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Towards a Profound European Asylum System?

On EU Governance during the Refugee Crisis

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Towards a Profound European Asylum System?
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Abstract

The refugee crisis has developed as one of the major challenges for EU governance in recent years. From 2013 onwards, the crisis determined the political agenda and public discourse within European politics. During that time, the numbers of asylum seekers reaching Europe increased dramatically, with more than one million people applying for asylum at the crisis peak in 2015. This paper deals with the efforts taken by the EU and its member states to mitigate and overcome the refugee crisis. How exactly has the EU reacted to the refugee crisis and how and to what extend have the EU and its governance changed throughout the crisis? These research questions are approached through a reconstructive analysis of the whole period of crisis. This approach provides for a comprehensive examination of the refugee crisis that includes all issues, measures and processes of the EU's policy reaction at the same time.

It will be argued that due to severe shortcomings of the Dublin regulation and the Common European Asylum System, a crisis in the EU's refugee policy was already predestined. This was the case from 2013 onwards. The EU approached the crisis in three stages – neglect and non-solidarity leading to unilateral approaches by affected states, supranational short-term emergency measures during the peak of crisis and enhanced cooperation with third countries, especially with Turkey, the Western Balkans states and African states – until the crisis lost traction in 2017. Yet, the asylum system's shortcomings are still not eliminated as the lasting measures of the EU's crisis management between 2013 and 2018 mainly focused on border security and externalisation. EU governance changed towards more intergovernmental, informal and regional action. Further, the crisis led to serious rows between member states, leading to the fragmentation of the EU into two blocs. With decreasing numbers of asylum seeker in the last few years, what remains is an incomplete asylum system and a political crisis among member states.

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Content

Abbreviations

AFSJ	Area of Freedom, Security and Justice
AMIF	Asylum, Migration and Integration Fund
CEAS	Common European Asylum System
CSDP	Common Security and Defence Policy
EASO	European Asylum Support Office
EBCG	European Border and Coast Guard
ECHR	European Court of Human Rights
ECJ	European Court of Justice
EU	European Union
EUROSUR	European Border Surveillance System
IBM	Integrated Boarder Management
JHA	Justice and Home Affairs
OLP	Ordinary Legislative Procedure
UNHCR	United Nations High Commissioner for Refugees

1. Introduction

For nearly a decade, the European Union (EU) has consistently been shaken by multiple crises. The financial crisis, the Eurozone crisis, the refugee crisis, the crisis of rule of law[1], terrorism, and Brexit are only part of a non-conclusive list of emergency periods the EU has had to face recently. Throughout the year 2016, Commission President Jean-Claude Juncker, in a number of statements, coined the term 'poly-crisis' for describing this current state of the EU. This poly-crisis can be summarised as a multitude of crises that "have not only arrived at the same time. They also feed each other, creating a sense of doubt and uncertainty in the minds of our people" (Juncker 2016a). These crises are so devastating due to the fact

> "that for the first time in history, we do not have to deal with one single crisis. In the past, we had crises, one at a time, which were then solved. This time, we have to deal with a poly-crisis, as it is burning everywhere; not only in Europe, but wherever it is burning outside of Europe, the conflagration is spreading into Europe." (Juncker 2016b)

In the last part of his assessment, Juncker seems to refer especially to the refugee crisis. Since 2010, the Arab Spring left many states in Northern Africa and the Middle East either destabilised or in civil war, with the most severe consequences in war-torn Syria and Iraq. By mid-2013, nearly three million people had to leave their homes due to the civil war in Syria and the military success of the Islamic State in Iraq (UNHCR 2014a). Further, the fragility of some Northern African states, especially of Libya, facilitated the development of migration routes towards Europe. Thus, from 2013 onwards[2] "the deteriorating security situation and living conditions in the EU's wider neighbourhood […] led to unprecedented numbers of third-country nationals seeking shelter and a better life in the EU" (Monar 2016: 134).

As such, the refugee crisis constitutes one of the biggest challenges in the history of the EU. Thus, this paper deals with the efforts taken by the EU and its member states to mitigate and overcome the refugee crisis. According to the sociologist Devan Pillay (2010: 25), "a crisis can dramatically alter, even overthrow the system, bringing forth a fundamentally altered state of being". Drawing on that, there will be two overall leading questions: How exactly has the EU reacted to the refugee crisis and how and to what extent have the Union and its governance changed throughout the crisis?

In doing so, this paper seeks to fill a research gap in academic literature: Although many papers deal with the refugee crisis as such, a specific period of the crisis or its consequences, no comprehensive reconstruction and analysis of the whole period of the crisis with regard to changes in the EU's governance, can be found[3].

It will be argued that due to severe shortcomings in the Dublin regulation and the Common European Asylum System (CEAS), a crisis in the EU's refugee policy was already predestined. However, the lasting measures of the EU's crisis management between 2013 and 2018 mainly focused on border security issues and externalisation so that humanitarian aspects as well as the internal dimension of the asylum policy faded out of sight. It will be further argued that

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[1] This refers to the situations in Poland and Hungary.

[2] See Eurostat (2017).

[3] Respective papers either cover a short span of time (see Jörg Monar's contributions on 'Justice and Home Affairs' in the Journal of Common Market Studies Annual Review 2015; 2016; 2017), are rather descriptive (see Carrera et al. 2015) or only very brief (see Hampshire 2016). Yet, one analysis can be found in which Marco Scipioni (2017) comprehensively describes the most recent developments in the EU's migration governance. Though, starting only in 2015, also this contribution does not have the aspiration, to deliver an analysis of the whole development.

severe conflicts between member states enhanced those developments, as general agreements on the internal dimension of asylum policy were unreachable. The result was threefold: an incomplete asylum system, discord between member states and even a partial circumvention of the EU in favour of intergovernmental or unilateral action.

This paper will proceed as follows: After this introduction, chapter 2 will shortly outline the development of the EU's migration regime until the start of the crisis in 2013 in order to emphasise the major shortcomings that led to the intensity of the crisis. Chapter 3 will then reconstructively analyse the course of the crisis with a focus on the EU's reaction to it. As already mentioned, this paper will focus on the time between October 2013, when a tragic boat capsizing, resulting in the death of hundreds of migrants, brought the crisis into the centre of media coverage and thus into public and political discourse, and the year 2018. Drawing on that, chapter 4 will examine how the EU's governance changed throughout the refugee crisis, and chapter 5 will conclude with giving an assessment of the nature of the crisis.

2. The EU's Pre-crisis Migration Regime

For a long time, a common migration and asylum policy had had a relatively low priority in European integration. Thus, it was only the Maastricht Treaty in 1993 that introduced cooperation in national migration and asylum policies. As part of the Treaty's third, intergovernmental pillar – cooperation in the field of Justice and Home Affairs – member states committed to cooperation concerning inter alia securing the EU's external border, controlling illegal immigration and a common European asylum policy (Title VI TEU_M). In 1999, the Amsterdam Treaty lifted this cooperation to a new level, establishing an 'Area of Freedom, Security and Justice' (AFSJ). Aiming to assure the free movement of people while maintaining a maximum level of (legal) security, one measure of the AFSJ was to communitarise the policy field and thus open it for majority voting as well as the participation of the European Commission and the European Parliament[4] in decision-making (Hampshire 2016: 537). This included the EU's migration and asylum policy and its cooperation in order to secure the EU's external border. Regarding the latter, another major development was the establishment of Frontex in 2004, a European agency to foster cooperation in border management. As such, Frontex was conceived to coordinate the member states' border management by assisting the training of border and coast guard personnel, carrying out risk analyses and proposing joint operations of member states (Council 2004: Articles 2-5).

Furthermore, regular working programs of the European Council set goals for the common asylum and refugee policy. Outlining a strategic agenda for asylum policy, the summit of Tampere in 1999 brought the first policies of the AFSJ on its way. The program included a closer cooperation with third countries to fight root causes and action against human trafficking (European Council 1999). The Hague Programme of 2004 emphasised a harmonisation of asylum standards and the fight of irregular migration (European Council 2004), while the Stockholm Programme (2009) called for the establishment of a common asylum system (European Council 2009). Through the Lisbon Treaty (2009), the EU asylum and refugee policy became fully communitarised, making it part of the newly created Ordinary

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[4] Although introduced in 1999, there was a five-year transition period, for which legislation remained in the hands of the Council. Communitarisation thus only became effective in 2004.

Legislative Procedure (OLP) and an object of the European Court of Justice's (ECJ) jurisdiction (Hampshire 2016: 537).

To support member states, the EU established a European Asylum Support Office (EASO) in 2011. As such, EASO staff is supposed to contribute to "facilitating, coordinating and strengthening practical cooperation among Member States" (EASO 2013: 5) in the area of asylum, especially in the conduct of asylum processes.

In the case of concrete policies, the creation of a CEAS in the year 2013 marked a significant moment in the area of asylum and migration, renewing the Dublin regulation as well as the relevant asylum directives. However, the reform of the Dublin system, which has been in place since 1997 and was already reformed in 2003, did not touch the main principle of the regulation: it determines which member state is responsible for the processing of asylum applications as well as the different obligations of this member state. At its core is the so-called first entry criteria: The member state through which the asylum seeker first entered the territory of the EU is responsible for the entirety of connected processes – starting with the asylum seeker's registration, the examination of the asylum application and providing asylum or respectively returning the person if the application was rejected (Council 2003). This remained untouched in the reform of 2013. Nevertheless, the new regulation strengthened the rights of asylum applicants by increasing the information on the process, guaranteeing personal meetings with officials and legal advice, as well as improving guarantees for unaccompanied minors (European Parliament and Council 2013). It also introduced a mechanism for early warning in case of an excessive overload for a member state. Article 17 of the renewed Dublin Regulation[5] further states that any member state can decide to "examine an application for international protection […] even if such examination is not its responsibility" according to the first entry principle. This principle will hereafter be called the *Sovereignty Clause*.

A reformed Qualifications Directive, Procedures Directive and Reception Conditions Directive complemented the reform of the Dublin regulation in order to further harmonise the CEAS. Through those directives, the EU aimed to set common standards for recognition of persons as refugees, to ensure a uniform application process and to determine EU-wide harmonised reception conditions for refugees (Hampshire 2016: 539). Overall, the CEAS aimed at fully harmonising the EU's asylum and refugee policy.

In reality this aim was not reached by the described measures. The main reason for this is that the directives only set "a threshold which national legislation must meet" (den Heijer et al. 2016: 609). This indeed maintains the adherence of minimum standards on EU level but did not lead to a full harmonisation, as member states are still responsible for their own refugee policy and can thus voluntarily go beyond the threshold. For this reason, "[r]ecognition rates continue to differ widely, and the same is true for procedural standards, reception conditions and the content of protection." (den Heijer et al. 2016: 609). It therefore matters a lot, whether an asylum seeker applies for asylum in Hungary or in Sweden, which, for a borderless area like Schengen, could lead to far-reaching consequences when it comes to secondary movements within the EU (Scipioni 2017: 9). All in all, according to Pastore and Henry (2016: 50), the "European migration regime was […] born as intrinsically asymmetrical […] unequally distributing functioning costs among EU countries" as effect of the Dublin regulation, while at the same time not inherently harmonising asylum standards within the EU. Thus, with the maintenance of merely loose cooperation between member states in case of border

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[5] This clause can already be found in the Dublin Reform of 2003.

management and at the same time by only setting minimum thresholds for asylum standards, "Member States have remained individually responsible for the management of their part of the external borders" (den Heijer et al. 2016: 615). This missing harmonisation and the asylum directives mark the most severe shortcomings of the CEAS.

3. The Crisis

As already stated in the introduction, instabilities and war in the EU's neighbouring regions led to escalating numbers of people being forced to leave their homes and to set off towards Europe. With refugees predominantly arriving in Europe through the Mediterranean, Greece and Italy were especially affected and increasingly overburdened by their obligations according to the Dublin regulation. The sheer number of incoming people since 2013, in conjunction with the shortcomings of the CEAS, led to an acute crisis situation that reached its peak in summer 2015 with a complete collapse of the EU's asylum system. This chapter will analytically reconstruct the course of the crisis from 2013 until the present in order to map the EU's reaction and its impact on the mitigation of the acute crisis. It will be argued that the EU's reaction to the crisis can be divided into three stages of crisis management, during which the Union pursued different strategies to mitigate the situation. The *first stage*, titled 'non-solidarity and neglect' (chapter 3.1) began in autumn 2013 and ended in spring 2015, followed by a *second stage* of emergency measures during the peak of the crisis (chapter 3.2). Lacking successes, the EU changed this approach again in autumn 2015, focussing on third country cooperation. This finally led to the shallow mitigation of the acute crisis situation – and the refugee crisis, for some time, vanished from public attention.

3.1 Stage 1: Non-solidarity and Neglect

During the first stage of crisis management, between autumn 2013 and spring 2015, the approach was mainly characterised by non-solidarity between member states. The situation was regarded as an Italian problem, with the effect that the EU hardly took effective measures during that time. This chapter will elaborate on the first stage of crisis management.

3.1.1 The Year 2013: Italian Crisis

Already in the years before 2013, the number of refugees crossing the Mediterranean was extremely high[6], leading to disordered and thus more and more tense situations in the Southern member states, e.g. Greece and Italy. Most solid evidence points to the cause for this condition being the result of the decision of the ECJ and the European Court of Human Rights, which already in 2011, had suspended the return of asylum seekers from other member states to Greece according to the Dublin regulation due to the bad humanitarian conditions in Greece (see ECHR 2011; ECJ 2011). The notion of a crisis, however, first arrived in the minds of Europeans on 3 October 2013, when a boat with more than 500 refugees capsized off the coast of Lampedusa, resulting in the death of 366 people (Pastore/Henry 2016: 52). For the

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[6] Numbers of arrivals via the Mediterranean varied from 59,000 in 2008 and 26,300 in 2009 towards a low of 9,700 crossings in 2010. They increased again immensely towards 70,000 in 2011, fell to 22,500 in 2012 and finally increased again to a total of 60,000 in 2013 (UNHCR 2014b: 1).

first time, the severity of the situation came to extensive public attention. Yet, despite an immediate emergency meeting of the Council of Justice and Home Affairs (JHA) on 7 and 8 October, the EU's temporary conclusions were no more than "a chorus of moral indignation and renewed promises of action" (Hampshire 2016: 546); no hard measures were taken at this meeting. This incapability of the EU and its member states to react adequately to this crisis situation forced the Italian government – while more and more refugees tried to reach Europe over the central Mediterranean – to react unilaterally. Within only two weeks, Italy launched the so-called operation Mare Nostrum, an extensive humanitarian search-and-rescue operation, which was patrolling the central Mediterranean from the Italian coast to the edge of the Libyan territorial waters (Geddes/Scholten 2016: 163; Kasparek 2015: 4). Its mission was twofold: On the one hand, there was the "declared objective of preventing similar disasters in the future" (Pastore/Henry 2016: 52), on the other hand, the operation aimed at fighting the business of human trafficking. As the costs for this operation at €9 million per month were extensively high, and the Italian coast guard was already being overstrained by the overwhelming numbers of asylum seekers at the ports, the Italian government called for solidarity by the other member states (Traynor/Kington 2013). Despite this call, the member states' response was once more insufficient: At a meeting of the European Council on 24 and 25 October 2013, the heads of states and governments' answer was merely to deploy a 'Task Force Mediterranean' to "optimize the use of EU instruments in order to avoid a repetition of the Lampedusa tragedy" (Monar 2015: 129). Only the Commission used its capabilities to allocate funds in case of an emergency, making available an amount of €30 million to the Italian government, in order to "relieve the pressure on Lampedusa" (Hampshire 2016: 546). Concerning support for the capacity of the Italian coast guard or the Mare Nostrum operation, the member states did not see the need for substantial solidarity with Italy.

It was only in December 2013 that effective measures were taken at an European level: In early December, the European Border Surveillance System (EUROSUR) became operational at the EU's Southern borders, a system that should enable Frontex to track routes of human traffickers and fight smugglers (Müller-Graff/Repasi 2014: 167). Although the prevention of catastrophes such as Lampedusa were mentioned as objectives, too, the system's focus lay on maintaining more effective security of the sea borders (Geddes/Scholten 2016: 161).

At the same time, the European Council pointed out that a future priority should also be an "[i]ncreased engagement with third countries in order to avoid that migrants embark on hazardous journeys towards the European Union", calling for "[i]nformation campaigns [...] mobility partnerships and an effective return policy" (European Council 2013: 21), thus continuing a policy that had been in place since Tampere in 1999. All in all, the EU's focus at that time lay not in addressing the obvious inequality in the CEAS or in solidarity with Southern member states, but in fortifying Europe by increased border security measures. The EU's approach was thus criticised by many NGOs, arguing that it would

> "force more and more migrants and refugees to take increasingly dangerous routes, putting their lives at risk and that these measures, coupled with limited opportunities for regular migration and [...] obtaining asylum, are among the causes of the ever increasing number of people dying on Europe's doorstep in an attempt to reach its shores" (c.f. Geddes/Scholten 2016: 161).

3.1.2 The Year 2014: First Answers of the Union

The situation continued in 2014, when asylum applications increased by 44% compared to 2013 and the crisis remained central in the media coverage due to countless capsizes in the Mediterranean[7] (Monar 2015: 128).

In the meantime, the EU continued its approach of securing borders and the enhanced return of rejected asylum seekers. By April 2014, a Readmission Agreement with Turkey had been ratified[8], and similar agreements with Azerbaijan and Tunisia had been signed. At the same time, the tensions between member states became increasingly apparent. Monar (2015: 130) for instance, speaks of "at time tense polarization between (mostly Southern) Member States demanding more intra-EU solidarity" and the majority of the remaining members which accused the Mediterranean states of ineffective border management. Indeed, so-called secondary migration – the movement of asylum seekers away from the member state they first arrived towards other member states – began to increase at that time. This was the result of Italy, and later also Greece, being unable to carry out the duty to register each arriving asylum seeker due to the sheer overload of capacities, which led to Italy allowing them to travel on to Northern member states (waving through)[9].

Again, solidarity was mostly shown through monetary means: in April 2014, the Commission once more increased the emergency funding for Italy and Greece, and the Council and the European Parliament agreed on the introduction of a new 'Asylum, Migration and Integration Fund' (AMIF) to improve the EU's asylum capacities and reception management (Monar 2015: 129). In May, first procedural ambiguities of the CEAS were addressed by the European actors: After a ruling of the ECJ, legislators adopted regulation 656/2014, determining that the principle of non-refoulement also applies to situations on sea and thus also on the Mediterranean. Therefore, each case of a refugee needs to be examined individually and general push-backs into third countries without examining the human rights conditions in those states are illegal (European Parliament and Council 2014; Müller-Graff/Repasi 2014: 171). Finally, the capacities of the EASO were also increased. In mid-2014, the office sent 56 asylum support teams to Greece, where the situation had worsened once again, as migration flows through the Eastern Mediterranean via Turkey increased immensely. Yet, with more than 35,000 open asylum cases in June 2014 in Greece alone, the support of the teams was hardly enough to prevent a further intensification of the situation on the ground (Monar 2015: 129).

The asylum debate got a new drive, when in April 2014, then candidate for Commission President – and later Commission President elect – Jean Claude Juncker presented his "five point plan on immigration". In this comprehensive approach he advocated for (1) a full implementation of the CEAS including a complete harmonisation of asylum standards throughout the EU, (2) an expansion of the EASO to reduce pressure on member states, (3) an increased cooperation with third countries, especially from North Africa to "address the root of the problem" (Juncker 2014) instead of its symptoms. He stressed (4) the need for more secure borders, and finally, (5) Juncker opted for an extension of legal ways for immigration, to ensure more controlled immigration and prevent people from the risks of human trafficking

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[7] According to the International Organisation on Migration, 3,283 migrants died in the Mediterranean on their way towards Europe in 2014 alone (IOM 2018).

[8] Yet, it would come into effect only three years after ratification (Müller-Graff/Repasi 2014: 172).

[9] However, not only the policy of waving through was the source of secondary migration. Also some already registered asylum seekers began to travel towards Northern member states in order to re-apply for asylum.

and crossing the Mediterranean (Juncker 2014). Although not entirely new, Juncker outlined the first *holistic* European approach, merging the EU's present strategies with new elements. By doing so, he gave asylum and refugee policy a new impulse.

In October, though, Italy's Operation Mare Nostrum came to an end. Despite great success – more than 150,000 migrants were rescued on the sea and 330 human smugglers arrested within the previous year (Geddes/Scholten 2016: 163) – the Italian government did not renew the mandate of its operation. The given reason was the extraordinarily high financial expense of the mission. Unofficially, however, increased critique and pressure by the EU and several member states to stop the operation can be regarded as a more likely reason. The main point of critique was the alleged high pull-factor, of the humanitarian mandate of Mare Nostrum (Carrera/den Hertog 2015: 4f.). In comparison to the previous year, the number of refugees crossing the central Mediterranean had nearly quadrupled from 60,000 to a total of 219,000 people arriving in Europe by sea in 2014 (UNHCR 2015a: 5), leading to an ever-increased policy of 'waiving through' by the Italian government and hence secondary movements in Europe (Kasparek 2015: 10f.). As a result, member states urged Italy to stop the humanitarian operation and instead opted for a smaller Frontex mission to replace it[10] (Trauner 2016: 318).

On 1 November 2014, the Frontex Operation Triton was launched by the Council to replace Mare Nostrum (Trauner 2016: 318). Its mandate and size, though, differed from its predecessor. Although composed of forces from 21 member states (Monar 2015: 133) its financial and personnel capacities were significantly smaller. Whereas the monthly budget of Mare Nostrum had been €9 million, Triton's financial resources were only €2.9 million per month – one third of its predecessor's (Geddes/Scholten 2016: 163; Trauner 2016: 318). Also, the area in the Mediterranean that Triton covered was by far smaller than the operating range of Mare Nostrum (Geddes/Scholten 2016: 163). In its mandate, Triton needs to be regarded as a mere border security mission, as the humanitarian character of its predecessor was not included in the new mandate. In order to decrease the pull-factor, the operation "was focused on sea border control and the interception of people smugglers" (Monar 2015: 133) while not including a search and rescue focus. Nevertheless, the missing humanitarian element does not imply that Triton does not rescue capsized refugees, but it also does not actively search for jeopardised boats.

Overall, in this stage of crisis management provided only minor support for affected member states. As the increased arrival of migrants through the central Mediterranean was perceived as a national problem, there was no true European answer to the crisis. Unilateral reaction was in the centre of crisis action, whereas solidarity was only shown through monetary means and measures to improve border security. Internal aspects of asylum and migration policy, such as the Dublin regulation or other shortcomings of the CEAS had not been touched.

3.2 Stage 2: EU Emergency Measures

The EU's approach to the crisis changed in spring 2015. This *second stage* of crisis management was characterised mainly by short-term emergency measures by the EU in order to reduce the pressure on Mediterranean member states. It lasted until late summer 2015.

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[10] Already since 2007, Frontex Operation Poseidon Sea had been patrolling the Eastern Mediterranean. The mandate ended in 2015 (Carrera/den Hertog 2016: 8).

3.2.1 Spring 2015: A Storm Evolves

Despite Triton having remarkable success at the beginning – it was able to rescue more than 15,000 people while arresting 57 smugglers in the first month alone – the operation could not halt the now immensely increasing numbers of refugees arriving in the EU. In the first quarter of 2015, an average of approximately 63,000 people per month applied for asylum in the European Union (Eurostat 2018) and this number even increased in the course of the year leading to the peak of the crisis in summer 2015. In addition to that, "Triton's inadequacy and the need for higher profile European responses were made shockingly evident on 19 April 2015" (Pastore/Henry 2016: 53), when 900 people died outside of the radius of Triton in the Mediterranean – in an area in which several months earlier the Operation Mare Nostrum had been patrolling (Carrera et al. 2015: 1).

Therefore, on 23 April 2015 the European Council met for a special meeting to discuss further measures in the Mediterranean. Here, the heads of states and governments agreed to triple the budget for Operation Triton and reassured solidarity with the affected member states (European Council 2015a). However, besides the important budget increase for Triton, no further effective measures were decided upon so that overall, the special meeting was again "appallingly unfruitful" (Pastore/Henry 2016: 53).

On 13 May 2015, it was then once again the European Commission that "boldly took the initiative by proposing a new European Agenda on Migration" (Pastore/Henry 2016: 53). This long-awaited policy document was the first comprehensive answer to the crisis by picking up Juncker's previously mentioned proposals, and drawing an ambitious attempt to formulate a far-reaching, coherent policy in order to mitigate the crisis (Carrera et al. 2015: 3). As such, the Commission outlined a twofold approach for better crisis management: Firstly, by means such as a more effective fight against human traffickers, measures to enhance sea rescues, plans for resettlement and relocation of refugees and increased support for frontline states, the EU's immediate response should be improved (European Commission 2015a: 3-6). Secondly, the Commission proposed a plan to address structural shortcomings of the EU's asylum system. Better border management, opportunities for legal migration, the cooperation with third countries and improvements of the CEAS, including a revision of the Dublin system, lay at the centre of this medium-term part of the Agenda (European Commission 2015a: 6-18).

Already on 27 May 2015, the Commission followed up with the first concrete proposals implementing its Agenda on Migration. It aimed to reduce pressure from the frontline states Italy and Greece, whose centres for initial reception were about to collapse due to the ever increasing numbers of arrivals (Eurostat 2015). Hence, the Commission proposed an emergency mechanism, by which 40,000 refugees should be relocated from Italy and Greece to the remaining member states within the following two years (European Commission 2015b). A resettlement programme should resettle 20,000 refugees directly from the refugee camps of the UNHCR outside of Europe. Furthermore, so-called hotspots should be installed in Greece and Italy, in which agents from Frontex and the EASO should support the local staff (European Commission 2015b). Finally, a tripling of the financial resources of Operation Triton and Poseidon[11], in order to reinstall the capacity of Mare Nostrum as well as an 'EU Action Plan against migrant smuggling' should improve the situation in the Mediterranean (European Commission 2015b). For all of those measures, the Commission proposed to

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[11] The financial reinforcement was already agreed on by the aforementioned European Council summit on 23 April 2015.

activate Article 78(3) TFEU, which allows the Council in the case of "one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries" to adopt legislation, after consultation with the European Parliament, on its own instead of through the OLP. Being used for the first time ever, the use of Article 78(3) TFEU should enable the EU to act faster to the severe crisis situation.

All in all, the Commission acted boldly with a first broad package of initiatives, addressing two pressing issues: on the one hand, the relocation and the establishment of hotspots should reduce the pressure on Greece and Italy (Bendel 2015: 21). On the other hand, the resettlement programme, the tripling up of the Frontex operations and the Action Plan against migrant smuggling should fight human trafficking in the Mediterranean (European Commission 2015b). It is needless to say that the numbers for relocation and resettlement proposed by the Commission – in total 60,000 refugees in two years – is not nearly enough, compared to 120,000 refugees which have made their way to Europe from April to June 2015 alone (UNHCR 2018). Nonetheless, the proposal needs to be seen as a first step by the Commission into the deep waters of a highly contested and politicised policy issue. A realisation of this package of initiatives would not have been able to end the crisis, nor to reduce the pressure on the frontline states significantly, but would have been an important step to move forward.

At the meeting of the Council JHA on 16 June, the large majority of ministers generally declared themselves in favour of the initiatives made by the Commission. Still, they postponed a final decision on the initiatives (Council 2015a; Pastore/Henry 2016: 53). The 'immediate action' to mitigate the crisis that the Commission hoped for in its Agenda on Migration, failed to come into effect.

On 22 June, it was the Foreign Affairs Council that approved the first measures in reaction to the renewed crisis situation. Also based on the Commission's Agenda on Migration, the Council launched the first ever Common Security and Defence Policy (CSDP) mission in the Mediterranean. Operation EUNAVFOR MED should support the Frontex operations by detecting and destroying refugee smuggling networks and their vessels (Bendel 2015: 18). In phase one of the Operation, which started on 22 June, smuggling networks should be detected and monitored. Phase two, which should begin in October[12], sought to take action against those networks by destroying their vessels in European and neutral waters, whereas a later phase three should, after approval by the Libyan government or the UN Security Council, fight traffickers even in Libyan waters (Faleg/Blockmans 2015: 1).

As EUNAVFOR MED is closely oriented to the successful anti-piracy Operation Atalanta at the Horn of Africa, the operation initially seemed very promising. However, especially NGOs criticised the mission's mandate for its lack of humanitarian components, resulting in EUNAVFOR MED not carrying out proactive search missions. In addition, it will be very difficult to fight human traffickers and destroy their vessels in international waters without harming refugees. Despite this criticism, the launch of the mission, as the first measure implementing the Commission's Agenda on Migration, in general can be assessed as a positive step towards a more effective crisis management.

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[12] After a decision of the Council, the second phase of the operation indeed started in the beginning of October 2015. At this occasion, the operation was renamed in 'EUNAVFOR MED Operation Sophia' to commemorate the birth of a girl named Sophia on an Operation vessel, whose parents were rescued only hours before (EUNAVFOR MED 2017).

3.2.2 Summer 2015: The Peak of Crisis

As crisis management still fell short of effective measures, the strained situation resulted in renewed tensions between member states. By still lacking measures in order to reduce the pressure on Italy and Greece, this forced them to continue their 'policy of waiving through', once again undermining the Dublin regulation and triggering mass secondary movements within Europe. At the same time, the main routes that refugees chose changed – due to the presence of Operations EUNAVFOR MED and Triton as well as the escalation of the Syrian civil war – towards the Eastern Mediterranean onwards to the Balkans. In addition to even more pressure on Greece, those secondary movements led to the effect of Hungary becoming the member state accepting the most refugees at that time; facing approximately 108,000 new asylum cases, Hungary – alongside with Germany had accepted more than a quarter of the total number for the entire EU between July and September 2015 (Eurostat 2015). Also under enormous pressure, Hungary decided to build a border fence to Serbia (Pascouau 2015a: 1). This unilateral policy once more led to the fragmentation of member states into two blocs. But unlike one year before, the Southern frontline states were now supported by Western and Northern European member states, leading to a division between Western against Eastern Europe. While the former demanded measures guided by more solidarity for the front states, the Eastern European member states demanded compliance to Dublin and predominantly opposed common measures and a relocation of refugees (Pascouau 2015a).

However, as the numbers of arrivals of asylum seekers reached their peak at that time, finding effective solutions became essential. At a meeting of the European Council on 25 June, the heads of states and governments agreed, as already proposed by the Commission, that effective measures including a relocation of refugees were necessary. Still, the vote on those measures was scheduled for the next meeting of the Council JHA nearly one month later on 20 July, which meant that almost three months after the Commission's ambitious Agenda on Migration, there was still hardly any decision made to mitigate the crisis. Attempts to secure the border in the Mediterranean were still the EU's only response to the crisis.

On 20 July, the Council finally came to first agreements concerning the Commission's proposals. Member states voluntarily agreed to resettle 22,504 people from refugee camps outside of Europe (Council 2015b). Although the initial proposal of 20,000 people could be surpassed in this agreement, it should not be mistaken as a great success. Firstly, the relocation mechanism based on population, GDP, number of asylum applicants in the previous five years and unemployment rate, developed by the Commission, was removed from the decision so that the agreement was purely based on a voluntary base. As a result 17 member states insisted on accepting less refugees than initially proposed by the mechanism (see table 1, page 14). Secondly, the number proposed by the Commission could only be reached in the first place, because Schengen members that are not EU members accepted resettling refugees as well.

With regard to a relocation of already arrived refugees, the member states came to an agreement as well (see table 2, page 15). Similarly to the resettlement scheme, though, the mechanism for distribution was removed and replaced by voluntary relocation, with the result that there was only space for 32,256 instead of 40,000 refugees to be relocated from Italy and Greece,

Table 1: Resettlement, decision of 20 July 2015

Member state	Allocation per distribution key proposed by the Commission (27 May 2015)	Voluntary allocation per Council decision (22 July 2015)
Austria	444	1,900
Belgium	490	1,100
Bulgaria	216	50
Croatia	315	150
Cyprus	69	69
Czech Republic	525	400
Denmark	345	1,000
Estonia	326	20
Finland	293	293
France	2375	2,375
Germany	3086	1,600
Greece	323	354
Hungary	307	0
Ireland	272	520
Italy	1989	1,989
Latvia	220	50
Lithuania	207	70
Luxembourg	147	30
Malta	121	14
Netherlands	732	1,000
Poland	962	900
Portugal	704	191
Romania	657	80
Slovakia	319	100
Slovenia	207	20
Spain	1549	1,449
Sweden	491	491
United Kingdom	2309	2,200
Norway	-	3,500
Iceland	-	50
Liechtenstein	-	20
Switzerland	-	519
TOTAL	**20,000**	**22,504**

Source: own calculation based on European Commission (2015b) and Council (2015b).

while a solution for the rest of the places for relocation was scheduled to be found until December (Council 2015b: 3). Thus, the Council could finally agree on first measures to mitigate the crisis. Yet, the scope of those decisions can be assessed as 'much too little, much too late', considering that by that time, about 1,000 refugees arrived per day in Greece alone (AIDA 2015: 56). Both the resettlement of about 22,000 and the relocation of about 32,000 refugees, respectively, within two years could not come close to relieving any pressure from the front states, especially as the Council did not agree on the establishment of hotspots to support the national personnel, as proposed by the Commission. In addition to that, the agreement did not come into force immediately, as the European Parliament, which was already in summer break, needed to be consulted before.

Hence, the situation worsened again during August. Due to the summer break, though, the Council did not schedule a single meeting for August either, with the effect that the EU's crisis response still fell appallingly short. Thus, apart from an allocation of financial resources by the Commission (Novotny 2015), no decision was made to support Greece.

Table 2: Relocation, Council decision of 20 July 2015

Member state	Allocation per distribution key proposed by the Commission (27 May 2015)	Voluntary allocation per Council decision (22 July 2015)
Austria	1,213	0
Belgium	1,364	1,364
Bulgaria	572	450
Croatia	747	400
Cyprus	173	173
Czech Republic	1,328	1,100
Estonia	738	130
Finland	792	792
France	6,752	6,752
Germany	8,763	10,500
Hungary	827	0
Ireland	-	600[13]
Latvia	517	200
Lithuania	503	255
Luxembourg	368	320
Malta	292	60
Netherlands	2,047	2,047
Poland	2,659	1,100
Portugal	1,701	1,309
Romania	1,705	1,705
Slovakia	785	100
Slovenia	495	230
Spain	4,288	1,300
Sweden	1,369	1,369
TOTAL	39,998	32,256

Source: own calculation based on European Commission (2015b) and Council (2015c).

Furthermore, not only in Greece did the crisis reach its peak in August 2015. Due to the situation in Greece, Italy, and also Hungary, secondary movements led to large numbers of unregistered refugees arriving in nearly all member states. Apart from the still applied policy of waving through, another kind of secondary migration also increased immensely at that point. Due to the severe reception conditions in some member states, already registered asylum seekers increasingly began to make their way to central European states, leading to huge disputes among involved member states[14]. To put it simply: at that time the Dublin system was basically out of practice. The situation in Hungary was especially tense, as thousands of refugees gathered in Budapest to travel on towards Austria and Germany (Thomas 2015). Consequently, Germany announced on 25 August that Syrian refugees arriving in Germany would not be returned to other member states any more, using the Sovereignty Clause of the Dublin Regulation (Hampshire 2016: 538). Two weeks later, Germany decided that no asylum seeker would be returned to Hungary any more due to the critical situation in Budapest. The effect was that even more refugees set off towards Germany. The German government justified this highly controversial decision with the need for action in the light of the situation in Hungary. Furthermore, according to the German government, Dublin had been ineffective at that time, so that "de facto the borders have become so porous that it has become difficult to determine where a person crossed into EU territory" (Gros 2015: 1). However, Germany seemed overwhelmed with the pull-factor, this decision had created and reinstated border checks towards Austria on 13 September. In the

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[13] Ireland's participation in this scheme is, due to its opt out, voluntary. It was thus not considered in the Commission's proposal.

[14] See the French-Italian border dispute on the entry of asylum seekers from Italy into France (RFI 2015)

following weeks, this triggered a chain reaction through which, "[b]eginning with Austria and Slovenia [...], other states also re-introduced border checks, initially to avoid becoming 'culs-de-sac' where asylum seekers could get stranded" (de Somer 2018: 5). Both decisions of the federal government of Germany, the decision to make use of the Sovereignty Clause as well as its unilateral decision to reinstate border checks, resulting in tremendous consequences for other member states, led to harsh criticism by those member states (see Orban 2015 and Eder/de la Baume 2015).

The situation in August 2015 thus illuminated two things quite clearly: firstly, the situation within the EU worsened drastically, becoming highly chaotic and resulting in a de facto breakdown of the Dublin system. Secondly, a European answer to this situation kept falling short. Instead, due to continuing tensions among member states, resulting in a blockade of the Council as well as the summer break, member states decided to act unilaterally. These actions were often considered by other member states as highly disputed decisions – with the effect that member states drifted apart even more and common European action receded even further away.

3.2.3 September 2015: Crucial Decisions on Relocation

Once again, an impulse of the European Commission was needed to bring the Union back together, encouraging member states to work on a European solution. In an evocative State of the European Union Address on 9 September, Commission President Jean-Claude Juncker reminded the member states that the EU had visibly failed in providing solidarity both towards refugees already arrived in Europe and towards the most affected member states. Thus, Juncker implored, "[i]t is time for bold, determined and concerted action by the European Union, by its institutions and by all its Member States" (Juncker 2015: 6). In accordance with this plea, Juncker proposed another comprehensive package of initiatives to adapt the past plans to the changed situation. Here, he proposed to relocate another 120,000 refugees under the previously suggested distribution key from Greece, Italy and Hungary to all other member states (European Commission 2015c: 10). Additionally, the proposal contained a closer cooperation with third countries, including a trust fund for Africa to fight the causes of migration. Finally, the Commission opened 40 infringement procedures against member states that violated EU legislation in asylum issues (Carrera et al. 2015: 14).

On 14 September, all eyes were on the meeting of the Council JHA. After the European Parliament had been consulted on the issue during its first debate after the summer break on 9 September, the Council finally voted in favour of the voluntary relocation of 32,000 refugees from Italy and Greece (Council 2015d; Council 2015e: 4). Four months after the initial proposal by the Commission, this watered down, voluntary measure was not at all enough and can hardly be assessed as a success, considering that the same amount of migrants reached Europe during that time *per week* (UNHCR 2015b: 1), with a total of 345,000 people having arrived since the Commission proposed the measures in late May (UNHCR 2018). However, the escalating situation seemed to make the member states act more vigorously now, as they also voted in favour of the installation of hotspots in Greece and Italy (Pascouau 2015b: 1) and had first discussions regarding the second Commission proposal on refugee relocation. Finally, the EU seemed to have found a crisis mode. Whereas Council meetings were scheduled only once a month or less during the earlier summer, the Council JHA met again on 22 September to find a solution for the second relocation of refugees. After the European

Parliament supported the proposal during its meeting on 17 September, this Council meeting is, due to its unprecedented outcome, worth a closer look.

The proposal discussed at that meeting was one of Juncker's 9 September initiatives, intending the relocation of 120,000 refugees from Italy, Greece, and Hungary to the rest of the member states. Yet, finding a solution was not easy as tensions between member states were still apparent. Two blocs, a Western European and an Eastern European bloc, had fundamentally differing views on the Commission's proposal. Whereas the Western members supported it, the Eastern bloc strictly opposed an automatic distribution. Thus, the Western European member states proposed different compromises to reach out to the Eastern bloc. To save the proposal, they removed previously included sanctions for non-compliance, as well as the distribution mechanism (Thanei et al. 2015)[15]. Also, Hungary was no longer declared a 'front state', from which refugees should be relocated to other member states[16] (Robinson 2015). Although several members changed their mind after those amendments, the Visegrád states – the Czech Republic, Hungary, Poland and Slovakia – still opposed the proposal.

After renewed attempts to come to a unanimous decision had failed, then President of the Council JHA Jean Asselborn, Luxembourg's minister for migration and foreign affairs, initiated – for the first time in the history of the EU's migration policy – taking a vote with a qualified majority[17]. After Poland had changed its position last minute and agreed to the amended version of the proposal (Salmen et al. 2015)[18], the Council voted – with 20 yes-votes and the rejection of Hungary, Romania, the Czech Republic and Slovakia – in favour of the changed proposal[19].

Summing up, the use of qualified majority can indeed be regarded a historic step, as for the first time, the Council made use of the whole spectrum of governance mechanisms set out by the Lisbon Treaty. Yet, the content of the decision itself is certainly not. After all, the Council decision only concerned a relocation of 66,000 refugees[20] (see table 3, p. 18), lacking any sanctions for non-compliance and excluding the binding mechanism that could have served as a precedent for the future. Those concessions were surely needed to facilitate a decision in the first place. Through those concessions, however, the decision was fundamentally watered down and its numbers remained insufficient to mitigate the crisis.

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[15] The new proposal thus just stated the fixed numbers. By doing so, the measure's exclusiveness was emphasised, which made it impossible to take the decision as precedence for a future distribution.

[16] This was a demand of the Hungarian government itself, in the face of its fundamental opposition of the proposal. Hungary also rejected the notion of being a 'front state'. The places for relocation, which were initially intended for relocation from Hungary, were for the time being not distributed newly in the compromise proposal.

[17] Although already introduced with the Amsterdam Treaty, the member states never used the possibility to apply the qualified majority vote in order to maintain a high consensus.

[18] Poland's change of position was essential, as until 31 March 2017, qualified majority voting could still take place under the mode of the Nice Treaty (degressively proportional weighting of votes according to population), instead of the mode of the Lisbon Treaty. In this case, Poland, Hungary, Rumania, the Czech Republic and Slovakia would have had enough votes to reject the proposal.

[19] Finland abstained, while Great Britain, Ireland and Denmark did not take part in the vote due to their opt-out.

[20] After the places for 54,000 refugees, which should be relocated from Hungary, were excluded from the final decision, no immediate solution for those could be found. Thus, it was agreed that a solution for those places should be found until December (Council 2015g: 28).

Table 3: Relocation, Council decision of 22 September 2015

Member state	Allocation per distribution key proposed by the Commission (9 September 2015)				Allocation per Council decision (22 September 2015)		
	Italy	Greece	Hungary	TOTAL	Italy	Greece	TOTAL
Austria	473	1,529	1,638	3,640	462	1,491	1,953
Belgium	593	1,917	2,054	4,564	579	1,869	2,448
Bulgaria	208	672	720	1,600	201	651	852
Croatia	138	447	479	1,064	134	434	568
Cyprus	36	115	123	274	35	112	147
Czech Republic	387	1,251	1,340	2,978	376	1215	1,591
Estonia	48	157	168	373	47	152	199
Finland	312	1,007	1,079	2,398	304	982	1286
France	3,124	10,093	10,814	24,031	3,064	9,898	12,962
Germany	4,088	13,206	14,149	31,443	4,027	13,009	17,036
Hungary	-	-	-	-	306	988	12,94
Latvia	68	221	237	526	66	215	281
Lithuania	101	328	351	780	98	318	416
Luxembourg	57	185	198	440	56	181	237
Malta	17	56	60	133	17	54	71
Netherlands	938	3,030	3,246	7,214	922	2,978	2,900
Poland	1,207	3,901	4,179	9,287	1,201	3,881	5,082
Portugal	400	1,291	1,383	3,074	388	1,254	1,642
Romania	604	1,951	2,091	4,646	585	1,890	2,475
Slovakia	195	631	676	1,502	190	612	802
Slovenia	82	265	284	631	80	257	337
Spain	1,941	6,271	6,719	14,931	1,896	6,127	8,023
Sweden	581	1,877	2,011	4,469	567	1,830	2,397
TOTAL	15,598	50,401	53,999	119,998	15,601	50,398	65,999

Source: own calculation based on European Commission (2015d) and Council (2015f).

This perfectly illustrates the shortcomings of the EU's approach in stage two. Here, the EU focussed on short-term emergency measures that should support affected member states and thus mitigate the acute crisis situation. However, the severe tensions between Eastern and Western member states resulted in the fact that those measures fell appallingly short in their extent and resoluteness, while obvious shortcomings of the EU's asylum system, such as the Dublin regulation or the CEAS, remained untouched. To put it simply, the most crucial fault of its crisis policy during summer 2015 was that the EU was not united in its approach. In a policy area, which is communitarised only on the surface, and with member states still in charge of major parts of the asylum process, a deadlock of crisis management was fatal.

3.3 Stage 3: Cooperation with Third Countries

Lacking successes, the EU hence changed this approach again in autumn 2015. In this *third stage* of crisis management, the member states, who have mainly driven the agenda from then on, focussed their approach on cooperation with third countries. Its reconstruction will be at the centre of this chapter.

3.3.1 Autumn 2015: A new Approach

At a meeting of the European Council on 23 September, the heads of states and governments changed their crisis strategy. The summit started stage three of the EU's approach. Relocation was no longer at the centre of their approach. Instead, they agreed on a closer cooperation

with third countries, especially in Africa and Turkey, to reduce the stream of refugees crossing the Mediterranean towards Europe. The European Council conclusion also called for a better protection of European borders, while at the same time assuring increased support for third countries in the Balkan as well as financial support worth €1 billion for humanitarian agencies (Bendel 2015: 15; Galpin 2016: 222).

During October, the conclusions were put into concrete policies. In a joint Council meeting of the JHA and the Foreign Affairs Councils with their colleagues from Turkey, Jordan, the Lebanon and the Western Balkans, member states agreed on a faster and more effective return of rejected asylum seekers to those countries in exchange for an additional €17 million aid for the Western Balkan. From then on, the Foreign Affairs Council especially became the most active player during this stage. Only four days after the joint meeting, the Council set out the foundation for an EU-Turkey action plan, which was agreed on by the European Council on 15 October. As such, the European Council proposed to the Turkish government closer cooperation in asylum and refugee issues, promising increased support to the Turkish government in fighting human trafficking, irregular migration, as well as granting financial support of €3 billion for the maintenance of refugee camps in Turkey. In exchange, Turkey agreed on continued support for refugees coming from Syria to Turkey and on "block[ing] the influx of irregular migrants to the EU" (Benvenuti 2017: 10). Additionally, Turkey should start to "smoothly readmit irregular migrants who entered the EU via Turkey" (den Heijer et al. 2016: 635). This plan was supposed to reduce the migration pressure on the European Union, while at the same time "ensuring an improvement of reception conditions with EU financial assistance and fundamental rights guarantees" (Monar 2016: 140). Both parties agreed on the implementation of those measures under the name of "EU-Turkey Action Plan" on 29 November 2016.

Furthermore, ten days later several EU member states met with their colleagues from the Western Balkans in order to improve the conditions along Europe's most frequently used migration route. In their action plan, the states agreed to provide better shelter for migrants, especially in Greece, facilitate a better registration of migrants and an increased combat of irregular migration (den Heijer et al. 2016: 638).

Finally, on 12 November, the EU decided on a third pillar[21] regarding the external dimension of its new asylum migration and refugee policy. On Malta, the European Council met with representatives of the African Union as well as 35 African heads of states and governments to discuss migration issues. The outcome of the Valletta Summit included two major points: Firstly, a Joint Action Plan called for an improvement of capabilities of African and European states regarding legal ways of migration, the fight of human trafficking and root causes of migration, a better protection of migrants as well as a better cooperation in the return of rejected asylum seekers. Secondly, the European states launched an Emergency Trust Fund for Africa for the support of stability and the fight of root causes of migration (European Council 2015b) worth nearly €2.6 billion (European Commission 2015e). While the EU aimed for a reduction of the migration pressure towards Europe and emphasised the huge impact the Trust Fund would have for the stability and development of African states, the approach was also criticised harshly. In this regard, it should be emphasised that considerable parts of the approach were built with immense support for African dictators in order to stop migration flows from Africa. Furthermore, the approach draws on repurposing of EU Development Aid from conditional development and good governance promotion towards a detachment from

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[21] Besides closer cooperation with Turkey and the Western Balkan states.

those principles. Thus, the EU politicised "aid as leverage for migration control, by making development aid conditional on third countries' performance on migration" (Castillejo 2016: 22): conditionality thus shifted from good governance promotion towards the sole purpose of stopping migration.

However, the focus on external cooperation with third countries came in hand with a neglect of other measures. No progress was made yet in regard to the internal aspects of asylum policy. Further, by the end of the year it became clear that the implementation of September's Council relocation and resettlement decisions were not pursued appropriately: Until the end of December, only 184 refugees were relocated from Greece and Italy to other member states[22] (Carrera et al. 2015: 6). In addition to that, political developments in the member states changed the political dynamics in the area of migration. After the election of a right-wing conservative party in Poland, the new Prime Minister Beata Szydlo, by the end of November, announced an end to accepting refugees under the relocation scheme (Monar 2016: 137). Furthermore, Hungary and Slovakia took legal actions to the ECJ against the Council decision of 22 September[23] (Monar 2016: 137). A further bloc formation among member states was thus apparent.

In December, the Commission went ahead with another proposal to mitigate the interior dimension of the crisis. Through its initiative for a European Border and Coast Guard (EBCG) the Commission aimed to take a considerable step to harmonise border management. At that moment, each member state was responsible for securing its own border (Carrera/den Hertog 2016: 3). This implied disparities in responsibility for front states, with a high effort especially at the Mediterranean. On the other hand, due to the Schengen system, a failure in protecting its border by one member state could have huge implications for other member states. Also, a lack of cooperation between national border and coast guards in the Schengen area was a frequent point of critique. The Commission's proposal intended to eliminate those shortcomings. It aimed to upgrade Frontex to an EBCG. While border security still remained in the hands of member states, the EBCG would have enlarged competences in order to compensate the shortcomings. Besides "more staff, tools and financial resources" (Carrera/den Hertog 2016: 13), it would continually monitor the member states' border security measures as well as its vulnerability. Possessing a 'right to intervene', it could then send staff of other national border and coast guards to a member state under pressure – without the consent of the affected member (Carrera/den Hertog 2016: 4). In addition to that, the initiative proposed the launch of standing emergency troops in order to be able to react quickly to a crisis (Monar 2016: 143). Although those proposals would compensate for the previous shortcomings of national border protection, for many critics, they did not go far enough, leaving border protection in the hands of member states. For the next nine months, those proposals were debated in the European Parliament and the Council.

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[22] Further, no decision was made on how to deal with the 8,000 places left for relocation from the 14 September decision and 54,000 places left for relocation from the 22 September decision. The initial Council decisions called for a review of that issue by the end of December.

[23] In its ruling from 6 September 2017, the ECJ "dismisse[d] the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers" (ECJ 2017). The relocation was thus legally binding.

3.3.2 The Year 2016 I: Productive Crisis Management

Despite the numerous measures taken in 2015, the Eastern Mediterranean route especially remained highly frequented in January 2016[24]; secondary migration from Greece towards central Europe thus remained high. Once again, member states reacted with enhanced border checks. In this regard, the change of Austria's previously open migration policy towards a suspension of Schengen at its borders (Galpin 2017: 192) as well as the introduction of an "upper limit for the admission to asylum procedures" (Monar 2017: 103) is remarkable. Further, the fragmentation of the EU into several smaller groups is notable: After a meeting on 15 February, the Visegrád group began to formulate their own approach to migration, calling for an "alternative back-up plan for the Western Balkans route" (Galpin 2017: 193). In addition, nine days after, Austria hosted a Western Balkans summit to discuss a complete closure of the route with all EU member states and non-member states at the Balkans route – but notably excluded the highly affected Greece (Funk et al. 2016: 8). Thus, despite the agreements with third countries of autumn 2015, the EU still was not able to mitigate the crisis. Instead, groups of member states started to act on their own.

While crossings in the Aegean remained high, the EU turned to even further intensified cooperation with Turkey to solve the tense situation. After several negotiation rounds over two weeks, the members of the European Council and the Turkish Prime Minister Ahmet Davutoglu presented a joint statement, outlining a EU-Turkey deal on 18 March 2016 (Pascouau 2016: 1). Refining the joint action plan of the previous year, this deal implies that each irregular migrant crossing the Aegean from Turkey will be returned. In exchange, for each returned migrant, the EU will resettle one Syrian refugee from a refugee camp in Turkey into the EU[25] (Rygiel et al. 2016: 316). Also part of the deal are "EU promises to liberalize visa restrictions for Turkish citizens and an investment of some €3 billion under the Facility for Refugees in Turkey" (Rygiel et al. 2016: 316). In doing so, the EU intended to cut off incentives for irregular migration by strictly sending back every irregular migrant while at the same time aiming to guarantee a better care for refugees in Turkey.

Nevertheless, the deal was criticised heavily. First, there were "doubts about its compatibility with international refugee protection standards" (Monar 2017: 102). Amnesty International meanwhile criticised the deal, arguing that by sending back refugees to Turkey, the EU would "wilfully ignore its international obligations" (Rygiel et al. 2016: 316) in the refugee crisis, the UN High Commissioner for Refugees also questioned the compliance with international law (Rygiel et al. 2016: 316). Indeed, simply sending refugees back to Turkey does violate the principle of non-refoulement, enshrined by international refugee law. Hence, each irregular migrant would have to be examined after entering Greece and only rejected migrants could be sent back to Turkey. It is doubtful that every migrant's asylum status is examined in detail and that general push-backs can be ruled out. Legally, the deal is thus built on very shaky ground. Furthermore, a promise to liberalise the EU visa process for Turkish citizens can be viewed highly critical in the face of current anti-democratic tendencies.[26] In addition, the deal

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[24] In January alone, about 67,000 migrants crossed the Aegean towards Europe, four times more than in January 2015 (UNHCR 2018).

[25] For those resettlements, the 54,000 places intentionally reserved for Hungary in the Commission's relocation scheme of September 2015, which were excluded from the later decision (22 September), as well as remaining 18,000 places from the resettlement scheme, were used (Pascouau 2016: 2).

[26] In January, for instance, the first academics were arrested in Turkey after signing a petition calling to stop the violence against Kurds (Kazim 2016) and even two weeks before the signing of the deal, the police stormed the offices of a newspaper, which was close to the Gülen movement (Welt 2016).

makes the EU highly dependent on Turkey, laying the EU's control over the irregular immigration flow towards Greece into the hands of one country. Especially with regard to future negotiations, for instance on the visa liberalisation or the continuation of EU accession negotiation or the EU's independence and resoluteness for increasing autocratic tendencies that had already begun at that time, the deal could easily compromise the EU's stance towards Turkey.

Finally, this deal was far from being a 'Union-wide initiative' commenced by the Commission and ending in an official legislation. Instead, it was in fact a German initiative that begun already in October 2015, when Angela Merkel travelled to Ankara to talk to the Turkish government bilaterally[27] in order to enhance cooperation on migration issues (Fischer/Kazim 2015). Later, all other EU member states were included. However, according to the European Council itself, those meetings and the final deal should not be mistaken as summits of the European Council, but as "merely [...] political commitment[s] of the Heads of State or Government of the Member States of the European Union vis-à-vis their Turkish counterparts" (European Council in Carrera et al. 2017: 5). The European Council used this line of argumentation to avoid a breach of EU law. In a lawsuit before the ECJ, three asylum applicants argued that the deal was unlawful as (1) the European Council does not have the right to make binding decisions and negotiate international treaties and (2) the deal violates the principle of non-refoulement. Hence, the EU argued that the deal was not a treaty made by the European Council, but by each member state individually. The ECJ followed this argument and thus "found that it lacked jurisdiction to rule on the Statement's lawfulness" (Carrera et al. 2017). The effect was that European institutions were fully circumvented by the member states in order to come to an effective solution for the refugee crisis. In the end, the result was not an official EU legislation, but an informal 'deal' of the European heads of states and governments with Turkey (Monar 2017: 102).

Yet, in its aim to reduce pressure on Greece, the deal was very effective. After the first irregular migrants were returned to Turkey on 3 April, the number of migrants crossing the Aegean fell rapidly after the implementation of the '1-for-1 deal'(Galpin 2017: 194; Monar 2017: 102). Thus, for the first time in years, pressure could be taken off Greece notably.

This did not mean, though, that the migration issue fell down on the agenda. While human smuggling through the Aegean decreased, the crossings at the central Mediterranean route went up to a record of 181,000 in 2016[28] (UNHCR 2018). At this point, secondary movements within the EU mainly started from Italy. The EU's focus thus went back to the cooperation with African states. In June, the Commission issued a communication on the cooperation with third countries, using money from the European Development Fund to stabilise and foster development in 16 African states and hence address root causes for irregular migration (Schmidt 2016: 2). In return, the addressed states committed to "save lives, fight smugglers, prevent irregular migration, [and] enhance cooperation on returns and readmission of irregular migrants" (Funk et al. 2017: 3).

Furthermore, the EU focussed especially on Libya, from where most migrants set off towards Europe. In June 2016, the Council thus enlarged the mandate of Operation EUNAVFOR MED Sophia towards assisting and "training [...] the Libyan Coast Guard and Navy in law

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[27] Merkel's visit was much criticised, especially because it has been several days before the Turkish elections and was thus seen as active promotion of Erdogan's campaign (Fischer/Kazim 2015).

[28] In 2015, 154,000 people arrived through the central Mediterranean; in 2014, there were 170,000 crossings registered by the UNHCR via this route (UNHCR 2018).

enforcement tasks at sea, in particular to prevent human smuggling and trafficking" (Council 2016: Article 2a) in Libyan waters.

3.3.3 The Year 2016 II: Reforming the Internal Dimension

For the internal dimension of its asylum and refugee policy, the Commission proposed two comprehensive packages of initiatives on 4 May and 13 July, which were supposed to eliminate the shortcomings of the CEAS. At the centre of these packages was a reform of the Dublin regulation. Again, the overall principle of the regulation – the principle of first entry – would remain intact after the recast. The important innovation, though, was the introduction of a 'fairness mechanism' (European Commission 2016), which activates an automatic, corrective allocation of asylum seekers to the other member states in the case that "one member state is facing a disproportionate number of asylum applications by reference to its size and wealth"[29] (Monar 2017: 105). Reforms of the Asylum Procedures Directive, the Reception Conditions Directive and the Asylum Qualification Directive sought to harmonise the member states' at that point diverse procedural arrangements in order to create "a genuine common procedure" (Monar 2017: 105), as well as to introduce EU-wide standards for the accommodation of and care for asylum seekers, by harmonising protection standards, residents permits and beneficiaries. Finally, a Resettlement Framework Regulation should make the 2015 ad-hoc resettlement scheme permanent. All in all, the Commission's proposals "constitute the largest package of legislative initiatives ever presented in a policy domain of the AFSJ" (Monar 2017: 105), seeking to correct all previously exposed shortcomings of the CEAS, and calling for a fully harmonised and fairer asylum system.

Concerning the proposal of an EBCG from December 2015, the European Parliament and the Council agreed on its launch on 14 September 2016. Apart from the Commission's right to initiate the EBCG's emergency interventions, the initial proposal was accepted without larger changes. Still, the new institution, which became operational on 7 December, should not be mistaken for an actual active coast guard, securing a common European border, with EU border protection becoming fully integrated. Instead, the latter remains mainly in national hands with the EBCG "placing national border guards in a hierarchical relationship under EU-level supervision and decision-making" (Monar 2017: 109). In the new agency, both Frontex and all national border management agencies come together to regulate and coordinate the European border protection. Within this framework, the EBCG Agency has the leading part of "establishing a technical and operational strategy for European IBM [Integrated Border Management] with which national IBM strategies have to be aligned" (Monar 2017: 109). The EBCG shall thus facilitate a better cooperation of national border and coast guards within the EU, control national agency's quality and "carry out 'vulnerability assessments' to assess the capacity and readiness of member states to face upcoming border challenges" (Monar 2017: 110). When the situation in a member state begins to escalate, the agency can make recommendations or set out binding measures. If a member state is not willing or able to comply, the EBCG reports a 'situation at external borders requiring urgent action' to the Commission, which can activate a procedure to intervene into the member state's border management. Unlike in the initial proposal, though, the Commission cannot order an intervention on its own, but proposes it to the Council, which can adopt the measures (European Parliament and Council 2016: Article 19). To be able to intervene, or if a member

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[29] Single member states can decide not to take part in the relocation. In this case there would be a 'solidarity contribution' of €250,000 per applicant not being relocated to this country (European Commission 2016).

state requests assistance in the protection of its borders, the EBCG has access to a 1,500 strong 'rapid reaction pool' (European Parliament and Council 2016: Article 17).

Overall, the missing communitarisation of border management under a fully integrated, independent and constantly operating 'actual' European border and coast guard can without a doubt be criticised as insufficient for an ideal border protection of the Schengen area. Nonetheless, the launch of the EBCG, its enhanced tasks and most notably the de facto right to intervene after a Council decision, considerably improves the EU's capabilities to coordinate national border management, ensures its qualities and ebables the EBCG to react effectively to situations of a member state's insufficient border management. It thus marks a timid step towards a better and more efficient management of the common borders.

While the situation within the EU was slowly easing up as actions taken became effective, European leaders came together for a number of informal meetings in September 2016, to ensure the lasting effectiveness of these measures. At an informal summit in Bratislava on 16 September, the European Council "reiterated the EU's full commitment to implementing the EU-Turkey Statement as well as continuing its support towards the countries of the Western Balkans" (Funk et al. 2016: 8) through financial assistance. On a meeting in Vienna on 24 September 2016, member states close to the Balkan region as well as non-member states of the Western Balkans[30] agreed on the desire to increase and improve the external border controls and maintain the closure of the route (Funk et al. 2016: 8).

The relationship between the EU and Turkey, on the other hand, became more and more troublesome since the averted military coup in July. While Turkey criticised the EU's endorsement of the coup, the EU criticised the government's course of action, arresting thousands of people, military personnel, but also academics and journalists. Moreover, as a reaction to the autocratic developments in Turkey, the EU decided to slow down the visa agreement, which was promised to be speeded up by the EU-Turkey deal (Karadeniz/Gumrukcu 2016). The European Parliament even went a step further, calling for ending the accession talks with Turkey (de Carbonnel 2016). Hence, while the implementation of the deal was working very well, bringing down irregular migration through the Eastern Mediterranean route towards Greece by 97%[31] (UNHCR 2018), continuous threats by the Turkish government, to end cooperation, led to an uncertainty regarding the continuation of the deal (Karadeniz/Gumrukcu 2016).

By the end of 2016, the EU's approach in the third stage, a three-pillar approach concentrating on external and border related measures, was fully operational. The most important part was undoubtedly the before mentioned EU-Turkey deal, but also cooperation with the Western Balkans states helped to control the influx of refugees and to fight human smuggling at the Eastern route. In regard to the cooperation with African states and to the central Mediterranean route, an improving trend, as there had been for the Eastern Mediterranean, was not noticed during 2016. The numbers of crossings even rose slightly[32] (UNHCR 2017). While this can be explained by the shift of migration flows from the Eastern towards the central Mediterranean due to the previously described measures, it must be noted that the total numbers remained at an intermediate level – and thus not on the level of acute crisis in

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[30] Present were the EU member states Austria, Bulgaria, Croatia, Germany, Greece, Romania, and Slovenia, EU representatives, as well as the non-member states Albania, Macedonia, and Serbia (Deutsche Welle 2016).

[31] While there were 995,701 crossings through the Western Mediterranean towards Greece during the 12 months before the EU-Turkey deal, only 26,006 crossings were recorded during the 12 months after (UNHCR 2018).

[32] From 153,842 (2015) to 181,436 (2016) sea arrivals (UNHCR 2017).

2015[33]. Furthermore, the missing immediate success in mitigating migration through the central Mediterranean is not surprising, as the measures taken were mainly long-term oriented. Hence, the EU's objective to fight the root causes of migration and to support the stabilisation of the addressed countries will take time to unfold, and thus cannot show immediate success.

Despite comprehensive proposals by the Commission to address shortcomings of the CEAS, especially Dublin, and the harmonisation of asylum standards within the EU, there is still no notable progress in achieving a decision between the Council and the European Parliament. The only measures taken to balance those shortcomings at least on a short-term basis were the relocation schemes agreed on in September 2015. However, by the end of 2016, only 8,162 of 160,000 refugees could be relocated from Greece and Italy, "showing the deep divisions within the Schengen group on this solidarity issue" (Monar 2016: 104). Thus, although the EU achieved relative success in the external dimension of its asylum and refugee policy, in its internal dimension there is no evidence of any noteworthy progress at all.

3.3.4 The Year 2017: Limited Action by the EU and its Member States

The numbers of sea arrivals decreased immensely between 2016 and 2017. This is mainly caused by a massive decline in arrivals to Greece due to the Turkey agreement, whereas the situation in the central Mediterranean remained steady throughout 2016 and the first half of 2017 (see graph 1).

Graph 1: Sea Arrivals via the Mediterranean – per quarter-year period
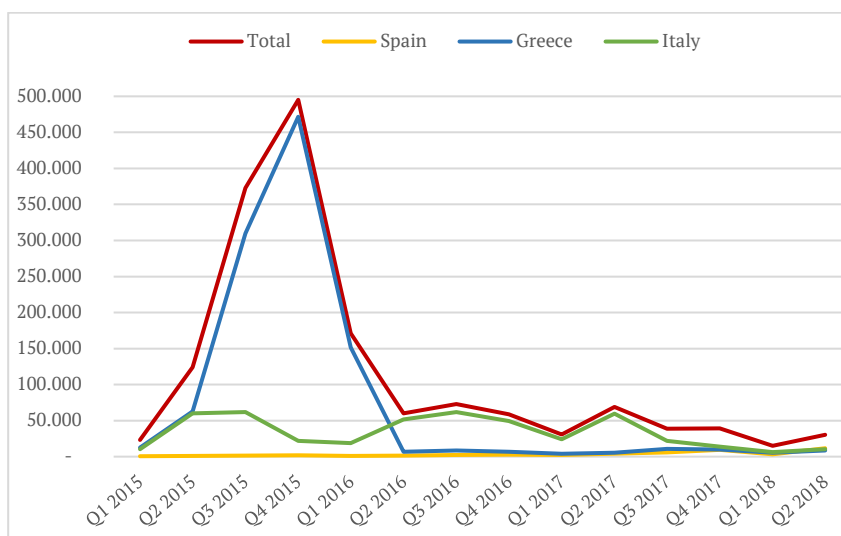
Source: own composition based on UNHCR (2018).

Despite several summits in different formations being held throughout the year, hardly any further measures were taken. Member states merely agreed on the continuation of efforts that were already agreed. For instance, at the Malta summit, heads of states and governments reinforced their commitment to enhance cooperation with third countries, especially Libya

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[33] During 2015, a total of 1,000,000 people crossed the Mediterranean to seek asylum. In 2016, the number decreased to 362,800 crossings (UNHCR 2018).

(European Council 2017a; Funk et al. 2017: 3). A similar conclusion was issued in the European Council meeting on 23 June (European Council 2017b).

On 28 August 2017, the newly elected French President Emmanuel Macron held a migration summit in Paris, which had a more promising outcome. As the numbers of crossings through the central Mediterranean still did not decrease any further, the 'mini summit' between French, German, Italian and Spanish heads of states and governments, EU High Representative Federica Mogherini and the heads of states of Niger, Chad and Libya reinforced the measures already taken and agreed on a number of further actions. Among these measures was support for Niger and Chad for the establishment of stable state structures as well as for the border protection in both countries. In addition, CSDP missions on the ground were reinforced and a new European "joint mission to Niger and Chad to examine the conditions for implementation of the above-mentioned decisions" (Bundesregierung 2017: 4) was launched. Besides that, the European countries agreed to the supporting and training of Libyan border guards also on the Southern borders. Furthermore, "economic cooperation with communities along migration routes in Libya [should be enhanced,] with the aim to [...] making them independent of human trafficking" (Bundesregierung 2017: 4).

Table 4: Relocations carried out by Member States and associated countries

Member state	Total number of relocations (September 2017)	Legal obligation as of the Council decisions of July and September 2015
Austria	15	1,953
Belgium	1,059	3,812
Bulgaria	50	1,302
Croatia	78	968
Cyprus	143	320
Czech Republic	12	2,691
Estonia	141	329
Finland	1,980	2,078
France	4,699	19,714
Germany	9,169	27,536
Hungary	0	1,294
Ireland	646	600
Latvia	321	481
Liechtenstein	10	-
Lithuania	384	671
Luxembourg	482	557
Malta	168	131
Netherlands	2,551	5,947
Norway	1,509	-
Poland	0	6,182
Portugal	1,507	2,951
Romania	728	4,180
Slovakia	16	902
Slovenia	232	567
Spain	1,301	9,323
Sweden	2,851	3,766
Switzerland	1,421	-
TOTAL	**31,503**	**98,255**

Source: European Commission (2017a)

Apart from that, little has changed during 2017. In May 2017, border controls within the Schengen area were once again prolonged by several member states. In September 2017, the two-year scheme for relocation ended with only 31,503 of 98,000 people being relocated from Italy and Greece (see table 4, p. 26). Rather effective in its outcome on the other hand was the

EU-Turkey agreement, which had the previously described decreasing effect (97% down), while more than 11,000 Syrians had been resettled from Turkey to the EU (European Commission 2017b) when both schemes officially came to an end by 30 September 2017.

3.3.5 The Year 2018: Slight Progress in the Reform of the CEAS

As the reform of the Dublin regulation, which would include a relocation of refugees, was still stalled, relocation and resettlement had to rely on voluntary contributions by willing member states. Indeed, by May 2018, member states voluntarily guaranteed more than 50,000 places for a new two-year resettlement scheme proposed by the Commission (European Commission 2018a). Relocations from Greece and Italy continued informally and on voluntary basis after September 2017, but ended by March 2018 (European Commission 2018b). Thus far, no other temporary relocation scheme is intended to reduce the pressure on Greece and Italy.

Concerning the reform of the CEAS that the Commission proposed in 2016, the Council and the European Parliament made progress in their negotiations on a number of issues. For the Reception Conditions Directive and the Qualifications Regulation, both institutions reached a political agreement on all disputed issues. They should pass legislation soon. Both are supposed to harmonise standards and thus eliminate incentives for secondary migration by increasing the rights of asylum seekers[34], while at the same time limiting those rights "to the country responsible for the asylum seekers' application" (Bamberg et al. 2018: 7). In the case of the Qualification Regulation, the Council and the European Parliament also reached a consensus to further harmonise criteria and rights of refugees.

Further, the entirely new Resettlement Framework Regulation could have another very positive impact on the CEAS. Drawing on the previous ad-hoc resettlement scheme of 2015, the regulation intends to establish a permanent resettlement scheme. Yet, significant shortcomings can be noticed. Not only that "the numerical ambitions of member states fall short" (Bamberg 2018: 6) already, but also that the Council pushed through its demand of voluntary quotas. Further, the proposal intends to use the resettlement quotas not only as a humanitarian corridor, but also as a channel to realise family unification. In this way, the regulation "may discriminate against the vulnerable people that do not fall under any of the 'family' categories" (Bamberg 2018: 8). In this point, tensions between the legislators remain. Due to that, as well as ongoing disputes with regard to the quotas as well as a conditionality clause with regard to third countries' cooperation on migration and asylum matters" (Bamberg et al. 2018: 8), the Resettlement Framework Regulation is far from being finalised at this point.

Finally, also concerning the Asylum Procedures Directive and the reform's centre, the Dublin recast, little progress has been made so far. The Asylum Procedures Directive intends to harmonise recognition rates throughout the EU and should thus in general be seen positively. Whereas both institutions reached a "broad consensus on the need for a quicker and more efficient start of the asylum procedure" (European Commission 2018c: 6), negotiations have still not advanced significantly. Instead, the Council seeks to further strengthen the proposal's arrangements for "sanctions against asylum shopping and absconding" (Council

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[34] For instance by providing sooner access to the labour market or the possibility of language courses from the first day of registration in all member states.

2018: 3), which the European Parliament opposes. The negotiations for the Procedures Directive are thus far from being concluded.

The negotiation status for the latter, though, is even more devastating. In fact, almost two years after the Commission's proposal, official negotiations between the European Parliament and the Council on the Dublin reform have not even started by the time of writing, with the member states not having agreed on a negotiation mandate yet (European Commission 2017c). Within the Council, member states' major dispute concerns the solidarity mechanism, the cornerstone of the Dublin reform. The Bulgarian Council presidency of the first half of 2018 was already the fifth presidency that tried to mediate a compromise between the two positions – the Visegrád group as main opponents and the Southern and Western European countries as main supporters of the fairness mechanism. Still, no progress could be noted by the end of the Bulgarian presidency (Bamberg et al. 2018: 1; Carrera/Lannoo 2018: 5). Thus, finding a compromise in the near future is illusory for both proposals. Especially, as the end of the Bulgarian Council presidency was often seen "as a last political chance to move towards a much-needed reform" (Carrera/Lannoo 2018: 3), considering the fact that the subsequent Austrian presidency will set its focus mainly on border security and external aspects of migration, instead of the EU's internal shortcomings (see Austrian Federal Government 2018).

The recent breakthroughs in the Qualification Regulation and the Reception Conditions Directive could be a pivotal step for the completion of the CEAS. However, as long as the Resettlement Framework Regulation, the Procedures Directive and the reform's centrepiece the Dublin regulation are not in place, and do not have the harmonising and solidary character they need to have, the reform will not have a significant impact.

Apart from the CEAS reform, the implementation of the EBCG also could not be realised without difficulties. Although the agency already entered into operation in December 2016, by the time of writing at the end of July, a number of member states still have not fulfilled their obligations to deploy experts, thus only 1,350 instead of 1,500 experts could be deployed so far (European Commission 2017d; European Commission 2018a). Further, the Commission assessed in May 2018 that "there are persistent and significant gaps in personnel and equipment [...] to the point that less than half of the current operational needs can be met" (European Commission 2018a). Therefore, the EBCG is currently under-delivering, meaning considerable improvements should be made in order for the agency to be able to deliver the extensive support for member states that it is supposed to be. As a first step to achieve that goal, the Commission, in its proposal for the EU's new budget (Multiannual Financial Framework 2021-2027), proposed to significantly step up the EBCG's resources, including an increase of the agency's personnel from 1,500 to 10,000 (European Commission 2018d: 14).

In a broader sense, the Commission's proposed budget is characterised by a significantly increased importance of migration and border management. Hence, the financial capabilities in those areas are nearly tripled – amounting € 34.9 billion compared to €13 billion in the 2014-2020 budget (European Commission 2018e). In this framework, the Commission considerably stepped up the Asylum and Migration Fund support affected member states and to significantly enhance the capabilities of EU agencies like the EASO and the EBCG (European Commission 2018d: 62; European Commission 2018e). It further created an Integrated Border Management Fund to improve and harmonise member states' performance in securing their border (European Commission 2018d: 64f.). With this significant budget increase in the area

of migration and border management, the Commission takes another initiative to mitigate the EU migration policy's structural shortcomings, in particular its lack of harmonised action.

Despite that, with Turkey becoming a more and more unpredictable partner and no major compromises being found for the Dublin reform and for the completion of the CEAS, the EU's asylum and refugee policy remains unfinished. By mainly increasing border security and reducing migration numbers through preventing them from crossing the Mediterranean in the first place, the EU approach still focusses on fighting the symptoms of the problem, instead of its roots. It was thus only a matter of time, until this insufficient migration regime would collapse again.

Summarising the whole period of crisis, after the EU did not come up with a major plan for the crisis during stage one, which forced affected member states to act on their own, and attempts to mitigate the crisis with short-term emergency-measures during stage two failed due to substantial shortcomings and a lack of implementation, the EU changed its approach in autumn 2015. In this third stage of crisis management, the member states, which have mainly driven the agenda from then on, focussed on a three-pillar approach in cooperation with third countries, namely with Turkey, the Balkans states and African countries. While this approach was not completely new – closer cooperation with third countries has been an objective since 1999 – the consistency and the resoluteness of its implementation was. With this approach being completely operational since the end of 2016, the Eastern Mediterranean and Balkan routes could be closed almost completely and numbers crossing the central Mediterranean have been held at a minimum ever since. During 2017 and 2018, the measures of stage three were only refined and optimised. Consequently, for some time, the topic disappeared from the top of political agendas. Outstanding reforms were still thus not pursued with the needed urgency so that, despite some progress in regard to the CEAS reform, the internal dimension of EU asylum policy remains unfinished.

Therefore, throughout all three stages of crisis management, the EU's response was characterised by only shallow adjustments, a lack of effective solidarity towards the affected states and an insufficient humanitarian response towards asylum seekers. While the numbers of arrivals decreased, the political disputes between member states regarding a common asylum policy, i.e. the appropriate degree of action concerning border management, solidarity between member states, the Dublin regulation and the regulations and directives of the CEAS remained.

4. Governance Changes: The Side-effects of EU Crisis Management

The previous chapter showed that the refugee crisis has been at the top of the European political agenda for years. As already stated in the introduction, Devan Pillay (2010: 25) argues that such deep crises have the potential of fundamentally altering a political system and its governance. Indeed, the crisis brought a number of changes to how the EU asylum and refugee policy is governed. Those governance changes have mainly taken place since 2015 and in the EU's politics dimension – its processes of governing or modes of decision-making. This chapter will map those governance changes.

One of the broader developments during the refugee crisis is that the European Commission has become more active and played a more important role in policy-making during the crisis. Especially during its peak in summer 2015, it was the Commission that repeatedly provided

new impetus for crisis action. This started with the extensive Agenda on Migration from May 2015. The Commission was especially important during times of the blockade of the Council, when for months no decision was made. Here, it granted financial support for Greece, in its capacity of guardian of the treaties aimed to maintain ordered conditions by opening infringement procedures and repeatedly called for unity among member states. This continued in late 2015 and 2016, when the Commission tried to shape migration policy through huge packages of proposals, among them the initiative for launching an EBCG and a reform of the CEAS. More often during the crisis, the Commission became an important agenda setter and policy initiator. In a policy field, in which agenda setting in former times was mainly dominated by the European Council and its five year programmes, the revaluated role of the Commission can be assessed as a significant change of the politics dimension of EU decision-making[35].

However, another development fundamentally contradicts this notion. Since late September 2015 especially, the member states started to set their own agenda in addition to the Commission's proposals. Thus, the main initiatives which in the end effectively mitigated the crisis were made by the European Council and the Council. This started with the European Council meeting on 23 September 2015, at which member states agreed on a change of strategy towards increased third country cooperation. All those measures were then realised by the Council or even by new informal forms of governance, such as regional summits. In many cases, those agreements were not made through regular EU decision-making, but informally and intergovernmentally. Here, two developments should be addressed in more detail. Firstly, this renewed intergovernmentalism came along with an increased fragmentation of the EU into an Eastern and a Western bloc, paired with contested views of how to mitigate the crisis. As this blockade was due to the fact that several member states opposed further communitarisation and supranational elements in crisis management, the reaction was twofold: On the one hand, the member states changed their strategy towards a more intergovernmental approach, giving up common approaches to introduce redistributing mechanisms in migration policy. The blockade thus resulted in a politics and policy change. On the other hand, the blockade resulted in a fragmentation of member states into different regional groups, often also pairing up with third countries. First and foremost, the Visegrád group started to coordinate their national migration policies individually and formulating demands for a new European migration policy. Furthermore, a close informal and intergovernmental cooperation between countries close to the Balkans became characteristic for the EU's crisis politics since late summer 2015. This is especially noteworthy as it included countries from outside the EU. At regular Balkan summits, both member states and third countries thus formulated their own approach to the refugee crisis – often completely outside of the EU framework and with severe consequences for other member states. This development is quite alarming for EU governance as it excludes several affected member states completely from decision-making, leads to a lack of coordination among the EU as a whole and thus completely out-levers EU decision-making.

A second development in this regard is even more alarming. As many experts doubted that a deal between Turkey and the European Council that included a 1:1-clause would be in line with EU law, the major measure to mitigate the crisis was agreed as "merely a political commitment of the Heads of State or Government of the Member States of the European Union vis-à-vis their Turkish counterparts" (European Council in Carrera et al. 2017: 5). It

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[35] This change of the Commission's role can also partly be explained by the changed approach of the Juncker Commission, which wanted to act more politically (Greubel 2017: 9).

should furthermore "not be understood to 'bind the European Union in any way'" (Carrera et al. 2017: 5). Thus, the EU-Turkey deal is an agreement which is settled outside of the EU framework. By doing so, EU decision-making was completely bypassed in the major decision to mitigate the crisis. Even more: it was completely bypassed because making this agreement under the roof of the EU would have been unlawful, contradicting EU decision-making and European law[36]. As such, the newly introduced crisis modes of governance in this case led to the erosion of "[t]he very legitimacy of the EU project" (Carrera et al. 2017: 13) itself and its decision-making structures.

To conclude, the modifications in EU governance during the refugee crisis represent changes towards supranational *and* intergovernmental elements. On the one hand, the strengthened role of the Commission as proactive, political agenda setter marks a remarkable step towards strengthened supranational elements in the area of asylum and refugees. The use of majority voting and introduction of compulsory relocation and resettlement as policy development can also be seen as a step in this direction. On the other hand – and this has been the broader development – the crisis management became increasingly intergovernmental. The decisive decisions during the effective time of crisis management were taken unexceptionally intergovernmentally, either during special summits of the European Council, meetings of the Councils JHA or Foreign Affairs, or even in more exclusive groupings of several member states with the exclusion of community institutions. At this point, also a factual devaluation of the Commission must be noted, as in many decisions, controlling rights of the Commission in form of sanctions or a right to intervene that were initially planned were either cut out completely (relocation decision from September 2015) or shifted to the Council (EBCG launch)[37].

With those intergovernmental tendencies, crisis management was shifted out of the EU framework, which had two inherent consequences: (1) outsourcing policies and policy making towards intergovernmental framework completely ignore the fact that a major reason for the EU's failure was a failure of existing EU policies, such as the Dublin regulation or several qualification directions, leading to a very superficial harmonisation of asylum policies. By focussing on intergovernmental arrangements, those EU internal shortcomings of the CEAS cannot be fixed appropriately. (2) This shift towards an intergovernmental sphere and the circumvention of EU decision-making and EU law, especially in cases in which action would have been legally questionable under the latter, leads to an erosion of the EU, its legal framework and its decision-making.

Finally, in the last stage of crisis management since fall 2015 especially, an informal new division of tasks can be observed. While member states took over the acute crisis management recently, to a remarkable extent ousting the Commission from this place, the latter subsequently focussed on internal aspects of migration management, like the reform of the CEAS. In the end, the largest endeavours to mitigate the crisis were driven by the member states. As a community institution, the Commission mostly committed itself to enhancing and reforming the long-term community framework for EU asylum policy in form of the CEAS and community agencies. The Commission's role thus remained as one pursuing and pushing intrinsic Union policies, while the member states took over in acute crisis management.

[36] See my remarks on the EU-Turkey agreement on page 21.

[37] For a theoretical view on increased intergovernmental tendencies and greater importance of the European Council and the Council also see Bickerton et al.'s New Intergovernmentalism (Bickerton et al. 2014; Bickerton et al. 2015; Puetter 2014)

5. Concluding Remarks: What Kind of Crisis?

After having had a look at both the EU's crisis strategy and the governance changes caused by it, what final assessment can be made? Throughout the previous chapters, we have found that, even though the crisis still cannot be assessed as being overcome today, considering the situation at the central Mediterranean route, for some time, the EU was able to remove substantial pressure off the acute crisis situation. Until June 2018, when tensions between and within member states brought the crisis back to the top of political agendas.

The timing for that was in a way remarkable, as numbers towards Europe hit a long-time low in 2018, a drop by 96% compared to the peak of the crisis in summer 2015 (Bamberg et al. 2018: 2). The immense decrease of arrivals in Italy since spring 2017 especially led to the long-time low (see graph 2). Thus, if the numbers were not the primary problem in 2018, what had changed that led to the re-emergence of the crisis?

Graph 2: Sea arrivals via the Mediterranean – per quarter-year period (detailed)
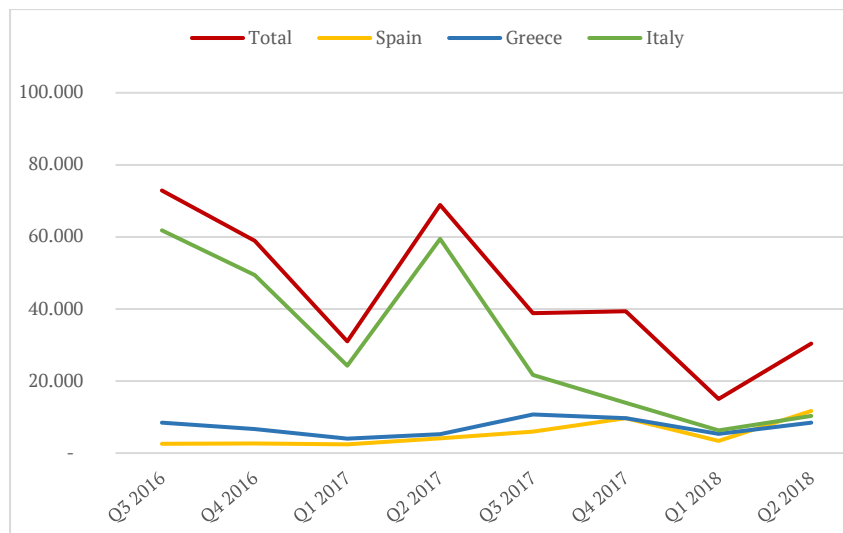
Source: own composition based on UNHCR (2018).

The change was basically brought by two simultaneous developments. *Firstly*, Italy's new government, composed of the populist Five Star Movement and the right-wing Lega Nord, changed the country's political direction on migration issues. The new Prime Minister Antonio Conte chose a far more extreme position in regard to Italy's contribution in managing arrivals at EU borders. Shortly after resuming office, the government denied access to its harbours for NGO ships undertaking search and rescue missions in the central Mediterranean. As a consequence, a number of NGO vessels, carrying hundreds of rescued migrants had to wait for days on high sea, until a country could be found which accepts the migrants[38] (Bamberg et al. 2018: 3).

Secondly, the still apparent issue of secondary movements led to a highly debated dispute within Germany's newly formed governing coalition, nearly causing its break-up. The new German Interior Minister Horst Seehofer from Merkel's sister-party CSU openly challenged the Chancellor's approach on migration, threatening to "reject asylum-seekers who had previously been registered in another member state" (Bamberg et al. 2018: 2) – even against

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[38] In the most prominent case of the NGO vessel Aquarius, Spain accepted those rescued migrants whereas in other countries, groups of member states accepted to relocate them.

Merkel's will. The Chancellor, on the other hand, called for European solutions[39]. With the situation in Italy and Merkel's need for a compromise to end the German coalition dispute, the migration policy, once again, dominated the European political agendas and led to heated political atmospheres and discourses on the issue[40].

Whereas attempts to find a solution for the re-emerged crisis through smaller fora, such as the French-German Ministerial Council in Meseberg (19 June) or a mini-summit with 16 participating member states in Brussels (24 June) were unsuccessful (Müller-Brandeck-Bocquet 2018), the European Council meeting of 28 and 29 June did find an agreement. Those conclusions, though, were once again in many parts very vague and fell short of ground-breaking solutions to mitigate the crisis. Little regard was made to the Dublin reform. Instead, the conclusion introduced regional disembarkation centres in frontline states to reinforce the hotspots and the possibility of establishing "'controlled centres' within member states to provide for rapid processing of asylum seekers and other migrants" (Bamberg et al. 2018: 1). For countering secondary movements within the EU, member states were encouraged to close bilateral agreements on the taking back of asylum seekers, who were have registered in another member state (European Council 2018: 4).

Rather controversial, though, was the possible establishment of disembarkation centres in neighbouring third countries such as Libya (European Council 2018: 2). In this case, migrants who will be rescued in the international and third-country waters of the Mediterranean would be brought back to those centres in the country they embarked from, where EU staff would examine whether the migrant is entitled to asylum, leading to his/her resettlement to the EU (European Commission 2018f). Although this would mitigate the human smuggling in the Mediterranean and take enormous pressure off Italy, critics point out that such centres would contradict international law and the non-refoulement-principle. Further, they constitute another step towards the EU's worrying tendency to neglect humanitarian action towards asylum seekers, and instead giving "priority to externalising or 'offshoring' asylum responsibilities to third countries" (Carrera/Lannoo 2018: 3).

The new measures once again only covered the surface of the problems. Instead of delivering on serious commitments, the conclusions seemed to be rather a rhetorical compromise in order to choose a wording that makes it possible for every head of state or government to sell the summit at home as a success.

Hence, it became more and more apparent in the weeks after that the conclusions could not deliver on a contentual enhancement of the EU's migration policy. As indicated before, the Austrian Council presidency, which took over on 1 July, will, according to its programme, focus almost solely on a strengthening of border security and outsourcing of asylum processes. A compromise on the Dublin Regulation and the remaining disputes of the CEAS in 2018 seems thus out of reach. Further, by mid-July 2018, Libya has already declared that they would not accept disembarkation centres on their territory (Wintour 2018). At the same time, Italy threatened that vessels of the EU operation EUNAVFOR MED Sophia were not allowed to dock in Italian harbours any more, demanding that other member states should

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[39] As of the limited scope, this article cannot elaborate on the German coalition dispute. For a closer look at this issue, see Müller-Brandeck-Bocquet (2018) (in German) or Bamberg et al. (2018) (in English).

[40] In Germany, populist terms, such as "asylum tourism" (Asyltourismus) or "anti-deportation-industry" (Anti-Abschiebe-Industrie) were increasingly used by particular political wings (FAZ 2018), Italy's Interior Minister Salvini emphasised his political direction with the statement, migrants "will only see Italy on a postcard" (Independent 2018). Victor Orban stated that "Africa wants to kick down our door" and that "Europe is under invasion" (Orban in Santoria 2018)

accept them (Deutsche Welle 2018). Thus, despite the recent decreasing numbers of arrivals of migrants, the increasing tensions between member states and the recent developments rather point towards a further escalation of the crisis, instead of its mitigation.

To conclude, the number of arriving migrants constantly fell throughout the last year. At the same time, domestic developments in several member states led to another spark of the refugee crisis on a European level. Those two diametrical developments emerging at the same time, demonstrate that the underlying problem is mainly of a political nature. Similarly, den Heijer et al. (2016: 641) state that "the present European crisis is a crisis of refugee policy, not a refugee crisis. The numbers in themselves are not the problem; the way in which the European Union deal[t] with them is". As indicated throughout chapter three, the problem lay in EU governance. Thus, the tensions that re-emerged in June 2018 display perfectly, that the core of the problem lay in two specific issues.

Firstly, the main problem lies in the unequal distribution of burdens between member states, resulting in a continual overstraining of Greece and, in the current situation, especially of Italy. Not the total numbers, but the continuous overburdening of and lacking solidarity for single member states led to the unilateral political decision of the new Italian government to call for an immediate reform more forcefully. This, of course, points towards the Dublin regulation, which enshrines this overburdening for frontline member states. It thus becomes clear that only through a substantial reform of the Dublin regulation that eliminates the unequal distribution of burdens and establishes a system of solidarity and burden sharing can there be a long-term mitigation of the crisis.

Secondly, an essential part of both the renewed crisis situation and the complete period of the 'refugee crisis' were secondary movements of asylum seekers within Europe. Here, distinguishing again between two kinds of secondary migration is important: Secondary migration of unregistered asylum seekers is connected to the Dublin regulation and the resulting overburdening of member states, especially during 2015 and 2016 (waiving through policy). Secondary migration of already registered asylum seekers on the other hand, which was the main cause for the renewed tensions in Germany in June 2018, is to a very high extent a result of differing qualifications and reception conditions. In this regard, only a complete harmonisation of EU asylum policy can counter this issue. The EU approach needs concise action, combining directives which set clear criterias on reception conditions, asylum qualifications and asylum procedures, with a strong Asylum Agency, which is in charge of all European asylum processes. Of course, those harmonising measures cannot eliminate secondary movements alone, but they could limit the incentives to move to a minimum. While the most recent agreements regarding the asylum directives go in the right direction, they still do not go far enough. Thus, with asylum standards within the EU not fully harmonised and the Dublin regulation simply shifting off responsibility by determining "that each Member State has to fend for itself, no matter how many asylum seekers are coming in" (den Heijer 2016: 612), the EU's asylum policy is still one of non-solidarity and national control, rather than a truly communitarised and harmonised policy field. Instead, the EU's management of the mitigation of crisis must be assessed as highly superficial.

Summarising, the underlying reasons for the June 2018 re-emergence of the refugee crisis on the EU's political agenda were (1) a lack of solidarity and burden sharing and (2) secondary movements within the EU. Both issues can be traced back to the beginning of the CEAS. This, as well as the fact that arrivals in the EU have decreased tremendously during the last year, points out perfectly that the 'refugee crisis' was not a crisis that was triggered just by the

influx of the mere number of refugees, but was primarily a failure of the EU's migration and asylum policy. The 'refugee crisis' should thus rather be seen as a *European crisis of migration governance*.

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