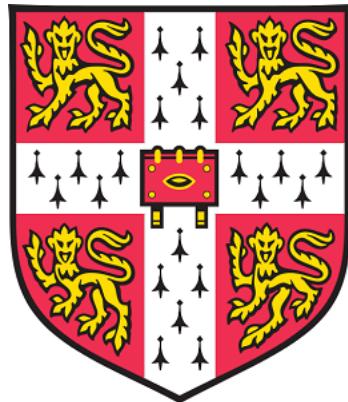


*Understanding bargaining outcomes in Europe's
migration and refugee crisis: The Refugee Relocation
Scheme and the EU-Turkey Statement*



Maria Chiara Vinciguerra

Department of Politics and International Studies (POLIS)

Robinson College, University of Cambridge

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Preface

This dissertation is the result of my own work and includes nothing which is the outcome of work done in collaboration except as declared in the Preface and specified in the text. It is not substantially the same as any work that I have submitted, or, is being concurrently submitted for a degree or diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. I further state that no substantial part of my dissertation has already been submitted, or, is being concurrently submitted for any such degree, diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. It does not exceed the prescribed word limit for the POLIS Degree Committee. The copyright of this thesis rests with the author. Quotation from it is permitted, provided that full acknowledgement is made. This thesis may not be reproduced without my prior written consent.

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When people ask me why I decided to embark on a PhD path, I tell them a story. It starts in 2015 in New York State, as I studied Chancellor Merkel's political leadership and interactions with domestic and international constituents during the migration crisis; it goes through a year spent in Berlin volunteering in a refugee legal advice centre in the face of daily domestic uprisings against refugees; and ends with the puzzling question of how the entanglement between domestic politics and international pressures shaped bargaining outcomes during the migration crisis. I am deeply indebted to my supervisor Professor Julie Smith (Baroness Smith of Newnham) for finding these questions equally interesting and for encouraging me endlessly throughout my PhD journey. For her unwavering support, for her patience reading countless drafts and, above all, for providing me with an example of academic and professional rigor that will guide me in the years to come, I thank her. My heartfelt gratitude also goes to my second supervisor, Professor Christopher Bickerton, for his precious feedback and comments on various chapters of the thesis. I also wish to thank Dr Geoffrey Edwards for having encouraged me to think again and think better during the first-year report. A special thanks also goes to my Syracuse and Hertie School mentors Dr Isaac Kfir, Professor Alina Mungiu-Pippidi, Professor Margaret Hermann and the late Professor Matt Bonham, for having encouraged me to apply for PhD programs and for having believed in the Cambridge dream before I did.

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ABSTRACT

This thesis investigates the distribution of, and competition for, power between Member States and EU institutions in the policy formulation of the two Council Decisions on refugee relocation and the amendment of the second of these by means of the EU-Turkey Statement. In so doing, it aims to further our understanding of how Member States and central EU institutions affect bargaining outcomes and respond to pressures from different levels of governance in the making of policies in the Area of Freedom, Security and Justice (AFSJ), particularly during Europe's migration and refugee crisis. While previous scholars all point to the same tension between supranational and domestic politics, they neglect to account for the competing influence of Member States and the central EU institutions in (un)making policies in the AFSJ.

In order to address this literature gap, the thesis takes an institutional approach and focuses on the role, power and bargaining strategies of the European Commission, the European Parliament, the European Council and the Council of the EU in the policy formulation of the Refugee Relocation Scheme and the EU-Turkey Statement, including how they relate to different spheres of influence and levels of governance over the course of the decision-making processes. It does so by exploiting a theory of bargaining – Putnam's two-level game theory – in order to determine how the interplay between domestic and supranational politics helps explaining how the Refugee Relocation Scheme became a 'deal breaker' for European integration in the AFSJ and the EU-Turkey Statement a success of informal governance for the EU. The empirical evidence was gathered primarily by means of a process-tracing methodology complemented with documentary research, vote analysis and semi-structured elite interviews.

The core argument advanced in this thesis is that, despite the incremental supranationalization of Justice and Home Affairs (JHA), deepening European integration in the AFSJ remains very much dependent upon intergovernmental compromises, which are fundamentally guided by the interests, preferences and win-sets or sets of acceptable agreements of the six founding Member States, and above all those of the Franco-German duo. Furthermore, the analysis of the three selected cases suggests that bargaining outcomes in the AFSJ are often the by-product of domestic politics, *synergistic and issue linkages*,

varying degrees of politicization and of interinstitutional and intergovernmental competition for power.

A key contribution of this thesis is that it moves beyond the focus of policy-makers and scholars on political impasse in JHA affairs, focusing instead on what prompts Member States to cooperate in the AFSJ, including how the distribution of power in negotiations and the nature of the policies bargained shape negotiations. From a theoretical standpoint, it has the merit of representing a rare application of Putnam's two-level game to the study of EU negotiations, a much-cited yet underused framework of analysis. It also provides a systematic analysis of bargaining and preference formation in the EU, which represents a crucial and timely contribution to the theorisation of the process of European (dis)integration in the AFSJ. In so doing, it furthers the ongoing debate on the nature of EU decision-making on migration, asylum and border control issues, including how crises in turn affect the EU's internal balance of power.

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LIST OF ABBREVIATIONS

AFAD	Turkish Ministry of Interior's Disaster and Emergency Response Management Presidency (from Turkish 'Afet ve Acil Durum Yönetimi Başkanlığı')
AFD	Alternative für Deutschland (Alternative for Germany)
AU	African Union
CDU	Christian Democratic Union
CEAS	Central European Asylum System
CEE	Central and Eastern Europe
CFSP	Common Foreign and Security Policy
CISA	Convention Implementing the Schengen Agreement
COREPER	Committee of the Permanent Representatives of the Governments of the Member States to the European Union
CJEU	Court of Justice of the European Union
COE	Council of Europe
CSU	Christian Social Union (Bavaria)
DG BUDG	Directorate-General for Budget
DG	Directorate-General for International Cooperation and Development
DEVCO	
DG ECHO	Directorate-General for European Civil Protection and Humanitarian Aid Operations
DG HOME	Directorate-General for Migration and Home Affairs
DGMM	Directorate-General for Migration Management
DG NEAR	Directorate-General for Neighbourhood and Enlargement Negotiations
EBCG	European Border and Coast Guard (also known as FRONTEX)
EC	European Community/ies
ECB	European Central Bank
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EEC	European Economic Community
EDA	European Defence Agency

EAM	European Agenda on Migration
EASO	European Asylum Support Office
EEA	European Economic Area
EEAS	European External Action Service
EMU	Economic and Monetary Union (of the European Union)
EP	European Parliament
EPP	European People's Party
ESI	European Stability Initiative
ESM	European Stability Mechanism
EU	European Union
EUCO	European Council
EU-LISA	European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice
EUREMA	Pilot Project on Intra-EU Relocation from Malta
EUROJUST	EU Judicial Cooperation Agency
EUROPOL	EU Police Cooperation Agency
FN	Front National (France)
FPÖ	Freedom Party of Austria
FRIT	Facility for Refugees in Turkey
FRONTEX	European Border and Coast Guard Agency (from French ‘Frontières Extérieures’, or external borders)
G7	Group of Seven
HOSG	Heads of State and/or Government
IASC	Inter-Agency Standing Committee
IDP	Internally Displaced Person
IGC	Intergovernmental Conference, or Intergovernmental Consultations on Migration, Asylum and Refugees
IMF	International Monetary Fund
IO	International Organization
IOM	International Organization for Migration
IPA	Instruments for Pre-Accession Assistance
IPCR	Integrated Political Crisis Response
JAP	Joint Action Plan
JHA	Justice and Home Affairs

LN	Lega Nord (Northern League or League; Italy)
MENA	Middle East and North Africa
MEP	Member of the European Parliament
MFA	Ministry of Foreign Affairs
MLG	Multi-Level Governance
MP	Member of Parliament
MPI	Migration Policy Institute
MS	Member State(s)
M5S	Movimento 5 Stelle (5 Star Movement; Italy)
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NP	National Parliament
OCHA	The United Nations Office for the Coordination of Humanitarian Affairs
OECD	The Organisation for Economic Co-Operation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
ÖVP	Austrian People's Party
PERMREP	Permanent Representative of a Member State to the European Union
PIIGS	Portugal, Ireland, Italy, Greece, and Spain
PM	Prime Minister
PP	People's Party (Spain)
PSOE	Socialist Workers' Party (Spain)
RN	Rassemblement National (France)
SAR	Search and Rescue
SCIFA	Strategic Committee on Immigration, Frontiers and Asylum
SPÖ	Social Democratic Party (Austria)
TCN	Third-Country National
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees / UN Refugee Agency
UKIP	United Kingdom Independence Party
UN	United Nations

VHAS	Voluntary Humanitarian Admission Scheme
VVD	The People's Party for Freedom and Democracy (the Netherlands)
WB	Western Balkans
WWI/II	World War I/II

Chapter 1 – INTRODUCTION

On 18 April 2015, an overcrowded boat carrying more than 800 migrants and asylum seekers sank off the Italian coast at Lampedusa, leading to a death toll of up to 700 – or ‘the largest single loss of life in the Mediterranean in decades’ (Miglierini, 2016). This was not the first instance in which hundreds of migrants died in the Mediterranean Sea while seeking refuge from wars, crises and poverty in the Middle East and North Africa (MENA region).¹ In October 2013, two migrant shipwrecks off Lampedusa had reported at least 368 migrant deaths and prompted the Italian government to launch a military-humanitarian operation, *Mare nostrum*. Despite the increased efforts in search and rescue (SAR) operations in the Mediterranean – later succeeded by EU operation Triton – approximately 2,929 deaths were recorded during 2014 and 2015 (IOM, 2015a).

The resonance of the 2015 Lampedusa migrant shipwreck on European news and politics was unprecedented and translated into a renewed EU commitment (and duty) to act and save lives. Five days after the tragedy occurred, an extraordinary European Council was convened, where Heads of State and Government from the EU-28 committed, among other things, ‘to increase emergency aid and consider options for organizing emergency relocation between Member States on a voluntary basis’ (Council of the European Union, 2015f). Based on this joint commitment and a European Parliament resolution a few days later, a European Agenda on Migration (EAM) was launched on 13 May. This furthered the Union’s commitment to ‘relocation’ as a solution to the crisis, such that ‘Member States [would] need to show solidarity and redouble their efforts to assist those countries on the frontline’, namely Italy and Greece (European Commission, 2015c, p. 8). While doing so, the Agenda anticipated that much could be gained from stepping up cooperation with Turkey, ‘to contribute to its efforts to deal with the pressure on its refugee management system and to help prevent hazardous journeys in the Eastern Mediterranean’ (*ibid*).

Following a pledging exercise on 20 July 2015 and in the context of the first Justice and Home Affairs (JHA) Council led by the Luxembourg Council Presidency, 32,256 relocation places were voluntarily pledged for allocation by Member States, along with

¹ Generally, the following countries are considered as part of the MENA region: Algeria, Bahrain, Djibouti, Egypt, Iran, Israel, Jordan, Kuwait, Lebanon, Libya, Malta, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, and the United Arab Emirates. To this list, Ethiopia, Sudan, Yemen (and the territories of Gaza and the West Bank) are sometimes added.

22,504 pledges of resettlement from outside the EU. A first Refugee Relocation Decision, or Council Decision (EU) 2015/1523, was passed in early September 2015, effectively formalizing the compromise reached in the JHA Council of July. However, as pointed out by the then-Luxembourgish Foreign and European Affairs Minister Jean Asselborn, while the figures pledged were ‘sometimes encouraging, sometimes disappointing, at times embarrassing’, the exercise highlighted how ‘placing European solidarity on a voluntary basis [had] its limits’ (Luxembourg Presidency of the Council of the European Union, 2015). In fact, aside from the core Member States, not all of the EU shared the same belief in a moral duty to act, as reflected in the gap between numbers pledged in July and the 40,000 allocations originally proposed by the Commission in the Agenda on Migration.

Far from being convinced by the EU’s narrative, a large portion of the Union – Eastern Europe and the Visegrád group² most visibly – had long shared a common historical hostility, even xenophobia, towards migrants (Boin *et al.*, 2005), and most importantly a conflicting idea of European solidarity. This became most evident in the wake of the migration crisis (Backmann, 2016; Trauner, 2016; Tackle, 2018), when increasing domestic contestation on how to handle irregular migrants and refugees resulted in more polarized stances being taken by national European leaders. Even before Angela Merkel’s historic decision to open Germany’s borders in August 2015, Hungarian PM Viktor Orbán announced his desire to build a 175-kilometer fence along the Hungarian-Serbian border. As the crisis worsened over the summer months, Orbán restated his view that the migration crisis ‘is not a European problem, it is a German problem [...] Nobody would like to stay in Hungary, neither in Slovakia, nor Poland, nor Estonia. All of them would like to go to Germany. Our job is only to register them’ (cited in BBC News, 2015b).

As the irregular migrant flows inbound to the Continent skyrocketed over the summer – from only 6,913 in January to 40,559 in May and peaking at 222,800 in October 2015 (UNHCR, 2015) – a new Commission proposal concerted with strong political support from the Franco-German duo (Revault d’Allonnes and Stroobants, 2015) and the Luxembourgish Presidency advanced the introduction of a second Refugee Relocation Decision for the quota-based relocation from Italy, Greece and Hungary of another 120,000 persons in need of international protection. While the first Refugee Relocation Decision

² Visegrád or V4 is an informal term used for the country set of Hungary, Slovakia, Poland, and Czech Republic, to which Austria is occasionally added under the term of V4+1 or V5.

was generally welcomed as a positive signal of voluntary-based solidarity for frontline Member States under migratory pressure, the second part of this Scheme was not as well received. Most importantly, the Commission's proposal moved away from the political consensus found in the Council for voluntary-based refugee relocation and onto a mandatory, emergency system of refugee relocation. Although the Commission's proposal was ultimately adopted as Council Decision (EU) 2015/1601, it was also the first Council Decision in the history of the Area of Freedom, Security and Justice to be passed by explicit qualified majority voting: indeed, four Member States vetoed it (Czech Republic, Hungary, Romania and Slovak Republic) and one abstained (Finland). Moreover, shortly after its adoption, Hungary and Slovakia brought the Decision to the Court of Justice (CJEU) to be annulled; they were soon backed by Poland in the aftermath of its November 2015 national elections (Court of Justice of the European Union, 2017a).

In order to resolve the significant political disagreements which came with the adoption of this Decision, further fuelled by the increasing domestic and supranational pressures to stem irregular migrant inflows, in September 2015 the EU revived its dialogue with Turkey to step up cooperation and bilateral coordination in preventing irregular immigration and supporting Syrian refugees and host communities in Turkey. Indeed, a renewed dialogue with Turkey was considered crucial for reducing migrant pressure on the Western Balkans and Eastern Mediterranean migrant routes³ into Europe. These migrant inflows were seen as threatening the survival of the Greek asylum system in the aftermath of the Eurozone crisis, which had financially drained the Greek economy, and they were putting further pressure on the Western Balkans and their EU-member neighbours, which had been some of the most vocal opponents of the infamous second Refugee Relocation Decision.

Following accelerated talks led by Germany, alongside the Dutch Council Presidency and the Commission, EU Heads of State and/or Government (HOSG) and Turkish authorities signed the EU-Turkey political statement on 18 March 2016. In doing so, the two sides agreed (*inter alia*) to the infamous '1-1 scheme', which entailed that for every Syrian returned to Turkey from the Greek islands, another Syrian would be resettled from Turkey

³ The Eastern Mediterranean route is a passage of migrants crossing from Turkey into the EU via Greece, Cyprus and Bulgaria. Lastly, the Western Balkan route refers to both a land and sea route from the Greek-Turkish border through the Republic of North Macedonia and Serbia into Hungary, Romania and Croatia.

to the EU.⁴ On the basis of the EU-Turkey Statement, the unpopular second Refugee Relocation Decision was amended by means of Council Decision (EU) 2016/1754 in a way that allowed Member States to fulfil part of the relocation obligations foreseen in the Refugee Relocation Scheme by means of refugee resettlement directly from Turkey instead. As Hungary had refused to participate as a (frontline) beneficiary of the Decision, 54,000 relocation places under the second Refugee Relocation Decision were left vacant; on the basis of those unfilled places, the Council provided Member States with the opportunity to meet their obligations under Council Decision (EU) 2015/1601 ‘by admitting Syrians present in Turkey through resettlement’ instead.⁵

What the two Refugee Relocation Decisions failed to achieve – emergency burden-sharing – was partially resolved by the EU-Turkey Statement, inasmuch as it succeeded in drastically reducing the flows of irregular migrants to Europe, thereby making the relocation debate temporarily lose momentum in the EU arena. Retrospectively, the Commission described the Statement as a ‘game changer’ (European Commission, 2017c). After agreement on the Statement was reached, European Council President Tusk highlighted how, throughout the negotiations, he had ‘made it clear that this deal need[ed] to be acceptable for all EU member states, regardless of their size’ and ensured ‘a balanced proposal that [would take] on board Cypriot concerns’ (Donald Tusk cited in European Council, 2016).

Arguably, the European Council’s approach towards shaping a compromise on the EU-Turkey Statement marked a crucial shift from the one used in brokering the two Refugee Relocation Decisions. The EU approach to negotiating the EU-Turkey Statement suggested that the use of the *Community method* in AFSJ decision-making at times of crisis is unattainable in the absence of solid consensus at the Council. Yet, it could equally be contended that the enhanced role of the European Commission over the course of the migration and refugee crisis indicated a change in the inter-institutional balance of power in the AFSJ in favour of further supranationalization. This, combined with the increasing problems arising from the EU’s externalization of migration governance and border

⁴ According to the European Commission, the 1-1 mechanism had the aim of replacing ‘disorganised, chaotic, irregular and dangerous migratory flows by organised, safe and legal pathways to Europe for those entitled to international protection in line with EU and international law’ (European Commission, 2016).

⁵ Recital 7 of 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.

control, could in turn suggest that the only political ‘success’ in response to the crisis achieved by means of intergovernmental consensus in fact stands on very thin ice, thereby questioning the effectiveness of intergovernmental bargaining in the AFSJ. The fact that, over six years on, the active role of the European Council and that of the European Commission in setting the JHA agenda is still contested, suggests that an in-depth analysis of these questions is long overdue.

1.1 AIM OF THE THESIS AND RESEARCH QUESTIONS

The overall aim of this thesis is to test the applicability of these alternative interpretations concerning the relative influence of central EU institutions vis-à-vis Member States, as well as the effect of domestic contestation, in the making of policies in the AFSJ. More specifically:

- How does the inter-institutional distribution of, and competition for, power among Member States and central EU institutions impact policy-making in the Area of Freedom, Security and Justice?
- How does the interplay between domestic and EU politics affect how policies are made in the AFSJ?

The thesis focuses on three cases in order to shed light on these research questions: the two Refugee Relocation Decisions and of the EU-Turkey Statement, later formalized as an amendment of the second Refugee Relocation Decision via Council Decision (EU) 2016/1754. In the face of a growing divide in Justice and Home Affairs (JHA) between Central and Eastern European (CEE) countries and the rest of the EU and of the increasing politicization of this policy area, these three pieces of legislation offer the ideal cases to understand the roles of Member States and central EU institutions in shaping policy outcomes in the AFSJ. This is because they show how EU actors positioned themselves on the future of this policy area, at key points in the process of European integration, including how domestic politics influenced their bargaining positions and strategy. Furthermore, they show how much political capital domestic actors were willing to spend on these issues – regardless of the potential implications at home – and how much power they were effectively able to exert on these policy-making processes at the EU level.

Employing a multi-method qualitative analysis primarily rooted in elite interviews, documentary research and vote analysis, the thesis studies how Member States and EU institutions influenced the policy-making process leading to the adoption of these three Council Decisions. The main aim is to understand the impact and power of EU institutions and Member States in determining policy-making outcomes during the migration and refugee crisis, as well as how this in turn informs their influence and relative power in decision-making in the Area of Freedom, Security and Justice. On these legislative dossiers, it will analyse in depth the evolution of the bargaining process and political debate within the domestic arena and at the EU level, thereby allowing considerations on the extent to which tensions between EU and domestic politics influence bargaining outcomes in the AFSJ.

The core argument advanced is that, in spite of formal developments towards further supranationalization introduced through incremental Treaty change, the evolution of European integration in the AFSJ remains essentially intergovernmental in nature, guided or strongly supported by the interests of the six founding Member States (i.e. the Benelux, Germany, France and Italy) and above all the Franco-German duo.

The argument is developed by showing how the various EU institutions and Member States positioned themselves in the formulation of the three Decisions under consideration and to what extent their interests, resistance points and bargaining strategies consequently shaped the ultimate bargaining outcomes of the two Refugee Relocation Decisions and the EU-Turkey Statement.

Drawing on Putnam's two-level analytical framework (Putnam, 1988), elaborated upon in Section 1.3, the thesis utilizes an institutional approach in conducting the analysis. After having identified common patterns of EU crisis decision-making that trigger political impasse (Chapter 2), it analyses the role, influence and relative distribution of power of the Commission, the Council, the European Council and the Parliament in determining bargaining outcomes during the migration and refugee crisis generally and more specifically in the formulation of the three Council Decisions under analysis.

In order to structure the analysis of bargaining strategies, preferences and resistance points of Member States (see Chapters 4 and 5), the thesis followed Manners's 'anatomy' of Member States (2000). In his work studying the nature of cooperative policy-making in the European Communities, Manners (2000) sub-grouped Member States on the basis of how

they positioned in different EU negotiations in the following categories: support states, lead states, swing states and veto states. Borrowing this ‘anatomy’ of Member States seemed particularly suited to the current project insofar as Manners similarly examined the policy outcomes of various negotiations and focused on the inter-institutional and intergovernmental discussions among then-EC Member States and institutional actors. In so doing, he also focused on the bargaining strategies employed, the institutional dynamics, domestic politics, payoff structure, shadows of interaction, and epistemic communities.

Before going into further detail, this chapter will first identify key concepts which will be employed in the PhD (Section 1.2). It will then review the relevant policy and academic debates (Section 1.3), raising a number of theoretical expectations (*TEs*) on the topic which will be addressed over the course of the thesis; it will subsequently specify the analytical approach guiding the analysis (Section 1.4) and sketch out the key theoretical and methodological contributions of the study to existing research (1.5). The final section (1.6) will outline how the remainder of the thesis will be structured.

1.2 KEY CONCEPTS

Insofar as the thesis will mainly deal with the analysis of three bargaining processes and the determination of their respective outcomes, it is essential to outline some working definitions which will be used recurrently throughout the study. The European Parliament (EP), the Council, the European Commission and the Court of Justice will be referred to as “EU institutions”. The then EU-28 Member States will be analysed in their role, bargaining strategies and preferences alongside the Council of the European Union and the European Council. Since this thesis will use Putnam’s two-level conceptualization of bargaining processes, negotiations that are conducted at the EU level will be called *level I* negotiations, whereas those conducted at a national level will be referred to as *level II*.

The concept of policy preference is much debated in literature. According to Moravcsik, ‘[p]references reflect the objectives of those domestic groups which influence the state apparatus; they are assumed to be stable within each position advanced on each issue by each country in each negotiation, but not necessarily across negotiations, issues, or countries’ (Moravcsik, 1998, p. 24). However, as rightly pointed out by Putnam (1988), preferences are often subject to change over the course of transnational negotiations, insofar as the chief negotiator can try to minimize the costs of agreement by achieving a

concession in another policy area (Putnam, 1988, p. 447). Furthermore, while classical game theory assumes fixed preferences over time, changes in domestic politics and thus in the domestic balance of power can affect the incidence of a certain policy issue and therefore the total national costs and benefits of a bargaining outcome over the course of a negotiation. For this reason, the thesis will assume preferences are in fact not fixed in time and are subject to change depending on *level I* and *level II* politics. The preferences of a given actor towards a bargaining issue form what Putnam defined as *win-set*, i.e. ‘the set of all possible Level I agreements that would “win” – that is, gain the necessary majority among the constituents’ (Putnam, 1988, p. 437). The larger the *win-set* of each of the parties involved in the negotiation, the more space for agreement there is on the given policy issue. *Bargaining power* in a multi-party negotiation is considered to be the cost for party A of disagreeing with party B relative to the cost of agreeing on party B’s terms (Kuhn, Lewin and McNulty, 1983). In the context of multi-party negotiations in the EU, bargaining outcomes will be considered, in line with IR theory, as the end result of consecutive interactions involving the distribution of gains and losses for each actor involved. For simplification, the ultimate bargaining outcome of a negotiation will be considered a success as it entails a *win-win* situation for all parties involved on the EU side of the bargaining table, thereby leading to no involuntary or voluntary defection in the short term; it will be considered a *zero-sum* game when the gains realized by one EU policy actor will be entirely balanced out by the losses experienced by (an)other agent(s).

Turning to the policy focus of the thesis, migration, the following concepts will be employed. ‘Refugee relocation’, or simply ‘relocation’ refers to the transfer of an applicant for international protection from the territory of the Member State responsible for examination of his or her application – or the Member State of first entry, as laid down in Chapter III of Regulation (EU) 604/2013 – to the territory of another Member State. ‘Resettlement’ involves the transfer of refugees, not applicants for international protection, from an asylum country to another for permanent settlement, as laid down by Decision 573/2007/EC. ‘Readmission’ is defined by the International Organization for Migration (IOM) as the act of a state to allow the re-entry of an individual into its territory, be it its own national, a third-country national or a stateless person (Perruchoud and Redpath-Cross eds., 2011, p. 79).

1.3 POLICY AND ACADEMIC DEBATES

To explain how policies are made in the AFSJ, two approaches have been followed by academic and policy debates to date. The first approach, more conceptual in nature, theorizes the drivers of European (dis)integration and political impasse in JHA affairs on the basis of key IR theories and debates. The second policy approach is employed particularly by think tanks and more policy-oriented research centres and departments and focuses on empirical evidence comparatively more than the latter approach in studying policy-making in the AFSJ, such as practical issues that originate directly from the institutional and legislative frameworks that govern JHA affairs in the EU. This last approach has the primary aim of providing policy-makers with pragmatic reflections on the nature of the issues at stake and possible solutions, including how legislative frameworks account for policy change in the AFSJ. Both approaches will be reviewed and judged on their merits and weaknesses in Sections 1.3.1 and 1.3.2 that follow. However, as explored in these sections and demonstrated throughout the thesis, a policy approach represents the most appropriate tool to study decision-making processes in the AFSJ, as it is most useful in informing analyses of policy-making in the AFSJ in view of its pragmatism and its orientation towards ‘practical’ knowledge. When complemented with existing research on the distribution of, and competition for, power in the European Union (section 1.4), this approach produces sound tools of enquiry and theoretical expectations to disentangle bargaining outcomes in the AFSJ.

1.3.1 THEORIZING THE DRIVERS OF EUROPEAN (DIS)INTEGRATION IN THE AFSJ

Already in 2004, Castles hypothesised the main reasons why migration policies in the EU are bound to fail (Castles, 2004, p. 207), including exogenous factors – such as the migration industry or migrant networks – and endogenous factors deriving from contradictions internal to the institutional framework, interest conflicts in immigration or emigration countries, hidden agendas, and so forth. While the progressive *communitarization* of the AFSJ and the partial transfer of powers from the national to the supranational level would *a priori* seem to contradict Castles’s prediction, institutional change has rarely translated into policy change and Member States have seemed to remain the key ‘policy entrepreneurs’ in JHA affairs (Trauner and Ripoll Servent, 2016, p. 1429). In the face of contradicting explanations, many strands of scholarly IR literature sought to

theorize the piecemeal evolution of this policy-making area, caught in political contestation.

One of the most prominent explanations of this seemingly contradictory evolution in IR scholarship is that state and non-state actors have gradually turned migration and asylum issues into matters of security, or ‘securitized’ them. According to the Copenhagen School of Security Studies (Buzan, 1983; Stritzel, 2007), by demonizing the arrival of migrants as a threat to security and public order (Waever *et al.*, 1993), it was made easier for conservative politicians to justify by popular consent blatant violations of human rights as well as breaches of supranational or international accords for the sake of more restrictive national policies on migration and asylum. This tendency to securitize migration and asylum has arguably ‘become embedded in the language and agencies of the EU’s Area of Freedom, Security and Justice, with direct and indirect implications for third country nationals and asylum seekers’ (Triandafyllidou and Dimitriadi, 2014, p. 150). Among the main implications of security and border escalation, Chebel d’Apollonia (2012) highlighted a gradual increase in migration phobia, leading to increased political distrust and uncertainty. In an endless circle of insecurity, Member States started to turn inwards, introducing policy measures that bolstered domestic control on frontiers, irregular migrants and asylum seekers (Boswell, 2014).

Arguably, this increasingly common approach of Member States towards the refugee question has further enhanced ‘the tension between two fundamental norms of the modern state system: the universalism of human rights and the particularism of state sovereignty’ (Lavenex, 2001, p. 24). Liberal thinking views the individual as the central unit of analysis, whereas states have at a minimum the ‘role of ensuring the rights of its people’ (Lavenex, 2001, p.13). Idealists believe in the three interrelated and mutually-reinforcing notions of economic interdependence, international institutions, and democratisation (Friedberg, 2005), and that strengthening any of them ultimately leads to increased communication among states, reduced uncertainty and thus decreased likelihood of international conflicts. In contrast with the realist notion of international anarchy, liberal idealists look at international relations as a *positive-sum* game whereby mankind benefits from transnational interdependence and the strengthening of the international legal order by means of increased distributive justice, cooperation, universal values and peace. Through an idealist lens, refugees are merely individuals entitled to those same human rights that ought to be

common to all human beings, regardless of their religion, ethnicity, political preferences, nationality, or cultural background (Lavenex, 2001). From this perspective, the international community of nation-states is held responsible for preventing human rights abuses and ensuring refugee protection (Hoffman, 1994), above any consideration of national security.

For realists, on the contrary, the state is the primary unit of analysis and its main priority is to guarantee security for national citizens, to exercise control over the territorial borders of the nation-state and preserve national authority over internal affairs key to its survival (Mearsheimer, 2001). For realists, international anarchy prevails in international relations – i.e. no *Leviathan* governs the system – and actors are mainly motivated by self-preservation and power. Under the centripetal structure of the European Union, Member States have gradually relinquished national territorial control (e.g. Schengen area) and control of transnational human movement in exchange for the promise of renewed peace, stability and economic growth. The perceived inability of the EU to control migration flows prompted the so-called *immigration security dilemma* (Alexseev & Hofstetter, 2006): that is, part of society came to be uncertain of their own country's capacity to maintain peace and internal security in the face of increased immigration (Alexseev, 2011), thereby becoming more inclined to support restrictive migration policies based on worst-case outcomes and hypothetical threats. Whereas liberal thinking prioritizes refugee protection and human rights over national security concerns, pessimist realism looks at migrants as potential threats to internal security.

Arguably, this categorical explanation has the merit of providing us with a classification of EU actors as ‘hawks’ or ‘doves’ in the policy arena, which well depicts how, over the course of the migration crisis, ‘European ideals of openness and humanitarianism collided with... clashing perceptions of national responsibility, intra-Union solidarity, multiculturalism and the rule of law’ (Brady, 2020, p. 2). While useful to simplify the underlying incentives that inform the behaviour of EU actors in the making of policies in the AFSJ, these scholarly debates are hardly applicable in practice to directly tackle practical shortcomings and issues in European migration governance; these debates are equally insufficient to explain institutional and policy change in the AFSJ.

Going a step beyond traditional IR debates, the study of European integration initiated by Haas (1958) focuses primarily on how the activities of the EU interplay with traditional concerns of IR theory (e.g. how nations willingly cease sovereignty to a supranational

organisation), and, building on this, on forming specific expectations about future institutional and intergovernmental behaviour of policy actors in the EU (Diez and Wiener, 2009, p. 4). Ever since Haas first theorized neo-functionalism in 1958 (Haas, 1958), European integration theories have flourished, first aimed at explaining the drivers and outcomes of European integration (from the 1960s), later at analysing the type of governance characterizing the EU system (from the 1980s) and lastly at better understanding the extent to which individuals have *constructed* and furthered the process of European integration (1990s onwards) by means of their individual behaviours and actions (Diez and Wiener, 2009, p.7).

In the aftermath of the Eurozone and migration crises, European integration scholars have revisited their theories in view of contemporary EU politics and issues, so as to test the applicability of earlier conceptualizations to the political developments and continuous state of crisis characterizing the EU in the 2010s – not least Justice and Home Affairs. In the past, neo-functionalists such as Haas argued that gradual spillovers and path dependencies would lead to increasing degrees of transnational interdependence and of supranational capacity. For neo-functionalists, the politicization of European integration in the 2010s did not substantially affect how EU policies are made, as they argued that governments were ultimately capable of isolating decision-making from domestic contestation (Schimmelfennig, 2014, p. 335). Commenting in particular on the migration and refugee crisis, Schimmelfennig (2018) unconvincingly contended that, even though “path dependency only obtains if transnational interdependence and supranational capacity cross critical thresholds” (2018, p. 987), variation in policy outcomes during crisis times remains best explained by neo-functionalism. Compared to neo-functionalism, post-functionalism, propounded by Hooghe and Marks, better appreciates how European integration shapes the very structure of political conflict: by triggering conflictual identity politics and by increasing functional pressures to integrate incompatible belief systems, it often hinders supranational problem-solving (Hooghe and Marks, 2019, p. 1117). Even if post-functionalist theory rightly points to the explanatory power of exclusive cultural identity and that of transnational divisions for studying the process of European integration and of European crises (e.g. the refugee crisis), post-functionalist accounts do little to predict, or explain, the ultimate outcome of incremental degrees of supranational activity and are, thus, hardly useful to systematically analyse how policies are made in the European Union.

Compared to post-functionalism or other European integration theories, liberal intergovernmentalism is arguably more helpful in explaining EU decision-making outcomes in the AFSJ, not least because it factors in the constellation of intergovernmental interests and preferences in the political arena by weighing carefully the respective bargaining powers and structural constraints of policy actors in the EU political arena. For liberal intergovernmentalists, national preferences were, as much as they remain to this day, the key to designing and reforming EU institutions by means of interstate bargaining, under a model of rational state behaviour with domestically constrained preferences (Moravcsik, 1993). For Moravcsik, the decade from the Eurozone crisis onwards is only further proof that EU institutions are merely acting as representatives of the most powerful Member States' interests and are unable to further European integration without them (Moravcsik, 2018, p. 1654). This view has its merits, especially when considering the political impasse characterizing the AFSJ in the 2010s and the EU institutions' inability to build a compromise on reforming the Dublin convention, or on adopting the legislative proposals in the New Pact on Migration and Asylum (2020). Notwithstanding this, liberal intergovernmentalism remains insufficiently dynamic to factor in rapidly changing state preferences over time in the AFSJ, supranational institutions' independent action – such as the entrepreneurial action of Juncker's Commission and of the European Court of Justice during the migration crisis (see, for instance, Hammargård and Olsson, 2019) – or the myopic time horizons of state actors under domestic and electoral pressures and the geometrically growing “issue density” of JHA policies, leading to unintended consequences in the making of related policy decisions (Pierson, 1998, p. 40). For some scholars, complementing the static nature of liberal intergovernmentalism with the longer-term oriented theory of historical institutionalism may constitute a partial fix to the shortcomings of liberal intergovernmentalism (Moravcsik, 2018, p. 1668). Nevertheless, even such a combination remains a grand bargaining theory that falls short of explaining how specific policy-making decisions are made beyond institutional constraints. Another branch of this European integration theory, new-intergovernmentalism, conceptualized European policy developments in the 2010s as an intensification of policy coordination in the absence of further supranationalization (Bickerton *et al.*, 2015); while this theory has the great merit of factoring in post-functionalism and the importance of domestic contestation in influencing the process of European integration, it equally falls short of appreciating that what new-intergovernmentalism describes as a “tendency towards deliberation and consensus-seeking” (*ibid.* p. 705) is in fact a central feature of communitarization and

supranationalisation (e.g. qualified majority voting) and that some of the so-called “*de novo* bodies” (e.g. the European Central Bank) are not always less autonomous than the Commission (Schimmelfennig, 2015). The theoretical limitations of these European integration theories are all the more restrictive when analysing intergovernmental and inter-institutional bargaining and competition for power in the Area of Freedom, Security and Justice, as they do not provide scholars with replicable analytical tools to systematically analyse recurrent manifestations of dynamic partisanship, identity politics and issue-specific politicization, often confronted over the course of the migration crisis.

1.3.2 PRACTICAL ISSUES IN EUROPEAN MIGRATION GOVERNANCE

An alternative and increasingly popular scholarly framework for analysing how JHA policies are made and for identifying drivers of political impasse and success in this policy area is to observe evolving migration and asylum policy debates and to identify and analyse common patterns and practical shortcomings in the AFSJ over time.

Among various issues, weaknesses and structural shortcomings of the Area of Freedom, Security and Justice, legal and policy scholarship recurrently points out that Europe’s refugee regime is broken and is characterised, much like the global refugee regime, by fragmented duties, institutional overlaps and normative loopholes. The complexity of the international and EU’s refugee regime reflects a variety of normative and institutional overlaps, most importantly: 1) international refugee and asylum law, e.g. the 1951 Geneva Convention for Refugees and its 1967 Protocol, and the EU and national regimes on refugees and asylum seekers; and 2) international agencies, such as the International Organization for Migration (IOM) and the UN Refugee Agency (UNHCR), vis-à-vis state-based agencies.

On the first tension between international and European refugee law, Hathaway argued that the contested scope of the Refugee Convention was partly the result of a historical balancing act between the moral need to protect those who have a well-founded fear of persecution, i.e. asylum seekers, and the ‘national self-interest of receiving states’ (Hathaway, 1997, p. xviii), which ends as soon as the conditions of well-founded fear of persecution in the home country cease to exist. Upon the foundation of the international refugee system, ‘[w]hile willing to protect refugees against return to persecution, states

demanded the right ultimately to decide which, if any, refugees would be allowed to resettle in their territories' (*ibid.*).

Not only did the Refugee Convention leave room for narrow interpretations of who a refugee is, and is inherently exclusive, but also 'in the context of subsidiary protection, links between the EU regime and international law [were] more ambiguous' (Nykänen, 2012, p. 88). Such ambiguity was clearly displayed in the EU Qualification Directive 2004/83/EC (Council of the European Union, 2004) under which, before the jurisdiction of the European Convention on Human Rights (ECHR) applied, EU Member States had first to enquire whether the individual was a refugee or was eligible for subsidiary protection. The Directive overlapped and had legal precedence over Article 3 from the ECHR on torture and *non-refoulement*,⁶ with the direct implication of rendering the scheme of subsidiary protection much more desirable and applicable for EU national governments (Storey, 2008). By using the Qualification Directive, Member States were allowed to overuse subsidiary protection (Storey, 2008; Hathaway, 2011). This is especially visible given that approximately half of the asylum applications made in Europe in 2016 did not qualify for refugee status and were instead granted subsidiary protection (Eurostat, 2017). The absence of a nexus between the EU and the international regime for displaced persons left 'room for discrepant national practices reflecting varying constitutional and administrative traditions and arrangements' (Nykänen, 2012, p. 24) and fed into a system of protection that fails to focus on the individual's rights (2012, p. 47).

In the context of Europe's refugee crisis, the lack of positive obligations to protect refugees strained cooperation under international as much as EU immigration and asylum law (Bauböck, 2018). The lack of unequivocal protection obligations within Europe's 'refugee regime complex' (Betts, 2013a) left room for alternative, security-driven interpretations of refugee protection. On this matter, many scholars have argued that 'the question of physical access to protection is ambiguously regulated in EU law' as the EU installed a number of legal mechanisms, such as Article 5(2) of the Convention Implementing the Schengen Agreement (CISA) or Article 4(2) Council Directive 2001/51, that enabled Member States to conform only to a limited extent with human rights and law principles (Moreno-Lax, 2008, p. 318). This imbalance between deterrence and protection, or security and human

⁶ The practice of *refoulement* consists in the forcible return of migrants with a legitimate claim for seeking asylum and it is prohibited under Article 33 of the 1951 Protocol Convention relating to the Status of Refugees and according to the comprehensive definition of 'refugee' provided in the 1967 Protocol Relating to the Status of Refugees.

rights, had direct implications on the functioning of the EU legal framework on asylum and irregular immigration which, in line with provisions in most liberal democratic states, attempted ‘to restrict entry of unwanted migrants while trying to respect human rights and civil liberties’ (Triandafyllidou & Dimitriadi, 2014, p. 149). At a time of increasing constraints on state sovereignty, some of which had already been long pinpointed as the rise of an international human rights regime and economic globalization (Sassen, 1996; Joppke, 1998, p. 268), Europe’s refugee crisis only shed light over the priority dilemma between security and human rights in the AFSJ.

As for the second overlap between international and state-based agencies, Betts argues that there needs to be an ‘authoritative clarification of the relevant normative frameworks governing protection in the context of cross-border movements’ and a ‘clear division of interagency responsibility for migrant protection’ (Betts, 2013a, p. 181). Instead of an institutional hierarchy and clear division of roles among international agencies, states are now surrounded by a ‘humanitarian marketplace’ which has made it easier for them to strategically ‘cherry-pick’ the one agency that has the most compatible agenda and methods with national priorities (Betts, 2013b, p. 76). In Betts’s words, what explains inconsistent responses to cross-border displacement is ‘not principle but politics’, as ‘there are no universally accepted standards on how such people should be protected ... where there is ambiguity in law discretion enables politics to define what happens in practice’ (Betts, 2013a, p. 174). According to Weiss, ‘countless conferences and internal agency debates indicate a cultural change [is] under way in institutional behaviour as practitioners grapple ... to put what they are doing into a political context rather than react viscerally with the hope that good intentions alone will suffice’ (Weiss, 1999, p. 11). In light of this intersection between politics and humanitarianism, the lack of internationally accepted standards of human rights and humanitarian intervention (Betts, 2013a) has left humanitarian agencies without unequivocal guidance on how to operate and this has thus increased the likelihood of mismanagement and policy failures. Many scholars have commented on the debatable operationalisation of such principles in previous humanitarian crises, the Rwandan genocide being the most well-known example (Betts, 1994; see also Des Forges, 1999; Cahill, 2013), let alone how the use of the same set of principles with conflicting ramifications under different circumstances led to substantially distinct results in terms of political engagement and humanitarian response (Betts, 2013a).

In the unfolding of Europe's refugee crisis, the operationalisation of humanitarian principles has further highlighted some of the tensions between sovereignty and cooperation in migration politics (Geiger and Pécoud, 2014). The state's traditional concern about the sovereign control of human mobilisation (Martin *et al.*, 2006), or 'tyranny of the national' (Noiriel, 1991) has clashed with the objectives of international organisations (IOs), including respect for human rights and for international refugee and asylum law, global development, international cooperation and order under the UN framework. International organisations were originally created as arenas where peer pressure would push states to voluntarily adhere to best practices and non-binding agreements while holding each other responsible to do 'the right thing' (Joseph, 2009; see also Ikenberry and Kupchan, 1990; Schimmelfennig, 2000). Nonetheless, the humanitarian environment ultimately lacks powerful gate-keepers and is highly competitive, thus making it harder to shape a univocal response to emergencies, such as Europe's migration and refugee crisis.

Besides regime complexity and institutional overlaps, it has been argued that an inadequate European framework for Justice and Home Affairs stems from the EU's structural inability to deal with redistributive issues, conceptualized by many as a 'regulatory state'. The Member States' reluctance to cede core redistributional powers to central EU institutions (Genschel and Jachtenfuchs, 2018) was often considered the direct result of the European electorate's 'little appetite... for the kind of [con]cessions required' for the switch of the supranational model of governance from a regulatory to a redistributional state (Scipioni, 2017, pp. 13–14). Political impasse arose from the traditional EU approach to JHA affairs based on supranational centralization and transgovernmental coordination which, when applied to redistributive issues, not only 'fails to generate sufficient social acceptance at the domestic level' but in fact fuelled political contestation on irregular immigration by populist politicians (Börzel, 2016, p. 9). As predicted by Majone, a regulatory level of governance such as the EU is not fit to deal effectively with redistributive issues (Majone, 1994): arguably, Europe's migration and refugee crisis exemplified this issue as Member States found themselves short of tools to manage irregular migration at the EU level, or 'to share the burden'. At the same time, by effectively agreeing to regulatory competition and supranational centralization, Member States were arguably deprived 'of core instruments to mitigate external asymmetric shocks' (Börzel, 2016, p. 12), as shown during the Eurozone, the migration, and the Coronavirus crises. The EU's inability to deal with redistributional issues by means of regulatory powers was exemplified during the migration

and refugee crisis: Member States' governments privileged a regulatory policy approach – e.g. the European Agenda on Migration and the infringement procedures for non-compliance to the Common European Asylum System (CEAS) – which failed to tackle the structural asymmetries of the EU and the shifting of the refugee 'burden' onto *unfortunate* Member States (Börzel, 2016, p. 12; Genschel and Jachtenfuchs, 2018, pp.188-189).

The fact that central EU institutions do not have the necessary powers to deal with redistributive issues is, according to some scholars, the result of a domestic unwillingness to provide EU institutions with more powers on sensitive policy domains, owing to a 'political conflict around the transfer of competencies on control of national territorial borders from the nation-state to European supranational institutions' (Tackle, 2018, p. 127). The unwillingness of national parliaments (NPs) to provide EU institutions with 'any macroeconomically or geopolitically significant powers of compulsory mobilization of fiscal or human resources' (Lindseth, 2017, p. 41) could explain the contradictory 'co-existence of restrictive and expansive tendencies in immigration policies' (Geddes, 2001, p. 172) and the fact that EU institutions tend to be left with the weaker bargaining chip on JHA affairs. Apart from allowing for EU border-control support (i.e. the EU Border and Coast Guard Agency [Frontex]) and police/defence coordination (e.g. EU Police Cooperation Agency [Europol] and the European Defence Agency [EDA]), NPs willingly kept the hold on the trans-border mobilisation of human resources, which has in turn highly affected the EU's capacities in the face of the latest migration crisis (Lindseth, 2017, p. 41). During the migration and refugee crisis, the EU's stated objective of intra-European solidarity required Member States 'to relinquish their sovereign control over national borders' (Tackle, 2018, p. 127), yet intergovernmental tensions reflected a 'solidarity crisis' rooted in past and future projects of European integration.

The political entrenchment of Member States was particularly visible in the development of the AFSJ's institutional framework. The project of European integration in the policy areas of migration, asylum and border control is deeply rooted in the notion of the Europeanisation of governance as an incremental process of 'debordering', which makes it practically impossible to understand national and supranational law in isolation (Schuppert, 2006). The Europeanisation of refugee policies formally started with the Single European Act of 1986, which for the first time saw refugee concerns as active part of the EU's agenda.

In line with securitization theory, deepening European integration in the AFSJ was well received until it reflected a securitarian orientation, that is a ‘downward harmonisation’ of refugee and migration policies, ‘lower European standards’ and a general use of European integration ‘as a means to impose limitations on domestic liberal traditions’, as shown in Germany and France (Lavenex, 2001, pp. 193–194). Moving away from the ‘lowest common denominator’ logic from the mid-2000s, the EU gradually invested in an upgrading of the asylum system and minimum protection standards for refugees (Thielemann and El-Enany, 2010). While arguably stopping a ‘race to the bottom’ in terms of refugee protection, human rights and asylum standards, this renewed EU cooperation framework – integrated into the CEAS – developed in parallel to a North-South ‘burden-shirking’ (Thielemann and El-Enany, 2010, p. 210). That is to say, more cooperation between EU Member States came side by side with more obligations imposed onto ‘frontline’ Member States, i.e. the first countries of entry into the EU, and protection duties. The reaction of Member States on the front or else subject to secondary movements was twofold: some non-frontline Member States – most notably those on the Balkan route – either shut their borders or introduced restrictive bilateral agreements (Wunderlich, 2013) in order to avoid secondary movements and ‘burden-shifting’; Mediterranean Member States – most importantly Italy and Greece – started ‘turning a blind eye’ to the increasing numbers of incoming migrants and refugees (Caponio and Cappiali, 2018, p. 125) and concealed information on screening and identification procedures (Pastore & Roman, 2014), to enable asylum seekers to reach Northern and Central European countries before applying for refugee status. Such ‘realist’ behaviour was often the object of stark criticism from both EU institutions and other (second-line) Member States, such as Germany, as well as IOs and the international humanitarian community. Criticisms eventually peaked in December 2015 with a first round of infringement procedures adopted by the European Commission against Italy, Greece, Croatia, Malta and Hungary (European Commission, 2015). A second round was adopted in December 2017 against the Czech Republic, Hungary and Poland (European Commission, 2017b)

1.4 FRAMING THEORETICAL EXPECTATIONS ON BARGAINING IN THE AFSJ

In different ways, the theoretical and policy debates explored in the previous sections attempted to explain political impasse and success in JHA negotiations as the result of an underlying tension in preferences and motivations among EU institutions and Member

States in the making of policies in the AFSJ – be it ideological, geopolitical, opportunistic in nature. While attempting to theorize how policies and preferences are shaped in the AFSJ, these debates have the essential weakness of leaving little space to a systematic analysis of the structural, individual, institutional and personal factors that shape the preferences, bargaining behaviours and strategies of key policy actors over time and how these in turn affect the development of the AFSJ.

Indeed, only few scholars have tried to put bargaining outcomes in the AFSJ into perspective with underlying motivations and preferences of policy actors, or with the distribution of power in place for the negotiation studied (see for instance Moravcsik and Nicolaïdis, 1999; Tallberg, 2004; Reslow and Vink, 2015). The shortage of systematic applications of bargaining theory to the study of negotiations in the AFSJ can be understood in light of the ‘intellectual origin of these models [for empirical analyses of EU negotiations] in game theory’, whereby Member States are seen as ‘functionally equivalent, leaving little theoretical space for variation in the parties’ formal control of the game’ (Tallberg, 2004, p. 1000). However, the selected case studies call for a revaluation of this standard approach to preferences in the EU policy arena, particularly in a sensitive area such as that of Justice and Home Affairs.

A scholarly analysis of structural sources of power and influence for Member States and EU institutions, as well as how agents compete for more influence in policy-making, is crucial to drawing some preliminary theoretical expectations (*TEs*) on how the Refugee Relocation Decisions and the EU-Turkey Statement were shaped. Responding to Moravcsik’s call for a more substantiated theory of preference formation (Moravcsik, 2018), this thesis uses the theoretical expectations outlined in the following sections as a starting point for the analysis of bargaining outcomes in the AFSJ. Conducting this analysis under the assumption that EU policy actors are inherently ‘constrained at home by domestic societal pressures and abroad by their strategic environment’ (Moravcsik, 1993, p. 474) will be more conducive to an in-depth understanding of how policies in the AFSJ, such as the two Refugee Relocation Decisions and the EU-Turkey Statements, are shaped.

1.4.1 DISTRIBUTION OF POWER AMONG MEMBER STATES IN THE AFSJ

Starting from Member States, there are three different dimensions of power that shape their relative influence in the EU: namely, structural, institutional and individual sources of

power (Tallberg, 2008). The most crucial of these sources of power for a Member State consists in the aggregate amount of its objective resources and capabilities, spanning from its demographic and territorial size to its economic and military strength, from its administrative and technological capacity to its political stability; this is otherwise known as the ‘aggregate structural power’ of a Member State (Tallberg, 2008, p. 689). Among these, demographic size is particularly relevant for determining the voting weight for Member States both in the Council of the European Union and in the European Parliament (Brown, 2000), hence it serves as a *proxy* for their structural power in the EU arena. In the European Union, demographic size defines whether a Member State can be considered large, small- or medium-sized and, in so doing, it reflects in the super majority required by the qualified majority voting system (Rose and Trechsel, 2014). According to Panke (2010, p. 15), 19 out of 28 EU countries are small-sized, as based on the average of votes in the EU-28 Council of Ministers (12.78) under the Nice Treaty.⁷

As most policy areas, including the AFSJ post-Lisbon, are now predominantly governed by a double majority voting system (or qualified majority voting, QMV) instead of unanimity, the actual voting weight of a Member State has become increasingly relevant to influence policy-making outcomes. In terms of EU capacity, decision rules requiring a bigger blocking minority are considered to lead to more organizational decisiveness (Meerts, 1997), hence more effectiveness in policy-making. European integration scholars have argued that, under QMV, the Commission focuses more on big states’ priorities, in light of their stronger bargaining power (Bunse, Magnette and Nicolaidis, 2005, p. 35-37; 44-45). Furthermore, bigger Member States are more likely to have an ‘outside option’ (Moravcsik, 1993; Voeten 2001) for when the negotiated solution in policy-making is not aligned with their national preferences. This, alongside the richer *entourage* of ‘threats, side-offers or issue-linkages’ (Hayes-Renshaw and Wallace, 2006, p. 252; Hix and Høiland, 2011) that make bigger Member States more likely to be able to persuade partners in international negotiations, put smaller Member States at a structural disadvantage in international negotiations (Panke, 2010; Thomson, 2011, p. 188).

⁷ The Lisbon Treaty adds the second component of the double majority principle (according to which 55 % of the Member States representing at least 65% of the population are required to pass a legislative act). Thus, Member States considered small based on the Nice Treaty measurement of political power are also the same, with more limited political weight under the Lisbon Treaty.

For smaller Member States, the use of QMV has arguably caused an integration dilemma: especially in security-related policy areas, it created a trade-off between more autonomy and influence within the EU (Wivel, 2005). In other words, the more autonomy a Member States retains in the EU, the less leverage and influence this will have in EU negotiations, and vice versa.

With the changes to the JHA framework under the Lisbon Treaty, the presence of historical coalitions within the Council is increasingly viewed and criticized as creating a structural disadvantage for more independent (or sovereignty-oriented) Member States, cases in point being the UK, Austria, Germany and the Netherlands between 2009 and 2015 (Hix and Hagemann, 2015a, 2015b). Indeed, various examples of intra-Council coordination exist, such as the German-Franco couple, the Benelux Union (see, for instance, Thomson, et al., 2004; Zimmer et al., 2005), the Baltic group, the Nordic Council, and the Visegrád group (Naurin & Lindahl, 2008). Even though pre-Lisbon literature did not find any fundamentally stable coalitions across different policy areas or within a single one at the Council (Thomson et al., 2004), the Franco-German *duo* or couple is often regarded as maintaining decisive leadership in setting the agenda at the European Council and furthering European integration especially at times of crisis (Krotz and Schramm, 2021, p. 49). In an asymmetric relationship, Germany is regarded as a ‘reluctant hegemon’ in spite of its increasing strength and recognition (Paterson, 2011; Bulmer and Paterson, 2013), and France as the smaller partner (Vassallo, 2013, p. 110). Indeed, Germany and France are seen as the two most essential partners by the remaining Member States in EU agenda-setting and decision-making (Busse et al., 2020) and it could be argued that their joint leadership is ‘a necessary condition for problem-solving and consolidation at the Union level’ (Krotz and Schild, 2018, p. 1179). While the Franco-German *duo* may be considered an insufficient force of cohesion for shaping long-term reforms in the European Union (*ibid.*, p. 1179), its dominant, necessary role in agenda-setting remains uncontested and its joint exercise of political leadership is particularly demanded at times of existential crisis in order to overcome decision-making deadlocks (Krotz and Schramm, 2021, p. 55). Indeed, in a state of continued existential crisis in Europe since over a decade, EU Member States have increasingly demanded for a Franco-German joint exercise of political leadership, forming ‘an inner negotiation core’ to broker intergovernmental compromises (Degner and Leuffen, 2020). Thus:

The first theoretical expectation (TE1) of this thesis is that the formation of multilateral compromises in the AFSJ follows predominantly the *win-sets* of the six founding Member States, as strongly guided by the Franco-German *duo*, whereas the preferences and concerns of small- and medium-sized countries are left out of the bargaining process.

If confirmed by the analysis, this would be in line with most recent literature pointing to the importance of Germany in determining political compromises in JHA affairs and in shaping a more open and homogeneous migration regime in Europe from as early as the aftermath of the Second World War (Comte, 2018), with France offering crucial political backing for German plans (2018, p. 180). This theoretical expectation seems all the more appropriate in the face of post-Lisbon changes in the voting system and relative weight of Member States in the AFSJ.

QUALIFIED MAJORITY VOTING IN THE AFSJ

In the past, decision-making in the Area of Freedom, Security and Justice was predominantly based on consensus-building as decisions were taken by unanimity. This meant that while smaller Member States were less likely to exercise their veto power compared to big ones (Rose and Trechsel, 2014), a Member State was nevertheless always able to veto decisions based on key national concerns. However, ever since the adoption of the second Refugee Relocation Decision – as noted, performed for the first time in the history of the AFSJ by the explicit use of QMV – voting weight has become more relevant for determining the dynamics of intergovernmental bargaining in the AFSJ.

Qualified majority voting is far from being a new legislative instrument in the European Union (it was envisaged in the original 1957 Treaty establishing the European Community, or TEC) and traces its origins as an ordinary voting mechanism for the EU's policy area Justice and Home Affairs within the Council back to the Intergovernmental Conference (IGC) of 1996-97, which paved the way for the Amsterdam Treaty of 1997. At Amsterdam, it was agreed that, for a transitional period of five years, the Commission and Member States could propose legislative initiatives in the area of Justice and Home Affairs, to be adopted unanimously by the Council. Once that five-year period expired, the Council would determine by unanimity whether proposals based on the new Title IV of the Treaty

Establishing the European Community (TEC)⁸ – introducing mechanisms for the progressive establishment of the AFSJ – ‘would in the future fall under qualified majority voting and co-decision rules’ (Niemann, 2012, p. 10; see also House of Lords, 2001). While this was described by many as substantial progress towards the supranationalization of Title IV (Niemann, 2012; see also Brok, 1997), this change was only to materialize ‘if – and this is a big if – this move finds unanimous backing in the Council’ (van Selmer-Thorburn, 1998, p. 632; see also Moravcsik and Nicolaïdis, 1998). In fact, the unanimity system was maintained at the Council Level – Title IV, Arts. 61-69 TEC – until 2009. With the Nice Treaty of 2001, a new voting system allowed for an adjustment to voting weights for the enlarged Union from 15 to 25 Member States, with the threshold for legislative adoption at the Council level set at 74%, cast by a majority of Member States, and, optionally, a check that 62% of the overall population would be represented by such a majority. Under Nice, there was also a ‘smaller-scale revision of institutional rules’, which paved the way to the use of qualified majority voting in areas related to irregular immigration and expulsion (Trauner and Ripoll Servent, 2014), albeit ‘under prior unanimous adoption of Community legislation defining the common rules and principles governing these issues’ (Niemann, 2005, p. 20). This condition was ultimately fulfilled in November 2004, when governments agreed to invoke a ‘passerelle clause’ from the Nice Treaty in order to transfer decisions on all issues related to asylum policy (Art. 78 of the Treaty on the Functioning of the EU, or TFEU), illegal immigration (Art. 79 TFEU) and part of the rules on short-stay visas and residence permits (Art. 77 TFEU) from unanimity to QMV and co-decision (General Secretariat of the Council of the EU, 2009, p. 2; Hix and Høiland, 2011, p. 276).

The first Decision agreed under this system was Directive 2008/115/EC, otherwise known as the *Returns Directive*, on 16 December 2008. It was not until the entry into force of the Lisbon Treaty in 2009 that the voting formally changed to ‘double-majority’ (Article 16 TEU / Article 238 TFEU), with a stronger focus on the demographic weight, meaning that for a proposal from the Commission or the High Representative and Vice-President (HR/VP) of the Commission , a qualified majority for adoption is reached if at least 55% of Member States (72% if not proposed by the Commission or the High Representative)

⁸ The competences laid down in Title IV of the Treaty were part of the ‘third’ pillar on cooperation in the fields of justice and home affairs, under the Maastricht pillar structure.

and at least 65% of the EU's overall population are on board; a blocking minority to reject the adoption of a legislative proposal requires votes representing at least 35% of the EU's overall population. According to Panke (2010), this new double majority system aimed at representing both the international legal principle of the equality of states (one state, one vote) and the democratic principle of the equality of citizens (one person, one vote). It was only with Lisbon that all legislative proposals in the AFSJ started to be adopted under co-decision unless otherwise stated, as set out in Article 294 TFEU. In practice, this meant a gradual change from unanimity to QMV,⁹ together with co-decision of the European Parliament and subject to the full jurisdiction of the CJEU.

Even though Lisbon formalized the AFSJ's nearly-full switch to the *Community method* – i.e. the Ordinary Legislative Procedure, formerly known as Codecision Procedure – and its voting mechanisms, up until the migration and refugee crisis 'Member States' governments ha[d] often managed to maintain their national interests in the adoption of legislation on the basis of lowest common denominator agreements' (Niemann, 2012, p. 35). In fact, there was an implicit understanding that there would always be the 'option of reasserting control when and if the Commission [should stray] too far from member-state preferences' (Pollack, 2013, p. 10). Seeing as Justice and Home Affairs was only communitarised under Lisbon, it escaped most scholarly studies on decision-making in the Council (Roos, 2019). According to official records predating the 2015 crisis, approximately 80% of all Council Decisions in practice passed by consensus – that is, in 'absence of explicit opposition' and without a vote upon their adoption (Novak, 2013; Novak and Elster, 2014). For most of them, an agreement would in fact be reached in advance among the working groups (70% of decisions) or the Permanent Representatives' Committee (Coreper) for 15 to 20% of the times, leaving approximately 5 to 10% of the legislative items to the Ministers (Hayes-Renshaw and Wallace, 1997, p. 40; see also Lewis, 2012).

The absence of explicit opposition did not necessarily imply that Member States never objected to Decisions passed by consensus in the AFSJ. Indeed, while two-thirds of all

⁹ The new QMV rule for voting in the Council of the European Union is to be found in the Treaty on the Functioning of the European Union in the following sections: Art. 78 TFEU (Asylum); Art. 79 TFEU (Immigration); Art. 77 TFEU (Border Checks); Art. 70 TFEU (Freedom, security and justice – cooperation and evaluation); Art. 69a TFEU (Criminal judicial cooperation); Art. 69b TFEU (Criminal law); Art. 69d TFEU (Eurojust); Art. 69f TFEU (Police Cooperation); Art. 69g TFEU (Europol); Art. 188R§3 TFEU (Response to natural disasters or terrorism); Art. 188i TFEU (Emergency international aid); Art. 188j TFEU (Humanitarian aid); Art. 28e TFEU (Common Defense Policy).

proposals are decided by consensus, between 2004 and 2016 ‘consensual agreement [could not] be reached in one out of three proposals’ in the EU JHA Council (Roos, 2019, p. 576). Nevertheless, qualified majority voting was often considered a ‘sword of Damocles hanging above the negotiation table’ (Bal, 2004, pp. 129–130), informally used as a political incentive to reach agreement without the need for a vote. The Council’s usual practice is to count the participants in order to determine whether there is a blocking minority but talk explicitly about it ‘only outside the Council’s room, when the Presidency and the Secretariat officials meet for working sessions, and also during bilateral meetings between the Presidency and [M]ember [S]tates’ representatives’, but not during the plenary sessions (Novak, 2010, p. 86). Some scholars have attributed the preference for consensus at the Council level to the logic of ‘blame avoidance’ (see, for instance, Weaver, 1986; Hood, 2010; Novak, 2013), although it could be equally argued that this preference persisted ever since the Luxembourg compromise, as revived in the Treaty of Amsterdam (see Moravcsik and Nicolaïdis, 1999). It is also worth noting that negative or abstention votes are usually circumvented as the benefits of such actions rarely surpass the potential repercussions that Ministers encounter at home for having been outvoted in the EU negotiations (Novak, 2013). In this sense, the practice of counting votes is still deemed important by EU negotiators as it is a proxy for the less attractive side-payments that small states can offer for issues they care about, as compared to bigger Member States (Panke, 2010; Mattila, 2004).

Despite the strong consensus culture that dominates the Council and the rare application of QMV in voting practice in the AFSJ, the second Refugee Relocation Decision saw the temporary rupture of the consensus norm at the Council, with five small- or medium-sized Member States outvoted within the Council, even though it only differed from the first Decision in the number of persons to be relocated and in the fact that it was based on mandatory relocation quotas for all Member States. Seeing as the second Refugee Relocation Decision was negotiated in crisis circumstances, i.e. high asymmetry of information and rushed decision-making, it could be argued that little bargaining space was left for seeking consensus and for reaching a *positive sum* compromise that would take into account the preferences, concerns and interests of all Member States. As explained in a variation of Putnam’s two-level game under asymmetric information (Iida, 1993), bargaining under high asymmetry of information often leads to a higher probability of breakdown of negotiations (or political impasse) as, throughout the negotiations, a) the executive is often not centralized in all Member States; b) the timing of the decision-making

process is too rushed before political (re)alignment between *levels I* and *II* is achieved in a Member States; c) there are changes in government or coalition in charge that affect a Member States' perceived or genuine bargaining position. The same rationale could be applied to the three policy-making processes under analysis, as they were all negotiated in crisis. Therefore:

The **second theoretical expectation of this thesis (TE2)** is that strong asymmetry of information and rushed decision-making lead to a higher probability of breakdown of, or political impasse in, negotiations.

THE EXERCISE OF POWER

While population size affects a Member State's relative standing in EU negotiations, the possession of power is not necessarily the only key to determine a Member State's bargaining behaviour (Thorhallson & Wivel, 2006). According to some, the possession of power is, in fact, just a social construction (Hanf & Soetendorp, 1998), heavily dependent upon the 'domestic government's view of its own state's size and capability' (Archer & Nugent, 2002, p. 2-3) or the extent to which a country's leaders consider themselves to have the ability to make an impact on the system on their own (Keohane, 1969, p. 296).

Whilst a country's aggregate power and voting weight are useful starting points in the analysis of EU negotiations, it is also crucial to capture how and when Member States *exercise* their power. Member States do not deploy the same amount of resources and capabilities on all policy issues at stake within the EU (Tallberg, 2008, p. 692). This explains why structurally disadvantaged Member States often 'punch above their weight' in the EU policy-making arena on issues that are highly salient in domestic politics or are otherwise related to the country's specific expertise, or why big Member States tend to wield more power on certain policy areas rather than others (see the case of German foreign and defence policy in Tallberg, 2008). The selective exercise of issue-specific power is particularly crucial for small Member States seeking to secure some influence on key policy interests, insofar as they often suffer from an inherently smaller administrative capacity, both in terms of policy and scientific expertise, and in establishing and maintaining links with EU institutions (see, for instance, Panke, 2010).

To *exercise* power in bargaining, Member States can use either a) capacity-building strategies or b) shaping strategies. Shaping strategies relate to the direct "uploading" of national strategies to the EU level and are highly dependent upon a country's administrative

capacity, i.e. aggregate structural power, and a country's direct interest in the issue at stake. Such strategies encompass arguing, bargaining, coalition-building, framing, networking with other Member States, acting as a mediator or compromise broker and directly lobbying EU institutions. Capacity-building strategies are most often used by small Member States to 'counterbalance size-related disadvantages' (2010, p. 20) and primarily consist in obtaining (or "downloading") additional information from other Member States or EU institutions on the issue at stake, so as to perfect the country's bargaining position and later policy implementation. Lastly, a Member State's success in exercising power in the EU policy-making arena also depends on whether the country has good alternatives to negotiated agreements or whether it is in urgent need of an agreement (Moravcsik, 1998; Tallberg, 2008). Because voices at the Council are not equal, small states have to wield influence over policy-making processes more parsimoniously than bigger Member States, only when negotiations touch upon nationally sensitive issues (Tallberg, 2008, p. 691). Therefore:

The third theoretical expectation of this thesis (TE3) is that Member States for which the issue at stake is highly salient in domestic politics wield more bargaining power in the policy-making process than otherwise expected from their aggregate structural power.

MEDIATING STRUCTURAL POWER ASYMMETRIES

Besides structural and state sources of power, individual and institutional sources of power are also relevant, albeit of secondary importance, to shaping a Member State's ability to influence policy outcomes and to 'mediate the impact of structural power asymmetry' (Tallberg, 2008, p. 703). In terms of individual sources of power, expertise and relations are seen as influencing bargaining outcomes in that, according to Putnam's two-level framework, HOSG and chief negotiators enjoy a certain degree of autonomy in their bargaining strategies at the two levels of governance (Putnam, 1988; Tallberg, 2008).

As for institutional sources of power at the EU level, the rotating Council Presidency represents the principal one, besides veto power in qualified majority voting. The general expectation is that Member States holding the Council Presidency do not directly promote their own national interests via this role, but instead use it to coordinate Member States in finding political compromises (Bjurulf & Elgström, 2004), while at times encouraging norm adoption and changing normative convictions (Björkdahl, 2008, p. 146-147). Even so, the Council Presidency gives the comparative advantage of setting the agenda and norm

advocacy (Björkdahl, 2008): thanks to the culture of reciprocity and of conflict prevention dominating EU negotiations, Member States rarely dispute the agenda of the rotating Presidency unless it goes directly against key national interests. Furthermore, by chairing Council working parties and closely working with the Commission and the European Council Presidents, it is possible for a small Member State indirectly to promote key national interests (Bátora, 2017), not least by taking on the role of gatekeeper and strategically including or excluding issues from the negotiations and the policy agenda (Tallberg, 2003). Under a QMV decision-making framework, this institutional source of power would seem to be even more relevant in that ‘the Presidency’s room for manoeuvre expands’ (Tallberg, 2004, p. 1006). With the introduction of the Trio Presidency structure under the Lisbon Treaty, even small and inexperienced Member States have been facilitated in their role as mediators while holding the rotating chair. Under the new rules, small Member States were provided with the resources and information needed to broker compromises and to avoid political conflict among Member States (van Gruisen, 2019), while modernizing and enhancing the quality of their public administration (Kaniok and Šteigrová, 2014, p. 350).

Insofar as, over the course of the crisis, bigger Member States often used a ‘take-it-or-leave-it’ approach to reach their own goals, as best exemplified by the explicit use of QMV for the adoption of the second Refugee Relocation Decision, we expect to find strong structural power asymmetries among Member States in the negotiations under analysis.

The fourth theoretical expectation (TE4) is that institutional and individual sources of power are recurrently used as counterbalancing measures; however, they are not sufficient to tip the balance of power when employed by structurally disadvantaged Member States.

1.4.2 DISTRIBUTION OF POWER AMONG EU INSTITUTIONS IN THE AFSJ

According to bargaining theory, a supranational regime such as that of the European Union is established to enhance the efficiency of intergovernmental bargaining (Keohane, 1984; Moravcsik, 1993) and is mainly shaped by ‘the pulling and hauling among domestic groups’ and state preferences on supranational cooperation over certain policy domains (Sweet and Sandholtz, 1997, p. 303). Based on principal-agent theory, the gradual delegation of powers from the national to the supranational level of governance is usually performed under the assumption of the political neutrality of the agent (see Hix and

Høiland, 2011); nevertheless, institutional actors also have inherent policy preferences and interests, often leading to attempts of competition for more public resources at hand (e.g. maximization of budget available) or for more independence in executing tasks (Hix and Høiland, 2011, p. 24; see also Niskanan, 1971; Dunleavy, 1991). While this holds true for other EU policy areas, the highly sensitive matters inherent to the Area of Freedom, Security and Justice meant that EU institutions and agencies were for a long time excluded from the bargaining process, let alone from a competition for more powers in legislative and executive politics.

LEGISLATIVE POLITICS

Thanks to the reforms undertaken under the Amsterdam Treaty, there was a progressive move in the direction of full bicameralism, with the European Parliament gradually evolving into a mature and internally cohesive political institution (Hix, Noury and Roland, 2007; Hix and Noury, 2009; Roland, 2009) and co-legislator in most social-policy areas. However, the real structural upgrade for the European Parliament in the AFSJ – was not to come until 2009 and, as James Hampshire (2016) put it, ‘the coming of age of the European migration governance’. With the Lisbon Treaty provisions were introduced to shift most of the decision-making in JHA affairs from unanimity to the Ordinary Legislative Procedure (OLP). This came as the ultimate step to formalize the Member States’ commitment made in the *Hague Programme* to move immigration and asylum-related policy issues to co-decision, as a result of the EP’s demonstrated ability for good scrutiny on a large number of directives and policies between 1999 and 2004 (Hix and Høiland, 2011, p. 297) and, above all, an increased alignment between Member States and the EP in liberal attitudes towards immigrants (see Hix and Noury, 2007; McElroy and Benoit, 2007).

While post-Lisbon legislative developments in the Area of Freedom, Security and Justice have seen a gradual change of the underlying institutional rules (Trauner and Ripoll Servent, 2016), they nevertheless were far from meeting the expectations of further liberalization and advancement towards a pro-migrant approach. As explained by Trauner and Ripoll Servent (2014), this was partly due to the reaction of Member States to the ‘communitarization’ of the AFSJ, which paradoxically they themselves had just agreed to. This prompted them to reassert control over these policy areas, partially because the EP itself did not make use of its new powers as expected, but rather gradually aligned with the

Council (Lopatin, 2013). As a result, the Parliament failed to develop an independent voice comparable to that of the Council in the AFSJ (Niemann, 2012), shown by the bargaining dynamics that characterized the migration and refugee crisis and the formulation of the policies under analysis in this thesis.

As explained in more detail in Chapter 2, in all three Decisions under analysis the European Parliament seemingly had the structural disadvantage of working under a special consultation procedure, under Art. 78(3) TFEU, which made it the weakest institution in terms of influence on the ultimate policy-making outcome. However, some scholars have started to question conventional wisdom according to which the EP has the weakest bargaining chip under consultation procedure: in a study that looks at all consultation proposals between 1999 and 2007, Kardasheva (2009) found that the EP can often exercise influence on the final legislative outcome by delaying the text's reading and thereby securing concessions from the Council and the Commission as based on its own policy preferences. In so doing, Kardasheva found that the EP successfully influenced the policy outcome in almost 28% of all JHA-related legislative proposals that were passed under consultation procedure in the given timeframe, measured by the number of times in which the EP saw its demands incorporated into the final legislative text adopted by the Council (Kardasheva, 2009, p. 395). This is not to say that the EP has unlimited power under the consultation procedure. In general terms, the European Parliament is often considered 'no more than a "lobbyist" of the Commission and the Council' under consultation (Hix, Noury and Roland, 2007, p. 19). In such procedures, its ultimate ability to exert influence continues to be strongly predicted by the support received from the Commission, the type of issue at stake, and the EP's ability to link its opinions to other co-decision proposals (Kardasheva, 2009, p. 395). Kardasheva nonetheless argues that the more urgent a legislative proposal is for the Commission, but not particularly so for Member States and there is no agreement on the proposal in advance, the more likely the EP is to have success influencing the ultimate legislative outcome under consultation procedure (2009, p. 399). Therefore:

The fifth theoretical expectation (TE5) is that for policies adopted under consultation procedure, the EP is only able to influence the legislative outcome if the legislative proposal is particularly urgent for the Commission and not so much for the Member States; conversely, if the Commission and the Council are aligned on the urgency of a

particular legislative proposal, the EP's role is substantially scaled back to a marginal player.

The reintroduction of irregular immigration on the agenda of the European Council as from April 2015 onwards would suggest that the latter was the case in the making of three policies under analysis.

AGENDA-SETTING AND EXECUTIVE POLITICS

In the early phases of the European Council, the only form of supranational coordination on matters of migration, asylum and border control was informal and purely intergovernmental in nature; indeed, Member States held 'strongly divergent views about competencies for the EU' in this policy area, as well exemplified by the opt-outs demanded and obtained from this framework of cooperation by Ireland, the UK and Denmark (Wessels, 2015, p. 231). Until the beginning of the 2010s the European Council's ability to set the agenda on JHA affairs was mostly limited to the drafting of multi-annual legislative guidelines (e.g. Tampere Summit of 1999, Hague Programme of 2004, Stockholm Programme of 2010).

Whereas Maastricht had left a 'considerable gap between the legal provisions of the Treaty and the actual activities and impact of the European Council' (Wessels, 2015, p. 234), the Lisbon Treaty more clearly defined the role of the European Council; besides designating a permanent European Council (EUCO) President for a renewable term of two and a half years (Art. 15 TEU), it also set up procedural brakes under the new OLP-based framework to ensure that the European Council had an emergency brake in the area of judicial cooperation in criminal matters (under Articles 82(3) and 83(3)). In parallel, Lisbon also finalized the shift of the AFSJ under the EU policy mainstream, abolishing the three-pillar structure and locating the AFSJ within the Treaty on the Functioning of the EU, thereby enhancing the role of the Commission in the AFSJ (Nugent and Rhinard, 2015, pp. 280–281).

Comparing the relative influence of the European Council and that of the Commission in EU agenda-setting, the former could be described as the 'fusion engine', or the 'highest instance of political appeal' (Wessels, 2015, p. 235), whereas the Commission's agenda-setting role is subject to variation based on the circumstances of each policy-making process.

In the making of decisions too, there was initially a preference for intergovernmental coordination among Member States over the full supranationalization of the AFSJ. In Justice and Home Affairs, the Council of Ministers has been generally quite successful in keeping a settled “*policy core*” in a situation of institutional change (Trauner and Ripoll Servent, 2016, p. 1420); in other words, whenever a newly empowered EU institution tried to push for policy change in the AFSJ against the status quo position of Member States on the matter, the Council found more opportunities to cooperate at a more intergovernmental rather than supranational level of governance, while favouring consultation procedures in the face of non-agreement.

Notwithstanding the structural advantage that the Council holds against the EP and the Commission in the making of JHA policies, the Commission has more opportunities for independent action under consultation than under co-decision, particularly when ‘the required majority exists in the Council in favour of changing the *status quo*’ (Costello and Thomson, 2013, p. 1037). To further complicate matters, under certain circumstances the Commission can gain renewed legislative impetus: namely from unexpected external events which prompt change, that would otherwise have been unattainable under normal circumstances (see, for instance, Bauer and Becker, 2014). In addition, while Member States remain pivotal in JHA policy-making, the Lisbon Treaty has contributed to a more entrepreneurial role for the Commission in this policy area (see Kaunert, 2009); as a result, the Commission contributed to the gradual communitarization of the AFSJ by means of strategic alliances with other EU institutions and civil society actors (Kaunert, 2010, p. 185). As the bureaucratic neutrality of the Commission is increasingly questioned in view of its politicization (Rhinard, 2010; Dinan, 2016; Nugent and Rhinard, 2016; Hammargård and Olsson, 2019), the role of the Commission in decision-making has been attracting the attention of scholarly literature. Nugent and Rhinard (2019) identify four different ways in which the Commission is acting politically, that is following through electoral promises throughout its political mandate. The Commission can play an ‘ideologically political role’, supporting a political vision of the future while setting its agenda ‘in line with wider societal needs and narratives’ (Nugent and Rhinard, 2019, p. 210), or a ‘policy political role’, advancing specific policies in line with its political priorities. It can also play an ‘organisationally political role’, with the task of protecting its own seat at the decision-making table with other EU institutions (2019, p. 207), or otherwise an ‘administratively

political role' in the management and implementation of adopted policies, involving a certain 'degree of subjective decision-making' (2019, p.207.).

With the 'crisisification' of EU policy-making over the course of the past decade (Rhinard, 2019), it has been argued that the European Commission failed to turn crises into agenda-setting opportunities. As discussed in Chapter 2, the Eurozone crisis was arguably solved by means of intergovernmental solutions crafted by Germany and its northern allies, alongside increased 'delegation to *de novo* bodies' (Bickerton *et al.*, 2015, p. 713) without strengthening pre-existing EU institutions. While the engaged and energetic leadership of Commission President Juncker during the migration and refugee crisis may challenge this take on the Commission's role in post-Lisbon EU bargaining, post-crisis scholarship has deemed the principal policy initiatives of Juncker's Commission 'worthy but not particularly fruitful', setting the agenda but failing to accomplish concrete results (Dinan, 2016, p. 114). After all, according to Hammargård and Olson (2019), the Commission's role in times of crisis depends upon the Member States' degree of engagement and the Commission's political mandate, in such a way that the more Member States are engaged, the less the Commission will actively try to set the agenda, and vice versa (2019, p. 174).

Drawing on the state of the art on executive politics in the AFSJ:

The sixth theoretical expectation of this thesis (TE6) is that in times of crisis, the Commission's role depends upon the intensity of its political mandate and the Member State's degree of engagement on the policy issue at stake (Hammargård and Olsson, 2019).

1.4.3 SUMMARY OF THEORETICAL EXPECTATIONS

In summary, the following general theoretical expectations will be explored while analysing bargaining dynamics in the policy formulation of the Refugee Relocation Decisions and the EU-Turkey Statement:

TE1. The formation of multilateral compromises in the AFSJ follows predominantly the *win-sets* of the six founding Member States, as strongly guided by the Franco-German duo, whereas the preferences and concerns of small- and medium-sized countries are left out of the bargaining process.

TE2. Strong asymmetry of information and rushed decision-making lead to a higher probability of breakdown of, or political impasse in negotiations.

TE3. Member States for which the issue at stake is highly salient in domestic politics wield more bargaining power in the policy-making process than otherwise expected from their aggregate structural power.

TE4. Institutional and individual sources of power are recurrently used as counterbalancing measures; however, they are not sufficient to tip the balance of power when employed by structurally disadvantaged Member States.

TE5. For policies adopted under consultation procedure, the EP is only able to influence the legislative outcome if the legislative proposal is particularly urgent for the Commission and not so much for the Member States; conversely, if the Commission and the Council are aligned on the urgency of a particular legislative proposal, the EP's role is substantially scaled back to a marginal player.

TE6. In times of crisis, the Commission's role depends upon the intensity of its political mandate and the Member State's degree of engagement on the policy issue at stake (Hammargård and Olsson, 2019).

1.4 ANALYTICAL APPROACH

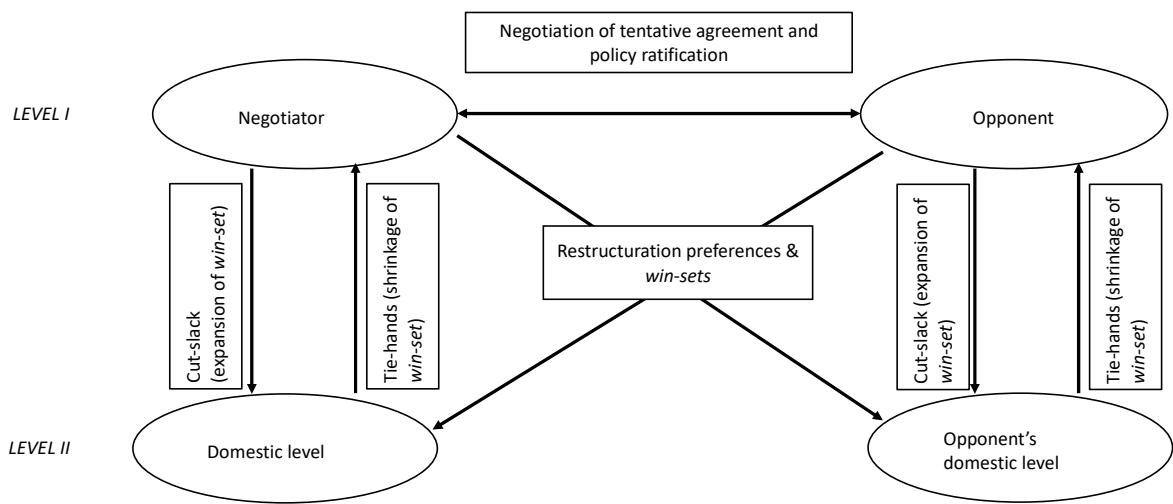
In order to test the reliability of these theoretical expectations, the dissertation primarily makes use of the disciplinary lens of European integration: insights from IR studies serve as a means to contextualize power and decision-making in the AFSJ within the broader spectrum of fundamental principles and drivers of international collaboration.

Putnam's two-level game framework (1988) will be used to guide the analysis of the negotiations under discussion. This analytical framework was deemed most suitable because it allows for the study of interactions, pressures and influences between *level I* – the supranational level of governance (EU) – and *level II* – domestic politics, while keeping a focus on EU politics in the formulation of the three Decisions selected. The concern of this thesis is to understand how the tensions between these two levels determine bargaining outcomes in the AFSJ generally and particularly the two Refugee Relocation Decisions and the EU-Turkey Statement: in Putnam's words, 'not whether the deal was wise economically, but how it became possible politically' (Putnam, 1988: 428). Placing the focus on political bargaining and inter-level interactions in the formulation of these policies

will allow an in-depth understanding of the role and influence of political actors (namely, EU institutions and Member States) in formulating policies in the AFSJ.

One of the key theoretical assumptions of Putnam's two-level game is that, while for national political leaders there are 'powerful incentives for consistency between the two games' (1988, p. 434), the ratification of any agreement follows the following process: 1) a tentative agreement is reached among negotiators at the supranational level (or *level I*) and; 2) separate discussions take place within each domestic constituency about whether or not to ratify the agreement (*level II*).

As shown in Figure 1.1. below, adapted from Moravcsik (1993, p. 32) and Ripoll Servent (2014, p. 572), Putnam's two-level game defines clear mechanisms based on which multi-party negotiations take place. Chief negotiators shape tentative agreements at *level I* that are shaped on the basis of their respective *win-sets*, of those of domestic negotiators, alongside the degree of centralized executive between the two levels during negotiations (Putnam, 1988, pp. 432–433). The more preferences and key concerns are aligned between the two levels of governance, the more chief negotiators at *level I* can concentrate on the altering of the opponent's *win-set* by: demanding more concessions from the latter; offering side-payments or synergistic issue-linkages (i.e. creating policy options for the opponent that would otherwise be beyond its domestic control); changing the costs of no agreement; or tying its own hands by pretending that there is no room for *manoeuvre* at the domestic level. The more a policy actor's interests are removed from those of the domestic arena, the higher the likelihood will be for the negotiator to escape its mandate originating from either or both *levels I* and *II* (Ripoll Servent, 2014, p. 572). Another mechanism that can affect negotiations is a change of interests throughout the negotiations, often due to the 'reverberation' of international pressures within domestic politics (Putnam, 1988, p. 456).

FIGURE 1.1: MECHANISMS OF A TWO-LEVEL GAME

Source: Author's own, adapted from Moravcsik (1993, p. 32) and Ripoll Servent (2014, p. 572).

By incorporating our understanding of the distribution and competition for power among EU institutions and Member States into Putnam's two-level game framework, it is possible to operationalise it in such a way that helps testing the theoretical expectations presented above on the policy formulation of the two Refugee Relocation Council Decisions and the EU-Turkey Statement.

Starting from domestic politics, when a policy issue is highly politicised in multiple EU domestic arenas (*level II*), it can be expected for negotiations at *level I* on the same issue to be as politicised: indeed, EU chief negotiators at *level I* will likely experience a *shrinkage in their win-sets* (i.e., *tied hands*) as a result of the various pressures arising from domestic politics. Looking at the supranational arena, the opposite is true when the same political agenda is shared by a qualified majority of policy actors. The more Council members are aligned on a certain policy issue, the more it is likely for them to be successful exerting pressure to ensure that Commission's proposals reflect their shared interests. The same is valid within the European Parliament in the case of consultation procedures: the more EP political groups are united and internally cohesive on a certain policy issue, the more we would expect chief negotiators in EP political groups (i.e. rapporteurs and shadow rapporteurs) to try and restructure Commission's proposals by: a) pushing forward an ambitious wish list of amendments in the EP report; b) and by demanding more concessions

or *tying their own hands* pretending there is no room for manoeuvre at the domestic level. Conversely, the more decentralized the governance of an EP political group is, the higher the likelihood that MEPs will escape their mandate originating from *level II* (Ripoll Servent, 2014, p. 372) and not align with their group's position. Equally, the less consensus is found within the Council in the formulation of a Council Decision, the more chief negotiators (e.g. Permanent Representatives to the EU, Ministers) will have space to "escape" the consensus norm if there are high pressures coming from below (*level II*). In this circumstance, it can be expected for the lead negotiators in charge of finding a united position at the EU level (e.g. the rotating Council Presidency, the EP's Rapporteur, the European Commission) to make concessions (or *cut slack*) to certain Member States/MEPs in order to find a compromise with a broad consensus.

Building on the elaboration outlined above, Putnam's two-level game will serve as a theoretical guide informing the main steps for the study of the political negotiations preceding the adoption of the three pieces of legislation under analysis. The most significant features of Putnam's two-level game informing this analysis can be summarized as follows:

- i. *Costs of no-agreement (levels I and II)*: these are the costs for national and EU negotiators, in the case that a political compromise is not found during the bargaining process. As observed by Putnam, 'no agreement often represents the status quo [for some actors], although in some cases [this] may in fact lead to a worsening situation' (Putnam, 1988, p. 442). The higher the cost of no-agreement is for the Member State or institution, the higher the agent's willingness will be to *cut slack* to opponent parties in order to achieve an agreement on the issue at stake. Vice versa, we expect that low costs of no-agreement would make a chief negotiator less prone to *cut slack* and rather to *tie its own hands* to achieve a more beneficial compromise.
- ii. *Costs and benefits from ratification (levels I and II)*: if an agreement is to be found, who will pay the most for its ratification as compared to the case of no-agreement? Who will benefit the most out of it? As explained by Putnam in relation to the degree of participation of eligible policy actors in the ratification process, 'when the costs and/or benefits of a proposed agreement are relatively concentrated, it is reasonable to expect that those constituents whose interests are most affected will exert special influence on the ratification process' (1988, p. 445). This expectation

is particularly relevant when looking at the relative role of national parties in putting pressure on *level I* chief negotiators: the more a national party's political agenda and/or core values are affected by the policy decision being negotiated, the more it can be expected for the national party and its MEPs to exert pressure to support/hinder that decision at the EU level.

- iii. *Cost-effectiveness of concessions, demands and threats made (levels I and II)*: in negotiations, agents tend to move jointly towards a point of tangency among their political indifference curves: in other words, they negotiate in an attempt to find a compromise among their *win-sets*, while respecting the preferences and concerns of their principals, their domestic constituents (*level II*). Each *level I* negotiator has a direct interest in maximising the amount of acceptable political agreements for the other side (or, the other side's *win-set*), thereby making it possible to achieve a deal. When the demands of an agent meet another agent's domestic *red flags*, it can be expected that threats will be used – especially if the agent represents a larger Member State – to get the other agent to agree on a *sub-optimal point of equilibrium*. However, this can have a negative impact on subsequent negotiations and on the eventual ratification of the same policy, in the case it negatively *reverberates* in certain domestic arenas.
- iv. *Degree of multi-issue negotiation (level I)*: when different issues are brought to the negotiation table, EU agents are faced with trade-offs making concessions on a certain issue in order to attain more on another issue at stake, and vice versa. Can a *synergistic linkage* between different policy issues alter the *win-sets* for the domestic constituency/ies? As shown by Putnam in his analysis of negotiations during the Tokyo Round, the preferences of the domestic constituency can often be modified 'by creating a policy option (such as faster export growth) that was previously beyond domestic control... to achieve internal reform in situations where constituency pressures would otherwise prevent action without the pressure (and tradeoff benefits) that an external partner could provide' (1988, pp. 447-448). In other words, concessions can be made on a different ongoing or future negotiation which in turn, by expanding the other agent's *win-set* in a different ongoing negotiation, would make the latter more willing to compromise on a parallel negotiation and ultimately increase the likelihood of a *win-win* scenario.
- v. *Uncertainty or asymmetry of information (levels I and II)*: uncertainty (or asymmetry of information) plays a fundamental role in shaping bargaining tactics

and outcomes. Putnam discusses at length the meaning and implications of uncertainty regarding an opponent's win-set (1988, p. 452-453), especially how it disincentivizes *defection* from negotiations in the context of continued negotiations: indeed, the prospect of repeated bargaining interactions in the future makes policy actors less likely to defect from a negotiation, insofar as this can negatively impact supranational cooperation and the agent's reliability as a partner. Beyond this, however, uncertainties of information take various shapes depending on the object of uncertainty and actors involved. There can be asymmetries in how the flow of information originating from an ongoing negotiation process reaches different policy agents in different ways, with the result of "isolating" certain policy agents and not fully incorporating their policy interests before reaching an agreement. Asymmetries of information can also be found when different policy agents use sources of information at odds with each other as the basis to make a policy decision. This type of asymmetry of information was best exemplified by conflicting migration data in Europe during the migration crisis: asymmetries of information on daily/weekly/monthly migration flows were so inconsistent across Member States during the migration crisis that they ultimately brought about the Integrated Political Crisis Response (IPCR) mechanism to facilitate information sharing, joint decision-making, and coordination of the crisis response at the highest political level. Lastly, there are often asymmetries of information with regards to the size and composition of the opponent's *win-set*. In this case, uncertainty becomes an advantage for the opponent as it can be employed to convince the other agent that any policy outcome different from the proposed one is likely to find the opposition of domestic actors or of its own constituency. Uncertainty over the opponent's win-set is a particularly successful driver of agreement: this is particularly the case if it is employed by structurally more advantaged Member States with strong bargaining power (Bunse, Magnette and Nicolaidis, 2005, pp. 35-37; pp. 44-45), since these states also tend to have an 'outside option' in the event of unfavourable policy proposals (Moravcsik, 1993; Voeten 2001).

- vi. *Change of interests throughout the negotiations (reverberation effect)*: at times, the media coverage given to a certain negotiation can influence both public opinion and the stance of national political parties towards the issue(s) at stake. This is known as the 'reverberation' of international pressures within domestic politics and it implies a certain interconnectedness among different levels of governance. While

Putnam talks more about ‘suasive reverberation’, which implies the expansion of a country’s *win-set* thanks to international pressures that facilitate a political compromise, ‘negative reverberation’ is also possible, albeit less common, in international negotiations (Putnam, 1988, p. 456). In view of the strong “reverberation” of international pressures within domestic politics and of the high politicization of migration between 2015 and 2016, it can be expected that changes of interests (i.e. non-fixed policy preferences) often affected the course and outcome of the negotiations under analysis.

- vii. *Degree of central executive decision-making (levels II and I):* one of Putnam’s main assumptions is that ‘[i]t is wrong to assume that the executive is unified in its views ... Central executives have a special role in mediating domestic and international pressures precisely because they are directly exposed to both spheres, not because they are united on all issues nor because they are insulated from domestic politics’ (Putnam, 1988, pp. 432-433). Following Putnam’s intuition, this thesis expects for executive bodies to act with varying degrees of unity when exposed to strong domestic pressures.

By using this framework of analysis, it will be possible to determine the *win-sets*, influence and bargaining strategies of central EU institutions and Member States, including the interplay between EU diplomacy and domestic politics, in determining bargaining outcomes in the negotiations under analysis. While acknowledging the operational and secrecy constraints surrounding the study of recent institutional policy failures in the EU,¹⁰ this research will try to get as close as possible to the understanding of *win-sets*, relative influence and bargaining strategies of central EU institutions and Member States in the cases under analysis, in order to determine how the Refugee Relocation Decisions and the EU-Turkey Statement were formulated.

¹⁰ Based on Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 on public access to EU institution documents, there are various exceptions on public access to EU documents. Among other exceptions, ‘the institutions shall refuse access to a document where disclosure would undermine the protection of the public interests as regards: public security, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State’ (Article 4). According to the same Article, para 7, ‘the exceptions may apply for a maximum period of 30 years’ or even longer, if necessary, in the case of sensitive documents.

1.5 CONTRIBUTION

Using the identified theoretical expectations and Putnam's mechanisms to help understand the practice, this thesis will study the role, preferences and bargaining strategies of Member States and EU institutions in the making of the two Refugee Relocation Decisions first, and its later amendment via the EU-Turkey Statement later.

In so doing, it will first and foremost enrich our scholarly understanding on modalities of decision-making in the EU policy arena (see Tallberg, 2008; Bailer, 2010; Puetter, 2012; Costello and Thomson, 2013; Börzel, 2016; Genschel and Jachtenfuchs, 2018). For instance, how deliberative are the key EU institutional bodies when policy-making concerns the EU's future and inherent *raison d'être*? What do these case studies tell us about the nature of EU institutions and their functioning? And what do they tell us about the bargaining power of Member States in the JHA policy area, whether acting alone or within an *ad-hoc* Council coalition? By answering these questions, this thesis will contribute to our current understanding of coalition-building and distribution of power at times of crisis within the EU, including a renewed debate on decision-making on migration, asylum and borders control issues, and how crises in turn affect the EU's internal balance of power.

Additionally, this thesis will contribute to the existing scholarly debate conceptualising the European Union and its functioning within the AFSJ (see Moravcsik, 1993, 2018; Marks, 1996; Sweet and Sandholtz, 1997; Bickerton, Hodson and Puetter, 2015; Niemann and Speyer, 2018). Given that legislative competence in Justice and Home Affairs has not been fully transferred to the EU, what is the nature of balance between intergovernmentalism and supranationalism? To what extent can this policy-making process be explained in terms of national sovereignty and the persistence of Europe's nation states? By addressing such questions, this thesis will actively engage with the ongoing academic and policy debates on the role of different policy actors in the furthering of European integration and in explaining the latest developments of the EU's Area of Freedom, Security and Justice.

1.6 METHODOLOGY

In light of the overarching research question, a multi-method research framework rooted in process tracing seems most suitable. It permits us to identify and map the modalities and content of intergovernmental and inter-institutional negotiations, including how they shaped the ultimate bargaining outcomes of the Refugee Relocation Decisions and the EU-

Turkey Statement (for more on multi-method research frameworks see, for instance, Seawright, 2016; Seawright and Koivu, 2018). The process-tracing approach will be integrated with elite interviews, documentary research and, to a lesser extent, voting analysis and descriptive statistics.

The process-tracing technique was first used in the late 1960s and the early 1970s in the United States as a methodological tool for research in the field of cognitive psychology. Later appropriated by Alexander George as a ‘structured, focused comparison of cases’ in his study of deterrence (George and Smoke, 1974; George, 1979b, 1979a), it entered political science as a way of analysing irrational behaviours exhibited in decision-making, although it was soon used by rational choice theorists beyond its original purposes. Bennett & Checkel summarize process-tracing as follows:

The analysis of evidence on processes, sequences, and conjunctures of events within a case for the purposes of either developing or testing hypotheses about causal mechanisms that might causally explain the case. Put another way, the deductive theory-testing side of process tracing examines the observable implications of hypothesized causal mechanisms within a case to test whether a theory on these mechanisms explains the case (Bennett and Checkel, 2014, pp. 7–8).

Process-tracing is a methodological technique that enables political scientists and policy-makers to infer explanations of historical events or series of events by looking at causal mechanisms between *observed outcomes* (in this case, bargaining outcomes in the migration and refugee crisis) and *partial explanations*, and the extent to which the *observed outcomes* can be explained by those *partial explanations*. Like Bayesian inference,¹¹ process-tracing verifies the credibility of such explanations in individual historical cases and it proceeds ‘through a combination of affirmative evidence on some hypotheses and eliminative induction of other hypothesised explanations that fail to fit the evidence’ (Bennett, 2008, p. 708). Differently from Bayesian inference, process-tracing is not grounded upon ‘bullet-proof evidence’, thus it usually aims to make informed predictions at best based on primary data and documentation (e.g. first-hand interviews and documentary research). Regardless of the kind of evidence or documentation used in the process, neither Bayesians nor political scientists using process-tracing can ever attach a 100% likelihood of truth to their proposed explanations. In other words, the hypothesized theoretical explanations of the observed bargaining outcomes (in this case, the *TEs*) will

¹¹ Bayesian inference is a tool for statistical inference which computes the probability for each and every hypothesis based on the evidence and/or information available (see Gelman *et al.*, 2013).

be considered as at most partially substantiating the causal mechanisms. The extent to which the theoretical expectations presented in Section 1.3 will be considered a valid explanation will depend on how much of the causal mechanism can be explained by the micro-correlations of the explanatory narrative in use.

As outlined above, the primary scope of the empirical analysis is the bargaining process and relative distribution of power in the formulation of the two Refugee Relocation Decisions (EU) 2015/1523 and 2015/1601 and the later amendment of the second Decision by means of (EU) 2016/1754 or the EU-Turkey Statement. As such, the timeline covered in the dissertation formally starts with the Italian Council Presidency (June-December 2014), which also corresponded to the beginning of the Juncker Commission, and ends with the adoption of Council Decision (EU) 2016/1754. An earlier starting point could have been chosen, given the presence of a ‘crisis’ of irregular migrant and refugee inflows already dating back to 2013 in Bulgaria, when the latter experienced approximately nine times the average yearly number of asylum applicants since its accession to the EU in 2007 (UNHCR, 2014, p. 4). Similarly, it could be noted how Italy had already started to confront a swift increase in the number of recorded migrant arrivals at sea as from 2013 onwards, thereby leading to the launch of a national, military-supported SAR operation named ‘Mare Nostrum’ in October 2013, followed by a Frontex-led operation ‘Triton’ in November 2014 (European Commission, 2017a). However, insofar as the interest of this analysis lies in the bargaining processes which led to the adoption of the two Refugee Relocation Decisions and the EU-Turkey Statement, the timeframe of research was limited to the relevant interval of time based on the process-tracing analysis undertaken.

Inevitably, the nature of this dissertation and its interest in the bargaining strategies, formation of preferences and resistance points on the policy issues at stake will require at times consideration of the legacy left of earlier policy experiences in the AFSJ – e.g. the relocation pilot projects EUREMA I and II in 2009-11¹² and the relevant legislative *acquis* in the AFSJ, as well as prior EU-Turkey relations – alongside *ex-post* considerations made by policy-makers and civil servants on the formulation and adoption of the three Council

¹² EUREMA I and II were two pilot projects for intra-EU relocation of persons in need of international protection to assist Malta, co-funded by the EU under the European Refugee Fund (ERF) Community Actions in 2010 and 2011. In total, 227 individuals were relocated under EUREMA I, 14 under EUREMA II and 451 through bilateral relocation agreements without the need for EU funding. A total of 113 pledges made under the EUREMA framework were never implemented (European Commission Directorate-General Home Affairs, 2014).

Decisions under analysis. This will allow use to be made of previous policy and/or legislative experiences as well as *ex-post* insights on the development of the AFSJ as *ad-hoc* causal-process observations (or CPO), or as ‘an insight or piece of data that provides information about context or mechanism and contributes to a different kind of leverage in causal inference’ (Brady, Collier and Seawright, 2010, p. 184). In other words, when a fundamental resistance point is identified in intergovernmental or institutional relations in the bargaining process leading to the adoption of the three Council Decisions, we expect to find a similar one in previous intergovernmental debates and/or at the implementation stage. If this is found to be the case, it will further strengthen the generalisability of the empirical findings uncovered in the analysis.

1.6.1 SOURCES

Empirical material for the thesis was drawn from a set of primary and secondary sources, namely: a) 62 semi-structured interviews, including eleven Commission and European External Action Service (EEAS) officials, six EP advisors and MEPs, four Council officials, twenty-seven diplomats and ambassadors, and six officials from think tanks, lobbies and UN agencies, and eight national officials and politicians, as based on the function of the interviewee at the time of the formulation of these Decisions; b) documentary research, including campaign speeches and press briefings, Council minutes and internal Ministry protocols in preparation to JHA sessions, interviewees’ meeting calendars, inter-institutional Communications, EP group position papers on migration and digitalised material on the issues of irregular migration, refugee relocation and resettlement published from EU institutions, IOs, NGOs and national governments; and c) EP voting data. The findings were triangulated with secondary literature on, and media coverage of, the intergovernmental and interinstitutional debate preceding the adoption of the two Refugee Relocation Decisions and the EU-Turkey Statement.

On the documentary research undertaken, the first step was to trace back the relevant legislative *acquis* on asylum, solidarity in the AFSJ, temporary and subsidiary protection based on which the two Refugee Relocation Decisions and the EU-Turkey Statement were formulated. Doing so helped tracing the changes in agenda-setting and decision-making power for Member States and EU institutions on these issues, including how the inter-institutional balance of power on these issues was modified over time with Treaty change

and with the introduction of different legislative and non-legislative acts and procedures. Furthermore, all relevant meetings and related documents were traced on the topics of refugee relocation, burden-sharing and solidarity, in order to better capture how Member States positioned on these issues at the EU level before the 2015 migration crisis, as well as the extent to which the issue was a matter of cooperation before the 2015 migration crisis. By doing so, it was possible to identify if national positions were consistent over time or whether they were subject to change under the political pressure exerted from the crisis.

On the basis of the background knowledge acquired on the issues and on the positions expressed by Member States on them, a timeline of meetings undertaken at various levels of governance from the Italian Council Presidency of 2014 to March 2016 was then reconstructed. For the two Refugee Relocation Decisions, tracing all relevant meetings proved more challenging in comparison to the EU-Turkey Statement. The backbone of the timeline constructed was built upon: a) the official meeting calendar provided on the *Consilium* website of the European Council and the Council of the EU, filtering out the period of time of interest; b) the details of the meeting calendar for each legislative procedure provided by the European Parliament on its *Legislative Observatory* website. All interviewed officials and diplomats were asked to provide the author, where possible, with information about the various meetings undertaken ahead of the adoption of the two Refugee Relocation Decisions (see Table 4.1, p. 115).

Building upon the documentary research undertaken, semi-structured interviews were selected as the principal tool for data gathering in order to uncover the nature and content of informal debates on the side lines of the various JHA sessions and the European Councils between late 2014 and early 2016 in the lead-up to the adoption of the three policies. This methodological choice was found most appropriate in view of the recent nature of the negotiations under analysis at the time the analysis was undertaken, not to mention that a big portion of these decision-making procedures took place informally. The interviews undertaken provided detailed accounts of the bargaining process from different perspectives, spanning from the EU institutions to different national governments, from lobbies and think tanks to UN agencies.

Most of the interviews were undertaken between October 2018 and December 2019, although two or three interviews that had been secured in late 2019 were postponed to early 2020. While the bulk of the chief negotiators who had directly dealt with the decision-

making processes under analysis was still located in Brussels at the time of the data collection, other fieldwork trips were also undertaken to get a hold of national-based negotiators and diplomats based in other European capitals, or who otherwise used to be posted in Brussels at the time of the adoption of the three policies and who were subsequently posted elsewhere.

The aim of the interviews undertaken was to discover: (1) the role and bargaining strategy of different EU institutions and Member States, and respective sub-units, in the negotiations leading to the adoption of the three Decisions; (2) the extent to which Member States coordinated and shared information with like-minded Council coalition partners and/or with the various EU institutions (*level I*); and (3) the domestic debate (*level II*) and the extent to which the Member State's executive was unified on the issues at stake. To this end, interviewees were asked two different sets of questions, depending on the level of governance they represented or the arena in which they worked. The group of interviewees who were national diplomats or politicians at either *levels I or II* were asked about: i) the main priorities, concerns and red flags raised during the negotiations leading to the two Refugee Relocation Decisions and the EU-Turkey Statement; ii) the kind of pressures coming from the domestic political arena, and the degree of coordination and information-sharing with other like-minded Member States, their own MEPs, national parties and EU institutions; iii) and the extent to which the bargaining strategy on the issues at stake changed during the interval of time considered for the purposes of this thesis. For the interviewees working as officials at central EU institutions, the questions revolved around the following: i) the intra- and inter-institutional division of responsibilities in the formulation of the policies; ii) the thinking processes behind the policy-making strategy and the extent to which the formulation of these policies responded to domestic and EU-level pressures, including how the strategy changed throughout the migration crisis; and finally iii) what thematic and technical priorities, concerns and red flags were raised by their respective institution or sub-unit throughout the negotiations. As for the category of lobbyists, think-tankers and officials from UN agencies, questions were primarily about: i) the extent to which they were involved at different points in time throughout the negotiations on the three policies under analysis; ii) the extent to which Member States and EU institutions consulted them during the bargaining process and on what particular aspects; iii) a self-assessment on the amount of influence that they had on chief negotiators

and politicians involved in the bargaining process. A sample interview questionnaire is to be found in *Annex I*.

To further complement the findings gathered, all officials and diplomats interviewed were asked – where possible and, if necessary, under full anonymity – to share all relevant notes for the record, internal notes or related documents on the negotiations leading to the Refugee Relocation Decisions. The same process was undertaken to trace the negotiations ahead of the adoption of the EU-Turkey Statement. In comparison to the Refugee Relocation Decisions, this process was greatly facilitated by the work of Smeets & Beach who carefully reconstructed a detailed timeline with the help of EU officials and diplomats (Smeets & Beach, 2020, p. 153-158), which was further corroborated by means of the analysis undertaken.

Response rates varied depending on the actor selected; altogether, the positive response rate accounted for 65% of all interview requests made.¹³ As for the negative responses, they came from mainly the following sub-groups: a third were MEPs who, while all belonging to the LIBE Committee and having actively participated to the votes on the dossiers under analysis, said they did not feel to be knowledgeable enough about the issues at stake and thus passed ‘the hot potato’ onto each other; another third came from national diplomats and/or politicians of various nationalities for the following reasons: some, most importantly from small Member States with undersized representations in Brussels, did not respond to the request or did not have the time to comment on the selected decision-making processes; others refused to undertake the interview due to the political sensitivity of the issues at stake (e.g. Bulgaria); finally, the rest came from the office of then-Commissioner Avramopoulos and from a few Brussels-based small lobbies or think tanks, where interview requests were refused on account of lack of time.

¹³ Interview requests were sent to 94 diplomats, officials and officers from various EU institutions, Member States, think tanks, lobbies and agencies. All interviewees were contacted via email with a formal request for a research interview. Each email contained a brief introduction of the researcher and the research project, first, some details on the tentative duration of each interview – approximately 60 minutes – and a suggested interval of time in which the interview could be undertaken, depending on the duration of each fieldwork trip. All emails were sent at least one month in advance compared to the suggested timeframe. Furthermore, all emails had in attachment a headed letter in pdf format with the same formal request and personally signed by the researcher. Where necessary, two follow-up reminders were sent out after two weeks and a month respectively.

Pursuant to an initial mapping that identified some of the crucial stakeholders and chief negotiators involved in the relevant decision-making processes, interviewees were gathered based on the traditional ‘snowball sampling’ approach often used in social sciences; this entails asking the first interviewees to help identify more potential subjects and thus expand the net of enquiry. The data collection continued up until the content of the interviews undertaken came close to a ‘saturation point’, meaning that any additional data found would overlap with the existing empirical research gathered (Glaser and Strauss, 1967, p. 65). The preferred interview format was face-to-face, although three interviews had to be conducted via telephone due to location constraints incompatible with the fieldwork plan. All interviews were held either in English or Italian and all but seven of them were recorded to ensure that no nuance or information would be lost. Each recording was complemented with written notes taken during the interview.

Given the political sensitivity and high domestic salience of the issues discussed in this thesis, the author carefully assessed best practices of confidentiality and treatment of anonymous data in social sciences (in the European Union and in the UK) before deciding on the best course of action to be taken in the collection of primary data. An informed consent form (see *Annex II*) was drafted on the basis of a template taken from the UK Data Service, the largest digital repository for qualitative and quantitative data in the UK from the social sciences and humanities. This template was shared online by the UK Data Service in order “to assist researchers in the design of their informed consent form” whenever collecting data “from people using questionnaires, observations, interviews, diaries, focus groups, video recordings, etc.” with particular attention placed on the future reuse of research data (UK Data Service, 2018). Following best practices suggested by the UK Data Service, an information sheet (describing the purpose of the research, usage of the data, future publishing and contact details of the researcher, as well as of their organisation) was sent to each interviewee who agreed to participate, or their secretary, ahead of the interview. Fully in line with the GDPR requirements for the collection of research data, the informed consent form contained seven different statements for the interviewee to tick and to sign relating to: a) participation in the study; b) usage of the information in the study, including specific statements on the usage of quotations in research outputs and a specific request for consent to use named quotations; c) future use and reuse of the information by the author for other publications; d) study contact details of the researcher for further information. Upon commencing or completing each interview, the interviewee consent form was

thoroughly discussed and signed by both the researcher and the interviewee to confirm the interview procedure, the conditions for use of the information gathered, and the possibility of requesting full anonymity and confidentiality on personal data (see *Annex II*). As a result of these anonymity and confidentiality clauses, some interviews (and some interview excerpts) were used fully off the record. All interviewees were given the opportunity, upon explicit request, to double-check direct quotations prior to submission of the thesis; five participants exercised this right. Some interviewees gave consent to the usage of named quotations but did not get back to the researcher regarding specific quotations ahead of submission; in these cases, the interviewee was paraphrased but no direct quotations were used without permission.

Finally, in order to analyse the voting data from the relevant plenary sessions at the European Parliament, the downloadable pdf files provided by the European Parliament on the relevant daily plenaries were processed for further analysis via the MatLab software. The inherent advantage of this procedure is that it made it possible to create a comprehensive dataset whereby the decision taken by each MEP was crossed with relevant information on the MEP's national party and EP political group of affiliation, country of origin and organizational function within the EP political group (e.g. Member, Member of the Bureau, Chair, Co-Chair and Vice-Chair). First, the relevant pdf was uploaded on the software to extract the names of MEPs. The author then proceeded by separating Yes, No, Neutral votes by parsing the array of choices provided by the pdf in the format of +, -, and 0. To combine the data of the plenary under analysis with a full list of MEPs at the time, the author extracted the relevant data from the EP file which lists MEPs of March 2016 (European Parliament, 2016a, p. 316) and created a txt. file based on it to be used for the subsequent steps of the text parsing procedure. An Excel file was then built with all the relevant information from the list of MEPs of March 2016, with an additional column which returned the information on the voting decision taken by each MEP, as extracted from the pdf on each plenary session under analysis. While the raw dataset has been provided separately to the examiners for close scrutiny, Appendixes 1, 2 and 3, alongside Tables 6.3 and 6.5, look at *level II* coalition-building dynamics and show information on the voting decisions taken by MEPs for the three plenaries under analysis by Member State of origin and national party of affiliation.

A data management plan was redacted in order to anticipate possible constraints while collecting, processing, and analysing data, as well as to ensure a transparent and accountable research enquiry. As based on this plan, all the recordings undertaken were fully transcribed on the NVivo software. In order to ensure the protection of all personal data often specifically requested by interviewees, all transcripts were coded with the acronyms P1 to P62 used consistently on NVivo and elsewhere, whereby P stood for participant and the number was based on the chronological order of the interviews conducted over time. The full list of participants consulted is to be found in *Annex III*.

1.7 OUTLINE OF THE THESIS

In view of the research framework detailed above, the following chapters are organised as follows. Chapter 2 briefly contextualizes the case studies by looking at previous European responses to crises and identifies the shared conditions under which EU crisis decision-making results in political deadlock. In so doing, it shows how political impasse during the migration crisis, much like other crises in the past, was triggered by high domestic contestation, clashing intergovernmental *win-sets* and competition for power among EU policy actors.

The subsequent chapters are organized on the basis of an institutional approach, starting from the Commission (Chapter 3), followed by the Council and the European Council (Chapters 4 & 5), and the European Parliament (Chapter 6). Chapter 3 analyses the ‘political’ role and bargaining strategy of the Commission in setting the agenda for the three decisions. It begins with an analysis of President Juncker’s agenda on migration in 2014 (3.1); it then considers how political impetus was built for refugee relocation (3.2), and how the Commission’s agenda-setting evolved from a voluntary to a mandatory basis for refugee relocation (3.3). The chapter then proceeds by analysing the process that led the Commission’s agenda to shift from refugee relocation to an EU-Turkey plan on irregular immigration, including how it guided the decision-making process at irregular intervals of time. Overall, the chapter argues that: (a) in the formulation of the two Refugee Relocation Decisions, the Commission played an ‘ideologically political role’ (Nugent and Rhinard, 2019) that reflected Juncker’s political prioritization of irregular migration and solidarity to frontliners in his Presidency agenda, which in turn led to an emotionally charged bargaining process; and (b) it played an ‘organizationally political role’ (Nugent and Rhinard, 2019) in the bargaining process leading to the EU-Turkey Statement, providing

Council members in the lead with the necessary expertise without overstepping any red lines set by the Member States.

Chapters 4 and 5 articulate the roles and bargaining strategies of Member States, the rotating Council Presidencies and the European Council (EUCO) Presidency in the formulation of the three policies analysed. The original intention before starting the collection of data was to have one single chapter for this group of actors, as with the other two institutional chapters. However, the sheer volume of material gathered on the role of these actors in the making of these policies made it necessary to subdivide this part of the thesis into two different chapters. Indeed, in all three cases under analysis, the European Council and the Council of the EU had a predominant role for both agenda-setting and decision-making purposes, which stemmed from the type of legislative procedure and the largely cosmetic role of the European Parliament under consultation. On top of this, the sensitive nature of the policy issues at stake rendered the positions, strategies and roles of Member States very diverse and malleable by external pressures and was thus reflected in more material originating from both elite interviews and documentary research. These features made it necessary to divide the analysis of the Council and the European Council into two different chapters, Chapter 4 for the two Refugee Relocation Decisions and Chapter 5 on the EU-Turkey Statement.

Chapter 4 therefore analyses the roles and bargaining strategies of Member States, the Council, the EUCO and the rotating Council Presidencies in the formulation of the two Refugee Relocation Decisions, or the Refugee Relocation Scheme. In the making of the Scheme (Section 4.2), the chapter focuses on the various agenda-setting efforts shown at the Council and the European Council on refugee relocation at different moments in time (4.2.1) and on the actors that directly led, or otherwise supported, the making of the two Decisions. The chapter then analyses the ‘unmaking’ of the Scheme (4.3), looking at actors who directly opposed or were only reluctantly brought on board for the adoption of the Scheme. Chapter 4 argues that it was an intergovernmental agreement brokered by the Franco-German alliance, and strongly supported by the rest of the six founding Member States, which guided the formulation of the two Refugee Relocation Decisions. While *level I* coalition-building had a crucial role in building a qualified majority for the second Decision, the Chapter illustrates how the bargaining behaviour of Council members, the rotating Council Presidency and the European Council Presidency was guided by a mixture

of self-interested considerations and domestic pressures, both for actors that supported and those that were against it.

Chapter 5 then proceeds to analyse the roles and bargaining strategies of Council members, the EUCO and the rotating Council Presidencies in the formulation of the EU-Turkey Statement. It starts off by providing a brief scholarly overview on how Member States and the European Council deal with third country partners to pursue cooperation on migration and mobility. It then proceeds by analysing lead and support actors on the one hand (5.2.1), and swing and veto actors on the other (5.2.2). Chapter 5 argues that domestic pressures coming from the six founding Member States, rather than *level I* coalition-building, were pivotal in steering the bargaining process and facilitating a quick intergovernmental compromise within the EU. In this, the rotating Council and European Council Presidencies had a crucial role to play in brokering an agreement and in devising alternative policy plans.

Chapter 6 analyses the role of the European Parliament in the three case studies. To do so, this chapter explores: i) early agenda-setting attempts made by the Parliament as a whole and by its various political groups (Section 6.2); ii) EP political groups' positions on the issues of refugee relocation, intra-European solidarity and EU-Turkey relations, as both formally stated in their position papers (6.3) and as expressed at the LIBE Committee and in the roll-call votes (6.4); *level I* and *level II* coalition-building efforts made by national parties throughout the policy-making process (6.5). The chapter shows that the Parliament was disadvantaged not only by working under consultation but also by a pre-existing political alignment in policy-making between the Commission and the Council and by the high salience of the issues at stake within the European electorate, which had the effect of damaging the overall intra-EP cohesion in these decision-making processes.

Lastly, Chapter 7 goes back to the research question and summarizes the main findings and the extent to which these met the *TEs*. In doing so, the chapter compares the degree and nature of involvement of central EU institutions and Member States in the decision-making processes leading to the adoption of Council Decisions (EU) 2015/1523, 2015/1601, and 2016/1754. It also discusses how the empirical findings displayed in the dissertation contribute to scholarly debates on the pace and nature of European integration in the AFSJ on the one hand, and on modalities of decision-making, coalition-building and distribution of power in the EU on the other, more specifically in the AFSJ.

Chapter 2 – DECISION-MAKING PATTERNS IN TIMES OF CRISIS

2.1 EUROPE’S MIGRATION AND REFUGEE CRISIS IN CONTEXT

From the Eurozone crisis to the migration and refugee crisis, from Brexit to the Covid-19 epidemic, it could be argued that the European Union has been seemingly trapped in a permanent state of crisis management for over a decade. This ‘crisisification’ of policy-making in the EU, as Rhinard puts it, has had irreversible implications on modalities of decision-making and participation in EU bargaining dynamics (Rhinard, 2019). In this sense, the EU’s inability to grow stronger out of the migration and refugee crisis does not only arise from issue-specific drivers of European (dis)integration and political impasse in JHA affairs (see Chapter 1, Sections 1.3.1 and 1.3.2), but also from the shortcomings of how decisions are made in crises.

In exploring the defining features of this common pattern of EU crisis decision-making, this chapter helps us to better understand modalities of decision-making during the migration crisis. Taken together, lessons learnt from previous European crises would suggest that political deadlock during Europe’s migration crisis resulted, much like earlier crises, from a combination of: a) conflicting intergovernmental interests and preferences and limited bargaining space for shaping a multi-lateral *win-set*; b) high issue salience and domestic contestation, which in turn further reduces the Member States’ perceived or actual *bargaining space*; and c) informal redistributions of ‘core state powers’ away from Member States and towards central EU institutions, which incentivizes redistributive conflicts and contestational interactions among policy actors.

On the basis of the lessons learnt from previous European responses to crises, the chapter then turns onto the selected case studies, the Refugee Relocation Decisions of 2015 and the EU-Turkey Statement, and shows the extent to, and the ways in which the three selected case studies resulted in political deadlock for the same reasons as earlier crises. In particular, it illustrates how the three Decisions under analysis were formulated under a newly defined modality of decision-making, which effectively put into question the traditional distribution of power in the AFSJ for similar policy matters and prompted competition for power among central EU institutions and vis-à-vis Member States. It lays the structural foundations in order to understand the two-level game analysis of how the preferences, national and multilateral *win-sets* and bargaining strategies of Member States

and EU institutions affected the ultimate formulation of the two Refugee Relocation Decisions and the EU-Turkey Statement.

LESSONS LEARNT FROM PAST CRISES

The ‘empty chair crisis’ was probably the earliest signal in the history of political Europe that moving towards greater supranationalization on key national interests without strong political backing would raise tensions on the inter-institutional and intergovernmental distribution of power and modalities of decision-making. The Commission’s attempt to make ‘policy without politics’ (Schmidt, 2019, p. 1020) resulted in a stalemate that was only temporarily shelved thanks to the impromptu Luxembourg compromise:¹⁴ this framed what came to be seen as the Member States’ veto power in case of legislative proposals threatening directly national interest(s).

Following this episode, alternating periods of stability and of crisis provided a natural justification for the use of exceptional measures in the face of extraordinary times in the early phases of the former European Communities (EC), later EU (Simms, 2013, p. 593). However, the gradual enlargement of the European Union, combined with more attempts to further political integration in the Union, resulted in diverging national win-sets, increased domestic contestation and competition for power between *levels I* and *II* of governance.

When the financial crisis hit in late 2008, followed by the unfolding of the debt and Eurozone crises from early 2010, the European Union was first confronted with a crisis that put at risk one of the main pillars of European integration, the EMU, and with it its very existence. This double-sequenced crisis – financial and Eurozone crises – owed its existential facet to the fact that the public debate on the direction and preferred extent of European integration was politicised for the first time in the history of the EU (Schimmelfennig, 2014). According to Schimmelfennig (*ibid.*), a spike in the salience of the European integration project was triggered by the massive effect of the crisis on the welfare of Member States, which in turn caused a substantial decrease in public support to

¹⁴ The Luxembourg compromise or accord was struck in January 1966 to solve the Empty Chair Crisis. Among other disagreements, mainly relating to the gradual shift towards supranationalism in furthering European integration, French President Charles de Gaulle had shown to be strongly against the Commission’s plan to extend the number of policy issues to be decided under qualified majority voting. As a result, a *de facto* veto power was given to Member States whenever the issue at stake was deemed to be threatening national interest(s).

the European Union, mass protests against supranational constraints and the ‘Troika’,¹⁵ alongside a steady rise in governmental instability between 2010 and 2013. Faced with these new challenges, the Union responded yet with further integration, historical ingredient for crisis management in the EU, without anticipating the explosive combined effect of divergent national *win-sets*, high issue salience, and supranational attempts at redistributing core state powers. The Member States’ unease towards more supranationalisation in the economic governance reform was perhaps best exemplified in the contentious issue of reverse QMV.¹⁶ Some of the most indebted Member States – namely France, Italy, Greece, Portugal and Spain – showed resistance at first towards the introduction of reverse QMV and the possibility of semi-automaticity for procedures for fiscal and budgetary discipline following the Commission’s early warnings. This was because they were afraid that such a framework would in the future make it virtually impossible ‘to cobble together a sufficiently large coalition to block the process’ of automatic penalties (Ludlow, 2010, p. 33). This issue was ultimately solved only two weeks before the adoption of the Six Pack¹⁷ at the Council, following increasing pressures on the international markets and Germany’s stated desire for stricter discipline in the EMU (Valle-Flor, 2018).

The economic reforms implemented to confront the crisis largely failed to adequately tackle the growing socio-economic discontent and national hostility for impositions from above. On top of this, increasing constraints on national autonomy left limited or no room for improvement to those Member States most heavily affected by the crisis. Looking at the divisive content of political debates during the Eurozone crisis, there was arguably a move ‘to more national EU-related “politics against policy”’, due to ‘the increasingly contestational nature of interactions’ among EU actors on what policy responses to the crisis ought to look like (Schmidt, 2019, pp. 1032; 1019). This unprecedented spike in domestic contestation shed light on the end of ‘permissive consensus’, on which leaders relied before the Eurozone crisis, and marked the beginning of an ongoing move towards

¹⁵ The term ‘Troika’ was first coined during the financial crisis of 2007-2008 to refer to the group of EU and international financial institutions in charge of decision-making on related matters, namely the European Commission, the European Central Bank and the International Monetary fund.

¹⁶ Under reverse QMV introduced by the Commission in the economic governance package, the Commission has the power to sanction a Member State unless the Council, by QMV, votes against such action within a predefined period of time. The Member State concerned cannot cast a vote.

¹⁷ The Six Pack, or otherwise Directive 2011/85/EU, came into force in December 2011 and laid down the requirements for Eurozone countries’ budgets so as to respect the rules entailed in the EMU and to not run excessive deficits. The introduction of the Six Pack was soon followed by that of the Two Pack to improve budgetary surveillance of Member States by means of the so-called European semester procedure.

‘constraining dissensus’, which has made public opinion critical on the modalities of decision-making and participation in the EU (Hooghe and Marks, 2009; Hobolt and Wratil, 2015). Increased contestation and competition for power led to an intensification of intergovernmental coordination and financial integration without further supranationalization, under the ruling principle of German ordoliberalism¹⁸ (Dullien and Guérot, 2012). The increased politicization, within both the Council and the European Parliament, intensified political struggles for more power, going hand in hand with the delegation of powers to *de-novo* supranational bodies rather than the more natural empowerment of existing European institutions, such as the Commission (Bickerton, Hodson and Puetter, 2015; Schmidt, 2019).

The failure in addressing longstanding demands for more accountability in EU political leadership, as combined with socio-economic disruption grown out of the Eurozone crisis, led to the proliferation of various populist and far-right movements across Europe. In the absence of *mechanisms of reconciliation* between technical knowledge and political control or democratic politics, Europeans began to turn to populism, or *direct democracy*, as a resource of last resort (Bickerton and Invernizzi Accetti, 2021) to tackle the most pressing concerns of national sovereignty (e.g. taxation, security, migration). This phenomenon became all the more acute in the Spring and Summer 2015. While the EU was still addressing the Greek government-debt crisis, Italy and Greece found themselves at the centre of a new political storm, the migration and refugee crisis, with the obligations entailed from the Common European Asylum System (CEAS), albeit without immediate support through substantial intra-EU burden-sharing or solidarity. The perceived lack of autonomy and solidarity, combined with lingering unemployment and the long-lasting effects of the economic crisis, further fuelled domestic contestation over European integration and Euroscepticism.

2.2 COMPETITION FOR POWER IN THE MIGRATION AND REFUGEE CRISIS

Indeed, between mid-2013 and mid-2017 the refugee population more than doubled in the European Union, going from 920,000 to 2.1 million (Spielvogel, 2018). In 2015 alone, the number of asylum applications peaked at 1.3 million and became the deadliest year for

¹⁸ Under the principle of German *Ordoliberalismus*, or ‘freedom within order’, a regulatory state imposes austerity and stringent fiscal rules to federal states in crisis.

migrants and refugees trying to cross the Mediterranean, with over 3,770 migrant deaths (IOM, 2015b).

This unparalleled wave of immigrants renewed popular discontent across the EU and fuelled identity politics, seeing as irregular immigration was perceived as an existential threat to the cultural values shared by EU Member States. According to *Eurobarometer* public opinion polls, in autumn 2015 immigration rose to the top of the list of most important perceived issues facing the EU (by 58% of respondents) (Debomy, 2015, pp. 42–43). At the same time, in autumn 2015 the EU experienced a drop in popularity for the first time since 2012, seeing as there was an increase of four percentage points in negative opinions of the EU (*ibid.*, p. 15). Societal distress was particularly strong in the Visegrád and CEE Member States (Reuters, 2015), where TCN migrants were seen as threatening a European way of life and would endanger the survival of Europe's welfare state system (Dustmann & Frattini, 2014; Cochrane & Nevitte, 2014). The complexity of the 2015 migrant phenomenon and the climate of uncertainty surrounding the numbers of arrivals and crossings of the Mediterranean left ample room for schizophrenic media coverage of the crisis (Heidenreich *et al.*, 2019, p. 172) and a politicization of numbers related to migration flows in the absence of a centralized EU database (European Stability Initiative, 2015a; see also Vespe *et al.*, 2018 & Mainwaring, 2019). Increased media visibility of the immigration issue in turn boosted anti-immigration attitudes and citizens' Euroscepticism (Eberl *et al.*, 2018, p. 210). Simplified storytelling, time and resource constraints in the journalistic reporting of the crisis, and a mediatic tendency to identify migrants and refugees as a problem rather than a benefit to host societies (Berry, Garcia-Blanco and Moore, 2016, p. 5) legitimized anti-immigrant parties' negative discourse on the issue (Eberl *et al.*, 2018, p. 212). For instance, an average of 64.4% of migration-related articles in German major newspapers concentrated on the scale of refugee flows/numbers, while only 7.5% featured humanitarian themes, such as the suffering and hardships that fleeing refugees experienced on their journey (Berry, Garcia-Blanco and Moore, 2016, pp. 115–116).

When considering the effect of the refugee crisis on the salience of the migration issue in the EU, it must be underscored that, while exogenous shocks such as the 2015 migration crisis may have changed immigration attitudes in the short term, in the long term immigration attitudes are largely persistent and hard to sway (Kustov, Laaker and Reller, 2021, p. 1490). Rather than creating a rising tide of anti-immigration parties across Europe

or altering pre-existing party and migration politics, the 2015 crisis circumstances pushed Europe's centre-right to mobilise more intensively on the topic of immigration and border control among European constituencies already predisposed to be concerned about the issue, reactivating latent concerns about the negative consequences of immigration (Dennison and Geddes, 2019, p. 116). In increasing the temporary salience of the migration issue, this exogenous shock had the effect of reducing indifference-based abstention (Folsz, 2019) and temporarily increased concerns about the increasing influxes of migrants, thus affecting political outcomes in the short term in favour of the far-right in various EU Member States (Sola, 2018). For example, in Germany there was a 22% increase in short-term concerns about immigration compared to pre-refugee crisis baseline levels, which was found to be positively correlated, in the short term, with growing political support for the right-wing anti-migrant *Alternative für Deutschland* (AfD) party (Sola, 2018, p. 30).

The perceived loss in control over the mobilisation of TCNs across Europe was depicted as the ultimate proof of a longer trend of failures of the EU to address popular concerns. As such, it was exploited by populist movements to increase popular consensus towards the cause of slowing down the project of European integration, i.e. ‘constraining dissensus’, insofar as the crisis was seen as having ‘confiscated’ the people of core liberties and powers (Surel, 2011; Inglehart and Norris, 2016; Caiani and Graziano, 2019). Perhaps one of the most iconic examples of this populist strategy was UKIP’s campaign for the Leave vote on the Brexit referendum (i.e. slogans such as ‘Let’s take back control on our borders’): this was noteworthy not only because the UK never belonged to the Schengen area and had built-in *opt-outs* from the third pillar – later abolished with Lisbon and brought under the Community method in the AFSJ – but also and most importantly because it polarized public opinion on the pre-existing legislative framework of the EU and thus on the desired degree of European integration in the future, or supranationalisation, particularly in the AFSJ.

Much alike other crises in the past, the migration and refugee crisis revealed a political deadlock in furthering political integration when a) Member States have divergent *win-sets* on b) highly salient and politicized issues at stake (*level II*); and when c) more integration entails a fundamental redistribution of powers among *levels I* and *II*, or change in modality of decision-making thereof.

On points a) and b), the thesis will show how increased political salience of the migration issue and domestic contestation mostly owed to a growing divide among Member States

with respect to their sets of acceptable agreements, or *win-sets*, in the AFSJ, particularly for what concerned the redefinition of priorities in this policy area in the face of the crisis. Key factors such as geographic proximity to emigration countries, national history of immigration and emigration, and dominance of liberal values progressively separated EU Member States into two main blocs (Comte, 2018): a) countries that either by force (i.e. Italy or Greece) or by political strategy (i.e. Germany) advocated for more migrant integration, intra-European solidarity and burden-sharing, as best exemplified in the legislative process leading to the adoption of the two Refugee Relocation Decisions; and b) countries that openly ostracized non-EU immigration, as seen as a potential threat to national wellbeing, safety, and cultural homogeneity, among other threatened privileges (i.e. Visegrád countries, UK and other European states less openly) and that would have rather spent more political capital on the defence and strengthening of the EU's external borders, as best illustrated in the making of the EU-Turkey Statement. This second group of Member States experienced a considerable expansion during the migration and refugee crisis, as an increasing portion of the Union started to agree on the fact that solidarity ought to be complemented with borders control, as showcased by the unanimous consensus found on the EU-Turkey Statement.

Discourses promoting a ‘humane’ reaction towards refugees escaping wars and violence along with more solidarity for ‘overburdened countries such as Italy and Greece’ (Merkel cited in Stone, 2017) clashed with anti-migrant, nationalist takes on the crisis such as that of former Polish PM Szydło, preaching at a memorial service at former Auschwitz-Birkenau concentration camp how ‘[i]n our troubled times, Auschwitz is a great lesson that everything must be done to defend the safety and the lives of citizens’ (Szydło cited in DW, 2017). As suggested by this discursive divergence, Europe’s migration and refugee crisis ultimately hinted at two opposite visions on, or preferred directions for, the future of European integration in the AFSJ. In so doing, it offers the perfect cradle to understand how EU policy actors position towards the future of European (dis)integration in the AFSJ, but also how much influence they can effectively exert in the policy-making arena all other factors being equal, and the extent to which domestic politics influences their preferences, concerns and bargaining strategies.

On point c), before turning to the analysis, this last section will briefly clarify the legislative framework in place for these policy issues, or distribution of power normally foreseen in this policy area, vis-à-vis the competition for power effectively triggered by these

negotiations. In so doing, it will set the stage for a better understanding the case studies under analysis.

2.3 COMPETING FOR PARTICIPATION IN AFSJ DECISION-MAKING: THE REFUGEE RELOCATION DECISIONS AND THE EU-TURKEY STATEMENT

As often reiterated by the Council of the EU and the Commission, both of the two Refugee Relocation Decisions and the EU-Turkey Statement were firmly rooted in the European treaties.

The first two Decisions were proposed and later adopted under Article 78(3) of the Treaty on the Functioning of the European Union (TFEU) which, when read together with Article 80 TFEU,¹⁹ provide the legal basis for the implementation of the principle of solidarity in the AFSJ. According to Article 78(3) TFEU:

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

From a decision-making perspective, under this article the Council takes decisions under consultation by QMV and not by Ordinary Legislative Procedure (OLP) and co-decision, as normally common in the area of asylum, migration and border control (see Chapter 1). When considering the main differences between co-decision and the OLP vis-à-vis consultation procedures in terms of inter-institutional separation of powers, the use of this Article in practice entailed that: 1) the Commission's agenda-setting power was augmented, seeing as proposals put forward under consultation by the latter can only be adopted or rejected by the Council, whereas 2) the European Parliament's role was reduced to providing an advisory, non-binding opinion; and 3) the Council of the EU only required a qualified majority of Member States to adopt legislation, which in turn made room for competition for policy-making influence at the Council.

Article 78(3) TFEU was first triggered during the migration and refugee crisis to adopt the first Refugee Relocation Decision. The same legal basis was used for both the second

¹⁹ According to Article 80 TFEU, ‘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. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.’

Refugee Relocation Decision and the EU-Turkey Statement, as a legal amendment to the second Refugee Relocation Decision. Under Article 78(3) TFEU, the provisions adopted in the three decisions relating to refugee relocation entailed a temporary and limited derogation to certain provisions of the Dublin Regulation, most importantly as regards the criteria for determining the Member State responsible for examining asylum applications.²⁰ From a political standpoint, the momentum to trigger Article 78(3) for the first time was provided by the European Council's conclusions of April 2015 on internal solidarity and responsibility towards frontline Member States (Council of the European Union, 2015f). With the European Council's backing on the underlying principles, the Commission proposed a first Council Decision for the relocation of 40,000 persons on a voluntary basis. The Council reached political consensus on it in the context of the JHA Council of 20 July 2015 (Luxembourg's Council Presidency, 2015). In early September, the Commission triggered the same Article once again for a new proposal for refugee relocation, in view of the sharp increase of migratory pressure observed and the shift in migratory routes (European Commission, 2015e, p. 11). Both Council Decisions were adopted under special consultation procedures, thus they followed the common provisions of Article 289 TFEU. In special consultation procedures like these, the EP only has an advisory role, no co-decision powers and a single reading: this means that the EP is permitted to give a non-binding opinion and may reject, approve or propose new amendments by simple majority before the Council of the EU adopts the text by qualified majority. Only in the case that the Council substantially amends the content of the Commission's proposal(s) after the EP's non-binding opinion, is the Council required to consult the EP again upon adoption (i.e. reconsultation). The EP conducts its work mainly in its various committees; the two Committees in charge of producing an opinion on these files were the Budget Committee and the LIBE Committee.

As for the EU-Turkey Statement, it was first published in a press release as an act (Council of the European Union, 2016b) between EU Heads of State and/or government and Turkey to end irregular immigration between Turkey and the EU. Enforcement of the Statement in terms of resettlement was broadly based on the legal framework of the bilateral readmission agreement between Greece and Turkey until the entry into force of a new EU-Turkey

²⁰ 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.

Readmission Agreement for non-EU nationals, on 1 October 2017. Based on one of the action points of the Statement, i.e. the 1-1 mechanism, Member States had the opportunity by means of the Statement to meet their relocation obligations entailed in the Refugee Relocation Scheme by means of resettlement instead, as per Article 1 of Council Decision (EU) 2016/1754, derived from the EU-Turkey Statement.

Insofar as it was drafted as a political statement rather than an international agreement, EU Heads of State and Government did not have to comply with the provisions for negotiating and adopting international agreements entailed in Article 218 TFEU for all EU external action areas other than commercial policy. Under the consent procedure, normally required for the adoption of all international agreements, the Council of the EU and the EP would have had to either approve or reject the Commission's proposal but neither of the two would have had the ability to amend it.

While other scholars have analysed in depth the legal nature of the EU-Turkey Statement (see, for instance, De Vrieze, 2018), what is interesting for the purposes of this analysis is to underscore how the EU-Turkey Statement, much like the Refugee Relocation Decisions, was adopted thanks to a legal and political exception to the norm for similar legislative texts, which fundamentally unsettled the inter-institutional balance of power and prompted a competition for power in their formulation.

In the case of the second refugee relocation Council Decision, this was coupled with the explicit use of qualified majority voting for the first time in the history of the AFSJ. The politicization of policy-making and the resulting competition for power in the policy formulation was most visible in that all three policies were subject to appeals for annulment and, in the case of relocation, later infringement procedures for non-implementation after the Court of Justice.

In the case of the Refugee Relocation Scheme, the second Decision was brought to Court for annulment by the Slovak Republic and Hungary, supported by Poland (Court of Justice of the European Union, 2017a). For Hungary, this came as a result of a parliamentary bill adopted on 17 November 2015 entitled 'Action against the compulsory settlement and in defence of Europe and Hungary', or *Act CLXXV of 2015*. In the *Joined Cases*, the three Member States put forward various pleas for annulment, later categorized by the CJEU in three subgroups for reasons of simplification. First of all, they made pleas on the legal base of the contested Decision, Article 78(3) TFEU, as well on the questionable provisional nature of the Decision and on the characterization of the situation as a 'sudden inflow of

nationals of third countries.’ Secondly, they raised pleas in view of alleged breaches of various procedural requirements, namely: i) breaches of Articles 68 and 293(1) TFEU relating to the need of consensus at the Council on voluntary relocation allocations; ii) the failure in consulting the European Parliament on the second Decision without a proper session for amendments; iii) the Council’s failure in making the voting session on the second Decision public and in giving national parliaments the right to issue an opinion; iv) the right to have the various texts of the initial proposal and of the final text translated in EU languages other than English. Thirdly, pleas were raised on the actual content of the Decision, for allegedly a) breaching the principle of proportionality, but also b) placing a disproportionate burden on Hungary, c) impacting culturally homogeneous countries like Poland more than others, and d) raising issues of legal certainty in relation to the rest of the EU asylum *acquis* and of international conventions. In its *Judgement* of 6 September 2017, the Grand Chamber of the CJEU dismissed all submissions made by the three Member States and did not find grounds for the submitted request for annulment of Council Decision (EU) 2015/1601 (Court of Justice of the European Union, 2017a, 2017b). Not only did the CJEU reject *Joined Cases C-715/17, C-718/17 and C-719/17* put forward against the Council on the basis of Article 263 TFEU; in 2020, it also ruled in favour of the Commission’s infringement procedures on Poland, Hungary and the Czech Republic, insofar as the countries were found to have failed to fulfil their relocation obligations under European Union Law (Court of Justice of the European Union, 2020).

Arguably, the result of a highly politicized and contested, non-consensus based legislative process was that only 32,683 relocations were effectively completed out of the 160,000 relocations foreseen in the Council Decisions²¹ by 26 September 2017, the original deadline of the scheme. The final outcome achieved by the deadline deviated only imperceptibly from the voluntary pledges made in July, forming the political basis for the first Refugee Relocation Decision.²² Blind to the evident gap between policy objectives and outcomes, the European Commission presented this result as a political success. As argued *ex-post* in an internal document shared with the author (European Commission, 2017c), the actual obligation entailed by the two Council Decisions was around 98,000 (63,302 from Greece and 34,953 from Italy), based on the number of persons in need of international protection

²¹ COM(2017) 465 final, Annex 3 to the Fifteenth Report on Relocation and Resettlement, 6 September 2017.

²² On 20 July 2015, Heads of State and Government agreed to the relocation of 32,256 persons in need of international protection to assist Italy and Greece.

eligible and registered. Given that most migrants arriving in Italy were not eligible for relocation²³ and that the EU-Turkey Statement resulted in a drop of 96% in irregular flows towards Greek islands, the Commission argued that the legal obligation to relocate was in the end internally adjusted to 35,245, just 2,562 away from the outcome finally achieved (European Commission, 2017c).

TABLE 2.1: WHO HAS RELOCATED THE MOST?

Member State	Total relocated from Italy and Greece	Fair distribution of the 35,245 deemed eligible for relocation	Percentage of fair share actually relocated
Austria	17	939	2%
Belgium	1114	1176	95%
Bulgaria	60	411	15%
Croatia	82	273	30%
Cyprus	143	70	204%
Czech Republic	12	766	2%
Estonia	141	96	147%
Finland	1980	618	320%
France	4767	6229	77%
Germany	9979	8185	122%
Hungary	0	623	0%
Ireland*	717	544	132%
Latvia	321	135	238%
Lithuania	384	201	191%
Luxembourg	512	114	449%
Malta	168	34	494%
Netherlands	2635	1874	141%
Poland	0	2445	0%
Portugal	1518	790	192%
Romania	728	1193	61%
Slovakia	16	386	4%
Slovenia	232	162	143%
Spain	1328	3859	34%
Sweden	2859	1152	248%
Liechtenstein**	10	N/A	N/A
Norway**	1509	N/A	N/A
Switzerland**	1451	N/A	N/A
TOTAL	32,683	35,245	93%

Source: European Commission (2017c).

*Ireland opted into the relocation scheme, whereas the UK and Denmark opted out

**In addition, some Schengen Associated States (Liechtenstein, Norway and Switzerland) chose voluntarily to participate in the scheme.

Looking at the other side of the coin, the CJEU was supportive of the Commission and in particular observed that ‘the small number of relocations...carried out pursuant to the contested decision [could] be explained by a series of factors that the Council could not

²³ According to the same document, ‘[o]nly 35,245 of eligible [nationals] arrived and were registered in Italy and Greece during the period of the relocation scheme (from September 2015 until September 2017)’. Out of this number, only 13,305 eligible persons arrived in Italy.

foresee at the time the decision was adopted, including, in particular, the lack of cooperation on the part of certain Member States' (Court of Justice of the European Union, 2017b). As shown in Table 2.1,²⁴ out of the total number of relocations undertaken by September 2017, eight Member States relocated 65% or less of their allocated share of those 35,245 'deemed eligible for relocation' (European Commission, 2017b): Hungary and Poland did not accept any, while only very few were relocated to Austria, the Czech Republic, Slovakia, Bulgaria, Croatia and Romania.

The evident rejection of a burden-sharing approach by CEE Member States was counterbalanced by supportive Member States *shouldering most of the responsibility*, taking between one-and-a-half and four times the original fair distribution of relocations: these included many of the six founding Member States (all but France and Belgium) and Southern Member States (Cyprus, Malta and Portugal), alongside some Northern Member States (i.e. Sweden and Finland, despite the latter's abstention on the second Council Decision), one *opt-in* state (Ireland) and all the Baltic states.

In the case of the EU-Turkey Statement, no direct action for annulment was put forward by Member States; however, three actions for annulment were made by two Pakistani nationals and an Afghan national,²⁵ challenging the legality of the Statement and particularly its fulfilment of Treaty rules on concluding international agreements with third countries (namely, Article 218 on the EU's external action, ex Article 300 TEC). The CJEU found all three requests for annulment inadmissible insofar as it found that the EU-Turkey Statement could not be considered as a measure adopted by the European Council, but rather by HOSG, 'acting in their capacity of organs of their States' (De Vrieze, 2018, p. 30). This was particularly interesting in that, in the first month following the adoption of the Statement, both the EUCO and Commission Presidents referred to the latter as an agreement in different occasions (European Commission, 2016; European Council, 2016; European Parliament, 2016; De Vrieze, 2018). Only as from the end of April, the Council started refraining from doing so, as so did the Legal Service of the European Parliament, reiterating how it was a press communication rather than a legally binding agreement (European Parliament, 2016b; Nielsen, 2016). Whilst the European Parliament as a whole

²⁴ This Table was derived from an internal Commission document provided to the author in an interview by a senior Commission official.

²⁵ Cases T-192/16, T-193/16 and T-257/16 NF, NG and NM v European Council.

backed the Statement, many MEPs – especially from the Centre-Left and Left – did not hesitate to reproach the deal in view of human rights concerns in Turkey, on the status of Turkey as a ‘safe third country’ and on the legality of the Statement under international human rights conventions (European Greens, 2016; GUE/NGL, 2016a).

As shown in the preceding paragraphs, all three decision-making processes under analysis shared a strong, underlying political agenda, which was served by stretching the legal and political basis provided by the Treaties. Indeed, in the case of the Refugee Relocation Decisions, the political commitment made by the European Council to ‘set up a first voluntary pilot project on resettlement across the EU’ (Council of the European Union, 2015f, p. 2) was first stretched to unprecedented numbers of refugee relocations – 40,000 – in the first Commission’s proposal; in the context of the second proposal, the political and legal bases for adoption were further stretched not only in numbers – another 120,000 – but also in relation to the basis for political commitment, made mandatory without first consulting the Council and then pushed through and adopted at the Council via QMV for the first time in the history of the AFSJ. In the case of the EU-Turkey Statement, a strong political agenda and increasing domestic pressures motivated the Council to adopt the Statement as a press release, fundamentally bypassing the provisions on EU agreements with third countries, which would have entailed co-decision with the European Parliament.

Arguably, this came at the cost of politicizing the policy matters at stake and rendered inevitable a competition for power among EU institutions and Member States in the formulation of the three legislative texts. As illustrated above, the crucial redistribution of powers and politicization of the policy matters at stake shown in the three case studies makes a two-level analysis on the role and bargaining strategies of EU institutions and Member States necessary. In so doing, it will be possible to fully comprehend what motivated a rebalancing of power in the first place and how it was possible to achieve it, as well as how other actors reacted to it and what strategies they used to exert influence along the decision-making processes. The following chapter starts by addressing the role and bargaining strategies of the European Commission in setting the political agenda for the Refugee Relocation Decisions and the EU-Turkey Statement.

Chapter 3 – ‘POLITICAL’ WHEN IT MATTERS THE MOST? THE COMMISSION IN THE MAKING OF THE REFUGEE RELOCATION SCHEME AND THE EU-TURKEY STATEMENT

Europe and our Union have to deliver. While I am a strong defender of the Community method in normal times, I am not a purist in crisis times – I do not mind **how** we cope with a crisis, be it by intergovernmental solutions or community-led processes. As long as we find a solution and get things done in the interest of Europe’s citizens.(Juncker, 2015, p. 24)

With these words, European Commission President Jean-Claude Juncker wrapped up his first *State of the Union* speech on 9 September 2015 and announced the proposal of a second emergency mechanism for refugee relocation to relieve Italy, Greece and Hungary from high migratory flows. This step represented the culmination of the Commission’s involvement in the response to the migration and refugee crisis, which came as the result of an escalating politicization of the challenge of migration as one of the core priorities for Juncker’s Presidency. In light of the existing scholarly literature on the Commission’s role in JHA policy-making (see Chapter 1, Section 1.4.2), this is unsurprising. As explained by Nugent and Rhinard (2019), the Commission has been able to increase its mandate on AFSJ matters over time by exercising its own ‘political’ roles in policy-making, particularly under Juncker’s Presidency. The policy formulation and adoption of the two Refugee Relocation Decisions and of the EU-Turkey Statement are further proof of this, as explored in this chapter.

In an attempt to illustrate the ‘political’ role, position and bargaining strategy of the Commission in the policy formulation of the three Council Decisions under discussion, the chapter proceeds as follows. Section 3.1 sketches out the main pre-condition for the Commission’s role in the formulation of these Decisions, that is the politicization of the institution of the European Commission under Juncker, in particular in the AFSJ. Section 3.2 analyses the Commission’s early attempts in agenda-setting on the issue of refugee relocation up until 2015, including how the nature of agenda-setting changed under the leadership of former Commission President Barroso vis-à-vis that of Juncker. Sections 3.3 and 3.4 respectively analyse the function of the European Commission, its Directorate

Generals and Services in agenda-setting, legislating and mobilizing political support for the two Refugee Relocation Decisions and the making of the EU-Turkey Statement.

3.1 THE JUNCKER COMMISSION: GOVERNANCE ROOTED IN SOLIDARITY ON IRREGULAR IMMIGRATION

The politically proactive role of the Juncker Commission in the management of the migration and refugee crisis (see Kassim and Laffan, 2019; Nugent and Rhinard, 2019, pp. 65–66; Schmidt, 2019) reflected not only an innate commitment to maintaining its President’s electoral promises, but also a series of structural innovations, as laid down by the Lisbon Treaty, for the Commission’s appointment and its role in supranational bargaining.

First of all, Juncker’s nomination was the first to fall under the so-called *Spitzenkandidat* system: in electing a Presidential nominee, the EP acted in a *maximalist* manner to ensure that, ‘if anyone other than the candidate of the largest group at the European Parliament after the elections was nominated, he or she would not be approved by parliamentary vote’ (Nugent and Rhinard, 2015: 65). Secondly, for the first time in the history of the Commission, the election of the Commission President was approved in the European Council by qualified majority voting, instead of unanimity – i.e. 26 out of 28 Member States (*ibid.*). In fact, the Hungarian and UK PMs, Viktor Orbán and David Cameron, strongly opposed Juncker’s candidacy because they would have preferred a Commission President with fewer ambitions for the project of European integration (Nugent and Rhinard, 2015, p. 77).

The highly politicized nature of Juncker’s appointment in turn continued into the selection of Commissioners-Designate. Not much is known about the meetings between the Heads of State and/or Government and President-Designate Juncker, however Juncker’s influence over the nomination process of Commissioners did not appear higher than usual (Nugent and Rhinard, 2015, p. 66). Most importantly, by the time Juncker was confirmed as President-designate, half of the Member States had already unilaterally selected their Commissioners-designate. The most important task for Juncker was to carefully craft a politically balanced allocation of the leading portfolios and the new roles of Vice-Presidency. In an attempt to mirror the electoral composition of the EP, Juncker appointed three Vice-Presidents from the Socialists & Democrats (S&D), two from the European

People's Party (which had also received the Commission Presidency) and one liberal from ALDE (Alliance of Liberals and Democrats for Europe). His willingness to make the Commission more political on 'big' issues had already been clearly expressed over the course of his electoral campaign. A clear instance of this was the televised *State of the Union 2014* debate, whereby Juncker debated the future of the EU with the other Presidential Candidates: on this occasion, Juncker expressed the need for a more political Commission where Commissioners would be 'real politicians' and the College composition would reflect the EP's political composition, in order to deliver a 'real political program for the next five years' (EUI, 2014).

The strategy followed by President-Designate Juncker in the appointment of leading Commissioners and Vice-Presidents followed his commitment to a more 'political' and 'effective' Commission, starting from his ten policy priority areas, among which was a five-point plan on immigration. As explained by a senior Commission official,²⁶ Juncker's prioritization of migration for his Commission was not part of the EPP agenda – Juncker's political affiliation. Rather, it reflected a strong sense of responsibility he nurtured for Southern frontline Member States, as well as a personal discontent with the way in which migration had been dealt with in the past.²⁷

This personal dedication to solving the problem of irregular immigration for Southern Member States was reflected in the creation of a *Task Force on Migration* within the European Commission. As explained by the same senior Commission official, one of Juncker's priorities as Presidential nominee was to create a dedicated Migration and Home Affairs portfolio in his College. For this purpose – again, against the suggestion of many – he wanted to nominate someone from a frontline Member State, 'not from the North', who would understand the issue at stake: this led to the allocation of the Migration portfolio to Greek Commissioner Dimitris Avramopoulos, who was tasked to design a *European Agenda on Migration* – published a year later, on 13 May 2015. In order to balance out the 'Southern influence' on Migration and Home Affairs, President Juncker personally pushed for the appointment of former Dutch Foreign Minister Frans Timmermans as First Vice-President of the Commission and Juncker's right-hand, against the original wish of Dutch PM Mark Rutte who wanted to send his Minister of Finance and President of the *Eurogroup*

²⁶ Interview with senior Commission official (P26), January 2019, Brussels (Belgium).

²⁷ Interview with senior Commission official (P26), January 2019, Brussels (Belgium).

Jeroen Dijsselbloem. Timmermans was in fact a strong pro-European with ‘very good contacts’ in Turkey, which made him the perfect candidate to coordinate the JUST and HOME portfolios, and later to represent personally the Commission in the negotiations with Turkey on the EU-Turkey Statement.²⁸ In August 2016, the College’s efforts on irregular immigration and border control were complemented by the creation of a new Commission portfolio, the Security Union, filled by Sir Julian King, the new British Commissioner following the Brexit referendum. In this new role, Commissioner King’s work was to be overseen by VP Timmermans and in close coordination with HOME Commissioner Avramopoulos, as externally supported by a Task Force from the Commission services and supervised by HOME Director-General Matthias Rüte (Juncker, 2016). This carefully drafted hierarchical structure had the effect of increasing the Commission’s potential for steering the issue of irregular migration and borders control by means of strong political leadership (Dinan, 2016).

The strategic allocation of vice-presidencies followed a politically intense two-month campaign across the EU, during which Juncker was particularly vocal on the topic of legal and irregular immigration, especially when visiting southern frontline Member States. The strong emphasis put by Juncker on these policy matters reflected his vision of a Commission that would make ‘an effort to rationalise new proposals in line with wider societal needs and narratives’ (Nugent and Rhinard, 2019, p. 210), i.e. being political in setting the EU’s agenda.

In relation to the failure of two earlier pilot projects on refugee relocation to assist Malta (see Chapter 4, Section 4.2), the President expressed outrage that a small country like Malta, locked in the middle of the Mediterranean, had to take on all the burden while everybody was looking away. On 2 May 2014, on the occasion of a visit to Malta during his electoral campaign, Juncker wrote an Op-ed for the *Malta Independent* highlighting his migration-related priorities as candidate for Commission Presidency:

During my campaign across Europe to become the next President of the European Commission, I have often said: In future, Europe needs to be big on big issues and small on small issues. For me, coping with the challenge of immigration is a big issue for Europe and will be high on my agenda as Commission President. [...] In a European Union of 28 Member States, it cannot be that a small island in the Mediterranean has to bear the full weight of immigration towards our continent [...] Europe

²⁸ Interview with senior Commission official (P26), January 2019, Brussels (Belgium).

therefore has a responsibility towards Malta, as it has a responsibility towards Italy, Greece, Cyprus and Spain. We cannot have common borders if only some have to bear the cost – it is a question of solidarity. (Juncker, 2014b).

In the *State of the Union 2014* debate, Juncker again called for a new system of European solidarity, which would deal with irregular immigration not as a problem merely concerning frontline states, but as ‘a European problem’ (EUI, 2014). On 12 May, a similar message was conveyed to the Spaniards in Madrid, where Juncker expressed the need for Europe ‘to combine...elements of solidarity with clear rules of the game... [arguing that] the inevitable cost of [irregular migration] must be shouldered by all Europeans, and not only by those who are geographically exposed’ (Juncker, 2014a).

Based on the electoral promises made across Europe and on President Juncker’s political commitment to the cause, in early March 2015 the Commission began working on a comprehensive European Agenda on Migration (EAM): the College’s first orientation debate was primarily focused on key actions relating to the reform of CEAS, a new European policy on legal migration, the fight against irregular immigration and human trafficking, and the strengthening of the EU’s external borders (European Commission, 2015c). It was only through the tragedy in Lampedusa in April 2015 and the political mandate received from the European Council that the Commission was able to expand the EAM’s reach in irregular immigration and table a first proposal or emergency scheme for refugee relocation on a voluntary basis.

3.2 BUILDING ON IMPETUS FOR A REFUGEE RELOCATION SCHEME

The impetus for the Commission to propose a first Decision for refugee relocation came shortly after the European Council’s Special Meeting of 23 April 2015 (EUCO 18/15). In a press release after the Special Meeting, the European Council expressed the political will to act in response to the migration and refugee crisis and, most crucially, called upon the Commission to act in response to it. At the Special Meeting, on the topics of intra-EU solidarity and responsibility-sharing the European Council committed to:

Increase emergency aid to frontline Member States and consider options for organising emergency relocation between all Member States on a voluntary basis [...] The EU institutions and the Member States will work immediately on the full implementation of these orientations (Council of the European Union, 2015f).

In this framework, the European Council called for a ‘Commission Communication on a European Agenda on Migration, in order to develop a more systemic and geographically comprehensive approach to migration’, with the first reporting deadline for both the Council and the Commission in June 2015. Shortly after the Special EU CO meeting, Juncker gave a speech (European Commission, 2015g) to the European Parliament on 29 April, whereby a tension in priorities and objectives soon arose between the European Council and the Commission. On this occasion, Juncker criticized the EU CO’s response as ‘immediate but inadequate’ and thus indicated that, together with the Commissioner in charge, Avramopoulos, the Commission would introduce a quota-based system:

I proposed this at the previous special European Council. At the time, we ought to have marked our collective will to tackle the geographical distribution of refugees throughout Europe. We will have to do this. We cannot leave it solely to the Member States directly concerned to manage the relocation of refugees. What we need is shared solidarity. To be honest, I have had enough of poetry. I find the rhetoric of concern attractive at first but not all the time. On 13 May we will propose a system of relocation throughout the European Union. Solidarity must be shared (European Commission, 2015g).

Already by the end of April the Parliament called ‘on the Commission to establish a binding quota for the distribution of asylum seekers among all the Member States’ (European Parliament, 2015d). On 13 May, a European Agenda on Migration (EAM) was thus launched, including an element of refugee relocation on a voluntary basis at the centre of the policy response:

To deal with the situation in the Mediterranean, the Commission will, by the end of May, propose triggering the emergency response system envisaged under Article 78(3) TFEU. The proposal will include a **temporary distribution scheme** for persons in clear need of international protection to ensure a fair and balanced participation of all Member States to this common effort ... This step will be the **precursor of a lasting solution**. The EU needs a permanent system for sharing the responsibility for large numbers of refugees and asylum seekers among Member States (Emphasised in the original version, European Commission, 2015a).

In spite of the launch of the EAM and the Commission’s prioritization of refugee relocation as the ‘precursor to a lasting solution’, EU CO President Tusk quickly reasserted in an interview with the *Polska Times* that his preferred policy solution to the crisis would have been to work on a new return policy, while welcoming ‘only a defined group of immigrants’ (Donald Tusk cited in Reuters, 2015). These contrasting positions would be the preamble

of a lasting tension between President Tusk and President Juncker on migration and asylum policy (for more on the European Council's role, see Chapter 4, Section 4.2.3).

With a political mandate from the European Council on refugee relocation – albeit not a strong one, as reflected in the position of President Tusk – the Commission quickly proceeded to propose a first Refugee Relocation Decision. Several meetings were held in the Luxembourg Presidency's offices, attended by President Juncker, his Head of Cabinet Selmayr, Director-General of DG HOME Ruete and the Director-General of the Council Secretariat, Christine Roger.²⁹ Contrary to the assumption that the Commission's executive was compact and unified on refugee relocation at all times, according to an off-the-record source Juncker's Head of Cabinet was already critical on the idea of testing relocation again, because it had already failed in the past (i.e. EUREMA I and II). The same doubts were initially shared by the Luxembourgish Presidency (see Chapter 4.3.1).

Nevertheless, for Juncker the expected costs of not tabling the proposal and not acting in response to the crisis (i.e. *costs of no-agreement*) far exceeded the expected costs from its ratification at *levels I and II*: failing to table a proposal may have compromised not only the sincerity of his electoral promises on the topics of irregular immigration and internal solidarity, but also the political support from frontline Member States. Reflecting the urgency of the issue at stake, President Juncker gave a joint press release with the UN Secretary-General Ban Ki-Moon right after having tabled the first proposal on 27 May 2015. Building upon Ban Ki Moon's political message in encouragement of compassion and responsibility-sharing among EU Member States, President Juncker reiterated the importance for Member States to be on board with the proposal(s) tabled and that even 'reluctant' ones '[would] have to accept that it's not about words but it's about actions and the Commission is proposing actions' (*Euractiv*, 2015a).

Contrary to the official narrative used by some Commission officials,³⁰ the impetus for a policy tool involving a temporary mechanism for refugee relocation was not merely the product of brainstorming sessions in April and May; rather, it represented the ultimate

²⁹ Interview with senior officials (P16-17), Brussels (Belgium), January 2019.

³⁰ Interview with Commission official (P4), Brussels (Belgium), November 2018.

output of years of work and studies to solve the issue of redistribution in the short-term, while waiting for a new reform of Dublin.

However, whilst former Commission President Barroso did not have a personal political commitment to the cause in either of his two Presidency mandates, Juncker made internal solidarity one of his electoral flagships, thereby rendering his personal *win-set* for the negotiations on refugee relocation smaller. As commented by an ALDE political advisor, the previous Commission under Barroso would always be wary of the political feasibility of any given proposal on JHA affairs before tabling it.³¹ As a result, most of the work undertaken under Barroso II³² in relation to relocation was limited to showing the importance of assisting and alleviating the pressure from frontline Member States under migratory pressure by means of various solidarity measures, and evaluating the political feasibility thereof (European Commission, 2013, p. 19). This is perfectly reflected in a study on the feasibility of establishing a mechanism for the relocation of beneficiaries of international protection commissioned by DG HOME and contracted under a European Refugee Fund (ERF) service contract by *Ramboll Management Consulting* and *Eurasylum* (2010): this study had the purpose of providing the Commission with detailed information relating to the political, legal and financial implications of creating a mechanism for refugee relocation, including an analysis of policy alternatives. Already then, the study had pointed to Art. 78(3) TFEU as the potential ‘legal basis for a relocation mechanism... due to its *ad hoc* nature...justified as an emergency situation with sudden high inflows, and moreover... limited in time (without this preventing the relocation of the persons concerned from being permanent’ (European Commission, 2010, p. IV). Learning from the experience of the EUREMA I and II pilot projects in Malta, the European Asylum Support Office (EASO) had already been pre-selected as a suitable ‘provider of external coordination’ to frontliners in the form of joint processing of applications, fingerprinting and registration, i.e. a ‘clearing house’ for relocation (*ibid.*, p. III-IV). Lastly, in relation to the financial grounds for a refugee relocation mechanism, the report had suggested using the ERF as a politically feasible instrument for the financing of the tool with a fixed amount per refugee relocated higher than 4,000 Euros.

³¹ Interview with ALDE political advisor (P9), Brussels (Belgium), January 2019.

³² Between November 2004 and October 2014, the European Commission was presided by former Portuguese PM José Manuel Barroso. In September 2009, the European Parliament in fact re-elected Barroso as President of the Commission for a second term, which remained known as *Barroso II*.

Only months before the end of his mandate in 2014, would Barroso take an active stance in favour of refugee relocation. In preparation to the upcoming strategic guidelines of the European Council of June 2014, the Commission noted, with a view to furthering the development of the AFSJ, that:

Relocation ... is one form of solidarity that should be enhanced... Further ways of achieving a more even responsibility sharing between Member States should be part of the future reflection (European Commission, 2014).

Unlike Barroso II, the Juncker Commission reflected a strong political agenda on irregular immigration, solidarity and responsibility sharing, arising from his ‘electoral’ promises. From the start of Juncker’s mandate, the Commission Services started assessing the general state of play in the AFSJ, while studying what instruments envisaged by the Treaties could be used for solidarity.

According to former Italian Minister of Interior Angelino Alfano, already under the Italian Council Presidency Vice President and High Representative (VP/HP) Mogherini, Commissioner Avramopoulos and President Juncker ‘had made all the efforts necessary to induce Member States into applying the principle of solidarity’ and finding solutions for doing so.³³ As former Director-General for DG HOME Matthias Ruete commented, the starting point of the Commission’s work in response to the increasing irregular migrant flows in 2014 consisted in a strong focus on the fight against human smuggling, which was reflected in the work of Latvia’s Council Presidency (see Chapter 4, Section 4.3). While the EAM was officially launched on 13 May 2015, Director-General Ruete and the rest of DG HOME had been working towards the mobilization of funds, additional operational support at sea and more solidarity in SAR missions for some time, alongside a resolution at the JHA Council.³⁴ On the 25 November 2014, the Commission had hosted the *Second Forum on Relocation and Resettlement ‘Solidarity in Practice’*, during which various measures for the intra-EU relocation of beneficiaries of international protection had been discussed, and the underlying principles for a distribution key had been defined (European Commission, 2015a, p. 19).

³³ Interview with former Italian Minister of Interior Angelino Alfano (P36), Milan (Italy), March 2019.

³⁴ Interview with former Director-General (DG HOME) Matthias Ruete (P3), Brussels (Belgium), November 2018.

By the end of 2014, under the impetus of the Italian Council Presidency, DG HOME had outsourced to *ICF Consulting* the evaluation of why the Temporary Protection Directive had never been triggered since its adoption in 2001. Directive 2001/55/EC,³⁵ commonly known as the Temporary Protection Directive (TPD), had established a scheme that would allow the EU to deal with mass influxes of foreign nationals to the EU due to war, violence, or human rights violations. Using this Directive would have enabled the EU to implement immediate, temporary protection for a specific group(s) of vulnerable people, to be specified in a Council Decision, for a period of one year, renewable to two. As irregular migrant inflows in the Mediterranean started to rise again, *ICF Consulting* was asked to come up with ‘concrete ideas [on] when it could be triggered’.³⁶ The final report was presented to and discussed with Members of the LIBE Committee and the Green Party. After mapping the whole procedure needed for the EU to activate the TPD, *ICF Consulting* came to the conclusion that it would have taken too long to activate the TPD for a variety of reasons including: the number of stakeholders involved, the procedure and the lengthy negotiations required, and the unclear grounds on which the Directive could have been triggered, insofar as at the time no clear-cut definition of a ‘mass influx’ existed, nor was there a precedent of one (European Commission Directorate-General Home Affairs, 2016b). Furthermore, the TPD raised concerns among Member States not only because it was not considered by many as a solution to mixed migration inflows, but also because it was seen as a potential “pull factor” and as a tool that would have provided beneficiaries of temporary protection with a ‘generous level of rights...reducing, or even undermining, the national sovereignty that Member States pursue in the decision on who can enter and sta[y] on its territory’ (European Commission Directorate-General Home Affairs, 2016b, pp. 35–36).

In the Spring 2015, *ICF Consulting* was consulted again by DG HOME with regards to the Dublin Directive (European Commission Directorate-General Home Affairs, 2016a). In the first instance, this consultation was to perform a ‘standard evaluation’ of Dublin III,³⁷ as Member States were still implementing the new second-generation instruments of CEAS (see Chapter 2). By the second meeting between *ICF* and DG HOME it became clear that

³⁵ 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, pp. 12–23).

³⁶ Interview with *MPI Europe*’s Acting Director, former Project Coordinator for TPD and Co-Project Director on the Dublin Regulation at *ICF Consulting* Hanne Beirens (P11), Brussels (Belgium), January 2019.

³⁷ Ibid.

they would probably have to review Dublin.³⁸ Among the various reports produced for the Commission, *ICF Consulting*'s work reflected on different kinds of distribution schemes and ways of distributing asylum seekers among Member States, including alternative criteria on the basis of which relocation would be grounded and rights granted to these individuals.³⁹

It could be tempting to downplay the role of the Commission and attribute its actions to the driving political impetus given by the Italian Council Presidency. Indeed, as commented with hindsight by former Italian Minister of Interior Angelino Alfano, 'the two Council Decisions would have never been adopted without the push provided by Italy and the European Commission'⁴⁰ (for more detail, see chapter 4). However, Alfano further commented that:

the pressure and moral suasion operated by the Commission was such that it evidently [brought] about not truly desired outcomes by its Signatories... I don't want to say that they were extorted with force, but [they were] certainly extracted with forceps, it was a bit like a caesarean section, not exactly spontaneous.⁴¹

The disconnect between the Commission's proposals and the preferences of the beneficiary Member States was also reported with hindsight by an IOM official,⁴² who claimed that from the very early stages of IOM's consultation with Italy regarding the implementation of the Scheme, Italy stated that it would only be able to relocate approximately 10,000 people – far fewer than the overall 39,600 persons to be relocated from Italy under the two Decisions; not only did the country lack the capacity to implement such numbers within the two-year timeframe imposed, but Italian authorities also predicted that, under the acceptance rate set by the Commission at 75%,⁴³ there would not have been enough potential individuals in need of international protection to reach the numbers set by the Commission.

³⁸ Interview with *MPI Europe*'s Acting Director, former Project Coordinator for TPD and Co-Project Director on the Dublin Regulation at *ICF Consulting* Hanne Beirens (P11), Brussels (Belgium), January 2019.

³⁹ Ibid.

⁴⁰ Interview with P36, Milan (Italy), March 2019.

⁴¹ Interview with P36, Milan (Italy), March 2019, translated by the author.

⁴² Interview with IOM official (P8), Brussels (Belgium), November 2018.

⁴³ Interview with IOM official (P8), Brussels (Belgium), November 2018.

The lack of a formal consultation process in the making of the two relocation proposals, alongside a general sense the Decisions were rushed, were lamented by various IOs and lobbyists. According to the same official,⁴⁴ although the IOM had been one of the Commission's main implementing partners for relocation since EUREMA I and II, upon adoption of the two Decisions they were only consulted informally and in the format of general discussions on broader themes, such as asylum or possible policy solutions for mixed migratory flows. This was particularly problematic for the two Refugee Relocation Decisions (as opposed to the resettlement framework of 20 July 2015)⁴⁵ insofar as a standardized process for refugee relocation did not as such exist at that point in time;⁴⁶ furthermore, IOM was not consulted in August, as the second larger proposal for mandatory relocation was being finalized. The inability of IOs or other lobbies to directly influence the decision-making process leading to the two Decisions was confirmed in an interview with the then Director-General of DG HOME Ruete:

Now I am accessible, I obviously received a lot of these people... but then, very often, I'd have such a reputation of not being very influenceable, so they didn't spend a lot of time with me ... I got to know their point of view, which is important, but that was it.⁴⁷

With the Council's formal mandate to act, the main objective for the Commission was to come up quickly with a legal means that would physically relieve pressure from frontline Member States, by sharing the responsibility to other Member States.⁴⁸

3.3 TOWARDS THE ADOPTION OF THE TWO REFUGEE RELOCATION DECISIONS: FROM CONSENSUS-SEEKING TO QUALIFIED MAJORITY

Reflecting on the policy-making process leading to the first proposal, a senior Commission official stated that it was rushed and mostly lacked any precedents upon which the Commission could base a policy response. As such, it called for a 'novel approach' to address the challenges ahead of the EU.⁴⁹ In open brainstorming sessions, DG HOME

⁴⁴ Interview with IOM official (P8), Brussels (Belgium), November 2018.

⁴⁵ Based on the JHA Council Conclusions of 20 July 2015, EU Member States and EFTA Associates (Iceland, Liechtenstein, Norway and Switzerland) agreed to resettle persons in need of international protection through multilateral and national schemes.

⁴⁶ Interview with IOM official (P8), Brussels (Belgium), November 2018.

⁴⁷ Interview with former Director-General of DG HOME Matthias Ruete (P3), Brussels (Belgium), November 2018.

⁴⁸ Interview with senior Commission official (P4), Brussels (Belgium), November 2018.

⁴⁹ Ibid.

proposed, among other possible instruments, a voluntary-based relocation mechanism, legally rooted in Art. 78(3) TFEU; however, refugee relocation was quickly selected over the other alternatives as the most tangible and impactful policy approach to ensure solidarity without creating a pull factor.⁵⁰

Already in the first proposal, the Commission introduced a mechanism for refugee relocation based on four key factors, or criteria for redistribution: a Member State's population size, GDP, average number of asylum applications in the previous four years and unemployment rate. Shortly thereafter, in the Coreper II⁵¹ of 6 June, an internal protocol from the Italian Ministry of Foreign Affairs indicated how:

Director-General Ruete reiterated the need to respect the numbers indicated by the European Council [60,000], highlighting that only in this way it will be possible to put aside the criteria on the basis of which the redistribution key [formula] was defined, and which for many delegations should [instead] make room for pledges made individually by Member States.⁵²

As explained in an interview by former Director-General Ruete,⁵³ the pledging exercise undertaken at the JHA Council of 20 July for the first proposal was rather ‘acrimonious’, insofar as Member States did not want to participate and could only see the need to act on the Central Mediterranean Route, not necessarily on the Eastern Mediterranean one.⁵⁴ Furthermore, it did not take long to realize that the formula shaped by DG HOME – in particular, the two criteria relating to the unemployment and the asylum effects – had a highly distortionary effect on smaller Member States, which left the Director-General himself ‘very dissatisfied with it’:⁵⁵ as a result, not only was the formula⁵⁶ never mentioned

⁵⁰ Ibid.

⁵¹ Under Article 240(1) TFEU, Coreper II is one of the two Council’s main preparatory bodies and is composed of the Member States’ Permanent Representatives to the EU. It prepares the work of four Council configurations: Economic and Financial Affairs; Foreign Affairs; General Affairs; Justice and Home Affairs.

⁵² Directorate-General EU of the Italian Ministry of Foreign Affairs, *Protocol 6475 on Coreper II of 6 June 2015 – Proposals by the Commission on Relocation and Resettlement* (signature: H.E. Ambassador Stefano Sannino), sent on 7 July, in view of the informal JHA Council of 9 July. Translated by the author from the original Italian version.

⁵³ Interview with former Director-General of DG HOME Matthias Ruete (P3), Brussels (Belgium), November 2018.

⁵⁴ The Central Mediterranean route refers to the sea passage from North Africa – namely, Egypt and Libya – towards Italy and Malta across the Mediterranean.

⁵⁵ Interview with P3, Brussels (Belgium), November 2018.

⁵⁶ The same original formula was used for the proposal of European Union: 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*

in any official document relating to the two Council Decisions, but it was also never used as the official basis for seeking consensus among Member States. As explained by Ruete in an interview:⁵⁷

We [DG HOME and the Luxembourg Presidency] had already started to work with what we would call a *fourchette*, [that is] a kind of bandwidth of where we wanted each Member State to land, which was based on a much simpler formula that we used also later [for the second proposal], which was GDP and population.

As clarified by a senior official,⁵⁸ this meant that instead of adapting the formula, the Commission calculated a minimum and a maximum numbers of relocations for each Member State before entering the bilateral consultations. The final allocated figures per Member State in the *Annexes* were the result of these bilateral consultations led by the Luxembourg Presidency and the Commission with all Member States. Thanks to this stratagem, JHA Ministers unanimously adopted a resolution on the first proposal with 32,256 places pledged by the Member States, out of the 40,000 proposed by the Commission, and committed to allocating the remaining 7,744 by December 2015 (Council of the European Union, 2015a).

Neither Commissioner Avramopoulos nor President Juncker were satisfied with the outcome of the EUCO conclusions of July 2015. The day after the JHA Council of 20 July 2015, Commissioner Avramopoulos expressed disappointment with the results achieved on relocation, stating:

This shows that a voluntary scheme is difficult to implement. We would have preferred the use of a proposed redistribution key [formula]. That is why the Commission will put forward later this year a proposal for a fixed emergency system to address future emergencies (Protothema, 2015).

Not dissimilarly from Commissioner Avramopoulos, President Juncker was also heavily dissatisfied with the outcome, particularly so with regards to the logic of consensus stressed in the EUCO conclusions. According to a senior Commission official, Juncker insisted with his team that, as President of the Commission, he had to fulfil obligations under the

a third country national or a stateless person, 10 September 2015, COM (2015) 450 final, pp. 11-13. Available at: <https://data.consilium.europa.eu/doc/document/ST-11843-2015-INIT/en/pdf>

⁵⁷ Interview with former Director-General (DG HOME) and later Special Adviser to President Juncker, Matthias Ruete (P3), Brussels (Belgium), November 2018.

⁵⁸ Email follow-up to interview with senior official (P17), May 2020.

Treaties; in this respect, as the Treaty provided that in any such circumstances you can use QMV, he would not give up on the Community method at the time of the biggest crisis the EU was facing.⁵⁹

As the crisis worsened, on Sunday 16 August there was a call between President Juncker and Chancellor Merkel.⁶⁰ After having finalized the *third economic adjustment programme for Greece* quickly,⁶¹ President Juncker shifted focus to the migration emergency and agreed with Merkel that the Commission ought to extend the first proposal on refugee relocation. For this to happen rapidly, Juncker called the whole Commission and its Services back from their summer holidays to work on a new refugee relocation proposal, while DG HOME was also dealing with the security implications of the Thalys attack.⁶²

Three weeks thereafter, on 9 September 2015, the Commission came up with a new proposal for refugee relocation (European Commission, 2015e). The legal basis of the second proposal would again be Art. 78(3) TFEU; however, unlike the previous proposal, this one would be based on a mandatory quota and would entail relocation on a much larger scale, namely for 120,000 persons in need of international protection to assist Greece, Hungary, and Italy. According to a senior official from the European Commission,⁶³ adding Hungary to the list of beneficiaries of the Refugee Relocation Scheme represented an ‘olive branch’ to Orbán, who complained about not being in the position to take in refugees in light of the increasing migrant inflows to Hungary.

While internal indications from the Commission suggested that a second relocation proposal would soon be tabled, it was only shortly before 9 September that the

⁵⁹ Interview with senior Commission official (P26), Brussels (Belgium), January 2019.

⁶⁰ Ibid.

⁶¹ Running between 19 August 2015 and 20 August 2018, the *third economic adjustment programme for Greece*, or simply put the *third bailout package*, was a government loan, at the request of Greece’s government, from the *European Stability Mechanism (ESM)*. From this package, €61.9 billions of financial assistance out of a maximum conceded of €86 billion were disbursed to Greece. In return for financial assistance, Greece committed to introducing a series of crucial reforms in terms of fiscal sustainability, financial stability, bank recapitalisation, growth, competitiveness and investment, a privatisation programme, and the modernisation of the state and of public administration (European Commission, Hellenic Republic and Bank of Greece, 2015).

⁶² On 21 August 2015, a 25-year-old Moroccan man named Ayoub El Khazzani opened fire on a Thalys train travelling from Amsterdam to Paris, leaving four people injured including the assailant. In the aftermath of the eponymous attack, on 29 August Interior ministers from Germany, Italy, Spain, Belgium, Luxembourg, the Netherlands, Switzerland, and the UK agreed to implement tighter security measures, including identity checks and baggage controls, at train stations, alongside with increased police presence at international train stations (BBC, 2015).

⁶³ Interview with senior Commission official (P26), Brussels (Belgium), January 2019.

Luxembourgish Presidency was directly consulted by the Commission on this matter.⁶⁴ Internally, the rotating Presidency, including its then Permanent Representative Christian Braun, was against a second decision and urged the Commission to wait until the implementation of the first decision had been completed, without proposing a high number of relocations that would be technically impossible to guarantee within that timeframe.⁶⁵ The Luxembourgish PermRep was convinced that, by waiting for the implementation of the first Decision, the Commission would have been able to gather more supranational consensus over the issue of refugee relocation for the future. However, the executive at *level II*, in the form of Luxembourgish Foreign and European Affairs Minister Asselborn, steered the Presidency towards full support for the new proposal, thus strengthening the Commission's position (see Section 4.3 for more detail on the role of the Luxembourgish Presidency).

The Netherlands raised a similar concern to the Commission, arguing that the implementation shortcomings of relocation experienced throughout the summer had shown how an even bigger relocation proposal to be fulfilled within the following two years would be unmanageable.⁶⁶ Notwithstanding these concerns, the Franco-German duo, the Benelux and the Mediterranean states never withdrew support from the second proposal (see Sections 4.2 and 4.3), thereby securing the necessary political base for the Commission's agenda (**TEI**). Soon after its adoption, the Netherlands, alongside Germany, France, Finland, and other Member States internally adjusted the speed of relocation processes to their own calculations made during the summer, which showed that only between a quarter and one-third of the total number of relocations proposed would be achieved by September 2017.⁶⁷

In the first Coreper II meeting relating to the second relocation proposal, the Commission received instant political endorsement from Italy, Belgium, Spain, the Netherlands, France, Germany, Sweden, Austria, Finland, Greece, Ireland, Cyprus, Croatia, Bulgaria and Slovenia.⁶⁸ Given that the minimum number of Member States required to pass the Decision

⁶⁴ Interview with senior official (P17), Brussels (Belgium), January 2019.

⁶⁵ Ibid.

⁶⁶ Interview with senior Dutch official (P44), Brussels (Belgium), May 2019.

⁶⁷ Interview with senior Dutch official (P44), Brussels (Belgium), May 2019.

⁶⁸ Directorate-General EU of the Italian Ministry of Foreign Affairs, *Protocol 8056 on Coreper II of 11 September 2015*. Translated by the author from the original Italian version.

was 14⁶⁹ (and Ireland, Denmark and the UK had opt-outs), the Commission needed to strengthen its support base against the veto countries, i.e. Hungary, Czech Republic, Slovakia and Romania. Having received the full support of the Council Presidency thanks to the political decision taken at the Ministerial level, the Commission held bilateral confessionalals with the various Member States. In fact, 15 Member States (with a strong demographic count representing 77.12% of the EU's population) had politically endorsed the new Decision. However, it was not enough to ensure that the Decision would be approved without causing stark divisions between Western and Central-Eastern Member States.⁷⁰ As reported by a senior Dutch official, the strategy in the so-called confessionalals consisted in first strengthening the support base from Western and Northern Europe, namely Germany, France, the Benelux and the northern Member States, including accepting Sweden's request to be exempted from the first phase of relocation. Secondly, the Commission targeted the Baltic states and all of the other swing states – most importantly Poland – so as to ensure that ‘the [bulk] of non-complying Member States [would] not be too big’.⁷¹

Alongside Luxembourg's Foreign and European Affairs Minister Jean Asselborn, Germany's Interior Minister Thomas De Maizière and EUCO President Donald Tusk, the Commission had a role to play in coordinating the efforts for getting Poland and the Baltic states on board for the newly tabled proposal. President Juncker's role and influence in the negotiations and internal discussions leading to the adoption of this proposal were carefully disentangled in an interview with a senior Commission official.⁷² In the first instance, Juncker was not in favour of a vote on it: for him, QMV was a useful tool to force those who disagreed to explain their position and for the others to take that into account, rather than a way to block policy-making, as that would mean either a ‘lowest common denominator logic’ or a deliberate outvoting of Member States. For this reason, President Juncker spent the whole of Sunday 20 September from 8am on the phone with each and every Head of State and Government, trying to convince those who were not yet on board to agree on the second proposal. In an attempt to do so, he would always read out the

⁶⁹ In the special circumstance in which not all Council members participate in a Council's voting procedure (e.g. in the case of opt-outs), the adoption of a decision requires that 55% of participating Council Member States vote in favour, representing at least 65% of the EU's population.

⁷⁰ Interview with former Polish Permanent Representative to the EU Dr Marek Prawda (P56), Warsaw (Poland), November 2019.

⁷¹ Interview with senior Dutch official (P44), Brussels (Belgium), May 2019.

⁷² Interview with senior Commission official (P26), Brussels (Belgium), January 2019.

numbers of applicants to be relocated, stressing the limited numbers and the responsibility to be supportive towards Member States under migrant pressure:

And he said: look, these are small numbers but we need a sign of solidarity so I would offer to you.. that we will not vote on Monday, but you will at that moment in time declare that you will take the number of people that we have attributed to you in this.. in an objective manner, you take them voluntarily. Then nobody forces you. It says 2,000 for you, it's a very small number of the 1.5 million that were coming this year, but by that everybody knows that you are participating in solidarity. And of the Heads of State and Government, half of them said yes. That's why for example some countries, the Baltics for example... and even Poland at the end voted in favour or abstained at least. The others had the problem that either their Prime Minister was from a different party than the Minister of Interior, or that between Sunday and Monday they didn't speak to each other.

According to a senior Commission official, arguably the Commission preferred to build consensus within the Council by means of a longer negotiation so as to avoid putting the proposal to a vote, whereas the German and French Ministers of Interior rushed the discussions as they wanted to announce the adoption of the Council Decision before the EU summit on migration of Wednesday 23 September.⁷³ Juncker asked to wait and discuss the topic further within the Council, so as to bring more Member States on board; however, according to an uncorroborated recollection of the events offered from the same Commission official, the vote took place against the wishes of the Commission.⁷⁴ The negotiations went on until Tuesday afternoon of 22 September and it was ultimately Slovakia and Hungary that explicitly requested a vote on the Decision, with the result of thwarting the opposition with the adoption of Council Decision (EU) 2015/1601 by qualified majority, with four Member States voting against and one abstaining.

3.4 MOVING BEYOND RELOCATION: THE EU-TURKEY STATEMENT

Since the early drafting stages of the EAM and before the two Refugee Relocation Decisions were adopted, the Commission regarded resettlement as the long-term sustainable strategy for migration management, whereas relocation was only to be a complementary emergency solution or tactic.⁷⁵ For the Commission, it was not only the timeframe of reference that distinguished the two policy approaches, but it was also an

⁷³ Interview with senior Commission official (P26), Brussels (Belgium), January 2019.

⁷⁴ Interview with senior Commission official (P26), Brussels (Belgium), January 2019.

⁷⁵ Interview with senior Commission official (P26), Brussels (Belgium), January 2019.

inherently different commitment to the political cause of solidarity vis-à-vis border control. The relocation debate was scarcely about resources and mostly ideological in nature – i.e. are you in favour or against European solidarity? – and originated from Juncker’s electoral promises on intra-European solidarity and burden-sharing.

Rather differently from the Refugee Relocation Scheme, the Commission’s participation in the decision-making process leading to the EU-Turkey Statement was not dictated by a specific electoral commitment but rather emanated from the European Council’s delay taking action on this front and from the embedded know-how and expertise of the College of Commissioners in EU-Turkey relations and irregular migration: as ESI Director Gerard Knaus put it in an interview, ‘it was only about identify[ing] the few people that we knew had to act and to persuade them why it was in their interest [to act].’ As a result, the Commission had a rather significant role in that it was the first actor to take the lead in the dialogue with Turkey and to shape the EU-Turkey Joint Action Plan in November 2015 (European Commission, 2015b), while later leaving it to HOSG to achieve a political breakthrough with Turkey on the Statement. This translated into a technically important role throughout the negotiations with Turkey, albeit not as crucial in setting the political agenda as in the formulation of the Refugee Relocation Scheme. As illustrated in the paragraphs that follow, these findings are fully in line with **TE6**, according to which, as the Member States’ degree of engagement on a policy issue increases over time, the Commission’s relevance in the policy-making process decreases.

It was the Commission that first identified in Turkey a key partner to respond to the migration and refugee crisis and started acting upon the need to work on an EU-Turkey partnership on migration in 2015. President Juncker had already identified the key players or negotiators within the Commission to further the EU-Turkey dialogue on migration: in particular, ever since the early drafting stages of the EAM Juncker had tasked the Enlargement Commissioner Johannes Hahn, alongside the VP Frans Timmermans and the VP/HP Federica Mogherini, to work with Jordan, Lebanon and Turkey in response to migratory flows from the MENA region.⁷⁶

In the EAM, the Commission referred to Turkey as one of the many third countries on the migration upstream that would be crucial for solving the root causes of irregular migration:

⁷⁶ Interview with senior Commission official (P26), Brussels (Belgium), January 2019.

A good example of where there is much to be gained from stepping up cooperation is Turkey. Since the beginning of 2014, Turkey has received EUR 79 Million to contribute to its efforts to deal with the pressure on its refugee management system and to help prevent hazardous journeys in the Eastern Mediterranean (European Commission, 2015a, p. 8).

Long before Turkey began to demand financial assistance from its international partners, the Commission had started to worry about the migrant pressure building up in Turkey and to think about ways to help relieving it.⁷⁷ As a result, there was a ‘renewed wave of engagement’ between the EU and Turkey, based on a ‘mutual interest’ in responding to the migration crisis:⁷⁸ among other things, in May 2015 the Association Council⁷⁹ met for the first time after a three-year break (European Council, 2015) and Turkey became a member of the EU Civil Protection Mechanism⁸⁰ a month thereafter (European Commission, 2015h). At the same time, DG NEAR and the Commissioners in Charge – Commissioner Hahn, VP Timmermans and HP/VP Mogherini – were tasked to look into old programmes from the EU budget, to find ways to draw ‘savings available, which would have otherwise been lost...into a kind of new legal proposal, just to give them a bit of money, to be seen as a kind of contribution’.⁸¹

According to an off-the record source, in effect, this was in line with the longstanding efforts made by the EU to support Turkey in facing the consequences of the Syrian crisis. Between 2010 and January 2016, € 345 million were committed from the EU budget to support refugees and migration management in Turkey before the Facility for Refugees in Turkey was created: out of this amount, € 71 million were committed by DG ECHO (Humanitarian Aid), € 249 M came from Instruments for Pre-Accession Assistance (IPA) funds⁸² and € 25.8 Million came from the Instrument for Stability and Peace. These efforts were particularly noticeable in 2015 as the humanitarian crisis worsened, when almost 70%

⁷⁷ Telephone interview with senior Commission official (P62), March 2020.

⁷⁸ Interview with senior Commission official (P61), Brussels (Belgium), January 2020.

⁷⁹ Insofar as the EU holds multiple agreements with various states, the Association Council gathers a Council of Ministers from the EU and the other party in order to monitor the respective association agreements.

⁸⁰ Since its inception in 2001, the EU Civil Protection mechanism supports the EU for strengthening cooperation between EU Member States and 6 Participating States (Iceland, Norway, Serbia, North Macedonia, Montenegro and Turkey) in responding to disasters and complex emergencies.

⁸¹ Telephone interview with senior Commission official (P62), March 2020.

⁸² IPA funds are financial *Instruments for Pre-Accession Assistance* (IPA) which in January 2007 replaced the various pre-existing EU programmes and financial instruments for EU candidate countries and potential candidate countries, as established under Council Regulation (EC) 1085/2006. The main components of the IPA funds are: regional and rural development, cross-border cooperation, human resources and assistance for transition and institution building.

of the overall amount of money committed by means of the IPA was supplied through the EU Trust Fund.

Ahead of the UN General Assembly of September 2015, Commissioner Hahn gave a few remarks on the EU's support to Turkey in addressing the challenges of the migration crisis:

Turkey is a key **country for a solution!** ... The Commission has **already deployed € 175 [M]illion** of funding in Turkey for migration-related actions including direct aid to refugees. But I am **willing to do much more**. I am working hard on the reallocation from other programs of **up to one billion Euros, if Turkey wants and agrees**. This would be done via **geographical ring-fencing** of our most affected regions in Turkey, to help with the integration of refugees...But time is pressing. At the same time, we need to be clear about **what we ask for from Ankara**: this is not a one-way street (Emphasised in the original version, Johannes Hahn cited in European Commission, 2015c).

In September 2015, in the margins of the 70th Session of the UN General Assembly in NYC, Hahn held bilateral talks with Turkey's Acting Foreign Minister Sinirlioğlu, but there was no meeting of minds. In particular, the fact any reallocation of funding to Turkish national programs would happen according to the Commission's strict rules of transparency, annual audits and checks, coming as quite a disappointment for Turkey.⁸³

As tensions increased between Hahn and the Turkish Foreign Minister, President Juncker reshuffled the Commission's team on Turkey and asked Vice-President Timmermans to take on a more political role in the negotiations with Turkey; to support the work of Timmermans, DG NEAR Director-General Christian Danielsson and Director for Strategy and Turkey Simon Mordue became the key interlocutors from a technical perspective.⁸⁴

While the European External Action Service (EEAS) and its Head and HR/VP Federica Mogherini retained part of the nominal responsibility to propose an agreement between the EU and Turkey on irregular immigration and borders control, there was never a formal discussion about it and after all neither the EEAS nor HR/VP Mogherini played a role in the formulation and adoption of the Joint Action Plan first, and the EU-Turkey Statement later.⁸⁵ According to a senior Commission official,⁸⁶ Mogherini's and EEAS' non-

⁸³ Interview off the record.

⁸⁴ Telephone interview with senior Commission official (P62), April 2020.

⁸⁵ Telephone Interview with senior Commission official (P62), April 2020; interview with former Dutch Government's Sherpa and Deputy Director-General for Migration Policy in the Ministry of Justice Jan-Willem Beaujean (P18), Hague (Netherlands), January 2019; interview with former Deputy Head of Cabinet for President Juncker, Dr Richard Szostak (P23), Brussels (Belgium) January 2019; interview with former Special Adviser to HP/VP Mogherini Dr Nathalie Tocci (P2), Cambridge (UK), November 2018.

⁸⁶ Telephone interview with senior Commission official (P62), April 2020.

involvement arose from a variety of reasons. First, the EEAS did not have the right people in Ankara to effectively negotiate a political deal with Turkey on migration; secondly and most importantly, as clarified by the former Special Advisor to the EU HR/VP Dr Nathalie Tocci,⁸⁷ Mogherini ‘was not involved [in the negotiations] because she did not want to be involved’. According to one senior Commission official,⁸⁸ Mogherini was politically uncomfortable shaping an agreement that dealt with the Eastern Mediterranean, rather than the Central Mediterranean route, due to domestic and political pressures coming from Rome (*level II*) to prioritize Libya in the EU’s migration management.⁸⁹ As a result, she did not want to be personally involved as part of the Commission’s team on Turkey.⁹⁰

In DG NEAR, Director Mordue played a pivotal role in the negotiations,⁹¹ to the point that he was often referred to as the ‘brain in the Commission’⁹² or the ‘third in the triangle’⁹³ representing the Commission in the negotiations. His centrality in the talks with Turkey was formalized by the President’s *cabinet*, which made it clear that Mordue would play this role with the full support of DG HOME Director-General Matthias Ruete.⁹⁴ Shifting leadership from Commissioner Hahn to VP Timmermans, as technically supported by Director-General Daniellson and Director Mordue, came with two advantages: firstly, strong political contacts in Turkey, developed by Timmermans during his previous post as Dutch Foreign Minister and by Mordue during his previous post as Head of the Financial Cooperation Section in the Commission’s Representation to Turkey; secondly, it enhanced coordination between the Commission and the upcoming Council Presidency – the Netherlands – especially via Timmermans’ *cabinet* and his Head of *cabinet*, Ben Smulders. Indeed, while the first contacts with Turkey for finding a common ground happened under the Luxembourgish Presidency, it was under the coordination of the subsequent Dutch

⁸⁷ Interview with former Special Advisor to the HR/VP Mogherini and Director of *IAI Istituto Affari Internazionali*, Dr Nathalie Tocci (P2), Cambridge (UK), November 2018.

⁸⁸ Telephone interview with senior Commission official (P62), April 2020.

⁸⁹ Interview with former Italy’s Minister of Interior Angelino Alfano (P36), Milan (Italy), March 2019.

⁹⁰ Interview with Dr Nathalie Tocci (P2), Cambridge (United Kingdom), November 2018.

⁹¹ Interview with former Head of Cabinet for President Juncker, Dr Richard Szostak (P23), Brussels (Belgium), January 2019; interview with Dutch MEP and EP Turkey Rapporteur Kati Piri (P25), Brussels (Belgium), January 2019; interview with former Dutch Government’s Sherpa and Deputy Director-General for Migration Policy in the Ministry of Justice Jan-Willem Beaujean (P18), Hague (Netherlands), January 2019.

⁹² Interview with MEP Kati Piri (P25).

⁹³ Interview with former Dutch Government Sherpa Beaujean (P18).

⁹⁴ Telephone interview with senior Commission official (P62), April 2020.

Presidency and Germany that the most crucial meetings with Turkey ahead of signing the EU-Turkey Statement took place (see Chapter 5.2.1).

In the early phases of the negotiations, both the Commission and Member States failed to grasp that there needed to be strong political backing from, and participation of, the European Council in order for Turkey to agree to be part of any migration management plan. The ineffectiveness of having the Commission lead the EU-Turkey talks was first pointed out by the Berlin-based think tank *European Stability Initiative (ESI)* and most notably its Director Gerard Knaus, in a policy paper in mid-September 2015. In it, the *ESI* argued that the key to restoring the EU's control over its borders was 'an agreement between the EU and Turkey' based on a commitment from Germany to resettle 500,000 Syrians 'directly from Turkey in the coming twelve months' while Turkey, as a *quid pro quo*, would 'agre[e] to take back all the refugees that reach Greece, from the moment the deal is signed' (European Stability Initiative, 2015c, p. 2). Two weeks later and in light of broad positive media coverage of the paper (*Le Parisien*, 2015; Geets, 2015; Herwartz, 2015; Martens, 2015; Partosch, 2015), the think tank came up with a second paper outlining the specifics of how an agreement between Germany and Turkey ought to look. These included: 1) the two points highlighted in the previous paper, prioritising, where possible, the resettlement of vulnerable groups of refugees; 2) visa-free travel for Turkey by the end of 2016; 3) financial assistance to Turkey by Germany, other participating Member States and the European Commission. Alongside the key points entailed in this 'Merkel plan' – labelled in this way to underscore that 'German Chancellor Angela Merkel [was] the only leader in a position to take meaningful action' (European Stability Initiative, 2015b, p. 7) – the think tank explained why other proposals discussed in the media or in policy circles would not work and why it would have been in Germany's and Turkey's best interests to support this plan (European Stability Initiative, 2015b). The proposal was quickly uploaded to the EU level (*level I*)⁹⁵ and, by the 5 October, just one day after the second paper from ESI was published, multiple German correspondents in Brussels confirmed that the European Commission had taken up Knaus's ideas and wanted to implement them (Kirchner and Roßmann, 2015).

⁹⁵ Interview with ESI Director Gerard Knaus, Berlin (Germany), March 2019.

In so doing, the European Commission initiated the dialogue with Turkey, thus setting the stage for the EU's common bargaining position, interests and red flags but also managing Turkey's expectations on the renewed partnership. President Juncker's *cabinet* put forward various objectives in the negotiations with Turkey, in a good balance 'between [showing] progress [to the EU] and firmness, meeting [the EU's] migration objectives'.⁹⁶ Among the most difficult aspects tackled in the negotiations, the Commission President wanted to ensure that Turkey would reverse its recent introduction of visa liberalization towards third countries such as Iran and Afghanistan: this was crucial for the Commission insofar as this policy change in Turkey had made it easier for people from these countries to travel through Turkey to the EU.⁹⁷ Secondly, Turkey originally wanted the EU to pay for its return operations; for this and other finance-related issues, every Monday morning the Commission scheduled meetings for discussions relating to which projects should be financed and in what timeframe, who the implementing partners would be and for what projects they would be partnering. By the end of September, following a first meeting between the Turkish ambassador to the EU, Selim Yenel, and Director-General for DG NEAR Danielsson, the Commission put together a first draft of what would later become the EU-Turkey Joint Action Plan (Smeets and Beach, 2020, p. 153).

Once Erdogan expressed interest in a migration deal with the EU in early October (Smeets and Beach, 2020, p. 153), regular visits to Turkey started to take place to solve the aspects that Turkey could not accept; among other things, Turkey wanted 'a more organic deal' that would include aspects relating to its accession to the EU, visa liberalization and financial aid.⁹⁸ On the Commission's side, these visits were chaired by Commissioner Timmermans and Simon Mordue (Director C for Turkey at DG NEAR) and externally supported by Berlin and the Hague via the physical presence in multiple meetings of Merkel's migration advisor, Jan Hecker, and the Dutch Government's Sherpa and Deputy Director-General for Migration Policy in the Ministry of Justice Jan-Willem Beaujean, and complemented by direct meetings between Chancellor Merkel and the Turkish PM Davutoğlu. In the space of three to four months, Director Mordue undertook over twenty visits to Turkey, with a particular focus on engaging Turkey's Ministry of Foreign Affairs (MFA) and its General Manager of Consular Affairs Mehmet Samsar on the one hand, the

⁹⁶ Interview with former Head of Cabinet for President Juncker, Dr Richard Szostak (P23), Brussels (Belgium), January 2019.

⁹⁷ Interview with former Head of Cabinet for President Juncker, Dr Richard Szostak (P23), Brussels (Belgium), January 2019.

⁹⁸ Interviews with Turkish officials (P39-40), Ankara (Turkey), May 2019.

Ministry of Interior's Disaster and Emergency Management Presidency (AFAD) and its Head Fuat Oktay on the other.⁹⁹ The Commission-led team was also working with the Directorate-General for Migration Management, which saw this as an opportunity to modernize Turkey's institutional framework for migration management.¹⁰⁰

Various were the objectives which the team aimed to tackle: first and foremost, to find ways for stemming irregular migration flows. Secondly, it aimed to achieve policy and legislative change in Turkey's migration management: among other things, the team consulted the Turkish authorities on how to change Turkey's legislation in a way that would quasi-automatically grant asylum status to Syrian refugees, while allowing them to be employed, despite Turkey's geographical limitation in its application of the 1951 Refugee Convention.¹⁰¹ In order for this legislative change to come about, the team presided over by Director Mordue, in conjunction with Turkey's DG MM, drafted a detailed legal analysis on the application of the Geneva Convention in Turkey, so as to ensure that Turkey could be considered a safe third country for Syrian refugees.¹⁰² While drafting the analysis, the most difficult aspects consisted of: 1) the modernisation of processing applications for guest status, so as to address the overwhelming administrative backlogs that the system was experiencing at the time, which caused processing delays for Syrian applicants; 2) the right for Syrians to access Turkey's national education and healthcare services; 3) the right for Syrians to work in Turkey. In parallel, Ruete chaired the discussions on visa liberalization, as well as joint readmission meetings and other parallel meetings with Turkish officials, to set up the contours of the Joint Action Plan. These meetings started off at more technical levels with only a few representatives and delegations from Member States – some of them being the Greeks, a few Bulgarians, the French and the German Embassy – quietly auditing the meetings. However, an intensification of intergovernmental interests on the policy issue at stake had the effect of scaling up the discussions to higher political levels, with the result

⁹⁹ Telephone interview with senior Commission official (P62), April 2020.

¹⁰⁰ Telephone interview with senior Commission official (P62), April 2020.

¹⁰¹ While being party to the 1951 Geneva Convention, as approved by Turkey under Law No. 359, Turkey is not a state party to either the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, or the Protocol Additional relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June 1977. Insofar as signatories to the Convention were given the option of applying the Geneva Convention to either all refugees or only European refugees, Turkey was the only country that opted for the latter, thus effectively granting the country with a 'geographic limitation' to its duties on the protection of refugees.

¹⁰² Telephone interview with senior Commission official (P62), April 2020.

of downgrading the Commission's role, in line with **TE6**. As stated by Ruete in an interview, this came with difficulties in defining the hierarchy of the negotiations:¹⁰³

Suddenly I saw that many more higher-level people wanted to be part of these discussions. And I had to first of all let them understand that, although they were high level officials of Member States, it wasn't necessarily they who would do the talking ... And it was quite interesting to see that, because of the crisis, it was especially the Dutch, but then also the Germans, who were getting much closer, more involved in these discussions. And so for them, it was also a way of developing the contacts [...] You had a kind of 'cooperative leadership', if you can put it that way, in this field.

Turkish sources¹⁰⁴ claimed that the first draft of the Joint Action Plan (JAP) of 15 October 2015 (European Commission, 2015b) was published unilaterally by the Commission before receiving any formal agreement from Turkey; at that stage, Turkey did not consider it a fully organic deal that showed relevant progress on visa liberalization and on securing a more multifaceted cooperation between the EU and Turkey that would go beyond irregular migration management.¹⁰⁵

As the political sensitivity of the negotiations mounted, so did Erdogan's impatience for activating a more comprehensive Action Plan (AP) at an EU-Turkey Summit. In the margin of the *G20* held on 15-16 November in Antalya, a heated discussion took place between Commission President Juncker, EU CO President Tusk and Turkey's President Erdogan (Papamiltiadou, 2016; Zalan, 2016). President Erdogan reproached Commission President Juncker and EU CO President Tusk for the lack of visible developments in opening any of the accession chapters 15 (Energy), 17 (Economic and Monetary Policy), 23 (Judiciary and Fundamental Rights), 24 (Justice, Freedom and Security), 25 (Science and Research), or 31 (Foreign, Security and Defence Policy) since the meeting of 5 October. For Juncker, this was justified by the need to agree on a more comprehensive package that would see the opening of accession chapters as one of its many parts. Of particular relevance was the clear acknowledgement by President Erdogan of the Commission's inability to deliver. The leaked minutes from this meeting between Erdogan, Sinirlioğlu, Tusk and Juncker indicate how:

¹⁰³ Interview with former Director-General of DG HOME Matthias Ruete (P3), Brussels (Belgium), November 2018.

¹⁰⁴ Interviews with Turkish officials (P39-40), Ankara (Turkey), May 2019.

¹⁰⁵ Interviews with Turkish officials (P39-40), Ankara (Turkey), May 2019.

Erdogan asks Juncker to name one delivery, one delivery, so far? [...] Erdogan insists that the EU hasn't done anything for Turkey. The money is [for] refugees, not Turkey. Moreover, you are using pre-accession money [IPA]. It's really nothing. No chapters at all. We have waited for 53 years. You have been mocking us (Papamiltiadou, 2016).

In the meeting's concluding remarks, Turkey's Foreign Minister welcomed further visits by Commissioner VP Timmermans, in light of previous work done with him 'in good faith'; nevertheless, he highlighted that any future agreement would need to promise more than 3 billion Euros – '3 [b]illion euro[s] is an insult' – and to comprise elements relating to resettlement quotas (Papamiltiadou, 2016). In other words, Turkey threatened a *voluntary defection* from the talks due to the Commission's inability to meet its demands. In order to reassure Turkey of its capacity to meet Turkey's expectations on the deal, President Juncker proactively followed up with PM Davutoğlu in person concerning the state of affairs on the opening of chapters. In parallel to the activation of the JAP on 29 November (Council of the European Union, 2015e), Juncker sent an email to Davutoğlu on the same day,¹⁰⁶ informing the PM that preparatory works had started for accession chapters 15, 17, 23, 24, 26 and 31; of these chapters, Juncker stressed that the Council was 'very close to unanimous' on chapter 17, to be opened on 14 December; furthermore, President Juncker mentioned that, between December to May, the EU would have started preparatory works to open chapters 23 and 24, and that an updated proposal would soon be presented for the opening of chapter 31.

However, in the face of mounting domestic pressures among Council members – particularly in the Netherlands, soon to be holding Presidency – these efforts proved to be insufficient to ensure no *voluntary defection* on the Turkish side, alongside measurable outcomes from the implementation of the JAP in stemming irregular migrant flows to the EU. As a result, there was a gradual shift of political leadership from the Commission back to the national capitals, particularly the Hague and Berlin, in line with the theoretical expectations of this thesis (**TE6**). As ESI Director Knaus commented, a Berlin-led approach had always been the way in which any workable plan with Turkey should have been implemented:

They [the European Commission] couldn't base it on our plan, because our plan was that Germany should make an offer to Turkey, and there

¹⁰⁶ Internal archives from Turkey shown to the author during the interviews undertaken with P39-40, Ankara (Turkey), May 2019.

was nothing the Commission could offer to Turkey that would really work. Because the Commission cannot offer to take in refugees [...] So the Commission was the wrong interlocutor. What the Commission tried to do, what it usually does, [is to] try and offer money. But why would Member States give the Commission extra money for something that wouldn't work? So the money actually didn't come. [...] And then the Commission said: what can we do? We can do something perhaps with the accession process... But I mean they couldn't, it requires unanimity... And they said yes but perhaps we could do something on the negotiation of the readmission agreement; but they have been negotiating this for more than ten years!¹⁰⁷

In other words, the change in leadership was due to a fundamental lack of ‘deliverability’ on the Commission’s end, in line with what Putnam viewed as a major issue in negotiations, that is one of the parties in a negotiation promising more than they can deliver (Putnam, 1988, p. 439).

Starting from the first weeks of December and in reflection of the shift of leadership, Dutch Director-General for Consular Affairs Diederik Samsom and Director for Consular Affairs and Visa Policies Jan Willem Beaujean joined Director-General Matthias Ruete (DG HOME) in his visits to Ankara on readmission and visa liberalization.¹⁰⁸ On the one hand, these talks prompted the Commission’s recommendation for a Voluntary Humanitarian Admission Scheme (VHAS) on 15 December. On the other, the Commission and the Dutch negotiators tried – under the lead of Samsom and Beaujean – to have Greece agree with Turkey on a readmission agreement.¹⁰⁹ Initially, this was not easy for Greece to accept politically in light of a troubled past with Turkey; however, eventually Greece agreed to the Netherlands’ request to test a few readmissions to Turkey during the Christmas break – 5 to 10 people – and proved that this would be manageable.¹¹⁰ It was only towards the end of February/beginning of March 2016 that Commissioner Timmermans and EUCO President Tusk prepared an agreement for Turkey – employed as a starting point for the meeting of 6 March – which included the readmission of all irregular migrants, including non-Syrians.¹¹¹ Between the European Council of 7 March (at which the Turks proposed a one-for-one trading of Syrian refugees) and the European Council of 17-18 March, DG

¹⁰⁷ Interview with ESI Director Gerard Knaus, Berlin (Germany), March 2019.

¹⁰⁸ Interview with former Dutch Government’s Sherpa and Deputy Director-General for Migration Policy in the Ministry of Justice Jan-Willem Beaujean (P18), Hague (Netherlands), January 2019.

¹⁰⁹ Interview with P18, Hague (Netherlands), January 2019.

¹¹⁰ Interview with P18.

¹¹¹ Interview with P18.

HOME, alongside the Commission's Legal Services, followed closely the team of chief negotiators in the preparation of the 1-1 agreement.¹¹² As explained in an interview with a Commission official,¹¹³ on 14 March, in a note to the preparatory works on the 1-1 scheme, the Legal Services criticized the priority given to Syrians for resettlement as legally problematic:

Any reference to irregular entry, as somehow [involving] disqualified people... is incompatible with the right to get asylum. You are fat or you are slim, you are big or small, or you are brown or black or yellow, you have broken [a] window so you have entered illegally: all that is not relevant, someone asks for asylum...we apply the *asylum acquis*.

According to another senior Commission official,¹¹⁴ the coordination between the Legal Services, especially via Pieter Van Nuffel and Clemens Ladenburger, and the Commission's team on Turkey was incredibly smooth and ultimately allowed for last-minute changes to the statement reflecting what the Commission could and could not legally do in the negotiations with the Turks. As the official put it:

[The coordination] was brilliant and it was flat. Clemens was at that time the assistant of the Director-General of the Legal Service, totally trusted by his Director-General, totally trusted by the President's team, and.. you know.. if Clemens said: if this comes to Court, we can defend this, go for it. And I would have occasionally gone back: so I can't get the Turks to [agree to] that but I can have them agree to this. Does that create you an equivalent effect? I had somebody from a legal point of view that was able to make the connections also with the *asylum acquis* which was important ... Sometimes we had 5 or 10 minutes to make calls.

In parallel to these talks on readmission, negotiations were taking place on how to mitigate the effects of irregular immigration by strengthening border control, reflecting the wishes expressed by many Member States to have a Plan B in case readmission between Greece and Turkey would not work (see Chapter 5, Section 5.2.2). The Commission, as represented by President Juncker's member of *cabinet* and Diplomatic Adviser Richard Szostak, attended these meetings while keeping a certain distance from the position of the German and Dutch negotiators.¹¹⁵ The reason the Commission kept a certain distance was that, while it only wanted to reduce the migration flows, Germany and the Netherlands wanted to stem irregular migrant flows entirely: this in turn resulted in a set of new ideas brought in by the

¹¹² Interview with senior Commission official (P47), Brussels (Belgium), May 2019.

¹¹³ Interview with senior Commission official (P47), Brussels (Belgium), May 2019.

¹¹⁴ Telephone interview with senior Commission official (P62), March 2020.

¹¹⁵ Interview with former Dutch Government's Sherpa and Deputy Director-General for Migration Policy in the Ministry of Justice Jan-Willem Beaujean (P18), Hague (Netherlands), January 2019.

Netherlands, from reserving certain Greek islands for the management of resettlement, to the usage of a particular cut-off date, after which all irregular inflows would have to stop.¹¹⁶ This gap in views was most visible in an exchange of letters between President Juncker and Slovenia's PM Miroslav Cerar: in response to Cerar's requests for consultation with the Commission on internal border controls, Juncker made a U-turn to President Tusk's support for border controls, ultimately putting an end to the 'wave-through approach' and demanding that the *Schengen Borders' Code*, and the integrity thereof, would again be fully applied and safeguarded throughout the Union (Smeets and Beach, 2020). To ensure that this would continue to be the case, Juncker's Adviser Szostak chaired multiple Sherpa video conferences with the Western Balkan (WB) countries. At a moment in which many countries were shutting down direct channels of communication, the Commission had a crucial coordinating task, ensuring that there would be no *domino effect* due to miscommunications on inter-country train transportation, border controls or even the installation of beds for refugee reception.¹¹⁷

Juncker also instructed Szostak to speak with the Turkish Ambassador to the EU, Selim Yenel, in order to assess what the price of stemming migration flows would be. As in any relation with third countries, and even more so with Turkey, Juncker was very attentive that the negotiations would be broad in content and go beyond the mere management of irregular migration. In this context, it was decided that the EUCO Conclusions of March, unlike the previous ones of February and December, would have to include aspects with regards to re-energising accession negotiations and speeding up visa liberalization. In order to do so, one of the most critical obstacles in the negotiations stemmed from the troubled relationship between Turkey and Cyprus and the many vetoes imposed by the latter on some of the most important accession chapters for Turkey. While these negotiations were co-led by Chancellor Merkel and Dutch Prime Minister Rutte, the Commission played a strategically passive role in providing practical expertise on how to address the Cyprus issue (**TE6**). Among others, as explained in an interview by a senior official, the Commission boasted of the then Head of Cabinet for Juncker Clara Martinez Alberola, who also dealt with

¹¹⁶ Interview with former Head of Cabinet for President Juncker, Dr Richard Szostak (P23), Brussels (Belgium), January 2019.

¹¹⁷ Interview with former Head of Cabinet for President Juncker, Dr Richard Szostak (P23), Brussels (Belgium), January 2019.

Cyprus issues during the Barroso Presidency, alongside Pieter Van Nuffel from the Commission's Legal services, who 'really, really understand the Cyprus problem'.¹¹⁸ As expanded upon by the same official, this was a great advantage for the Commission because:

Every aspect, when you want to re-energise relations [with Turkey], every time there is a Cypriot angle, so of course we had a role in simply finding, understanding the issue and then finding the right language which covers the Cypriot concerns, but that's also something where persons like Jeppe [Tranholm-Mikkelsen, Secretary-General of the Council] also come in...

Thanks to these unofficial communication channels to Turkey and to Cyprus – at a time in which it was thought there would be a good opportunity to solve the Cyprus issue – the Commission was able to test Cyprus's red lines at 'a high [diplomatic] level, but not the highest level, where [Cyprus] clearly stated: ok this is the absolute maximum that we can accept [*least acceptable agreement, or LAA*] and it wasn't just one meeting, there were numerous meetings'.¹¹⁹ After finding the right language at this level, while finding an agreement on the opening of accession chapters at the level of the European Council (see Chapter 5), the Commission was at last able to show a swift change in the language of the March EUCO Statements. As a result, direct references to the speeding up of visa liberalization for Turkish citizens, alongside the re-energisation of accession, were included in both the Statement of EU HOSG and Turkey of 7 March (Council of the European Union, 2016d) and in the EUCO Conclusions and EU-Turkey Statement of 18 March (Council of the European Union, 2016b; see also Smeets and Beach, 2020, p. 158).

After the EU-Turkey Statement was signed, the Commission (under incredible pressure from the Council and Turkey) was key in finding an agreement on how to channel the money to Turkey rapidly. On April 22, Commissioner Timmermans and Director Mordue accompanied President Tusk and Chancellor Merkel to speak with Davutoğlu and to inaugurate the first small project of the Facility for Refugees in Turkey (FRIT). On that occasion, according to a senior Commission official,¹²⁰ as the negotiations about funding got heated VP Timmermans asked Mordue to come up in five minutes with a figure that

¹¹⁸ Interview with former Head of Cabinet for President Juncker, Dr Richard Szostak (P23), Brussels (Belgium), January 2019.

¹¹⁹ Interview with senior Cypriot official (P48), Brussels (Belgium), May 2019.

¹²⁰ Telephone interview with senior Commission official (P62), March 2020.

would be possible for the Commission to contract by the end of the summer: this was considered to be necessary in order to prove to Turkey that the funding was coming through, i.e. trying to avoid Turkey's *involuntary* or *voluntary defection*. Mordue gave his word to be able to contract € 1 billion by the end of August and swiftly started to base funding decisions on the same concepts used in his previous Commission post in Turkey, that is: 1) value for money; 2) sustainability; and 3) ownership.

The role and bargaining strategy of the Commission in contracting € 1 billion in funding to the FRIT by end of August were fully explained in an interview with a senior Commission official.¹²¹ For the Commission, UN agencies are usually the preferred negotiating counterpart on the ground; however, not only was Turkey not keen on the UN ownership of projects, but the involvement of UN agencies would also have meant that less funds would have directly reached the end users, i.e. Syrian refugees. In fact, the allocated overheads charged by UN agencies were quite high, close to 45% to 50%. To avoid both the unnecessary overhead costs and Turkey's *defection* from the talks, Director Mordue and DG NEAR started undertaking negotiations with Turkey's Ministry of Education to find ways for Syrians to get into Turkey's national education system, while channelling part of the funds through the Ministry. In order to do so, they found internationally validated data on the average school cost and rooted upon it a validation mechanism to check with the Turkish authorities on the number of Syrian children effectively attending school. The same mechanism was then reproduced with the Ministry of Health, allowing for a system that would directly link health bills to the Syrians, which would be reimbursed with the FRIT funds. The involvement of the Ministries of Health and Education effectively erased any remaining motive for Turkey's *defection* from the agreement up until 2019, when temporary suspensions in the implementation of the EU-Turkey agreement started to be unilaterally notified by Turkey.

3.5 CONCLUSION

In sum, the role, preferences and bargaining strategies of the Commission in shaping the policies under analysis could be evaluated by two standards. On the one hand, the Commission was indisputably very involved in the three decision-making processes and it took the institutional and political lead thereof, somehow reflecting the Juncker

¹²¹ Telephone interview with senior Commission official (P62), March 2020.

Presidency's ambitious agenda on irregular migration management and intra-European solidarity. From the early stages of his electoral campaign, Juncker had in fact expressed the need for a more 'political' College and programme for the following five years, including a five point-plan on immigration. This translated into a prioritization of refugee relocation as the preferred emergency measure in response to the crisis, leaving resettlement as the preferred, long-term sustainable strategy for migration management.

As a result, the Commission played an 'ideologically political' role (Nugent & Rhinard, 2019) in the formulation of the two Refugee Relocation Decisions, reflecting the same liberal values anticipated during Juncker's electoral campaign; in this circumstance, the Commission used the ideas of solidarity and responsibility-sharing as driving forces to broker a compromise at times of crisis. This translated, as predicted in theory by Nugent and Rhinard (2019, p. 217), into the exercise of a strong political role from setting the agenda on relocation, to initiating and facilitating the making of the two Decisions, to the management and later implementation of the policies. The impetus for refugee relocation was the ultimate outcome of years of work and studies by the Commission on the issue of refugee redistribution as a temporary solution to a broken Dublin system. However, it was only under Juncker's leadership and with the momentum provided by the migration and refugee crisis that it was possible for the Commission to take the lead and push through a large-scale emergency mechanism for refugee relocation. The idea of solidarity effectively served as a 'hot button' to unblock an emotionally charged compromise among the core Member States, while reducing to a minimum the bloc of non-complying Member States and keeping in check EUCO President Tusk's scepticism towards this policy.

In the formulation of the EU-Turkey Statement, the Commission was more passive: while sharing the same intensity of intent, it did not turn this bargaining process into an ideologically charged one, nor did it support a policy alternative without unanimous consensus at the Council. Instead, the Commission showed a clear willingness 'to have a seat at the table' for formulating a long-term, sustainable strategy for migration management that involved Turkey from the drafting stage of the EAM. From as early as 2010, and particularly so from the summer of 2015, the Commission gradually reallocated funds to support Turkey in facing the consequences of the Syrian crisis, from both IPA and IPA additional funds. Knaus's idea to link any additional financial support to Turkey's commitment to border control and Germany's commitment to resettle refugees was immediately *uploaded* by the Commission.

One senior Commission official commented that the crisis situation and the urgency to act swiftly ensured that ‘nobody was going to get involved in turf battles at this time, we didn’t have the luxury of that’;¹²² as anticipated in Chapter 2 and shown in this and the following Chapters, however, the lack of turf wars between the Commission and the Council in the formulation of the Statement was not the result of crisis decision-making per se. Rather, it was the result of a prolonged crisis situation and of the Commission’s inability to deliver on the growing demands of the European electorate relating to border control and the stemming of irregular migrant inflows. Arguably, less intra-institutional politicization of the issue at stake ensured that ‘[the Commission] worked in an incredibly flat, seamless, informal way, with networks both within the Commission and from the Commission to key Member States, who were direct and totally non-bureaucratic’.¹²³

As further explored in subsequent chapters, for the initiative that mattered most for solving the migration crisis – i.e. the EU-Turkey Statement – Member States and the European Council led the negotiations and, in so doing, were able to achieve a political breakthrough with Turkey. Arguably, this made the Commission only instrumental, providing the EU chief negotiators’ team with the necessary staff, coordination and technical expertise, where and when needed. In turn, for the less politically decisive, but ideologically charged part of the EU’s policy response to the crisis – that is, refugee relocation – the Commission was the principal agenda-setter. This supports to one of the theoretical expectations of this thesis concerning the interinstitutional balance of power (**TE6**): that is, the Commission only plays an active role in agenda-setting and policy-making whenever it has a strong political mandate and the Member States’ degree of engagement on the issue at stake is low. But after all, what is the good of detaining legislative initiative, if it does not translate in successfully dictating the course of action?

In the two chapters that follow, this thesis will explore the extent to which European Council members and the Council of the EU, rather than the Commission, dictated the course of action in the course of the three decision-making processes under analysis, thereby testing **TE1** to **TE4**. Chapter 4 will focus on the role and negotiating strategies of

¹²² Telephone interview with senior Commission official (P62), March 2020.

¹²³ Telephone interview with senior Commission official (P62), March 2020.

these actors in the formulation of the Refugee Relocation Scheme, while Chapter 5 will focus on the making of the EU-Turkey Statement.

Chapter 4 – NATIONAL SELF-INTEREST IN SOLIDARITY: THE EUROPEAN COUNCIL, THE COUNCIL AND THE REFUGEE RELOCATION SCHEME

As the migration and refugee crisis unfolded on the European continent and the momentum finally arose for a policy response involving a large-scale mechanism for refugee relocation, in September 2015 the Council of the European Union adopted two emergency measures to alleviate frontline Member States Italy and Greece from heavy migratory pressure. The first measure, Council Decision (EU) 2015/1523, was introduced by unanimous consensus, reflecting the intergovernmental agreement reached under heavy political contestation at the JHA Council of 20 July 2015 (discussed in Chapter 2). A very different story applied to the second measure, Council Decision (EU) 2015/1601, whereby the Council agreed by qualified majority to a wider, quota-based mechanism for refugee relocation in spite of four Member States voting against it, and one abstaining. As explained in Chapter 2, the crisis-driven adoption of the second Decision by QMV was at best problematic: not only did it raise questions concerning the redistribution of powers arising from the Commission’s strong political agenda on irregular immigration and pressures coming from affected Member States; it also showed an existential weakening of the consensus culture at the Council in the Area of Freedom, Security and Justice.

In this context, this chapter will analyse the agenda-setting, coalition-building and decision-making efforts of these actors in the leadup to the adoption of these two Council Decisions. To do so, it will analyse the *win-sets*, role and bargaining behaviour of Member States, the European Council Presidency and rotating Council Presidencies at different points in time during these negotiations, as well as how and in what ways inter-state coalition-building and domestic politics came into play in the formulation of these two Decisions.

Certain actors proceeded as hard-liners and thereby did not substantially change their position throughout the negotiations: cases in point are Hungary, Slovakia and the Czech Republic on the ‘against’ side, and Germany, Sweden, and the Mediterranean states on the ‘pro’ side. As shown in this chapter, the same does not apply to most remaining actors, whose *win-sets* throughout the negotiations were heavily exposed to, and affected by, pressures coming from both the domestic, and EU arenas, i.e. *levels II* and *I*. For this reason,

the analysis will be structured so as, firstly, to outline what the agenda-setting efforts were at the Council level on refugee relocation and who led them at different moments in time (Section 4.2). Secondly, it will investigate the roles of different policy actors in the making of the Scheme, following Manners's typology for the study of intergovernmental cooperation in the European Communities (Manners, 2000; see also Porter and Brown, 1991, p. 36): namely, support and lead states on the one hand (Sections 4.3 and 4.4), swing and veto states on the other (Section 4.5).

4.2 EARLY AGENDA-SETTERS

The concepts of solidarity, burden-sharing and refugee relocation had existed and been debated among Member States long before the introduction of the two Refugee Relocation Decisions in the second half of 2015. In fact, at different times in European history, various European countries showed particular interest towards refugee relocation whenever they derived direct benefits from its adoption.

Various resettlement programmes (to “share the refugee burden”) were activated in western European states during the Cold War and in the mid-1990s in response to civil war in Yugoslavia (European Commission, 2010, p. 4). It was in the context of the Bosnian war that Austria, Sweden and Germany first started looking for European cooperation on asylum issues. At the extra-EU Council of Europe (CoE) in 1993, Austria and Sweden came up with a proposal calling for a more equal distribution of displaced persons and war refugees from Bosnia. At *level I* in the meantime, the United Kingdom hosted a meeting of European Immigration Ministers in the context of its rotating Council Presidency (July–December 1992), based on which it was concluded that the admission of displaced persons or war refugees should be based on ‘national capabilities’ for refugee management (*ibid.*, p. 4).

In line with the outcome of the London Summit, in July 1994 the German Council Presidency drafted a resolution (Council Document 7773/94 ASIM 124), according to which refugees would be redistributed on the basis of indicative figures, related to the size of a Member State’s population and national territory in proportion to the EU, and GDP. Germany also contemplated the possibility of reviewing the figures based on the Member States’ previous efforts in receiving refugees. This “quota” system proposed by the German Presidency was most importantly based on the dispersal criteria used by Germany to distribute asylum seekers between *Länder* (federal subdivision of Germany) proportionally

to their population ‘as a way of distributing financial and social costs of asylum across Laender’ (Thielemann *et al.*, 2010, p. 52). According to the German proposal, which for the first time introduced the concept of a compulsory quota, the number of relocated persons was not to be fixed but to be adjusted, Member State by Member State, as jointly defined within the EU. Already then, in spite of the ‘flexible approach’ proposed, two Member States, the UK and France, expressed serious concerns over the implications of the proposed system: both, alongside other Council Members were strongly opposed to such a ‘physical’ burden-sharing regime which they believed would have violated established human rights and allowed for the transfer of refugees in their territory without their explicit consent (Thielemann, 2008, p. 20); thus, they urged fellow Member States to focus only on financial burden-sharing (European Commission, 2010, p. 5).

Between 1995 and 1998, the concept of burden-sharing was largely put aside until the war in Kosovo (1999), which prompted an *ad hoc* approach of burden-sharing via pledges made to the *Humanitarian Evacuation Programme* (HEP): pledges were made without the need of a redistribution formula and thanks to particularly positive public opinion on the matter at the time. However, the particular circumstances under which the pledges were made left behind no policy lessons for any future mechanism for relocation pledges, especially because the pledges made were not linked to any formula but were rather offered on a voluntary basis (European Commission, 2010, p. 6). The crisis in Kosovo also led to renewed efforts at the Commission level and to the introduction in 2001 of the Temporary Protection Directive (discussed in Chapter 3).

Starting from the early 2000s, following a spike in immigration inflows coming mainly from the MENA region (Ortega Pérez, 2003; Scotto, 2017), frontline Mediterranean Member States proactively advocated for relocation as the main policy solution, or part thereof, to the issue of irregular immigration to the EU. Yet, the idea of burden-sharing by means of refugee relocation did not resurface until the French Council Presidency of 2008 (European Commission, 2010, p. 7). From then onwards, Mediterranean Member States took a proactive stand towards refugee relocation at different times. As the following paragraphs show, lobbying efforts were stronger when these Member States were directly affected by big migrant influxes arriving to their territory. The first Member State to be affected by heavy migrant inflows was Spain, which was affected throughout the 2000s; it was followed by Malta until 2009; Italy in 2011 and then again from 2013 onwards together with Bulgaria; and Greece from 2014 onwards. In spite of similar circumstances and

incentives, the discrepancies in political salience and geography of the issue of irregular immigration at home, coupled with a sporadic interest coming from other Council members, heavily affected the success of Mediterranean Member States in demanding policy change in JHA affairs. The absence of a compact intergovernmental coalition lobbying for burden-sharing within the Council impaired the Mediterranean states' ability to *upload* domestic concerns and preferences in the policy-making process leading to the adoption of the two Refugee Relocation Decisions.

SPAIN

Although Spain similarly experienced mass inflows of irregular migrants in the 2000s, the agenda-setting efforts of Spain on the issue of refugee relocation did not produce any comparable policy outcomes to those produced from Malta with its lobbying efforts (i.e. EUREMA I and II). This would translate into a missed opportunity for Spain to *upload* its historical 'know-how' and experience on this policy issue in the making of the two Refugee Relocation Decisions.

Already between 2000 and 2010, Spain had experienced a sixfold increase in the number of immigrants registered as residents in Spain (Worden, 2010). This was the result of large influxes of third-country economic immigrants and retirees, mainly coming from Morocco and Spain's former Latin American colonies. Domestic salience of the issue of irregular immigration to Spain rose even further in 2006 during the so-called *cayucos* crisis, when approximately 30,000 irregular immigrants reached Spain through the Canaries by means of small fishing boats coming from various Western African countries (Arango, 2013). Thanks to a series of agreements reached by means of compensation (i.e. work visas, vocational training, foreign aid, etc.) with various Western African countries – namely, Cape Verde, Gambia, Guinea Conakry, Mauritania, Nigeria and Senegal – Spain was ultimately able to manage the migration inflows without any support from the EU on this matter (Agencia Española de Cooperación Internacional para el Desarrollo, 2009).

As explained by a senior Spanish diplomat, neither the country's efforts nor insights from practice were heeded in the negotiations leading to the adoption of the Scheme:¹²⁴

We were of course saying [that] we are going to show solidarity, and we agree with most of the criteria, but there's one missing: in the case of Spain – and I think it was the Italian position too – the responsibility that we are taking control [of] the external borders, that is already a huge effort ... I mean, there should be modulation, because if you take into

¹²⁴ Interview with Spanish senior diplomat (P58), December 2019, Brussels (Belgium).

account population, GDP, and [the] number of refugees, it didn't take into account [the] effort that was actually done on a regular basis. In our case ... we were spending a lot of political and material investment in Morocco ... So, there was a kind of [snapshot] that started in 2014, and previously there had been a lot of movement, so we thought it was not completely fair as a picture.

When asked about the existence of domestic contestation at home on, and the presence of negative media coverage of, the negotiations on the two Refugee Relocation Decisions, the same diplomat commented how domestic politics did not create issues per se ahead of their adoption; nevertheless, he argued, it made it harder in the following years to justify at home that the EU had found an '*ad hoc* solution for others' on irregular immigration at last, after having ignored earlier flows inbound to Spain in the past.

MALTA

After the Kosovo war, it took seven years for the revival of the concept of burden-sharing. Malta was the first Mediterranean Member State to successfully lobby for a relocation-based system of solidarity,¹²⁵ as its request for support was included in an EU text in 2008. Under the French Council Presidency, a *European Pact on Immigration and Asylum* (Council of the European Union, 2008) was agreed, whereby the Presidency called for further advances in these policy areas. In particular, in the context of the fourth point of this Pact – ‘Construct a Europe of asylum’ – the European Council agreed to introduce a relocation mechanism for Member States under pressure, ‘on a voluntary and coordinated basis’ and ‘under existing EU financial instruments’ (Council of the European Union, 2008, p. 12).

Shortly thereafter, in June 2009, the European Council concluded that the circumstances in Cyprus, Malta, Greece and Italy necessitated ‘the coordination of voluntary measures for internal reallocation of beneficiaries of international protection present in Member States exposed to specific and disproportionate pressures and highly vulnerable persons’ (Council of the European Union, 2009, p. 14). In view of the successful uploading of Malta’s concerns, the EU CO called for the introduction of a relocation pilot project in Malta. The 2009 call for proposals under the European Refugee Fund (ERF) Community Actions included a category which specifically targeted ‘pilot projects aiming at supporting existing or creating joint platforms for resettlement inside the EU or in third countries, in

¹²⁵ Interview with Maltese senior official (P53), Brussels (Belgium), October 2019.

cooperation with UNHCR and possibly other relevant organizations.’ Malta was the first Member State to request its activation (EASO, 2012).

As a result of Malta’s bid to the ERF, two small pilot projects were put in place for Malta in 2009 and 2011 respectively. Twelve Member States decided to participate to the two pilot projects, ten in the first phase – known as the Pilot Project for Intra-EU relocation from Malta (EUREMA I) – and fifteen between Member States and Associated Countries in the second phase – EUREMA II – of which eight were on a bilateral basis. Ten Member States – Austria, Belgium, Cyprus, Croatia, Czech Republic, Estonia, Finland, Greece, Italy, and Latvia – did not pledge in either of the two phases. The two pilot projects were completed without great success – 227 and 7 persons in total were relocated respectively in the two phases – further curbing the EU’s appetite for similar policy initiatives.¹²⁶ Nevertheless, the implementation of these small pilot projects was vital for the making of the two Refugee Relocation Decisions in the midst of the 2015 migration crisis, insofar as they represented its conceptual and technical cornerstones.

CYPRUS AND PORTUGAL

Quite differently from Spain, the non-participation of Cyprus and Portugal as agenda-setters to the formulation of the two Refugee Relocation Decisions was the direct result of the fact irregular immigration did not represent a political concern for either of them between 2015 and 2016. As a result, their role boiled down to passive support for the early agenda-setting efforts of Mediterranean states on refugee relocation and for the later making of the Refugee Relocation Scheme. According to a Portuguese official, before the introduction of the two Refugee Relocation Decisions, Portugal had ‘only ever experienced’ small and indirect migrant inflows, mainly originating from secondary movements through Spain,¹²⁷ which had made the country aware of the problem and thus historically supportive of relocation and resettlement schemes towards Member States under migrant pressure. This resulted in a supportive role during the negotiations of the Scheme: the only request raised jointly to the Commission by Portugal and Slovenia was that the defined amounts provided for the emergency-based Refugee Relocation Scheme would be used ‘without jeopardizing the strategic and national objectives inscribed in the

¹²⁶ Interview with Dutch and Maltese senior diplomats (P52-53), October 2019.

¹²⁷ Interview with Portuguese diplomat (P45), May 2019, Brussels (Belgium)

afore approved financial programs',¹²⁸ such as the Asylum, Migration and Integration Fund (AMIF).

For Cyprus, there was no need to discuss either the numbers proposed by the Commission for the two Decisions, or the mathematical basis used to calculate them.¹²⁹ Not only was Cyprus supportive of both proposals in the later adoption of the Scheme, but it also contributed to its agenda-setting as it advised the Commission to construct the quota in such a way that would cover the most relevant migrant influxes at the time. As explained by a Cypriot senior diplomat, already during the Italian Council Presidency, Cyprus had insisted on using the unemployment rate as a key criterion for refugee redistribution, insofar as the financial limitations experienced by the country would have impaired its ability, and that of similar Member States, to pay unemployment allowances to beneficiaries of international protection.¹³⁰

Unlike Portugal, Cyprus had a clear preference for relocation over resettlement 'because we need[ed] people to be moved from our territory to another territory'.¹³¹ At the same time, the Cypriot government insisted that any refugee relocation would need to be pre-agreed by each applicant for asylum: 'asylum seekers could not be obliged to be taken to another Member State... you are supposed to be asking for permission to relocate them, you are not talking about furniture, you are talking about people'.¹³²

ITALY AND GREECE

Whilst Italy and Greece had a similar negotiating position in the bargaining process leading to the adoption of the two Decisions, both standing to benefit from the Scheme, the two countries played fundamentally different roles throughout the negotiations. Italy and Greece countries are the main gatekeepers for two different migrant routes, the Central and the Eastern Mediterranean/Western Balkans routes respectively, but most importantly they were at the time on two different emergency timelines. Namely, for Greece the migration crisis represented a 'crisis upon a crisis', seeing as the outbreak of the refugee crisis in

¹²⁸ Council of the European Union (2015). Draft Minutes from the 3405th meeting of the Council of the European Union (Justice and Home Affairs) held in Brussels on 20 July 2015 (11088/15). Brussels, 22 September 2015, p. 11.

¹²⁹ Interview with senior Cypriot diplomat (P48), May 2019, Brussels (Belgium).

¹³⁰ Interview with P48, May 2019.

¹³¹ Ibid.

¹³² Ibid.

Spring 2015 came hand in hand with a growing liquidity crisis and the menace of a sovereign default; the migration crisis also started right before the Greek bailout referendum in July 2015 when the Greek citizens were called to decide whether the country should have accepted the new bailout conditions proposed by the Troika. Taken together, these emergency circumstances meant that the country had no political resources or capital to use in setting the agenda on another policy issue, refugee relocation.¹³³ The gravity of the combined effect of the two crises in Greece was such that the EU and the Franco-German *duo* had to intervene in order to avoid a *Grexit* becoming inevitable (see Section 4.3).

Unlike Greece, Italy had already been prioritizing the issue of irregular immigration since late 2013 and strategically used its role of Council President in the second semester of 2014 to raise the political momentum for burden-sharing and for a mechanism for refugee redistribution. According to former Italian Minister of Interior Angelino Alfano,¹³⁴ Italy's "account" on the issue of migration really started with the Lampedusa tragedy of October 2013, although a state of emergency on migration had already been declared before then, with the *D.P.C.M. of 12 February 2011*,¹³⁵ activating the state of humanitarian emergency up until 31 December 2011 due to an exceptional influx of North African immigrants. As it started dealing with a sudden rise in irregular migrant inflows, the Italian government experienced first-hand the shortcomings of the recently reformed Dublin Regulation in practice and thus urged other Council Members to update it and complement it with a 'burden-sharing' approach:

Thus, [our] first battle was that of burden sharing and the Dublin Regulation. As months went by, it became evident how that pathway wouldn't have been productive insofar as it would have meant mandatory [basis] for the other Member States; we then proceeded to express the option of voluntary [basis]. That is to say, each Member State would have expressed – on the basis of its own public opinion's sensibility [towards the topic of migration] – its own possible pledge.¹³⁶

On 16 June 2014, the Italian government exploited its position as Council President to present a non-paper '*Taking action to better manage migratory flows*' which was later adopted on the occasion of the JHA Council of October 2014. In this non-paper, the Council

¹³³ Off the record interview (P49), Brussels (Belgium), May 2019.

¹³⁴ Interview with Dr Angelino Alfano (P36), Milan (Italy), March 2019.

¹³⁵ The DPCM (in Italian, *Decreto del Presidente del Consiglio dei Ministri*) is a Prime Minister's Decree.

¹³⁶ Interview with former Interior Minister Dr Angelino Alfano (P36), March 2019.

suggested that ‘[t]he use of relocation, on a voluntary basis, while taking into account the efforts already carried out by affected Member States, also contributes to support Member States under pressure’ (Council of the European Union, 2014a, p. 4). In the meantime, a ‘military operation with humanitarian purposes’ (Council of the European Union, 2014b), Operation Triton, was launched to replace the Italian Navy’s humanitarian operation *Mare Nostrum*.

Nevertheless, the efforts made by the Italian Council Presidency and the Commission to build intergovernmental consensus disintegrated due to Italy’s divisive party politics on the topic of irregular migration. As stated in an interview by the then Minister of Interior:¹³⁷

The Italian Semester did not produce the hoped effects insofar as the left-wing governments were not as supportive as we hoped for, whereas the right-wing [parties] feared that public opinion would have negative attitudes towards the government’s policies.

According to Minister Alfano’s former advisor Dr Marco Peronaci, Germany represented Italy’s ‘principal ally’ within the EU, insofar as the country ‘agreed on the necessity of having a policy based on burden sharing, not only for refugees but also for migrants [from countries] with [Mobility] Partnerships Agreements, a policy [that is] humane and responsible at once, that would tackle the pull factors’ of migration.¹³⁸ Germany and Italy agreed on the underlying principles, although they had different strategic interests on migrant routes.¹³⁹ With respect to France, Italy shared a similar political sensitivity towards the issue of irregular immigration, but there was a ‘concrete tension on the *Ventimiglia frontier* between the two countries’.¹⁴⁰ As a result, the trilateral meetings organised by the Italian Interior Minister, with his French and German counterparts Bernard Cazeneuve and Thomas de Maizière, ‘did not manage to give a European push that would lead to the fulfilment of duties that we had expected’.¹⁴¹ The nature and political urgency of Italy’s objectives on migration, coupled with their disconnect from those of the remaining founding Member States (Germany, France, the Benelux states and Italy, or the “Core group”), left Italy proactive on the issue, yet isolated in the *uploading* of national preferences and concerns to the EU level.

¹³⁷ Interview with former Interior Minister Dr Angelino Alfano (P36), March 2019.

¹³⁸ Interview with Dr Marco Peronaci (P50), June 2019, Rome (Italy).

¹³⁹ Interview with former Minister Alfano (P36), March 2019, Milan (Italy).

¹⁴⁰ Interviews with P36 and P50, March and June 2019, Milan and Rome (Italy).

¹⁴¹ Interview with former Minister Alfano (P36), March 2019.

FROM AGENDA-SETTING TO DECISION-MAKING

Alongside the agenda-setting efforts made by the Mediterranean frontline states, between late 2013 and 2015 the policy option of refugee redistribution or relocation had been discussed among a few like-minded policy players¹⁴²: namely, Member States' representatives from the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) Council Working Group¹⁴³ (namely, Austria, Belgium, Germany, Austria, the Netherlands, Denmark, Sweden, Greece and Malta), the then Director of Migration, Protection and Visa from the Commission's DG HOME, and other representatives from the Council Secretariat.¹⁴⁴ Held under the Chatham House Rule,¹⁴⁵ a few meetings were hosted by the then-Director of the *Migration Policy Institute (MPI)* Europe Elizabeth Collett and the Permanent Representations of the countries involved, in order to prepare the ground¹⁴⁶ for a future Commission proposal.¹⁴⁷ As explained by its Acting Director, *MPI* is often consulted by DG HOME whenever important decisions have to be made, particularly to analyse and provide them with some thoughts on 'the viability of proposals, [but] also the degree to which it is politically feasible [since] we are quite informed about the political position of MEPs and Member States'.¹⁴⁸ Various technical aspects were pre-agreed in this occasion: the need for security screening, swift processing, a matching system, a confined space for screening procedures (later defined 'hotspot'), and support from EU agencies.¹⁴⁹ In the aftermath of the shipwreck of April 2015,¹⁵⁰ the incumbent Dutch Presidency solicited the think-tank *MPI* to organise an informal dinner at the residency of the then-PermRep of the Netherlands to the EU, Pieter van Hooghe.¹⁵¹ The group, supported by the Intergovernmental Consultations on Migration, Asylum and

¹⁴² Interview with senior Dutch diplomat (P44), May 2019, Brussels (Belgium).

¹⁴³ The Strategic Committee on Immigration, Frontiers and Asylum or SCIFA is a forum for exchange at the level of the Council of the EU, consisting of senior-level officials dealing strategically with matters in the fields of immigration, asylum and frontiers. The SCIFA Council Working Party deals important legislative proposals and non-legislative initiatives in the policy areas concerned, as well as horizontal issues.

¹⁴⁴ Interview with senior Dutch official (P44) May 2019; Interviews with senior PermRep officials (P52-53), October 2019.

¹⁴⁵ The Chatham House Rule reads as follows: 'When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed'. Available at: <https://www.chathamhouse.org/chatham-house-rule>

¹⁴⁶ In the original interview with P52, the original terminology used was 'to set the spirits right', as a literal expression borrowed from Dutch meaning to set the mood, to prepare the ground.

¹⁴⁷ Interviews with senior PermRep officials (P52-53), October 2019.

¹⁴⁸ Interview with *MPI* Acting Director Hanne Beirens (P11), January 2019, Brussels (Belgium).

¹⁴⁹ Interview with P44, May 2019.

¹⁵⁰ See Chapter 1, page 1-2.

¹⁵¹ Interview with P52, October 2019.

Refugees (IGC),¹⁵² DG HOME and DG ECHO, brainstormed two alternative scenarios of migration management: 1) 100,000 irregular migrants coming from the Central Mediterranean route; 2) 100,000 irregular migrants arriving from the Eastern Mediterranean route. Given that at the time the numbers were considered far from likely to happen, the group only performed this exercise for the Eastern Mediterranean route and concluded that the EU was not prepared to tackle the situation.¹⁵³ As described by a senior Dutch official, it was:

Not [a] top-down [exercise], but among some who are going to be in charge: what would happen.. if something would happen.. you would then have to do something, like increase personnel or resources or whatever, you are too late. So I remember from then onwards, you have then to convince your capital, your ministry, why you need more people, you know it's a complex process, and increases [in the Dutch Permanent Representation] went from 2 to 4, from 4 to 8, and in December [2015] it went to 10... Ideally you do these things beforehand, ideally one or two years before [the Presidency].¹⁵⁴

Based on this exercise and on the renewed political momentum provided by the Extraordinary EUCO of April 2015, the Commission seized the opportunity (as discussed in Chapter 3), ‘the moment to do several steps forward... changing everything from Directive to Regulation and making a big package [CEAS]’ and to propose a scheme for refugee relocation.¹⁵⁵ However, while the Commission exploited the underlying political impetus to table originated from Lampedusa’s tragedy and the Council’s renewed willingness to show solidarity to Italy and Greece, it was ultimately German Chancellor Angela Merkel who chose refugee relocation as the preferred policy measure in response to the crisis, strengthened by the political backing received from the then French President François Hollande.

¹⁵² IGC, or the Intergovernmental Consultations on Migration, Asylum and Refugees, is ‘an informal, non-decision-making forum for inter-governmental informal exchange and policy debate on all issues of relevance to the management of international migratory flows’, available at: <https://www.iom.int/igc>. The IGC ‘Participating States’ are Australia, Belgium, Canada, Denmark, Finland, Germany, Greece, Ireland, the Netherlands, New Zealand, Norway, Poland, Spain, Sweden, Switzerland, the UK, and the USA. The Member Organizations are the EU, the IOM, and the UNHCR. Not to be confused with the Intergovernmental Consultations, often referred to as IGC, the formal procedure for amending the EU Treaties.

¹⁵³ Interviews with P53-54, October 2019.

¹⁵⁴ Interview with P52, October 2019.

¹⁵⁵ Interview with P53, October 2019.

4.3 LEAD AND SUPPORT ACTORS

The unconditional support provided to the Commission by Germany and the rotating Council Presidency held by Luxembourg, as supported by the Benelux states and France, gave the proposal for refugee relocation institutional recognition, while earlier agenda-setting efforts had rendered it acceptable, even welcome, to many Member States.

THE ROTATING COUNCIL PRESIDENCY¹⁵⁶

In the making of the two Refugee Relocation Decisions, Latvia and Luxembourg had the crucial role of holding the Council Presidency in the first and second semesters of 2015 respectively. As such, they bore the expectation of playing the role of *compromise brokers* in reaching an intergovernmental agreement on refugee relocation. Luxembourg took the lead in the negotiations on the two Refugee Relocation Decisions, informally while Latvia was completing its Presidency in order to build a political compromise on the first Decision, and formally on the second Decision after officially taking over from Latvia as Council Chair.

Latvia was only able to maintain a neutral stand towards JHA affairs until May 2015: at that point, mounting domestic pressures and security concerns related to refugee relocation led the Latvian government to request Luxembourg's incoming Presidency to take over on the negotiations from as early as mid-May (*tied hands*). The type of political compromise found between the domestic and international arenas by the two Member States was reflected in turn on the political outcome: Luxembourg experienced no domestic backlash even though the policy solution was not entirely in line with national preferences, whereas Latvia experienced domestic contestation and anti-migrant protests from September 2015 (Ragozin, 2015), ultimately leading to changes in Latvia's asylum policy (see section 4.4).

Following the Charlie Hebdo attacks in Paris of 7-9 January 2015, Latvia's main concern as Council President in the AFSJ was to shape a strategy counteracting migrant smuggling

¹⁵⁶ A part of this section has been published as a chapter in the book '*Small States and Security in Europe: Between national and international policymaking*', co-edited by T. Weiss and G. Edwards and published by Routledge (Vinciguerra, 2021a).

and terrorist attacks,¹⁵⁷ thus prioritizing the objectives set in the Trio Programme¹⁵⁸ on counterterrorism over other areas. In a speech made on 14 January 2015 at the EP, Latvia's PM Laimdota Straujuma (2015) reiterated this priority: 'We have to activate all the mechanisms at the disposal of the EU developed for the fight against terrorism [...] I believe that Europe will be able to show unity and overcome this threat.' As a senior Latvian official explained in an interview:

It wasn't like we neglected migration issues at all... We just wanted to provide, as far as migration is concerned, a possibility to evaluate the situation on the ground, are there additional needs?... but as I said for purely political reasons, it [our Council Presidency] was more shifted towards the fight against terrorism, information sharing among Member States, and so on.¹⁵⁹

As the Commission was consulting with Member States, IOs and other European institutions to finalise the EAM¹⁶⁰ and a proposal for refugee relocation at the Council's request (see Chapter 3), Latvia continued to coordinate and facilitate the exchange of ideas. Riga had given 'free rein' to Latvia's Permanent Representation to the EU to deal with migration issues beyond national preferences and concerns.¹⁶¹ Despite the domestic pressures experienced on migration issues in the country, the then Latvian PM Straujuma and Minister of Interior Rihards Kozlovskis understood that there needed to be a separation between national thinking and Latvia's role in the Council Presidency.¹⁶² Throughout its time as Council President, Latvia maintained a neutral, mediating role (*cut-slack*). From January to early April 2015, it tried to provide Member States with an opportunity to evaluate the migration issue from various perspectives, including 'the possibility for Member States to reflect on this [Commission's] proposal, on the migration agenda and to just move forward in the discussions on [the] relocation decisions.'¹⁶³

¹⁵⁷ Interview with Latvian senior official (P20), January 2019.

¹⁵⁸ In order to ensure the continuity of the Council's work, the Lisbon Treaty introduced in 2009 the Trio Presidency structure, whereby Member States holding the Presidency one after the other work closely together on the basis of a common agenda. The trio sets out a detailed programme outlining the major issues and topics on which the Council will work over an 18 month period, on the basis of which each Member State belonging to the Trio defines a more detailed programme for its own Council Presidency.

¹⁵⁹ Interview with P20.

¹⁶⁰ European Commission (2015), Statement on the developments in the Mediterranean. 18 April, Brussels. Available at: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_15_4800

¹⁶¹ Interview with P20.

¹⁶² Interview with P20.

¹⁶³ Ibid.

Notwithstanding Latvia's efforts to remain neutral throughout its Presidency, committing to 'facilitate [the] swift adoption of short-term emergency measures once proposed by the European Commission' (Latvia's Cabinet of Ministers, 2015c), Latvian PM Straujuma stressed in a meeting with EUCO President Tusk how the country would be willing to show solidarity on migration 'especially by providing expertise and technical support' (Latvia's Cabinet of Ministers, 2015a).¹⁶⁴

Shortly after the EUCO's Special Meeting of April 2015 on migration, Latvia's PM stressed once again the country's readiness 'to offer [their] expert help to speed up the processing of asylum requests, along with technical support in the form of helicopter, patrol boats, mobile surveillance vehicles and border control experts'.¹⁶⁵ Nevertheless, Latvia's prospective involvement in refugee quotas *reverberated* negatively in domestic politics from as early as May – two months before Latvia's Council Presidency was due to end. In fact, except for the opposition social-democratic Harmony party or *Sociāldemokrātiskā partija Saskaņa*, Latvian politicians, including the PM herself, did not support a refugee quota system (*The Baltic Times*, 2015).

The increased political salience of the issue of refugee relocation at *level II*, alongside the mounting urgency of finding an intergovernmental compromise at the EU level, led Straujuma, persuaded by her right-wing government coalition partner the *National Alliance*,¹⁶⁶ to make a statement on 29 May: Latvia would only support a voluntary mechanism for refugee redistribution to express its solidarity to other EU Member States under pressure, and opposed any future attempt to introduce a mandatory quota for refugee relocation (*The Baltic Times*, 2015). Its Baltic partners Estonia and Lithuania took a similar stance: for Estonian PM Taavi Rõivas, the proposed quota for the country was too large, while according to Lithuanian President Dalia Grybauskaitė, Lithuania was already

¹⁶⁴ Latvia's Cabinet of Ministers (2015). *Laimdota Straujuma talks with President of the European Council: Latvian Presidency ready to start work immediately on current European migration challenges*, Available at: <https://www.mk.gov.lv/en/aktualitates/laimdota-straujuma-talks-president-european-council-latvian-presidency-ready-start-work>

¹⁶⁵ Latvia's Cabinet of Ministers (2015). European leaders agree on joint action to prevent mass deaths of refugees in the Mediterranean Sea. 23 April, Brussels. Available at: <https://www.mk.gov.lv/en/aktualitates/european-leaders-agree-joint-action-prevent-mass-deaths-refugees-mediterranean-sea>

¹⁶⁶ Following the parliamentary elections of 4 October 2014, the PM's party Unity formed a coalition government with The National Alliance, officially known as the *National Alliance 'All for Latvia!' – 'For Fatherland and Freedom/LNNK'* and *The Union of Greens and Farmers*. The government resigned on 7 December 2015.

showing solidarity via humanitarian aid and participation in joint SAR missions in the Mediterranean (*ibid.*).

While there has been a general move by the Council to encourage smooth transitions between Presidencies, the transition between Latvia's and Luxembourg's Presidencies unofficially started much earlier than usual, with the first co-chairing meetings on JHA affairs in May 2015. This was dictated by the *reverberation* of the issue of refugee relocation on Latvia's domestic politics. Off the record, one interviewee explained how the then Latvian Permanent Representative to the EU, Ilze Juhansone, signalled to the upcoming Luxembourg Council Presidency that Latvia could not guide the Council on a proposal for refugee relocation against the wishes of PM Straujuma and the majority of Latvian politicians.¹⁶⁷ From May onwards, therefore, Luxembourg had to be fully in charge of the relocation file.¹⁶⁸ Increasing the coordination efforts with the incoming Luxembourg Council Presidency was thus vital for Latvia to fulfil its commitments as President in office, while leaving to the incoming one the responsibility for finding a political compromise on the Commission's proposal.

While there was a clear mandate for the Luxembourgish Council Presidency to take over on the relocation file, a senior official commented how, in the first instance, the Presidency would have preferred instead to 'test the temporary protection mechanism [TPD], a directive that after the Balkan wars was put in EU legislation but never activated'.¹⁶⁹ For the Council Presidency, triggering Directive 2001/55/EC¹⁷⁰ would have allowed for a postponement in the examination of asylum files, thus alleviating the administrative burden on the European asylum systems, while ensuring the swift and full protection of vulnerable groups of individuals. Unlike the TPD, testing relocation again was, to the Luxembourgish Council Presidency, not a sensible option seeing as previous pilot projects – EUREMA I and II – had been largely unsuccessful.

A combination of factors led to the selection of refugee relocation over the activation of the TPD. The policy option of refugee relocation had been discussed at length and spelled

¹⁶⁷ Off-the-record interview.

¹⁶⁸ Interview with senior officials (P16-17), Brussels (Belgium), January 2019.

¹⁶⁹Interview with senior officials (P16-17).

¹⁷⁰ See Chapter 3, page 95.

out in detail behind closed doors in preparation for a future Commission's proposal (see Section 4.2). Secondly, an evaluation run by DG HOME and *ICF Consulting* found this policy option to be more viable than activating the TPD.¹⁷¹ Furthermore, the German government signalled to President Juncker that, were they to activate the TPD in the face of the crisis, Germany would have risked not being able to cope with the situation,¹⁷² due to the increased migratory and political pressure in the country. It was thus decided that the Commission would propose a first, small-scale intra-EU relocation mechanism that could be triggered again in the future, if proven successful. The *uploading* of relocation by Germany was more successful than the alternative policy option proposed by the Luxembourg Presidency, despite Luxembourg's apparent structural advantage of holding the Council Presidency at that time. This proves the accuracy of one of the theoretical expectations of this thesis (**T4**): even institutional sources of power, such as holding the Council Presidency, are insufficient for small- and medium-sized Member States such as Luxembourg to successfully counter structural imbalances of power. Germany's structural advantage was instrumental not only for issuing a first but also a second Refugee Relocation Decision, as the migrant arrivals by sea and land worsened in the summer months.

On a technical level, the Luxembourg Presidency had also argued against a second Decision on relocation given the lack of assessments on the implementation of the first one (see Chapter 3). Notwithstanding this, Luxembourg's ability to thrive through migration and in the absence of domestic contestation on the policy matter for decades, as complemented with a *centralized executive* in full support of the Commission, facilitated the Luxembourgish Council Presidency's work in brokering a compromise on the two relocation dossiers (*cut-slack*). Indeed, quite differently from a large part of the EU, the 'chronic' weakness of populist and far-right parties in Luxembourg (e.g. *Alternative Democratic Reform Party [ADR]*) (de Jonge, 2019, p. 130), not to mention the country's heavy economic reliance on foreigners' labour, creates the perfect conditions for a positive political agenda on asylum in the Grand Duchy (Fetzer, 2011; de Jonge, 2019). These favourable conditions for setting the agenda translated into a strong, *centralized executive* at the lead of the Presidency, where the political direction was unilaterally dictated by

¹⁷¹ Interview with *MPI Europe*'s Acting Director, former Project Coordinator for TPD and Co-Project Director on the Dublin Regulation at *ICF Consulting* Hanne Beirens (P11), Brussels (Belgium), January 2019

¹⁷² Interview with senior officials (P16-17), January 2019.

Minister of Foreign and European Affairs Jean Asselborn. As Council President, Luxembourg provided full support to the Commission's proposal, notwithstanding the implementation difficulties of hotspots in Greece and Italy,¹⁷³ not to mention its own preference against a permanent mechanism for relocation without tabling a reform of Dublin first (*cut-slack*).¹⁷⁴

The *centralization of the executive* at the level of the Luxembourgish Interior Ministry provided the Presidency with strong political backing to deal with technical and political setbacks in the negotiations successfully and ultimately broker a compromise on the two relocation files, side by side with the Commission. Together with the Commission, in July the Presidency took the initiative and started undertaking bilateral *confessionals*¹⁷⁵ with each and every delegation to negotiate a politically acceptable number of refugee relocations for each Member State. As Table 4.1 shows, in early June there was a first general discussion at the SCIFA level on the European Agenda on Migration, followed by a more intense agenda of meetings ahead of the adoption of the first Refugee Relocation Decision: namely, two meetings at the level of the Council's Asylum Working Party (AWP), one among JHA Counsellors of the various Permanent Representations to Brussels, two at the Coreper II level among Ambassadors and a final one at the level of the JHA Council (20 July) to find unanimous consensus on the first Refugee Relocation Decision, before it would be formally adopted on 14 September.

¹⁷³ Interview with P17, January 2019.

¹⁷⁴ Ibid.

¹⁷⁵ One of the longstanding roles of the rotating Council Presidency is to broker a compromise between Member States in the Council in the so-called 'confessional system'. Under the 'confessional system', the Council Presidency identifies potential difficulties and incompatibilities among national *win-sets* ahead of achieving an agreement in the negotiation. In order to map all concerns and national preferences at stake, the Presidency 'adjudges the Council and speaks to each member state in turn, asking each delegation to state its position with reasons... Through these confidential *confessionals*, the President is in a better position to establish compromise agreements' (Sherrington, 2000, p. 44).

TABLE 4.1: NEGOTIATING ROUNDS ON COUNCIL DECISIONS (EU) 2015/1523 AND 2015/1601.

First Proposal	Second proposal
▪ SCIFA 05/06 (general discussion on EAM)	▪ Coreper II 11/09
▪ AWP 02/07 and 07/07	▪ JHA Council 14/09
▪ JHA Counsellors 14/07	▪ Friends of the Presidency (Asylum) 17/09
▪ Coreper II 06/07 and 16/07	▪ JHA Counsellors 18/09
▪ JHA Council 20/7	▪ Coreper II 20/09, 21/09 and 22/09
▪ Coreper II 09/09	▪ JHA Council 22/09
▪ JHA Council 14/09	

Source: data retrieved from agenda of meetings shared confidentially by an official, May 2020.

In the first *confessionals* of July, the Presidency quickly realized that ‘everybody wanted a formula reflecting their own national interests’.¹⁷⁶ Furthermore, as anticipated in Chapter 3, the formula proposed by the Commission for the calculation of the refugee quota contained a mathematical ‘error’ or ‘distortion¹⁷⁷, such that ‘the smaller the country was, the more people you had to take’, proportionally.¹⁷⁸ In an attempt to circumvent the political concerns which evidently surfaced from the confessionals, the Presidency sought an unofficial compromise with Member States’ delegations: any number proposed for the refugee relocation quota would be based only on GDP and population size, leaving aside the effect of unemployment rate and territorial size.¹⁷⁹ As a result of the Presidency’s *centralized* efforts, neither the first nor the second Council Decision explicitly ever referred to the use of such a formula for the calculation of Member State’s shares.

THE CORE GROUP, SWEDEN AND AUSTRIA¹⁸⁰

While the Luxembourgish Council Presidency’s work was crucial for coordinating the works ahead of the adoption of the two relocation files, building unanimous consensus and qualified majority on voluntary- and quota-based refugee relocation would have not been politically attainable without the coalition-building efforts at *level I* of the Franco-German *duo*.

¹⁷⁶ Interview with senior officials (P16-17), Brussels (Belgium), January 2019.

¹⁷⁷ Interview with former DG HOME Director-General Matthias Ruete (P3), November 2018.

¹⁷⁸ Interview with senior officials (P16-17), Brussels (Belgium), January 2019.

¹⁷⁹ Interview with senior official (P17), Brussels (Belgium), January 2019.

¹⁸⁰ Seeing as Italy was a beneficiary of the Scheme and was heavily involved in agenda-setting efforts on the issues of refugee relocation and burden-sharing much earlier than 2015, the country was analysed together with the rest of the Mediterranean frontliners and agenda-setters, rather than here.

Relating to the first Commission's proposal for voluntary-based relocation, all of the Core MS gave supporting statements in the context of the JHA Council of 20 July, arguing that all EU Member States ought to contribute to it. France and Germany made a joint statement 'particularly recall[ing] that solidarity and responsibility are closely interlinked' and that '[a]ll EU Member States concerned by these programmes shall take part in them, in order to have a balanced distribution of the effort' (Council of the European Union, 2015b, pp. 8–9). In a similar fashion, the Netherlands also confirmed its willingness 'to make a sizeable contribution', attaching particular importance to other MSs' contributions to the relocation mechanism, on the understanding that '[i]nsufficient results with regard to these aspects may lead to reconsideration of the stated commitment of the Netherlands' (Council of the European Union, 2015b, p. 10). Besides the Core MS, the Swedish government also provided the rotating Council chair and the Commission with its full support,¹⁸¹ even though it did not make any supporting statement at the JHA Council of 20 July 2015.

While political backing for the Commission's proposal for voluntary refugee relocation was guaranteed from the Core states, the Mediterranean MSs and Sweden, beyond these 'the discussions from the beginning onwards were very difficult'¹⁸²: from British concerns about a pull factor and of increasing migrant deaths in the Mediterranean, to the Austrian inability to participate in the early stages due to the mass influx of displaced persons flowing into the country, to the Hungarians stating that their *solidarity contribution* was the amount of border guards needed once their borders closed.

It was thanks to the combined political efforts of France and Germany that unanimous consensus was found on the first Decision by mid-July. Former French Sherpa Ambassador Léglise-Costa described the bargaining strategy used to bring Member States on board as a mix between a voluntary and a mandatory approach. Relocation pledges would be made unanimously by Member States and, once included in the list of commitments made, they would become binding for implementation purposes. This allowed the Commission to describe this as a voluntary-based relocation mechanism built upon unanimous consensus at the Council, even though relocation commitments were effectively binding once pledged.¹⁸³

Thanks to this creative approach, the JHA Council reached an agreement by consensus on the distribution of 32,256 persons in need of international protection and a resolution of

¹⁸¹ Interview with Swedish diplomat (P41), May 2019, Brussels (Belgium).

¹⁸² Interview with P17, January 2019.

¹⁸³ Interview with French Ambassador Léglise-Costa (P22), January 2019, Brussels (Belgium).

Heads of State and Governments was adopted on 20 July 2015, forming the political basis for the Council Decision (EU) 2015/1523.

For building a qualified majority on the second Commission's proposal for quota-based relocation, the coalition-building efforts of the Franco-German *duo*, as politically backed by the Benelux and the Mediterranean Member States, were even more decisive (in line with *TEI*).

Between mid-July and 14 August, the main focus of Franco-German coordination consisted in the finalisation of the *Euro Area Initiative for Greece*,¹⁸⁴ ahead of the incumbent Euro summit.¹⁸⁵ The turning point for a shift in policy focus from the Eurozone to the migration crisis only came in mid-August, when the number of land and sea migrant arrivals nearly doubled – from 79,380 in July to 131,786 in August, according to UNHCR's records (UNHCR, 2015) – and the migration route shifted from the Central Mediterranean to the Eastern route. As recalled by Ambassador Léglise-Costa, during a phone conversation on 11 August, Chancellor Merkel asked for Hollande's support to ensure that the Commission's public procurement would not be too rigid with regards to her plan of building additional housing in Bavaria for the growing number of incoming refugees.¹⁸⁶ Even before the introduction of its open-door policy, Germany was in fact already struggling to cope with the influx of Syrian refugees – over 218,000 asylum claims by the end of July (Reuters, 2015b). In light of this, Hollande agreed without reservation (*cut-slack*) and the two leaders decided to meet again on the 20 August, when the leaders had to further discuss the implementation of the *Euro Area Initiative for Greece*.¹⁸⁷ Merkel's and Hollande's Euro Sherpas, Philippe Léglise-Costa and Uwe Corsepius, met in preparation for the Euro meeting. While the focus of the meeting was meant to be entirely on the *Euro Area Initiative*, the German Sherpa gradually moved the discussion onto the new migration emergency, which had become the primary concern for Germany over the summer, and the potential need to extend the first legislation on refugee relocation with a new Commission proposal.

¹⁸⁴ The European Stability Mechanism (ESM) approved the first tranche of financial assistance for Greece of 26€ billion on 20 August 2015. Available at: <https://www.esm.europa.eu/press-releases/esm-board-directors-approves-first-loan-tranche-€26.bn-greece>

¹⁸⁵ Interviews with French and Commission senior officials (P22, P26), January 2019.

¹⁸⁶ Interview with P22.

¹⁸⁷ Interview with P22.

At the same time, there was an *uploading* of the German concerns to the EU level, confirming once again the theoretical expectation on the crucial role played by Germany in building intergovernmental compromises in the AFSJ (*TEI*). On 16 August, Chancellor Merkel and President Juncker agreed via telephone that Article 78(3) TFEU ought to be triggered again for another proposal for refugee relocation. However, while seeking to shape a European response to the crisis, Germany found itself to be at the centre of it. Two different narratives exist for what triggered Merkel to open Germany's doors. According to Western sources, Hungarian PM Orbán decided to send all Syrian asylum-seekers to the Austrian-Hungarian border so the pressure was shifted to Austria and Germany. (Blume *et al.*, 2016). The alternative narrative is that in a series of phone calls between Austrian Chancellor Faymann, Chancellor Merkel and PM Orbán, the latter announced that, were asylum seekers to be redirected from Austria to Hungary, they would be arrested for human smuggling.¹⁸⁸ Regardless of what Orbán announced, the actions of the Hungarian PM led Chancellors Merkel and Faymann to decide and open their borders on 29 August after consulting with each other (Than and Preisinger, 2015).

Before doing so, Merkel only briefly consulted her government ministers, advisors and coalition partners (*level II*) to ensure there would be no serious objections to the open-door policy (Blume *et al.*, 2016). Far from asking permission, Merkel reached out to her Vice-Chancellor and leader of her coalition partner, the *Social Democratic Party (SPD)*, Sigmar Gabriel, to reassure him that the open-door policy would constitute a ‘humanitarian exception’ to the rule (*ibid.*); a similar attempt to reach out to Bavaria’s governor Horst Seehofer, at the time also President of the *Christian Democratic Union (CDU)*’s sister party, the *Christian Social Union (CSU)*, was unsuccessful and left Merkel with no option other than opening Bavaria’s borders without notice nor explicit support from the *CSU*. While doing so, Chancellor Merkel made sure with her *SPD* Minister of Foreign Affairs Frank-Walter Steinmeier that the open-door policy would be in accordance with the Dublin Regulation, particularly the *sovereignty clause* laid down by Art. 17(1).¹⁸⁹ The Chancellor’s attitude to *level II* negotiations reflected two advantages from which she benefitted at the time: firstly, this was Merkel’s third term leading a *grand coalition* characterized by a

¹⁸⁸ Interview with senior official (P37), March 2019, Berlin (Germany).

¹⁸⁹ According to Art. 17(1) of the Dublin Regulation, ‘[a]ny Member State should be able to derogate from the responsibility criteria, in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection lodged with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation’

rather comfortable majority (Beinhorn and Glorius, 2018, p. 14), comprising approximately 80% of the parliamentary seats (namely 311 seats by the *CDU/CSU* and 193 by the *SPD*, out of 631 seats); second, at the time there was a relatively low polarization on issues relating to responsibility-sharing in the EU in the German parliament (*ibid.*), which allowed Merkel to act without being hindered by ‘constraining dissensus’ at home.

With tensions mounting at home, further pressure for action was created by the European media as Syrian boy Aylan Kurdi was found drowned on the Turkish shores of Bodrum. This prompted Chancellor Merkel and President Hollande to write a joint letter – the first the two leaders co-signed in their common time in power¹⁹⁰ – aimed at designing a comprehensive EU policy response to the crisis. Hollande’s and Merkel’s Euro Sherpas were tasked to draft a letter that would summarize Franco-German common thinking on the migration challenge, refugee camps, relations with neighbouring countries, border guards, and Turkey.¹⁹¹ The points left outstanding from the Sherpa meetings were directly resolved by the two HOSG. Most crucially, Hollande was originally not in favour of the idea of a permanent refugee relocation mechanism, but ultimately decided to compromise (*cut-slack*) on this with Merkel to accelerate the letter’s circulation to the other EU HOSG. Lèglise-Costa reported in an interview how Hollande realized that France could not “drop Germany” on this policy matter, as doing so would have damaged Franco-German relations, not to mention it would have risked “isolating” the Germans from the rest of Europe. Thus, Hollande decided to show solidarity towards Chancellor Merkel and support her on this (*cut-slack*). As a result, among the key principles raised in the letter, Merkel and Hollande invited the Commission to submit an additional proposal for permanent relocation, while stating their willingness ‘to contribute to all actions in a spirit of European solidarity and responsibility’ (Dallonne and Stroobants, 2015 translated by the author).

The solidarity expressed by President Hollande towards Germany and the rest of the EU did not come without a price at home and prompted heavy criticisms by the opposition. Far-right *Front National* leader Marine Le Pen condemned all French politicians in government as ‘despicably conciliatory’ towards the requests made by Germany and Chancellor Merkel, playing with the sense of guilt provoked by the media (*Le Monde*,

¹⁹⁰ Interview with P22.

¹⁹¹ Interview with P22.

2015). Among members of the moderate right *Les Républicains*, the most outward critique came from former President and then Head of the party Nicolas Sarkozy. In an interview with *Le Figaro*, he manifestly criticized Hollande for his ‘lack of strategy, vision, and authority’ in agreeing with Merkel (Jaigu, De La Grange and Brézet, 2015). Firstly, Sarkozy was convinced that ‘quotas can be nothing but the consequence of a new politics of European immigration, and by no means the prerequisite’ (*ibid.*). Secondly, Sarkozy thought that the fixed quota would only have enabled more secondary movements to France. And lastly, he argued for a temporary legal status so as to create the distinction between political and war refugees, leaving no space for economic migrants (*ibid.*). Even on the left of the political spectrum, Hollande’s plan received criticism, this time on account of its overly cautious nature and for not doing enough while ‘watching as people are dying under our eyes’ (Briançon, 2015).

What saved President Hollande’s policy stance was that many of these criticisms – most prominently Sarkozy’s – came in late, at a time when other key actors from the party (i.e. Sarkozy’s main rivals for the 2017 Presidential Election Alain Juppé and François Fillon) had already expressed their support for Hollande’s *plan*. A divided opposition ultimately mitigated the *negative reverberation* at home and helped President Hollande to steer clear of a breakdown in the negotiations at *level II*. While Hollande’s choice to support Merkel on the Scheme did not immediately lead to a “breakdown” in the negotiations, the heavy criticisms received at home highlight once again the crucial but unpredictable role played by domestic contestation (*level II*) in the shaping of bargaining outcomes at *level I* in the presence of asymmetric information in crises (somehow supporting **TE2**).

In spite of the transition towards a quota-based mechanism for refugee relocation, the Benelux countries, Sweden and Austria remained supportive of the Commission, for a variety of different reasons. Support from the Benelux was almost automatic in light of 1) the institutional responsibility deriving from holding (Luxembourg) or soon-to-be holding (the Netherlands) the Council Presidency at the time of the second proposal; and 2) the strong coordination within the Benelux group, formalized with regular ‘Benelux breakfasts...being organised quite often before a JHA Council’, as well as ‘daily or weekly contacts with these colleagues’.¹⁹² This in turn further strengthened the Commission’s hand

¹⁹² Interview with senior Belgian official (P33), Brussels (Belgium), January 2019.

in the negotiations. According to a senior Belgian official, Luxembourg, the Netherlands and Belgium worked together on the two Refugee Relocation Decisions:

We always have worked very closely together within the Benelux ...the main objective for Belgium was to have an EU answer to an EU question. And in that respect of course we fully supported both the Luxembourg and then the Dutch Presidency in their efforts to move forward on the files.¹⁹³

Sweden and Austria were both supportive out of self-interest, insofar as under the Scheme both governments could have almost automatically benefitted from a temporary or full suspension of their obligations. The Swedish government supported the work of the Presidency in brokering a compromise in the bilateral *confessionals* of September¹⁹⁴ and promoting the need for shared responsibility. As the irregular border crossings into Sweden increased in the autumn, Sweden requested and successfully obtained the full suspension of its obligations under both Decisions up until 16 June 2017 (European Commission, 2015d).¹⁹⁵ Austria was also supportive, as it quickly became clear that it could request the suspension of up to 30% of the relocation obligations imposed on it by the second Decision.¹⁹⁶ According to an Austrian senior official,¹⁹⁷ the Commission even asked Austria, upon tabling the proposal, whether it would have preferred to be incorporated as one of the beneficiaries; ultimately, Austria opted for the postponement of part of the duties deriving from the Decision, so that 30% of its obligations would be suspended for the first year (*tied hands*).¹⁹⁸

Altogether, the findings gathered showed how a spirit of reciprocity guiding Franco-German and Benelux relations, as combined with a sense of institutional responsibility and national self-interest, led non-frontliners to support the adoption of the two Decisions. Together with the Mediterranean states, the support received from this group formed the bulk of a qualified majority at the Council in terms of minimum population weight, only

¹⁹³ Interview with senior Belgian official (P33), Brussels (Belgium), January 2019.

¹⁹⁴ Interview with senior Swedish official (P41), Brussels (Belgium), May 2019.

¹⁹⁵ *Council Decision (EU) 2016/946 of 9 June 2016 establishing provisional measures in the area of international protection for the benefit of Sweden in accordance with Article 9 of Decision (EU) 2015/1523 and Article 9 of Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece* (OJ L 157/23, 15.6.2016).

¹⁹⁶ Art. 4(5) of *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 239, 15.9. 2015).

¹⁹⁷ Interview with Austrian senior official (P19), January 2019, Brussels (Belgium).

¹⁹⁸ *Council Implementing Decision (EU) 2016/408 of 10 March 2016, on the temporary suspension of the relocation of 30% of applicants allocated to Austria under Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece* (OJ L 74/36, 19.3.2016).

requiring one or two more Member States to be on board to reach the minimum number of Member States (55%) required for adoption with QMV.

4.4 SWING AND VETO PLAYERS

The public statements made in support of relocation by France, Germany, the Benelux, Austria and Sweden, alongside the two beneficiaries – Greece and Italy – and the Mediterranean agenda-setters, could suggest strong political support across the EU for the two proposals. However, a closer look to negotiations behind closed doors shows otherwise.

As explained in an internal document outlining the first Coreper II meeting on the first Commission proposal in early June, the early signs of intra-Council rifts had already started to appear then.¹⁹⁹ One of the first dimensions of competing interests to show in the making of the two Decisions distinguished states that ‘want[ed] three-monthly evaluation of nationalities to be included (IT, AT, FI, EE, DE, RO, BG, CY, PL, HR, BE, CZ, MT, SK, PT)’, to better reflect changes in the composition of irregular migrant inflows, and those that preferred the yearly basis instead ‘(ES, SE, LV, NL) to better plan relocation activities’.²⁰⁰ Another early sign of division, reported in the same internal document, consisted in different preferences on the management of secondary movements and of asylum seekers refusing to be relocated to certain Member States: in particular, Austria and Germany ‘support[ed] the exclusion of those who refuse[d] to go to certain Member States’, as did France, which also supported the strengthening of the initial screening stages. Going one step further, Slovenia wanted all secondary movements to be redirected to the first country of entry (Italy or Greece at the time), but the Commission excluded the option requested. In the opposite direction, Spain and Portugal asked to give asylum seekers the opportunity to choose the Member State where they wanted to be relocated, however the request was deemed ‘unacceptable’ by the Commission.

Despite the heated debates surrounding the policy issues of refugee relocation and burden-or responsibility-sharing, the first Decision passed by unanimous consensus, and despite the initial rifts, only a few Member States formally opposed the adoption of the second one: namely, the Czech and Slovak Republics, Hungary and Romania, while Finland abstained.

¹⁹⁹ Directorate-General EU of the Italian Ministry of Foreign Affairs, *Protocol 6475 on Coreper II of 6 June 2015 in preparation to the informal JHA of 9 July*, 7 July 2015. Translated by the author from the original Italian version.

²⁰⁰ Ibid.

As explained in the following sections, the breach of consensus in the second Decision is in line with the theoretical expectations outlined in Chapter 1. Particularly, the fact that an intergovernmental compromise found among the six founding Member States is crucial to further integration in the AFSJ (**TE1**). However, asymmetry of information in crises (**TE2**) and high domestic salience of a policy issue (**TE3**) can make unanimous consensus harder to build, with more Member States wielding more power than anticipated in the negotiations. At the same time, the following sections show that if individual and institutional sources of power are deployed by small- to medium-sized Member States in negotiations, it is not possible to counter objective imbalances of power (**TE4**).

THE EUROPEAN COUNCIL PRESIDENCY

The general assumption on the EUCO Presidency's actorness in policy-making processes is that limited formal powers and a lack of resources make it rather 'difficult for the European Council [Presidency] to be a dynamic, innovative and independent policy actor' (Nugent and Rhinard, 2015, p. 231). The migration and refugee crisis was no exception to this: before April 2015, the European Council had hardly discussed migration, except for the much less politically contentious tragedy of October 2013.²⁰¹ Under normal circumstances, Home Affairs matters are generally delegated to Coreper II or the JHA Council at most. According to his JHA Advisor Hugo Brady, this was also the view of Donald Tusk, as he represented one of the few EU top-ranked officials 'to see the crisis through a geo-strategic lens'²⁰² and to have 'quite orthodox views on the protection of borders', very much in accordance with 'the language of the Centre-Right on immigration issues'.²⁰³

Tusk's attitude was consistent throughout the crisis, with a particular scepticism towards the policy of refugee relocation. However, while sceptical of the proposed policy tool, Tusk lived up to his institutional responsibility as EUCO President and did not represent a veto

²⁰¹ Interview with former JHA advisor and speechwriter to Donald Tusk, Mr Hugo Brady (P54), November 2019, Brussels (Belgium).

²⁰² Interview with Mr Hugo Brady (P54), November 2019, Brussels (Belgium). With regards to what Mr Hugo Brady referred to as a geo-strategic lens, the connotation given to the term follows Rogers and Simón's definition of geo-strategy (2010): 'the exercise of [hard] power ...about crafting a political presence over the international system. It is aimed at enhancing one's security and prosperity; about making the international system more prosperous; about shaping rather than being shaped'.

²⁰³ Interview with Hugo Brady (P54), Brussels (Belgium), November 2019.

player ahead of the adoption of the two Decisions.²⁰⁴ Throughout the negotiations on the Scheme, Tusk's sceptic attitude towards relocation was threefold. Firstly, he was concerned that such a policy would act as a pull factor for smugglers' networks. As described by his then advisor in his unpublished account of the crisis, Tusk was already half-hearted about refugee relocation in April 2015:

Italy's insistence that these matters were the realm of high politics could no longer be denied ... Tusk was deeply unenthusiastic about drawing the EU any further into the smugglers' net than it already was. Above all a political communicator, he thought the smugglers and migrants needed to hear the unambiguous message that Europe would stop the taxi service ... But this cut-to-the-chase approach went against the grain of the Union's established practice of tackling challenges with 'constructive ambiguity', incrementalism and the soothing balm of comprehensiveness (Brady, 2020, p. 7).

Secondly, President Tusk doubted the effectiveness and well-foundedness of quota-based relocation at all, let alone as the centrepiece of the EU's policy response to the crisis. Notwithstanding his reservations, Tusk showed support while relocation was based on contributions pledged voluntarily by Member States, i.e. first Decision. In fact, Tusk was the one mentioning the first unofficial figure for a voluntary scheme,²⁰⁵ a pilot project involving at least 5,000 refugees (Norman and Pop, 2015). The real disagreement between President Tusk on the one hand and Commission President Juncker and Chancellor Merkel on the other surfaced when it became clear that the latter two were supporting quota-based solidarity as a central feature of crisis management. Juncker immediately increased the figure proposed by Tusk to a minimum of 10,000 refugees; Merkel asked him to delete any fixed figure from the proposal altogether, so as to send a clear political message that the EU would not let people die in the Mediterranean, regardless of the number of asylum seekers.²⁰⁶ In April, Juncker took the lead and further raised the stakes to 40,000. As Hugo Brady commented, the President feared this policy initiative would create a pull factor, with the result of creating a policy tool for 'sharing out unproven asylum seekers *ad infinitum* with no let-up in migratory pressure.²⁰⁷

²⁰⁴ According to Art. 15 of the Treaty on the European Union (TEU), the role of the EUCO President consists, among other things, in facilitating cohesion and consensus within the European Council. Furthermore, the EUCO President cannot hold any national office during its mandate at the European Council.

²⁰⁵ Interview with senior PermRep official (P37), May 2019, Berlin (Germany).

²⁰⁶ Interview with P37.

²⁰⁷ Interview with P54, November 2019.

Thirdly, Tusk's scepticism towards refugee relocation originated from his 'obsession' for unity²⁰⁸ as *leitmotif* and primary task from the very beginning of his EUCO Presidency (Council of the European Union, 2019). According to the then Polish Permanent Representative (PermRep) Dr Marek Prawda, Tusk feared that the adoption of a mechanism for refugee relocation would cause a serious rift between Central-Eastern and Western European Member States.²⁰⁹ This preoccupation was reflected in increased tensions with Juncker and Merkel. In particular, Merkel considered this quota-based system as a necessary policy 'to calm the [German] spirits by offering a good functioning system for now and for the future'.²¹⁰ As reported by Dr Prawda, who was then directly in contact with Merkel:²¹¹

Tusk's idea was the opposite one. He tried to explain to her: Angela, the only way to get our people on board is to convince them that we use all possibilities to solve the problem, the root causes and to be active there, so that the people see that we.. that's not the only solution we have burden sharing, because that will, [it] is a pull factor and this will.. this will be a never-ending story! And instead of solving, we produce problems! That's why he refused to support her idea in the Council, end of September, [that] there should have been the permanent mechanism for [refugee] relocation. And at that time, they visibly disagreed.

While Tusk remained supportive ahead of the adoption of the two Refugee Relocation Decisions, this disagreement eventually led the EUCO President to withdraw support from Merkel's proposition for a permanent mechanism for refugee relocation in late September 2015.²¹²

THE BALTIC STATES

The position of Latvia, outgoing Council President, and its Baltic partners risked hindering the adoption of the Scheme. Between the end of Latvia's Presidency (30 June 2015) and the adoption of the second Decision, the Baltic states intensified their mutual cooperation on the matters of migration and cross-border coordination as the migrant influxes rose: in Latvia alone, 463 irregular migrants were caught and detained while crossing the Green

²⁰⁸ Interview with the then Permanent Representative of Poland to the EU, Dr Prawda (P56), November 2019, Warsaw (Poland).

²⁰⁹ Interview with the then Permanent Representative of Poland to the EU, Dr Prawda (P56), November 2019, Warsaw (Poland).

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

Border in 2015,²¹³ as compared to 139 in 2014 (Siliņa-Osmane, 2016, p. 6). On 18 September, ahead of the JHA Council of 22 September, Straujuma met with Lithuania's PM Butkevicius, and they made a common statement on their common priorities in the AFSJ, recognizing 'the need for solidarity towards the most affected countries and support for those asylum seekers who genuinely need international protection', but equally 'emphasizing the importance of comprehensive and geographically balanced migration management' (Latvia's Cabinet of Ministers, 2015b)

In spite of the reported preference for means other than mandatory refugee relocation, the Baltic states supported the adoption of the second Decision. As explained by Ambassador Léglise-Costa,²¹⁴ what was crucial to persuade the Baltic states was the approach taken by Commission President Juncker and his conceptual focus on the responsibility to show solidarity towards Member States under migrant pressure (*issue linkage*): indeed, they understood that Italy and Greece needed solidarity on migration as much as the Baltic states would need it in the event of a Russian threat (i.e. spirit of reciprocity).²¹⁵ This came hand in hand with a renewal in the Baltics' bilateral relations with Germany, which had been contributing to NATO for a long time, patrolling the Baltic air space and land on a rotational basis (Latvia's Cabinet of Ministers, 2015d).

Agreeing to the consensus norm came at a high price for the Baltics, especially Latvia, where the Decision negatively impacted domestic politics and led to a change in national legislation and in government. In the immediate aftermath of the adoption of the second Decision, Latvians (whether ethnic Russians or ethnic Latvians) found unity against a common enemy and opposed the acceptance of asylum seekers into the country (Ragozin, 2015). Insofar as it enjoyed widespread public support, the *National Alliance party* 'managed to convince opposition in Parliament, as well as some Members of [the ruling] coalition that Parliament was somehow left outside of the discussion regarding the relocation Decisions [...] and managed to change the asylum law':²¹⁶ following a parliamentary debate on relocation and resettlement, on 17 December the Latvian

²¹³ The term 'Green Border' is used to refer to the corridor of the former Iron Curtain. While this corridor is formally used only for the *European Green Belt Initiative* – a grassroots initiative with purposes of sustainable development and nature conservation – migration experts have borrowed this term to refer primarily to the migrant route crossing through the Turkish borders with Bulgaria and Greece.

²¹⁴ Interview with French Ambassador Léglise-Costa (P22), January 2019.

²¹⁵ Interview with French Ambassador Léglise-Costa (P22), January 2019.

²¹⁶ Interview with senior Latvian official (P20), Brussels, January 2019.

Parliament integrated Art. 69 into its *Asylum Law*,²¹⁷ ensuring that any EU decision relating to the reception of asylum seekers from other Member States (i.e. relocation) or third countries (i.e. resettlement) had to be based on a Decision by the national Parliament, the *Saeima*. These and other pressures from the domestic arena eventually led PM Straujuma to resign.

HUNGARY, THE CZECH AND SLOVAK REPUBLICS AND ROMANIA

From the early discussions on the first proposal for refugee relocation, the Visegrád bloc and Romania agreed to the consensus norm for adopting mechanisms for refugee relocation, so long as it would continue to be based on voluntary pledges. While Poland also preferred voluntary relocation in principle, it nonetheless remained open to supporting the majority at the Council throughout the negotiations (see following Section).

The most fundamental concern that the Visegrád bloc and Romania shared was towards the introduction of any mandatory, quota-based mechanism for refugee relocation, which ultimately led them – with the exception of Poland – to vote against the second Decision. In the JHA Council of June 2015, Slovakia and the Czech Republic had already clearly and jointly argued that participation in a refugee relocation scheme would only be possible on a voluntary basis,²¹⁸ and on the understanding that there was consensus among leaders and that there was an urgent issue in need of exceptional, ad hoc measures.²¹⁹ Upon adoption of the first Decision, Hungary officially announced that it would not pledge on a voluntary basis, while the Czech Republic highlighted that ‘the proposed refugee relocation scheme [was] temporary, exceptional and that [its] participation to it...[was] voluntary (Council of the European Union, 2015b, p. 7). Furthermore, the Czech Republic stressed that ‘[s]hould there be any discussions about a permanent refugee relocation mechanism in the future, these should take place only after the functioning of the proposed temporary scheme is thoroughly assessed’ (Council of the European Union, 2015b, p. 7). Romania agreed to show solidarity on a voluntary basis, preferably ‘for persons in clear need of international protection and, to the extent possible, from Syria, given the better integration perspectives’ (Council of the European Union, 2015b, p. 11).

²¹⁷ Latvia’s Asylum Law, Chapter XII, Section 69: *Competence of the Saeima and the Cabinet on Asylum Issues*. Available at: <https://likumi.lv/ta/en/en/id/278986-asylum-law>

²¹⁸ Interview with senior Slovak official (P12), January 2019.

²¹⁹ Interviews with senior PermRep officials (P6, P12, P37), 2018-2019.

Not only was this group of Member States fundamentally against mandatory relocation, but they were also exposed to heavy political pressure coming from the domestic arena (*level II*), particularly against compulsory relocation, which rendered their bargaining *win-set* even smaller than other Member States (*tied hands*). In the case of Slovakia, the pressure was such that *level I* Slovakian negotiators in the Permanent Representation ‘didn’t really have much room for manoeuvre’ (*tied hands*): a senior Slovak official reported how, unlike other legislative files, ‘we had these red lines which were simply not compatible with this big political decision...it was clear from the beginning that we can’t, we won’t be able to agree with any kind of mandatory quota mechanism’.²²⁰ A similar pro-voluntary stand was clearly put forward by the Czech Republic, which, along with Slovakia, was considered a ‘lone voice’ at Coreper II, being ‘in favour of a voluntary mechanism’ only; furthermore, the Czech Republic would have wanted ‘to balance references [in the text] to refugee relocation with more decisive language on border control, the implementation of CEAS and the stemming of secondary movements’.²²¹ For the Czech Republic, the difficulty of agreeing on a non-voluntary basis was furthered by the rush and lack of discussion in the decision-making process, the wording of the text and the way in which it was tabled by the Commission.²²² Similarly to Slovakia, the position taken by the Czech Republic throughout the negotiations reflected ‘the political agenda and narrative of political parties in Prague, which made it feel [like] the Czechs [were] stubborn’ (*tied hands*): the domestic pressure was particularly reflected during the consultation stage in the European Parliament (see Chapter 6), whereby the Czech and Slovak position ‘created a huge tension inside the S&D group and put the Slovak and Czech social democrats ‘on a completely different page compared to the S&D as such.’²²³

In the case of Romania, on multiple occasions the Chamber of Deputies endorsed the position of Romania’s Presidency and Government, whereby solidarity would have to be only a voluntary and temporary measure of migration management (Romania’s Chamber of Deputies, 2015). Both the Presidential administration and the government favoured refugee relocation in the form of voluntary contributions only (*tie-hands*). With the wisdom

²²⁰ Interview with P12, January 2019.

²²¹ Directorate-General EU of the Italian Ministry of Foreign Affairs, *Protocol 8056 on Coreper II of 11 September 2015*. Translated by the author from the original Italian version.

²²² Interview with senior Czech official (P6), November 2018, Brussels (Belgium).

²²³ Ibid.

of hindsight, the then Socialist PM Victor Ponta deemed the decision of the country to vote against the second Decision to have been a mistake, in that ‘it put us in the same league as Hungary and Slovakia’.²²⁴ This in fact would seem to suggest that either the Romanian executive was not entirely unified in its views on the issue of refugee relocation ahead of the vote at the JHA Council, or the chief negotiators changed their sets of acceptable agreements over time or that they felt obliged to do something at the time which they later spoke out against (in line with the assumptions behind **TE2**).

A shared concern and preoccupation for Hungary, the Czech Republic and Slovakia – informally shared by the United Kingdom²²⁵ – was that sharing refugees out before closing the external borders of the EU would represent ‘an invitation for more people to come’.²²⁶ Indeed, firstly they were convinced that relocation would constitute ‘just a pull factor’, which ‘in practice wouldn’t help’, as well as that many refugees considered these Member States as transit countries, not final destinations, and were ultimately disappearing from the Member States where they had been originally allocated.²²⁷

Secondly, this group of countries – particularly the Czech Republic – was concerned about the practical effectiveness of refugee relocation and the inability to evaluate the impact of the first Decision, before implementing a second one:

How much is it? What might be the numbers? How efficient are these numbers in practice? When and how should things be happening and implemented? ... The decision [to vote against] was based on the fact that we still hadn’t had, didn’t have at that time any clear, objective, scientific, empirical data on the impact and effectiveness of the first Decision.²²⁸

Thirdly, Hungary in particular nurtured a fundamental concern about the mismanagement of secondary movements along the Western Balkans Route and subsequent national security risks. According to a Hungarian official,²²⁹ just a day before Christmas 2014 their Interior Minister had already sent out a letter to all EU Ministers and Commissioners

²²⁴ In a speech delivered in the plenary of the Chamber of Deputies at “Prime Minister’s Hour” on 5 October 2015, Romanian PM Ponta stated: ‘I think we were right to support the principle of not having compulsory quotas, but I also think that we made a mistake by voting along with Hungary and Slovakia, contrary to the rest of the European Union, and I do believe that it is the time to have, I emphasize, a European, constructive and solidary position’ (Romanian Government, 2015).

²²⁵ Interview with senior Hungarian diplomat (P7), November 2018, Brussels (Belgium).

²²⁶ Interview with senior officials (P16-17), January 2019, Brussels (Belgium).

²²⁷ Interview with senior Slovak diplomat (P12), January 2019, Brussels (Belgium).

²²⁸ Interview with P6, November 2018.

²²⁹ Interview with Hungarian official (P7), November 2018, Brussels (Belgium).

requesting an urgent revision of the asylum *acquis*, particularly proposing extra-EU open asylum facilities in which the EU could determine outside of its territorial sovereignty the ‘merit of the asylum request’. Hungary’s main argument was that it was necessary to close the first entry point for irregular migrants, i.e. Greece. In fact, as one senior official from the CEE region noted,²³⁰ Viktor Orbán had always argued for the control of the EU’s external borders, even at the cost of *Grexit* from the Schengen zone, if Greece had proven unable to stop secondary movements. As a senior Czech diplomat put it,²³¹ the Visegrád countries interpreted the migration crisis metaphorically as a ‘burning forest’:

The whole forest is burning, or various forests [are] burning. That’s a problem but it doesn’t mean that the way how we should help is to bring one particular pile of woods or block of something burning from that forest into our forest, which is still nicely safe and secure and under control, and definitely full of security rules, procedures, and you know... there is no fire there.

The rejection of compulsory relocation based on principles translated into a general lack of interest for defining the technical criteria for refugee redistribution. As stated by a senior Slovak official, this was ‘because by criteria you can change the final numbers but not the principle, and we thought the principle was wrong so... that was not, I would say, a [pivotal] issue from our perspective’.²³²

Going one step further, Hungary even refused to be listed as a beneficiary of the second Decision, alongside Italy and Greece, as it did not consider itself to be the first entry point, or a frontliner.²³³ As reported off the record, Hungary was the first state asking for the floor at the first Coreper II in September (11/9), shortly after the Commission had tabled its second proposal (see Table 4.1): the Ambassador requested the Council Presidency and the Commission to delete the country from the title of the proposal and from its *Annex*, claiming the Commission had included the country as beneficiary ‘behind Hungary’s back’, representing a ‘breach of confidence’.²³⁴

²³⁰ Interview with CEE senior diplomat (P37), March 2019, Berlin (Germany).

²³¹ Interview with P6, November 2018.

²³² Interview with P12, January 2019.

²³³ Interview with senior official (P37), March 2019, Berlin (Germany).

²³⁴ Off the record interview.

POLAND

In the face of the Visegrád group's isolation at *level I*, Poland initially tried to act as *compromise broker* representing the group on the relocation files. In June and July, the Polish PM Ewa Kopacz spoke on behalf of the Visegrád group 'favouring a voluntary solution', rejecting both a quota-based system as a whole and the specific quotas assigned to the Visegrád states as seen as a disproportional treatment.²³⁵ In response to this criticism, the Commission had reduced the quotas applied to all V4 states, except for Poland, whose 'quota' increased instead.²³⁶ As Poland wanted to negotiate the modified quotas further, the Polish PermRep Dr Marek Prawda was sent to his Visegrád colleagues to renegotiate a common approach; however, in the face of the favourable cut the remaining Visegrád colleagues were satisfied with the solution found and did not push any further, with the effect of leaving Poland alone to renegotiate this.²³⁷

The fact that Poland was left isolated negotiating at *level I* was particularly deleterious to intra-Visegrád coordination given how the issues of migration and asylum were crucial for Poland. At the time, the Polish government understood that the EU needed a *concrete* solution on irregular immigration for the future;²³⁸ this was particularly the case as Poland itself had already gone through an emergency of the same kind with Ukraine which, while less significant numerically, had seen thousands of Ukrainians fleeing their homes during the war and seeking temporary work elsewhere, particularly in Poland (Jaroszewicz, 2015). As stated by Dr Marek Prawda, it was vital for Poland to negotiate sensibly on this occasion, because 'we were also facing unpredictable developments [and] at the time it was still unsure what the outcome of the war in Ukraine with Russia would be, and there were more than one million displaced persons in Ukraine' (*issue linkage*). In other words, in the face of the uncertain situation with Ukraine, Poland faced higher costs than the rest of the Visegrád group from not agreeing to the consensus norm at *level I*.

According to a senior Czech official, 'the speed with which the [second] decision was made', alongside the lack of coalition-building attempts from the rest of the V4 countries

²³⁵ Interview with the former Permanent Representative of Poland to the EU Dr Marek Prawda (P56), November 2019, Warsaw (Poland).

²³⁶ Ibid.

²³⁷ Ibid.

²³⁸ Ibid.

further facilitated the Core MS and EU institutions getting Poland on board.²³⁹ As substantiated by Prawda:

We were trying to be in favour [*cut slack*] and [the others] accepted it... I told them that my personal conviction was that we shouldn't put at risk the unity of the EU... And we lose much more if we just vote against. [but] then.. in the JHA Council of 22nd September where Poland voted for a common solution, we were presented as.. a betrayal, like: you didn't act in a solidary way with the Visegrád.²⁴⁰

Ultimately, the prospect of losing the upcoming general elections regardless of the stand taken in the Council, combined with heavy intra-Council pressures channelled by Germany and Italy, persuaded Poland to show support towards the second Refugee Relocation Decision. On the one hand, the EPP party in office at the time in Poland (*Civic Platform*) was very close to the heart of the EU institutions: not only was *Civic Platform* EU CO President Tusk's party, but the Polish PM had a close personal relation with Commission President Juncker, besides that with Tusk.²⁴¹ The proximity to EU institutions led the Polish government to take a more constructive approach to the negotiations on refugee relocation from the outset. Furthermore, it started to become clear that the *Civic Platform* would have lost at the upcoming general elections of October regardless of its stand on refugee relocation, as pressure from the opposition party PiS (*Prawo i Sprawiedliwość*, or *Law and Justice*) mounted in the summer months:²⁴² the fact that the government faced virtually no costs from ratifying the second Decision arguably gave more leverage to the EU level (*level I*) Polish negotiators – above all, the Permanent Representation – to argue for the defence of European values and solidarity without giving into the populist logic [*cut-slack*]. In order to convince his PM to support the majority at the Council level [*cut-slack*], the PermRep sought to clarify the terms that would make it possible for Poland to be on board, namely: a) the security clause, later Article 5(7) of Council Decision 2015/1601;²⁴³ b) the possibility for Poland or other Member States to become an addressee(s) or beneficiary(/ies), if need

²³⁹ Interview with senior Czech official (P6), November 2018, Brussels (Belgium).

²⁴⁰ Interview with the former Permanent Representative of Poland to the EU (P56), November 2019, Warsaw (Poland).

²⁴¹ Interview with senior Commission official (P26), January 2019, Brussels (Belgium).

²⁴² Ibid.

²⁴³ Article 5(7) of Council Decision (EU) 2015/1601 states that 'Member States retain the right to refuse to relocate an applicant only where there are reasonable grounds for regarding him or her as a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions set out in Articles 12 and 17 of Directive 2011/95/EU'.

be, which was later translated into Article 4(3);²⁴⁴ and the ultimate right to refuse relocations in case of danger to national security or public order, again in Article 5(7).

Besides the government's determination to show support to European values and the low *costs of ratification*, Poland was also exposed to heavy political and diplomatic pressures, insofar as its support was crucial to circumvent a potential blocking minority in the Council. According to an off-the-record interview, Germany was the most aggressive Member State at the JHA Council, threatening less solidarity towards Poland in the future on economic and financial issues, if Poland decided to be 'anti-European' and deny solidarity to Italy and Greece.²⁴⁵ Moreover, the personal relationship between the Polish PermRep and his Italian counterpart Stefano Sannino, put further diplomatic pressure on Poland to support. In effect, during the Ukrainian crisis, Poland had been arguing for sanctions on Russia and had found initial resistance from Member States such as Italy, Spain, Greece and Cyprus. As reported by Dr Prawda in an interview, the Italian PermRep leveraged past support provided on a different policy matter to prompt a spirit of reciprocity for the relocation file (*issue linkage*):

Stefano told me: if we have sanctions against Russia we will lose a lot of money because the Italians were involved with a lot of commerce, but in the end they agreed (the classical pro-Russia countries) ... they saved the unity. You can imagine then in two and a half years Stefano asked me to save the [European] values: I know that you in Poland have problems with [migration].. but we are now in the corner and it's about, it's something more at stake, and he used the same words that I tortured him with in the past ... it's about unity in Europe.

The combined effect of these factors ultimately made it possible for Interior Minister Teresa Piotrowska to support the majority at the Council [*cut-slack*]. However, this did not come without a price and compromised the *cost-effectiveness* of the demands and threats made by the Core group and the Commission. While temporarily maximising *the set of acceptable agreements* for Poland regarding the issue at stake [*cut-slack*], supporting this Decision made the opposition party *PiS* even more popular ahead of the November 2015 elections; strong of the anti-migrant sentiments at home, the subsequent *PiS*-led supported the infringement procedures brought forward by Hungary and the Czech Republic against

²⁴⁴ According to Art. 4(3), 'If by 26 September 2016, the Commission considers that an adaptation of the relocation mechanism is justified by evolution of the situation on the ground or that a Member State is confronted with an emergency situation characterised by a sudden inflow of nationals of third countries due to a sharp shift of migration flows and taking into account the views of the likely beneficiary Member State, it may submit, as appropriate, proposals to the Council, as referred to in Article 1(2).'

²⁴⁵ Off the record interview.

the Commission relating to the legal basis of these very Council Decisions (see Chapter 2). On the one hand this would suggest that, ultimately, *level II* trumps *level I* in the presence of crucial national interests. On the other, it once again indicates the appropriateness of **TE2** in that, under asymmetry of information, negotiations can break down when the executive is not centralized or when a change in the coalition in government at *level II* leads to a change in the MS' bargaining position on the issue at stake at *level I*.

FINLAND

Finland was different from every other Member State, being the one state that abstained. Its position was dictated by the delicate political compromise found within the coalition in government at home: a change in the ruling coalition reduced Finland's *set of acceptable agreements* on the issue at stake (*tied hands*) over the course of the negotiations and ultimately constrained the executive (in line with **TE2**). Indeed, following parliamentary elections in April 2015, the new Sipilä Cabinet was formed (PM Juha Sipilä) on 29 May 2015, in the midst of the negotiations on the first Relocation Decision; this governing coalition was peculiar not only because, for the first time since 1979, it did not comprise the *Swedish People's Party of Finland*, but also because, for the first time in Finland's history, a right-wing populist party (the *True Finns' Party*) was part of a governing coalition. Reflecting the precarious political compromise (*tied hands*) found by the three centre-right parties in government – the *Centre Party*, the *National Coalition Party* and the *True Finns' Party* – Finland had published a government programme reiterating the country's commitment to voluntary relocation measures only, stating that the Union needed to 'act decisively to manage illegal migration flows in the Mediterranean area' and that the '[r]elocation of asylum seekers within the EU should [have] be[en] based on the voluntary participation of Member States (Prime Minister's Office Finland, 2015, p. 36).

According to a senior Finnish official, the *True Finns' Party* 'really wanted to stick to the government's programme on everything on migration... and that also explains why the first relocation decision was easier for us... but then when the second decision came... Finland abstained and that was our way to cope with the situation and with the government's programme'.²⁴⁶ Notwithstanding Finland's bargaining position, its relationship with Sweden and the other Scandinavian partners remained strong, thanks to continued bilateral coordination at both the civil servant and political levels; nevertheless, this could 'not

²⁴⁶ Interview with senior Finnish official (P32), January 2019, Brussels (Belgium).

change the fact that.. if you have a coalition government where the compromise [is] in such political direction, you are bound by that'.²⁴⁷ Intra-Scandinavian coordination remained unchanged during the migration crisis except for the Danish-Swedish relationship, which worsened as a result of Sweden's closure of its borders with Denmark on 12 November.

THE OPT-OUTS

In the formulation of the two Refugee Relocation Decisions, the three Member States benefitting from opt-outs in JHA affairs – Denmark, Ireland and the United Kingdom²⁴⁸ – did not necessarily align in the negotiations. This reflected different policy preferences on the issue of irregular migration management,²⁴⁹ as much as substantially different institutional frameworks in place.

On the basis of Protocol 36 of the Lisbon Treaty, Ireland and the UK had more flexible opt-outs from legislation passed under the AFSJ, such that they could opt-in on a case-by-case basis. On the basis of Protocol 22 on the position of Denmark,²⁵⁰ Denmark had a more rigid opt-out from the AFSJ, such that Denmark could only cooperate on an intergovernmental basis in the AFSJ, with the exception of Schengen visa rules and subsequent legislation that builds upon the Schengen *acquis*. For Denmark, failing to implement Schengen-related measures can result in its exclusion from the Schengen area.

Besides the differences among the three opt-out systems in place, Denmark was in a particularly complex position in the negotiations on the Scheme, both from a legal and a political perspective. First, in accordance with Protocol 22 of the Treaty on the Functioning of the EU, the country is bound by the Dublin Regulation via intergovernmental agreement [*tied hands*]; if relocation had become an integral part of Dublin, Denmark would have been forced either to opt into or be forced out of Dublin, and eventually Schengen.²⁵¹ In an attempt to maintain its opt-out, the Danish PermRep undertook multiple bilateral meetings with the then DG HOME Director-General Ruete and the Legal Services of the

²⁴⁷ Ibid.

²⁴⁸ Prior to its withdrawal from the EU in 2020, the UK also had an opt-out from legislation in the AFSJ.

²⁴⁹ Interview with senior British official (P55), November 2019, Brussels (Belgium).

²⁵⁰ Protocol 22 on the position of Denmark of the Maastricht Treaty was signed at a European Council Meeting in Edinburgh, in December 1992. On the basis of this Protocol, Denmark was granted four exceptions to the Maastricht Treaty for matters concerning the Economic and Monetary Union (EMU), the Common Security and Defence Policy (CSDP), citizenship of the EU and JHA.

²⁵¹ Interview with senior Danish official (P43), May 2019, Brussels (Belgium).

Commission and the Council:²⁵² the main line of enquiry was whether it would be possible to maintain relocation as a separate element from Dublin or alternatively find another legal solution through which Denmark could voluntarily agree to relocate a certain number of individuals on the basis of an intergovernmental agreement. This negotiation was not only legally but also politically difficult: in the aftermath of the 2015 general election, the *Denmark's People Party (DPP)* – known for its tough stance towards non-Western immigration – became the second largest party in the country, providing parliamentary support to the government led by the minority liberal *Venstre Party* (*The Economist*, 2015). Thus, starting from the JHA Council of July 2015 Denmark had signalled that they would have only been ready to relocate around 1,500 individuals on a voluntary, intergovernmental basis:²⁵³

Both politically and legally, we could not take part in the obligatory relocation [scheme]. Politically we didn't want to, but we could also not do it legally because of the opt-out ... And then my Prime Minister knew that we might be forced to do that [relocate on a voluntary basis] at some point, but politically he said: I cannot do it now. Maybe I can do it in the summer months [2016], and then it never materialized.

In line with Putnam's two-level game (1988, p. 440), the genuine and perceived domestic and institutional constraints in Denmark – entailing a small *win-set* – turned into a bargaining advantage to relocate only a few individuals on a voluntary basis (*tie-hands bargaining strategy*). According to a senior Irish official, Denmark's decision was driven not only by legal circumstances, but also by an indirect pressure dictated by Ireland's decision to opt-into the Scheme. In fact, Ireland's commitment to the Scheme was often commended by the Commission as an example of solidarity to be followed, and it also 'had a positive effect... I mean the Danes suddenly came up with rather an inventive solution, and the Associated countries stepped in'.²⁵⁴ Unlike the rest of the opt-outs, Ireland's population was fully supportive of the EU policy, 'to be seen to do.. not just what we are obliged to do, but more than we are obliged to do':²⁵⁵ domestic support and a clear agenda at the European Council brought 'complete coherence and unity of vision' between the Permanent Representation, the Ministers of Interior and of Justice and their *Taoiseach* (or PM) Enda Kenny.

²⁵² Ibid.

²⁵³ Ibid.

²⁵⁴ Interview with senior Irish official (P29), January 2019, Brussels (Belgium).

²⁵⁵ Ibid.

According to a senior British official, the United Kingdom was closest to the Netherlands, Belgium and Denmark in the formulation of policy responses to the migration and refugee crisis, with a preference for resettlement programs targeted for vulnerable Syrians.²⁵⁶ In spite of the similar legal opt-outs, there was little to no coordination in the making of these policies with Ireland and Denmark, since the United Kingdom was fundamentally against the introduction of relocation quotas.²⁵⁷

4.5 CONCLUSION

In analysing agenda-setting, coalition-building, and decision-(un)making efforts at the Council and the European Council in the formulation of the two Refugee Relocation Decisions, this chapter shed light on the role, influence and various bargaining positions taken by the European Council and the Council Presidencies, alongside all Council members therein. In so doing, it showed how the bargaining outcomes under analysis were primarily the product of 1) national self-interest in solidarity – which motivated not only ‘lead’ and ‘support’ actors, but also the opposing or ‘veto’ parties in the in the making of the Scheme –, 2) strong *level I* coalition-building efforts and 3) information asymmetries on genuine and perceived domestic constraints.

Self-interested considerations motivated the veto actors’ decision to defect from the consensus norm in JHA affairs on the second Refugee Relocation Decision. In the face of rising national security concerns, domestic contestation and a general sense of unease with quota-based solidarity in the AFSJ, many Member States opposed the second Decision as they feared that this mechanism would have translated into a *de facto* redistribution of core powers on a sensitive policy area away from Member States (see Chapter 2). Notwithstanding this, the inability of veto actors to hijack the negotiations supports another theoretical expectation of this thesis (**TE4**), according to which small- and medium-sized Member States cannot successfully counter structural imbalances of power by deploying additional institutional and individual sources of power.

National self-interest, rather than solidarity, most importantly guided the bargaining behaviour of agenda-setters, lead and support actors in the making of the Scheme. Far from representing the first instance of this *quid pro quo* phenomenon, lobbying for mechanisms

²⁵⁶ Interview with senior British official (P55), December 2019, Brussels (Belgium).

²⁵⁷ Ibid.

of refugee redistribution and burden sharing had historically been the product of direct migratory pressures towards the country/ies in question. Germany and Austria directly benefitted from ‘burden-sharing’ post-WWII in the redistribution of refugees fleeing from Hungary, former Yugoslavia, Czechoslovakia, and to a lesser extent Poland. Slovenia and Croatia were active lobbyists in the 1990s, insofar as they were experiencing considerable pressure in temporarily protecting Bosnian refugees. As the numbers of asylum applicants to France experienced a swift increase in the mid-2000s,²⁵⁸ the *European Pact on Immigration and Asylum* was adopted under the French Council Presidency and it called, among other things, for more burden-sharing within the EU. As discussed in Section 4.2, Spain, Malta and Italy also actively promoted the introduction of a mechanism for refugee redistribution in the late 2000s and 2010s in conjunction with increases in migratory pressures.

The ultimate choice of introducing a mechanism for refugee relocation was dictated by Germany’s policy preference for relocation over the TPD and was immediately backed by the Commission Presidency, not only because it was the most feasible option in the short term, but also because President Juncker was personally committed to showing immediate solidarity to frontline states (see Chapter 3), particularly Italy and Greece. As for France, President Hollande understood in a spirit of *direct reciprocity* (see Chapter 1) that supporting Germany on the relocation file (*cut-slack*) was essential to ensure Germany’s long-term commitment to the project of European integration and most importantly to maintain good Franco-German relations. Finally, Austria and Sweden’s support were secured by guaranteeing that either a postponement or a partial suspension from the obligations entailed under the Scheme would have been unlocked in the event of migratory pressures on those states. In a similar way to Hungary, Austria did not pledge any contributions under the first Council Decision and agreed to the second one after having secured this ‘opt-out’ option. The way in which a compromise was shaped for both Council Decisions would suggest the appropriateness of the first theoretical expectation of this thesis (**TE1**) on the driving force of the *win-sets* of the founding Member States – or Core group – and particularly that of the Franco-German *duo* in shaping bargaining outcomes in the Area of Freedom, Security and Justice.

²⁵⁸Eurostat (2021). Asylum Applicants by Citizenship till 2007 – annual data (online data code: migr_asyctz). Available at: https://ec.europa.eu/eurostat/databrowser/view/migr_asyctz/default/table?lang=en , last accessed on 11 May 2021.

While the chapter showed how national self-interest was most crucial in determining policy preferences and negotiating positions in the making of the Scheme, it also showed how Council coalitions, alliances and friendships – that is, *level I* coalition-building – can represent important tools even at times of crisis, allowing for a temporary resolution of domestic opposition. In the case of France, a way-out of domestic constraints was found by means of a *synergistic linkage* (Putnam, 1988, pp. 447–448): that is, the temporary expansion of feasible policy alternatives by means of supranational pressures. The personal relationship between Chancellor Merkel and President Hollande and the former's cry for help in August 2015 led France not only to agree to the informal norm of consensus, but also to support Germany with its plans for both temporary and permanent mechanisms for refugee redistribution. In the case of the Benelux group, the strong alliance and coordination made support automatic for the two Decisions, in view of the institutional role as Council President that one of them – Luxembourg – had to broker a compromise on the relocation files. In the case of Poland, supranational pressures – or, as Putnam first put it, the capacity of *messages from abroad* to ‘change minds, move the undecided, and hearten those in the domestic minority’ (Putnam, 1988, p. 455) – swayed Polish chief negotiators first, and then the *Civic Platform* government, to support the majority at the Council. In particular, *level I* negotiators from Germany and Italy persuaded the Polish government to show solidarity towards Italy and Greece and to agree to the consensus norm. *Suasive reverberation*, alongside *issue linkage*, also helped to get the Baltic states on board, by reminding them of the solidarity which the EU had shown them on multiple occasions against Russian threats. In line with theoretical expectation **TE4**, the successful diplomatic efforts made by the Core group to bring these actors on board would suggest that individual sources of power, such as the authority and personal relations of national diplomats, are most successful when employed by big Member States.

The breach of consensus on the second Refugee Relocation Decision was informed by **TE2** on the implications of asymmetry of information for two-level negotiations. From Finland's change of governing coalition and hence its *win-set* on relocation over the course of the negotiations, to the Visegrád group's missed opportunity to be politically aligned due to rushed decision-making, from Denmark's perceived domestic constraints to Latvia's decentralized executive: the negotiations on the two Refugee Relocation Decisions pointed out to the centrality of perceived and genuine domestic constraints in shaping bargaining outcomes under asymmetry of information (**TE2**).

To conclude, self-interested considerations driven by the Core group, combined with *level I* coalition-building and *level II* genuine and perceived constraints, informed the formulation of the two Refugee Relocation Decisions at the level of the Council. The following chapter will analyse whether this explanation holds true in the case of the Council negotiations on the EU-Turkey Statement.

Chapter 5 – A NON-RECIPROCAL RELATION AMONG UNEQUALS: THE EUROPEAN COUNCIL, THE COUNCIL AND THE EU-TURKEY STATEMENT

I have a plan, but this doesn't only depend on me.

(Angela Merkel cited in Börnsen, 2015)

Following the short-term fix provided by an open-door policy in Germany and the redistribution of asylum seekers within the European Union, increasing domestic contestation across Europe (*level II*) and steady irregular migrant inflows brought European states to consider policy alternatives for stemming, or at least dramatically reducing inbound irregular immigration. On 7 October 2015, under increasing pressure from her *CDU* party to reduce the influx of refugees and asylum seekers to Germany (*Online Focus*, 2015), Chancellor Merkel admitted for the first time on national TV to having a ‘plan’ that, among other things, involved EU-Turkey cooperation to stem irregular immigration. What Chancellor Merkel first called a plan, eventually turned into a fully-fledged political statement between EU Heads of State and Government and Turkey, otherwise known as the EU-Turkey Statement.

Even more than in the case of the two Refugee Relocation Decisions, it was the Member States’ national self-interest in stemming irregular immigration and reducing domestic political contestation that guided the formulation of the EU-Turkey Statement, albeit at the cost of disregarding legal and normative concerns about Turkey’s democratic decline (Martin, 2019, p. 1356). This being the case, the national *win-sets* and bargaining strategies of EU Member States were very distinct from those held during the negotiations on the Refugee Relocation Scheme and reflected: a) the unequal relationship between the EU and Turkey; and b) the EU’s urge to stem irregular migrant flows, without breaching key Member States’ red lines on Turkey.

The chapter unfolds as follows. Section 5.1 briefly sketches out the nature of bilateral cooperation between the EU and third countries on irregular immigration, more specifically in the context of EU-Turkey relations. Section 5.2 explains the role and *win-sets* of, and the distribution of power among, Member States, the Council and the European Council in the making of the Statement following Manners’ typology of cooperation in the EU (see

Chapter 1); furthermore, it analyses how, if at all, the *win-set* of, and interactions with, Turkey modified the positions and tactics of EU negotiators.

5.1 THE EU-TURKEY STATEMENT IN CONTEXT: THE EXTERNALIZATION OF IRREGULAR MIGRATION AND BORDERS CONTROL

In EU scholarship, there is a tendency to frame the EU-Turkey Statement as a piece of the EU's policy response to the migration and refugee crisis (van Middelaar, 2019) or as a case study of EU crisis management (Smeets and Beach, 2020). Indeed, these classifications help us to understand the EU's strategic rationale in reviving EU-Turkey relations in the course of the migration and refugee crisis. However, one should not underestimate how the preferences and negotiating strategies of Turkey and those of some EU actors, particularly within the European Council, were in many ways consistent with the decades-long EU-Turkey accession and visa liberalization talks. In light of this, a brief contextualization of the Statement is overdue, particularly as relates to the EU's externalization of, and cooperation with third countries in, migration management and borders control.

The EU's primary instrument of influence regarding the neighbouring and candidate countries for accession such as Turkey is conditionality, 'a bargaining strategy of reinforcement by reward, under which the EU provides external incentives for a target government to comply with its conditions' (Schimmelfennig and Sedelmeier, 2004, p. 662). Schimmelfennig and Sedelmeier's external *incentives model* shows that the incentives provided by EU conditionality are most successful in leading to policy change in the third country depending on the following factors: a) the interpretation of what represents compliance is clear and does not allow for manipulation (*determinacy of conditions*); b) size and speed of rewards; c) credibility of conditionality, i.e. the promises made do not exceed the EU's capabilities; and d) veto players and adoption costs (Schimmelfennig and Sedelmeier, 2004, pp. 664–665). As illustrated below, the EU's inability to provide Turkey with sufficient conditionality incentives in order to comply with the EU-Turkey Statement in the long-term is consistent with the EU's negotiating behaviour when formulating agreements with third countries or neighbours on irregular migration, readmission and border control.

The first attempt to use the conditionality approach for irregular migration and border management dates back to the Austrian Presidency of 1998 (Cortinovis and Conte, 2018, p. 4); however, this method was not formalized until the changing geopolitical context in the MENA region prompted the formulation of the Global Approach for Migration (GAM) in 2005 and then the Global Approach for Migration and Mobility (GAMM) in 2012 (2018, p. 5-6): the latter, in particular, established more comprehensive relationships with third countries, also dealing with issues of migration and development. It is true that, according to Art. 79(5) TFEU, Member States have the ultimate right to decide on the numbers of third-country nationals admitted into their territory to seek work. However, Member States often decide to seek cooperation at the EU level in the circumstance of external shocks whose effective management goes beyond national capabilities. Indeed, it is often argued that whenever Member States seek cooperation at the EU level, it is to achieve their own national preferences (Moravcsik, 1993; Aspinwall and Schneider, 2000; Stetter, 2004; Reslow, 2012a). According to the Europeanization literature, Member States compete at the European level to *upload* policies that best conform to their interests and policy approach in relation to any given issue, in an attempt to minimize the costs of *downloading* European rules for their home constituencies (Börzel, 2002, p. 194). Particularly on sensitive policy issues such as irregular migration management and border control, Member States only decide to take part to third-country partnerships whenever they deem that the instruments proposed at the EU level are in line with national policy preferences (see, for instance, the case of the Netherlands on the *Mobility Partnership* instrument,²⁵⁹ as illustrated in Reslow, 2012a, p. 234). This is also the reason why supranational cooperation is normally avoided on highly sensitive topics such as visa liberalization, seen as a ‘domain réservée’ to Member States (Reslow, 2012a, p. 235).

In the areas of irregular migration and border control, Turkey is nowadays considered one of the principal partners for the EU, being a key transit country for the region. Alongside Readmission Agreements and Return policies, as well as the series of *Mobility Partnerships* signed from 2007 onwards, the EU-Turkey Statement was in fact the result of a long and gradual process of externalizing the EU’s management of irregular immigration and border

²⁵⁹ As illustrated by Nathalie Reslow (Reslow, 2010, p. 4), the Netherlands did not participate to the Mobility Partnership with Cape Verde from the outset but only signed later in 2008 as it understood that its participation would entail ‘the enhancement of national policy objectives’ (Reslow, 2012a, p. 234).

control to third countries, either of origin or of transit for irregular immigration (see, for example, Lavenex and Uçarer, 2004; Sterkx, 2008).

However, irregular migration only became a crucial aspect of EU-Turkey cooperation from the late 1990s, particularly so in the aftermath of the Arab Spring uprisings and the war in Syria in 2011. Before then, migration was primarily an item for bilateral cooperation (e.g. case of guest worker [*Gastarbeiter*] programme in Germany) and was treated at the EU level as part of the broader economic relationship between the two, as established by the 1963 EC-Turkey *Association Agreement* (Aydin-Duzgit and Tocci, 2015, p. 135). As the Cold War ended and the European integration project was revamped with the Maastricht Treaty and the creation of the Schengen area, the issue of Turkish immigration became increasingly politicized in Europe. Court rulings from Turkey and the European Court of Justice further politicized the issue²⁶⁰ insofar as they interpreted the ‘standstill clauses’ in the *Additional Protocol to the Association Agreement* as giving Turkish citizens the right to travel to the EU without visa restrictions (2015, p. 137). The internal developments and economic growth of Turkey led to increased immigration from neighbouring states, with people either looking at the country as a final destination or as a transit country on the way to the EU, which in turn put further political pressure on Turkey on this matter.

In the first decade of the twenty-first century and with the two waves of reforms of 2002-2005 and 2008, policy change was still overwhelmingly led by the EU. However, towards the end of the 2000s and under increasing domestic contestation in the face of rising irregular immigration in Turkey, Turkey’s visa policy started diverging from the EU’s demands, under increasing influence from other international organizations – such as the UNHCR, the CoE, and the European Court of Human Rights (ECHR) – in this policy area (Aydin-Duzgit and Tocci, 2015, p. 140). As from the early 2010s, the EU’s quest for a solution on readmission of irregular migrants from Turkey and on the integration of Turkish immigrants in Member States became interlinked with, or arguably conditional on, progress in the accession and visa liberalization talks with Turkey. Even the initiation of the visa liberalization dialogue thanks to the Commission’s mediation (2015, p.144) was not

²⁶⁰ See, for instance, *Judgement of the Court, First Chamber, of 19 February 2009 on Case C-228/06 Mehmet Soysal and Ibrahim Savatli v Bundesrepublik Deutschland*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0228>, last accessed on 11 May 2021.

enough of an incentive for Turkey to align with the Schengen visa regime, or to lift the geographical limitation from Turkey's application of the Geneva Convention.²⁶¹

As shown in this chapter, the same issues of the size of rewards and the credibility of promises made hampered Turkey's observance of the Statement in the long-term, insofar as the incentives provided by EU conditionality and resulting from the compromise reached at *levels I* and *II* of the EU were too little and too close to the status quo to avoid Turkey's *defection* in the medium- to long-term. Looking at previous migration and mobility agreements with third countries, this does not come at a surprise (see, for instance, Reslow, 2012b; Reslow and Vink, 2015). In fact, in the EU's external policies of migration, decision-making driven by self-interest and *security myopia* has often resulted in the failure of the original set goals (Reslow, 2012b), alongside a dissatisfaction on the part of third countries (Cassarino, 2007). According to academic literature, these systematic failures were the result of an underlying misalignment in priorities between the EU's explicit goals and what the third countries want, ultimately leading to unintended consequences, among which the *involuntary defection* of the non-EU third player (Collett and Ahad, 2017, p. 1). In fact, leaving aside the inherent administrative capacity and political stability of any given country, a third country's domestic preferences towards cooperation on migration issues represent a good proxy to determine the success or failure of any given EU external migration policy (Reslow, 2012b, p. 394). In line with Keohane's earlier analysis of reciprocity in international cooperation (Keohane, 1986, p. 6), this chapter argues that forging partnerships and agreements tailored primarily to suit the EU's strategic goals in an asymmetrical, *patron-client* like relationship leads to a substantially increased risk of *involuntary, or voluntary, defection* in the medium to long term. While side-lining the goals of Turkey, the high salience of the issue at stake translated into the prioritization of the interests and resistance points of the Core group (**TE1**) and of other heavily impacted Member States – most crucially Cyprus – whose influence, or *exercise* of power, was bigger than otherwise expected from its aggregate structural power (**TE3**).

By analysing in detail how the EU-Turkey Statement was formulated at the Council and European Council levels and in what ways power was distributed among the key actors, the following sections will show how the EU's *win-set* developed into a deal with Turkey,

²⁶¹ See footnote 100.

as well as how a compromise was found among Heads of State and/or government in line with key concerns and interests coming from the Member States' domestic arenas. Furthermore, it will look at the intra-EU dynamics that produced a reshuffling in leadership from the Commission back to the European Council when the saliency as the policy issue of irregular immigration increased among Council members (**TE6**). Whilst insufficient to remove the risk of Turkey's *defection* in the long term, the Council's devised approach to the issue – particularly so that of the Dutch Council Presidency and Germany – was nonetheless successful in reducing irregular migrant inflows in the short term and provided the European Council with a big political win in its response to the migration crisis.

5.2 THE MAKING OF THE EU-TURKEY STATEMENT

Started as a Commission-driven process, two crucial aspects put the negotiations back in the hands of the European Council. On the one hand, domestic pressures to stem migratory flows started mounting in virtually all Member States, posing an existential risk to the functioning of Schengen and therefore demanding a more top-down, crisis management approach for the negotiations with Turkey. The Member States that were experiencing the heaviest domestic pressures, particularly the Netherlands and Germany, had a direct interest in neutralizing domestic opposition by taking the lead in formulating an agreement with Turkey and turning it into a political success at home. On the other, as anticipated in Chapter 3, Turkey started questioning the Commission's "deliverability", and hence credibility as the chief negotiator, which resulted in a swift shift in leadership back to the European Council and its larger Member States in the crucial and more political stages of the negotiations.

5.2.1 LEAD AND SUPPORT ACTORS

As the irregular migrant flows into continental Europe kept rising throughout September and October 2015, domestic pressures to stem them (*level II*) mounted across North-Western Europe. Following the introduction of the open-door policy in Germany and of the two Refugee Relocation Decisions, German Chancellor Merkel was attacked on all fronts. On 9 October 2015, the upper house of the German Parliament (*Bundesrat*) followed the lower house (*Bundestag*) in tightening asylum conditions, specifically reducing cash and other similar benefits for incoming refugees (Smale, 2015). In the meantime, Hamburg

and Bremen started acting independently from the federal level: even though Interior Minister, Lothar de Maizière, had promised federal help in support of the two municipalities, these two City States approved laws for the occupation of empty properties so as to give shelter to incoming refugees with the approach of the winter (Smale, 2015). As the attacks perpetrated by locals on refugee shelters grew to an all-time high in 2015 and the popularity of the governing party *CDU* dropped to 36% - its lowest in three years (Connolly, 2015) – Bavaria’s President and CSU leader at the time, Horst Seehofer, gave an ultimatum to Chancellor Merkel to announce a plan that would reduce irregular flows by Sunday 1 November (Connolly, 2015). For Seehofer, as so for the *SPD*’s party chairman Sigmar Gabriel, helping refugees in Germany would only be feasible ‘with an upper limit for the immigration of refugees’(Thomas, 2015). By the end of November, German conservatives produced the ‘Berlin declaration’ on terrorism and refugee policies, particularly calling for an upper limit to the number of refugees allowed into Germany (Fürstenau, 2015).

In the Netherlands, pressures to halt refugee flows were even stronger and more long-standing, preceding the time when the crisis hit the rest of Northern-Western Europe. Already on 22 March 2015, MP Malik Azmani from the *Volkspartij voor Vrijheid en Democratie (VVD)* – PM Rutte’s ruling party – had written a seven-page position paper calling for the end of asylum flows to Europe and for the rather unrealistic offer of asylum to refugees coming from Europe only (Azmani, 2015). While the extent to which this plan enjoyed broad support from within the *VVD* and its highest ministerial ranks is unclear, Diederik Samsom leader of *VVD*’s coalition partner *Labour Party*, criticised this ‘unrealistic’ plan as ‘totally unacceptable’ (Dutch News, 2015). As pressures mounted over the summer and triggered multiple attacks and threats of the local population directed towards local politicians and mayors ready to resettle more refugees, King Willem Alexander intervened in late October to appease the opposition parties (Cluskey, 2015). As the polarization of the public debate on Muslim immigration mounted across Europe in the aftermath of the Paris November attacks²⁶² (Jungkunz, Helbling and Schwemmer, 2019), PM Rutte proposed a mini-Schengen:

I want [the border] shut. I don’t care how this happens, whether it is through pressure from Europe or through other agreements, just as long

²⁶² On 13 November 2015, a series of coordinated terrorist attacks took place in Paris and its northern suburb, leading to a death toll of 130 people – including 90 in the *Bataclan* shooting – and another 413 people injured, in what has been proclaimed the deadliest attack in France since the end of WWII (McVeigh and Graham-Harrison, 2015).

as it happens...As we all know from the Roman empire, big empires go down if the borders are not well protected (PM Rutte cited in Jungkunz, Hebling and Schwemmer, 2019).

In both Austria and France, unmet popular demands regarding border control and increasing fears over irregular migrant inflows resulted in heavy electoral losses for mainstream parties. In the former case, the *Social Democrats (SPÖ)* and the conservative *People's Party (ÖVP)* suffered heavily in the local elections of upper Austria in September 2015. The beneficiary was the far-right *Freedom Party (FPÖ)*, which doubled its electoral base by over 15 percentage points in every single community (Steinmayr, 2016, p. 3). In the case of France, the *Front National (FN*, now known as *Rassemblement National [RN]*) came first at the regional elections of December, building on the fear culture shaped by mass irregular immigration in conjunction with multiple terrorist attacks during the same year. The magnitude of these fears grew in parallel with the gradual rise in irregular migrant inflows and peaked in October (UNHCR, 2015), as almost 223,000 irregular arrivals by land and sea were reported in a single month. Eventually, this prompted politicians from Northern-Western Europe to shift the debate from relocation to border control, readmission and resettlement.

At its Special Meeting of 23 April 2015, the European Council had agreed to ‘step up cooperation with Turkey in view of the situation in Syria and Iraq’ (Council of the European Union, 2015f), as later reiterated in the EUCO Conclusions of 25-26 June 2015 (Council of the European Union, 2015d, p. 5). As partly explored in Chapter 4, the focus of the Luxembourg Presidency had primarily been on relocation, asylum and on the successful installation of the Integrated Political Crisis Response mechanism (IPCR). However, as reported by a senior Dutch official in an interview,²⁶³ both the incumbent and the incoming Council Presidencies realized that the focus of the following six months ought to shift to border management, in line with the Commission’s publication of the new mandate for the European Border and Coast Guard (EBCG).²⁶⁴

²⁶³ Interview with senior Dutch official (P44), Brussels (Belgium), May 2019.

²⁶⁴ European Commission (2015). Press Release: A European Border and Coast Guard to protect Europe’s External Borders. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_15_6327. Last accessed on 17 November 2020.

On 7 October, Chancellor Merkel explained on *Anne Will's* eponymous popular German talk show that she had a plan. This closely resembled the policy proposal made by the European Stability Initiative for a *Merkel plan* with Turkey only three days earlier (2015a):

We must better protect our external borders, but this is only possible if we reach agreements with our neighbours, for example with Turkey, on how to better share the task of dealing with the refugees. And this will mean more money for Turkey, which has many expenses because of the refugees. This will mean that we will accept a set number of refugees (Merkel's interview translated in Knaus, 2016a).

It is true, as already argued in Chapter 3, that the Commission was considered the acting chief negotiator in the bilateral negotiations with Turkey until the EC Summit of February 2016. Indeed, in the first phase of the negotiations, the Member States' involvement was minimal and could be summarized in a series of last-minute debates on the Commission's draft of the Joint Action Plan in the context of the Coreper meetings of 15 October and of 26-28 November (Smeets and Beach, 2020, p. 141). As confirmed in an interview with two Turkish officials, there were no direct bilateral meetings between EU Member States and the EU Affairs Department of Turkey's MFA. Rather, Turkey's MFA arranged meetings with the Commission, most crucially by means of a direct line between the MFA's Undersecretary and Commission's VP Timmermans.²⁶⁵

ESI Director Gerard Knaus argued that the negotiations between the Commission and Turkey did not lead to any measurable outcome until the European Council took the lead, insofar as only Germany and the European Council would be able to 'offer Turkey something real.'²⁶⁶ As explained by former Dutch Sherpa J.W. Beaujean, the turning point – what would later be referred to as a 'game changer' by many – was when the focus of the negotiations shifted to readmission. As a senior Turkish official put it,²⁶⁷ this shift in EU priorities represented an equally crucial turning point and opportunity for Turkey:

[PM] Davutoğlu is a very goal-oriented person...So when the readmission concept gets into the deal, you know, they [Davutoğlu and the MFA] thought about what we can get out of this, at the end of these negotiations and international deal, and that's how they have got to the point that the visa free travel should be involved in this process.

With the Commission still formally in the lead, Diederik Samson and J.W. Beaujean from the Dutch Ministry of Foreign Affairs started participating in the meetings of the

²⁶⁵ Interviews with Turkish officials (P39-40), Ankara (Turkey), May 2019.

²⁶⁶ Interview with ESI Director Gerard Knaus (P38), Berlin (Germany), March 2019.

²⁶⁷ Interview with senior Turkish official (P42), Brussels (Belgium), May 2019.

Readmission Committee in Ankara between the JAP declaration of 29 November and February 2016; this led to a breakthrough for starting readmissions and returns between Greece and Turkey, as illustrated in Chapter 3.²⁶⁸ In the meantime, Chancellor Merkel was able to get the Commission to develop a proposal on voluntary resettlement, the Voluntary Humanitarian Admission Scheme (Smeets and Beach, 2020, p. 141). The shift in the EU's approach towards the negotiations was also evident in the wording used in the EUCO Conclusions of 17-18 December 2015, whereby the upcoming Dutch Presidency introduced the word 'readmission', reflecting the efforts already ongoing at the time.²⁶⁹ In this text, EU institutions and Member States were called upon to urgently:

Take concrete measures to ensure the actual return and readmission of people not authorised to stay and provide support to Member States as regards return operations ... and ensure the implementation and operational follow up to: [...] the EU-Turkey Statement of 29 November 2015 and the EU-Turkey Action Plan; in this context Coreper is asked to rapidly conclude its work on how to mobilise the 3 billion euro for the Turkey Refugee Facility (Council of the European Union, 2015c).

The Dutch Presidency's lead was crucial for Coreper to mobilise € 3 billion for the Facility for Refugees in Turkey (FRIT); more specifically, it eased a compromise among Member States' representatives on the shape and size of funding, so as to have Member States sign up to the so-called 'contribution certificates.' Agreed in principle at the Coreper II meeting of 18 December 2015 (Smeets and Beach, 2020, p. 144), the contribution certificates, known in EU legal jargon as 'externally EU signed revenues',²⁷⁰ had the purpose to commit Member States to pledge a certain amount of money by a certain date to the EU budget for the Facility for Refugees. The Member States' legal responsibility to pay the committed amounts of money stemmed from them signing and dispatching the contribution certificates back to the Commission, confirming that they would contribute to the Facility. As explained by a senior Commission official in an interview:

For this to happen, the Dutch Presidency had a fundamental role to play: by calling the meetings, steering the process of adoption of a common understanding [at the Council], by putting the points on the agenda of the European Council, and all this was endorsed by the highest level at the European Council.²⁷¹

²⁶⁸ Interviews with Turkish officials (P39-40), Ankara (Turkey), May 2019.

²⁶⁹ Interview with former Dutch Government's Sherpa and Deputy Director-General for Migration Policy in the Ministry of Justice Jan-Willem Beaujean (P18), Hague (Netherlands), January 2019.

²⁷⁰ Interview with senior Commission official (P61), Brussels (Belgium), January 2020.

²⁷¹ Interview with senior Commission official (P61), Brussels (Belgium), January 2020.

Thanks to the Presidency's political approach as compromise broker, by April 16 Member States had already sent in their contribution certificates committing €1.61 billion out of the €2 billion pledged for the Facility for 2016-2017 (European Commission, 2016).

While attempting to mobilise financial contributions for the FRIT, pressures mounted to shut down the Western Balkans (WB) route. Already during Summer 2015, Hungarian PM Orbán had started calling for a stronger control of the EU's external borders by cooperating with its neighbouring countries, be it with or without Greece as part of the Schengen system. Questioned in the context of the informal HOSG migration meeting of 23 September on whether he would want to seal the EU's external borders, Orbán had stated:

We don't seal it, what we do is sealing what we call the green border ... Otherwise, if you don't follow the regulation, the whole EU will be involved [in] a chaos, we must follow the regulation and restore the legal order... I think if the Greeks are not able to defend their borders, we should ask kindly - because this is a sovereign country - let the other countries of the EU defend your borders (PM Orbán cited in Euractiv, 2015).

For Orbán there were two alternative solutions to the irregular migrant inflows on the WB route: either Greece should have accepted the intervention of other Member States in its border management systems – which Greece rejected – or Greece would have had to leave the Schengen zone.²⁷²

It was ultimately thanks to pressures coming simultaneously from the incoming Dutch Presidency and the EUCO Presidency that the Western Balkans route shut down, making it impossible to ascertain with certainty where the idea originated. According to Beaujean,²⁷³ the incoming Presidency devised the shutdown of the WB route as Plan B in case Plan A – a working readmission scheme between Greece and Turkey – failed. From December onwards, as explained by Beaujean, the Dutch negotiators, particularly Beaujean himself and Samson, started arranging weekly meetings and telephone calls with all countries located on the Western Balkans Route, insofar as they felt that irregular immigration control could be mitigated by stronger border control. Based on the momentum of these conversations, pressures grew for the Commission to take a stand on

²⁷² Interview with senior diplomat (P37), Berlin (Germany), March 2019.

²⁷³ Interview with former Dutch Government's Sherpa and Deputy Director-General for Migration Policy in the Ministry of Justice Jan-Willem Beaujean (P18), Hague (Netherlands), January 2019.

border management under Schengen, particularly relating to what Member States could and could not do with their borders.²⁷⁴

Based on the account of Tusk's speechwriter and JHA advisor, in the same timeframe, if not earlier, President Tusk had the same idea of closing the Western Balkans route.²⁷⁵ This was reflected in a couple of meetings and visits organised by President Tusk with Chancellor Merkel on 16 February 2016, and President Juncker and other Balkan leaders at the EUCO of the following day.

The competition for ownership of Plan B suggests that multiple actors greatly benefitted from its *ratification* in the domestic arena (*level II*). Whether it was the Dutch Council Presidency or EUCO President Tusk, Plan B was ultimately uploaded to *level I* under growing pressure from these two, alongside Germany and other Member States on the WB route. According to Tusk's JHA Advisor:

The simple truth is that the same thought occurred simultaneously to most people directly involved because it was the only way to restore order ... If we could close the North Macedonian border with Greece, the other countries would be automatically forced to close theirs as well right up the route.²⁷⁶

When Slovenian PM Cerar sent a letter to Juncker with a similar request, as informally backed in content by Berlin and the Hague,²⁷⁷ some senior officials from the Hague and the Dutch Council Presidency wrote back in Juncker's stead on 25 January. They gave the PM the green light for closing the borders (see Chapter 3) and for effectively putting an 'end to the wave-through approach' on the EU's green border, as mirrored in the EUCO Conclusions of 18-19 February 2016 (Council of the European Union, 2016a, p. 4). This eventually led to a cascade of border shutdowns along the Western Balkans route, most importantly in Slovenia and Serbia, from 9 March onwards (Euractiv, 2016).

With Plan B enacted and the start of the Dutch Council Presidency, leadership moved back to *level II*, leading to the appointment of key contact points, or chief negotiators, primarily from Berlin and the Hague. On 25 January, PM Rutte formalised the division of

²⁷⁴ Ibid.

²⁷⁵ Interview with former JHA advisor and speechwriter to Donald Tusk, Mr Hugo Brady (P54), Brussels (Belgium), November 2019.

²⁷⁶ Ibid.

²⁷⁷ Interview with former Dutch Government's Sherpa and Deputy Director-General for Migration Policy in the Ministry of Justice Jan-Willem Beaujean (P18), Hague (Netherlands), January 2019.

responsibilities on the deal with the formation of the so-called ‘Ankara Club’, composed of two senior officials each from the Netherlands and Germany and a few more from Turkey; on a more political level, Merkel and Rutte divided up responsibilities and tasks among themselves on 31 January (Knaus, 2016c). This had the effect of *side lining* the Commission in the high-level talks and meant the contacts between Ankara, the Hague and Berlin were no longer mediated by the Commission at *level I*.

While the lead in the negotiations shifted from the Commission back to *level II*, events in the Netherlands during the third week of January 2016 vindicated Putnam’s view that ‘it is wrong to assume that the executive is unified in its views’ (Putnam, 1988, p. 432). By the end of January 2016, domestic pressures gave further impetus to Berlin and the Hague to finalize a deal with Turkey, as a regrettable event displayed the partial split in the Dutch central executive in charge of these negotiations.

Possibly under the influence of Knaus’s paper in the context of a Dutch trip to Ankara,²⁷⁸ *Labour* leader Samsom was the first politician to claim ownership on the EU-Turkey plan, with barely any consultation with the PM Rutte (Knaus, 2016b). In an interview with the Dutch newspaper *De Volkskrant*, Samsom revealed details of the ongoing negotiations with Turkey, including considerations on the Member States’ *win-sets* – supporters and opposers alike – and on the *cost-effectiveness* of the concessions offered to Turkey (translated version in Knaus, 2016a). Among other things, Samsom noted how the deal was mainly negotiated and supported by the Netherlands, Germany, Sweden and Austria, while there were some countries, including France and other ‘refusers’ (mainly small MS) that were ‘dodging the issue’ (Knaus, 2016a). The interview was met with surprise and dissatisfaction by the other chief Council negotiators, particularly as it was seen as threatening to lead to Turkey’s *defection* from the talks. Whilst Turkey’s delay in reacting to the news allowed the Dutch government to reduce the damage caused,²⁷⁹ this event exemplified the fact that the Dutch government was in fact not unified in views or negotiating strategy. Samsom’s interview had the primary effect of putting further pressure on the Council in order to finalize the deal quickly before further disclosures to the media could undermine the diplomatic efforts made thus far.

²⁷⁸ Interview with ESI Director Gerard Knaus (P38), Berlin (Germany), March 2019.

²⁷⁹ Off-the-record interview.

According to an off-the-record interview, it was not until mid-February that the idea of reciprocity in managing refugees surfaced, i.e. ‘sending something back and taking something else’ in return, or what will later be defined the ‘1-1 wish’: in particular, there were two informal avenues in which this solution was first addressed, one at *level I* and the other at *level II*. Between January and February Commissioner Timmermans and EUCO President Tusk travelled regularly to Turkey and started to discuss the possibility for Europe to send back to Turkey all non-Syrians. Separately, in the guise of a meeting between the Dutch Presidency and a big partner in the Near East,²⁸⁰ Turkish PM Davutoğlu was invited to the Hague for a meeting with PM Rutte on 10 February; PM Davutoğlu maintained a ‘non-committal’ attitude, only taking note of the conversation and of the ideas raised without refusing them *a priori*, but not committing to them either yet.

According to Léglise-Costa, the 1-1 scheme was still on the table when Chancellor Merkel visited President Hollande in Paris on 4 March; however, before Davutoğlu put this 1-1 mechanism back on the table during the night of the 6 March, the understanding was that: 1) it may have been complicated to use it from a legal standpoint, and 2) it was not necessary.²⁸¹ The new proposal for a deal tabled by Davutoğlu had the effect of changing the potential bargaining outcome which had been negotiated *ex ante* by Chancellor Merkel and PM Rutte and backed by Coreper II. At a time in which domestic pressures demanded a quick fix for irregular immigration, this left the EU chief negotiators with no other choice but to accept most of the new requests made by Turkey without renegotiating them at the European Council or at Coreper II.

The night of 6 March has been the object of interest for various unofficial journalistic accounts (Knaus, 2016b; Peeperkorn, 2016). Among other things recollected in these accounts, one of the key takeaways is that the draft Statement which was finalized in the preceding week by Commissioner Timmermans and EUCO President Tusk had already gone through Coreper during the weekend of 5-6 March and received the backing of the Member States at a diplomatic level.²⁸² This fits with the first-hand insights gathered in the interviews conducted for this thesis.²⁸³ While a consensus was quickly found among

²⁸⁰ Off-the-record interview.

²⁸¹ Interview with French Ambassador Léglise-Costa (P22), Brussels (Belgium), January 2019.

²⁸² Off-the-record interview.

²⁸³ Interviews with former Dutch Government’s Sherpa and Deputy Director-General for Migration Policy in the Ministry of Justice Jan-Willem Beaujean (P18), Hague (Netherlands), January 2019; Interview with former Head of Cabinet for President Juncker, Dr Richard Szostak (P23), Brussels; Interview with senior Commission official (62), via telephone, January 2019 and March 2020; Interview with ESI Director Gerard

PermReps, the German and Dutch governments were informally dissatisfied with the negotiated outcome,²⁸⁴ insofar as they held that the draft proposal contained insufficient incentives to secure a deal with Turkey. In this context, on the night of 6 March, Rutte and Merkel were invited to sit in, without advisors, at the Turkish delegation in Brussels for a meeting behind closed doors with PM Davutoğlu; there, they were surprised with a newly drafted 12-point plan for action for Turkey and the EU.

According to another off-the-record interview, the Turkish negotiators – most importantly Davutoğlu and Foreign Minister Çavuşoğlu – had discussed on their flight to Brussels a variety of ‘outrageous’ requests to make to the Europeans (*tie-hands strategy*). Grasping the mounting desperation on the EU side to find a way to stem irregular migrant inflows by mid-March, the Turkish interlocutors made a move to shape a deal more closely aligned with Turkey’s *win-set*: namely, a second tranche of an additional € 3 billion (point 6 of the Statement); a cut-off date of 20 March, after which the 1-1 wish would enter into force (point 1 of the Statement); a shorter deadline for visa liberalization – 6 months (point 5 of the Statement); more EU accession chapters to be opened; the activation of the Voluntary Humanitarian Admission Scheme once flows would have stabilized as per point 4 of the Statement (Council of the European Union, 2016d, p. 2).

When Davutoğlu presented the new plan, Merkel and Rutte reported it back to their closest advisors and negotiators, who had the task to decide overnight whether it would represent a fair offer worthy of consideration. Under Merkel’s direction, the advisors and chief negotiators set out the details of the new text together with the Turkish negotiators, so as to have it ready to be presented at the European Council the following morning. Only a couple of representatives from the Commission attended the overnight talks – notably, Juncker’s Head of Cabinet Selmayr and VP Timmermans – whereas nobody from the EUCO Presidency did so.²⁸⁵ According to an off-the-record interview, nobody from the Turkish side expected that Merkel and Rutte would accept the request for a second tranche of € 3 billion:

[The Turkish deputy foreign minister] told me: we nearly fell off our chairs when we said to her [Chancellor Merkel]: we will insist on another 3 billion and neither Merkel nor Rutte blinked and just said ok, fine...

Knaus (P38), Berlin (Germany), March 2019; Interview with senior official (P42), Brussels (Belgium), May 2019.

²⁸⁴ Off-the-record interview.

²⁸⁵ According to an off-the-record interview, Director for Turkey (DG NEAR) Mordue was also invited to join in the overnight negotiations but did not answer to the phone.

[We were surprised] because we were just using that for negotiating tactics, we never really wanted it [i.e. second tranche] or needed it.²⁸⁶

In other words, Turkey used to its advantage the EU's uncertainty over Turkey's actual *win-set*, as well as the EU's fear of its potential *defection*, in order to negotiate an agreement that far exceeded their *least acceptable agreement* (LAA).

On the morning of 7 March, Commission Secretary-General Selmayr was given the unpleasant task of informing EUCO President Tusk of how the conditions of the agreement had changed overnight to the advantage of Turkey.²⁸⁷ Throughout the crisis, Tusk had been inherently sceptical towards the prospect of prioritizing irregular immigration in the European Council's agenda (see Chapter 3). According to two off-the-record sources, the EUCO President was not supportive of a deal and even less so of one that, to him, contained unrealistic promises such as visa liberalization within six months, the opening of more chapters and double the original finances. As a result, in this meeting the two Secretariats-General of the Commission and the European Council clashed: Secretary-General Selmayr argued that the new plan would be a 'game changer', promising to reverse the migratory dynamics on the Western Balkans route. His view and that of the German and Dutch chief negotiators clashed with the scepticism and reticence of Tusk and EUCO SG Tranholm-Mikkelsen,²⁸⁸ who made it clear that they would not have formally backed the plan in the face of HOSG but they would have merely agreed to negotiate on the basis of the principles included in the new deal (Smeets and Beach, 2020, p. 142).

EU HOSG expressed surprise and discontent at the 'Alleingang', or solo effort, made by the Germans and the Dutch (Ludlow, 2016, p. 60), given that most ambassadors and HOSG were only debriefed at the last minute on the swift change made about the text on the morning of 7 March.²⁸⁹ The negotiating tactic used by the chief negotiators to keep the remaining HOSG in the loop on the bargaining developments consisted in 'shielding' (Smeets and Beach, 2020, p. 136), that is involving Member States and other bureaucratic action channels (e.g. the European Parliament and the Commission's College) on a 'need-to-know basis', primarily 'because it was so delicate, so difficult to create a package

²⁸⁶ Off-the-record interview.

²⁸⁷ Interview with senior Commission official (P26), Brussels (Belgium), January (2019).

²⁸⁸ Off-the-record interview.

²⁸⁹ Interview with senior Danish official (P43), Brussels (Belgium), May 2019.

persuasive for the Turkish side'.²⁹⁰ From a process management perspective, Member States were asked to endorse at the last minute the final drafts of the Joint Action Plan and the EU-Turkey Statement (Smeets and Beach, 2020, pp. 141–142). In the language of the framework of analysis in use, this allowed the chief negotiators to move jointly towards a single point of tangency between the EU's political indifference curve of acceptable agreements (*win-set*) and Turkey's. While doing so, the negotiating parties kept an eye on the *incidence* of concessions made to Turkey in their domestic arenas, to ensure what Putnam called the *cost-effectiveness* of the concessions, demands and threats made (Putnam, 1988, p. 451).

The fact that the Council was able, under the lead of the Dutch Presidency and Germany, to approach Turkey in the negotiations with a seemingly unified *win-set* was ultimately facilitated by the shared objective of stemming irregular migrant inflows, the lack of visible policy outcomes from adopting the relocation files and the mounting domestic pressures in all EU-28 countries. Even the most vocal veto players regarding the refugee relocation scheme – i.e. Hungary, the Czech and Slovak Republics – warmly welcomed the revived talks with Turkey. According to a senior official from Central-Eastern Europe, a deal with Turkey was supported as a second step to be taken after shutting down the Western Balkans route and to demonstrate the EU's ability to protect its external borders in the first place.²⁹¹ The EU-Turkey agreement was considered a 'quite welcome development' in the region, as confirmed by a senior Slovak official.²⁹²

The shared objective provided the Commission first, and Germany and the Netherlands at a later stage, with the political backing necessary to stand by the promises made to the Turkish in the Joint Action Plan of 15 October (see Chapter 3), then doubled in financial terms on 6 March. After intense debates among Member States, it also allowed the air to be cleared for opening accession chapter 17 (Economic and Monetary Union) by mid-December 2015. With a key, urgent priority in common and the "shielding" element in place, even the reservations raised by Member States on the final drafts of the JAP and the EU-Turkey Statement did not hinder the bulk of the negotiations. President Tusk did not allow any bilateral negotiations with Turkey and reassured the HOSG that, in terms of

²⁹⁰ Interview with senior PermRep official (P52), Brussels (Belgium), October 2019.

²⁹¹ Interview with senior official (P37), Berlin (Germany), March 2019.

²⁹² Interview with senior Slovak official (P12), Brussels (Belgium), January 2019.

relocation and resettlement, the Statement would have not created any additional commitments for Member States (Smeets and Beach, 2020, pp. 142–143). Notwithstanding the “shielding” process, Member States effectively downsized the promises made on the opening of accession chapters: only chapter 17 (EMU) was opened on 17 December, whereas Member States agreed to open shortly chapter 33 (Financial and budgetary provisions), a promise which never materialised due to the *coup d'état* in July 2016.

5.2.2 SWING AND VETO ACTORS

Aligned on one common objective – to stem or drastically reduce irregular migrant inflows – Member States quickly found agreement on the underlying principles and conditions defined in the negotiations and agreed by consensus on the political statement of 18 March. While there were no veto actors at the signing of the Statement, various aspects caused discontent and heated discussions among HOSG up until then, from the “shielding” practice used in the negotiations (Smeets and Beach, 2020, p. 136), to the legality of the deal, the definition of chapters to be opened and the potential conflict of interests originating from the financial contributions pledged to the Statement vis-à-vis other migration-related tools financed by the European Council.

Often neglected in previous scholarly accounts, France’s role in these negotiations went beyond “shielding” and could be described as halfway between a support and a swing state. Not unlike the formulation of the Refugee Relocation Scheme, France’s support was crucial for Merkel to Europeanise the final stages of the negotiations and to counter mounting domestic pressures in Germany. As explained in an interview with former French Sherpa Léglise-Costa, Merkel visited Hollande for a working lunch in Paris on 4 March in order to obtain clear political backing for the deal and to have him agree, alongside Presidents Tusk and Juncker, to convene an extraordinary EUCO meeting on Monday 7 March. Merkel explained to President Hollande that she was under heavy political pressure at home in the aftermath of the open-door policy (*tied hands*) and that she crucially needed to win the upcoming regional elections of 13 March in the German states of Baden-Württemberg, Rhineland-Palatinate and Saxony-Anhalt in order to secure the support of her domestic constituency. For this to be the case, Merkel signalled to President Hollande that she needed his support on the Statement in order to reassure Erdogan and Davutoğlu that this was a European plan, not a German one.²⁹³

²⁹³ Interview with Ambassador Léglise-Costa (P22), Brussels (Belgium), January 2019.

Building on the preparatory work conducted by the two Sherpas, Merkel and Hollande discussed and finalized within two hours a very detailed plan to be perfected at the Coreper on Sunday, and then proposed to the Turks. Furthermore, they finalized the planning in preparation to the extraordinary EUCO of Monday.²⁹⁴ However, in the aftermath of the overnight negotiations of 6 March, one of the Dutch chief negotiators attending called Sherpa Léglise-Costa at 6 o'clock in the morning of Monday to inform the French counterparts of the unexpected changes made to the plan; once informed, Hollande suggested meeting with Merkel 'before [meeting] with the other Europeans at lunch', to try to rebuild a common basis for agreement. According to Léglise-Costa, Hollande was ready to accept the anticipation of visa liberalization insofar as the criteria for Turkey to meet it would not be softened, as well as the 1-1 scheme and the second tranche of 3 billion euros, if needed, once the first was fully disbursed. This being the case, he nevertheless raised two outstanding concerns: first, he was concerned about the legality of the text, particularly the 1-1 mechanism's resemblance to *refoulement*; secondly and owing to Cyprus's vetoes on various accession chapters, he deemed most demands made by Turkey on the opening of chapters unacceptable.²⁹⁵

On the legality of the text, many Member States such as Sweden and Ireland, while supportive of the Statement in principle, raised similar concerns to France's as they wanted to ensure that Turkey would represent a safe third country for refugees;²⁹⁶ these concerns were partially solved by means of some changes to the language of the text as based on Sweden's requests,²⁹⁷ partially thanks to the reassurance provided and work done by the Legal Services of the European Council and the Commission to guarantee the legal soundness of the text.²⁹⁸

On the opening of chapters, the Turks overestimated Merkel's ability, and arguably even her political willingness, to deliver multiple accession chapters at once for Turkey. On the 7 March, there was a small meeting on this matter between Merkel, Rutte, and Juncker, Hollande and Cypriot President Nicos Anastasiades. In that circumstance Merkel, probably

²⁹⁴ Ibid.

²⁹⁵ Interview with Ambassador Léglise-Costa (P22), Brussels (Belgium), January 2019.

²⁹⁶ Interviews with senior Danish official (P43) and senior Irish officials (P29-P30), Brussels (Belgium), May and January 2019.

²⁹⁷ Interview with senior Swedish official (P41), Brussels (Belgium), May 2019.

²⁹⁸ Interview with senior Irish officials (P29-30), Brussels (Belgium), January 2019.

as part of ‘a political game’,²⁹⁹ tried to challenge well-known Cypriot red flags with regards to the opening of accession chapters for Turkey. As explained in an interview by Ambassador Léglise-Costa, Merkel initially urged President Anastasiades to do something about his country’s *red lines* [on opening accession chapters for Turkey]; however, Anastasiades erupted over this request and emphasised how this was a “life-or-death” issue for Cyprus and that, while the country was ready to show solidarity and to financially support other Member States in response to the crisis, he could not erase *red lines* that directly interfered with the very existence of Cyprus (*tied hands*).³⁰⁰

Commenting on the difficulty for Cyprus to come to terms on the opening of chapters for Turkey, a senior Cypriot official observed how, while the country was generally constructive in the discussions with Turkey, insofar as it could see the added value of working in closer cooperation with the latter for migration management, the Cypriot government often did not have the flexibility to negotiate on EU-Turkey relations.³⁰¹ In particular, the chapters that Turkey wished to open – chapters 15 (Energy), 23 (Judiciary and Fundamental Rights), 24 (Justice, Freedom and Security), 26 (Education), and 31 (Foreign Security and Defence Policy) – were in direct conflict with Cyprus’s *red flags* and were all unilaterally blocked by Cyprus.³⁰² As explained by the same Cypriot senior official:

[The country’s main] concern was that Turkey would be given too many incentives without taking into consideration what it was delivering [...] And the other point we wanted to be clear [about was] that we wanted to have no clause whatsoever that could enable Turkey to bypass the fact that Cyprus is a Member State.

To ensure that its *red lines* would be safeguarded throughout the negotiations, according to an off-the-record interview, Cyprus approached some ‘friendly Member States’, [including] Greece, and presented them with their views and concerns about the negotiations. As a result, Greece stepped in to show its support to Cyprus, while other countries, for example France and the UK, remained helpful to Cyprus throughout the discussions.³⁰³ As explained by Léglise-Costa, the political stalemate was ultimately solved by: 1) finding a minuscule chapter, Chapter 33 (Financial and budgetary provisions), that could be opened without breaching Cyprus’s red lines (*cut-slack*); 2) having the Turkish

²⁹⁹ Interview with Ambassador Léglise-Costa (P22), Brussels (Belgium), January 2019.

³⁰⁰ Ibid.

³⁰¹ Interview with Cypriot senior official (P48), Brussels (Belgium), May 2019.

³⁰² Interview with senior Danish official (P43), Brussels (Belgium), May 2019.

³⁰³ Interview with former Dutch Government’s Sherpa and Deputy Director-General for Migration Policy in the Ministry of Justice Jan-Willem Beaujean (P18), Hague (Netherlands), January 2019.

interlocutors accept that the second tranche of money for FRIT would only be paid out, if needed, after the full disbursement of the first.

Insofar as Turkey did not, and does not, recognize the sovereignty of the Republic of Cyprus, it was not only the opening of certain accession chapters which was politically unacceptable for Cyprus, but also the idea of directly financing Turkey for FRIT. The same reluctance was shared by Belgium and Hungary.³⁰⁴ This issue was ultimately resolved by *issue-linkage*: as the Danish and the Cypriot PermReps sat near each other during the negotiations, the Danish PermRep was effectively able to convince his Cypriot counterpart to pay for Syrian refugees in Lebanon and Jordan instead of paying for refugees in Turkey. As a result, Cyprus contributed € 2.3 million to the EU budget for Jordan and Lebanon instead of financing the Facility for Refugees in Turkey (Council of the European Union, 2016c). According to an off-the-record interview, this was probably a conscious decision on the EU side ‘because they knew that Turkey would never accept Cyprus [as a signatory party] on any statement whatsoever’.

The last difficult knot in the negotiations consisted in finding an agreement on the Statement with Spain and Italy, since both countries were concerned that the prioritization of the Western Balkans route and the finances devoted to the Facility would have negatively impacted upon the attention given to the Central and Western Mediterranean routes on the EU agenda. In a similar manner to the case of the Refugee Relocation Scheme, the concerns raised by Italy and Spain were different from each other. As Spain had always prioritized the external dimension of migration in its national policies, the country was fundamentally supportive of the deal.³⁰⁵ Furthermore, according to a senior Spanish official,³⁰⁶ the debate on the EU-Turkey Statement never *reverberated* into domestic politics and did not turn into a political issue between the two then main political parties, the *People’s Party (PP)* and the *Spanish Socialist Workers’ Party (PSOE)*. However, in an off-the-record interview, one senior official described how the Spanish government was worried about the potential:

emulating effect of this huge amount of money that was going to Turkey, that the neighbourhood countries would consider that there was a business opportunity for them’, and... [they were also worried] about the potential ‘domino effect of the agreement, as a negotiating kind of

³⁰⁴ Interview with senior Danish official (P43), Brussels (Belgium), May 2019.

³⁰⁵ Interview with senior Spanish official (P58), Brussels (Belgium), December 2019.

³⁰⁶ Ibid.

[tactic] to[wards] Europe.. I mean if you go and pay € 6 billion and Morocco gets € 100 M [from Spain], I mean it's a joke.

As for Italy, according to multiple interviewees,³⁰⁷ the country never explicitly opposed the deal with Turkey, although it was rather preoccupied that there would not be enough finances and political will at the EU level to reproduce a similar kind of agreement for Libya and/or Northern Africa. Upon reassurance from the Commission that Africa would have been the next target for migration investments, Italy agreed, albeit with difficulty, to the consensus norm on the EU-Turkey Statement (*issue linkage*).³⁰⁸

5.3 CONCLUSION

As the rise in irregular migrant inflows revealed the inherent shortcomings of a solidarity-based approach to the crisis, mounting domestic pressures brought all EU policy actors to agree on a different policy approach aimed at stemming, or dramatically reducing, irregular migration by means of cooperation with third countries and readmission. The first key partner targeted for bilateral arrangements was Turkey, because it was a transit route for most migrants crossing towards Europe. Unlike the two Refugee Relocation Decisions, the intensification of the Member States' interests and concerns on irregular immigration and border control, as combined with the Commission's inability to deliver to Turkey (see Chapter 3), facilitated a change to leadership dynamics in favour of the European Council and particularly Germany and the Netherlands. This supports several theoretical expectations outlined in Chapter 1. In line with **TE6**, the Commission played an active role in the interinstitutional balance of power during the crisis until the European Council's interests on the issue at stake intensified, when the Commission was downgraded to a strategically passive policy player. A renewed interest and willingness to respond directly to irregular migrant inflows stemmed partly from the Commission's inability to meet Turkey's expectations of rewards for managing the refugee 'issue' in the EU's stead (see Chapter 3). However, increased domestic salience of the crisis across Europe was the ultimate trigger for the European Council to take the reins of the negotiations.

³⁰⁷ Interview with former Home Affairs Minister Alfano (P36), Milan (Italy), March 2019; interview with senior Commission official (P26), Brussels (Belgium), January 2019;

³⁰⁸ Interview with senior Italian official (P13), Brussels (Belgium), January 2019.

The centralization of bargaining power at the HOSG level, with Germany and the Netherlands acting as *proxy* chief negotiators for the European Council, served multiple purposes: first, it helped to rapidly address the mounting pressures from *level II* while avoiding negative *reverberation* of the issues at stake at home; secondly, it became crucial to do so insofar as the main outcome of the bilateral talks between the Commission and Turkey – the Joint Action Plan – did not work in practice and failed to meet the demands of the Turkish negotiators; lastly, it made it easier to reach an agreement that would be fully representative of the EU’s default position of containment towards Turkey (Martin, 2019), while remaining attractive to Turkey. Yet again, the *win-sets* and red flags of the Core group, as set out in this occasion by Germany and the Netherlands with strong political backing from France, shaped the conditions of agreement at the European Council and ultimately pre-determined the multilateral *win-set* for the whole of the EU on the Statement (**TE1**). Despite negotiating *by proxy* for the rest of the European Council with Turkey, Germany and the Netherlands nevertheless had to yield to the *red flags* raised by a few small Council members, most crucially Cyprus. This proved again how Member States can, and often do ‘punch above their weight’ when the policy issue at stake in a negotiation directly affects their key national interests (**TE3**) and in the shadow of the veto.

Having analysed the roles and bargaining strategy of the Commission, Member States, the Council and the European Council in the making of the Refugee Relocation Scheme and the EU-Turkey Statement, the next chapter will focus on the functions assigned to, and eventual struggles for power led by, the European Parliament in the consultation procedures for the three Decisions under analysis. In so doing, it will test one of the theoretical expectations (**TE5**) set out in Chapter 1, according to which the European Parliament is only able to influence consultation procedures if there is no political alignment on the issue at stake between the Commission and the Council. It will also study whether coalition- and consensus-building at the EP primarily follows group dynamics (*level I*), or whether it also responds to pressures coming from *level II*.

Chapter 6 – PUNCHING BELOW ITS WEIGHT: THE ROLE OF THE EUROPEAN PARLIAMENT IN POLITICISED CONSULTATION PROCEDURES³⁰⁹

It is undeniable that, over time, and particularly after the adoption of the Lisbon Treaty, the European Parliament has seen its power and influence as co-legislator grow remarkably in the Area of Freedom, Security and Justice (Hix and Høiland, 2011; Hampshire, 2016; Trauner and Ripoll Servent, 2016). While growing used to behave more consensually under co-decision, Members of the European Parliament (MEPs) remain portrayed as being comparatively more confrontational under consultation procedures, pushing forward ‘Christmas wish lists’ with ‘left-wing, liberty-oriented positions’ in Justice and Home affairs (Ripoll Servent, 2012, p. 67; see also Ripoll Servent, 2015).

In many ways, the entry into force of the Treaty of Lisbon and the gradual move away from consultation provided the European Parliament with a timely opportunity of institutional adaptation (Ripoll Servent, 2012): that is, to close the gap between these two “schizophrenic” behaviours in co-decision vis-à-vis consultation procedures (2012, p. 68). Nevertheless, policy developments in the AFSJ during the late 2010s – most notably, the use of consultation for formulating key policy responses to the migration crisis (i.e. the Refugee Relocation Decisions and the EU-Turkey Statement) and the political impasse reached under various co-decision procedures (e.g. the Dublin Regulation Recast and the Asylum Procedure Regulation) – have suggested that Member States ‘remain privileged policy entrepreneurs in the AFSJ’ (Trauner and Ripoll Servent, 2016, p. 1429). The missed chance for the EP to transform the Treaty of Lisbon into an opportunity for institutional change became all the more visible in the shaping of emergency responses to the migration and refugee crisis, particularly the two Refugee Relocation Decisions, or Council Decisions (EU) 2015/1523 and 2015/160, adopted under a special consultation procedure as provided by Art. 78(3) TFEU . Soon after the two Refugee Relocation Decisions were adopted, former EP President Schulz criticized Member States for being responsible of unambitious policy responses to the crisis:

³⁰⁹ Part of this chapter has been published in July 2021 in the peer-reviewed *Politics & Governance* as part of a Special Issue “Resilient Institutions: The Impact of Rule Change on Policy Outputs in European Union Decision-Making Processes” co-edited by A. Ripoll Servent and A. Tacea (Vinciguerra, 2021b).

The European supranational institutions have shown their readiness to act. The European Parliament has supported the European Commission – the EU’s executive – in its courageous push for a binding system to help the countries most exposed to the refugee crisis. On the other hand, EU member states often preach solidarity when it suits them and resist it when it does not [...] It is not the European Union – or Brussels – that is broken. It is the intergovernmental decision-making process jealously guarded by national capitals that has once again proven its ineffectiveness (Schulz, 2015).

It is indeed true that the European Parliament, under consultation and faced by conditions of structurally limited power and influence in the legislative procedures under analysis, could only “lobby” other institutions (Hix and Noury, 2009, p. 19) and try to demand radical change in a united manner to be somewhat influential (see, for instance, Kardasheva, 2009; Varela, 2009). At the same time, in view of the heated intergovernmental debate and impasse found at the Council on the Refugee Relocation Decisions (Barigazzi and de la Baume, 2015), this chapter explores whether the highly salient ‘nature of the problem and the absence of a shared “common bad”’ (Ripoll Servent, 2019, p. 307) were reflected in a less united, thereby even less influential European Parliament. In other words, the chapter analyses whether the high political stakes and domestic salience on the issues at stake cast “the shadow of intergovernmentalism” on intra-EP dynamics too, in such a way that they prevented the EP from pushing forward an ambitious, maximalist agenda on these issues, and undermined any chance for the institution to act united in the formulation of these two Decisions.

In order to show this, the chapter analyses the role, bargaining position and preference formation of the European Parliament in the making of the three Decisions. The chapter is structured as follows. Section 6.1 reviews the EP’s attempts at agenda-setting from 2013. Section 6.2 analyses the various EP groups’ positions on refugee relocation and burden-sharing at the outbreak of the crisis, to provide a basis for comparison between early political objectives and the ultimate policy-making outcome. Section 6.3 analyses the case of the Refugee Relocation Scheme, with particular emphasis on the crafting of the relevant Report from the LIBE Committee in charge (European Parliament, 2015c), alongside *level I and II* coalition-building efforts and power dynamics within the EP. In Section 6.4, a similar analysis is undertaken for the case of the consultation procedure on the EU-Turkey

Statement, amending the second Refugee Relocation Decision by means of Council Decision (EU) 2016/1754.

6.1 THE EP AND EARLY AGENDA-SETTING FOR A EUROPEAN RESPONSE TO MIGRATORY FLOWS

From as early as 2013, the European Parliament attempted on various occasions to propose a Union-wide relocation mechanism for refugee redistribution. In a debate in late February 2013 (European Parliament, 2013a), the EP questioned the then-JHA Commissioner Cecilia Malmström about the Commission's commitment to table a legislative proposal for an intra-European, permanent voluntary relocation scheme, shaped on the basis of the earlier pilot projects EUREMA I and II. While stating that the Commission was 'very happy with the EUREMA scheme', Malmström concluded, based on the limited commitment of Member States in implementing the pilot project EUREMA II (only 14 asylum seekers were relocated), that 'there [was] not the [right] political climate ... to propose such a scheme' without incurring in 'a robust no...[or] a paper tiger' (European Parliament, 2013a).

Despite the clear political unworkability of relocation, Lampedusa's migrant shipwreck of 3 October 2013 gave the EP enough political momentum to reopen a debate about the situation in the Mediterranean and possible reforms of the AFSJ. A first EP Resolution was published just days after the tragedy in the Mediterranean, encouraging Member States and the Commission, among other things, for a 'a more coherent approach and greater solidarity with Member States facing particular pressure' (European Parliament, 2013b). Less than two weeks later, the EP published another Resolution, reiterating the 'legal obligation' for Member States to assist migrants at sea, as well as the need for responsibility-sharing in the field of asylum. It recommended: 'creating a mechanism based on objective criteria to reduce the pressure on those Member States receiving higher numbers of asylum seekers and beneficiaries of international protection, in either absolute or proportional terms' (European Parliament, 2013c).

While the immediate public and political response to the Lampedusa tragedy was to pledge 'no more deaths' in the Mediterranean (Muiznieks, 2015), the increased resources invested in SAR operations and vessels did not produce the results expected in the short run. The EP gathered renewed momentum on the issue during the Italian Council Presidency and

with the start of a more “political” Commission under Juncker’s leadership (Kassim and Laffan, 2019; Nugent and Rhinard, 2019). Following the JHA Council of early December 2014 and taking advantage of the situation, the EP stressed in another Resolution ‘the need for the EU to step up fair sharing of responsibility and solidarity towards Member States ... [and] recall[ed] the obligations deriving from Art. 78 and 79 TFEU’ (European Parliament, 2014).

A critical juncture on the issue was only to come on 18 April 2015, when a shipwreck disaster leaving over 700 migrants dead shook the European Council and prompted it to convene a Special Summit on 23 April 2015 (see Chapter 1). The EUCO’s call for a voluntary-based mechanism for refugee redistribution was reiterated in another EP Resolution, which called ‘on the Commission to establish a binding quota for the distribution of asylum seekers among all the Member States’ (European Parliament, 2015d). In other words, in spite of the EP’s active efforts in setting the policy agenda on the issue at stake, it was only when the Commission’s willingness to table a refugee relocation scheme was echoed by the European Council that a proposal for voluntary relocation was tabled by the Commission (in line with **TE5**).

6.2 EP GROUPS’ POSITIONS ON REFUGEE RELOCATION AND BURDEN-SHARING

While the EP as a whole lobbied Member States and other EU institutions with a single voice, all the EP political groups each came up with a different position paper ahead of the Special EU CO on migration of April 2015: these papers reflected primarily the groups’ *sets of acceptable agreements* or *win-sets* on the issues of refugee relocation and burden-sharing, the groups’ internal unity, and their policy focus and preferences for a refugee relocation mechanism. While each group’s position was evaluated in detail in the paragraphs that follow, Table 6.1 below summarizes the various groups’ positions to facilitate the reader’s comparative analysis and understanding of early agenda-setting in EP political groups. Seeing as neither the Eurosceptic Europe of Freedom and Direct Democracy Group (EFDD) nor the far-right Europe of Nations and Freedom Group (ENF) came up with a position paper in the outbreak of the migration crisis, it was not possible to determine either of these variables for them.

TABLE 6.1: SUMMARY OF GROUPS' POLICY POSITIONS ON A REFUGEE RELOCATION SCHEME

Group	Position Paper	Policy focus	Nature of Scheme	Expected group unity	Size of win-set
ALDE	Yes	MS capacity and refugee oriented	Permanent, substituting Dublin	Moderate	Broad
ECR	Yes	Executive control	Voluntary and temporary	High	Narrow
EFDD	No	N/D	N/D	N/D	N/D
ENF	No	N/D	N/D	N/D	N/D
Greens/EFA	Yes	Refugee oriented	Permanent	High	Narrow
GUE/NGL	Yes	Refugee oriented	Permanent, substituting Dublin	High	Narrow
EPP	Yes	MS capacity	Binding but temporary	Moderate/Low	Narrow
S&D	Yes	MS capacity and refugee oriented	Binding and permanent	Moderate	Broad

As displayed in the Table, the most proactive groups were the green and regionalist Greens/EFA and the leftist GUE/NGL. Both argued for a more straightforward pathway to settled, refugee status in Europe for Syrian asylum-seekers. Furthermore, the Greens/EFA argued for ‘visa-free travel’ for Syrian refugees and for a relocation system focused on the refugees’ preferences, language and culture to replace the Dublin Regulation (Greens/EFA, 2015, p. 2) and, most importantly, to reform the Regulation in which the latter assigns responsibility for examining asylum applications to frontline Member States. The GUE/NGL, strong of its internal cohesion on the issues at stake, threatened that their MEPs would oppose any EU budget that went against (*tie-hands*):

‘family reunification ... activation of Temporary Protection Directive 2001/55/EC... increase[d] sharing of reception of asylum-seekers between Member States, including through relocation programmes that take fully into account family, language and cultural ties, adequate funding and reception conditions and closing down of detention centres’ (GUE/NGL, 2016b, pp. 1–2).

Both the Christian Democrat/centre-right group (European People’s Party or EPP) and the Socialists and Democrats (S&D) – the two largest groups in the EP – supported the idea of

a binding mechanism of refugee relocation among Member States based on a variety of criteria reflecting each Member State's capacity. They nonetheless had different *win-sets* on a variety of fundamental issues at stake. As stated by Dutch Social-Democrat MEP Kati Piri, 'when looking at the group debate, we wanted a legally binding, permanent relocation',³¹⁰ with a comprehensive basis for the key redistribution criteria, reflecting both the Member State's capacity and the individual asylum seeker's preferences. According to Piri, while the majority of S&D's members of the LIBE Committee sided with the group's official position, the Eastern Europeans in the group were an exception in that they 'were more for voluntary, and for them voluntary means not taking anyone'. The EPP lobbied for a refugee distribution scheme based on solely objective criteria (EPP, 2015, p. 7), such as territorial size, population, economic situation, and the number of migrants already present in the country. In Putnam's terms, the EPP had a *relatively narrower win-set* as compared to the other groups, meaning that it had less room for manoeuvre (*tied hands*). According to Christian Democrat MEP Jeroen Lenaers (EPP, the Netherlands), who served as Shadow Rapporteur on the first dossier, concerns about asylum seekers' preferences were *secondary* or even *tertiary* in the discussion, whereas the whole EPP debate centred on whether there should be a binding or non-binding mechanism for refugee relocation.³¹¹ In Spring 2015, the group initiated a fundamental discussion relating to the potential *costs and benefits of no agreement*, as well as the potential benefits which would originate from the ratification of the Scheme. As explained by Lenaers, the group did not like the option of binding relocation, but abided by it in order to maintain pressure on the Council (*cut-slack*):

It was never our favourite solution... but we understand we are in a crisis situation [...] The only thing we could do [was] delay the procedure really... which is something we really didn't want to do because the Parliament was in a majority in favour for a binding relocation measure so we wanted to keep pressure on the Member States.

In March 2015, the Alliance of Liberals and Democrats of Europe (ALDE) party³¹² had already held a seminar on the topic,³¹³ which resulted in the creation of ALDE's *Blueprint*

³¹⁰ Interview with MEP Kati Piri (P25), January 2019, Brussels (Belgium).

³¹¹Interview with MEP Jeroen Lenaers (P24), January 2019, Brussels (Belgium).

³¹²The European Liberal Democrat and Reform Party (ELDR) was a European political party founded in 1976 and succeeded by the ALDE party as from 2004, which is composed of 60 national-level liberal and democrat parties across Europe and is mainly active in the European Union. Like all European political parties, the ALDE Party operates transnationally within Europe and is made up of national parties, rather than individual MEPs.

³¹³ *Reclaiming Liberalism: Shaping a modern liberal approach to migration*, 22 March 2015, Mansfield College, University of Oxford, United Kingdom. Available at: <https://www.aldeparty.eu/news/liberal-around-europe-and-world-gather-oxford>, last accessed on 20 January 2019.

for a new European Agenda on Migration on 23 April. In the document, ALDE called for the introduction of a centralized, two-step refugee distribution scheme to replace Dublin. This entailed, among other things, the voluntary offer of spaces by each Member State; if insufficient, this had to be complemented by compulsory redistribution, based ‘on both quantitative data (GDP and the Member State’s population) and qualitative data (language, cultural ties, family ties of the refugee)’ (ALDE, 2015, p. 6). As explained by a political advisor from the ALDE group,³¹⁴ the time usually required to find a compromise in such a variegated group – 21 Member States and 60 different national parties – prompted an early debate on the issue and thus the early formation of the group’s *win-set* on migration.

The main task for the ALDE Shadow Rapporteurs and political advisors was to clarify and provide reassurance on the content of the legislative texts to their MEPs. The clarifications provided by the ALDE Shadow Rapporteurs aimed at ensuring that the procedural complexity of the decision-making process and *negative press* coverage in their respective domestic arenas would not get in the way of showing the Group’s support at the consultation plenaries.³¹⁵ This proved more challenging than expected due to the presence within the Group of eight parties that were at the time part of national governing coalitions: in the face of the increasing popularity of far-right, anti-migrant parties and movements at home, these parties in government would be sending different (i.e. more realist) messages to their domestic audience (*level II*) than they would within ALDE. As stated by the same ALDE political advisor relating to the political debate surrounding the first Commission’s proposal:

They [Ministers] might be saying one thing in the Council, and then saying [to] their colleagues and MEPs a slightly different thing. No, no it’s not mandatory, but yes yes, it is mandatory... Having to explain [at the national level] that it’s not mandatory but in the end we reached the same [result] because Member States are basically, not very publicly, but pretty much signed up to the same numbers as the Commission put forward in the mandatory Scheme.³¹⁶

Unlike the other groups, the European Conservatives and Reformists Group (ECR) clarified that for them relocation ought to be based only on voluntary contributions as decided directly by the governments, or in Putnam’s words the executive was *centralized at level II*. In particular, the ECR was sceptical towards the proposed distribution key, insofar as

³¹⁴ Interview with ALDE political advisor (P9), January 2019, Brussels (Belgium).

³¹⁵ Interview with P9.

³¹⁶ Interview with P9, January 2019.

‘[s]tatistics, numbers, and graphs rarely reflect the true local and national effects of decisions in the area of migration and asylum’ (Kirkhope, 2015, p.3).

The only two groups not to clarify their *win-sets* via the publication of a position paper were the populist and Eurosceptic Europe of Freedom and Direct Democracy Group (EFDD) and the far-right Europe of Nations and Freedom Group (ENF). The failure to do so pertained mainly to the great diversity of political stances at stake in the two groups, as well as the ENF’s late foundation (15 June 2015). As a result, both the EFDD and the ENF gave their MEPs the ‘absolute freedom of vote’,³¹⁷ with no attempt at consensus seeking.³¹⁸

6.3 THE REFUGEE RELOCATION SCHEME: LEVEL I POLITICS IN THE EP

With the EP’s Committee on Civil Liberties, Justice and Home Affairs (LIBE) in charge of drafting a Report on the two Refugee Relocation Decisions, the primary objective for Rapporteur Ska Keller (Greens/EFA) was ‘to put down in black and white a bit of what we thought about it, and what our requests were’.³¹⁹ The results obtained in the relevant Committee vote on the first Refugee Relocation Decision – 42 Members in favour, 13 against, 3 abstentions – were praised by the Rapporteur as an example for the Council of unity:

While member states are muddling through and cannot agree on how to distribute 40,000 refugees, our committee has supported a binding distribution key by a large majority ... We are also calling for a permanent distribution mechanism which must go substantially beyond the current proposals. [...] Respecting the interests of refugees is essential for the success of the distribution key (LIBE Committee, 2015).

As explored in the following paragraphs, the cross-group unity achieved by the Rapporteur on this and the second Committee votes came at the cost of a less ambitious and maximalist agenda tabled by the EP as a whole on refugee relocation and responsibility-sharing, in order to bring the Conservatives and Centre-Right on board.

When commenting on how the LIBE report was drafted, an ALDE political advisor explained how there was then – as there usually is on these policy matters – ‘a kind of alliance between S&D, ALDE, Greens, GUE/NGL and the Rapporteur on this was Ska

³¹⁷ Interview with ENF Political Advisor (P31). January 2019, Brussels (Belgium), translated by the author.

³¹⁸ Phone interview with EFDD political advisor (P1), October 2018, translated by the author.

³¹⁹ Interview with P1, October 2018.

from the Greens, so automatically we would in a group of friends on these issues.³²⁰ This was not the case for the EPP. According to Jeroen Lenaers – substitute Member for the LIBE Committee – Rapporteur Ska Keller knew very well that ‘she needed at least half of the EPP in order to get a majority in the European Parliament.’³²¹ For this to occur, he continued, a careful formulation was needed in the LIBE report. As a result of the Rapporteur’s efforts, the concerns raised by the EPP group were effectively reflected in a swift change in the amendments proposed in the official Report (European Parliament, 2015c). For the EPP to agree, the Rapporteur ensured that the preferences of asylum seekers would only be included ‘to the extent possible’ (2015c, p. 35), whereas the numbers of refugees to be relocated would be kept to the same level proposed by the Commission with a possible adjustment accounting for the evolution throughout the Summer.³²² While the draft Report had called for an amendment in numbers of asylum seekers to be relocated from 40,000 to 50,000 (European Parliament, 2015a, pp. 8; 16), in the final Report it was only in the Explanatory Statement that the Rapporteur suggested increasing that number in the future ‘to 50 000 as a minimum’. (European Parliament, 2015c, p. 34).

Thanks to these and other small adjustments in the wording, all but one of the related roll-call votes tabled in the plenary of 9 September passed by a majority.

Alongside these efforts, the EPP also successfully ensured that MEPs from the group who attended the LIBE vote would all be aligned to the reached compromise:

What we did try to do of course is to make sure that in the LIBE vote, so in the Committee vote, we would have people there that would represent the EPP line. And the EPP group line was that we were in favour of a mandatory binding mechanism. So, for instance, you tried to make sure that [when] people were absent from the vote, that they are being replaced by people who follow the EPP group line and not people who.. go against the EPP group line.³²³

A closer look at the Committee Report, with a particular emphasis on the substitutions made ahead of the LIBE Committee vote on this legislative dossier, further corroborated Lenaers’ statements. Among the Substitute Members who were present for the vote of the 28th July, four out of eleven were MEPs from moderate national parties belonging to the EPP group, namely: Anna Maria Corazza Bildt (*Moderate Party*, Sweden), Teresa

³²⁰ Interview with P9, January 2019.

³²¹ Interview with P24, January 2019.

³²² Interview with P24, January 2019.

³²³ Interview with P24, January 2019.

Jimenez-Becerril Barrio (*Partido Popular*, Spain), Jeroen Lenaers (*Christian Democratic Appeal [CDA]*, the Netherlands) and Eliza Vozemberg (*New Democracy*, Greece). Under Rule 200(2),³²⁴ four out of the six substitutions made followed the same political rationale, meaning that they all came from moderate national parties: Herbert Reul (*CDU*, Germany), Vladimir Urutchev (*GERB*, Bulgaria), Tom Vandenkelaere (*CD-V*, Belgium) and Wim van De Camp (*CDA*, the Netherlands). The speed with which the EPP aligned itself to the compromise found with the Rapporteur (*cut-slack*) in spite of domestic pressures suggests a high degree of centralization and group discipline, as reported in other scholarly literature (Hix, 2002, pp. 690–691).

The legislative procedure for the second Decision – a total of thirteen days from the publication of the proposal on 9 September to its adoption on 22 September – was much shorter than the first one. As a result of the short timing and the mostly unchanged legislative text, neither the LIBE nor the Budget Committees produced a different opinion. The only remarkable aspect was to see how domestic contestation weighed in preparatory EP debates (European Parliament, 2015b). In a debate on 8 September, a striking amount of references to domestic pressures and national preferences was reported among MEPs. Non-affiliated MEP Janusz Korwin-Mikke (*Confederation Liberty and Independence*, Poland) highlighted how his country ‘has dozens of problems, [and] we have a problem with migrants’, and defined the relocation policy as an ‘absurd policy.. we have a wave of human garbage that comes to Europe and doesn’t want to work... this will lead to the destruction of Europe’. Slovak MEP Monika Beňová (S&D) brought attention to the fact that ‘these issues are viewed differently dependent on which Member State you are talking about’ and reproached to EU institutions for failing to ‘find a manner to get this issue across the population’ and communicate it in an effective manner. Czech MEP Mach (EFDD) threatened that ‘if you vote a binding quota through in our country, then the public would not like to remain in the EU’. As shown in Section 6.5, domestic politics had heavy repercussions on the degree and nature of coalition-building at the EP, particularly in the second consultation procedure on 14 September 2015.

³²⁴ Under Rule 200(2), ‘in the absence of the full member and where permanent substitutes either have not been appointed or are absent, the full member of the committee may arrange to be represented at meetings by another member of the same political group, who shall be entitled to vote. The Chair of the committee shall be notified of the name of the substitute prior to the beginning of the voting session’.

Looking at the voting dynamics in the two EP plenary votes, referred to as vote 1 and vote 2 respectively in the Table 6.2 below, the total number of MEPs supporting the second Decision ('Pro Vote') diverged from the first by 25 percentage points. The EFDD was the only group whose number of MEPs voting in favour remained unchanged across the two RCVs. Besides the ENF and the EFDD, all remaining groups lost between 18% and 78% of 'Yes' votes: namely, the ECR went down by 78%, GUE/NGL by 38%, Greens/EFA by 25%, the S&D by 23%, the EPP by 27% and ALDE by 18%. While the amount of 'No' votes ('Anti Vote' in the table) went consistently down with the exception of S&D, in addition 15 more MEPs abstained ('Abst. Votes') and 143 more MEPs were absent ('Absent Votes') in the second as compared to the first RCV. The increase in absentee two- to fourfold was visible in all groups, with peaks among the Independent MEPs NI (+175%), ENF (+1200%), GUE/NGL (+250%) and EPP (+280%).

TABLE 6.2: VOTING BEHAVIOUR ON EP RESOLUTIONS A8-0245/2015 AND C8-0271/2015, BY EP POLITICAL GROUP

EP GROUP	PRO VOTE 1	PRO VOTE 2	%Δ	ANTI VOTE 1	ANTI VOTE 2	%Δ	ABST. VOTE 1	ABST. VOTE 2	%Δ	ABSENT VOTE 1	ABSENT VOTE 2	%Δ
ALDE	51	42	- 0.18	7	4	- 0.43	4	3	- 0.25	9	22	- 1.44
ECR	9	2	- 0.78	58	49	- 0.16	0	6	- 6.00	7	17	- 1.43
EFDD	17	17	- 0.00	25	23	- 0.08	1	0	- 1.00	2	5	- 1.50
ENF	0	0	- 0.00	36	25	- 0.31	1	0	- 1.00	1	13	- 12.00
GUE/ NGL	42	26	- 0.38	2	0	- 1.00	2	4	- 1.00	6	21	- 2.50
NI	0	1	- 0.00	9	3	- 0.67	1	0	- 1.00	4	11	- 1.75
EPP	158	115	- 0.27	18	14	- 0.22	26	31	- 0.19	15	57	- 2.80
S&D	173	133	- 0.23	3	6	- 1.00	2	10	- 4.00	12	41	- 2.42
GREENS	48	36	- 0.25	0	0	- 0.00	0	0	- 0	2	14	- 6.00
TOTAL	498	372	- 0.25	158	124	- 0.22	37	54	- 0.46	58	201	- 2.47

Source: Author's own on the basis of empirical research illustrated throughout the chapter.

Commenting on the change in intra-EPP voting dynamics between the two plenary votes, Lenaers stated that there was no pressure on MEPs either to vote in favour of the second Decision or to be absent for the plenary:

[I]n our.. parliamentary group, there is always room, if you have a principled issue, that you can vote according to your conscience, so that [pushing to be absent for the plenary] was not.. not something we tried.. We tried of course to [bring on board] as many people as possible but.. if you are not in favour of this, try at least, if you could at least abstain instead of voting against.³²⁵

A similar stance regarding absenteeism was shared by an ALDE political advisor, according to whom within ALDE there are often ‘half [of the MEPs who either] for whatever reason are not present, maybe [due to a] long session of plenary, or they make mistakes, which sounds incredible but this happens’.³²⁶ The substantial increase in defections and absentees makes an analysis of *level II* politics and voting pressures essential in order to either confirm the advisor’s take on absenteeism or put it into question in the face of potential *level II* pressures coming from national parties or governments in place.

6.3 THE REFUGEE RELOCATION SCHEME: THE IMPACT OF *LEVEL II* POLITICS IN THE EP

Looking at level II voting dynamics is particularly interesting to see whether MEPs from the countries that either rejected or abstained from the second Refugee Relocation Decision at the Council level – namely, CZ, HU, SK, RO, and FI – faced *level II* pressures to vote in one direction or the other in the EP (*tied hands*). Alongside these countries, it is also useful to analyse the voting behaviour of Polish MEPs, seeing as the support provided by the Polish government at the time, led by EUCO President Tusk’s Civic Platform party, was absolutely essential to build a strong qualified majority in the Council without causing a serious rift and real division between Central-Eastern and Western European Member States (see Chapter 5). In order to better visualize how bottom-up politicization was reflected in the voting dynamics of the second Refugee Relocation Decision, the analysis undertaken in the following paragraphs is streamlined into Table 6.3 (alongside Appendixes 1 and 2): these tools are useful for the reader to have an overview on the voting behaviour of MEPs by Member State on the two EP legislative files (Appendices 1 and 2) and to cross-reference this information with the voting behaviour of parties in government from Member States (Table 6.3).

³²⁵ Interview with P24, January 2019.

³²⁶ Interview with P9.

As shown in Table 6.3 below, the Polish delegation to the EPP mostly abided by the group's request to abstain rather than voting against, when unwilling to support the majority. In fact, the number of Polish MEPs abstaining in the second Decision increased by five and 'Yes' votes fell from 11 in the first to four in the second Decision; all of the Abstain votes from Poland came from the then-governing EPP coalition led by the *Civic Platform* (*Platforma Obywatelska*) and its junior coalition partner *Polish People's Party* (*Polskie Stronnictwo Ludowe*). These two parties in government led not only the national Abstain front, but also the national efforts to side with the majority of the Parliament. This could suggest that the EPP's call for its MEPs to abstain rather than to vote against was respected by Polish MEPs, somewhat anticipating the later inclination of Poland to side with the majority at the Council level. The *Civic Platform* and its PM Ewa Kopacz, were in fact steered by President Juncker towards siding with the majority as they had already foreseen losing the upcoming elections regardless of their voting behavior on the Refugee Relocation Scheme (see Chapter 4, Section 4.4).³²⁷

TABLE 6.3: LEVEL II POLITICS IN THE EP PLENARY ON THE SECOND REFUGEE RELOCATION DECISION

Member State	Voting Behaviour at the Council	Parties in govt (EP group affiliation)	Voting behaviour at the EP
Czech Republic	Against	<i>CSDD</i> (S&D)	3 against; 1 absent
		<i>ANO 2011</i> (ALDE)	2 against; 2 absent
Hungary	Against	<i>Fidesz</i> (EPP)	8 missing; 3 against
		<i>Christian Democratic People's Party</i> (EPP)	1 absent
Slovakia	Against	<i>Smer-SD</i> (S&D)	3 against; one absent
Romania	Against	<i>PNL</i> (EPP)	6 against; 1 abstain; 1 absent
		<i>PSD</i> (S&D)	5 abstain; 6 missing; 1 for
Finland	Abstain	<i>Centre Party</i> (ALDE)	1 abstain; 2 absent
		<i>National Coalition Party</i> (EPP)	1 for; 2 absent
		<i>Finns' Party</i> (ECR)	1 against; 1 absent
Poland	In Favour	<i>Polish People's Party</i> (EPP)	3 abstain; 1 absent
		<i>Civic Platform</i> (EPP)	3 for; 13 abstain; 2 absent

Source: Author's own on the basis of empirical research illustrated throughout the chapter.

Most MEPs from Hungary's and Finland's parties in government were absent at the plenary, suggesting they may have been subject to pressures coming from their own

³²⁷ Interview with senior Commission official (P26), January 2019, Brussels (Belgium).

electorate/government and coalition partner respectively to vote in line with their own country's attitudes at the Council.

The voting behaviour of the Romanian delegation to the EP seemingly mirrored Romania's rejection of the second Decision at the level of the Council. Among representatives from the governing coalition parties – *Partidul Național Liberal (PNL)* and *Partidul Social Democrat (PSD)*, essentially an EPP-S&D coalition – the only 'Yes' vote came from S&D Vice-Chair Victor Boștinaru. The rest of the *PSD* abstained or did not attend the vote. The overwhelming majority of the *PNL* – including EPP Vice-Chair Marian-Jean Marinescu – voted against the second Decision.

Similarly, the Slovak delegation voted in line with the country's rejection at the level of the Council rather than the S&D's position, with 3 out of 4 MEPs belonging to the governing party *Direction-Social Democracy (Smer – sociálna demokracia, Smer-SD)* voting against.

This was also the case for the Czech parties in government at the time: MEPs from S&D member party *Česká strana sociálně demokratická (CSSD)* and its junior coalition partner *ANO 2011* (from ALDE) – either voted against the second Decision or did not attend the plenary, including ALDE Vice-Chair Pavel Telička. Commenting on the Czech delegation's voting behaviour in the second RCV, an ALDE political advisor suggested that, in spite of ALDE's affiliation of the then-PM:

There was some kind of acceptance and they explained... for national reasons we have a different position. We did have discussions about other ways around this.. but when the nature of these consultations is basically saying yes or no, there's not much room for manoeuvre, or discussions, so they were kind of left behind.³²⁸

In sum, *level II* coalition-building and centralized decision-making seemingly increased in the second RCV vote for parties in government in countries that either rejected, or abstained from, the relevant vote at the Council (in line with the expectations set by **TE3**).

6.4 EP GROUPS' POSITIONS ON THE EU-TURKEY STATEMENT

The European Parliament has long been at odds with the European Commission and the Council with regards to EU-Turkey relations, insofar as the former has primarily been

³²⁸ Interview with ALDE political advisor (P9), January 2019, Brussels (Belgium).

driven by a concern for human rights' violations and the rule of law (see for instance, Aydin-Duzgit and Tocci, 2015); while this holds true for the institution as a whole, the intra-parliamentary debates leading to the amendment of the second Refugee Relocation Decision via the EU-Turkey Statement further shone a light on the fundamental differences among groups on this matter.

For the Parliament as a whole, the primary concerns during this negotiation pertained to the allocated budget and human rights, often overlapping with an underlying apprehension about the implications of this statement on the EU's relative bargaining power with Turkey, i.e. how it would affect the EU's overall negotiating position with Turkey. On the budget, intra-parliamentary discussions spanned from the political justification for an increased EU budget, to finding the right way to allocate it. As an EPP advisor put it,³²⁹ there were two ways through which EPP Members debated the issue of budget vis-à-vis human rights:

The question is: what would this additional money be paid for, and where would it go? Would it turn out that President Erdogan would use or abuse this for other political purposes? This is one debate. Then you have all those, some in the EPP but mainly in the centre-left wing groups, that in any case considered that this was not a way to proceed, that this was not humanitarian to outsource this migration problem to Turkey, leave that to a state that they do not consider to be a reliable democracy, respecting the rule of law, respecting asylum procedures, and what have you.

Compared to the EPP, the S&D wanted to ensure there would be no clash between the allocation of EU funds and sustainable development in Turkey. According to the Parliament's Rapporteur on Turkey Kati Piri (S&D), the group's main budgetary concerns were to ensure a 'responsible [expenditure] of taxpayers' money' but also, and most importantly, to guarantee the 'social cohesion' of the allocated budget by empowering local municipalities rather than by using UN agencies or foreign NGOs as a default for political reasons.

The second category of concerns raised by many MEPs across different groups pertained to both the legal and the humanitarian bases for the 'deal'. According to an EPP advisor,³³⁰ the intra-group debate on this matter was even more heated than that on the two Refugee Relocation Decisions. In particular, many MEPs felt the EU should have aimed at using IPA pre-accession funding only and justify it 'as the ideal occasion to prove that they

³²⁹ Interview with EPP political advisor (P27), January 2019, Brussels (Belgium).

³³⁰ Interview with P27.

[Turkey] would be a valuable member in the South East that would basically protect our borders'.³³¹ Furthermore, from a humanitarian point of view, many MEPs from the EPP were not convinced that Turkey was a fully functioning democracy and started questioning the morality of ‘outsourc[ing] our humanitarian problem we have and turn[ing] a blind eye to what actually happens’.³³²

While raising reasonable concerns, however, no EP group was able to come up with an alternative solution to the deal with a comparable outcome. On top of the lack of workable policy alternatives, most liberal-leaning groups also nurtured concerns about voting indirectly against their own Commissioner/Commission President (in the case of the EPP)³³³ or some of their own political parties (in the case of ALDE). As stated by the same advisor:³³⁴

No one at least to me came forward with a solid plan B, with a solid alternative. [...] I said it back then, being the advisor of the EPP group, [that] it would be ill advised to go against our own Commission’s President, to go against our own Commission, right? [...] so one line that has always been followed, or tried to be imposed by the Germans back then was to stabilise Juncker, to stabilise Avramopoulos, to not give a signal to the outside world that the EPP group is in contradiction with its own Commissioner and Commission’s President. You can sometimes question, or you can dislike political measures but in the end there’s also the party’s political line that plays a role.

A similar concern prevented ALDE MEPs from ever seriously considering voting against the proposal. As explained by one ALDE advisor, ‘it would [have been] hard to do something, to torpedo through this’, seeing as it was the Dutch government and the governing party *VVD* (ALDE Member) that were among ‘the main architects of the deal’.³³⁵ Taken together, these findings would suggest the applicability of **TE5**, seeing as the already ancillary role played by the EP under consultation was further downscaled in the presence of an alignment between the Commission’s and the European Council’s political agendas.

The last concern for the Parliament as a whole related to visa liberalization as a *de facto* currency of exchange for the 1:1 mechanism. The vast majority of EPP Members considered the 1:1 mechanism to be a good idea, whereas the issues of visa liberalization

³³¹ Ibid.

³³² Ibid.

³³³ Interview with former EPP political advisor (P27), January 2019, Brussels (Belgium).

³³⁴ Interview with P27.

³³⁵ Interview with P9.

and the opening of accession chapters – let alone the financial rewards promised – remained controversial: as explained by MEP Lenaers, ‘We like the mechanism, but we are not sure especially about this part of the visa liberalization and [the] opening of new chapters... and then in the end nothing came from it’.³³⁶ For ALDE, the 1:1 mechanism for readmission was ‘quite [a] heated concept’.³³⁷ In order to overcome their concerns, ALDE advisors reframed the presentation of the 1:1 mechanism in a way that ‘didn’t necessarily affect our side of things... [be]cause the result is that more people are coming into the EU’ rather than dying at sea.’³³⁸

A similar tactic was used by centre-left groups to contain concerns over the prospects of visa liberalization; their advisors, Rapporteurs and Shadow Rapporteurs stressed the fact that it would not have been possible for the Commission to fast-track visa liberalization without the Parliament’s approval.³³⁹ As further expanded upon by the Turkey Rapporteur, this take on visa liberalization was formalized in a brief interinstitutional exchange of letters between the EP President Schultz and the Commission, whereby it was made clear that the Parliament would not ‘vote on the visa file on Turkey before [it had an assessment [on] whether Turkey fulfils all the criteria’.³⁴⁰

In spite of the array of principled concerns raised by EP groups on the legal, financial and political implications of the EU-Turkey Statement, the EP supported *en bloc* the legislative text without pushing for any ambitious amendments or improvements of the existing Statement. As shown in Section 6.5, the EP’s lack of ambition originated primarily from a pre-existing political compromise reached between the European Council, the Commission and Turkey (**TE5**) on an urgent policy issue; however, there were still interesting *level II* voting dynamics that surfaced in the consultation procedure, primarily reflecting the various national parties’ position on EU-Turkey relations.

6.5 THE EU-TURKEY STATEMENT: *LEVEL I AND II POLITICS AT THE EP*

The EP’s role in the EU-Turkey Statement was even more limited than in the first relocation Decision, insofar as there was no direct legislative procedure on the EU-Turkey Statement

³³⁶ Interview with P24.

³³⁷ Interview with P9.

³³⁸ Interview with P9.

³³⁹ Interview with P9 and with MEP Kati Piri (P25), January 2019, Brussels (Belgium)

³⁴⁰ Interview with P25.

and the EP was only consulted to use the latter in order to amend the second Refugee Relocation Decision (see Chapter 2). As explained by MEP Lenaers (EPP, Substitute LIBE),³⁴¹ despite being informed along the way via the media and unofficial cabinet channels, ‘the Parliament was completely excluded’ from the negotiations leading to the adoption of the Statement. As a result, the EP was left with two alternative pathways: a) either to block the adoption of this Decision in September 2016, in defiance of the intergovernmental consensus found earlier in March, or b) to pass the amendment while nonetheless voicing eventual concerns and criticisms.

In a relatively unambitious Report, the LIBE Committee in charge put forward two main requests. The first concerned a request to distinguish the concepts of relocation and resettlement in the text (Amendments 3 and 11), as for the EP both policies were equally necessary in order to tackle irregular migratory flows (Amendments 12 and 13). The second main request put forward was to safeguard human rights and the status of refugees (Amendments 5 and 6) and to encourage the creation of legal pathways to safe migration, thus rendering illegal entry unnecessary (Amendment 7).

The final vote in the LIBE Committee on this Decision anticipated the same *level I* and *II* political considerations that would emerge later in the plenary vote of September 2016. All of the LIBE Members or Substitutes coming from mainstream centre-right to centre-left political groups (i.e. ALDE, GUE/NGL, EPP, S&D, Greens/EFA) voted in favour. The only exceptions were two MEPs from the EPP, namely one rejection by Hungarian MEP Kinga Gal (*Fidesz*), and one abstention by French MEP Brice Hortefeux (*Les Républicains*, earlier *UMP*). Unsurprisingly, Gal voted in line with *Fidesz*, which voted *en bloc* against the Decision at the plenary; as for Hortefeux, his abstention reflected the UMP’s hostility towards Turkey’s potential accession seen in the EU elections campaign of both 2009 (see Navarro, 2015, p. 62) and 2014 (*Toute l’Europe*, 2014), alongside the internal split within his new party *Les Républicains* on the issue. The ENF, the EFDD and all of the non-affiliated MEPs voted against; half of the ECR Members and Substitutes voted against, half abstained.

³⁴¹ Interview with P24.

The EP plenary of 15 September further emphasized the divide between Conservatives, the far-right ENF and parts of the EFDD vis-à-vis the rest of the EP in relation to the divisive issues of visa liberalization for Turkey and EU-Turkey relations. As shown in Table 6.4 below, both the Greens/EFA and the S&D groups were very supportive, with only a few absences reported at the plenary. A similarly favourable stand was taken by ALDE and the EPP; of ALDE's MEPs, 73% voted in support of the amendment, while 69% of the EPP's MEPs did. The whole of the ENF voted against it, as so did the majority of the Conservatives from the ECR group, 27% of whom abstained.

TABLE 6.4: VOTING BEHAVIOUR ON EP RESOLUTION A8-0236/2016, BY EP POLITICAL GROUP

Vote	ALDE	ECR	EFDD	ENF	EPP	Greens/EFA	GUE/NGL	NI	S&D	Total
Favour	51	6	17	0	149	44	43		160	470
Against	4	41	19	33	19	0	3	9	3	131
Abstain	5	20	0	0	14	0	3	3	5	50
Absent	10	7	10	6	33	6	3	4	21	100
TOT	70	74	46	39	215	50	52	16	189	751

Source: Author's own on the basis of empirical research illustrated throughout the chapter.

As further discussed in the paragraphs that follow and shown in Table 6.5 below and Appendix 3, the plenary leading to Council Decision (EU) 2016/1754 was still somewhat subject to political pressures coming from *level II*, which prompted a variety of defections and abstentions in line with domestic politics and with the MEPs' positions on the future of EU-Turkey relations.

TABLE 6.5: LEVEL II POLITICS IN THE EP ON COUNCIL DECISION (EU) 2016/1754

Member State	Parties in govt (EP group affiliation)	Voting behaviour at the EP
Czech Republic	CSDD (S&D)	3 against; 1 missing
	ANO 2011 (ALDE)	4 against
Hungary	Fidesz	9 against; 2 missing
	Christian Democratic People's Party	1 missing
Slovakia	Smer-SD (S&D)	3 abstain; one missing
Romania	PNL (EPP)	6 for; 2 missing
	PSD (S&D)	13 for
United Kingdom	Conservative Party (ECR)	17 abstain ;3 missing
	UKIP (EFDD)	13 against; 9 missing
France	Les Républicains	4 against; 6 abstain; 6 for; 3 missing

Source: Author's own on the basis of empirical research illustrated throughout the chapter.

For instance, the voting behaviour of the UK *Conservative Party* and the *United Kingdom's Independence Party (UKIP)* seemingly reflected the domestic debate which characterized the leadup to the Brexit referendum of 2016. Particularly *UKIP*'s united rejection reminisced the way in which *UKIP*'s Vote Leave Campaign had weaponized public concerns about migration and Turkey's prospective accession to the EU in the leadup to the referendum. In turn, the UK *Conservative Party*'s united front for abstention was seemingly in line with the position of the party at the time on EU-Turkey relations: indeed, its leader and PM at the time Cameron – until July 2016 – and his successor PM Theresa May, had effectively avoided to make any public statements against Turkey's accession or immigration from Turkey (Ker-Lindsay, 2018b, 2018a).

The only three votes from within the S&D against the Statement came from the governing Czech party *CSSD*, whereas the abstainers were led by three Slovakian MEPs from the governing party *SMER* and two Danish Social Democrats (biggest party in the Danish Parliament, albeit in the opposition at the time).

As for ALDE, there were only five MEPs against and five abstainers: yet again, the only four votes against came from the Czech junior coalition partner in government *ANO 2011*, including the Vice-Chair Telicka. Not unlike the vote on Council Decision (EU) 2015/1601, this would suggest that the national sensitivity of these policy issues in Czechia had more *reverberation* than the affiliation to a certain EP group for parties in government. Another interesting aspect captured from ALDE's voting trends is that the abstain bloc was led by three Dutch MEPs from the *Volkspartij*, in spite of strong *level I* and *II* coalition-

building efforts – in view of both ALDE’s position and the Dutch efforts in adopting the EU-Turkey Statement.

As visible in Table 6.4, the EFDD was split, with a slight majority against the statement (41%), compared with 37% in favour. *UKIP* was on the forefront of the EFDD’s majority against the amendment, whereas the whole of the Italian *Movimento Cinque Stelle* voted in favour of the amendment. The voting behavior of the *M5S* was particularly striking in that the deal was soon criticized in the domestic arena on account of excessive spending required from Italy and of the promises made by Merkel of visa liberalization, considered ‘total madness’ (*Movimento 5 Stelle Europa*, 2016). According to a former EFDD advisor, while the group was internally cohesive in nurturing concerns towards the allocation of funding and Turkey’s definition as safe third country, the *M5S* was also aware that there were no existing policy alternatives.³⁴²

As for the EPP, all of the MEPs present from Hungary’s governing *Fidesz* party voted against the amendment, as so did some French *Républicains*, four Czechs from three different national parties and two Romanians from *UDMR*. Many French *Républicains* abstained, as so did a couple of Czech MEPs, two Slovakian MEPs and a few other MEPs from Czechia, Latvia, Portugal and Denmark. Unlike the UK *Conservatives*, the French *Républicains* were internally split on the vote, as shown by the fact that six *Républicains* voted in favour of the amendment: this may once again confirm the criticism often addressed to *Les Républicains* of having a double-discourse on Turkey’s accession to the EU depending on their being in government or not (Sénécat, 2019).

Overall, these findings suggest that *level I* politics was more relevant in explaining the voting behaviour of the majority in favour of Council Decision (EU) 2016/1754. However, a brief analysis of how *level II* politics impacted on EP voting dynamics was helpful to explain the voting behavior of parties in government with an anti-Turkey political agenda, or one quite conservative on visa liberalization for, and accession talks with Turkey.

6.6 CONCLUSION

In conclusion, this chapter showed that the EP’s initial efforts as agenda-setter in the outbreak of the migration crisis did not result in an ambitious political agenda or role on the issues at stake for a variety of reasons. First, the already disadvantageous position of the European Parliament in the making of the Refugee Relocation Decisions was further

³⁴² Telephone interview with EFDD advisor (P1), October 2018.

downgraded due to the political alignment found between the Council and the Commission to act unitedly in response to the crisis, much in line with *TE5*. This was even more so the case in the formulation of the EU-Turkey Statement, seeing as the EP was consulted only after the Statement was signed by EU HOSG and Turkey, in orchestration with the Commission. The centralization of the policy-making process at the Council and Commission levels of EU governance forced the EP groups to quickly come up with their own position on the matter. Secondly, particularly in the formulation of the two Refugee Relocation Decisions, bottom-up politicization of irregular immigration and refugee relocation made the EP more internally divided from within and ultimately led to an unambitious policy agenda.

Under consultation, the only negotiating leverage left to the EP would have been to be united to be influential and to advance forward-looking amendments.

In the case of the Refugee Relocation Scheme, however, the Rapporteur’s need to get the Centre-Right on board in order to come across as united in front of other EU institutions came at the cost of a less far-reaching Opinion. Indeed, the EPP’s concerns were successfully integrated into the final text insofar as the group had a relatively narrower *win-set (tied hands)* compared to other mainstream EP groups and only sided with the majority on the two Decisions as the benefits from ratifying it surpassed the costs of blocking it. As shown in this chapter, the issues of relocation and irregular immigration *reverberated* so strongly at home (*level II*), particularly in Central and Eastern Europe, that *level II* political considerations were as important as, or even trumped, the MEP’s loyalty to his/her EP political group’s line (*level I*), leaving MEPs torn between “competing principals” and compromising the unity of the EP on this issue. This was particularly the case for MEPs from governing parties in countries that voted against the second Decision at the Council.

In the case of Council Decision (EU) 2016/1754, amending the second Refugee Relocation Decision by means of the EU-Turkey Statement, the EP’s role was even more marginal than in the leadup to the two Refugee Relocation Decisions due to the structural disadvantages fully disentangled in Chapter 2. This added to the frustration of the Parliament as a whole, which was left with the option of either passing the legislative text with minor comments or blocking the proposal altogether. The option of rejecting the proposal was briefly taken into consideration due to shared concerns for human rights, democracy and the allocation of EU funding, let alone the prospects of visa liberalization

for Turkish nationals. However, the lack of sound policy alternatives and considerations on the party affiliation of chief negotiators for the Statement left the EP with no option but to pass the amendment.

Overall, this chapter shows that the EP's marginality in consultation procedures increases in the presence of a political alignment between the Commission and the Council (**TE5**). Most importantly, though, it illustrates how increasing pressures from the bottom and polarized debates at the EU level, such as the ones permeating EU policy-making during the migration crisis, are increasingly weakening the EP's transnationalism due to the competing interests on related policy matters (Högenauer, 2017, pp. 1105–1106), with the unintended consequence of further undermining the EP's bargaining position in JHA affairs.

Chapter 7 – CONCLUSIONS

We must now resist the temptation to fall back into national government action. Right now, we need more Europe! Germany and France are ready. Only together will we succeed in reducing the global causes of flight and expulsion.

Chancellor of the Federal Republic of Germany Chancellor Merkel, 8 October 2015.³⁴³

Ever since the unfolding of the migration crisis, a new wave of domestic contestation and politicization of irregular migration and border control has swept the European continent and has hindered policy reform in Justice and Home Affairs. As shown in this thesis, increased media coverage and salience of the issues at stake has further aggravated the condition of political impasse in this policy area in that it has reduced the room for manoeuvre for national politicians at the domestic level. Ever since the crisis, not only has the political salience of the issues at stake increased but also, in line with the expectations of Genschel and Jachtenfuchs (2018, p. 179), there has been an increased awareness of the diversity of interests (i.e. migratory routes) at stake, thereby leaving little room for substantial policy reform in a *positive sum* game. Evidently, as further corroborated throughout the thesis, high domestic politicization, little common ground among Member States on ways forward, and competition for power in the making of policies have rendered a structural solution hard to find and to agree upon (Chapter 2).

From Hungary's EU refugee relocation quota referendum to Latvia's change of national asylum law, from a domino of border checks across Europe to the Commission's opening of multiple infringement proceedings against non-complying Member States, the migration and refugee crisis pointed out strong power-based distributive conflicts for the making of key policies in Justice and Home Affairs. Indeed, EU crisis management prompted the use of innovative policy approaches, such as explicit QMV, the invocation of 'forgotten' Treaty Articles, and unconventional political statements with third-countries, which in turn triggered a disequilibrium in the balance of power among central EU institutions and Member States, and thus turf wars.

³⁴³ Merkel addressing the EP Plenary Session of 8 October 2015, Strasbourg (France). Available at: <https://www.europarl.europa.eu/ireland/en/news-press/francois-hollande-and-angela-merkel-face-meps>, last accessed on 9 March 2021.

The main objective of this thesis has been to delve deeper into this complexity. Employing a process-tracing methodology and focusing on the negotiations leading to the two Refugee Relocation Decisions and the EU-Turkey Statement, this thesis addressed two research questions. First, how does the inter-institutional distribution of, and competition for, power among Member States and central EU institutions impact the formulation of policy outcomes in the AFSJ? Second, how does the interplay between EU-level and national-level politics influence the making of JHA policies?

To answer these questions, the main goal of this thesis was to determine the role, practical influence and bargaining strategies of Member States and central EU institutions in the making of policies in the Area of Freedom, Security and Justice, particularly at times of crisis. At a time of political crossroads in the AFSJ, the Refugee Relocation Decisions and the EU-Turkey Statement offered the ideal case studies for analysing the position of EU policy actors towards cooperation in the AFSJ, the circumstances under which Member States and central EU institutions exert influence and compete for power, as well as the influence of domestic politics in the making of JHA policies.

The thesis attempted to achieve this by deploying an analytical approach grounded in Putnam's two-level game theory (1988), allowing us to best deconstruct political incentives coming from the domestic and the supranational arenas. Under this analytical framework, multi-party negotiations, such as the ones on the two Refugee Relocation Decisions and the EU-Turkey Statement, are studied as sets of simultaneous negotiations at both the domestic (*level II*) and supranational/EU (*level I*) levels of governance, in which chief negotiators respond to, and interact with, different pressures, interests and diplomatic strategies that contribute to, or impede, a tentative agreement among the parties at stake. To complement this approach, the thesis advanced various theoretical expectations (*TEs*) in explaining bargaining dynamics in the AFSJ and tested their relevance in the formulation of the selected policies. In so doing, it took an institutional approach and studied the role, formation of preferences and bargaining position of the European Commission, the European Parliament, the Council, the European Council and the Member States in the making of the policies under analysis.

While maintaining the primary focus on the formulation of the two Refugee Relocation Decisions and the EU-Turkey Statement, the analysis undertaken provided useful insights that are emblematic of JHA decision-making in emergency situations and on highly salient issues at home. Furthermore, by analysing distributive conflicts of power among Member

States and central EU institutions, it pointed to contentious areas of JHA policy-making and to ways forward for reforming the AFSJ, which will be fully assessed in Section 7.2.

7.1 SUMMARY OF THE FINDINGS

In the introduction, the thesis advanced a variety of theoretical expectations on how decisions are made and what the intergovernmental and inter-institutional balance of power is in JHA negotiations. The introduction stated that these *TEs* would have been tested against the empirical analysis of the three selected case studies. As fully assessed in the paragraphs that follow, most theoretical expectations were met, however with different degrees of intensity.

Starting from the intergovernmental and inter-institutional balance of power in the AFSJ, the core theoretical expectation advanced (*TE1*) was that intergovernmental consensus in the AFSJ can only be reached under the lead of the Franco-German couple and with the intergovernmental support provided by the remaining founding Member States (i.e. the Benelux countries and Italy). The core argument put forward in the analysis undertaken, much in line with *TE1*, is that the evolution of this policy area is still very much dependent upon broad intergovernmental compromise, primarily driven or strongly guided by the Franco-German couple and the remaining founding Member States (i.e. the Benelux countries and Italy). In spite of earlier neo-functionalist expectations for the full supranationalization of *Title V* post-Lisbon (see, for instance, Niemann, 2012), the negotiations leading to the adoption of the two Refugee Relocation Decisions and the EU-Turkey Statement ultimately confirmed that it is in fact intergovernmental cooperation that sets the pace of European integration in the Area of Freedom, Security and Justice.

Far from representing an exception to the historical development of the AFSJ (formerly the Third pillar), bargaining dynamics during the migration and refugee crisis were consistent with post-crisis historical accounts of the centrality of immigration countries in determining bargaining outcomes in the European migration regime (Comte, 2018). According to Comte, ‘the European migration regime’s openness is the natural implication of Germany’s “benevolent hegemony” since the end of World War II’ (Comte 2018, p. 182; see also Hellmann *et al.*, 2005; Vinciguerra, 2019). In line with this, both the Refugee Relocation Scheme and the EU-Turkey Statement were formulated on the basis of the political preferences of Germany, strongly supported by the consensus found among a group of

Member States that had been receiving high numbers of first-time asylum applications in the late 2010s (i.e. the Benelux countries and France [Eurostat, 2020]), or that had otherwise been regularly exposed to irregular immigration in the past (i.e. the Mediterranean countries). In the case of the Refugee Relocation Decisions, it was only when Germany *uploaded* its policy preference for triggering Art. 78(3) TFEU, instead of activating the Temporary Protection Directive, that a large-scale mechanism for refugee relocation was formulated. In previous instances of sudden mass inflows of irregular migrants, requests for burden-sharing and refugee relocation made by other Member States were left unanswered, with the exception of the purely symbolic EUREMA pilot projects for the benefit of Malta in 2008-09 and 2011-12 (see Chapter 4, Section 4.2). Similarly, it was Germany that set the pace when formulating the EU-Turkey Statement, not only because its participation constituted a *conditio sine qua non* for forming an agreement with Turkey on irregular migration management and border control (European Stability Initiative, 2015b), but also because domestic and electoral pressures in Germany and the Netherlands prompted these Member States to act first, alongside the Commission.

While **TEI** was found to apply for all three case studies analysed, the findings gathered equally suggested that, in the prospect of continued international cooperation, the bargaining position taken by Member States in the negotiations under analysis reflected the specific intertwining between *level II* concerns and pressures, to which most Member States were exposed at the time, and *level I* attempts of coalition- and compromise-building. In line with Putnam's argument that most international agreements become possible politically under equally strong international and domestic pressures to do so (Putnam, 1988, p. 428), it is the isolation or withdrawal from the logic of European integration, not its application, which poses an existential threat to EU Member States (Bickerton, Hodson and Puetter, 2015, p. 715). In other words, as anticipated in Chapter 1 (Section 1.3.3, part I) and shown throughout Chapters 4 and 5, it is in most Member States' best interest to speak with one voice, especially when they are structurally disadvantaged by their own size and aggregate structural power. This realization, in a circumstance of continued prospects of EU cooperation in JHA affairs, reduces dramatically EU policy actors' 'temptation to defect' (Putnam, 1988, p. 438; see also Axelrod, 1984; Keohane, 1984, p. 116).

In the shaping of the two Refugee Relocation Decisions, particularly the second one, this realization explains how a series of alliances and 'friendships' at the Council made it easier for Chancellor Merkel to broker a qualified majority in spite of domestic contestation from far-right, anti-immigrant movements: particularly, the historical alliance with the Benelux

states, secured by Luxembourg as the *compromise broker* holding the rotating Presidency at the time; a spirit of reciprocity governing Franco-German relations, which ultimately convinced President Hollande to support Chancellor Merkel in spite of domestic pressures; and the ability to sway Poland and the Baltic states thanks to diplomatically effective *issue-linkages* to past and future negotiations. When formulating the EU-Turkey Statement, Cyprus's red flags were bypassed by ensuring that the final text respected that country's territorial sovereignty, with the mediation of a few friendly Member States (e.g. France, Greece); in turn, the conflicts of interests that saw Spain and Italy concerned about other migratory routes were solved once again by *issue-linkage* with future compromises on the migratory routes of interest to them (i.e. the Western and Central Mediterranean ones respectively). In other words, these concerns dissolved with the prospect of future collaboration in other negotiations (see, for instance, Axelrod, 1984; Keohane, 1984).

With regards to the hypothesised role of the Commission as a 'doer' or 'follower' depending on the institution's political mandate and the Member States' degree of engagement (**TE6**), the selected case studies evidenced a similar power pattern which saw the Commission more proactively in the lead in the formulation of the two Refugee Relocation Decisions. Indeed, the European Council gave a general political mandate to the Commission to consider options for changing the *status quo* and formulating a first proposal for relocation on a voluntary basis. Even after a first Decision was agreed upon in July, the Commission was able to maintain the lead in the negotiations on a second proposal for quota-based relocation. This was possible thanks to the high politicization of the Commission under Juncker's leadership (Dinan, 2016; Kassim and Laffan, 2019; Nugent and Rhinard, 2019; Schmidt, 2019), as well as the political backing provided by Germany and France on this policy issue. The Commission 'recycled' the two-level game bargaining outcome achieved on the first Refugee Relocation Decision to propose a second, mandatory-based Refugee Relocation Decision under the same legal basis of Art. 78(3) TFEU. In so doing, it maintained that the principles of subsidiarity and proportionality would only be respected by confronting the crisis with intra-European solidarity and EU action.

Soon after the two Decisions were adopted, however, the Member States' increased engagement in managing irregular migration and in externalizing border control and screening procedures to Turkey, not to mention the Commission's inability to deliver – or non 'deliverability' in Putnam's words (Putnam, 1988, p. 439) – on the promises made to

Turkey in the Joint Action Plan, put intergovernmental bargaining at the European Council back at the centre of EU action. The increased degree of engagement of Member States in these negotiations gradually reduced the Commission's role as a 'doer' in the making of the EU-Turkey Statement. Not only was the EU's involvement necessary to reassure Turkey of the EU's joint commitment to the talks, but it also became especially urgent in the face of increasing domestic contestation (*level II*) for Chancellor Merkel in order to win back her domestic constituency's trust before the country held three regional elections in mid-March.

On the European Parliament, there was a theoretical expectation that the EP's relevance in policy-making under consultation procedure would be directly related to the urgency of a proposal for the Commission and inversely related to the urgency assigned by Member States, and vice versa (**TE5**). This theoretical expectation was only partially met. Indeed, the selected case studies showed how the EP is even a more marginal policy actor under consultation whenever the Commission and Member States share the same political agenda. This was particularly visible in the case of the EU-Turkey Statement, where the urgency of the issue at stake for the Commission and the Member States was such that the European Parliament did not have a say on the legislative procedure until only after a political statement was signed by all HOSG and Turkey, thereby making the institution even more marginal.

At the same time, however, the cases of the Refugee Relocation Decisions indicated that high domestic salience of the issue(s) at stake and the lack of intra-EP unity can be even more crucial factors for determining the EP's inability to push forward ambitious policy agendas under consultation procedure. In the formulation of a scheme for relocation, the European Parliament was in fact only united in the early phases of agenda-setting up until April 2015, lobbying for a mechanism for refugee relocation and for intra-European solidarity, yet was divided along political and societal cleavages on how such a scheme ought to look like (see Table 6.1) Not only did the urgency for action in response to the crisis make it illogical for the Parliament to try and delay the legislative procedures in the first place, but most importantly the amount of positions taken within each political group made it difficult to act in a united manner within each individual group (see Chapter 6).

Given that the three negotiations under analysis were conducted in crisis, under the circumstances of rushed decision-making and strong asymmetry of information, **TE2**

suggested that there would be a higher probability of breakdown of negotiations. This theoretical expectation was only marginally met, given that all negotiations under analysis were ratified. While the strong consensus-seeking attempts and the lead of the Franco-German couple (**TE1**) made it possible for all three Decisions to be passed, the strong information asymmetry explained the lack of consensus on the second Refugee Relocation Decision and the unexpected use of explicit QMV for the first time in the history of the AFSJ. From Latvia's *National Alliance*, to Finland's *True Finns' Party* and Denmark's *Liberal Party*, the participation of a right-wing minority party in a governing coalition or external support provided by right-wing parties to a minority national government (i.e. Denmark's case) rendered the *win-sets* of these countries more volatile and prone to responding to pressures coming from the opposition, or to suffering the ex-post ramifications of not doing so (see Chapter 4).

Lastly, this thesis had clear theoretical expectations about the effect of aggregate structural power and other individual and institutional sources of influence in determining the relative weight of Member States in JHA negotiations: **TE3** and **TE4** suggested that issue salience at home would affect a Member State's relative influence in negotiations at the EU level in two ways. For **TE3**, Member States for which a certain policy issue is particularly salient at home would exert more power in related negotiations than otherwise expected by the Member States' aggregate structural power. For **TE4**, the high domestic salience of the issue(s) at stake would lead structurally disadvantaged MSs to employ individual and institutional sources of power as a way to counter the balance of power, albeit unsuccessfully so.

Notwithstanding the EP's marginal role in the making of these policies, the high domestic salience of these issues strongly reverberated within EP group debates and led to defections in line with *level II* politics especially in Central and Eastern Europe. This was in line with **TE3** and the fact that structurally disadvantaged Member States would exert more influence on highly salient policy-making processes that otherwise expected from their aggregate structural power. In fact, the most numerous defections from the position of the EP as a whole on these legislative dossiers were observed among the ranks of MEPs that were subject to equally strong, if not stronger, political pressures coming from the domestic arena than from their own EP groups. This dynamic was particularly in evidence where the stance taken by the PM or the Ministry in charge of the issue at stake differed from that of the MEP's own political group within the EP. In the making of the second Refugee

Relocation Decision, this voting trend was particularly apparent for countries whose Head of State/Government and/or Ministry in charge had clearly stated in the Council that only voluntary relocation would be acceptable and had thus voted against, or abstained from this Decision in view of its mandatory nature. In other words, it confirmed the fact that *level II* politics can and do trump *level I* coalition-building in the circumstance of high domestic salience.

Even in the case of the EU-Turkey Statement, where intergovernmental consensus among HOSG had been found before consulting the Parliament, all Eurosceptic parties from the ENF political group were united against the Decision, as were over half of the Conservatives from the ECR group (see Table 6.3). Among the EPP, the S&D, ALDE and the EFDD, the overwhelming majority of the outliers voting against Decision (EU) 2016/1754 came from Eurosceptic parties, such as *UKIP*, the Czech MEPs from *ANO 2011* and the Hungarian MEPs from *Fidesz*.

These findings were in line with existing literature on defection and abstentions in the European Parliament, according to which MEPs are more likely to defect or abstain from their EP group's position 'on specific questions that are of particular importance to them, but not on a general basis' (Faas, 2003, p. 860), particularly when these questions coincide with crucial interests of an MEP's national party (Mühlböck, 2017, p. 60).

While the cases analysed demonstrate the relevance of strong domestic support across Europe to achieve policy change in the AFSJ, they also served as a reminder, again in line with **TE1**, that integration in the AFSJ can be successfully achieved only by means of a *deliberative intergovernmental method*, meaning high-level intergovernmental policy coordination without further supranationalization (Puetter, 2012; Bickerton, Hodson and Puetter, 2015).

In this sense, the analysis undertaken showed the appropriateness of **TE4**, in that structurally smaller Member States can hardly shift the balance of power to their advantage, even when deploying structural or individual sources of power. This was most visible in the analysis of the role of rotating Council Presidencies in the formulation of these Decisions. As shown in Chapters 4 and 5, the rotating Council Presidency was most effective in acting as an honest compromise broker when its Chair was a) held by one of the structurally 'large' and/or well-established Member States that had the necessary political support at home and personnel at the EU level; and b) was directly affected by the issue of irregular immigration.

Indeed, the only Council Presidencies that successfully pushed forward the European agenda on the issues of refugee relocation and intra-European solidarity were medium to large Member States that benefitted from a centralized executive and had a national interest in solving the issue of irregular immigration, be it in the form of burden-sharing or border control. This was the case for France, which already in 2008 was able to introduce a voluntary mechanism for refugee relocation (i.e. EUREMA I and II) for the benefit of the country most hit at the time, Malta, as a result of its *European Pact on Immigration and Asylum*. Even if not structurally as large as France, in 2016 the Dutch Council Presidency benefitted from strong *centralization of the executive*; this, combined with the Presidency's political alignment with Germany, turned into an opportunity for the Netherlands to lead, alongside Germany, in the formulation of a carefully balanced text for the EU-Turkey Statement.

The cases of the Italian and Luxembourgish Council Presidencies (second semesters of 2014 and 2015 respectively) showed how aggregate structural power is insufficient in the absence of a centralized executive and vice versa, when seeking to make use of the rotating Council Presidency to further European integration in the AFSJ. During its Council Presidency in 2014, Italy had in fact pushed through a ‘burden-sharing’ approach with the support of the Commission, which centred around voluntary-based refugee relocation for the management of irregular migrant inflows; however, the lack of a centralized executive and of a broad majority at the national parliament overshadowed its programs in JHA affairs during the Council Presidency (see Chapter 4, p. 107). Arguably, Italy’s failure to set the agenda could also be explained in view of the fact that frontline Member States also enjoy a ‘scant bargaining power’ when it comes to making policies directly affecting their own migratory routes, insofar as they have ‘fewer viable unilateral policy options’ (Moravcsik and Schimmelfennig, 2019, p. 77).

By contrast, Luxembourg was supported by a *centralized executive* at home in the national-international nexus as it was holding the Presidency in 2015. However, its efforts in brokering a compromise on a voluntary-based Refugee Relocation Scheme did not result in the successful *uploading* of its preferences and concerns on a mandatory-based and/or permanent scheme for refugee relocation as these were not in line with the preferences of structurally ‘bigger’ Member States such as Germany or France. While holding its Presidency in the first half of 2015, Latvia suffered from the combined effect of clear structural disadvantages and a divided coalition in government, which constrained the country in the negotiations on the Refugee Relocation Scheme (Vinciguerra, 2021a).

Taken together, these findings demonstrate the relevance of **TE4** as they show how structural sources of power, such as holding Council Presidency, are relevant in negotiations (see, for instance, Hey 2003), but insufficient to shape bargaining outcomes. In so doing, they challenge the scholarly assumption according to which holding the Council Presidency serves as a ‘mechanism to equalise power differences between the EU’s small and big Member States’ (Bunse, 2009, p. 5).

Going beyond the theoretical expectations formulated at the outset of this thesis, the crisis situation triggered direct competition for power between central EU institutions and Member States, which had a defining role in the making of the two Refugee Relocation Decisions and the EU-Turkey Statement (see Chapter 2). Arguably, from as early as the Maastricht Treaty, the ‘frustrations of intergovernmental cooperation’ had led national governments ‘to voluntarily cede authority to supranational agents’ (Hooghe and Marks, 2002, p. 22) and to try to cooperate multilaterally on new areas of European activity, Justice and Home Affairs among them. With the changes in the AFSJ brought about by the Lisbon Treaty, not only did the interinstitutional balance of power fundamentally change, but emergency clauses and measures were also introduced to deal with emergency situations in the area of irregular migration and with responsibility-sharing in the AFSJ, including new standards for solidarity (Articles 78 and 79 TFEU). While the implicit understanding in the AFSJ was that irregular immigration management remained a national policy domain (i.e. Art. 79(5) TFEU), the migration and refugee crisis provided EU institutions and particularly the European Commission with the momentum to make the *Community method* a standard practice in the making of JHA policies, much like the past (see Chapter 2). This was arguably the case during post-2015 crises too, as the Commission found in the Covid-19 pandemic an opportunity to push for integrated European health management and for further communitarization of health policy.

During the migration and refugee crisis, the strategic exploitation of QMV made agreement easier to reach, particularly for the adoption of the second, quota-based Refugee Relocation Decision. However, this came at a high price in the long term. The need to act urgently in response to the crisis, pushing decisions through by QMV, had the effect of muting smaller Member States that either were against the policy altogether due to incompatible national *win-sets* (e.g. Czech Republic, Hungary, Romania, Slovakia) or that were temporarily constrained due to high domestic salience of the issue at stake (i.e. Finland). Even for countries that voted in favour, this often came at a high political price at home,

strengthening the far-right and opposition parties, as in the cases of Latvia and Poland. With hindsight, former Director-General for DG HOME Matthias Ruete said:

we were perhaps trying too quickly to move into qualified majority. But then again, this is the instrument that we have, on the level of the European Union. If we think of other crises, if we had in other crises always been in a situation where you had.. one Member State who could block every decision, you would never be able to move ahead.³⁴⁴

As per the lessons drawn from EU responses to earlier crises (see Chapter 2), policy responses to crises which involved a redistribution of powers away from the national level up to the supranational level of EU governance resonated with Member States so long as they were in line with the legacy of the Luxembourg compromise: that is, the option for Member States to veto any proposal found to be detrimental to key national interests or to be touching upon sensitive matters for national sovereignty (Miller, 2004). In many ways, this conflict of sovereignty was reminiscent of the financial crisis, whereby Southern European Member States showed a fundamental resistance towards the introduction of semi-automatic, QMV-based procedures for fiscal and budgetary disciplines against heavily indebted Member States (see Chapter 2, p. 51). The migration and refugee crisis too proved that the *Community method* is hardly enforceable to further European integration in the AFSJ, if intergovernmental consensus is not established at the Council in the first place.

Transitioning to the *Community method* in the AFSJ not only hindered the practical effectiveness of policy responses to the migration crisis, but also most fundamentally damaged the informal consensus norm for JHA policy-making, particularly for the Visegrád group. While intra-V4 cooperation only at times results in a ‘unified opinion or stance’ on a particular policy issue, over time Visegrád states have found ‘mechanisms to strengthen their shared interests in negotiations on an EU level’ (Bauerová, 2018b, p. 134). Particularly in the aftermath of the migration crisis, Visegrád countries have gradually become more unified as a coalition and have become more prone to reject *a priori* any redistributive policy, particularly in the AFSJ. Various examples can be found in JHA negotiations between 2015 and 2021, most importantly on the reform of Dublin and of the CEAS, as well as following the Commission’s 2020 proposal for a New Pact on Migration

³⁴⁴ Interview with former Director-General for DG HOME Matthias Ruete (P3), Brussels (Belgium), November 2018.

and Asylum (European Commission, 2020a). In its attempt to reform the Dublin III Regulation, the Bulgarian Council Presidency (January-June 2018) made considerable efforts to build an intergovernmental compromise on the Dublin reform, yet its efforts were frustrated due to intergovernmental conflicts of interests: on the one side, the opposition of the V4 countries to any mandatory refugee quotas and on the other the frontline states' common position on how to recast Dublin (*Politico EU*, 2018). In 2020, only the day after the Commission proposed the new Migration Pact (24 September 2020), the Visegrád group took a common position against it, particularly reproaching the failure to tackle the issue of hotspots outside of the EU in neighbouring third countries (Zalan, 2020).

Taken together, these findings serve as a reminder that lasting policy change in the AFSJ is only attainable when backed by direct or indirect political pressures coming from the domestic constituency/ies. These findings are reminiscent of Moravcsik's claim that 'concrete policy demands encourage substantive policy change, whereas symbolic identity-based demands from voters encourage superficial and formalistic changes' (Moravcsik, 2018, p. 1661). In the case of the two Refugee Relocation Decisions, symbolic pressures for more solidarity and intra-European refugee redistribution prompted Member States to engage in a costly, rhetorical debate without meeting the expectations of policy reform. An agreement was found on a symbolic policy, albeit under heavy pressure from a few 'large' Member States and the Commission, which gave a superficial, ill-advised response to the migration crisis rather than restructuring the broken Dublin system. It was the opportunistic prioritization of refugee relocation in spite of evidently divergent national *win-sets* and of the highly salient issues at stake at *level II* that broke the consensus norm in the Council on the concepts of redistribution and 'fair' burden-sharing.

In the formulation of the EU-Turkey Statement, concrete demands from the European electorate for tighter border controls and less irregular immigration led Member States' *win-sets* to converge on the common objective of stemming irregular migrant flows. Turkey was the most natural interlocutor, insofar as it was the key transit country for irregular migrants and asylum seekers to access the Western Balkans route. These findings are in line with Moravcsik and Schimmelfennig's argument on the development of the EU asylum system, rooted in the two 'enduring principles' of prevention of secondary movements and asylum-shopping (Moravcsik and Schimmelfennig, 2019, p. 77).

7.2 THEORETICAL CONTRIBUTION AND AVENUES FOR FURTHER RESEARCH

This thesis has provided a systematic analysis of bargaining and preference formation in the making of the two Refugee Relocation Decisions and the EU-Turkey Statement. In so doing, it makes a contribution to current studies of European integration, decision-making and power in the AFSJ. Particularly, it moves away from the classical approaches normally used for studying preferences in the AFSJ, which leave little space for considerations of distribution of, and competition for power among different policy actors (Tallberg, 2004, p. 1000).

From a theoretical standpoint, the analysis undertaken has the merit of representing one of the first attempts to consistently examine bargaining processes in the AFSJ under a two-level game approach. While other authors had already tried in the past to operationalise Putnam's analytical framework for the study of negotiations in EU migration policy-making (see, for instance, Munz, 2011; Reslow and Vink, 2015; Coman, 2020), these studies fell short of either unpacking Putnam's two-level game into defined variables and measurable indicators that are empirically observable across case studies, and/or making of it as much a solid operationalizable analytical framework as a smooth read without unnecessary separations of results into numerous, jargon-driven sections.

The most crucial difference between past works inspired by Putnam's two-level game and this analysis lies in that the latter gave equal weight to how both *levels I* and *II* – domestic and international politics – shaped preferences, interests and resistance points of EU policy actors in the AFSJ. Using this analytical framework for studying EU negotiations had the inherent advantage of enabling an in-depth analysis of how a policy is formulated at different levels of governance, how political pressures from *levels I* and *II* are in turn reflected onto the bargaining strategies of chief negotiators and how they lead to a particular policy outcome instead of other policy alternatives. While doing so, the framework applied consistently throughout the thesis (see Chapter 1) renders it possible to theorise bargaining dynamics in ways that are easily relatable across negotiations and it provides a replicable analytical tool which puts preferences, interests and bargaining constraints – be it from *level I* or *II* or originating from a policy actor's own structural limitations – back at the centre of analysis.

The analysis undertaken also contributes to longstanding scholarly debates on decision-making, distribution and competition for power in the AFSJ. It would be far-fetched to theorize the nature of decision-making in the AFSJ on the sole basis of the findings of three case studies, however significant they may be; equally, the findings gathered suggested that the process of European integration in the AFSJ is less deliberative than otherwise expected based on the historical development of this policy area over the last 20 years, as evidenced by the ability of a few more ‘dominant’ Member States to define how key policies are formulated in the AFSJ.

Previous crises, starting with the Eurozone crisis, had suggested that at times of political crossroads Germany is the primary deliberative agent. While the Decisions under analysis acknowledged Germany’s essential role in furthering European integration (see Section 7.1), they also indicated that the ‘deliberative authoritarianism’ or ‘harsh dictatorship’ (Schmidt, 2020) often associated with the role of Franco-German policy coordination during the Eurozone crisis do not provide an accurate representation of how decisions are made in the AFSJ. In fact, the internal functioning of the Council of the EU is still strongly guided by an informal consensus norm. Even if policies in the AFSJ are more often than not the result of a bargaining process guided by the Franco-German duo and a few *like-minded* Member States, this does not translate into Germany’s ability to impose its national preferences at the EU level without first building a broad intergovernmental consensus within the Council, as showcased by the formulation of the second Refugee Relocation Decision.

In this regard, the findings on the importance of coalitions, alliances and ‘friendships’ suggest that further research may be needed to expand on the relevance of Council coalitions in shaping bargaining outcomes in Justice and Home Affairs and other EU policy areas, such as the Common Foreign and Security Policy (CFSP). Indeed, in view of the intergovernmental nature of this policy-making area and its *issue-linkages* with security concerns, applying the same theoretical framework could be conducive for future studies of bargaining in the CFSP. The explanatory power of such studies would be further magnified by tackling the main limitations of the present study: the small-N of cases analysed in JHA decision-making and the consideration of consultation procedures only. To complement the analysis undertaken here, future studies could represent a notable contribution to scholarly literature by increasing the number of case studies under analysis and by considering how Council coalitions play out under different decision-making rules, i.e. consultation vis-à-vis ordinary legislative procedures. For instance, further research

may study whether and in what ways coalitions, alliances and ‘friendships’ at the Council have affected, if at all, a Member State’s relative power in the AFSJ before and after the first explicit use of QMV during the migration crisis.

While the analysis undertaken speaks to the existing scholarly literature on European integration, it did not seek to theorise European integration but rather to contribute to the academic debate through its findings on the intergovernmental and interinstitutional distribution of power in the AFSJ. In testing the appropriateness of the various *TEs* outlined, the nuances of the empirics gathered underscored some of the underlying weaknesses of existing theories of European integration.

In some ways, the findings on the leadership of the Franco-German *duo* in JHA policy-making could be misinterpreted as further proof of the relevance of intergovernmentalism or its many variations to explain the process of European integration in the AFSJ. Indeed, there is no doubt that the crisis circumstances under which the three policies under analysis were formulated prompted a top-down management approach, whereby intergovernmental consensus prevailed at the expense of a more deliberative decision-making process at the Council. After all, as suggested by Collett and Le Coz whilst analysing EU decision-making during the migration crisis, ‘strong Member State support and consensus are needed for core EU decisions, particularly if they deviate from established norms and processes’ (Collett and Le Coz, 2018, p. 23). For liberal intergovernmentalists, this is because Member States are the ultimate ‘masters of the Treaty’ and, by means of their preferences, they shape interstate bargaining and set the agenda for central EU institutions (Moravcsik, 1998, 2018; Moravcsik and Schimmelfennig, 2019). More specifically in the context of Justice and Home Affairs, liberal intergovernmentalists have long been interpreting divergent national preferences in this policy area as the result of the Member States’ different intake of asylum seekers over time and their ability to control external borders (Moravcsik and Nicolaïdis, 1999, p. 63), or as the result of a cleavage between host and non-host Member States for asylum seekers and refugees (Zaun, 2018, p. 54-55).

However, while the analysis showed how the pace of European integration in the AFSJ is primarily set by the Franco-German *duo* and a few *like-minded* Member States, it also proved how consensus-seeking and coalition-building are just as essential to determine lasting policy change in the AFSJ. Not to mention, the nature and scope of liberal intergovernmentalism as a theory of EU decision-making proved to be too static and narrow to account for the longer ‘time horizon of preferences’ and *issue-linkages* (Moravcsik,

2018, p. 1667) that drive Member States' behavior in the AFSJ. In order to offer a viable approach to the study of bargaining in the EU, such studies would need to be updated and complemented with elements such as 'the nature of domestic powerful veto groups, the risk acceptance of states, the nature of adjustment costs, the evolution of preferences over time and the credibility of commitments' (Moravcsik, 2018, p. 1668). The main empirical findings of this thesis reinforce this claim, particularly the 'constraining dissensus' of domestic contestation, *issue-linkages* with past and future negotiations, and the credibility of commitments when dealing with third countries on key issues in the AFSJ. The information asymmetries underscored throughout the analysis also suggest that in its crucial assumption of full information in the EU (Moravcsik and Schimmelfennig, 2019, p. 83), liberal intergovernmentalism fails to acknowledge that one of the most recurrent conditions under which economic transactions occur is in fact asymmetric information.

In many ways, a post-functionalist corrective could be considered fruitful for the studies of integration in the AFSJ, particularly insofar as post-functionalism recognizes the centrality of exclusive identity in shaping domestic contestation in Europe, as strategically 'cued by Eurosceptic political parties' (Hooghe and Marks, 2009, p. 21), as well as the key influence of national political parties in EU decision-making. However, post-functionalist studies tell us little about interactions at the EU level of governance other than noting that domestic politicization leads to increasing constraints for HOSG (Schmidt, 2019, p. 1025). Furthermore, this theory predicts that increased domestic contestation would 'stimulate decisional reform' (Hooghe and Marks, 2009, p. 21); however, the political impasse that persists in the AFSJ in spite of increased mass mobilization on the topic since the early 2010s suggests that this is not a truly compatible theory with how decisions are made in the area of JHA affairs.

While not denying the theoretical value of these theories of European integration, the thesis showed how Putnam's analytical framework, combined with theoretical expectations on bargaining and power in the AFSJ, form a much sounder theoretical framework to understand how decisions and policies are made in the AFSJ. In sum, the thesis had the merit of analysing the role, relative influence and power of different Member States and central EU institutions in the selected policy-making procedures and, by outlining a variety of theoretical expectations on the bargaining behaviour of policy actors in the AFSJ and under consultation, it provided the reader with the necessary tools to compare the

bargaining dynamics observed against common practices of decision-making and power distribution in the AFSJ. But how far does this key theoretical contribution travel beyond the case studies used to analyse decision-making in the AFSJ?

THE FUTURE OF DECISION-MAKING IN THE AFSJ

The key theoretical and empirical claims put forward in this thesis aimed to provide the reader with a novel framework of analysis to fully grasp policy developments observed in the Area of Freedom, Security and Justice in the late 2010s.

Looking at how the policy debate on solidarity and responsibility-sharing was played out between 2015 and 2021, the use of QMV to push through the second Refugee Relocation Decision broke the informal consensus norm at the Council ever since on related policy matters. In so doing, it presented the Visegrád states with an opportunity to strengthen ideological ties with each other and to formulate more common positions and objectives in EU migration policy, with the crucial implication of widening the political divide with the rest of the EU (Bauerová, 2018a). Only in November 2020, with the momentum provided by the new von der Leyen Commission and Germany chairing the Council Presidency, did the Commission propose a New Pact on Migration and Asylum (European Commission, 2020a) to try and break the longstanding political impasse on the reform of Dublin and CEAS. The proposal provided Member States with ‘the flexibility to decide whether and to what extent to share their effort’ among different forms of solidarity, including not only refugee relocation but also the sponsorship of returns or immediate operational support (European Commission, 2020a, p. 5). This was arguably in line with the *win-sets* expressed already in 2015 on refugee relocation and responsibility-sharing by the Visegrád group, Austria and a large part of Northern Europe (most notably Denmark), suggesting yet again the centrality of intergovernmental consensus for the making of policies in the AFSJ.

At the same time, the Commission made it equally clear that Member States’ solidarity contributions are mandatory in one form or the other. In particular, it reminded Member States of the legal implications of failing to comply, with a direct reference to the European Court of Justice’s Judgement on Poland, Hungary and the Czech Republic (European Commission, 2020a, p. 5), thus reiterating the supranational dimension of JHA decision-making. Most crucially, the Commission highlighted how ‘outside of pressure situations, continuous voluntary solidarity’ would be the basis for EU cooperation (European Commission, 2020b, p. 12). Seeing as the logic of introducing a QMV system in EU policy-making had always been that Member States would cede part of their sovereignty on those

issues to the Union (Meerts, 1997), the Commission's 'step back' from mandatory relocation may suggest its ultimate acknowledgement of the political failure of a QMV-led decision-making approach in the AFSJ, making it now even more difficult to revert to it in case of need in the future.

The proposal for a New Pact on Migration and Asylum suggests that there are still many open-ended questions for what concerns the determination of ultimate responsibility in asylum management. In particular, the Commission proposed a new Asylum Procedures Regulation entailing a 'flexible use of border procedures', whereby asylum claims would be 'examined rapidly without requiring legal entry to the Member State's territory' (European Commission, 2020a, p. 4); however, this proposal failed to indicate how this 'flexible' location for asylum screening procedures would be determined outside of the EU's external borders, if not in neighbouring third countries (e.g. Turkey).

If EU cooperation with neighbouring states and countries of origin in the field of migration governance may indeed represent the keystone towards the effective management of irregular migrant inflows and border control, then 'mutually beneficial partnerships' are a prerequisite for long-term success. Going beyond a mere replication of the EU-Turkey Statement, such partnerships would not only require the EU to support third countries for developing migration management capacity, as suggested in a 2020 Commission's proposal (2020a, p. 20), but they would call for a deeper understanding of the needs of the EU's strategic partners beyond capacity building and targeted financial assistance.

In its analysis of the EU-Turkey Statement, this thesis showed how the current EU conditionality framework constitutes a slippery basis for long-term agreements with third countries in the fields of irregular migration management and border control. As illustrated in practice by the developments in EU-Turkey relations, between 2016 and 2021 there has been a gradual disintegration of a trust-based strategic partnership between the EU and Turkey. As spelled out in Chapters 3 and 6, these developments were foreseeable given that the Statement was formulated in a way that failed to provide a sufficient number of attainable 'carrots' for Turkey to be persuaded to comply in the medium- to long-term, which in turn translated into growing frustration on the part of Turkey ever since 2016. Among the most crucial incentives for Turkey to comply to the Statement, already in April 2016 the then-PM Davutoğlu had signalled, as echoed by President Erdogan, that Turkey's commitment to the Statement would be dependent upon the fulfilment of visa liberalization for Turkey (Kroet, 2016); however, no relevant progress has been made on the topic ever

since the July 2016 *coup d'état*, even if this priority was reiterated as a standing priority in Turkey's political agenda long after the EU-Turkey Statement was adopted (Gotev, 2018). Neither on the modernization of the EU-Turkey customs framework nor on accession negotiations, has there been any significant progress due to political stall at the Council. Arguably, the only tangible 'carrot' for Turkey has consisted in the provision of two tranches of funding to Turkey via the Facility for Refugees; even on this matter, nevertheless, the EU had only been able to effectively disburse only slightly over 4 out of the promised 6 Billion Euros as of March 2021 (Germany's Federal Government, 2021), and it had failed to directly contract more than a few projects to Turkish authorities and Ministries due to fears of organizational misconduct and corruption. The underlying misalignment in policy priorities between the EU and Turkey became more evident between 2019 and 2020, as President Erdogan started threatening the EU at regular intervals to drop out from the Statement and 'open the gates' for Europe to refugees and asylum seekers (Al Arabiya, 2019; Euronews, 2019; DW, 2020).

Arguably, the political impasse within the Council and the failure to meet a large part of the defined objectives in the Statement originated from the general political and democratic backsliding observed in Turkey, not to mention a poor track record in fighting corruption, upholding human rights and defending freedom of the press, as well as increasingly strained relations between the two parties in view of the ongoing illegal drilling dispute in the Eastern Mediterranean. On the other hand, as shown in this thesis, the European Council's political myopia and Commission's inability to deliver on third-country partnerships in the fields of migration governance and border control seriously compromised the very credibility and effectiveness of EU conditionality in the medium-long term, for the sake of satisfying short-termism and electoral pressures originating from *level II*. Even then, with the gradual aggravation of negotiating terms between the EU and Turkey, EU CO Members have grown more adverse to renegotiating the Statement or other parts of this strategic partnership with 'a knife at [the EU's] throat' (Khan and Fleming, 2020).

These policy developments have left the Area of Freedom, Security and Justice in a standstill condition defined by the same political fault lines observed in the unbridgeable positions of Member States while responding to the migration crisis. These political divisions in turn render any Commission proposal either too far-reaching for some Member States or not enough for others (Sundberg Diez and Trauner, 2021, p. 6). Under such circumstances, further aggravated by the unprecedented economic crisis caused by the

Covid-19 pandemic, even the lead of the Franco-German *duo* will hardly unblock the political impasse in the AFSJ and succeed in far-reaching reforms of Dublin and CEAS until a lasting solution is found for securing the EU's external borders. Holding the rotating Council Presidency in the second half of 2020, Germany had promised to make of security and migration the two key priorities of its Presidency's agenda (Germany's Council Presidency, 2020b); however, it stumbled upon the same ideological fault lines observed in the making of the Refugee Relocation Decisions and failed to make of its political clout an opportunity for breakthrough on the Commission's proposal for a New Pact on Migration and Asylum.

At the beginning of this thesis it was asked what the role of Member States and central EU institutions in shaping JHA policies was, particularly at times of political crossroads. In its central claim, the thesis asserted that it is under Franco-German leadership that strong intergovernmental consensus can be built and that therefore European integration can be furthered in the AFSJ. Do policy developments in the late 2010s, one may ask, show that even under the leadership of the Franco-German *duo* it has become unattainable to further integration in the AFSJ, in full respect of the informal rule of consensus at the Council? This thesis has shown otherwise, namely that unanimous consensus *can* be found by prioritizing the effective management of the EU's external borders, third-country cooperation on resettlement and returns (i.e. EU-Turkey Statement) over solidarity measures (i.e. the Refugee Relocation Decisions) and that far-reaching reforms on the latter policy matter cannot succeed unless they are preceded by a lasting resolution on the former. Even Germany's 2020 Council Presidency acknowledged that 'in the absence of this, improvements of our internal asylum and return systems cannot be fully effective' (Germany's Council Presidency, 2020a, p. 12). In the future, could times of crisis in the AFSJ legitimize the exploitation of explicit QMV once again? The findings of this thesis suggest that walking down this escape route could fast-track legislation in the short term. However, in the long term such an approach would not only have catastrophic consequences for the unity of the EU, but it would also fail to produce the long-awaited reforms and further delay a reconciliation between Central-Eastern Europe and the rest of the EU. After all, as Donald Tusk often noted in his time as European Council President: it's the unity, stupid!

**APPENDIX 1: CONSULTATION PROCEDURE BY MEMBER STATE, EP'S LEGISLATIVE
RESOLUTION A8-0245/2015 ON THE FIRST REFUGEE RELOCATION DECISION.**

Member State	Vote				
	Abstention	Against	For	Did not vote	Grand Total
AT		4	14		18
BE		4	14	3	21
BG		2	11	4	17
CY			6		6
CZ		15	3	2	20
DE		4	86	6	96
DK	3	4	6		13
EE			6		6
ES			51	3	54
FI		3	9	1	13
FR	1	24	41	8	74
GB		41	27	5	73
GR	1	3	15	2	21
HR		1	10		11
HU		13	6	2	21
IE			8	3	11
IT		5	65	3	73
LT	2	1	8		11
LU			6		6
LV	4	2	2		8
MT			6		6
NL	2	5	17	2	26
PL	15	20	11	5	51
PT	1		16	4	21
RO	3	2	24	3	32
SE		2	18	1	21
SI			7	1	8
SK	5	3	5		13
Total	37	158	498	58	751

**APPENDIX 2: CONSULTATION PROCEDURE BY MEMBER STATE, EP'S LEGISLATIVE
RESOLUTION C8-0271/2015 ON THE SECOND REFUGEE RELOCATION DECISION.**

Member State	Vote				
	Abstention	Against	For	Did not vote	Total
AT		4	12	2	18
BE		4	13	4	21
BG		1	11	5	17
CY			6		6
CZ	3	9	3	5	20
DE		8	71	17	96
DK	1	2	5	5	13
EE			5	1	6
ES	4		43	7	54
FI	1	1	6	5	13
FR	3	12	26	33	74
GB	3	29	21	20	73
GR		1	9	11	21
HR	1		6	4	11
HU		4	3	14	21
IE			5	6	11
IT		5	51	17	73
LT		3	5	3	11
LU			6		6
LV	4	2	2		8
MT			6		6
NL		4	13	9	26
PL	20	21	4	6	51
PT			16	5	21
RO	9	7	3	13	32
SE		2	13	6	21
SI			8		8
SK	5	5		3	13
Total	54	124	372	201	751

**APPENDIX 3: CONSULTATION PROCEDURE BY MEMBER STATE, EP'S LEGISLATIVE
RESOLUTION A8-0236/2016 ON THE AMENDMENT OF THE SECOND REFUGEE
RELOCATION DECISION BY MEANS OF THE EU-TURKEY STATEMENT.**

Member State	Vote				
	Abstention	Against	For	Abstent	Total
AT		4	14		18
BE		5	14	2	21
BG		2	13	2	17
CY			5	1	6
CZ	2	17		2	21
DE	1	9	80	6	96
DK	4	3	3	3	13
EE			6		6
ES			46	8	54
FI	1	2	6	4	13
FR	8	24	32	10	74
GB	19	14	23	17	73
GR	1	3	16	1	21
HR		1	8	2	11
HU		11	3	7	21
IE			10	1	11
IT		5	64	4	73
LT		1	8	2	11
LU			5	1	6
LV	2	1	3	2	8
MT			6		6
NL	3	3	14	6	26
PL		19	25	7	51
PT	3		16	2	21
RO		3	25	4	32
SE		2	14	4	20
SI			7	1	8
SK	6	2	4	1	13
Grand Total	50	131	470	100	751

ANNEX I: SAMPLE INTERVIEW QUESTIONNAIRE



- the negotiations and what were the priorities and concerns for Poland on a political statement with Turkey?
- vii. You left office as Poland's PermRep to the EU in February 2016. To what extent did the change in government affect your position and role in the negotiations leading to the adoption of the EU-Turkey Statement? How did the change in leading negotiator at the Coreper level affect Poland's national stand on this matter, if at all?
- viii. Ahead of the consultation stage at the European Parliament for the two refugee relocation decisions and the amendment of the second one by mean of the EU-Turkey Statement, how much coordination was there with your MEPs?

ANNEX II: INFORMED CONSENT FORM



Informed consent form¹

Consent Form for PhD Research Project on the Refugee Relocation Scheme and the EU-Turkey Statement

The University of Cambridge requires that all research students secure informed consent from all research participants. I would be very grateful if you would sign and date the consent form. This will be securely stored for research purposes and not linked to any interview data.

Please tick the appropriate boxes

Yes No

Taking part in the study

I have read and understood the study information, or it has been read to me. I have been able to ask questions about the study and my questions have been answered to my satisfaction.

I consent voluntarily to be a participant in this study and understand that I can refuse to answer questions and I can withdraw from the study at any time, without having to give a reason.

I understand that taking part in this study involves an audio-recorded interview and written notes.

I understand that the audio recording will be transcribed as text and that the transcribed text, in whole or parts, will be used for the writing of the PhD thesis of Maria Chiara Vinciguerra and may be re-used in the future for other publications.

I understand that the information I provide may be re-used in written reports and/or academic publications.

I agree that personal information collected about me that can identify me, such as my name, can be quoted in research outputs.

I agree that my real name can be used for quotes.

Name of participant [IN CAPITALS]

Signature

Date

I have accurately read out the information sheet to the potential participant and, to the best of my ability, ensured that the participant understands to what they are freely consenting.

MARIA CHIARA VINCIGUERRA
Name of researcher [IN CAPITALS]

Signature

Date

¹ This informed consent form was drafted based on the latest UK Data Service and it is consistent to our current knowledge of the requirements of the General Data Protection Regulation (GDPR) which has come into effect from 25 May 2018.

ANNEX III: LIST OF INTERVIEWS

Interview Number	Name (if not anonymised)	Title (in 2015-2016)	Date	Place
P1	/	EP Policy advisor	25.10.18	Telephone
P2	Dr Nathalie Tocci	Special Advisor to HR/VP Mogherini	06.11.18	Cambridge, UK
P3	Dr Matthias Ruete	Former Director-General, DG HOME	12.11.18	Brussels, BE
P4	/	Commission Official	14.11.18	Brussels, BE
P5	/	Off the record interview	15.11.18	Brussels, BE
P6	/	Senior Czech official	15.11.18	Brussels, BE
P7	/	Senior Hungarian official	16.11.18	Brussels, BE
P8	/	IOM official	16.11.18	Brussels, BE
P9	Mr Tom Feeley	Policy Advisor and Head of Section ‘Values’, ALDE	09.01.19	Brussels, BE
P10	/	Commission official	10.01.19	Brussels, BE
P11	Director Hanne Beirens	Acting Director, <i>MPI Europe</i>	10.01.19	Brussels, BE
P12	/	Senior Slovak official	11.01.19	Brussels, BE
P13	/	Senior Italian official	14.01.19	Brussels, BE
P14	/	Council official	15.01.19	Brussels, BE
P15	/	Council official	15.01.19	Brussels, BE
P16	/	Senior Luxembourgish official	15.01.19	Brussels, BE
P17	/	Senior Luxembourgish official	15.01.19	Brussels, BE
P18	Mr Jean-Willem Beaujean	Vice Director-General for Immigration attached to the Dutch Ministry of Justice and Security, dealing with international affairs (later Director for Consular Affairs and Visa Policies and Vice Director-General for European cooperation, Ministry of Foreign Affairs)	16.01.19	The Hague, NL
P19	/	Senior Austrian official	17.01.19	Brussels, BE
P20	/	Senior Latvian official	17.01.19	Brussels, BE
P21	/	Senior Polish official	18.01.19	Brussels, BE
P22	Ambassador Léglise-Costa	Euro-Sherpa for President François Hollande and Head of France’s Secretariat General for European Affairs (later Ambassador Plenipotentiary and Extraordinary, Permanent Representative (COREPER II) of France to the European Union.	18.01.19	Brussels, BE
P23	Dr Richard Szostak	Deputy Head of Cabinet to European Commission President Jean-Claude Juncker, European Commission	21.01.19	Brussels, BE

P24	Mr Jeroen Lenaers	MEP and Substitute Member for LIBE Committee, EPP	22.01.19	Brussels, BE
P25	Ms Kati Piri	MEP, Substitute Member for LIBE Committee and EP's Turkey Rapporteur, S&D	22.01.19	Brussels, BE
P26	/	Senior Commission official	22.01.19	Brussels, BE
P27	Mr Michael Speiser	Policy Adviser for LIBE Committee, EPP (later Director for citizens' rights & constitutional affairs at EP's Directorate-General for Internal Affairs)	23.01.19	Brussels, BE
P28	/	Commission official	23.01.19	Brussels, BE
P29	/	Senior Irish official	24.01.19	Brussels, BE
P30	/	Senior Irish official	24.01.19	Brussels, BE
P31	/	EP Policy Advisor	24.01.19	Brussels, BE
P32	/	Senior Finnish official	25.01.19	Brussels, BE
P33	/	Senior Belgian official	25.01.19	Brussels, BE
P34-35	/	Commission officials	25.01.19	Brussels, BE
P36	Dr Angelino Alfano	Minister for Interior and Justice, Italy	11.03.19	Milan, IT
P37	/	Senior official	20.03.19	/
P38	Dr Gerald Knaus	Director and Founding Chairman, European Stability Initiative	21.03.19	Berlin, DE
P39-40	Mr Bilgi Can Koksal and Mr Caner Yildiz	Experts for EU Affairs, Political Affairs Department, Directorate for EU Affairs (Ministry of Foreign Affairs), Republic of Turkey	02.05.19	Ankara, TU
P41	/	Senior Swedish official	14.05.19	Brussels, BE
P42	/	Senior Turkish official	14.05.19	Brussels, BE
P43	/	Senior Danish official	15.05.19	Brussels, BE
P44	/	Senior Dutch official	15.05.19	Brussels, BE
P45	/	Senior Portuguese official	16.05.19	Brussels, BE
P46	/	Council official	17.05.19	Brussels, BE
P47	/	Senior Commission official	17.05.19	Brussels, BE
P48	/	Senior Cypriot official	17.05.19	Brussels, BE
P49	/	Senior Greek official	20.05.19	Brussels, BE
P50	Mr Marco Peronaci	Diplomatic Advisor to Italian Minister of Interior Alfano (later Plenipotentiary Minister for the Italian Minister of Foreign Affairs)	06.06.19	Rome, IT
P51	/	UNHCR official	27.09.19	Brussels, BE

<i>P52</i>	/	Senior Dutch official	04.10.19	Brussels, BE
<i>P53</i>	/	Senior Maltese official	04.10.19	Brussels, BE
<i>P54</i>	Mr Hugo Brady	JHA Advisor to European Council President Donald Tusk	15.11.19	Brussels, BE
<i>P55</i>	/	Senior British official	19.11.19	Brussels, BE
<i>P56</i>	Dr Ambassador Marek Prawda	Ambassador Plenipotentiary and Extraordinary, Permanent Representative (COREPER II) of Poland to the EU between 2012 and 2016 (later Head of the European Commission's Delegation to Poland)	21.11.19	Warsaw, PL
<i>P57</i>	/	Senior Polish official	25.11.19	Telephone
<i>P58</i>	/	Senior Spanish official	16.12.19	Brussels, BE
<i>P59</i>	/	Senior Slovenian official	17.12.19	Brussels, BE
<i>P60</i>	/	Senior Slovenian official	17.12.19	Brussels, BE
<i>P61</i>	/	Senior Commission official	17.01.20	Brussels, BE
<i>P62</i>	/	Senior Commission official	05.03.20	Telephone

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