legitimacy/>, Accessed 9 April 2021

Lavenex, Sandra. 2018. "Failing Forward' Towards Which Europe? Organized Hypocrisy in the Common European Asylum System". *JCMS: Journal of Common Market Studies* 56: 1195– 1212. doi.org/10.1111/jcms.12739

Lavenex, Sandra and Wagner, Wolfgang. 2007. "Which European Public Order?

Sources of Imbalance in the European Area of Freedom, Security and Justice". *European Security* 16 (3-4): 225-243, doi: 10.1080/09662830701753972

Lavenex, Sandra and Wallace, William. 2005. "Justice and Home Affairs. Towards a "European Public Order"?" . In *Policy -Making in the European Union*. 457-80. Edited by Helen Wallace, William Wallace and Mark A. Pollack. Oxford: Oxford University Press.

Lavenex, Sandra. 2001. "The Europeanization of refugee policies: normative challenges and institutional legacies". *JCMS: Journal of Common Market Studies* 39 (5): 851–74. doi.org/10.1111/1468-5965.00334

Lawson, Kay. 1980. *Political Parties and Linkage: A Comparative Perspective*. New Haven, CT: Yale University Press.

Lee Tomson, Danielle. 2020. "The Rise of Sweden Democrats: Islam, Populism and the End of Swedish Exceptionalism". Working paper is part of a multi-year Brookings project—"The One Percent Problem: Muslims in the West and the Rise of the New Populists.". Available at: <https://www.brookings.edu/research/the-rise-of-sweden-democrats-and-the-end-of-swedish-exceptionalism/>, Accessed 23 January 2021

Lees, Charles. 2018. "The 'Alternative for Germany': The Rise of Right-Wing Populism at the Heart of Europe." *Politics* 38 (3): 295–310. doi.org/10.1177/0263395718777718.

Lessing, Guido. 2017. "Police and Border Controls Cooperation at the EU Level: Dilemmas, Opportunities and Challenges of a Differentiated Approach". *Istituto Affari Internazionali (IAI)*.

Leuffen, Dirk, Rittberger, Berthold and Frank Schimmelfennig. 2013. *Differentiated Integration: Explaining Variation in the European Union*. Palgrave Macmillan.

Leruth, Benjamin, Gänzle, Stefan and Jarle Trondal. 2021-forthcoming. *Routledge Handbook of Differentiation in the European Union*. Routledge.

Leruth, Benjamin, Gänzle, Stefan, and Trondal, Jarle. 2019. "Exploring Differentiated Disintegration in a Post-Brexit European Union". *JCMS: Journal of Common Market Studies* 57: 1012– 1029. doi.org/10.1111/jcms.12869

Leruth, Benjamin. 2015. "Operationalizing national preferences on Europe and differentiated integration". *Journal of European Public Policy* 22(6): 816-835, doi:10.1080/13501763.2015.1020840

Liebhart, Karin. 2020. "25 years later – Austria's shift to the populist right: national characteristics of a pan-European trend». *Politics in Central Europe* 16 (2): 399-417. doi.org/10.2478/pce-2020-0024

Lord, Christopher. 2015. "Utopia or dystopia? Towards a normative analysis of differentiated integration", *Journal of European Public Policy* 22 (6): 783-798, doi: 10.1080/13501763.2015.1020839

Lubbers, Marcel, and Scheepers Peer. 2010. "Divergent trends of euroscepticism in countries and regions of the European Union". *European Journal of Political Research* 49(6): 787–817. doi.org/10.1111/j.1475-6765.2010.01915.x

Lubbers, Marcel. 2008. "Regarding the Dutch 'Nee' to the European Constitution: A Test of the Identity, Utilitarian and Political Approaches to Voting 'No'." *European Union Politics* 9 (1): 59–86. doi.org/10.1177/1465116507085957.

Lubbers, Marcel, and Peer Scheepers. 2005. "Political versus Instrumental Euro-Scepticism: Mapping Scepticism in European Countries and Regions." *European Union Politics* 6 (2): 223–42. doi.org/10.1177/1465116505051984.

Lucassen, Geertje, and Marcel Lubbers. 2012. "Who Fears What? Explaining Far-Right-Wing Preference in Europe by Distinguishing Perceived Cultural and Economic Ethnic Threats." *Comparative Political Studies* 45(5): 547–74. doi.org/10.1177/0010414011427851.

Luedtke, Adam. 2005. "European Integration, Public Opinion and Immigration Policy: Testing the Impact of National Identity." *European Union Politics* 6 (1): 83–112. doi.org/10.1177/1465116505049609.

Luetgert B. and Vezbergaitė I. 2015. "EU Migration Policy, the 2015 Migratory Influx Crisis and the Inevitable". IPSA papers, Available at: http://paperroom.ipsa.org/papers/paper_60740.pdf, Accessed 1 April 2019

Lutz, Philipp. 2019. "Variation in policy success: radical right populism and migration policy". *West European Politics* 42(3)517-544, doi: 10.1080/01402382.2018.1504509

Lynch, Philip & Whitaker, Richard. 2012. «Rivalry on the right: The Conservatives, the UK Independence Party (UKIP) and the EU issue». *University of Leicester*. <https://hdl.handle.net/2381/31946>., Accessed 15 June 2020

Majone, Giandomenico. 2009. *Europe as the Would-be World Power*. Cambridge: Cambridge University Press

Mair, Peter. 2007. "Political Opposition and the European Union." *Government and Opposition* 42 (1). Cambridge University Press: 1–17. doi:10.1111/j.1477-7053.2007.00209. x.

Mammone, Andrea. 2015. "Rome In Black Shirt: FarRight Alliances in recent Italy. In *the European Far Right: Historical and Contemporary Perspectives*. Edited by Charalampous Giorgos. 29-34. PRIO Cyprus Centre, Friedrich-Ebert-Stiftung, Report 2

Mattila, Mikko.2004. "Contested decisions: Empirical analysis of voting in the European Union Council of Ministers". *European Journal of Political Research* 43: 29-50. doi.org/10.1111/j.1475-6765.2004.00144.x

Marks, Gary, Hooghe, Liesbet, Nelson, Moira and Edwards, Erica. 2006. "Party Competition and European Integration in East and West: Different Structure, Same Causality," *Comparative Political Studies* 39(2):155-175. doi:10.1177/0010414005281932

Marks, Gary .2004. "Conclusion". In *European integration and political conflict*. 235-258, Edited by Gary Marks and Marco R. Steenbergen. Cambridge University Press.

Marks, Gary, and Hooghe, Liesbet. 2003. "National identity and support for European integration". Discussion Papers /Wissenschaftszentrum Berlin für Sozialforschung, Forschungsschwerpunkt Zivilgesellschaft, Konflikte und Demokratie, Abteilung Demokratie: Strukturen, Leistungsprofil und Herausforderungen, 2003-202. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-111559>, Accessed 12 April 2020

Marks, Gary, and Hooghe, Liesbet and Blank, Kermit. 1996. "European Integration from the 1980s: State-Centric v. Multi-level Governance". *JCMS: Journal of Common Market Studies* 34: 341-378. doi.org/10.1111/j.1468-5965.1996.tb00577.x

McCallum, John. 1995. "National Borders Matter: Canada-U.S. Regional Trade Patterns." *American Economic Review*, American Economic Association 85(3):615-623.

McLaren, Lauren M.2002. "Public Support for the European Union: Cost/Benefit Analysis or Perceived Cultural Threat?". *Journal of Politics* 64: 551-566. doi.org/10.1111/1468-2508.00139

McLaren, Lauren M.2001. "Immigration and the new politics of inclusion and exclusion in the European Union: The effect of elites and the EU on individual-level opinions regarding European and non-European immigrants". *European Journal of Political Research* 39: 81–108. htdoi.org/10.1023/A:1007128912618

Meijers, Maurits J. 2017. "Contagious Euroscepticism: The Impact of Eurosceptic Support on Mainstream Party Positions on European Integration." *Party Politics* 23, (4): 413–23. <https://doi.org/10.1177/1354068815601787>.

Meyer, Sarah and Rosenberger, Seglida. 2015. "Just a Shadow? The Role of Radical Right Parties in the Politicization of Immigration, 1995–2009". *Politics and Governance* 3(2): 1-17. [doi:doi.org/10.17645/pag.v3i2.64](https://doi.org/10.17645/pag.v3i2.64)

Mihálik, Jaroslav and Jankoľa, Matúš. 2016. "European Migration Crisis: Positions, Polarization and Conflict Management of Slovak Political Parties". *Baltic Journal of Law & Politics* 9(1): 1-25. doi.org/10.1515/bjlp-2016-0001

Miles, Lee, and Anders Wivel. 2014. "A Smart State Handling a Differentiated Integration Dilemma? Concluding on Denmark in the European Union?". *Loughborough University*. <https://hdl.handle.net/2134/13187>.

Mill, John Stuart. 1850. *A System of Logic, Ratiocinative and Inductive: Being a Connected View of the Principles of Evidence and the Methods of Scientific Investigation*. New York: Harper

Mondon, Aurelien. 2015. "The Irresistible Rise of the Front National? Populism and the mainstream of the Extreme Right". In *The European Far Right: Historical and Contemporary Perspectives*. Edited by Charalampous Giorgos. 35-42. PRIO Cyprus Centre, Friedrich-Ebert-Stiftung, Report 2

Moravcsik, Andrew. 2018. "Preferences, Power and Institutions in 21st-century Europe". *JCMS: Journal of Common Market Studies* 56: 1648– 1674. doi.org/10.1111/jcms.12804.

Moravcsik, Andrew. 1998. *The Choice for Europe. Social Purpose and State Power from Messina to Maastricht*. Ithaca, NJ: Cornell University Press

Moravcsik, Andrew. 1993. "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach". *Journal of Common Market Studies* 31(4):473-524. doi.org/10.1111/j.1468-5965.1993.tb00477.x

Morini, Marco. 2018. "Front national and Lega Nord: two stories of the same Euroscepticism". *European Politics and Society* 19(1): 1-19, doi: 10.1080/23745118.2017.1295569

Monar, Jorg.2016. "Justice and Home Affairs". *JCMS: Journal of Common Market Studies* 54: 134– 149. doi: 10.1111/jcms.12409.

Monar, Jorg.2010b. "The 'Area of Freedom, Security and Justice': 'Schengen' Europe, Opt-outs, Opt-ins and Associates". In *Which Europe?* Edited by Dyson, Keneth and Sepos A. Palgrave Studies in European Union Politics. Palgrave Macmillan, London

Monar, Jorg. 2005. "Justice and Home Affairs in the EU Constitutional Treaty. What Added Value for the 'Area of Freedom, Security and Justice'?". *European Constitutional Law Review* 1(2) :226-246. doi:10.1017/S1574019605002269

Monar, Jorg,Rees, W. and Mitsilegas, Valsamis. 2003. *The European Union and internal security: guardian of the people?* Basingstoke, UK: Palgrave Macmillan

Monar, Jorg.2001. "The Dynamics of Justice and Home Affairs: Laboratories, Driving Factors and Costs". *JCMS: Journal of Common Market Studies*, 39: 747-764. doi.org/10.1111/1468-5965.00329

Mouritsen,Per and Olsen, Tore Vincents.2013. "Denmark between liberalism and nationalism". *Ethnic and Racial Studies* 36(4): 691-710, doi: 10.1080/01419870.2011.598233

Mudde, Cas, 2007. *Populist Radical Right Parties in Europe*. Cambridge University Press, Cambridge.

Murphy, Daniel T. 2003. "Closer or Enhanced Cooperation: Amsterdam or Nice", *Ga. J. Int'l & Comp. L.* 265 (31). Available at: <https://digitalcommons.law.uga.edu/gjicl/vol31/iss2/3>, Accessed 27 August 2019

Nannestad,Peter. 2004. "Immigration as a challenge to the Danish welfare state?". *European Journal of Political Economy* 20 (3): 755-767. doi.org/10.1016/j.ejpoleco.2004.03.003.

Narkowicz, Kasia. 2018. "Refugees Not Welcome Here': State, Church and Civil Society Responses to the Refugee Crisis in Poland".*International Journal of Politics, Culture, and Society* 31: 357–373. doi.org/10.1007/s10767-018-9287-9

Neidhardt, Alberto-Horst and Diez, Olivia Sundberg. 2020. "The upcoming New Pact on Migration and Asylum: Will it be up to the challenge?". EPC Discussion Paper.

Nič,Milan. 2016. "The Visegrád Group in the EU: 2016 as a turning-point?". *European View* 15:281–290

Nicoli, F., Reinl, AK.2020. "A tale of two crises? A regional-level investigation of the joint effect of economic performance and migration on the voting for European disintegration". *Comparative European Politics* volume 18: 384–419. doi.org/10.1057/s41295-019-00190-5

Niemann, Arne and Speyer, Johanna. 2018. "A Neofunctionalist Perspective on the 'European Refugee Crisis': The Case of the European Border and Coast Guard". *JCMS: Journal of Common Market Studies* 56: 23– 43. doi: 10.1111/jcms.12653.

Niemann, Arne, and Zaun, Natascha. 2018. "EU Refugee Policies and Politics in Times of Crisis: Theoretical and Empirical Perspectives". *JCMS: Journal of Common Market Studies* 56: 3– 22. doi: 10.1111/jcms.12650.

Niemann, Arne. 2012. "The Dynamics of EU migration policy: from Maastricht to Lisbon". In *Constructing a policy-making state? Policy dynamics in the European Union*. 209-233. Edited by Richardson, Jeremy. Oxford: Oxford University Press.

Ozerdem, Fusun and Hunter, Alan. 2013. "Religion in Turkey's domestic and international agendas: Human security perspectives". In *Human security in Turkey*. 137-152 Edited by Ozerdem, Fusun and Hunter, Alan. Taylor and Francis.

Parkes, Roderick, and Daniela Schwarzer. 2012. "The Divisiveness of Mobility: Fuelling Populism in the Euro and Schengen Areas." SWP Comments 21. Berlin: German Institute for International and Security Affairs

Peers, Steve.2018. "Differentiated integration and the Brexit process in EU justice and home affairs". In *The Routledge Handbook of Justice and Home Affairs Research*. 252-263. Edited by

Ariadna Ripoll Servent and Florian Trauner

Peers, Steve.2015. "Denmark and EU Justice and Home Affairs Law: Details of the planned referendum" Available at: <http://eulawanalysis.blogspot.com/2015/03/denmark-and-eu-justice-and-home-affairs.htm>, Accessed 30 June 2019

Peers, Steve.2014. Denmark and EU Justice and Home Affairs Law: Really Opting Back In?, Available at:

<https://free-group.eu/2014/10/09/denmark-and-eu-justice-and-home-affairs-law-really-opting-back-in/>

Peers, Steve. 2013. "Towards a New Form of EU Law? The Use of EU Institutions Outside the EU Legal Framework." *European Constitutional Law Review* 9 (1). T.M.C. Asser Press: 37–72. doi:10.1017/S1574019612001034.

Peers, Steve. 2013b. "The second phase of the Common European Asylum System: A brave new world – or lipstick on a pig?", Statewatch. Available at: <https://www.statewatch.org/media/documents/analyses/no-220-ceas-second-phase.pdf>, Accessed 24 June 2019

Peers, Steve. 2006. *Justice and Home Affairs Law*. Oxford: Oxford University Press.

Pennings, Paul. 2016. "Relating theory and concepts to measurements: bridging the gap". In *Handbook of Research Methods and Applications in Political Science*. 54-67. Edited by Hans Keman and Jaap J. Woldendorp. Edward Elgar Publishing Limited

Pierson, Paul. 2000. "Increasing Returns, Path Dependence, and the Study of Politics." *American Political Science Review* 94 (2): 251–67. doi:10.2307/2586011.

Pierson, Paul. 1996. "The Path to European Integration: A Historical Institutional Analysis." *Comparative Political Studies* 29 (2): 123–63. doi.org/10.1177/0010414096029002001.

Piris, Jean Claude. 2012. *The Future of Europe. Towards a Two-Speed EU?*. Cambridge University Press

Pirro, Andrea LP, Paul Taggart, and Stijn van Kessel. 2018. "The Populist Politics of Euroscepticism in Times of Crisis: Comparative Conclusions." *Politics* 38 (3): 378–90. doi.org/10.1177/0263395718784704.

Pirro, Andrea LP and van Kessel Stijn. 2018. "Populist Eurosceptic trajectories in Italy and the Netherlands during the European crises". *Politics* 38(3):327-343. doi:10.1177/0263395718769511

Philippart, Eric and Edwards, Geoffrey. 1999. "The Provisions on Closer Co-operation in the Treaty of Amsterdam: The Politics of Flexibility in the European Union". *JCMS: Journal of Common Market Studies* 37: 87-108. doi.org/10.1111/1468-5965.00151

Powell, Eleanor Neff, and Joshua A. Tucker. 2014. "Revisiting Electoral Volatility in Post-Communist Countries: New Data, New Results and New Approaches." *British Journal of Political Science* 44 (1). Cambridge University Press: 123–47. doi:10.1017/S0007123412000531.

Putnam, Robert D. 1988."Diplomacy and Domestic Politics: The Logic of Two-Level Games." *International Organization* 42 (3): 427-60. <http://www.jstor.org/stable/2706785>.

Quirk, Jessica. 2020."Italy and Euroscepticism – political uncertainty gives way to temporary political relief".*Australian and New Zealand Journal of European Studies* 12 (1). doi.org/10.30722/anzjes.vol12.iss1.15079

Rasmussen, Maja Kluger and Sørensen, Catharina. 2016. " A Pragmatic Euroscepticism". Building Bridges Paper Series..

Rheindorf,Markus and Wodak, Ruth. 2018. "Borders, Fences, and Limits—Protecting Austria From Refugees: Metadiscursive Negotiation of Meaning in the Current Refugee Crisis". *journal of Immigrant & Refugee Studies*, 16(1-2:)15-38 doi: 10.1080/15562948.2017.1302032

Ripoll Servent, Ariadna and Trauner, Florian. 2014. "Do supranational EU institutions make a difference? EU asylum law before and after 'communitarization'." *Journal of European Public Policy* 21(8): 1142-1162, doi: 10.1080/13501763.2014.906905

Ripoll Servent, Ariadna. 2011. "Co-decision in the European Parliament: Comparing Rationalist and Constructivist Explanations of the Returns Directive." *Journal of Contemporary European Research* 7 (1): 3–22.

Rosamond, Ben. 2016. "Brexit and the Problem of European Disintegration". *Journal of Contemporary European Research* 12 (4): 865–71, Commentary (Special Section)

Saatçioğlu,Beken. 2020. "The EU's response to the Syrian refugee crisis: a battleground among many Europes". *European Politics and Society*. doi: 10.1080/23745118.2020.1842693

Scharpf, Fritz.W.1988. "The joint-decision trap: lessons from German federalism and European integration" *Public Administration* 66(3): 239–87. doi.org/10.1111/j.1467-9299.1988.tb00694.x

Schmidt, Vivien A. 2019. Politicization in the EU: between national politics and EU political dynamics, *Journal of European Public Policy* 26(7):1018-1036, doi: 10.1080/13501763.2019.1619189

Scipioni, Marco. 2018. "Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis". *Journal of European Public Policy* 25(9):1357-1375, doi: 10.1080/13501763.2017.1325920

Schimmelfennig, Frank. 2018. "Brexit: differentiated disintegration in the European Union", *Journal of European Public Policy* 25(8): 1154-1173. doi.org/10.1080/13501763.2018.1467954

Schimmelfennig, Frank. 2017. "European integration (theory) in times of crisis. A comparison of the euro and Schengen crises". *Journal of European Public Policy* 25(7): 969-989, doi: 10.1080/13501763.2017.1421252

Schimmelfennig, Frank. 2014. "European Integration in the Euro Crisis: The Limits of Postfunctionalism." *Journal of European Integration* 36(3):321-337, doi: 10.1080/07036337.2014.886399

Schimmelfennig, Frank and Winzen, Thomas. 2020. "Differentiated EU Integration: Maps and Modes"
EUI Working Paper RSCAS 2020/24, European University Institute. Robert Schuman Centre for Advanced Studies.

Schimmelfennig, Frank, and Winzen, Thomas. 2019. "Grand theories, differentiated integration". *Journal of European Public Policy* 26(8): 1172-1192, doi: 10.1080/13501763.2019.1576761

Schimmelfennig, Frank, Leuffen, Dirk and Berthold Rittberger. 2015. "The European Union as a system of differentiated integration: interdependence, politicization and differentiation". *Journal of European Public Policy* 22(6):764-782, doi: 10.1080/13501763.2015.1020835

Schimmelfennig, Frank, and Winzen, Thomas. 2014. "Instrumental and constitutional differentiation in the EU". *JCMS: Journal of Common Market Studies* 52: 354-370. doi.org/10.1111/jcms.12103

Schimmelfennig, Frank. 2010. "The Normative Origins of Democracy in the European Union: toward a Transformationalist Theory of Democratization." *European Political Science Review* 2 (2): 211-33. doi:10.1017/S1755773910000068.

Schmitter, Philippe C. 2000. *How to Democratize the European Union... And why bother?* Lanham, Rowman & Littlefield Publishers: Governance in Europe

Schnapper, Pauline. 2015. "The Labour Party and Europe from Brown to Miliband". *JCMS: Journal of Common Market Studies* 53: 157-173. doi.org/10.1111/jcms.12209

Schraff, Dominik and Schimmelfennig, Frank. 2020. "Does differentiated integration strengthen the democratic legitimacy of the EU? : evidence from the 2015 Danish opt-out referendum". *EUI RSCAS* 2020/11, European Governance and Politics Programme

Schuette, Leonard. 2019. "Comparing the Politicisation of EU Integration during the Euro and Schengen Crises" *Journal of Contemporary European Research* 15(4): 380-400. doi.org/10.30950/jcer.v15i4.1036

Shaw, Jo. 1998. "The Treaty of Amsterdam: Challenges of Flexibility and Legitimacy". *European Law Journal* 4: 63-86. doi.org/10.1111/1468-0386.00043

Smouts, Marie-Claude. 1998. "The proper use of governance in international relations". *International Social Science Journal* 50: 81-89. doi.org/10.1111/1468-2451.00111

Schneider, Christina J. 2019. *The Responsive Union: National Elections and European Governance*. Cambridge: Cambridge University Press

Sitter, Nick. 2001. "The politics of opposition and European integration in Scandinavia: Is Euro-scepticism a government-opposition dynamic?". *West European Politics* 24(4): 22-39, doi: 10.1080/01402380108425463

Slominski, Peter, and Trauner, Florian. 2018. "How do Member States Return Unwanted Migrants? The Strategic (non-)use of 'Europe' during the Migration Crisis". *JCMS: Journal of Common Market Studies* 56: 101– 118. doi: 10.1111/jcms.12621.

Sørensen, Catharina. 2015. "To be, or to be out: Reflection on the Danish referendum", Commentary, No. 29(10 December 2015), Available at: https://epin.org/wp-content/uploads/2019/02/EPIN_Commentary29_Danish-Referendum.pdf, Accessed 3 October 2020

Sørensen, Catharina. 2004. "Danish and British popular Euroscepticism compared: A sceptical assessment of the concept", *DIIS Working Paper* 2004:25, ISBN

8776050475, Danish Institute for International Studies (DIIS), Copenhagen

Spanje, Joost van. 2010. "Contagious Parties: Anti-Immigration Parties and Their Impact on Other Parties' Immigration Stances in Contemporary Western Europe." *Party Politics* 16(5): 563–86. doi.org/10.1177/1354068809346002.

Startin, Nicholas. 2015. "Have We Reached a Tipping Point? The Mainstreaming of Euroscepticism in the UK." *International Political Science Review* 36 (3): 311–23. doi.org/10.1177/0192512115574126.

Statham, Paul and Trez, Hans-Jörg. 2015. "Understanding the mechanisms of EU politicization: lessons from the Eurozone crisis". *Comparative European Politics* 13 (3): 287-306. dx.doi.org/10.1057/cep.2013.30

Statham, Paul, and Hans-Jörg Trez. 2012. *The Politicisation of Europe: Contesting the Constitution in the Mass Media*. Abingdon, Oxon: Routledge

Stone Sweet, Alec and Sandholtz, Wayne. 1997. "European integration and supranational governance". *Journal of European Public Policy* 4(3):297-317, doi: 10.1080/13501769780000011

Stojarová, Věra. 2018. "Populist, Radical and Extremist Political Parties in Visegrad countries vis à vis the migration crisis. In the name of the people and the nation in Central Europe". *Open Political Science* 1 (1): 32-45. doi.org/10.1515/openps-2018-0001

Stubb, Alexander. 2002. *Negotiating Flexibility in the European Union: Amsterdam, Nice and Beyond*. Palgrave Macmillan:UK

Stubb, Alexander C-G. 1997. "The 1996 Intergovernmental Conference and the management of flexible integration". *Journal of European Public Policy* 4(1):37-55, doi:10.1080/135017697344226

Stubb, Alexander C-G. 1996. "A Categorization of Differentiated Integration". *JCMS: Journal of Common Market Studies* 34: 283-295. doi.org/10.1111/j.1468-5965.1996.tb00573.x

Stockemer, Daniel, Niemann, Arne, Rabenschlag, Johannes et al. 2018. "Immigration, anti-immigrant attitudes and Euroscepticism: a meta-analysis". *French Politics* 16: 328–340. doi.org/10.1057/s41253-018-0065-x

Styczyńska, Natasza. 2018 "Refugees Not Welcome. The Populist Radical Right

in Poland and the Migration Crisis". In *Visions and Revisions of Europe*. 75-89. Edited by Karolina Czerska-Shaw, Marcin Galent, Bożena Gierat-Bieroń. Studies in Euroculture 4. Universitätsverlag Göttingen

Svensson, Pelle. 2002. "Five Danish referendums on the European Community and European Union: A critical assessment of the Franklin thesis". *European Journal of Political Research* 41: 733-750. doi.org/10.1111/1475-6765.00028

Szabados, Krisztian. 2015. "The Particularities and Uniqueness of Hungary's Jobbik". In "The European Far Right: Historical and Contemporary Perspectives. Edited by Charalampous Giorgos.49-57. PRIO Cyprus Centre, Friedrich-Ebert-Stiftung, Report 2

Szczerbiak, Aleks. 2008. "Opposing Europe or problematizing Europe? Euroscepticism and Eurorealism" in the Polish Party System." In *Opposing Europe? The comparative party politics of Euroscepticism* Vol 1. Edited by Paul Taggart and Aleks Szczerbiak. Oxford: Oxford University Press, pp. 221-242.

Taggart, Paul and Szczerbiak, Aleks.2018. "Putting Brexit into perspective: the effect of the Eurozone and migration crises and Brexit on Euroscepticism in European states". *Journal of European Public Policy* 25(8): 1194-1214, doi: 10.1080/13501763.2018.1467955

Taggart, Paul and Szczerbiak, Aleks.2013. "Coming in from the Cold? Euroscepticism, Government Participation and Party Positions on Europe". *JCMS: Journal of Common Market Studies* 51: 17-37. doi.org/10.1111/j.1468-5965.2012.02298.x

Taggart, Paul and Szczerbiak, Aleks. 2008. *Opposing Europe? The Comparative Party Politics of Euroscepticism, Volume 1: Case Studies and Country Surveys*.Oxford: Oxford University Press.

Taggart, Paul and Szczerbiak, Aleks. 2002. "The Party Politics of Euroscepticism in EU Member and Candidate States". *SEI Working Paper* 51, Sussex European Institute, University of Sussex

Taggart, Paul.2004. "Populism and representative politics in contemporary Europe". *Journal of Political Ideologies* 9(3): 269-288, doi: 10.1080/1356931042000263528

Taggart, Paul.1998. "A touchstone of dissent: Euroscepticism in contemporary Western European party systems". *European Journal of Political Research* 33: 363–388. doi.org/10.1023/A:1006853204101

Tekin,Funda. 2012.*Differentiated Integration at Work: The Institutionalisation and Implementation of Opt-Outs from European Integration in the Area of Freedom, Security and Justice*.Series: Studies on the European Union 6. Nomos

Tilly, Charles. 2007. "Why and how history matters". In *The Oxford Handbook of Political Science*. Ch. 26. Edited by Goodwin R.E., Oxford: Oxford University Press.

Thielemann,Eiko. 2018. "Why Refugee Burden-Sharing Initiatives Fail: Public Goods, Free-Riding and Symbolic Solidarity in the EU". *JCMS: Journal of Common Market Studies* 56: 63– 82. doi: 10.1111/jcms.12662.

Thielemann,Eiko and Armstrong, Carolyn. 2013." Understanding European asylum cooperation under the Schengen/Dublin system: a public goods framework". *European Security* 22(2): 148-164, doi: 10.1080/09662839.2012.699892

Thielemann,Eiko R. and Dewan,Torun. 2006. "The myth of free-riding: Refugee protection and implicit burden-sharing". *West European Politics* 29(2):351-369, doi: 10.1080/01402380500512742

Thomson, Robert.2011. "Resolving Controversy in the European Union. Legislative Decision-Making Before and After Enlargement". Cambridge: Cambridge University Press

Thatcher, Margaret. 1995. *The Downing Street Years*. London: Harper Collins

Thym, Danieli.2017. "Competing models for understanding differentiated integration". In *Between Flexibility and Disintegration: The Trajectory of Differentiation in EU Law*.Edited by Bruno De Witte, Andrea Ott and Ellen Vo

Tocci, Nathalie and Faleg,Giovanni. 2013. "Towards a More United and Effective Europe: A Framework for Analysis/ Istituto Affari Internazionali (IAI) 1.

Tournier-Sol, Karine.2015. "Reworking the Eurosceptic and conservative traditions".*JCMS: Journal of Common Market Studies* 53: 140-156. doi.org/10.1111/jcms.12208

Trauner, Florian. 2016. "Asylum policy: the EU's 'crises' and the looming policy regime failure". *Journal of European Integration* 38(3): 311-325, doi:

10.1080/07036337.2016.1140756

Trauner, Florian. and Ripoll Servent, Ariadna. 2016. "The Communitarization of the Area of Freedom, Security and Justice: Why Institutional Change does not Translate into Policy Change". *JCMS: Journal of Common Market Studies* 54: 1417– 1432. doi: 10.1111/jcms.12397.

Treib, Oliver. 2014. "Implementing and complying with EU governance outputs", *Living Rev. Euro. Gov.* 9 (1). Available at: <http://europeangovernance-livingreviews.org/Articles/lreg-2014-1>

Triandafyllidou, Anna. 2018. "A "Refugee Crisis" Unfolding: "Real" Events and Their Interpretation in Media and Political Debates". *Journal of Immigrant & Refugee Studies* 16(1-2): 198-216, DOI: 10.1080/15562948.2017.1309089

Trondal, Jarle. 2007. "The public administration turn in integration research". *Journal of European Public Policy* 14(6): 960-972, doi: 10.1080/13501760701498061

Tsourdi, Lilian. 2016. "Bottom-up salvation? From practical cooperation towards joint implementation through the European asylum support office". *European Papers* 1 (3): 997–1031. doi:10.15166/2499-8249/115

Toś, Arkadiusz and Tabaszewski, Robert. 2012. "Denmark in European Union -Danish Attitudes towards European Cooperation."

Usherwood, Simon. 2018. "The Third Era of British Euroscepticism: Brexit as a Paradigm Shift". *The Political Quarterly* 89: 553-559. doi.org/10.1111/1467-923X.12598

Usherwood, Simon. and Startin, Nick. 2013. "Euroscepticism as a Persistent Phenomenon". *JCMS: Journal of Common Market Studies* 51: 1-16. doi.org/10.1111/j.1468-5965.2012.02297.x

Van der Brug, Wouter, D'Amato, Gianni, Ruedin, Didier and Berkhout, Joost. 2015. *The Politicisation of Migration*. London: Routledge.

Van der Brug, Wouter, D'Amato, Gianni, Berkhout, Joost and Kevin Cunningham. 2015. "Cross-Country Comparisons and Conclusions". In *The Politicisation of Migration*. 179-195. Edited by Van der Brug, Wouter, D'Amato, Gianni, Ruedin, Didier and Berkhout, Joost. London: Routledge

Van Munster, Rens. 2009. *Securitizing immigration: the politics of risk in the EU*. Basingstoke, UK: Palgrave Macmillan.

Von Sydow, Göran. 2013. *Politicizing Europe: Patterns of party-based opposition to European integration*. Stockholm Studies in Politics 151: Department of political science, Stockholm University

Vollaard, Hans. 2014. "Explaining European disintegration". *JCMS: Journal of Common Market Studies* 52: 1142-1159. /doi.org/10.1111/jcms.12132

Vollmer, Bastian and Karakayali, Serhat. 2018. "The Volatility of the Discourse on Refugees in Germany", *Journal of Immigrant & Refugee Studies* 16(1-2)118-139, doi: 10.1080/15562948.2017.1288284

Wallace, H. and Wallace, W. 1995. "Flying Together in a Larger and More Diverse European Union". *Netherlands Scientific Council for Government Policy Working Documents* 87: 69-70.

Wallace, H. (with Ridley, A.).1985. "Europe: The Challenge of Diversity". London: Chatham House Paper 29, Royal Institute of International Affairs.

Warleigh, Alex. 2002. *Understanding European Union Institutions*.Routledge:London

Warntjen, Andreas. 2012. "Measuring Saliency in EU Legislative Politics." *European Union Politics* 13(1): 168–82. doi.org/10.1177/1465116511428495.

Wellings, Ben and Baxendale, Helen. 2015. "Euroscepticism and the Anglosphere". *JCMS: Journal of Common Market Studies* 53: 123-139. doi.org/10.1111/jcms.12207

Wellings, Ben. 2010. "Losing the peace: Euroscepticism and the foundations of contemporary English nationalism". *Nations and Nationalism* 16: 488-505. doi.org/10.1111/j.1469-8129.2010.00447.x

Wessel, Ramses A., Luisa Marin, and Claudio Matera. 2011. "The External Dimension of the EU's Area of Freedom, Security and Justice." Chapter. In *Crime within the Area of Freedom, Security and Justice: A European Public Order*. Edited by Christina Eckes and Theodore Konstadinides, 272–300. Cambridge: Cambridge University Press. doi:10.1017/CBO9780511751219.011.

Werts, Han, Peer Scheepers, and Marcel Lubbers. 2013. "Euro-Scepticism and Radical Right-Wing Voting in Europe, 2002–2008: Social Cleavages, Socio-Political Attitudes and Contextual Characteristics Determining Voting for the Radical Right." *European Union Politics* 14,(2): 183–205. doi.org/10.1177/1465116512469287.

Whitefield, Stephen, and Robert Rohrschneider. 2015. "The Saliency of European Integration to Party Competition: Western and Eastern Europe Compared." *East European Politics and Societies* 29 (1): 12–39. doi.org/10.1177/0888325414567128.

Winzen, Thomas. 2016. "From capacity to sovereignty: Legislative politics and differentiated integration in the European Union". *European Journal of Political Research* 55: 100-119. doi.org/10.1111/1475-6765.12124

Winzen, Thomas and Schimmelfennig, Frank.2016. "Explaining differentiation in European Union treaties". *European Union Politics* 17(4):616-637. doi:10.1177/1465116516640386

Witte, Bruno de. "Five Years after the Lisbon Treaty's Entry into Force: Variable Geometry Running Wild?" *Maastricht Journal of European and Comparative Law* 22 (1): 3–9. doi.org/10.1177/1023263X1502200101

Wratil, Christopher. 2018. "Modes of Government Responsiveness in the European Union: Evidence from Council Negotiation Positions." *European Union Politics* 19 (1): 52–74. doi.org/10.1177/1465116517735599

Zaun,Natascha and Smeets,Sandriano.2020 . "What is intergovernmental about the EU's '(new) intergovernmentalist' turn? Evidence from the Eurozone and asylum crises". *West European Politics*. doi: 10.1080/01402382.2020.1792203

Zaun,Natascha. 2020. "Fence-sitters no more: Southern and Central Eastern European Member States' role in the deadlock of the CEAS reform". *Journal of European Public Policy*. doi: 10.1080/13501763.2020.1837918

Zaun, Natascha.2018. "States as Gatekeepers in EU Asylum Politics: Explaining the Non-adoption of a Refugee Quota System". *JCMS: Journal of Common Market Studies* 56: 44– 62. doi: 10.1111/jcms.12663.

Zeitlin, Jonathan, Nicoli, Francesco and Laffan, Brigid. 2019. "Introduction: the European Union beyond the polycrisis? Integration and politicization in an age of shifting cleavages". *Journal of European Public Policy* 26 (7): 963-976, doi: 10.1080/13501763.2019.1619803

Zhelyazkova, Asya. 2014. "From selective integration into selective implementation". *European Journal of Political Research* 53: 727-746. <https://doi.org/10.1111/1475-6765.12062>

Zielonka, Jan. 2001. "How New Enlarged Borders will Reshape the European Union". *JCMS: Journal of Common Market Studies* 39: 507-536. doi.org/10.1111/1468-5965.00301

Zürn, Michael. 2019. "Politicization compared: at national, European, and global levels". *Journal of European Public Policy* 26(7):977-995, doi: 10.1080/13501763.2019.1619188

Zürn, Michael and de Wilde, Pieter. 2016. "Debating globalization: cosmopolitanism and communitarianism as political ideologies". *Journal of Political Ideologies* 21(3):280-301, doi: 10.1080/13569317.2016.1207741

Zürn, Michael, Martin Binder, and Matthias Ecker-Ehrhardt. 2012. "International Authority and Its Politicization." *International Theory* 4 (1). Cambridge University Press: 69–106. doi:10.1017/S1752971912000012.

ANNEX I

List of Interviews

No	Interview	Date
1	Commission Officer- External Relations	December 2019
2	Commission Policy Assistant- Asylum	December 2019
3	Commission Officer- Irregular migration and Return	December 2019
4	Commission Policy Coordinator- Asylum	December 2019
5	Denmark-High-Level diplomat	November 2020
6	Denmark-EU spokesman of Political Party in Denmark	December 2020
7	Commission Officer-Borders and Schengen	January 2021
8	Commission Officer- Asylum	January 2021
9	Officer of Secretariat of the Council - Communication and Information Unit	January 2021
10	Administrator of Secretariat of the Council - Justice and Home Affairs Unit	January 2021
11	Former Assistant of the President of the Council	February 2021
12	Sweden- Permanent Representation in the Council	February 2021
13	Czech Republic- Permanent Representation in the Council	March 2021
14	Austria- Permanent Representation in the Council	March 2021

ANNEX II

Questions/ structure of Interviews

Questions for EU Commission officers

- 1) The Commission have submitted proposals for the amendment of the CEAS since 2016. In your opinion, why the Member states have not reached an agreement since then on the amendment? Which are the main difficulties /divisions?
- 2) Do you think that the divisions within the Council and the delay of CEAS amendments (including the relocation system) are a result of the reinforcement of Eurosceptic and right wing parties in many member states?
- 3) In relation to the CEAS amendment proposals of the Commission and the New Pact, which are the subject(s) that the Member States in the Council mainly disagree and what are the subject(s) that they have already agreed?
- 4) What is the progress in the negotiations over the New Pact currently?
- 5) What is the difference between the concepts of situations of migratory pressures and crisis situations?
- 6) In what ways the New Pact is different than the previous 2016 Commission's proposals?
- 7) Do you think that EASO could be more reinforced and acquire competences of a true European Asylum Agency as proposed by the Commission since 2016? Why?
- 8) Do you think that the integration of the European migration policy can proceed without flexibility and differentiated integration (opt-outs, enhanced cooperation, flexibility, etc)?
- 9) Do you think that flexibility (including the aspect of solidarity as in the New Pact) is a beneficial measure for CEAS?
- 10) The Commission has proposed the replacement of some CEAS directives with regulations do you think that this will amend the CEAS effectiveness? Why?
- 11) During the refugee crisis, the amendment of the Frontex Regulation was realized in 2016 while the amendment of the asylum system has yet to be finalized. In your opinion, what are the reasons for that?
- 12) The EU external border management has also been characterized by DI and flexibility. In your opinion, what is its effect?

Questions for the Council/ National representations

- 1) In relation to the amendment proposals of the Commission and the New Pact on migration, which are the subject(s) that the Member States in the Council mainly disagree and what are the subject(s) that they have already agreed?
- 2) What is the progress in the negotiations over the New Pact currently?
- 3) The Commission have submitted proposals for the amendment of the CEAS since 2016. In your opinion, why the Council have not reached an agreement since then on the amendment? Which are the main difficulties /divisions?
- 4) Do you think that the divisions within the Council and the delay of CEAS amendments (including the relocation system) are a result of the reinforcement of Eurosceptic and right wing parties in many member states?
- 5) Is it true that it is unofficially agreed within the Council that the decision over the amendments of asylum and migration policy will be taken in unanimity instead of the QMV as the Lisbon Treaty provisioned? If yes, what are the reasons of this development in your opinion?
- 6) Do you think that the integration of the European migration policy can proceed without flexibility and differentiated integration (opt-outs, enhanced cooperation, flexibility, etc)?
- 7) Do you think that flexibility (including the aspect of solidarity as in the New Pact) is a beneficial measure for CEAS?
- 8) The Commission has proposed the replacement of some CEAS directives with regulations do you think that this will increase the effectiveness of EU migration policy? Why?
- 9) Do you think that the inclusion of the provision for the reintroduction of temporary internal borders controls in the Schengen Code (2013) has been a measure for controlling possible weaknesses of the Dublin system?
- 10) Since 2016, the EU has promoted the reinforcement of external border controls. What is your opinion on the introduction of the “pre-entry border screenings” proposed by the Commission as a part of the New Pact?
- 11) Do you think that EASO could be more reinforced and acquire competences of a true European Asylum Agency as proposed by the Commission since 2016? Why?
- 12) At the time of your service in the Council, which states supported the amendment of the CEAS and the inclusion of the permanent solidarity system?