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THE LACK OF INTENDED EUROPEANIZATION

IN THE EU ASYLUM POLICY

A DIFFERENTIATED IMPLEMENTATION IN EU LEGISLATIVE

INSTRUMENTS CONCERNING ASYLUM

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Introduction

The European Union and the asylum policy. A long and conflictual relationship

Asylum is a policy field that concerns the institution of protection measures granted by host States to displaced persons. Asylum is granted to people fleeing persecution or serious harm in their own country and therefore in need of international protection (CEAS 1999).

Asylum policy belongs to the immigration control policy that comprehends the residence permits, the admission policy, the asylum policy, and the border controls (Meyers 2000).

The asylum policy of the European Union (EU) has been governed until the '80s by two international Treaties, namely the Geneva Convention and the New York Protocol. West Germany was the first European country to implement the first European asylum legislative instrument in 1983, but the troubled application of such a norm¹ let the European countries understood that policies on asylum, or at least policies concerning visa requirements, could only work if adopted in a coordinated way among neighbor countries.

Following this idea, in 1999 the European Union implemented a framework on asylum aimed at achieving a common legislation in this policy area, with the final goal to harmonize the legislative instruments across the EU Member States.

This framework was the Common European Asylum System (CEAS). In this thesis, the CEAS will be intended as the main policy tool through which the EU tries to Europeanize the asylum policy and will therefore assume a crucial position in the overall analysis conducted here.

¹Since the 1983 the number of people seeking for asylum from Sri Lanka in Europe grew in response to the Sri Lankan Civil War where insurgencies by the Liberation Tigers of Tamil Eelam against the Government aimed at creating an independent Tamil State in the Sri Lankan island (DeVotta 2009). Thus, West Germany introduced a legislative instrument in asylum matters in order to harden the asylum right through the introduction of the visa requirement for the citizens coming from Sri Lanka. However, since East Germany (GDR) had not such a visa requirement, the Sri Lankan displaced persons arrived in the GDR and then asked to enter in West Germany (Sciortino 2016).

Europeanization has been a hot topic in the first decade of the present century. In those years, many theorization and empirical researches have been published. Several definitions and methods to assess and measure the degree of Europeanization of politics and policies have been tried by scholars and experts, aiming at understanding what could be considered Europeanized (or not) and to what extent (Radaelli 2003).

The Europeanization of public policies has therefore been an important focus of empirical researches: many policy areas have been analyzed in order to appreciate the impact of European Union on the Member States (*ibidem*). The impact may refer to the direct and indirect effects of Europeanization (Featherstone 2003; Radaelli 2003; Radaelli 2000), may impact on national competition policy and regulatory approaches of the Member States (Radaelli 2003, Majone 1996), and can take different forms, such as that of convergence (Toshkov and de Haan 2013; Harcourt 2000; Radaelli 2003; Schneider 2000).

Despite the many studies on this topic across the last two decades, scholars do not share a common idea on what Europeanization is, and on how to assess it. Definitions, in fact, change and so do their measurements.

In this thesis, a semantic reduction of the Europeanization concept will be adopted by employing the label *Intended Europeanization* meant as a voluntary action with respect to a well-defined purpose.

In our perspective, Intended Europeanization is *a process of change* (Radaelli 2003, p. 41) that implies *the construction, the diffusion and the institutionalization of [...] formal rules [...] which are first defined and consolidated at the EU level* (Radaelli 2000, p. 4) and then transferred to the Member States (MSs) that must comply with the new norms.

Adopting this definition and perspective, two implications are in order.

1) The first is that the process of Europeanization in a certain policy area can be assessed only by referring to the purpose of a certain EU policy, and, more specifically, by evaluating if the main aim of that policy has been achieved. In the case of asylum policy, since the purpose of the CEAS is the harmonization of

domestic policies and legislative instruments, if evidence for it is found, then evidence for Intended Europeanization in this policy field emerges as well.

2) The second implication is that Intended Europeanization accounts for the legal compliance only: Intended Europeanization focuses on the construction of EU formal rules then transferred to the Member States (MSs) that must comply with them. Neither indirect effects of Europeanization, nor styles, ‘ways of doing things’ and shared beliefs (Radaelli 2000) will be in fact inspected in this thesis.

Scientific literature does not converge not only on a common definition of Europeanization but neither on a univocal method to assess the degree of Europeanization².

Concerning this point, the semantic reduction and the limitation of the definition of the concept of Europeanization to the legal perspective (as meant in this thesis), could lead to a shortcut between the concept and the assessment method as well. Nonetheless, this choice turns out to be the most fruitful path to follow, since this work mainly refers to the legislative instruments introduced to harmonize/Europeanize the EU asylum policy and to the legal impact of these tools on the domestic change. Intended Europeanization hence allows to grasp if the EU legal tools have triggered a change in the domestic laws.

This choice is even more appropriate, since the legal perspective adopted is in line with some of the Europeanization mechanisms elaborated by Kohler-Koch (1996), Radaelli (2000) and Knill and Lehmkuhl (2002).

Kohler-Koch (1996) refers to three mechanisms to explain the domestic impact of the European policy namely imposition, involvement and attraction. Among them *imposition* is the one where the super-national entity imposes a *legal model* to the domestic ones.

Radaelli (2000) talks about *coercion*, that is the mechanism where the MSs are under the pressure of an EU model and must therefore *comply with its norms*.

Our Intended Europeanization seems to be also in line with the *institutional compliance* mechanism argued by Knill and Lehmkuhl (2002), where the EU policy

² See Chapter 1 for a detailed review.

making triggers domestic change by prescribing *institutional requirements with which the MSs must comply* (ibidem, p. 257) (emphasis added).

This work explores the domestic impact of the EU policy only, where the mechanisms of imposition, coercion and institutional compliance are prescribed by the European model³. Intended Europeanization is thus a perfectly fitting concept to be employed here.

Given these premises, the core goal of this work is to assess whether a process of Europeanization⁴ has been (or is) taking place in the asylum policy area. In particular, it aims at assessing if the CEAS – the set of legislative instruments with the goal to achieve a common legislation across the EU MSs – has brought Europeanization in the EU asylum policy by triggering a domestic implementation of the EU legal rules.

Outputs, outcomes and impact. Analyzing the EU asylum policy through the public policy analysis

In policy analysis, by policy *inputs* are meant the *ingredients* employed to create a public policy, by *outputs* the *products*, and by *outcomes* the short-term effects of a public policy (Bobbio et al. 2017). The *impact* refers instead to the long-term effects that may influence the society (Chiaf 2013).

If borrowing these concepts to analyze the asylum public policy of the EU, the *ingredients* (input) of the asylum policy are then the efforts, made by the EU institutions, to create a set of legislative instruments, as well as the human and economic resources aimed at achieving the common legislation across the MSs. The *products* (output) are instead the legislative instruments created with those resources and efforts: in this work this is primarily the CEAS. Following this reasoning, the *short-term effects* (outcome) are the domestic changes of the MSs in order to harmonize their legislation according to the EU guidelines. The *long-term*

³ In some policy areas the EU prescribes the adoption of a well-defined model to follow. In many cases the European model is compulsory (Radaelli 2000; Knill and Lemhkuhl 2002).

⁴ The concept of Europeanization will in the following be referred to the above-given definition of *Intended Europeanization* also when the word “intended” is omitted.

effects (impact) is represented by the final effective set-up of a common legislation in this field of policy.

The set-up of a common legislation in asylum matters is strictly related to the Intended Europeanization of asylum policy. In fact, whether Intended Europeanization is, as defined before, a voluntary action with respect to a well-defined purpose that implies the transfer of the EU norms to the MSs, the impact here scrutinized coincides with the EU goal and thus it is an *intended impact* in its turn, namely the set-up of a common legislation among the EU MSs.

Hence, differently to the literature that refers to the impact of Europeanization as its effects, in the following of this thesis, when referring to the impact it will be always meant the *intended impact*, that in this case is, the desired consequence of the EU asylum policy, namely *the set-up of a common legislation* in this policy field.

This work will focus on the last three steps (2 to 4): a) output: the legislative instruments (CEAS) adopted to achieve the main goal (the harmonization of such a policy area) of the EU asylum policy; b) outcome: the (expected)⁵ domestic change of the EU MSs; and c) intended impact: the set-up of a common legislation in asylum policy. (Table I.1).

Table I.1. Input, output, outcome and (intended) impact as steps in the asylum policy area.

Step 1	Step 2	Step 3	Step 4
Input (ingredients)	Output (products)	Outcome (short-term effects)	(Intended) impact (long-term effects)
Human and economic resources employed in the policy	Legislative Instruments (CEAS)	MSs' (expected) domestic change	Set-up of a common legislation

Source: own elaboration

This thesis is articulated in two parts.

⁵ The domestic change is compulsory in almost all cases, since the EU employed a set of secondary legislation tools with which the MSs must comply.

The first part aims at assessing if there is evidence for Intended Europeanization of asylum policy across the EU MSs⁶ in the 2008-2017 decade.

By applying the definition of Intended Europeanization, that refers to a voluntary action with respect to a well-defined purpose, should the aims of the EU in asylum policy be achieved, then it would be possible to argue in favor of a Europeanization. In this policy area, being the purpose the harmonization of asylum policies across the EU member countries, if such a harmonization is achieved, then also Europeanization of asylum policy occurs.

It is worth stressing once again that, if adopting the semantic reduction of the Europeanization process as Intended Europeanization, and if then focusing on the EU aims, the process of “harmonization” and that of “Europeanization” in this policy field coincide.⁷ Even if, as Radaelli (2003) magistrally explained, harmonization of policies does not coincide with Europeanization as such, but is just a possible consequence of this process⁸, in the policy area here explored (asylum policy), the EU aim is precisely the harmonization of policies. Therefore, in this case, Europeanization and harmonization coincide.

Once clarified this crucial point, in the first part of the thesis it is explored the asylum policy’s intended impact (in the sense described above) and if there is evidence for Europeanization.

This first part comes to the conclusion that no Europeanization is present in the asylum policy area.

The second part of the thesis aims at understanding the main reasons why, notwithstanding the EU efforts, strong differences still remain among the MSs in this policy area. In this sense, the outputs and the outcomes of the asylum policy (Table I.1) – the legislative instruments (CEAS) and the domestic change, respectively – will be in-depth inspected. In particular, the derogations in the

⁶ The analysis conducted here, concerns also the United Kingdom since the analyzed time span covers the period when it was still an EU MS.

⁷ Again, harmonization and Europeanization coincide because the harmonization of asylum policies is the EU goal in this policy area. If, for instance, the EU aim was the differentiation across countries, then Europeanization would occur if evidence of a differentiation in asylum matters would emerge.

⁸ In this line, Montpetit (2000) in a research on French environmental policy concludes that even if the Europeanization encourages domestic policy change, not all countries will opt for the same type of change. Hence, Europeanization should not be confused with harmonization (see Chapter 1 on this point).

asylum laws conceded to some MSs and the possible differentiations in the domestic implementation of the EU dispositions will be discussed in order to understand if they may be among the possible determinants for this lack of Europeanization.

Lack of Europeanization. Is a *Differentiated Integration* the answer, or is it a *Differentiated Implementation*?

The main goals of the CEAS asylum framework are: the harmonization of the asylum legislation instruments and the mutual recognition of acts and States (Guild 2006). For this reason, the CEAS will be considered in this work, as hinted before, the main instrument employed by the EU to Europeanize⁹ the asylum policy area. For the sake of preciseness, it is not correct to strictly denote the CEAS as an instrument, since it includes many legislative tools, and is more a set of legislative instruments than a single tool. Nevertheless, in this thesis the CEAS will be labeled as “tool” or “instrument”, since it will be considered in its totality, and as a unitary legislative set aiming at Europeanizing this policy area.

Toshkov and de Haan (2013) authored one of the main contributions in the Europeanization of asylum policy. They argued that a common legislation in this policy area may lead to two main consequences: the race to the bottom (RTB) and the convergence. Also, this work adopts this assumption. Hence, if these expected consequences are confirmed, it can be stated that there is evidence for Intended Europeanization of asylum policy.

The concept of *race to the bottom* is widespread in the literature. It has been employed in many policy areas (welfare migration, fiscal policy, social policy, asylum policy, environmental policy and so on). The RTB describes a situation where the policies of a cluster of countries have met at the lowest denominator, for example, the most restrictive access to the labour market (Kvist 2004, p. 303). This

⁹ Following the definition of Intended Europeanization presented in the previous section, by Europeanize it is meant here the transfer of the EU norms to the single Member States.

can happen in a situation where the countries try to shirk their responsibilities to the neighbour countries (Toshkov and de Haan 2013). In a situation of common legislation in the asylum policy area, the EU Member States, «*will try to shirk responsibility and free-ride on the efforts of others*» (ibidem, p. 664). In particular, this expected consequence may decrease the asylum recognition rates since the EU MSs may tight their domestic policies on access to their territory. To be clear, the asylum recognition rate is the most used indicator to calculate the quotas of asylum seekers accepted by an EU country as refugees. Broadly speaking, it is the rate that refers to the quotas of the recognized asylum requests.

Convergence is a concept that is often confused with that of Europeanization, while, analogously to harmonization, it is merely one of the possible consequences of the Europeanization process (Radaelli 2003). Convergence in public policy may be the result of structural dynamics or of specific decisions taken by policy makers (Bennett 1991). In this thesis, in line with the already-given definition of intended Europeanization and the Toshkov and de Haan's approach, by convergence it is meant the convergence, i.e. the pointing towards, or the reaching of, the same level in the asylum recognition rates. Thus, should harmonization/Europeanization of asylum policies be achieved, then a convergence in the asylum recognition rates should occurs (being the convergence a consequence of the asylum legislative instruments' harmonization).

The assessment will be done by addressing the two main expected consequences of a common legislation in asylum policy (the RBT and the convergence) through a statistical analysis of the asylum recognition rates that is considered in this work as the main indicator of the just-mentioned two expected consequences.

If the RTB occurs, then the asylum recognition rate should diminish; while, as for the convergence, a reasonably equal quota of asylum recognition rates across the EU MSs should be registered. If these two expected consequences are confirmed, then it means that the EU has achieved its aim of creating a common legislation area in asylum matters (Figure I.1).

Since some terms employed in this work often overlap each other in the literature and may cause confusion – namely (in alphabetic order) convergence,

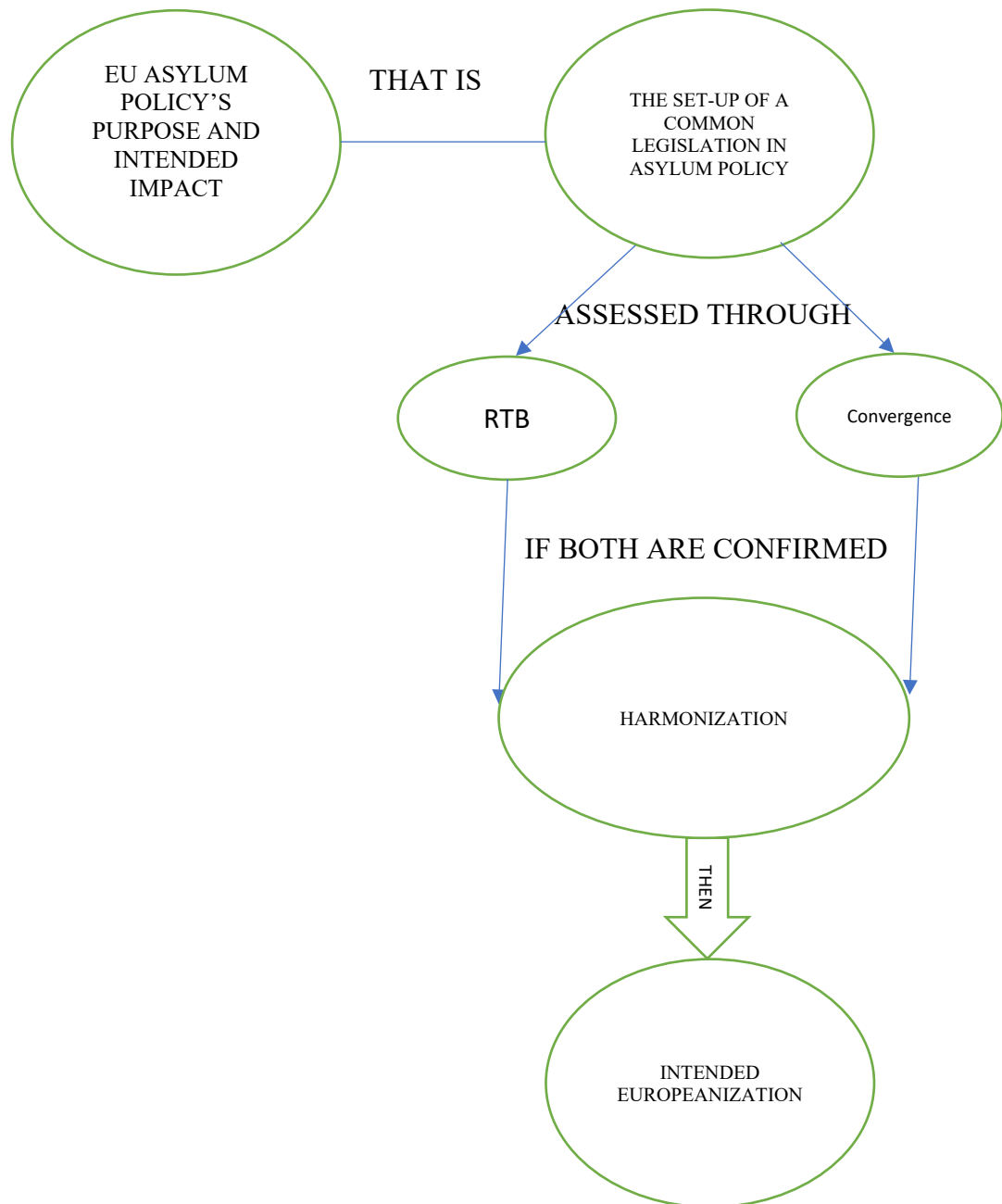
Europeanization, harmonization, and impact – it seems useful to clarify how they will be employed in this thesis (Table I.2).

Table I.2. Definition of Convergence, Europeanization, Harmonization, and Impact as will be employed in this work

Convergence	Europeanization	Harmonization	Impact
Convergence is the pointing towards (or the reaching of) the same level of asylum recognition rates.	<i>Intended Europeanization</i> meant as <i>a voluntary action with respect to a well-defined purpose</i> . In our perspective, intended Europeanization is <i>a process of change</i> (Radaelli 2003, p. 4) that implies <i>the construction, the diffusion and the institutionalization of [...] formal rules [...] that are first defined and consolidated at the EU level</i> (Radaelli 2000, p. 41) and then transferred to the Member States (MSs) that comply with the new norms.	Harmonization is considered as the common legislation across countries in asylum matters.	Intended impact is the hoped consequence of the EU asylum policy: the set-up of a common legislation in this policy field.

Source: own elaboration

Figure I.1. Flow chart of the Europeanization assessment.



Source: own elaboration

Figure I.1 shows the logic employed in this work to assess if the Europeanization of asylum policy is achieved. Starting from the main purpose/intended impact of the EU (the set-up of a common legislation in asylum matters) it will be assessed if the expected consequences (race to the bottom and convergence) of such a common legislation in asylum policy effectively occurred. If both the consequences are

confirmed, then the aim is achieved and a harmonization across MSs is present. Since the Intended Europeanization is strictly related to the achievement of the EU aim in terms of legal harmonization in asylum matters, should both expected consequences be present, then Intended Europeanization in asylum policy will be considered present as well.

The European policy on asylum and the implemented instruments to achieve common legislation in this policy area have been harshly criticized in the literature. For example, Longo (2017) argued that the EU guidelines seem to be unappropriated to manage a situation of a massive influx of asylum seekers; the EU policies in asylum matters are still based on the separation between asylum seekers and economic migrant flows. Moreover, the author argued that the definition of refugee based on the 1951 Convention is obsolete. Today the violence against people is in fact considered as a war strategy, so it is very difficult to distinguish between peace areas and war areas (Kaldor 1999, Longo 2017). Many critics focus instead on some legislative instruments implemented under the CEAS framework such as the Dublin Regulation that introduced the criterion of the “first-arrival-country” (Campomori 2016). This regulation (and the just-mentioned criterion) has been heavily criticized for three reasons: a) the asylum seekers cannot choose the State to send the asylum request; b) it is impossible an equal burden sharing among the States because of the Dublin III Regulation; c) it is very hard to apply this system when the migration flows give a big pressure on the border MSs (Longo 2017). In this sense, the MSs coerce asylum seekers to apply for asylum in a particular place and this have led to forms of disobedient behaviour by the part of asylum seekers (Den Heijer et al. 2016). Furthermore, the European Asylum Support Office (EASO) underlines that notwithstanding the EU efforts to harmonize the legislation on asylum, significant disparities remain among the Member States in their reception of asylum seekers, procedures for granting asylum, and assessment of qualification for international protection. As stated by the European Commission, the minimum standards were – and still are – indeed not appropriate to guarantee the desired degree of harmonization between the States.

The findings of the first part of this work seem to support the just-mentioned critics. In fact, the recognition rates increased across the 2008-2017 period and they are not the same quota for all the MSs. Thus, no evidence for RTB and convergence is found in the EU MSs in the considered decade and, therefore, no Intended Europeanization is present.

Why, notwithstanding the EU efforts to harmonize the asylum policy across the MSs, there are still differences among countries? This is the key question that will drive the second part of the present work.

As hinted before, this work will refer to two possible motivations to understand the lack of Europeanization in this field of policy that refers to the outputs and the outcomes of the asylum policy presented in Table 1: the legislative instruments and the domestic change respectively.

More specifically, **is it possible that some legislative instruments can counterbalance the main goal of the EU asylum policy?**

In order to answer this question, it has been assessed if the EU has conceded derogations to some country in the asylum policy area through the study of different EU treaties. The CEAS has been approved by 25 countries out of the 28 EU MSs. The three European countries that decided to opt out – completely or partially – are Denmark, Ireland and the United Kingdom (EASO 2016). These three countries are entitled with some derogation rights referring to Protocol No 21¹⁰ and Protocol No 22¹¹ of the Treaty on the Functioning of the European Union (TFEU). In particular, these protocols conceded derogations to these Member States to Article 67, Title V of the TFEU concerning the Area of Freedom, Security and Justice¹². Following these derogations rights, it will be assessed if Denmark, Ireland and the UK participated or not to a subset of legislative instrument implemented under the CEAS (or strictly related to it). In sum, this part aims at assessing if these countries produced a *differentiated integration* in the asylum policy field in order to

¹⁰ Protocol No. 21 On the Position of The United Kingdom and Ireland.

¹¹ Protocol No. 22 On the Position of Denmark.

¹² The Area of Freedom, Security and Justice (AFSJ) is a collection of home affairs and justice policies established by the EU in order to ensure security, rights and free movement within the European Union.

understand if the possible differentiated integration may have caused the evidenced lack of Europeanization.

The second possible motivation of the lack of Europeanization here explored refers to the MSs' domestic change. In other words, **is it possible that, notwithstanding the EU dispositions, the MSs did not implement the legislative instruments about the asylum? Or at least, is it possible that the countries decided to implement the EU tools in a such a differentiated way that the final outcome turns out to be highly different?**

In order to answer this second key question, it will be employed a new concept: the *Differentiated Implementation*.

Even if the expression Differentiated Implementation has not been explicitly employed by scholars as such, some analyses have dealt with it and may be considered as first measurement attempts of this phenomenon, namely the differences among MSs in the implementation¹³ and their consequent possible non-compliance with the European dispositions.

For instance, Börzel (2000) studied the compliance of two EU Member States (Germany and Spain) in environmental policy founding different implementation of the EU norms; Arndt, Heichel and Knill (2011) created a rank in order to shed light on the “leaders” and the “laggards” countries in environmental policy aims at showing the differentiation in the implementation on the EU legislative instruments in this policy field.

Differentiated Implementation is, therefore, a concept employed to understand if a differentiation in the transposition of the EU directives by the part of the MSs is present.

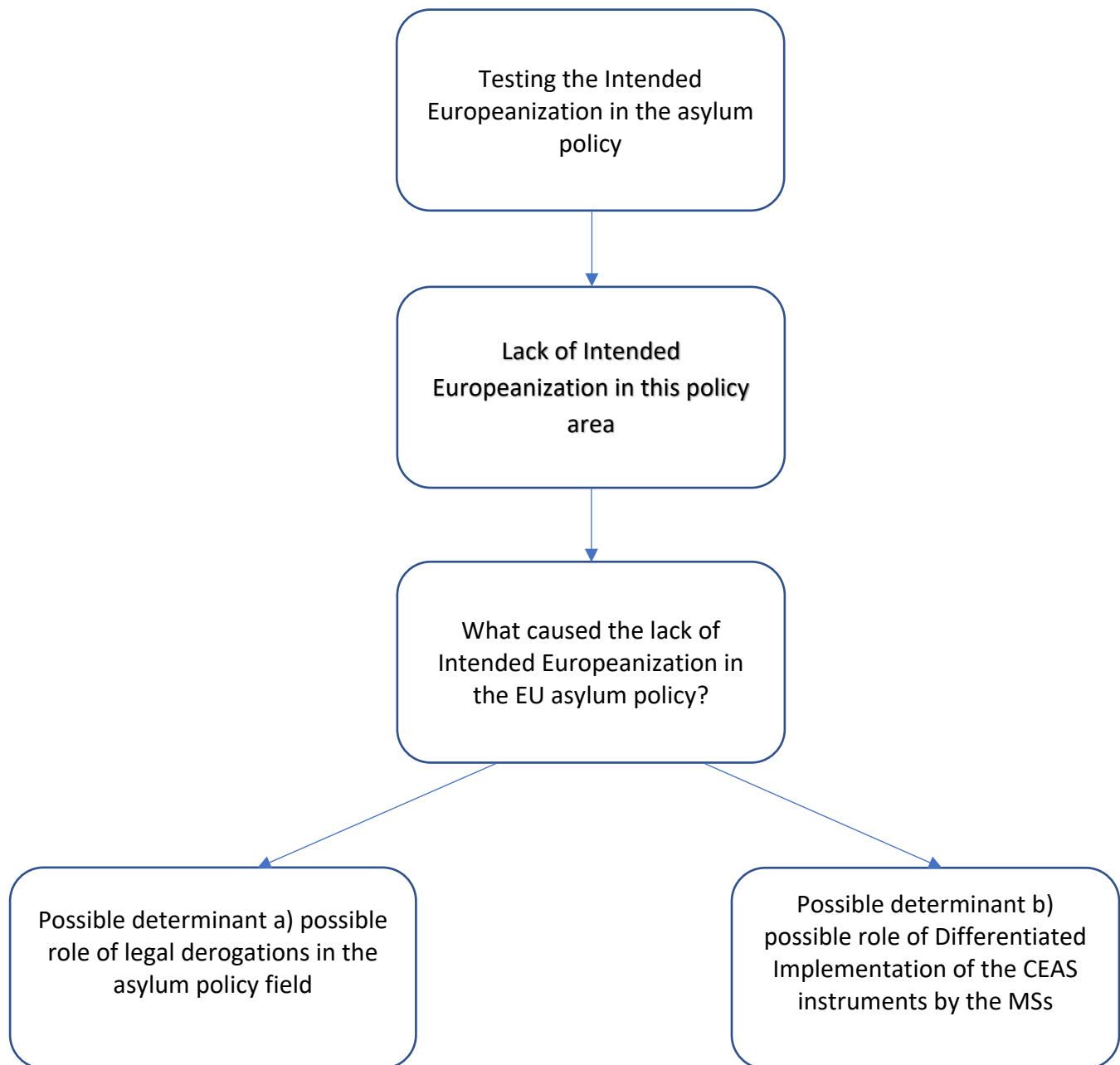
Differentiated Implementation, thus, will be here employed to identify the different responses of the EU Member States to a set of EU Directives aiming at harmonizing asylum policy. In order to assess if the Differentiated Implementation is present across the EU MSs, a set of indicators concerning the requirements that the countries should satisfy when implementing three CEAS' pivotal directives will be analyzed. The satisfaction of these requirements will be calculated through different

¹³ It is useful to clarify that for implementation it is meant the transposition of a set of EU directives.

scores and a rank of 16 MSs (those with available data) will be then created. In other words, it will be assessed if differences in implementation are present across the considered countries.

Hence, once tested and argued that no evidence for Intended Europeanization of asylum policy in the considered period is found (first part of the thesis), the (possible) determinants of such evidence will be explored, namely by examining the role of: a) possible legal derogations in the asylum policy area conceded to some MSs and b) possible differentiation in implementation across the countries concerning the legislative instruments for a common asylum policy. In the end, it will be assessed if a differentiated integration (determinant a) and/or a Differentiated Implementation (determinant b) are present, and if these processes may have counterbalanced the EU efforts towards a common legislation in the asylum policy (second part of the thesis) (Figure I.2).

Figure I.2. Flow chart of the thesis' main reasoning



Source: own elaboration

After this introductory chapter, the present work is structured into six chapters and a conclusion. The first chapter explains the theoretical framework revolving around the concept of Europeanization; the second chapter focuses on the EU asylum policy and legislative instruments since the foundation of the European Union until the last years, with a special focus on the CEAS. Subsequently, Chapter 3 presents

how Europeanization, as well as differentiated integration and Differentiated Implementation will be analyzed. The fourth chapter analyzes the Europeanization of asylum policy through its main expected consequences (the RTB and the convergence). Furthermore, a special focus on the determinants of the asylum recognition rates trend will be presented. The fifth chapter considers the differentiated integration by exploring to what extent the countries entitled with diverse derogation rights participated to the CEAS. Chapter 6 analyzes the Differentiated Implementation of 16 EU MSs in the reception of three directives adopted under the CEAS. Finally, the conclusive chapter sums up the main results of the thesis, by arguing that among the determinants of the lack of Europeanization showed in the asylum policy field, the Differentiated Implementation of the legislative instruments by the part of the MSs played an important role.

CHAPTER 1

Employing Europeanization as a Theoretical Framework

*«Too rich to be relevant to the world's poor,
[Europe] attracts immigration but cannot encourage imitation.
Too passive regarding international security.
Too self-satisfied,
it acts as if its central political goal is to become the world's most comfortable retirement home.
Too set in its ways, it fears multicultural diversity»*

Zbigniew Brzeziński (1997) *The Grand Chessboard: American Primacy and its Geostrategic Imperatives*.

In the political science literature, three issues have dominated the debate on the nature and the trajectory of the European Union (EU): a) whether the EU is an intergovernmental organization or a supranational entity; b) the discussion about the integration of the EU as a legal system; c) the development of policies formulated at the European level (Fligstein 2000). Scholars and experts have elaborated a set of theories in order to address these issues. One of them, and one of the most renowned is the Europeanization theory, which is also the main theoretical framework of this thesis.

Europeanization has been a mainstream theoretical framework among the European integration theories between the last decade of 900s and the first years of the new century. Scholars have used this concept in two different ways: a) Europeanization as the development of distinct structures of governance aims at creating authoritative rules (Caporaso et al. 2000; Börzel and Risse 2000); b) Europeanization as a process through which the social, economic and politic dynamics of the European Union become part of the logic of domestic identities, discourses and public policies (Radaelli 2000; Ladrech 1994; Börzel and Risse 2000).

This work aims at discussing if the Europeanization theoretical framework may still be useful to case some current EU policies, namely the asylum policy, governing the European Union.¹⁴

¹⁴ The term European Union (EU) will be used here despite the fact that this label changed in time: European Economic Community (EEC) until the 1993 Maastricht Treaty, and only thereafter EU.

This chapter first briefly introduces the major European integration theories (1.1), then it proposes an overview of the most relevant studies on Europeanization in the late 90s - early 2000s (1.2). The term Europeanization will be defined in order to assess what it is (and what is not), by distinguishing it from similar concepts like globalization, European integration, harmonization, and convergence. Furthermore, an excursus on the most important definitions of Europeanization will be offered. Thirdly, it will be explored to what extent it is possible to measure Europeanization (1.3). In order to do so, two main approaches will be presented: the one based on the mechanisms of change, which focuses on the key arenas where the change can be triggered, and the other one based on the “misfit theory”, which supposes a mismatch between the European polity, politics and policies and the domestic ones. Finally, an adapted definition of Europeanization, conceived as a voluntary action with respect to a well-defined purpose, and the method to assess its existence will be presented (1.4).

1.1 The European integration theories: realism vs pluralism

European integration is the process of industrial, political, economic, social, and cultural integration of the European Union MSs. The current form of the EU is the result of a political and economic process of integration by the part of its Member States (Longo 2005). Following Schimmelfennig and Rittberger (2006 p. 71) the European integration is considered *«as the process whereby (a) new policy areas are regulated on the EU level partially or exclusively (sectoral integration), (b) competencies are increasingly shared across EU Member States (vertical integration) and (c) the EU expands territorially by accepting new members (horizontal integration)»*. The sectoral integration refers to the process where new sectors or policy areas are becoming regulated at the EU level; the vertical integration concerns the distribution of competencies among EU institutions in integrated policy sectors; the horizontal integration refers instead to the territorial extension of sectoral and vertical integration (ibidem).

Since its creation in 1951, the EU has been studied by scholars and experts of political science in order to determine its level of integration and to forecast its possible future forms. Thus, many theories have been proposed – such as the domestic political approach, the liberal intergovernmentalism, the functionalism, and so on – in order to provide an answer to the uncertainty of the future of European integration.

Thus, EU scholars found different theories to refer to the integration of the EU Member States. Among them, two classical theories have been developed across the years: namely realism and pluralism.

Realism (and neo-realism) is the theoretical approach that until the 80s mainly contributed to the development of theories aimed at understanding and at describing the mechanisms of inter-states relations (Longo 2005). In this perspective, the State is considered as a sole and rational actor that defines its interests based on its relationship with the other States. The use of the realism theoretical variables on the study of European integration developed a set of theories called intergovernmental theories. In spite of their differentiation, all these theories, consider the EU institutions driven by the choices of the Member States that negotiate their interests and determine the integration evolution in both institutions and policies (ibidem).

Even if the intergovernmentalist interpretation of the European integration has been widely accepted by scholars and experts in the 60s and the 70s, in the 80s many critics have been moved that culminated to a review of these theories. According to this revision, the States remain the main actors of the European integration, but the driving force becomes the inter-state bargaining, rather than the power relation among the Member States (ibidem). This review led to the creation of a new set of intergovernmental theories developed since the 80s.

Bulmer (1983) elaborated the *domestic politics approach* that refers to the State as the key actor of the European integration process, that aims at maximizing its power in the international system. Thus, the State is not considered as a sole actor but as an arena where political and social forces move in order to reach their goals by influencing the decision making (Longo 2005).

This perspective has been in-depth elaborated by Moravcsik (1993). The author coined the label *liberal intergovernmentalism* and argued that the national interests emerge in the domestic political conflict and that the interest is the result of the competition among the social groups aiming at reaching their own objectives (Longo 2005). This is considered by the author the first level of the analysis. Subsequently, he argued that the national interests' creation is the pre-condition to analyze the second level, that is the strategic interaction among the States, interaction where the State becomes a sole and rational actor aims at satisfying its own national interests.

Wincott (1995) criticized Moravcsik's liberal intergovernmentalism by underling the effective relevance of the everyday practices of the EU institutions. The author employed the Single European Act¹⁵ as an example to argue that it only conceded the legal status to already consolidated practices in the everyday life of the EU system (Wincott 1995, Longo 2005). This set of theories has been contrasted by the pluralist approach.

The main studies of the pluralist approach refer to Mitrany's functionalism (1975). The functionalist proposal refers to the fact that each government should have as final goal the human needs satisfaction instead of the maximization of their interests. Hence, it has to adapt to the functional needs of the international society (Rosemond 2000). The key principle of the functionalist theory is that the integration among the MSs should occur gradually firstly in economic and social sectors and then to expand to other fields such as politic and law (Saponaro 2019).

The functionalists strongly criticized the European unification because it is based on the same logic of the National States: having territorial delimitation, the EU as well may produce nationalism and in a wider territorial level (Mitrany 1975, Longo 2005). Nonetheless, the neo-functionalism analyzes the European integration by employing its own concepts. The basis of these concepts is that the non-governmental actors play an important role in the European integration. In this perspective, the integration is a result of the competition among governmental and non-governmental interest groups (Longo 2005). The neo-functionalism,

¹⁵ The Single European Act has been signed in 1986 aims at establishing a single market by December 1992.

differently to the classical realist theories, conceptualizes the States as an arena where societal actors operate to realize their interests. Thus, rather than explaining international politics as a game among countries, the neo-functionalists consider International Relations as the interplay of societal actors (Hooghe and Marks 2018). Many critics have been advanced also to the neo-functionalism approach, mainly from the intergovernmentalist experts. For example, Lodge (1978) argued that many social groups continued to feel their national Government as the core point of the decisional arena rather than to move their fidelity to the supra-national institutions. Harrison (1990), instead, criticized neo-functionalism since, in his view, it neglects the formal arrangements of power as described by the treaties, as well as the role played by the Nation States as actors of integration.

1.2 Europeanization: term and definitions

The Europeanization is a meta-theory of the European integration theories that aims at assessing the effective transfer of the European practices into the domestic ones. A meta-theory has the aim to increase the knowledge about world politics through a focus on ontological and epistemological issues rather than on the international system's structures and dynamics (Wendt 1991). Being a meta-theory, *«Europeanization needs to embrace its theoretical underpinnings rather than simply delimiting itself as an analytical framework»* (Bache, Bulmer and Gunay 2011, p. 2).

Since the late 90s, the term Europeanization started to be increasingly employed in several academic disciplines such as history, anthropology, sociology, and political science. According to Featherstone (2003), who surveyed academic literature for a decade, the largest group of Europeanization studies revolve around the impact of EU membership on domestic public policies. Some scholars studied the Europeanization of public policies by emphasizing the constraints on domestic policies imposed by the EU: for example, Radaelli (1997) compared Italian and British tax policy taking into account the constraints given by the EU regulations. Other scholars studied the juxtaposition of the European with the national policies:

for instance, Abraham and Lewis (1999) focused on the EU procedures in order to harmonise the marketing authorization (or licensing) of prescription medicines. Some others do account for the indirect effects exercised by the EU on domestic policies: for example, the impact of the European social and work policy on the Italian ones (Graziano 2008).

Before arguing about the many definitions of Europeanization it is useful to distinguish among this term and some “fake friends”, namely terms improperly used to mean Europeanization. European integration, convergence, harmonization, or even globalization are in fact often (erroneously) used as synonyms of Europeanization (Featherstone and Radaelli 2003, Fabbri 2003, Casadei 2013).

Europeanization in itself *«is a process of structural change, variously affecting actors and institutions, ideas and interests [...] minimally, Europeanization involves a response to the policies of the European Union»* (Featherstone 2003, p. 3).

The impact of these policies is not necessarily that of convergence (Héritier and Knill 2000). Convergence can in fact be only one among the possible consequences of the Europeanization process. Europeanization can in fact also produce divergences among the Member States (Radaelli 2003). As well, Europeanization should not be confused with European integration: *«Europeanization would not exist without European integration. But the latter concept belongs to the ontological stage of research, that is, the understanding of a process in which countries pool sovereignty, whereas the former is post-ontological, being concerned with what happens once EU institutions are in place and produce their effects»* (ibidem, p. 33). In other words, Europeanization is considered the second step of the European Integration (Fabbri 2003) where the latter concerns to the ontological stage of research, while Europeanization is a post-ontological stage that assesses what happens when the EU institutions start to produce their effects (Radaelli 2003). In order to strengthen the difference between Europeanization and European integration, Fabbri (2003) and Casadei (2013) argued that the Europeanization effects affected also EU non-Member States such as Norway and Switzerland. Furthermore, Fabbri (2003) claimed that Europeanization is the second step of European integration after the Maastricht

Treaty signature. As Dyson and Featherstone (1999) affirmed, Europeanization is a result of the decisions taken to respect the commitment related to that Treaty.

Nor does Europeanization equal harmonization. Harmonization boosts national policy change, but not all the States display the same types of change (Montpetit 2000): «*Harmonization reduces regulatory diversity [...] Europeanization leaves the issue of diversity open. The outcome of Europeanization can be regulatory diversity, intense competition, even distortions of competition*» (Radaelli 2003, p. 33).

A further “fake friend” is represented by globalization. Europeanization and globalization are interconnected, but the two terms are antithetic (Wallace 2000). Globalization has been conceived as a synonym of Americanisation and therefore some European countries – France in particular – have proposed to employ the term Europeanization as an alternative to that of globalization, indicating the latter as Americanisation (Fabbrini 2003). European countries had in fact already started the creation of regional integration institutions (such as the CECA in 1952 and the CEE in 1957) well before the globalization wave. Additionally, «*the concept of Europeanization potentially offers a more accurate sense of, and explanation for, aspects of domestic change than globalization [...] Attention to Europeanization opens up the “black box” of national political system to a further level of analysis and understanding*» (Ladrech 2010, p. 6).

Defined what Europeanization is not, let us now turn to what Europeanization may be.

During the 90s, many scholars tried to single out a precise definition of Europeanization. One of the first attempts is the one by Börzel (1999), who indicates Europeanization as the penetration of the European policy making in the domestic policy arena. Lawton (1999) claims instead that Europeanization is the transfer of sovereignty from the super-national level to the domestic one, while Mjoset (1997) defines Europeanization as the growing development of the European influence on its MSs.

These three first definitions proved very useful to examine and explain Europeanization but, as many scholars – such as Di Gregorio (2005) and Radaelli

(2000) – affirmed, they are too vague and explain *«too much little»* (Di Gregorio 2005, p. 2).

On the contrary, some other definitions are even too much accurate and examine only a particular aspect of the Europeanization process (Di Gregorio 2005). For example, the one by Leonardi (1995), who described Europeanization as a convergence of decision making and policies; or that by Jeffery (1996), who claimed that Europeanization is the adaptation of the domestic policies to the supernational change. These two terms – convergence and adaptation – as Morlino (1999), Radaelli (2003), and Di Gregorio (2005) argued, may be some key-consequences of the Europeanization process but they do not represent Europeanization in itself.

Ladrech (1994, p. 69) affirmed that the Europeanization is an *«incremental process re-orienting the direction and shape of politics to the degree that EC political and economic dynamics became part of the organizational logic of national politics and policy-making»*. This definition is very interesting not only because it frames Europeanization as a process, but also because it introduces elements not scrutinized that far, such as learning and policy change (Radaelli 2003, Di Gregorio 2005).

A further definition is that proposed by Radaelli (2000 ,p. 3), who defines Europeanization as a *«process of (a) construction (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms in which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies»*. Following this definition, Europeanization is not just a process that implies institutional changes in a Member State, but also a process that modifies norms, policy styles, ways of doing things, shared beliefs. These changes emerge in the European policy process and, afterward, they penetrate in identity frames, in speeches, in political structures, as well as in national policies (Di Gregorio 2005). Fabbrini (2003) underlines that Europeanization is a twofold phenomenon. On the one side, it is an “institution creator”: Europeanization is in fact considered as a process of institution-building and hence a “creator” – at the European level – of

different governance structures, aiming at solving specific problems about public policies (ibidem). On the other side, Europeanization also refers to the influence exercised by the European Union onto the Member States. For instance, Morlino (1999) refers to the Europeanization as a process of penetration and of development of formal and informal norms, values and directives generated at the European level, which penetrate to the national level.

1.3 Europeanization: previous studies and measurement attempts

Relying on the definition of Europeanization as a process through which «*formal and informal rules, procedures, policy paradigms, styles, 'ways to doing things and shared beliefs and norms*» (Radaelli 2000 p. 3) will spillover from the European level to the domestic one, some plausible questions are in order.

Among them: where does Europeanization operates and to what extent? What does the Europeanization process imply in terms of domestic change? Is it possible to measure the degree of Europeanization? What can be labelled as “Europeanized”? Let us start by discussing the impact of Europeanization and the extent of its influence.

To this goal, it will be employed the typology built by Morlino (1999) in order to distinguish the main arenas in which the Europeanization process may produce a domestic structural impact, namely values, socio-cultural norms, formal and informal structures (see Table 1.1). The author, in his typology, also includes three cultural dimensions such as citizenship, the penetration of values, and the changes in the cultural identities of various groups of European people. Furthermore, the typology refers to «*the relationship between each member and the other countries within the European Union or outside it, that is, the international alignment and the sovereignty*» (ibidem, p. 4)

Table 1.1. Main arenas where Europeanization may trigger domestic change.

International alignment
Sovereignty
Domestic stability
Functions and structures of representation
Cabinet/Assembly relations
Legal system
Centralization/decentralization
Administrative structure
Cultural identity
Non-statist political values
Citizenship

Source: Morlino (1999, p. 5)

Differently from Morlino, who differentiated among the main arenas in which the Europeanization should trigger a domestic change, Börzel and Risse (2000) argued that the basic trichotomy of polity, politics, and policy (Sager 2007) is also involved in the Europeanization process. In particular, they argued that the implementation of European policies induces policy change, transforms policy style and changes policy instruments as well. As for politics, they claimed that the Brussels policies have consequences for «*domestic process of social interest formation, aggregation and representation*» (Börzel and Risse 2000, p. 4). Furthermore, the Europeanization process can affect intergovernmental relations, national bureaucracies, and administrative structures, state traditions, as well as regulatory and judicial structures (ibidem).

To assess *where* Europeanization works, it is also useful the taxonomy elaborated by Radaelli (2003).

Here the arenas of Europeanization are singled out in macro-domestic structures, public policies and cognitive-normative structures. The first arena includes the institutions, the legal structures, the inter-governmental relations, the political parties and the pressure groups. The Europeanization of public policies (second arena) can affect actors, policy problems, styles, instruments and resources. As for the third arena – cognitive and normative structures – the Europeanization can

affect discourses, norms and values, political legitimacy, identities, State traditions, policy paradigms, frames and narratives.

The arenas of Europeanization singled out by these three studies – Morlino (1999), Börzel and Risse (2000) and Radaelli (2003), respectively – have been compounded by Di Gregorio (2005) (see table 1.2). It emerges how Europeanization affects the whole range of polity, politics and policies.

Table 1.2 Europeanization arenas

Europeanization process		
Polity	Politics	Policy
political institutions	Process of:	Actors
international harmonization	interests formation	Style
sovereignty	interests articulation and aggregation	Instrument
domestic stability	interests representation	Resources
government-parliament relations	public discourses	Cognitive structures of public policies
governmental relations	Representation structures	Paradigms
centralization/decentralization	party politics	Frames
judicial structures	Pressure and interests groups	Narratives
Public administration	NGOs	Policy discourse
State traditions	Cognitive and normative structures	
Economic institutions	Discourses about Europe	
State-society relations	Norms and values	
cultural identity	Political legitimization	
discourses about Europe	Identity	
Norms and values	Interpretation of governance	

Source: Di Gregorio (2005, p. 8).

This thesis focuses on the policy arena and on the impact of Europeanization on public policy.

In the following it will be discussed how in the literature has been studied the impact of Europeanization of public policies.

There are two possible ways to inspect how the Europeanization can trigger domestic change: referring to the mechanisms of change and to the misfit theory.

Referring to the mechanisms of change, Knill and Lehmkuhl (2002) tried to explain the domestic impact of the European policy making through an analytical

distinction among three main mechanisms of Europeanization: *institutional compliance*, *changing of domestic opportunity structures*, and *framing of domestic beliefs and expectations*. They tried to illustrate this distinction by referring to three policy areas where the mechanisms can be observed: environmental policy for institutional compliance, road haulage policy for changing domestic opportunity structures, and railways policy for framing. The impact of the European policy making on domestic regulatory styles and structures can be: «(a) *very prescriptive and demand that Member States adopt specified measures in order to comply with EU requirements*; (b) *confined to changing domestic opportunity structure*; or (c) *in their weakest form, without any direct institutional impact at all since they primarily aim to change domestic beliefs and expectations*» (ibidem, p. 257).

As for the first mechanism – institutional compliance – the authors claimed that European policy making can «*trigger domestic change by prescribing specific institutional requirements with which Member States must comply*» (ibidem, p. 257). In this case, the MSs have limited discretion in order to decide the specific arrangements for their compliance with the EU requirements.

As for the second mechanism – changing of domestic opportunity structures – no institutional model is available, but the European influence promotes the domestic arrangements by altering the domestic rules of the game by modifying the domestic opportunity structures (ibidem).

The last mechanism – the framing of domestic beliefs and expectations – implies that European policies do not prescribe any institutional model and do not modify the institutional context, but the aim is that to indirectly trigger a domestic change to the EU objectives «*by altering the beliefs and expectations of domestic actors*» (ibidem, p. 258).

Before Knill and Lehmkuhl's contribution, which is still the most used distinction, other scholars had attempted other categorization to understand how the process of Europeanization may influence Member States.

Kohler-Koch (1996) for example, underlined three different mechanisms to explain the domestic impact of the European policy: *imposition* (input from the super-national level to the domestic one), *involvement* (that provides a comparison

between national structures and the European model) and *attraction* (that prescribes a multidirectional influence between EU and MSs).

Following the Kohler-Kohl's interpretation, Radaelli (2000) distinguished three mechanisms of pressure by the EU on the Member States: *coercion*, *mimetism* and *normative pressure*. In the first case (coercion) the MSs must be under the pressure exercised by the European model, which is the model that they must follow. The pressure thus implies coercion. For instance, some directives specify the time within which the Member States are compelled to introduce regulatory arrangements. Mimetism is instead a solution for MSs when EU policies are adopted only by a part of them. In this case, the Member States can choose to join EU policies or to opt out (due to the lack of compulsory directives or for the existence of derogations). Mimetism is hence considered by Radaelli (2000, 2003) as an alternative mechanism of pressure of Europeanization in which «*if the countries adopting EU models provide a critical mass, the remaining countries can feel the force of attraction of the EU 'center of gravity' and join in*» (Radaelli 2000, p. 18). These two mechanisms – coercion and mimetism – are considered by the author as mechanisms of isomorphism. The third mechanism – normative pressures – does not prescribe any European model. The impact here is in fact indirect, via international regulatory competition. Moreover, that Europeanization is a dynamic, reversible, and unsure concept, which can be influenced by context and time (Fabbrini 2003).

These three mechanisms are further discussed by Radaelli in a later contribution (2003). In this further study, the author emphasizes the role of a European framework and distinguished between vertical and horizontal mechanisms. If the latter does not forecast an EU policy model and thus no pressure will be present, in the vertical mechanism there is a clear definition of where the policy has to be defined (the EU level) and who need to comply with the model defined at the supra-national level: «*vertical mechanisms seem to demarcate clearly the EU level (where policy is defined) and the domestic level, where policy has to be metabolized. By contrast, horizontal mechanisms look at Europeanization as a process where there is no pressure to conform to EU policy models*» (Radaelli 2003, p. 41).

Secondly, a very accredited theory about the impact of the Europeanization on domestic policy is the *misfit theory*. Lots of studies demonstrate that Europeanization is likely to trigger domestic change only if it is “inconvenient” (Börzel and Risse 2000). A certain “misfit” between the European and domestic policy must be therefore necessary to permit the change (ibidem). The “goodness of fit” *«between the European and the domestic level determines the degree of pressure for adaptation generated by Europeanization on the Member States. The lower the compatibility, between European and domestic process, policies, and institutions, the higher the adaptational pressure. If European norms, rules, and the collective understandings attached to them are largely compatible with those at the domestic level, they do not give rise to problems of compliance or effective implementation more generally speaking. Nor do they provide new opportunities and constraints to domestic actors, which could lead to a distribution of power resources at the domestic level. European policy frames which resonate with domestic policy ideas and discourses are unlikely to trigger collective learning process which could change actors’ interests and identities»* (ibidem, p. 6). Nevertheless, the misfit degree must be neither too high, nor too low. If a Member State has a “style” that is too close to that of the European Union, it receives no stimulus to change/adapt, and the adaptation pressure is too low; conversely, if the MS has too much different structures, the adaptation costs will be too high (Fabbrini 2003; Casadei 2013). Nonetheless, policy misfit is only one condition for domestic change. Börzel and Risse (2000) argued that some facilitating factors may help domestic change. From a Rationalist Institutionalism point of view, they argued that Europeanization may in fact lead to a redistribution of resources and differential empowerment at domestic level. The domestic change is possible only if there is a considerable misfit that provides actors with new opportunities and constraints. Furthermore, they argued that domestic actors must have the capacity to exploit new opportunities and to avoid constraints. They identified two mediating factors that influence these action capacities. On the one side, the presence of multiple veto points in a State can strengthen actors that have different interests: they can avoid constraints and can resist to the domestic change. On the other side, the presence of formal institutions gives the possibility to provide material and ideal

resources to the actors in order to exploit new opportunities and promote domestic change (Börzel and Risse 2000; Di Gregorio 2005). *«The existence of multiple veto points and formal facilitating institutions determine whether policy and institutional misfit lead to the differential empowerment of domestic actors as a result of which domestic processes, policies, and institutions change»* (Börzel and Risse 2000, p. 10).

From a sociological institutionalism point of view, they argued that European policies, norms and values exercise adaptive pressures on domestic process in which there is a misfit between national norms and belief systems. Also from this perspective, the authors identified two further mediating factors that can influence the process of MSs' adaptation: on the first side, the presence of change agents or norm entrepreneurs that influence actors in order to redefine their interests; on the other side, the presence of a political culture and other informal institutions oriented to consensus building and cost sharing (Börzel and Risse 2000, Di Gregorio 2005). *«The existence of norm entrepreneurs and consensus-oriented cultures affect whether European ideas, norms and the collective understandings which do not resonate with those at the domestic level, are internalized by domestic actors giving rise to domestic change. This sociological institutionalist logic of domestic change embodies the cognitive and normative Europeanization mechanisms such as policy framing and norm diffusion»* (Börzel and Risse 2000, p. 13). This logic is similar to that Radaelli (2003) called "horizontal mechanism", where, as presented before, he underlines how no European model exerting a strong pressure on the Member States is present (Casadei 2013).

Mining from the mediating factors argued by Börzel and Risse (2000), Fabbrini (2003) added a distinction between facilitating factors of Europeanization (such as the presence of national people that support the European pressure, the presence of a national policy style similar to the European one, the existence of centres of power that can promote change), and inhibiting factors of Europeanization (such as the presence of national people that do not support the European policy, that of a national policy style very different from the European one, and the presence of institutions reluctant to change).

Börzel and Risse (2000) claim that facilitating and inhibiting factors can cause three different degrees of domestic change: absorption, accommodation and transformation. In case of *absorption*, the MSs are able to incorporate European policies and ideas and to adjust their institutions without modifying existing processes, policies and institutions. In this first case, the degree of change is low. In the case of *accommodation*, Member States accommodate Europeanization pressure by adapting domestic policies, processes and institutions without substantially change their essential features. Here the degree of domestic change is modest. In case of *transformation*, the MSs replace their domestic policies, processes and institutions by new. Their essential features are fundamentally changed, and the degree of domestic change is high.

Drawing from Börzel and Risse's misfit theory, Radaelli (2000, 2003) claims that the main outcomes of Europeanization can be four: inertia, absorption, transformation and retrenchment. *Inertia* is a situation without change. This is possible when a Member State finds that EU political architectures, choices, models or policies are too dissimilar from domestic practices and thus it does not move. *Absorption* indicates change as adaptation. The MSs can absorb some non-fundamental changes but maintain their core habits. *Transformation* implies that the logic of political behaviour in a MS changes and, as a consequence, processes, policies or institutions are modified. The last outcome, *retrenchment*, is considered a paradoxical effect in which the national policies became less "European" than they were, that is, less in line with the model defined by the European Union. This effect is remarkable when there are many opposers in a Member State (Di Gregorio 2005).

Hence, the impact of the EU policy making on domestic policies can be triggered directly (whether an European model impose norms on the MSs) or indirectly (if there is not such an European model but the EU logic, the discourses and the "ways to doing things" penetrate in the domestic level).

As seen, the past attempts to see if an impact of Europeanization occurs refer to mechanisms of change and to the misfit theory. Nevertheless, as in-depth explained in the next paragraph, this work will only focus on one of the mechanisms

elaborated in the literature: the one which the MSs must comply to the norms of an EU model.

1.4 The challenge in using Europeanization as a Theoretical Framework

This thesis aims at employing Europeanization as the main theoretical framework to frame and interpret a specific EU public policy, that is the asylum policy.

This is a tough challenge for at least three reasons.

First, Europeanization is an “out of fashion” theoretical framework since it has been replaced by other meta-theories such as that of differentiated integration; secondly, Europeanization is difficult to assess if the expected consequences and the expected impact of an EU public policy, as well as its main goals, are not taken into account; thirdly, too many definitions of the concept exist and they often conflict with each other. That means that a research employing a certain definition of Europeanization may conclude that Europeanization is ongoing, while another one, employing a different definition may turn out to conclude the opposite.

For this reason, a clear statement on which definition of Europeanization (and on which method to assess it) will be here employed is needed. Namely, in this work a semantic reduction of the Europeanization concept will be adopted by employing the label *Intended Europeanization*, meant as a voluntary action with respect to a well-defined purpose. In this perspective the definition of *Intended Europeanization* compounds some of the previously presented definitions and sounds as follows:

Europeanization is a process of structural change (Featherstone 2003) [that implies] *the construction, the diffusion and the institutionalization of formal rules that are first defined and consolidated at the EU level* (Radaelli 2003) and then transferred to the MSs that have to comply with the new norms.

This definition compounds some of the main aspects already covered by some scholars: for instance, the definition of Europeanization as a process of structural

change stated by Featherstone (2003) and that of Radaelli (2003) referring to the construction, diffusion and institutionalization of rules.

Nevertheless, in its second part, the definition employed in this thesis differs. Radaelli talks also about informal rules, procedures, and shared beliefs. In the definition elaborated in this work, there is only a legal perspective, where the MSs have to comply with the new EU norms.

This is a reduction of the semantic concept of Europeanization. Nevertheless, it is useful since this work will refer to the legislative instruments concerning the harmonization of the asylum public policy and to the impact of these tools on the domestic change. Furthermore, since scientific literature does not converge not only on a common definition of Europeanization but also on a univocal assessment method, the choice to limit the definition to the legal perspective has been reputed the most fruitful path to follow. Even more so, since the legal perspective is in line with one of the Europeanization mechanisms elaborated by Kohler-Koch (1996), Radaelli (2000) and Knill and Lehmkuhl (2002) namely respectively imposition, coercion and institutional compliance (see section 1.3).

This work will refer to the domestic impact of the EU policy only, where imposition, coercion and institutional compliance are prescribed by the European model. Neither indirect effects of Europeanization, nor styles, ‘ways of doing things’ and shared beliefs (Radaelli 2000) will be inspected thus making the use of intended Europeanization as perfectly fitting.

Moreover, the adopted definition implies that Europeanization can be assessed only by referring to the aim of a certain EU policy and by evaluating if the main goal of that policy has been achieved.

The next chapter will focus on the policy area analysed in this work: the asylum policy. It will be presented through an excursus of the main policy tools implemented since the EU creation with a special focus on the Common European Asylum System (CEAS) that, in this thesis, plays a pivotal role in the Europeanization of the asylum policy field.

CHAPTER 2

The European Union and the legislative instruments on asylum

*«There still exists - even today - a yearning, a nostalgia for European solidarity,
a solidarity of European culture.
Regrettably, solidarity itself no longer exists,
except in hearts, in consciences, in the minds of a few great men at the heart of each nation.
European consciousness - or what one might call a 'cultural European awareness' –
had been on the wane for years ever since the awakening of national identity.
You could say that patriotism has killed Europe. Patriotism is particularism.
However, European culture goes back much further than the nations of Europe.
Greece, Rome and Israel, Christendom and Renaissance,
the French Revolution and Germany's eighteenth century,
the supranational music of Austria and Slavic poetry:
these are the forces that have sculpted the face of Europe.
All these forces have forged European solidarity and the European cultural consciousness.
None of these forces know national boundaries.
All are the enemies of that barbarian power: so-called 'national pride'»
Joseph Roth (2013) On the end of the world.*

The European Union has a crucial position in the global migration geography. It is exposed to migration flows because of its geographic position and its socio-demographic structure (Pastore 2006). An effective system to manage these flows is therefore mostly needed. Not by chance, scholars, policy makers, and experts in European studies have been trying to address this issue since the Treaty of Rome.¹⁶ The main instrument employed by the EU to manage this issue has been that of regulation. This is one of the policy analysis instruments most used by policy makers, in order to solve public troubles (Bobbio et al. 2017). Policy makers try to modify the behaviour of individuals, companies, institutions, and States in a well-defined direction by employing this kind of instrument that consists of obligations and prohibitions (ibidem). A set of norms has to be created in order to modify such behaviours (Howlett 2011). This is what, first the United Nation and then, the EU, tried to do in order to manage the international migration since the end of WWII.

¹⁶ The treaty of Rome was signed on 25 March 1957 by Belgium, France, Italy, Luxembourg, the Netherlands and West Germany in order to create the European Economic Community (ECC).

This chapter aims at giving an excursus on the most important legislative instruments concerning the asylum policy area in the EU since the creation of the European Economic Community (ECC) in 1957. It is structured as follow: first of all, the different types of migrants will be explained (section 2.1); then a brief overview of the first types of asylum seekers and asylum legislative instruments, which historically appeared in Europe, will be discussed; subsequently, the asylum legislative tools after World War II will be sketched and the Geneva Convention and the New York Protocol will be mentioned (section 2.2 and 2.3, respectively). To address the core of the chapter, an excursus on the legislative instruments concerning the asylum policy area in the European Union will be presented, and a particular focus on the Common European Asylum System (CEAS) will be provided (section 2.4). Finally, the chapter will discuss the major flaws in the CEAS legislation and its consequences, as well as the attempt made by the United Nations (UN) to establish a new international framework for asylum by learning from the CEAS (section 2.5).

2.1 Migrants, asylum seekers, and refugees: definitions and distinctions

Before differentiating the categories of migrants and their relevant juridical statuses, it is necessary to clarify the distinction between migration and asylum policy.

Although misleading, these two terms are often used as synonymous. Migration policy comprehends both immigration policy and immigrant policy (Guarneri 2005). The first one consists of all activities devoted to immigration control – that include residence permits, admission policies, asylum policies, and border controls (Meyers 2000) – while immigrant policy refers to all activities concerning the integration of immigrants (Guarneri 2005). Consequently, the asylum policy – that is the main focus of this work – belongs to the immigration (control) policy.

Also, the terms migrant, asylum seeker, and refugee are employed (especially by the media) as synonymous (Campomori 2016). It is, instead, necessary to

distinguish among these categories because their rights depend on the status that they have (*ibidem*).

People that migrate from their countries in order to find better economic possibilities and improve their living standards are considered economic migrants. A second category refers to people that emigrate for family reunification: these are people that emigrate in order to re-join their family; people instead that arrive in a country without following the legal procedures are called undocumented or irregular migrants; the last category is composed of forced migrants or displaced persons.¹⁷ This category refers to people that are obliged to leave their countries because of natural disasters, violence, persecution, and ecological degradation (Wockramasekera 2002). These people, when arriving in a new States can apply for asylum and thus becoming asylum seekers. This last category consists of refugees under the Geneva Convention, refugees for subsidiary protection, and refugees for humanitarian protection (Campomori 2016).

An *asylum seeker* is a person who flees from the origin country and applies for asylum in a host State. Asylum seekers usually describe themselves as refugees hoping that their application will be accepted, but they remain asylum seekers while waiting for a decision on their application for the refugee status (Tribe 2002).

A *refugee* is thus an asylum seeker that obtained the refugee status under the Geneva Convention legislation (1951) that will be specifically explained later.

The Subsidiary protection is an international protection for asylum seekers judged as refugees under the jurisdiction of the Directive 2004/83/EC¹⁸.

The humanitarian protection is a residual category for people that do not have the right to be accepted as a refugee, neither under Geneva nor the Directive 2004/83/EC, but that cannot be pushed away from the territory they arrived in, because of serious personal situations. Examples of such categories include people who are not removable on ill health grounds and unaccompanied minors.

¹⁷ The displaced persons category must not be confused with the Internally displaced persons that refer to people forced to flee his or her home but who remains within his or her county (UNHCR Internally Displaced Persons <https://www.unhcr.org/en-us/internally-displaced-people.html>).

¹⁸ Council Directive of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

A further type of figure that is strictly related to migrants is the *stateless person*. It is considered as such, any person not possessing the citizenship of any country. Some of the stateless people are also refugees. Nevertheless, not all stateless are refugees indeed some of them never crossed an international border (Bhabha 2011). Table 2.1 summarizes the diverse categories of migrants.

Table 2.1. Migrants, asylum seekers, and refugees: different statuses and forms

Economic Migrants	Emigrating people aiming at improving their living standards and opportunities. ¹⁹
Migrants for family reunification	People that reach the country hosting their kindred under the 2003/86/EC Directive. ²⁰
Irregular migrants	People who – due to irregular entry, breach of a condition of entry or the expiry of their legal basis for entering and residing – lack legal status in a transit or host country. ²¹
Forced migrants/Displaced persons	People who are obliged to leave his or her country because of natural disasters, violence, persecution, and ecological degradation (Wockramasekera 2002).
Asylum Seekers	Displaced People whose request for sanctuary has yet to be processed. ²²
Refugees under the Geneva Convention	Asylum seekers that obtained the refugee status under the 1951 Geneva Convention.
Refugees for Subsidiary protection	Asylum seekers that obtained the refugee status under the 2004/83/EC Directive.
Refugees for humanitarian protection	People not authorized to stay in a host country – neither under the 1951 Convention nor under the 2004/83/EC Directive – but granted with the authorisation to stay under national laws concerning international protection because they have special needs and cannot be expelled. ²³
Stateless	People not considered as a national by any State law. ²⁴

Source: own elaboration

A displaced person arriving in a territory, and applying for a refugee status, becomes an asylum seeker. If the application is accepted, he becomes a refugee. The asylum seekers must be hosted by the country processing the claim until the

¹⁹ MacMillan Dictionary <https://www.macmillandictionary.com/dictionary/british/economic-migrant>. Accessed on October 14, 2019.

²⁰ The Directive on the right to family reunification determines the conditions under which family reunification is granted.

²¹ EUglossary https://ec.europa.eu/home-affairs/whatwedo/networks/european_migration_network/glossary_search/irregular-migrant_en. Accessed on October 14, 2019.

²² UNHCR Asylum Seekers <https://www.unhcr.org/asylum-seekers.html>. Accessed on October 14, 2019.

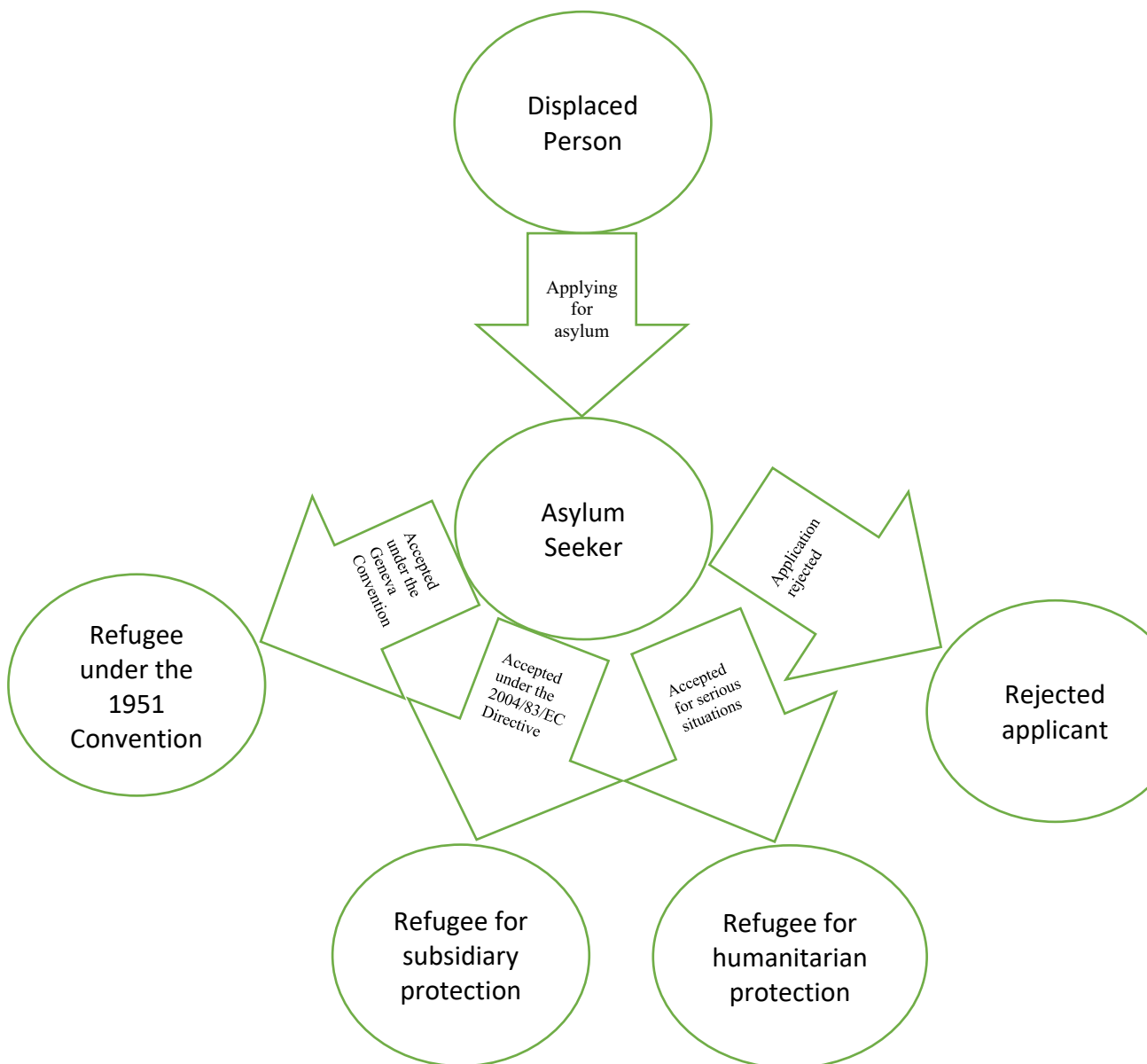
²³ Eurostat: Statistics Explained. Glossary, Asylum Decisions https://ec.europa.eu/eurostat/statistics-explained/index.php/Glossary:Asylum_decision. Accessed on October 14, 2019

²⁴ See the 1954 Convention relating to the Status of Stateless Persons.

final decision. The possible results of an asylum application can be four: a) the asylum seeker is accepted under the 1951 Geneva Convention (refugee), or b) accepted under the 2004/83/EC Directive (refugee for subsidiary protection), or c) accepted because of serious personal situations (refugee for humanitarian protection); d) the asylum application is rejected.

Figure 2.1 summarizes the possible results of the asylum applications.

Figure 2.1 Displaced persons, asylum seekers, and the application results.



Source: own elaboration

2.2 Asylum seekers in Europe: first asylum applications and the Geneva Convention

The term “asylum” became increasingly important in Europe in the XIXth century, after the 1789 French Revolution, when the revolutionaries were obliged to flee abroad, and the monarchs decided to emigrate (Bade 2001). Not surprisingly at that time, the European countries had different laws governing the asylum. If France, had severe regulative instruments, Belgium had been described by Marx and Engels as a favourable country for asylum (ibidem). Most of the displaced persons used to go to England that, until 1905, did not possess legal instruments to reject these people (ibidem).

After the two World Wars, millions of European people were outside of their origin country (ibidem). In order to define these people, Kulischer (1948) used the term “displaced persons” referring to persons outside of their territory of origin because of the war.

A common basis on asylum law and some effective policies for managing the mass of displaced persons, asylum seekers, and refugees were thus urgent. The United Nations Convention addressed the problem and defined the refugee status, identifying both the rights of people who are granted asylum, and the responsibilities of those States giving asylum. The Convention was drafted and signed by 145 States at the UN Conference held in Geneva, Switzerland, from July, 2 to 25, 1951.²⁵

Article 1 of the Geneva Convention defines a refugee as follows:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of

²⁵ States Parties to the 1951 Convention relating to the status of refugees and the 1967 Protocol, UNHCR, available at <https://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>

his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Hence, a refugee is defined as a person who cannot return in his or her country because of a well-founded fear of being persecuted or killed for reasons of race, religion, nationality, and so on²⁶. The countries that signed the Geneva Convention are obliged to grant the refugee status to these people.

In 1967 the UN ratified the Protocol Relating to the Status of Refugees in New York, signed by 146 countries. While the 1951 Geneva Convention restricted the refugee status to those whose circumstances had come about “as a result of events occurring before 1 January 1951” as well as “events occurring in Europe” or “Events occurring in Europe or elsewhere”, the New York Protocol removed both the temporal and the geographic restrictions (Bem 2004). Thus, the new dispositions refer to the whole world and time.

Both legislative instruments (Geneva Convention and NY Protocol) are based on the *principle of non-refoulement* that is a fundamental principle of International law prohibiting countries receiving asylum seekers from returning them to a country in which they could be persecuted or killed based on race, religion, nationality, member of a particular social group or political opinion (Trevisanut 2014).

The EU strictly followed both the Convention and the NY protocol: all Treaties, Conventions, Regulations, and Directives concerning the EU asylum policy area have been drawn by embracing their principles (European Council 2013).

In the next section the most relevant EU legislative tools that – directly or indirectly – have modified the EU asylum legislation will be briefly overviewed.

2.3 Before a common framework for asylum: European legislation in asylum matters

The European immigration policy is the result of three different institutional and political issues based on Chapter 2 of the Lisbon Treaty: “Policies on border

²⁶ Nevertheless, some categories of people, such as war criminals, cannot be accepted for the refugee status.

control, asylum and immigration” (Longo 2017). Even if these three areas of activity are strictly related, they culminated into three different policy pathways: asylum seekers rules, policy on crossing borders in order to prevent the irregular migration, and rules for economic migrants from third countries (ibidem, p. 53).

Until the 80s the sole instrument governing the asylum in the EU was the 1951 Convention and its New York Protocol. In this same decade, the number of people seeking for asylum started to increase. West Germany was the first country to develop a legislative tool to harden the possibility to exercise the asylum right through the introduction of the visa requirement for the citizens coming from Sri Lanka²⁷ (Sciortino 2016). Nevertheless, since East Germany (GDR)²⁸ had not such a visa requirement thus, the Sri Lankan displaced persons arrived in GDR and then asked to enter in West Germany (ibidem). Learning from this experience, the European countries understood that legislative tools concerning the asylum policy area, or at least instrument concerning visa requirements, could only work if adopted in a coordinated way among neighbor countries.

This awareness is considered to have been the spur for the introduction, first, of the Schengen and then of the Dublin Agreements (ibidem), and then, of the Common European Asylum System (CEAS).

Asylum policy needed to be regulated at the EU level also because the States became aware that, by abolishing the internal borders, the asylum seekers might move from one Member State to another for personal reasons, or to locate in countries with more generous asylum policies. Hence, a common legislation in asylum matters became crucial to avoid this secondary movement as well as to strengthen the external borders and the cooperation in the field of asylum and immigration.

Some important legislative instruments will be presented in the following. Despite they do not strictly concern the asylum policy, indirectly they modified rules and norms also in this policy area. The Schengen Convention, the Dublin Convention,

²⁷ Since 1983 the number of people seeking for asylum from Sri Lanka in Europe grew in response to the Sri Lankan Civil War in which there were insurgencies by the Liberation Tigers of Tamil Eelam against the Government aims at creating an independent Tamil State in the Sri Lankan island (DeVotta 2009).

²⁸ East Germany, officially the German Democratic Republic (GDR) was a State that existed from 1949 to 1990 that was part of the URSS.

the London Resolutions, the Maastricht Treaty, and the Amsterdam Treaty will be briefly addressed.

Asylum law is strongly linked to the EU “free movement of persons” (Handoll 1995; Fry 2005), a principle which states that people can move freely within the European Union once they crossed the external borders (Lenaerts and Marlies 2005). The first policy instrument related to this principle is the Schengen Treaty. It has been signed on June 14, 1985 in Luxembourg by five countries (Belgium, France, Germany, Luxembourg, and the Netherlands). Currently the number of countries involved in the agreement counts 26 from both EU and outside.²⁹ Some countries (such as Bulgaria, Croatia, Ireland, Romania, and the United Kingdom³⁰) are however part of the EU and not of Schengen (Figure 2.2).

Figure 2.2 Maps of Schengen and EU countries



Source: Schengen Area – The World’s Largest Visa Free Zone
available at <https://www.schengenvisainfo.com/schengen-visa-countries-list/>

²⁹ The 26 Schengen Countries are: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland.

³⁰ Starting January 2020, the UK is not part of the EU any longer. Nevertheless, since this work will focus on the 2008-2017 decade, it will refer to the UK as an EU country.

The Schengen treaty aims at abolishing the national border controls in order to build a Europe without borders known as the “Schengen Area”. The States that signed the agreement agreed to gradually remove controls at their common borders in order to introduce the freedom of movement for all nationals of the signatory EU States, other EU States or non-EU countries and enabling a free movement of people, goods, services, and capitals.³¹

On June 19, 1990, the Schengen Implementing Convention was signed in order to give concrete implementation to the Agreement. The Convention proposed some innovation by introducing the complete abolition of internal borders, the definition of procedures for issuing the uniform visa and the operation of a single database for all members, namely the Schengen Information System (SIS).³² This Convention thus, definitely abolished border controls of persons on internal borders of the signatory States. However, a signing MS can re-introduce border control on their common borders under certain specific circumstances.³³ Since the signature of the Agreement, the number of people who have been travelling through the Schengen Area reached over one billion.³⁴

A further legislative tool signed in 1990 is the Dublin Convention, which aims at harmonizing the different EU MSs’ asylum policies and at granting suitable protection to refugees. The Dublin Convention came into force on September 1st, 1997. Seventeen countries took part in this agreement³⁵ before its replacement by the Dublin Regulation II in 2003 and by the Dublin Regulation III in 2013 (a focused overview on it will be presented in the next section).

In 1992 the London Resolutions were adopted by the Justice and Interior Ministers of the EEC Member States. These Resolutions aimed at setting out the agenda for

³¹ EU Glossary, available at: https://ec.europa.eu/home-affairs/e-library/glossary/schengen-agreement-convention_en.

³² The Schengen Information System is a database used by 31 European countries in order to find information about people for the purposes of national security, border control and law enforcement.

³³ The re-introduction of border controls at the internal borders must remain an exception. The scope and duration of the temporary re-introduction of border checks is limited in time and should be restricted to the bare minimum needed to respond to the threat in question (European Commission, available at https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen/reintroduction-border-control_en).

³⁴ Un’Europa senza frontiere. Lo spazio Schengen. European Commission available at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/schengen_brochure/schengen_brochure_dr3111126_it.pdf.

³⁵ The twelve signatory States are Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom. Nevertheless, five more countries (EU and not EU) took part in this agreement in a second time: Austria, Finland, Iceland, Norway and Sweden.

asylum and refugee protection for the next 15 years (Durcke 1992). The first Resolution defined the rules for “unfounded asylum applications”. For instance, an application may be manifestly unfounded when a person has passed through a safe third country before applying for asylum in a Member State (Guild 2006). In this case, the State authority is not obliged to examine that application. The second Resolution outlined a common definition of “safe third country” in order to avoid that asylum seekers passed through a “safe country” and did not apply there for asylum before arriving in the Member State where they effectively applied (ibidem).

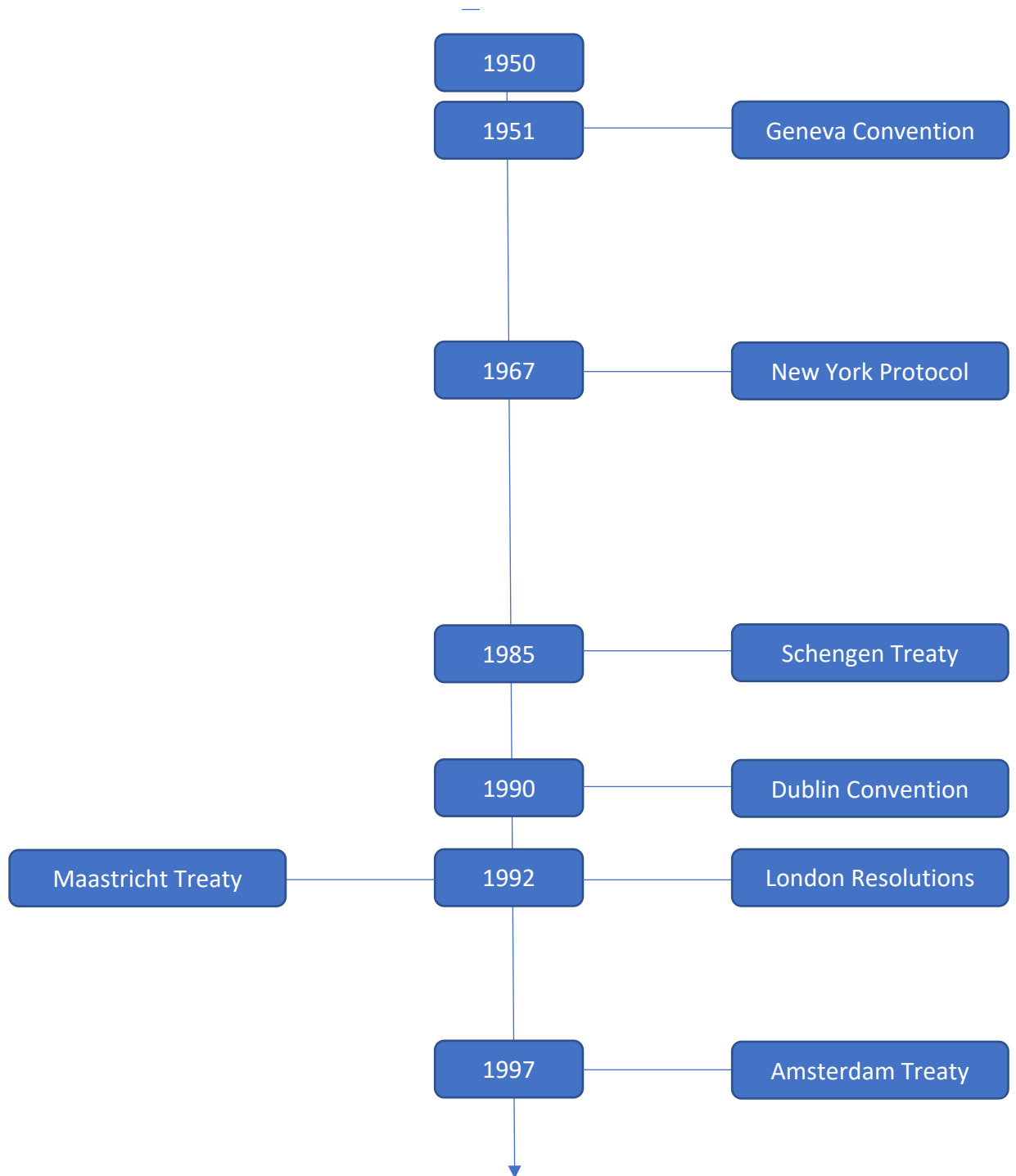
Also two of the fundamental EU Treaty indirectly concern the asylum policy. The first is the Maastricht Treaty. Officially called Treaty on European Union, it was signed in Maastricht, Netherlands, on 7 February 1992 and aimed at establishing the so-called EU pillar structure. The first pillar – renamed “European Community” from “European Economic Community” – aims at expanding competences beyond economic matters. Two new pillars were then created: the Common Foreign and Security Policy, and the Cooperation in the Fields of Justice and Home Affairs. These two pillars paved the way for the creation of the EU asylum law (Guild 2006) since they provided the legal basis for the creation of the CEAS.

The Amsterdam Treaty was signed on October 2, 1997 with the purpose to substantially change the Maastricht Treaty. In the Treaty of Amsterdam, which amended the Treaty on the European Union, the Member States agreed to transfer certain powers to the European Parliament in some areas (such as the legislative tools concerning the immigration), by adopting common civil and criminal laws, and by enacting a common foreign and security policy. In line with Title IV of the Amsterdam Treaty, Article 63 sets the guidelines to be followed in order to progressively establish an area of freedom, security and justice by employing border control measures in order to ensure the free movement of persons and respecting the external border controls, asylum and immigration policies (Bernard 2004; Fry 2005). Furthermore, these measures must be in accordance with the 1951 Geneva Convention and its 1967 Protocol (EASO 2016).

But it was only with the Conclusion of the Tampere Summit in 1999 that the EU explicitly tried to create a common asylum system. The next section will be devoted to this.

Figure 2.3 chronologically recalls all the legislative instruments reviewed thus far.

Figure 2.3. Legislative instruments concerning the movement of persons before the 1999 CEAS.
1950-1997



Source: own elaboration

2.4 Asylum in the EU: the Common European Asylum System (CEAS)

In 1999 the EU Member States met in Tampere to develop a common asylum framework aimed at harmonizing the legislation in this policy area across the EU. The 1999 Council indeed laid down the basis for what was to become the **Common European Asylum System (CEAS)**. This legislative framework was developed, in accordance with the principle of non-refoulment stated by the 1951 Geneva Convention and the NY Protocol, to set out common standards in the field of international protection, and to harmonize the interpretation and application of asylum law in the EU MSs (EASO 2016).

The CEAS also implemented Title IV of the Amsterdam Treaty (Fry 2005). As mentioned above, Article 63 of the Amsterdam Treaty provided the legal basis for the establishment of the CEAS, but no explicit mention to the creation of such a system was present (EASO 2016). Only the 1999 Tampere Council explicitly referred, for the first time, to a “Common European Asylum System” (Kaunert and Leonard 2012, Van der Klaauw 2001).

The Tampere Council’s goals were to establish a partnership between EU MSs and migrants’ origin countries in order to make these States more attractive to their own people, to frame a CEAS for procedure and recognition of asylum, to ensure fair treatment for people from third countries, and to manage in an efficient way the migration flows (Bernard 2004, Fry 2005). Furthermore, the CEAS includes a clear determination of the country that has the burden to examine an asylum application; establishes common standards for fair and efficient asylum procedures, as well as common minimum conditions of reception for asylum seekers; sets the rules on recognition and content of the refugee status (EASO 2016).

The CEAS is soft law³⁶ in its nature. Hence, the countries are not obliged to follow the guidelines proposed by this framework. Nonetheless – following Gammeltoft-Hansen (2018) who stated that soft law measures may help the introduction of binding rules or guidelines over time – it has been elaborated a set of both soft law and hard law instruments to achieve the main goal of the CEAS namely the common legislation in asylum matters.

³⁶ The term soft law refers to not legally binding guidelines.

The CEAS application can be split into two phases, where different measures have been enacted.

The first phase includes the introduction of a set of secondary legislation tools.³⁷ These refer to: the definition of common minimum standards about the reception of asylum seekers, the qualification for international protection and its content; the granting of the refugee status; the criteria and mechanisms to determine which MS has the burden to examine an asylum application; a database for storing and comparing fingerprint data (Table 2.2) (EASO 2016).

Table 2.2. CEAS legislative instruments implemented in the first phase

	Date of entry into force
The Eurodac Regulation, 2000	15 December 2000
The Temporary Protection Directive, 2001	7 August 2001
The Dublin Regulation II, 2003	17 March 2003
The Regulation laying down detailed rules for the application of the Dublin Regulation, 2003	6 September 2003
The Reception Condition Directive, 2003	6 February 2003
The Qualification Directive, 2004	20 October 2004
The Asylum Procedures Directive, 2005	2 January 2006

Source: EASO 2016, p. 15

Despite the implementation of these legislative instruments, whose primary aim was that of harmonizing the existent legislation in asylum matters, significant disparities remained among the EU MSs in their reception of asylum seekers, procedures for granting asylum, and assessment of qualification for international protection (EASO 2016). As stated by the European Commission, the minimum standards were – and still are – indeed not appropriate to guarantee the desired degree of harmonization across States. Amendments are still needed to achieve such a harmonization (ibidem).

³⁷ The EU primary legislation is composed of treaties. The secondary legislation, on the contrary, comes from the principles and the objectives of the treaties. It includes regulations, directives, decisions, recommendations and opinions.

Hence, a second phase was conceived to quickly follow, in order to give more emphasis to the first-phase instruments. And, in fact, most of those instruments have been revisited in the second phase.

The second phase of the CEAS began with the European Pact on Asylum³⁸ signed by the European Commission in September 2008. Its main aim, as underlined in the 2009 Stockholm Program³⁹, was to establish a common area of protection and solidarity based on a harmonized common asylum procedure and a uniform status for people granted the international protection (*ibidem*).

The CEAS second phase's legal basis is provided by Article 78 of the Treaty on the Functioning of the European Union (TFEU). It has been completed in June 2013, with the enactment of a set of revisited secondary legislations.

The European asylum framework currently comprises the following legislative instruments: (Table 2.3).

Table 2.3. CEAS secondary legislative instruments at present.

CEAS instruments	Date of entry into force
The Temporary Protection Directive, 2001	7 August 2001
The Commission Regulation laying down detailed rules for the application of the Dublin Regulation, 2003	6 September 2003
The Qualification Directive (recast) (QD (recast)), 2011	9 January 2012
The Eurodac Regulation (recast), 2013	19 July 2013
The Dublin III Regulation (recast), 2013	19 July 2013
The Reception Conditions Directive (recast) (RCD (recast)), 2013	19 July 2013
The Asylum Procedures Directive (recast) (APD (recast)), 2013	19 July 2013

Source: EASO 2016, p. 15

Moreover, since also some primary legislation instruments provided the legal basis of the asylum framework, they are considered part of the legislation implemented

³⁸ EU Doc. 13440/08, 24 September 2008.

³⁹ The Stockholm Program. An Open and Secure Europe Serving and Protecting the Citizens, December 2, 2009.

under the CEAS framework (ibidem). The CEAS therefore, is now consisting of both primary and secondary legislation.

Primary legislation on asylum policy comprises the TFEU, the Treaty on European Union (TEU), and the EU Charter. As for the secondary legislation, the asylum policy counts on regulations, and directives. Only three instruments are Regulations – the Regulation laying down the rules for the application of the Dublin Regulation, the Dublin III Regulation and the Eurodac Regulation (recast) – while the rest – the Temporary Protection Directive, the QD (recast), the RCD (recast), and the APD (recast) – are directives.

Table 2.4 shows the primary and secondary legislation instruments currently valid under the CEAS framework. It is worth reminding that the directives need to be transposed into the national law of the Member States to enter into force. This, as better explained in the last part of the present work, will be considered one of the possible determinants of a lack of Europeanization across the MSs in this policy area.

Table 2.4. Primary and secondary legislative tools currently valid under the CEAS.

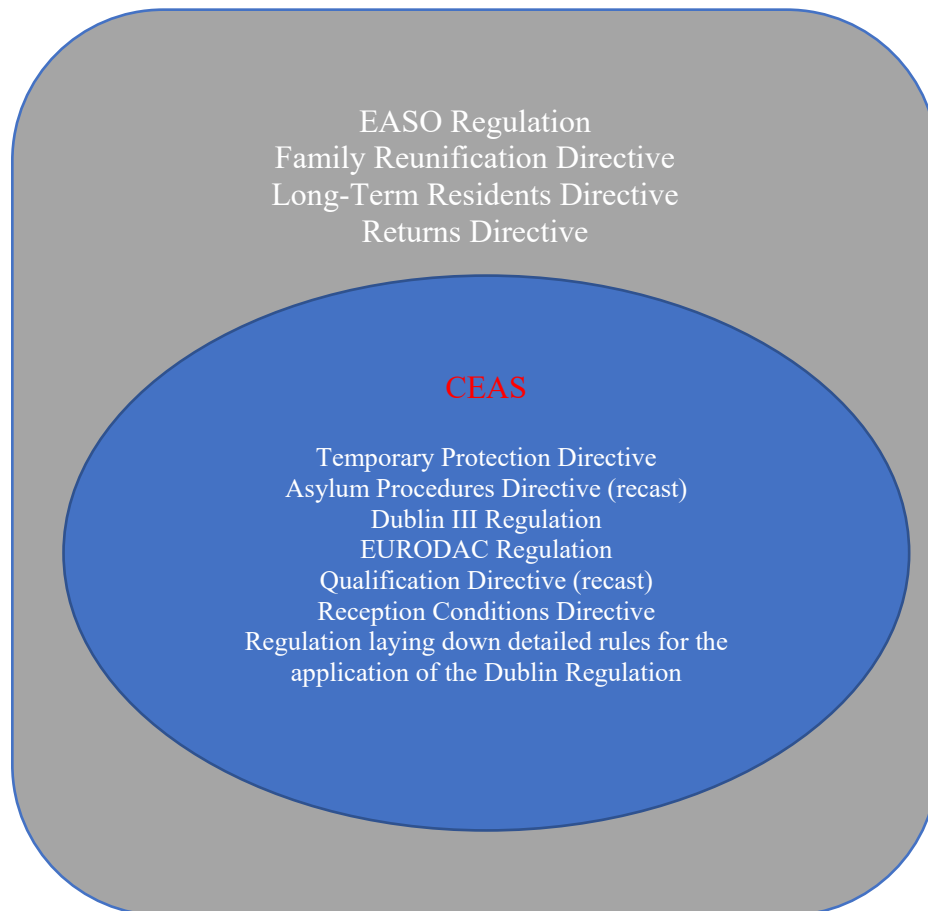
Primary legislation	Secondary legislation
TFEU	The Commission Regulation laying down detailed rules for the application of the Dublin Regulation
TEU	Dublin Regulation III
EU Charter	Eurodac Regulation (recast)
	Temporary Protection
	Qualification Directive (recast)
	Reception Condition Directive (recast)
	Asylum Procedure Directive (recast)

Source: own elaboration

Furthermore, a set of secondary legislation instruments, even if it is not part of the CEAS, have been adopted during its implementing phases, and are thus relevant to the field of asylum. These legislative tools refer to the EASO Regulation, the Family Reunification Directive (2003); the Long-Term Residents Directive(2003); and the Returns Directive(2008), thus mainly EU immigration policy, which however may have «*implications for issues relating to the residence rights and benefits of refugees and beneficiaries of subsidiary protection*» (EASO 2016, p.

18). Figure 2.4 shows the whole picture of the secondary legislation concerning asylum matters.

Figure 2.4. EU secondary legislation concerning asylum



Source: own elaboration on EASO 2016.

Once argued about the two phases of the CEAS and the implemented instruments, it is now time to scrutinize these legislative tools more in-depth. First, it will be analyzed the primary legislation then, the secondary legislation.

2.4.1 EU primary legislation under the CEAS framework

As mentioned before, the main instruments of primary law under the CEAS framework are the Treaty on the Functioning of the European Union (TFEU), the Treaty on European Union (TEU), and the Charter of Fundamental Rights of the European Union (EU Charter). Let us examine each of them more attentively in the parts regarding the asylum policy.

2.4.1.1 The Treaty on the Functioning of the European Union (TFEU)

The TFEU has been introduced in 2007. Immigration and asylum laws are contained in Chapter 2 and in particular in the Articles 77, 78, 79, and 80. Article 77 (1) refers to «*ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders [and] carrying out checks on persons and efficient monitoring of the crossing of external borders*». Article 77 (2) states that for the purpose of article 77 (1) the European Parliament and the Council will adopt measures concerning the conditions in which third country nationals shall have the possibility to travel within the EU – for a limited period – once crossed the internal borders regardless to their nationality (EASO 2016). Article 80 adds that the implementation of the asylum legislative tools has to be governed by the principle of solidarity and fair sharing of responsibilities among the Member States (ibidem).

Article 78 and 79 are respectively concerned in the asylum and immigration policy area. In particular, Article 78 states that the EU has to adopt a common policy on asylum in compliance with the principle of non-refoulment and according with the Geneva Convention and the NY Protocol. For this purpose, the EU shall adopt a set of instruments for the CEAS concerning to a) the uniform status of asylum for refugees; b) the uniform status for people granted with the subsidiary protection; c) a system of temporary protection for displaced persons in times of massive flows; d) common procedures for granting asylum or subsidiary protection; e) criteria and mechanisms in order to determine the Member State that has the burden to examine

the asylum application of an asylum seeker; f) minimum standards on the conditions for the reception of applicants for asylum or subsidiary protection and cooperation with third countries in order to manage inflows of people applying for asylum, subsidiary protection and temporary protection (ibidem).

Article 79, instead, refers to the development of a common immigration policy that aims at ensuring the efficient management of migration flows and at combatting the illegal migration and trafficking of human beings. For these purposes, the EU shall adopt a set of measures in the condition of entry and residence and in combating trafficking in particular of women and children (ibidem).

2.4.1.2 The Treaty on European Union (TEU) and the Charter of Fundamental Rights of the European Union (EU Charter)

The TEU of 2007 is one of the primary Treaty of the EU alongside the TFEU. It forms the basis of EU law by defining the general principles of the EU's purpose, the governance of its central institutions, and the rules on external, foreign and security policy. The most relevant part related to the CEAS is Article 6, which makes the EU Charter binding not only for the EU institutions but also for the Member States when implementing EU law (EU Charter, Article 51).

The Charter of the European Union has been ratified by the European Convention on December 7, 2000. Nevertheless, it was incorporated in the primary law of the EU only in December 2009 with Article 6 of the TEU. Article 52 of the EU Charter is very relevant since it states that the rights recognized by the Charter, which correspond to rights stated by the European Court of Human Rights, shall have a common meaning and a common aim (EASO 2016).

Article 18 states that the right to asylum must be guaranteed according to the rules of the 1951 Refugee Convention, the TEU, and the TFEU. Furthermore, this Article is important since it is the first time in the EU that a legally binding legislative instrument – thus compelling also for the Member States – recognizes the right of asylum (ibidem). Table 2.5 displays the main rights recalled in the EU Charter.

Table 2.5. Main rights stated in the EU Charter.

Article	Right
Art. 1	Human dignity
Art. 2	Right to life
Art. 3(1)	Right to physical and mental integrity
Art. 4	Prohibition of torture and inhuman or degrading treatment or punishment
Art. 5(3)	Prohibition of trafficking in human beings
Art. 6	Right to liberty and security
Art. 7	Respect for private and family life
Art. 10	Freedom of thought, conscience and religion
Art. 11	Freedom of expression and information
Art. 14	Right to education
Art. 15	Freedom to choose an occupation and right to engage in work
Art. 16	Freedom to conduct a business
Art. 18	Right to asylum
Art. 19	Protection in the event of removal, expulsion or extradition
Art. 21	Non-discrimination
Art. 23	Equality between men and women
Art. 24	The rights of the child
Art. 34	Social security and social assistance
Art. 35	Health care
Art. 41	Right to good administration
Art. 47	Right to an effective remedy and a fair trial

Source: own elaboration on EASO 2016.

2.4.2 EU secondary legislation under the CEAS framework

As said before, instruments of secondary legislation implemented under the CEAS framework and still present in the actual legislation, refer to regulations and directives. In particular, they are the Dublin III Regulation, the Eurodac Regulation (recast), the Qualification Directive (recast) (QDr), the Asylum Procedures Directive (recast) (APDr), The Reception Condition Directive (recast) (RCDr), and the Temporary Protection Directive (TPD). Other relevant secondary legislation tools in the field of international protection are also worth mentioning, namely: the

2010 EASO Regulation, the 2003 Family Reunification Directive, the 2003 and 2011 Long-Term Residents Directive, and the 2008 Returns Directive.

In this section only the secondary legislation instruments currently valid at the time of writing are presented. Those in force before the revisiting (such as the ancestors of the Dublin Regulation III) are not discussed.

2.4.2.1 The Dublin Regulation III

The Dublin Regulation III is an EU legislative tool directly applicable to the Member States. It is the third generation of the Dublin Convention and it was enacted in 2013 aiming at establishing which country should have the obligation to examine an asylum application. This Regulation created a new criterion: that of the first MS where the asylum seeker arrives. In other words, the “first arrival country” has the burden of reception (Campomori 2016).

Nevertheless, there are some exceptions where this criterion shall not be applied. The first exception refers to unaccompanied minors. In this case, the responsible Member State is that in which a family member is legally present (Article 8). Furthermore, if an applicant has a family member whom has been granted international protection in a Member State, is that country to be responsible (Article 9). In the same way, if an applicant has an applying family member whose application for international protection has not yet been the subject of the first decision in a MS, then that MS is the one responsible also for the other application (Article 10). When a big number of family members apply for international protection in the same Member State at the same time – or on very close dates – the responsible States is the country responsible for the applications of the largest number of family members. Failing this, the Member State responsible is the country of application of the oldest family member (Article 11). If the applicant has a valid residence permit or a valid visa, the country responsible is that of the document or the visa (Article 12). If an applicant irregularly crosses the border of a Member State from a third country, is that MS to be responsible (Article 13). If an applicant arrives in a Member State waiving the need for a visa, that MS is

responsible (Article 14). The last exception refers to applications for international protection made in the international transit area of an airport of a Member State: it is again that MS to be responsible (Article 15).

Failing all these exceptions, the only valid criterion is the first arrival country.

It is worth to remind that the Council Decision 2015/1523 of September 14th, 2015 and the Council Decision 2015/1601 of September 22nd, 2015 established measures in the international protection area for the benefit of Italy and Greece⁴⁰ by activating a temporary derogation to the above-recalled Dublin System. In fact, the two decisions provide an exceptional mechanism for the relocation of 160,000 people in clear need of international protection from Italy and Greece to other Member States.

This regulation, however, has been a target for many critiques. In situations lacking the above-mentioned exceptions of the “first-arrival country criterion” there is coercion by the EU to the asylum seekers to start an asylum procedure in a particular place and, at the same time, it entails forms of disobedient behaviour by the part of asylum seekers. In fact, it has been demonstrated that asylum seekers try to avoid registrations and lie about their travel routes (Den Heijer, Rijpma and Spijkerboer 2016). Past events told us that in times of crisis, this system tends to collapse. In fact, the arrival of irregular migrants in 2015 (that is only 0.3% of the 508 million of the inhabitants of the EU) made the EU not able to respond to such a situation (ibidem).

2.4.2.2 The EURODAC Regulation (recast)

The Eurodac Regulation is a secondary law instrument that aims at facilitating the application of the Dublin III Regulation through the creation of a system that operates by employing a central database of fingerprint data. The original Eurodac Regulation only referred to the effective implementation of the Dublin system,

⁴⁰ Namely respectively the Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece QJ L. 239/146 and the Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece QJ L. 248/80.

while its recast version expanded its aims. It sets up the conditions for national authorities and for the Europol⁴¹ to access the already stored fingerprint data, and to take the fingerprints of every older-than-14-year applicant in order to transmit them to the Central System within 72 hours after the application for international protection (EASO 2016).

2.4.2.3 The Qualification Directive (recast)

The Qualification Directive (recast) is a very important legislative instrument of the CEAS. It defines the standard for qualifying people from a third country or stateless persons as beneficiaries of international protection. It also aims at achieving a uniform status for both refugees under the 1951 Refugee Convention and people eligible for subsidiary protection. The directive, therefore, states a definition of refugee that is restricted to non-Eu citizens. This Directive also set up a minimum number of years for issuing the residence permits for refugees under the Geneva Convention (3 years) and under the Subsidiary Protection (1 year) (Consterdine 2019).

2.4.2.4 The Asylum Procedures Directive (recast)

The APD (recast) is an EU secondary law instrument providing the mechanisms to apply in the process of application for both refugee and subsidiary protection status (EASO 2016). Its goal is to establish common procedures for granting international protection. This Directive sets up the time limits to examine an application in the regular procedure and appeal, it lays down the legal assistance in both the regular procedure and in appeal, and it obligates the Member States to lay out the list of the safe country of origin (Consterdine 2019). Nevertheless, not all these provisions are

⁴¹ The European Union Agency for Law Enforcement Cooperation or European Police Office (Europol) is the law enforcement agency of the EU aims at combat serious international organized crime and terrorism through the cooperation among the Member States.

legally binding for the Member States: some of them are instead facultative (EASO 2016).

2.4.2.5 The Reception Conditions Directive (recast)

This Directive aims at establishing a dignified standard of living for those applying for international protection in the EU MSs, as long as they are allowed to stay in the country as applicants, for example by allowing them to access to the labor market (Constardine 2019).

Even if Article 8 of this Directive explicitly states that an applicant cannot be detained for the only reason that he is an applicant, this practice is quite frequent (EASO 2016). The Member States, in fact, use to practice detention since it is the last resort in absence of alternative and less coercive measures for the time that the countries employ to decide on the applicant's right to enter in the territory (ibidem).

2.4.2.6 The Temporary Protection Directive

This Directive is an exceptional instrument of secondary law. In fact, as underlined in its Article 1, it aims at establishing «*minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons*» (EASO 2016, p. 54). The temporary protection regime provides immediate and temporary protection to people in cases of mass inflow and when there are risks that the asylum system will be not able to manage such an influx (EASO 2016). Even if this directive has been established in 2001 and all the EU MSs (except for Denmark) had transposed it, this directive has never been used (EASO 2016, European Commission 2016). The difficulties to render the Temporary Protection Directive applicable into the domestic countries has been studied by the Odysseus Network (2007) that found for example that some States

that did not transpose it for a series of reasons. Some did not translate the reference to safeguarding human dignity and other country did not transpose the reference to the consent of the person concerned for the transferal from one Member State to another (European Commission 2016, Odysseus Network 2007). Nevertheless, the countries which had major difficulties with the transposition were Austria, Italy, Lithuania, and the Netherlands that did not fully transpose all the Temporary Protection Directive provisions (ibidem).

2.4.3 Other relevant secondary legislation instruments

This section briefly describes the most important secondary legislation instruments on international protection that are not part of the CEAS but that are strictly related to it. Here the European Asylum Support Office Regulation the Family Reunification Directive, the Long-Term Residents Directive, and the Returns Directive will be recalled. Even if these legislative instruments are not under the CEAS framework, they helped its implementation (EASO 2016) and constitute the overall picture of secondary legislation instruments (see figure 2.4 again).

The first legislation tool is a Regulation, namely the EASO Regulation, enacted in 2010. This instrument aims at improving the implementation of the CEAS by strengthening the cooperation among the Member States in the asylum policy area and by providing operational support to countries subject to strong pressure on asylum and reception system (EASO Regulation, Art. 1).

The Family Reunification Directive has been enacted instead already in 2003. It aimed at establishing the right to family reunification for people from third countries. This directive is applied to people from third countries that legally resides in the country including the one which has granted the refugee status. Nevertheless, it is not applied neither to applicants of every type of international protection (for refugee status, subsidiary, temporary or humanitarian protection) nor to beneficiaries of subsidiary protection and temporary protection (Family Reunification Directive, Article 3 (2)).

A further legislative instrument employed in this field is the Long-Term Residents Directive. It has been ratified in 2003 and emended in 2011, and aims at ensuring the integration of people from third countries who are long-time resident in a Member State by recognizing them the right to the equality of treatment with the MS citizens as far as economic and social matters are concerned and by conferring them the right to reside in other Member States.

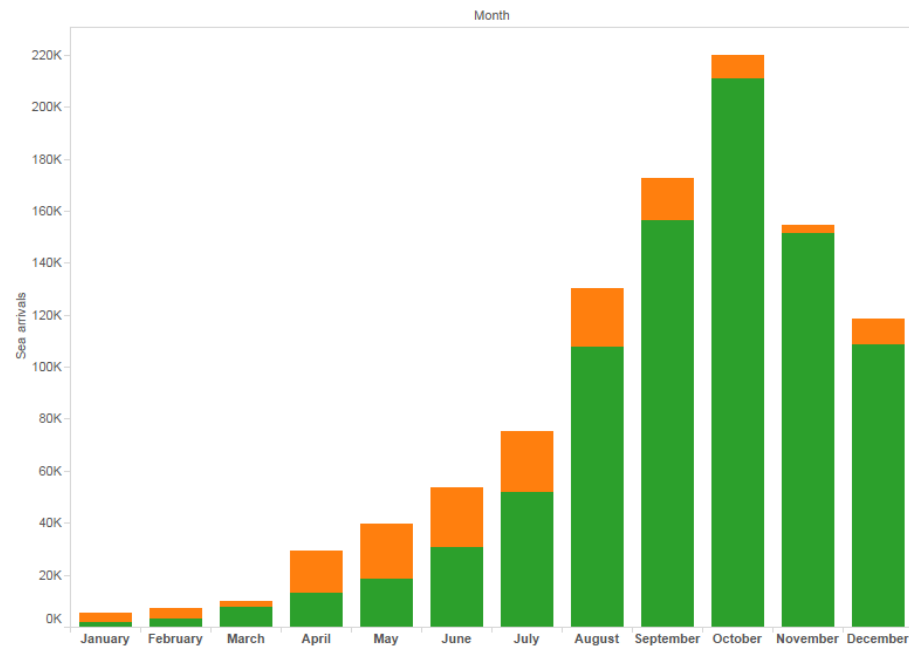
The last instrument refers to the Returns Directive enacted in 2008. It aims at setting common procedures to be applied in the Member States in order to return to their origin country people that stay in the country illegally, always by respecting the fundamental rights of international law.

Once the CEAS and its instruments have been presented in this section, it is now time to discover how, after the so-called 2015 “refugee crisis”, the EU and its MSs tried to reform the CEAS and its main legislative tools.

2.5 The refugees’ “crisis” and the CEAS reform

The term “refugees’ crisis” refers to the increment of asylum seekers and displaced persons arrived in Europe in the summer of 2015 because of the increasing wars among States, civil wars in Africa and in the Middle East, and of the poverty in these areas. In this year more than 1 million of asylum requests have been sent to the EU countries (UNHCR 2016). In particular, in Italy and Greece, arrived more than 1 million of displaced persons (*ibidem*) (Figure 2.5). Nevertheless, not all the displaced persons applied for asylum in the first arrival countries, since most of them arrived at the EU borders countries aiming at reaching other EU countries with more generous tools concerning asylum. As argued before, following the first arrival country criterion, this is not possible but, many displaced persons tried to cross the borders illegally.

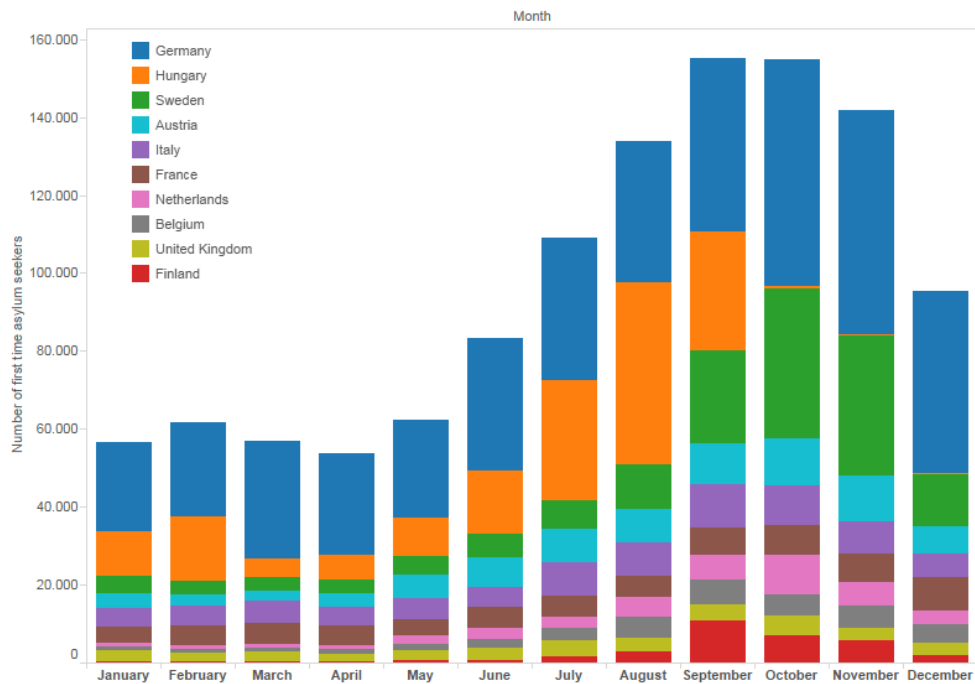
Figure 2.5. Displaced persons in Italy (in orange) and Greece (in green) in 2015 by months



Source: UNHCR 2016

Figure 2.5 shows the trend of displaced persons in the year of the so-called “refugees’ crisis”. The number of displaced persons is increasing across the year (particularly in the summer). In the first part of 2015, they arrived mostly in Italy. During the summer, most of the displaced persons arrived instead to the Greek coasts. Analogously, also in the other countries of the European Union the number of displaced persons dramatically increased, and the number of asylum requests grew up (Eurostat 2016). In 2014 the European Union received 626,000 asylum requests. This number is one of the highest registered in the history of the EU, second only to the asylum requests caused by the ex-Yugoslavia war, when the asylum requests were 672,000 (Eurostat 2016). In 2015 the number of asylum requests doubled those peaks, reaching 1,250,000 (Eurostat 2016). The countries that received more asylum applications in that year were Germany, Hungary, and Sweden, respectively (Figure 2.6).

Figure 2.6. Number of asylum applications in 2015 sent to the first ten EU receiving countries



Source: Eurostat 2016

Figure 2.6 shows the trend of asylum requests sent to the first ten EU receiving countries in 2015 (in decreasing order: Germany, Hungary, Sweden, Austria, Italy, France, Netherlands, Belgium, UK, and Finland). The overall number of asylum requests started to grow up in May. The mode (that is the case registering the highest number of frequencies) is represented by September and October, when almost 160,000 requests have been registered. After these months the number of asylum requests started to decrease also for a strong response of some EU countries that literally closed their borders.⁴²

In this climate, the CEAS started to be no longer appropriate to manage this situation. Many agreements (such as the Schengen and the Dublin ones) started to be temporally suspended. It was a turning point since the Member States started to talk about a possible CEAS reform.

On April 6, 2016, the EU Commission proposed a set of provisions to reform it. The main aim of the Commission was indeed to change the current system, which

⁴² In most countries the Governments decided to close their borders by building walls or by temporally suspending the Schengen and the Dublin Agreements.

gives too many responsibilities to some Member States and encourages uncontrolled and irregular migration flows (Senato della Repubblica and Camera dei Deputati 2017). Hence, the Commission proposed two groups of reforms in order to establish a more sustainable and equitable system.

The first group was presented on May 4, 2016 and it was formed by three proposals. The main objective of these instruments was to change the asylum rules and in particular the criterion of the first arrival country.

The first proposal was referred to a “Dublin system reform” in order to establish new criteria for determining which should be the MS having the duty to examine an asylum application. This reform proposal was aimed at redistributing asylum seekers and refugees across the MSs in order to be more efficient, sustainable, and equitable (*ibidem*). The second proposal was aimed at transforming the EASO into an effective European Agency. Hence, according to its new role, the EASO should have the duty to assign equitable quotas of asylum seekers and refugees to the MSs in order to applicate a “new Dublin system” (*ibidem*). The last reform proposal of the first group was referred to a strengthening of the Eurodac Regulation with the goal of saving more personal data about the asylum seekers (such as: date of birth, nationality, particularities, and so on) in order to ease the identification of irregular migrants (*ibidem*).

On July 13, 2016 the EU Commission presented a second group of reform provisions, composed of four proposals. The first was aimed at reforming the Directive 2013/33/EU on the reception conditions of asylum seekers (see above). The aims of this reform was both to harmonize the standard of reception in order to render them dignified across the EU MSs and to avoid secondary movements (Senato della Repubblica and Camera dei Deputati 2017). The second proposal concerns a Regulation on the norms to assign international protection. This reform provides: a higher harmonization in the recognition criteria; a higher convergence among the decisions on the Member States asylum granting; graver norms for secondary movements; and further harmonization on the rights of the international protection beneficiaries (*ibidem*). The third proposal was aimed at reforming the Directive 2013/32/EU on the procedures for granting and withdrawing international protection (see above). In particular, this proposal was aimed at rendering the

asylum procedure easier, clearer and shorter for both the asylum seekers and the Member States; to graver norms to combat the abuses; and to harmonize the norms on the safe countries (*ibidem*). The last proposal was a plan of resettlement of asylum seekers and/or displaced persons in the EU. Article 78 of the TFEU provided a special legislative procedure in case of a massive influx of third country persons.

To implement the benefits for the MSs and by following the just-mentioned proposals, three decisions were adopted by the EU: 1) the Decision 2015/1523/EU that instituted a temporary relocation system for 40,000 asylum seekers (24,000 from Italy and 16,000 from Greece); 2) the Decision 2015/1601/EU that instituted temporary measures in asylum matters for Italy and Greece; 3) the last decision is the 2016/1754/EU that permits to the MSs to accept Syrian citizens on the Turkish territory in order to help Italy and Greece to better distribute their asylum seekers. Despite these proposals, no reform has been actually enacted.

This was caused mainly by the reluctance of a group of Member States to accept the amendments to the CEAS legislative instruments (European Parliament 2019). These MSs were led by the Visegrád group⁴³. On February 15, 2018, for instance, the Hungarian Government announced to oppose the amendments of the Dublin Regulation by rejecting any kind of compulsory admittance quota. Furthermore, other Member States submitted a position paper that aims at reducing the “fair share” that indicates the number of applicants that each MS should admit (*ibidem*). The EU countries convened again at the June, October, and December 2018 meetings in order to discuss about the possible CEAS reform, but they did not reach an agreement.

Nevertheless, some steps forward on the reform of the EU asylum system has been done in the last part of 2019 with the Malta Declaration.

The declaration has been approved by the Governments of Italy, Malta, France, Germany, and Finland in La Valletta in September 2019. The mechanism, however, is that of a “joint declaration of intent”. Hence, it is neither a legal act, nor an

⁴³ The Visegrád group (or V4) is a cultural and political alliance of four EU countries namely: Czech Republic, Hungary, Poland, Slovakia.

international agreement. It is merely a non-legally binding instrument, an initiative to undertake on a voluntary basis (Carrera and Cortinovia 2019b). The declaration has the same aim of the above-mentioned reform proposals: to revise and update the CEAS, and in particular to reform the Dublin system. In Paragraph 1 it is stated the possibility to suggest an alternative place for disembarking rescued migrants that is different from the MS that should be otherwise responsible under the Dublin Regulation (ibidem). Nevertheless, no legally-binding instruments have been employed as a result of the Malta Declaration (Frasca 2020).

To sum up From summer 2015, despite the EU is trying to manage the situation of the increasing inflow of both asylum seekers and economic migrants to the “old continent”, , no reform proposals have been accepted and the asylum policy legislative instrument have remained untouched – and probably inadequate for the contemporary situation. The strong reluctance by part of the EU MSs to accept more migrants has been a decisive factor to this stalemate.

In the next paragraph, an international non-legally binding agreement on refugees in order to give an actual global overview on this issue will be done. In this sense, it will be presented the Global Compact for Refugees in order to understand how the United Nations (UN) acted when implementing an asylum framework in order to compare it with the CEAS.

2.6 A global overview: the Global Compact for Refugees

The United Nations (UN) Global Compact for Refugees may be considered as a new international framework for asylum. It is composed by a set of principles and guidelines that the UN Member States should comply in order to reach the specific goals of the Compact. These goals refer to ease the pressure on host countries, enhance the self-reliance of refugees, expand the set of third countries, and to support the country of origin conditions for return in safety and dignity (General Assembly 2018).

The term “compact” has been frequently employed in international speeches since the new millennium. A compact can be conceived as a set of different deals or agreements across actors and issues (Gammeltoft-Hansen 2018). The choice of a compact emphasizes political and practical cooperation rather than legal commitments (ibidem).

The Global Compact on Refugees – and the Global Compact on Migration – are the result of the 2016 New York Declaration for Refugees and Migrants. It has been conceived as a political action plan in order to address the growing phenomenon of movements of refugees and migrants (Bufalini 2019). In December 2018, the two Global Compacts have been adopted. In this work, only the one concerning refugees will be scrutinized.

The Global framework for asylum – such as the European framework – operates taking into account the principle of non-refoulment. Furthermore, it is driven by both International Human Rights instruments⁴⁴ and International Humanitarian law⁴⁵.

The objectives of the Global Compact on Refugees are: *«(I) ease pressures on host countries; (II) enhance refugee self-reliance; (III) expand access to third country solutions; and (IV) support conditions in countries of origin for return in safety and dignity. The global compact will seek to achieve these four interlinked and interdependent objectives through the mobilization of political will, a broadened base of support, and arrangements that facilitate more equitable, sustained and predictable contributions among States and other relevant stakeholders»* (General Assembly 2018 p. 748). Furthermore, the Global Compact states that these aims have been achieved by respecting the principles of burden – and responsibility –

⁴⁴ «Including, but not limited to, the Universal Declaration of Human Rights (which inter alia enshrines the right to seek asylum in its article 14) (A/RES/3/217 A); the Vienna Declaration and Programme of Action; the Convention on the Rights of the Child (United Nations, Treaty Series, vol. 1577, No. 27531); the Convention against Torture (United Nations, Treaty Series, vol. 1465, No. 24841); the International Convention on the Elimination of All Forms of Racial Discrimination (United Nations, Treaty Series, vol. 660, No. 9464); the International Covenant on Civil and Political Rights (United Nations, Treaty Series, vol. 999, No. 14668); the International Covenant on Economic, Social and Cultural Rights (United Nations, Treaty Series, vol. 993, No. 14531); the Convention on the Elimination of All Forms of Discrimination against Women (United Nations, Treaty Series, vol. 1249, No. 20378); and the Convention on the Rights of Persons with Disabilities (United Nations, Treaty Series, vol. 2515, No. 44910).» (General Assembly, 2018 p. 747).

⁴⁵ «E.g. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (United Nations, Treaty Series, vol. 2237, No. 39574); Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (United Nations, Treaty Series, vol. 2241, No. 39574).» (General Assembly 2018, p. 747).

sharing in order to help both refugees and host countries and communities. It states that is fundamental to translate this principle in concrete actions by supporting countries that have historically contributed to the refugee cause by hosting refugees (General Assembly 2018). It intends to create a basis for an equitable burden – and responsibility – sharing among not only all the MSs but also with other relevant stakeholders such as International Organizations within and outside the UN, humanitarian and development actors, regional organizations, academics and other experts, the private sector, media, and so on (ibidem). Hence, it aimed at creating a set of efficient, effective, and practicable arrangements in order to achieve the full realization of the principles of international cooperation and the burden – and responsibility – sharing.

The first arrangement stated by the Compact is the Global Refugee Forum. It will take place every four years in Geneva by convening all the UN MSs and relevant stakeholders. The Global Refugee Forum aims at announcing concrete engagements and contributions in order to address the Compact's goals. Furthermore, it aims at considering opportunities, challenges and ways to enhance the burden and responsibility sharing. Pledges, contributions and engagements may take different forms including financial, material and technical assistance, resettlements, complementary ways for asylum seekers' admissions and so on (Ineli-Ciger 2019).

The second arrangement aims at establishing a set of instruments by taking into account both the importance of national leadership and the domestic policies in order *«to coordinate and facilitate the efforts of all relevant stakeholders working to achieve a comprehensive response»* (General Assembly 2018, p. 751). This could support the development of a comprehensive plan in line with domestic policies and priorities⁴⁶. To support the national arrangements, the activation of a Support Platform will be provided⁴⁷.

⁴⁶ Helped by the United Nations High Commission for Refugees (UNHCR) and other relevant stakeholders, will be set out policy priorities, institutional and operational among requirements to support from the International Organizations, solutions such as the resettlement (General Assembly, 2018).

⁴⁷ Its functions include the mobilization of financial, material and technical assistance; resettlement; complementary ways for admission to the third country in support for the comprehensive plan; facilitating coherent humanitarian and development responses; and support for comprehensive policy initiatives to diminish the host countries' pressure (General Assembly, 2018).

Furthermore, in order to ease the burden on host countries and to help both destination countries and refugees, a set of measures have been provided. They refer to the reception and the admission of asylum seekers; meeting needs and support communities; and a set of solutions in order to address the challenges of burden and responsibility sharing. As for the first – reception and admission of asylum seekers – it is fundamental that States and stakeholders will contribute with their resources and expertise in order to be prepared for large asylum seekers movement. In these cases, States, United Nation High Commissioner for Refugees (UNHCR) and other relevant stakeholders will contribute to strengthen national capacities for the reception and to provide humanitarian assistance and essential services in reception areas. A further measure refers to the registration and the identification of people who arrived seeking for asylum. This facilitates the countries to know who arrives in order to give them the access to basic assistance and protection. The efforts of States and stakeholders will be also to address people that require specific needs.⁴⁸ The second set of measures that the Compact will seek to activate focuses on meeting the needs of asylum seekers and support communities. In particular, host countries seek to develop a set of interventions to meet the needs of asylum seekers on the one hand and to support host communities on the other hand in order to ensure policies aim at achieving direct benefits for both host communities and asylum seekers. The areas where the States should focus refer to education, jobs and livelihoods, health, woman and girls, children, adolescents and youth, accommodation, energy and natural resources management, food, security and nutrition, civil registries, statelessness, and foresting good relations and peaceful coexistence. The support in these areas *«will be provided in coordination with relevant national authorities in a spirit of close partnership and cooperation, and be linked as relevant to ongoing national efforts and policies.»* (General Assembly 2018, p. 762).

Finally, the Compact provides a set of solutions in order to achieve a fair burden – and responsibility – sharing. These solutions seek to be implemented by the

⁴⁸ Persons with specific needs include children, including those who are unaccompanied or separated; women at risk; survivors of torture, trauma, trafficking in persons, sexual and gender based violence, sexual exploitation and abuse or harmful practices; those with medical needs; persons with disabilities; those who are illiterate; adolescents and youth; and older persons (A/RES/46/91).

adaptation to the domestic context and taking into account the level of development and the demographic situation of the host countries. The first solution is the voluntary repatriation in the condition of safety and dignity. The International community will contribute in order to support countries of origin. The voluntary repatriation aims at removing obstacles to return and to permit favourable conditions to repatriation in safety and dignity conditions. This solution – namely resettlement – is a tool that enables both protection and solutions for refugees and a mechanism to achieve a fair burden – and responsibility – sharing. Furthermore, it is a demonstration of solidarity *«allowing States to help share each other's burdens and reduce the impact of large refugee situations on host countries»* (General Assembly 2018 p. 769). UNHCR, States and other relevant stakeholders will devise a three-year strategy (2019-2021) in order to increase the number of resettlement places and to include countries not participating in the resettlement mechanism. Additionally, the Compact provides a set of complementary pathways for admission to third countries that will be helped by States and stakeholders in order to facilitate ways for family reunification, humanitarian corridors, educational opportunities for refugees through a grant of scholarship, and so on.

This set of measures proposed by the Global Compact on Refugees should be provided by States and stakeholders that should help asylum seekers, refugees and host communities with assistance and appropriate resources (including cash assistance) and services.

This new global framework for asylum seems to be quite similar to the CEAS.

Nevertheless, a comparison between these two non-binding instruments is quite difficult for at least three reasons. The first refers to the size of application of these guidelines: While in the Global Compact 181 UN Member States declared their approval, the CEAS has a smaller range of applications since it is applicable only to the EU Member States.⁴⁹ The second reason is that the CEAS is an already implemented instrument while the Compact is a newer framework on asylum and thus no instruments have been yet applied. A further reason refers to the different kinds of aims that the two frameworks try to achieve namely the common

⁴⁹ With the exception of Denmark, Ireland and the United Kingdom that did not participate in some primary and secondary legislation under the CEAS framework.

legislation in asylum matters for the CEAS; and the creation of more sustainable asylum policies and procedures for the destination countries, the third countries and the asylum seekers for the UN Global Compact.

Despite the just-mentioned limits, some speculative and preliminary considerations will be drawn by discussing some key points of the respective instruments.

First of all, like the CEAS, the Global Compact on Refugees is not a binding instrument. Hence, the countries can decide if comply or not with it, how much to comply and the method used to comply. Nonetheless, this does not mean that this framework will be just a series of principles that can be forgotten by the MSs. As Gammeltoft-Hansen (2018) argued, it can help to implement a series of both binding and non-binding instruments in order to achieve its objectives. For example, the CEAS, even if it was born as a non-binding framework, helped the creation of binding instruments in asylum matters.

As outlined before, this did not turn out however, in a smooth compliance of the framework. Quite the contrary.

The CEAS has in fact a series of flaws that have led to an unfair burden – and responsibility – sharing. One of the CEAS' errors is considered the form of the secondary legislation instruments. Being the main part of the directives, they are not directly applicable to the Member States. Article 288 of the TFEU stated that Directives are binding but the choice of form and methods is left to national authorities. Hence, the countries have the possibility to decide in which way with comply to this binding legislative instrument. A further flaw laid down the Dublin Regulation III that following the criterion of the first arrival country (see above), it does not take into account the differences across Europe in domestic reception policies and living standards. The principle of the first arrival country has led to a disproportional burden on Europe's Southern border (mainly Italy and Greece). Furthermore, it provides strong differences in reception conditions and to process the asylum requests (Brekke and Brochmann 2014). Hence, this system seems to create disparities among States rather than a fair burden – and responsibility – sharing. Neither in the Presidency Conclusions of the Tampere European Council (1999) nor in the Dublin Regulation III (2013) references to this issue have been proposed. The burden sharing topic has been only mentioned in the 2007 Green

Paper on the Future of the European Asylum and in the 2010 European Parliament report (Toshkov and de Haan 2013).

The Compact, unlike the CEAS, dedicates instead a big part of its agreement to this issue. Indeed, it provides a set of concrete measures and solutions that the international community should implement in the next three years. These have been drawn by taking into account the country's domestic differences such as their different degree of development, their national asylum policies, and their demographic situation. The United Nations asylum framework did not stop to only describe the good practices and their desirable solutions, but it tried to set out practical ways to achieve its goals. For example, has been proposed the Global Refugee Forum in which, beyond to be a helping instrument to address the Global Compact objectives, it has the aim to enhance a fair burden and responsibility sharing. This Forum, thus, seems to be very important since it has the responsibility to be a neutral place where the Member States meet to remind themselves both the Compact goals and the current situation of the burden and responsibility sharing. These measures should be implemented respecting both the host communities and the asylum seekers trying to meet the needs of both and to implement ad hoc solutions. Additionally, a set of desirable solutions has been stated. These refer to resettlement, to the support to origin countries, to complementary pathways for admission to third countries and a plan to increase the number of resettlement places differently to the CEAS in which the EU countries only started to look for these solutions after the 2015 "crisis". Thus, it seems that the EU can learn of the UN asylum framework in order to correct the main flaws of the CEAS.

This chapter had the aim to give an overview on the European asylum policy, its tools and its evolution. In the next chapter the theories of Europeanization, differentiated integration and Differentiated Implementation as well as the methods to assess them in the asylum policy area will be introduced.

CHAPTER 3

Methodology, Techniques and Research Questions

«Quando studia e insegna, il metodologo deve avere un atteggiamento descrittivo, cioè disposto ad apprendere dalle varie esperienze di ricerca altrui valutandole senza preconcetti, e a riferire in modo sistematico e sintetico quanto ha appreso.

Quando mette le proprie competenze, capacità ed esperienza al servizio di una ricerca, sua o altrui, il metodologo non può che essere prescrittivo, in quanto deve scegliere quali strumenti usare e come usarli; meglio se nelle sue prescrizioni saprà tener conto di tutto ciò che ha imparato svolgendo l'altro ruolo»

Alberto Marradi (2007) Metodologia delle Scienze Sociali.

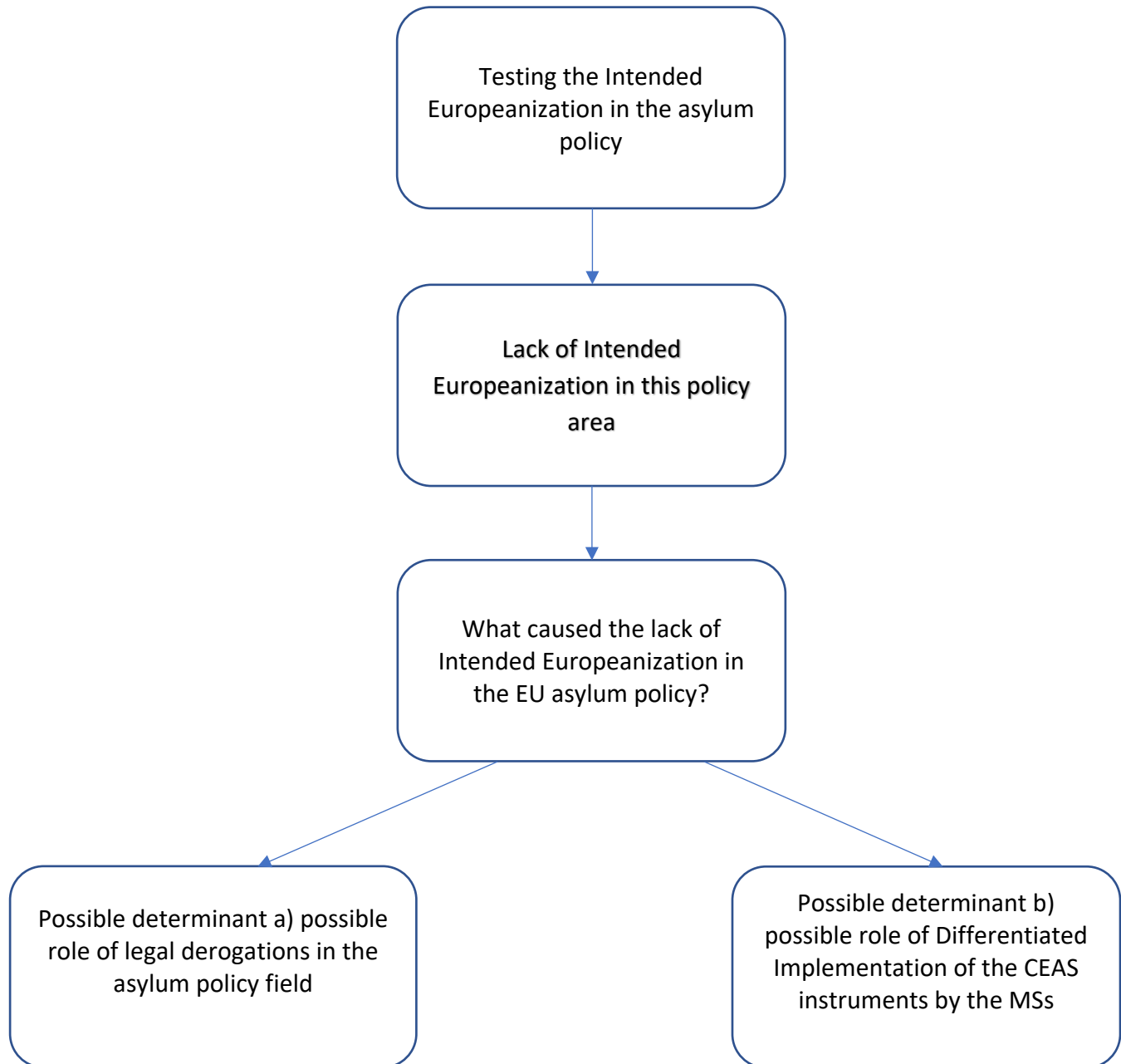
The previous chapters explained the main theorization and empirical researches about Europeanization (Chapter 1), and the most important legislative instruments of the European Union concerning asylum (Chapter 2).

This chapter aims instead at explaining the methodology employed to assess Europeanization (section 3.1) as well as differentiated integration (section 3.2) and Differentiated Implementation (section 3.3). The main methodological aspects of the thesis will be developed here in order to have them in a consistent section, and to be able to elaborate on the arguments in the respective chapters without interrupting their flow with methodological clarification.

As argued in the introduction chapter, the main purpose of this thesis is to assess if Intended Europeanization (see Introduction and Paragraph 1.4) is present in the EU asylum policy as a result of the principal aim of the Common European Asylum System (CEAS).

The main results of this analysis will show that no Europeanization of asylum policy is present (Chapter 4), hence two possible determinants of such a missed Europeanization will be investigated. In particular, in Chapter 5 it will be investigated the possible determinant A) the *differentiated integration* and the possible determinant B) the *Differentiated Implementation*. (Figure 3.1).

Figure 3.1. Flow chart of the thesis' line of action



Source: own elaboration

The first, *differentiated integration*, refers to a process where the EU States decide to move at a different speed or by following different objectives regarding common policies (Dyson and Sepos 2010, p. 4). It will be therefore investigated if some country is entitled with some derogation right in this policy field. Possible determinant B), namely *Differentiated Implementation*, refers instead to the diversification in the implementation of legislative tools regarding the asylum

policy area. In particular, it will be assessed if evidence for a diversification when transposing a set of EU directives is present. Hence, it will be tried to understand the MSs Differentiated Implementation of a subset of the CEAS.

Let, therefore, see each of them into details.

3.1 Europeanization

The Europeanization of asylum policy in the EU has been intensively studied in the first decade of the 2000s. Scientific literature proposed a set of hypotheses and research questions for assessing Europeanization in general and Europeanization of asylum policy in particular. Nonetheless, this topic was much less addressed during the second decade. The analysis presented in this chapter aims at covering the missing time span and updating the data concerning asylum until 2017.

Toshkov and de Haan (2013) authored one of the main contributions of the Europeanization of asylum policy starting from the CEAS introduction in 1999. Among the purposes of the CEAS, the harmonization of the asylum policies across the EU Member States is central. The authors explained that harmonization – and, therefore, the common legislation in asylum matters – may lead to two expected consequences: the race to the bottom (RTB) and the convergence (C). Hence, they tried to understand if, after the introduction of the asylum framework, these consequences were present. The main literature in this field argues in fact that, if these conditions are present, then a Europeanization of asylum policy can be detected.

In this thesis the RTB and the convergence assume two meanings: first, they are two expected consequences of the asylum common legislation; secondly, they are two conditions of the Europeanization of this policy area. In this case, the expected consequences of a common legislation in asylum matters and the two conditions of Europeanization of asylum policy coincide.

Following the above-mentioned literature, the present work tries to analyze the Europeanization of asylum policy through the main expected consequences of the asylum harmonization (RTB and C).

These latter will be analyzed by employing the most appropriate indicator in this field of study, that is the asylum recognition rates. To be clear on the meaning of these terms, let us explain what the recognition rates and the race to the bottom are, and what we mean by convergence in asylum recognition rates.

The *asylum recognition rate* is one of the most used indicators (I) to calculate the quotas of the asylum seekers accepted by a country or by the European Union. It is a rate that refers to the quotas of the recognized asylum requests. Theoretically, the correct computation of the asylum recognition rate considers the percentage of asylum claims recognized, out of the number of asylum claims lodged (Neumayer 2005a). Since data are lacking in most EU countries, this correct calculation on asylum recognition rate cannot be run (UNHCR 2002). Hence, we will follow the United Nation High Commissioner for Refugees (UNHCR) practice, that consists in computing the recognition rates as the yearly share of positive decisions out of the total number of asylum decisions in that year. Our recognition rate thus, measures the rate of successful decisions.

$$RR = \text{positive decisions} / \text{total decisions}$$

The concept of *race to the bottom* is widespread in the literature. It has been employed in many policy areas (welfare migration, fiscal policy, social policy, asylum policy, environmental policy, and so on). The RTB describes a situation where the policies of a cluster of countries have met at their lowest denominator, for example, the most restrictive access to the labour market (Kvist 2004, p. 303). It is based on the assumption that the EU Member States «*will try to shirk responsibility and free-ride on the efforts of others. In addition, Member States which provide more favourable treatment and easier access for potential refugees will fear attracting a disproportionate number of asylum seekers. [...] The individual Member States will unravel their domestic system of protection, tighten*

up admissions requirements and ultimately depress recognition rates and the number of people they offer protection in order to avoid becoming a favoured destination by asylum seekers shopping for an easy-access entry point» (Toshkov and de Haan 2013, p. 664).

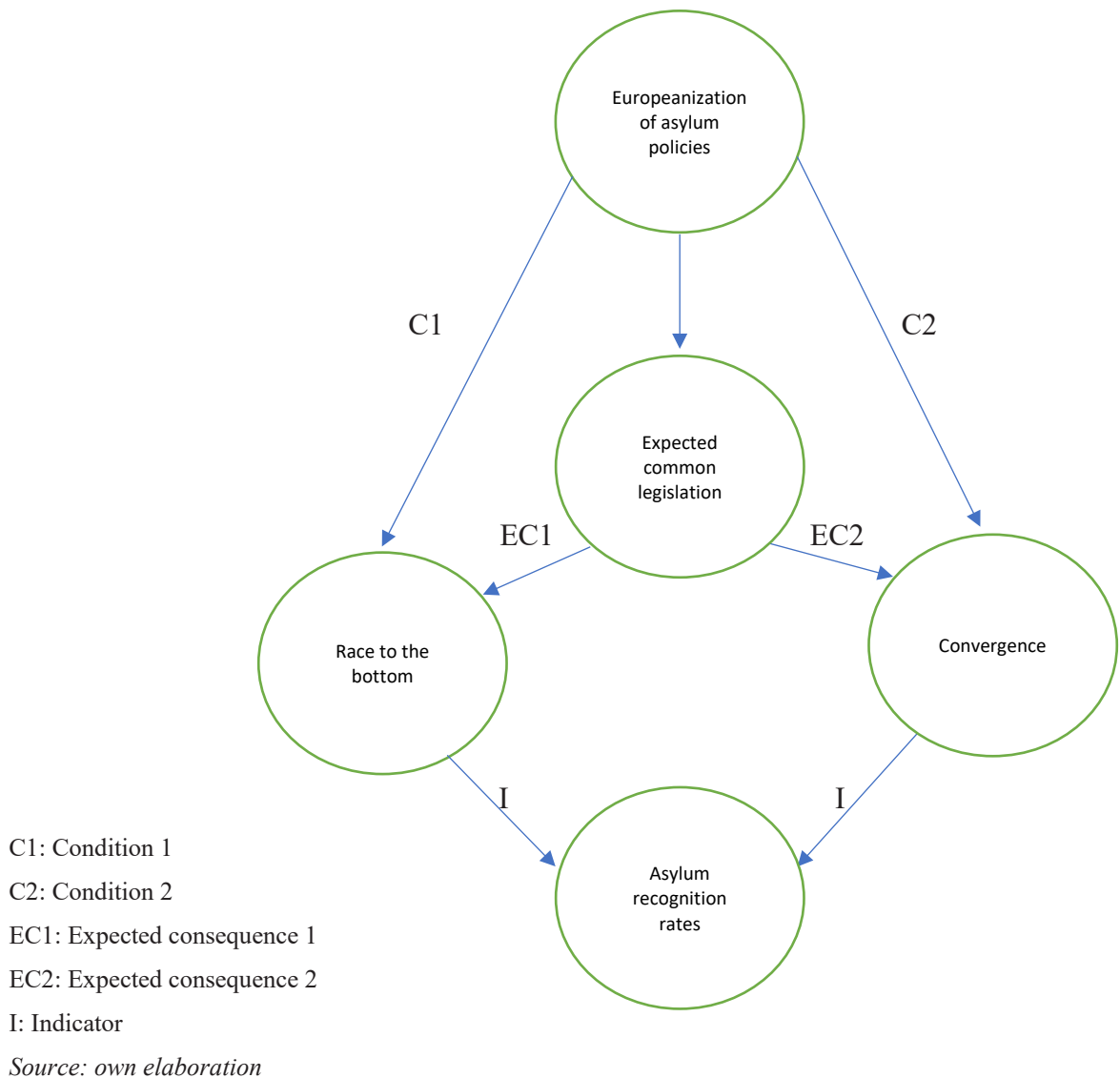
As it will be pointed out in the following, the race to the bottom roused two opposite positions on its likelihood.

Against this background, it will be checked if the asylum recognition rates increased or decreased in the period under scrutiny, and if a race to the bottom among MSs took effectively place or not.

Convergence is a concept that is often confused with that of Europeanization, while, analogously to harmonization, it is merely one of the possible consequences of the Europeanization process (Radaelli 2003). Convergence in public policy may be the result of structural dynamics or specific decisions taken by policy makers (Bennett 1991). In this thesis, in line with the already-given definition of Intended Europeanization and the Toshkov and De Haan's approach, by convergence it is meant equal or similar quotas in the recognition rates. Convergence is computed by looking at the percentage of the recognition rates across the analysed countries, and by checking if these rates are close to those of the other MSs as well as to the EU average.

Figure 3.2 summarizes the conditions (Cs) to assess the Europeanization of asylum policy, the expected consequences (ECs) of the asylum common legislation, and the indicator (I) both for the race to the bottom and the convergence.

Figure 3.2: Conditions (Cs), expected consequences (ECs), and indicator (I) employed to assess the Europeanization of asylum policy.



The two expected consequences of the CEAS (RTB and C) are tested to understand if the Europeanization of asylum policy is present: if the expected consequences hold true, then there is evidence for such a Europeanization.

The RTB will be analysed looking at the trend of the asylum recognition rates observe if a decrement on these rates is occurring. Should the trend show a decrement, then claim on a RTB can be made; the contrary if the trend should be positive.

The convergence will be scrutinized by referring to the dispersion of the asylum recognition rates to understand if the countries will be equally distributed across the

distribution. In particular, it will be inspected if the range of variation of these rates will be higher (or lower) than 0.2 for all the considered years regardless of the outliers. Evidence for convergence will be found only if the variation range is lower than 0.2. This cap that has been employed as a reasonable margin to consider the countries as convergent.

This analysis of Intended Europeanization will be split into two parts. In the first part, all decisions concerning asylum and all countries of origin will be taken into account in order to grasp a first general overview of the whole phenomenon of the asylum seeking in the European Union. In the second, a more punctual analysis will be performed, by considering only specific types of applications and a reduced number of origin countries of the applicants.

The first, more general part, will be run for at least two reasons: first, such an overview may allow a more comprehensive picture of the refugees' phenomenon in the European Union, which has not been updated since the very early 2010s; secondly, the official documents (such as that of the UNHCR) use to display all sending countries as well as all international protections to show the current picture of the world in asylum matters. This choice contains also some limits, mainly due to the inclusion of all data concerning both the decisions on asylum and the nationality of the applicants.

The first limit is that all the decisions (Geneva Convention refugee Status, Subsidiary Protection, Humanitarian Protection, and Temporary Protection) will be computed meaning that just an overall picture can be presented and no specific conclusion on the Europeanization of asylum policy may be drawn. Hence, in the first part all EU legislative instruments, will be analysed together, also including the Humanitarian and the Temporary Protection⁵⁰ (the latter, even if it is an EU Directive, the Member States did not use it to grant asylum) (European Commission 2016).

Secondly, this general picture may be biased also because some countries have been included in the figures, although they did not implement domestically some legislative instruments in order to have a detect such an overview on asylum.

⁵⁰ This legislative instrument has been abolished by some Member States.

Additionally, the number of decisions on asylum concerning the Temporary Protection are very low (Eurostat data 2016) and no Member State granted this kind of international protection (European Commission 2016). Thus, this type of protection may bias the overall data for the countries that adopted it.

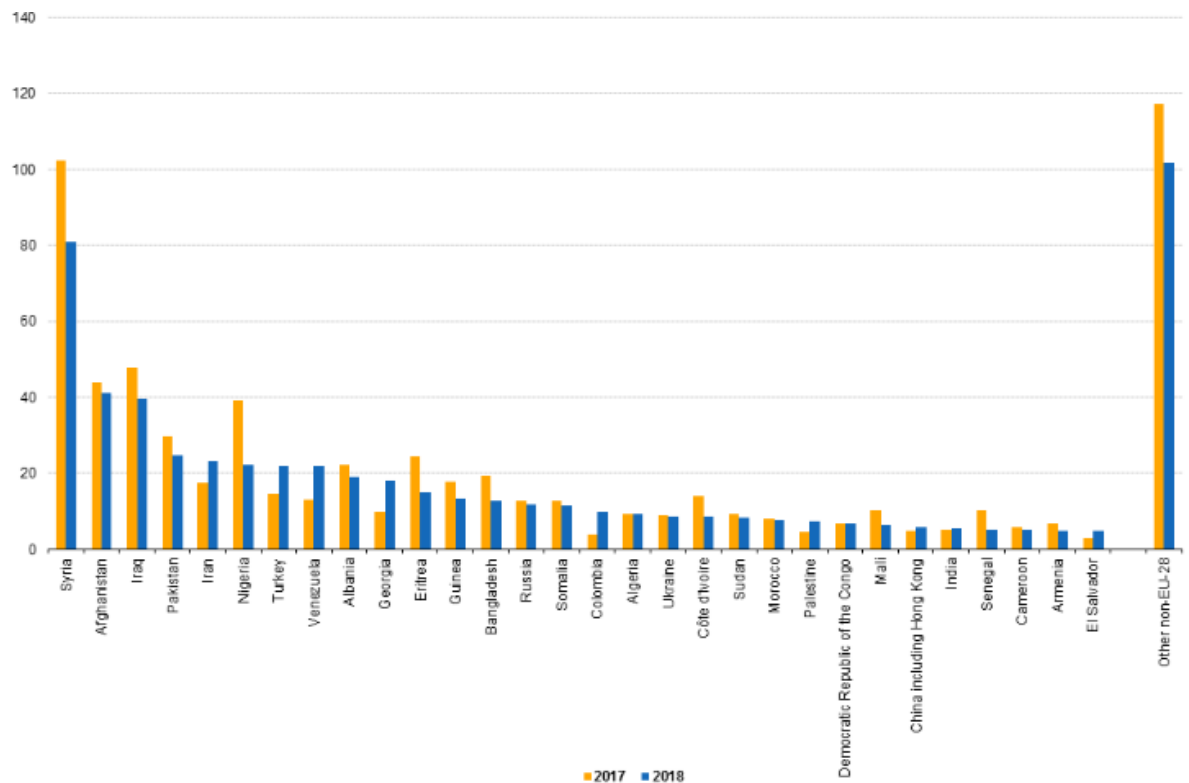
The third limit is that this first part does not differentiate according to the nationality of the asylum applicants. From this perspective, the data may be biased because each EU Member State has a different range of applicants' nationalities. Thus, it is possible that some countries received more asylum applications from asylum seekers running from wars – and thus, most probably they are obliged to accept them – while other EU countries may receive mainly economic migrants, easier to reject under the international agreements.

In order to overcome the above-discussed limits – and thus to differentiate the properly EU protection and the domestic ones as well as to distinguish the different country where applicants came from – in the second part of the analysis concerning the Intended Europeanization, the same elaboration will be conducted by referring to the asylum recognition rates granted under the 1951 Geneva Convention and the Subsidiary Protection only.

As well, since the structure of asylum applications – and consequently of the related decisions – referring to the origin country of the applicants is different in each country, following Toshkov and de Haan (2013) only the first five origin countries that scored top in the asylum applications' figures in 2017 have been inserted in the analysis. These countries are, following the number of applications' decreasing order: Syria, Iraq, Afghanistan, Nigeria, and Pakistan (Figure 3.3). These countries cover a big part of the asylum requests sent to the EU countries (Eurostat data, 2016).

The choice to limit the number of applications to a subset of legislative instruments and to a set of sending countries will allow us to eliminate, or at least to diminish, the possible bias that may affect the overall picture presented in the first part of the analysis.

Figure 3.3. Countries of origin of (non-EU) asylum seekers in the EU-28 Member States. 2017 and 2018 (thousands of first time applicants).



Source: Eurostat (online data code: migr_asyappctza)

Figure 3.3 refers to both 2017 and 2018, but only 2017 will be taken into account for our analysis because the period analyzed in this work refers to the 2008-2017 decade.

The Figure shows that migrants from (in alphabetic order) Afghanistan, Iraq, Nigeria, Pakistan, and Syria out of all applying migrants, are those applying more to obtain the refugee status in the European Union in 2017.

The reasons why these countries are top applicants may be mainly related to internal and external wars as well as to environmental disasters affecting those territories. In Afghanistan, the threat for civilians started after September 11, 2011 and grew in recent years with the conflict between the Taliban and the Islamic State (Byrne, Khan and Krzyzaniak 2015). The conflict expanded also in Pakistan and in particular in Waziristan, in the North West of the country.

The war in Iraq against the USA caused by the United States' invasion, started in 2003 and finished in 2011. Nevertheless, together with Syria, it was one of the countries most involved in the Arab Springs (Byman 2015). As shown in Figure 2 Syria is the country that in 2017 has registered the biggest number of asylum

applicants in the EU. Nevertheless, these numbers are lesser than 2015, that is the year of the so-called refugees' "crisis".

In Nigeria, the asylum applicants try to grant asylum in the EU in order to escape to the environmental disaster in the Niger Delta regions. These territories are rich in oil but its extraction caused disasters for the environment (Chiluwa 2011, Eweje 2006, Jike 2004). Furthermore, there is also a civil war in Nigeria caused by the terroristic group Boko Haram that between 2009 and 2017 caused 51,000 deaths and 2.5 millions of displaced persons (Okechukwu 2018).

The next paragraph will be devoted to in-depth explain the analysis about the Intended Europeanization by presenting its main research questions.

3.1.1 Research Questions of the Intended Europeanization and the recognition rates trend determinants

Once defined and explained the main concepts employed here, it is now possible to outline the research questions addressed to assess the Intended Europeanization of asylum policy. As said, the Europeanization of asylum policy in the EU has been less scrutinized during the second decade of the 2000s. Hence, the research questions posed in this section try to fill this gap and therefore to account for the possible evolution of the phenomenon in recent years. The principal research question (RQ) thus directly derives from this attempt:

Int. Europeanization RQ1: Is there evidence for Intended Europeanization of asylum policy across the EU Member States in the analysed period?

In order to answer this general question, two steps will follow by analysing the main Europeanization of asylum policies conditions as well as the main expected consequences of common legislation in asylum matters – namely the RTB and the convergence in asylum recognition rates.

Two further sub-questions will be thus asked:

- *Int. Europeanization Sub RQ1a: Did the RTB trend effectively take place in the 2008-2017 period?*
- *Int. Europeanization Sub RQ1b: Did convergence effectively take place in asylum recognition rates across the 28 European Member States in the same period?*

In order to in-depth scrutinize the asylum recognition rates trend, a further analysis will be presented. In particular, it will be inspected on the determinants of the recognition rates trend checking if some (social, economic, political) conditions may have affected these rates. Thus, the further RQ sounds:

- *Int. Europeanization RQ2: Which are the determinants of the asylum recognition rates trend in the 2008-2017 period?*

In order to detect the recognition rates determinants, a multiple regression analysis is employed. This method is usually used by scholars and experts to see what changes in a dependent variable when other variables score differently.

In our case, the goal is to detect the reasons for such a trend throughout the EU MSs in the analysed period.

The countries analysed are the 28 EU MSs as well as 28 non-EU sending countries⁵¹ in the 2008-2017 period. For each destination country, from 2 up to 7 major sending countries have been selected to cover at least 90% of all asylum claims of that specific destination country. In some cases, only two countries have been chosen because they already reached 90%, in other cases seven sending countries have been necessarily chosen in order to achieve this cut-off. The overall final number of cases is 1,290.

In the analysis, six independent variables and one control variable have been inserted. These variables are grouped in four clusters that refer to: 1) economic, 2) political, 3) historical and 4) social conditions of origin and destination countries.

⁵¹ The considered sending countries are (in alphabetical order): Afghanistan, Albania, Algeria, Bangladesh, Congo, Eritrea, Georgia, Guinea, Haiti, Iran, Iraq, Ivory Coast, Libya, Mali, Morocco, Nigeria, Pakistan, Russia, Serbia, Somalia, Sudan, Syria, Tajikistan, Turkey, Ukraine, Venezuela, Vietnam and Zimbabwe.

Data has been retrieved from official sources, which will be detailed in the following.

The dependent variable employed in the analysis is the asylum recognition rates, computed as the yearly share of positive decisions out of the total number of asylum decisions in that year (Eurostat data). As already mentioned, the correct way to compute the asylum recognition rates would be the percentage of asylum claims recognized out of the number of asylum claims sent to the destination countries (Neumayer 2005a). Nevertheless, we lack data on most of the claims, so we employed the UNHCR practice computing the asylum recognition rates as said. In other words, our recognition rate measures the rate of successful decisions.

Furthermore, in order to capture the influence of the determinants, the timespan has been divided into three phases: 2008-2010; 2011-2014; 2015-2017. These three phases led to a subdivision of the dependent variable (the asylum recognition rate) in three further dependent variables, one for each period. Consequently, three different ordinary least square (OLS) regressions will be analysed.

The three phases have been chosen in order to check what changed in the asylum recognition rates after three events that reasonably may have affected these rates.

The first event refers to the global economic crisis that started in 2008 and its potential influence on the asylum recognition rates in the 2008-2010 period. It is plausible to argue that the economic troubles in the destination countries may have affected the dependent variable negatively, that is by depressing the recognition rates. It could happen because the countries could tend to decrease their recognition rates in order to address their domestic economic troubles first, thus leaving the immigration issue aside.

The second phase refers, instead, to a further event that may have affected the asylum recognition rates in the 2011-2014 period that is the triggering of the Arab Spring. the Arab Spring was a cluster of anti-government protests, riots, revolts, and armed rebellions triggered across North Africa and the Middle East in December 2010⁵². This event, according to the principle of non-refoulment stated

⁵² The Arab Spring triggered in December 2010. The riots hit lots of Arab and not Arab countries such as Syria, Libya, Tunisia, Yemen, Algeria, Iraq, Bahrein, Jordan, Djibouti, Mauritania, Saudi Arabia, Oman, Sudan, Somalia, Morocco and Kuwait. The factors that led to these riots refer to

by the Geneva Convention and reasserts by the New York Protocol (see Chapter 2), should increase the asylum recognition rates. Destination countries are in fact obliged to accept asylum applications by the part of people that cannot return to their origin countries in which they have a well-founded fear to be killed or tortured for reasons regarding their political profession, religion, and gender.

The last phase refers to the triggering of the refugees' "crisis" that started in the summer of 2015. This phase has been characterized by increasing numbers of people arriving in the EU principally from the Mediterranean Sea or through Southeast Europe and, therefore, a peak of asylum applications. The migration "crisis" should affect the asylum recognition rates for the countries that are obliged to accept asylum applications by people that are escaping from internal or external wars.

These three phases – selected around critical global events that happened during the analysed time-span – are expected to influence the asylum recognition rates trend. The three phases are sketched in Table 3.1.

Table 3.1. The three phases and relevant triggering event in the considered time span (2008-2017).

Phase	Event
2008 - 2010	Global economic crisis
2011 - 2014	Arab Spring
2015 - 2017	Migration "crisis"

Source: own elaboration

Six independent variables have been employed in order to grasp the determinants of the recognition rates trend. These variables stem from four different dimensions: the economic conditions, the political conditions, the historical conditions, all three related to the destination countries, and the social conditions of the origin countries. As for the *first dimension (economic conditions)*, the unemployment rate (UNEMPLOYMENT) has been used as its most appropriate variable. Asylum seekers try in fact to apply in rich countries with low unemployment and high

corruptions, freedom, human rights violation and no interest by the part of the Governments of extreme poverty cases in the country.

economic growth because these countries are usually more generous in their welfare provisions and it is easier to find a job there (Massey et al. 1993, Borjas 1994 and Neumayer 2004); in countries with low unemployment rate, the asylum recognition rate seems to increase (Neumayer 2004, Neumayer 2005a, Neumayer 2005b).

Hence, our expectation is that with low unemployment rate in the destination countries corresponds high asylum recognition rate. The data have been provided by the International Labour Organization (ILO).

A further variable of the economic dimension is the GDP per capita (GDP PER CAPITA) because it represents the major economic incentive for migration (Neumayer 2005b). This is also true for the previous studies: Neumayer (2005a) found in fact that a high GDP per capita is associated with a high recognition rate. In this case, we predict that the higher the GDP per capita, the higher the asylum recognition rates. These two variables have been employed only for the destination countries (the 28 EU MSs) in order to assess whether the domestic economic conditions play a role in the acceptance or in the rejecting of the asylum applications. The data have been provided by the World Bank in constant US dollars of 2017.

As for the *second dimension (political conditions)*, the percentage of votes in national parliamentary in the last elections for the so-called right-wing populist parties (PRRPs) (%POPULIST) have been employed (Neumayer 2005a, Holzer and Schneider 2001). This variable has been chosen because *«the electoral success of right-wing populist parties often prompts governments and parliaments – no matter what matter their political orientation – to enact restrictive asylum policies with a view to winning back the voters and eroding the ground on which right-wing populist parties build their success»* (Neumayer 2005a p. 52). Thus, it seems that even if these populist parties are not at the head of the Government, high share for them is related to a fall in asylum recognition rates.

Hence, we may presumably expect that with a high vote share for PRRPs, the recognition rate should diminish because previous studies demonstrate that a high share of votes for these parties corresponds to a low asylum recognition rate (Akkerman 2018).

The list of the PRRPs is based on the existing mainstream literature on this topic (Mudde 2013, Pausch 2015). The percentage of votes has been retrieved from the Ministry of Interior of each country.

The *third dimension (historical conditions)* is represented by the variable (PASTASYAPPLOG), which is the logarithm of the average past-five-year asylum applications normalized by the country population. Log has been used to normalize the variable past asylum applications. According to Neumayer (2005a p. 53), «*total asylum numbers might exert downward pressure on all recognition rate*», reasonably for a sort of “crowding effect”. The idea is that the countries tend to reject asylum requests whether these numbers start to become very big.

Hence, a high number of past asylum applications should diminish the asylum recognition rate because, with already high numbers of past asylum applications, the countries are probably inclined to reject further asylum requests.

Data are provided by the UNHCR Statistical Yearbooks (from 2004 to 2017).

The *fourth dimension refers instead, to the origin countries (social conditions)*. It is represented by two variables: the human rights violation degree (RIGHT VIOLATION CENTER) and the threats to inter-state wars degree (INTERWAR CENTER). These two variables are very important since, as stated by the Geneva Convention, a person who has a well-founded fear to live in the origin country for the threat of persecution or war or natural catastrophe, has the right to be hosted by the countries that signed the 1951 Convention. Furthermore, it is useful to remind that the EU Member States has been obliged to sign the Geneva Convention in which it is a requirement to be part of the Union.

The first variable, human right violation degree, is measured by employing the Amnesty International’s Political Terror Scale (PTS) that «*measures levels of political violence and terror that a country experiences in a particular year based on a 5-level “terror scale” originally developed by Freedom House. The data used in compiling this index comes from three different sources: the yearly country reports of Amnesty International, the U.S. State Department Country Reports on Human Rights Practices, and Human Rights Watch’s World Reports.* [1 refers to] *Countries under a secure rule of law, people are not imprisoned for their views, and torture is rare or exceptional. Political murders are extremely rare.* [2 refers

to] *There is a limited amount of imprisonment for non-violent political activity. However, few persons are affected, torture and beatings are exceptional. Political murder is rare.* [3 refers to] *There is extensive political imprisonment, or a recent history of such imprisonment. Execution or other political murders and brutality may be common. Unlimited detention, with or without a trial, for political views is accepted.* [4 refers to] *Civil and political rights violations have expanded to large numbers of the population. Murders, disappearances, and torture are a common part of life. In spite of its generality, on this level terror affects those who interest themselves in politics or ideas.* [5 refers to] *Terror has expanded to the whole population. The leaders of these societies place no limits on the means or thoroughness with which they pursue personal or ideological goals»* (The Political Terror Scale)⁵³.

The second variable, the threats to inter-state wars, is measured by the extent of external armed conflict based on data from the Uppsala Conflict Data Project (UCDP). This scale is coded by using 0 between 0 and 24 battle-related deaths in a given year, «1. Minor: between 25 and 999 battle-related deaths in a given year, 2. War: at least 1,000 battle-related deaths in a given year» (Uppsala Conflict Data Project)⁵⁴.

In order to collect these scores, 2 up to 7 sending countries for each destination country have been selected. These origin countries represent at least 90% of the asylum applications lodged in each destination country. Against this backdrop, the expectation is that: the higher these scores, the higher the asylum recognition rates. This expectation is reinforced by the fact that the 1951 Convention and the 1967 Protocol, state the principle of non-refoulment, thus obliging the signing countries to accept asylum requests by people that have a well-founded fear to come back to their State.

A further clarification is nonetheless in order. These two variables (the human right violation degree and the inter-state war degree), are affected by collinearity. Collinearity induces large standard errors, reflecting our low confidence in the coefficients estimated on these highly correlated factors. To avoid this, Following

⁵³ For the complete codebook <http://www.politicalterroryscale.org/Data/Documentation.html>

⁵⁴ For the complete codebook <https://ucdp.uu.se/>

Kam and Franzese (2005) the technique of centering has been employed, followed by an interaction among the centered variables, to get a negative relation, and thus an absence of collinearity. An interaction has been therefore run. Adding interaction terms to a regression model can greatly expand understanding of the relationships among the variables in the model and allows more hypotheses to be tested. The process is quite simple; firstly, we centered the variables in order to normalize them. Then we added the values of two variables by multiplying them. In the regression model, we have to include all the three variables: the interaction one (RIGHTVIOLATION*INTERWAR) and both the variables that were used to generate the interaction (RIGHTVIOLATIONCENTER and INTERWARCENTER) in order to control for all the effects on the dependent variable. Two possible figures must be checked for when an interaction is generated: 1) the statistical significance of the interaction term (whether or not it influences the regression model); and 2) how much interaction changes the coefficient of determination when having it or not in the model (how much the adjusted R^2 changes, basically). When the significance of these two terms increases, then the interaction is needed. If neither 1) nor 2) is observed, then the interaction term can be removed from the regression equation. In our case both figures (significance and the adjusted R^2 level) were significant, thus we decided to add both the interaction between the two variables (RIGHTVIOLATION*INTERWAR) and the two relevant centering (RIGHTVIOLATIONCENTER and INTERWARCENTER) in the model.

Finally, the year (YEAR) has been introduced as a control variable. This variable allows us to appreciate the statistical effects on the dependent variable – in our case the asylum recognition rate – with the passing of time.

Table 3.2 sums up the dimensions, the variables, their measurement and their expected impact.

Table 3.2. Independent variables grouped by dimension and their expected effects on asylum recognition rates (RR)

Dimensions	Independent variables	Meaning	Measurement	Expected impact
<i>Economic condition of the destination country</i>	UNEMPLOYMENT	Unemployment rate per country and per year	%	Low unemployment rate -> high RR
	GDP PER CAPITA	GDP per capita per country and per year	U.S. \$ (2017)	High GDP pc -> high RR
<i>Political condition of the destination country</i>	%POPULIST	Share of votes to PRRPs in the last national elections	%	High % of votes to populist party -> low RR
<i>Immigration history of the destination country</i>	PASTASYAPLOG	Logarithm of the average of past asylum applications	Absolute numbers	High log. of past asylum application -> low RR
<i>Social condition of the origin country</i>	RIGHTVIOLATIONCENTER	Human right violation degree	1-5	High human right violation degree -> high RR
	INTERWARCENTER	Inter-state war degree	0-2	High interstate war degree -> high RR
<i>Control variable</i>	YEAR	Year	Absolute numbers	

Source: own elaboration

Table 3.3. RQs concerning the Intended Europeanization

INTENDED EUROPEANIZATION	Int. Europeanization RQ1 <i>Is there evidence for Intended Europeanization of asylum policy across the EU Member States in the analysed period?</i>	Int. Europeanization Sub RQ1a: <i>Did the RTB trend effectively take place in the 2008-2017 period?</i>
		Int. Europeanization Sub RQ1b: <i>Did convergence effectively take place in asylum recognition rates across the 28 European Member States in the same period?</i>
	Int. Europeanization RQ2 <i>Which are the determinants of the asylum recognition rates trend in the 2008-2017 period?</i>	

Source: own elaboration

3.2 Differentiated integration: research questions and the descriptive analysis

The differentiated integration is the core of Chapter 5. As hinted before, once the analysis in Chapter 4 will have shown a lack of Europeanization in the asylum policy across the countries, some possible determinants will be taken into consideration. The first one is the differentiated integration (possible determinant A) that refers to possible derogations conceded to some MS in the asylum policy area that could have led to the missing of the asylum policy Intended Europeanization. In particular, it will be assessed if there are derogations to certain countries when implementing three EU directives concerning the asylum.

Since the Treaty of Rome in 1951, the EU is facing the differentiated integration issue (Brunazzo 2017) but only recently – with many enlargements and with the new functions of the EU institutions – it started to raise in the experts and scholars debates that started to reflect about the future implications for the EU integration (ibidem).

When in 1999 The EU implemented the CEAS, some EU Member States decided to opt out (completely or partially) from the provisions stated in the asylum framework⁵⁵. Indeed, the EU conceded some derogations to these countries by wishing that they may join in the future to such a framework (EASO 2016).

The research question aims at analyzing the possible determinant A, tries to understand if a differentiated integration is present across the 28 EU MSs in the asylum policy area. Hence, the RQ sounds like follows:

Diff. Int. RQ1: did the differentiated integration is present in the EU asylum policy in the 2008-2017 period?

Chapter 5 aims at verifying – descriptively – if a differentiated integration in asylum policy is present by taking into account the derogations⁵⁶ that the EU conceded to some countries (namely Denmark, Ireland, and the United Kingdom) and by

⁵⁵ The CEAS is not-binding in nature. Nevertheless, many binding legislative tools have been implemented under this asylum framework.

⁵⁶ In particular Protocol N.21 and N.22 of the TFEU will be examined in order to assess the derogations.

checking their options in respect to a subset of legislative instruments concerning the asylum. This subset is composed of fourteen secondary legislation instruments implemented under the CEAS or strictly related to it. These are the crucial tools implemented under this framework since they are considered as the core of the EU asylum policy (EASO 2016). EASO, in fact, denoted these as the most important secondary legislation approved under the CEAS, although not approved directly under it. Indeed, the EASO analyzes them as instruments that helped to build the European Asylum System. Thus, these instruments should be representative of the EU asylum policy area or at least of the secondary legislation implemented under the CEAS.

The legislative tools that will be considered in the analysis of differentiated integration are the Temporary Protection Directive, the Dublin II Regulation, the Eurodac Regulation, the Reception Condition Directive (RCD), the Asylum Procedures Directive (APD), the Qualification Directive (QD), the Dublin III Regulation, the Eurodac Regulation (recast⁵⁷), the Reception Condition Directive (recast) (RCD-recast), the Asylum Procedure Directive (recast) (APD (recast)) and the Qualification Directive (recast) (QD (recast)), the Family Reunification Directive, the Long-Term Residents Directive, and the Returns Directive.⁵⁸

Hence, it will be checked if Denmark, Ireland, and the UK opted out to the fourteen legislative tools of the subset and, therefore, leading to the creation of the differentiated integration in this policy area.

After this assessment, it will be additionally assessed if this possible differentiated integration has contributed to the lack of Europeanization by in-depth scrutinize the asylum recognition rates of the opt-out countries. Reasonably, it is expected that if a sole country did not implement the legislative tools of the subset, the race to the bottom and the convergence will not take place only for that country while the others – according to the concept of RTB and Convergence – will decrease their RR and will converge in their RR among the countries.

⁵⁷ The recasting of legislation means the adoption of a new legal act, when an amendment is made to a basic instrument.

⁵⁸ The last three legislative tools have been considered even if they are part of the common immigration policy of the European Union and not strictly of the asylum policy. The EU asylum policy area is closely connected to the EU immigration policy which has important implications related to the residence rights and to the benefits of the refugees and of the beneficiaries of subsidiary protection (EASO 2016).

A further analysis concerning the possible determinant A) will refer the type of differentiated integration that is present in the EU asylum policy. Following the categorization elaborated by Stubb (1996) it will be assessed if evidence for Multi-Speed Europe, Variable Geometry and/or À-la-Carte Europe is present. Thus, it will be checked if a differentiation by speed, space or matters is present by scrutinizing the derogations rights conceded to Denmark, Ireland, and the UK, namely Protocol N.21 and Protocol N.22. Thus, the Diff. Int. research question 2 sounds:

Diff. Int. RQ2: Is there evidence for Multi-Speed Europe, Variable Geometry or À la Carte Europe in the EU asylum policy?

This RQ will be assessed through a descriptive analysis of Protocol N.21 and N.22 trying to understand if the Stubb's categorization requirements are respected. For instance, following Stubb (1996), it is not enough to assess a differentiated integration of a type only assessing if a differentiation by time, space or matter is present. In fact, the author stated a set of requirements that need to be respected when a differentiation of that type is present. For example, if a differentiation by time is present and no possibility for the opt-out countries to opt-in in the future, no Multi-Speed Europe is present. On the contrary, if a differentiation by space is present but the EU leaves an open door for the opt-out countries, no Variable-geometry is present despite the effective differentiation by space.

Hence, through this descriptive analysis, and following Stubb, it will be assessed (if any) which differentiated integration is present in the EU asylum policy.

Table 3.4 briefly resume the RQs concerning the differentiated integration.

Table 3.4. RQs concerning the differentiated integration

DIFFERENTIATED INTEGRATION	Diff. Int. RQ1 <i>did the differentiated integration is present in the EU asylum policy in the 2008-2017 period?</i>
	Diff. Int. RQ2 <i>Is there evidence for Multi-Speed Europe, Variable Geometry or À la Carte Europe in the EU asylum policy?</i>

Source: own elaboration

3.3 Differentiated Implementation

The second possible determinant of the lack of Europeanization – the Differentiated Implementation (possible Determinant B) – will be scrutinized in Chapter 6. Its aim is to understand if it have played a role in the asylum policy missed Intended Europeanization

Differentiated Implementation is a concept concerning the assessment of the coordination or the differentiation among countries when adopting the legislative tools according to an European model that imposes legal requirements. Thus, Differentiated Implementation will be in this thesis employed in order to assess the MSs' transposition of three directives approved under the CEAS (The Asylum Procedures Directive (recast), The Reception Condition Directive (recast) and the Qualification Directive (recast)) ⁵⁹. This section aims at displaying the Differentiated Implementation's research questions, the countries that will be part of the analysis, the data and the indicators employed, the measurements methods and the criteria employed for score ratio and the rank, and finally the clustering methods.

The research question has been split into four steps.

The first one refers to the effective existence of Differentiated Implementation in the EU Member States in the revisited directives. Hence, the first RQ sounds like this:

Diff. Impl. RQ1: Is there evidence for Differentiated Implementation in 16 EU Member States in the domestic transposition of the revisited directives?

Diff. Impl. RQ1 is the core question of the Chapter 6 since it aims at assessing if 16⁶⁰ EU countries implemented three pivotal directives of the CEAS in a differentiated way. If it is this the case, then, it may play a fundamental role in the lack of Europeanization in asylum policy.

⁵⁹ These directives will be in the following labelled as revisited directives or just as directives.

⁶⁰ The 16 countries part of the analysis are Austria, Belgium, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Hungary, Italy, Malta, Netherlands, Poland, Portugal, Romania, and Sweden.

The assessment will be done through an analysis of the already mentioned three EU directives and, country by country, it will be assessed if they correctly satisfied a set of requirements imposed by the three legislative tools.

Once assessed if there is evidence for a Differentiated Implementation, a deeper analysis will be devoted to the examination of such a differentiation (or coordination) by identifying leaders and laggards in the transposition of such directives.

A leader country is the one that pursues the most comprehensive and stringent approach in public policy compared to other nations. Such a country might intentionally (or not) set an example that can be emulated by other countries or other countries feel compelled to emulate it (Jänicke 1998). On the contrary, a laggard country does not display such behavior: it is reluctant and resistant to the adoption of comprehensive and stringent policies (Arndt, Heichel and Knill 2011). Basically, the leaders' countries are those who quickly transposed these directives and respect the requirements stated by these legislative instruments. On the contrary, the laggards' countries are those who transposed the directives with a delay and/or that not respect the conditions of the directives. Thus, the Diff. Impl. research question 2 sounds as follows:

Diff. Impl. RQ2: *Who are the leaders and who are the laggards' countries in the transposition in the domestic law of the revisited directives?*

The assessment of leaders and laggards countries will be done through the identification of 10 directives' requirements (indicators) that the countries should satisfy. The satisfaction (or not satisfaction) of these requirements will give to the countries different scores. Based on these scores it will be assessed who are the countries on the top of the rank (leaders) and who on the bottom (laggards).

The third step refers to the possible identification of clusters of countries that has similar political, geographic, and economic⁶¹ features and that have the same (or similar) behavior in the transposition on the revisited directives. Thus, the Diff. Impl. research question 3 is:

Diff. Impl. RQ3: Is it possible to group the countries that respond similarly in the transposition of the revisited directives on the basis of the GDP per capita, of the Government party in charge, and of their geographic position on the map?

The assessment will be here done through a clusterization of the countries based on their GDP per capita, Government party in charge, and on their geographic position. These clusters will be compared to further clusters composed by the leaders and laggards countries as assessed before. Here the aim is to understand if economic, political or geographic variables have played a role in the correct (or un-correct) transposition of the revisited directives.

The last step aims at identifying if some of the country's behavior may fit in one of the categories proposed by Stubb⁶² (1996) and therefore, if a category of the differentiated integration may be useful to explain the Differentiated Implementation discussed here. The last Diff. Impl. research question thus, will sound like this:

Diff. Impl. RQ4: Following the Stubb's categorization (1996), may the variables composing the categories explain the Differentiated Implementation present in the European Union in the revisited directives?

Analogously to Diff. Impl. RQ3, the assessment method employed for the Diff. Impl. RQ4 is the comparison among the clusters of leaders and laggards countries and a set of new clusters created based on the Stubb's variables (space, time, and

⁶¹ These features are represented by the GDP per capita in 2017, the Government party in charge in 2017, and the effectively geographic position in the European map.

⁶² The Stubb's categorization is composed by the Multi-Speed Europe, the Variable Geometry and À-la-Carte Europe. See Chapter 5 on this point.

matters) in order to assess if these variables have played a role in the correct (or uncorrect) transposition of the revisited directives. Table 3.5 aims at resuming the RQs concerning the Differentiated Implementation.

Table 3.5. RQs concerning the Differentiated Implementation

DIFFERENTIATED IMPLEMENTATION	Diff. Impl. RQ1 <i>Is there evidence for Differentiated Implementation in 16 EU Member States in the domestic transposition of the revisited directives?</i>
	Diff. Impl. RQ2 <i>Who are the leaders and who are the laggards' countries in the transposition in the domestic law of the revisited directives?</i>
	Diff. Impl. RQ3 <i>Is it possible to group the countries that respond similarly in the transposition of the revisited directives on the basis of the GDP per capita, of the Government party in charge, and of their geographic position on the map?</i>
	Diff. Impl. RQ4 <i>Following the Stubb's categorization (1996), may the variables composing the categories explain the Differentiated Implementation present in the European Union in the revisited directives?</i>

Source: own elaboration

Hence, Chapter 6 aims at answering research questions Diff. Impl RQ1, Diff. Impl RQ2, Diff. Impl RQ3, and Diff. Impl RQ4 by referring to the effective legal transposition of three revisited directives (namely the Asylum Procedure Directive recast, the Reception Condition Directive recast, and the Qualification Directive recast) in 16 EU Member States⁶³ and to understand if some features may help to explain this Differentiated Implementation (if any).

The data have been retrieved from the European Council website and on the Asylum Information Database (AIDA). 10 indicators identified by Consterdine (2019) have been employed aims at verifying the effective transposition in the domestic law of the three revisited directives. These indicators refer to a set of requirements that the countries should satisfy when transposing these directives. In the following, the considered directives and the indicators will be presented.

⁶³ No sufficient data for the other Member States namely Czech Republic, Estonia, Latvia, Lithuania, Luxembourg, Slovenia, Slovakia and Finland have been found; Denmark, Ireland and the United Kingdom have been not included since their derogation in asylum matters (See Chapter 5 to learn more). Spain has been also excluded since it did not yet transpose the directives. The Proyecto de Real Decreto aims at introducing the implementing regulation for the 2009 act but the transposition of the recast acquis is not even at draft stage (Consterdine 2019).

The Asylum Procedures Directive (recast) (APDr) aims at providing the mechanisms to be applied in the process of application for both refugees and subsidiary protection (EASO 2016). This Directive set up the time limits to examine an application in the regular procedure and appeal, lays down the legal assistance in both the regular procedure and in appeal, and obligates the Member States to lay out the list of the safe country of origin.

Four indicators have been employed to analyze this directive implementation. Three are measured as a binary choice (0-1) and the fourth is quantitative since it measures the number of days.

The first indicator refers to legal assistance in the first instance (**A**). Article 19 of the directive specifies that the Member States shall ensure that, on request, the asylum applicants are provided with legal and procedural information free of charge. In case of a negative decision on an asylum application at first instance, following Articles 11 and 12 the Member States on request may provide information in order to clarify the reasons for such a decision and explain if and how it can be challenged. This indicator will be measured referring to the presence or absence of this condition in the domestic law (0 if absent, 1 otherwise).

The second indicator refers to the legal assistance in appeal (**B**). Article 20 of the directive ensures free legal assistance for asylum seekers in appeal procedures. Nevertheless, Article 20(3) specifies that a Member State can decide to not offer free legal assistance in appeal when it considers that such the appeal will not have the prospect of success. Analogously for indicator A, it will be measured by referring to the presence (1) or the absence (0) of such a requirement in the domestic law.

Indicator **C** concerns the determination of a safe country of origin list. Articles 36 and 37 of the directive stated that the Member States have to designate a country as a 'safe country of origin' in case of its citizens are not at risk of persecutions based on of law, political situations and, general circumstances. As for the previous indicators, the C one is analyzed on the basis of its presence (1) or its absence (0) in the transposition in the domestic law.

Indicator **D** refers to the transposition (in number of days) of the directive. It is entered into force on 19/07/2013 and had the first deadline on 20 July 2015 that has

been prorogated until 20 July 2018. It will be measured by referring to the timespan between the day it entered into force in the EU and the day of the transposition in each country.

The Reception Condition Directive (recast) (RCDr) aims at establishing a dignified standard of living for asylum protection applicants for example by allowing them to access to the labor market (Consterdine 2019). Three indicators have been devoted to this directive: the first is measured as a binary choice while the others are quantitative (the second detects the number of months and the third the number of days).

The first indicator refers to the formal access to the labor market **(E)**. Article 15 of the directive concerns the obligation of the Member States for the access of asylum seekers to the labor market. Nevertheless, the Member States may prioritize EU citizens and people of the State. This indicator will be measured by referring to the presence (1) or the absence (0) of this condition in the domestic law.

The second indicator of this directive refers to the maximum time limit for access to the labor market **(F)** (in number of months). Article 15 of the directive stated that the access to the labor market should be provided not later than 9 months after the asylum application. Hence, this indicator will be analyzed by referring to the number of months that the domestic law provides to grant free access to the labor market for asylum seekers.

Indicator **G** refers to the transposition (in number of days) of the directive. It entered into force on 29 June 2013 and had the deadline to be transposed in the national law on 20 July 2015. It will be measured by referring to the timespan between the day it entered into force in the EU and the day of the transposition in each country domestic law.

The Qualification Directive (recast) (QDr) defines the standard for the qualification of people from third countries or stateless people as beneficiaries of international protection. It sets up the minimum years for the residence permits for refugees. Three quantitative indicators have been employed for this directive.

The first indicator (**H**) refers to the duration of residence permits for refugees under the Geneva Convention (in number of years). Article 24 of the directive stated that refugees of this type have the right to be beneficiaries of a residence permit with a minimum duration of 3 years. Thus, the indicator will be measured by referring to the years transposed in the domestic law by the Member States.

The indicator **I** refers to the duration of residence permits for Subsidiary Protection (in number of years). Article 24 of the directive states that the beneficiaries of Subsidiary Protection must have a residence permit with a minimum duration of 1 year. This indicator will be measured in the same way as the H one.

The last indicator (**J**) refers to the transposition of the directive in the national law. It entered into force on 20 December 2011 and has the transposition deadline on 21 December 2013. It will be measured by referring to the timespan between the day it entered into force in the EU and the day of the transposition in each country domestic law.

Table 3.6 summarizes the indicators, their meaning, and their measurement.

Table 3.6. Indicators, meanings, and measurements grouped for directive

Asylum Procedure Directive			Reception Conditions Directive			Qualification Directive		
Indicator	Meaning	Measurement	Indicator	Meaning	Measurement	Indicator	Meaning	Measurement
A	Legal assistance in first instance	0-1	E	Access to labor market	0-1	H	Residence permit duration Geneva	Number of years
B	Legal assistance in appeal	0-1	F	Time limit for access to labor market	Number of months	I	Residence permit duration Subsidiary	Number of years
C	Safe origin country list	0-1						
D	Time of transposition	Number of days	G	Time of transposition	Number of days	J	Time of transposition	Number of days

Source: own elaboration

As hinted before the rank will be useful in this analysis in order to identify the leaders and laggards countries in the domestic transposition of the revisited directives.

Since this part of the thesis aims at assessing if the domestic implementation of the revisited directives is differentiated across the EU countries, the compliance (or

not) to the directives' requirements, and, therefore, to each indicator, will give a score to the countries. Compliance is meant here as the correct transposition of a directive by respecting all its requirements.

For example, if a requirement of a directive is completely respected by the domestic implementation, that country will score the maximum points, if instead, it did not comply with it, no points are assigned. If it complies with the directive provisions but with such a delay compared to the other countries or it implements only partially the requirement, it scores less points (Table 3.7).

Table 3.7. Indicator, measurement, and score ratio for the creation of the rank.

Indicator	Measurement	Score ratio
A	0-1	0=0, 1=50
B	0-1	0=0, 1=50
C	0-1	0=0, 1=50
D	Days	0-500=100, 501-1000=70, 1001-1500=40, 1501-1827=10, >1827=0
E	0-1	0=0, 1=50
F	Months	0=100, 1=90, 2=80, 3=70, 4=60, 5=50, 6=40, 7=30, 8=20, 9=10, >9=0
G	Days	0-200=100, 201-400=70, 401-600=40, 601-751=10, >751=0
H	Years	>7=100, 5-6-7=70, 3-4=40, <3=0
I	Years	>4=100, 3-4=70, 1-2=40, <1=0
J	Days	0-200=100, 201-400=70, 401-600=40, 601-732=10, >732=0

Source: own elaboration

Table 3.7 summarizes the score *ratio* employed in this analysis. In the following, it will be descriptively explained, for each indicator, the range of points that each country may receive.

First, for the dichotomic measurements that only tell us about its presence or absence in the domestic transposition (namely indicator A, B, C, and E), 50 points in case of presence and 0 points otherwise will be given.

Second, in the case of the months' calculation (indicator F) the non-compliance is represented by over 9 months. In this case, the non-compliant country will receive 0 points.

In order to detect the Differentiated Implementation in the indicator F, 100 points will be given to countries that transposed this condition (the access to the labor market for asylum seekers) by inserting 1 or less than a month, 90 points to 1 month but less than 2 months, 80 points to 2 months until 3 months, 70 points to 3 months until 4 months and so on until to 10 points for the countries that inserted 9 months.

Third, in the case of years, for the years of the residence permit for refugees under the Geneva Convention (indicator H), the non-compliance is represented by 0 to less than 3 years. In this last case, the country scores 0 points. Countries that transposed 3 or 4 years score 40 points, 5, 6 or 7, 70 points, the countries that transposed 8 or more years scores 100 points. As for the residence permit for refugees under the Subsidiary Protection (indicator I), the non-compliance is represented by 0 to less than 1 year. In this case, the country will score 0 points. Countries that transposed 1 or 2 years score 40 points, 3 and 4, 70 points, 100 points for them who transposed 5 years or more.

Fourth, in the case of the days for transposition of the directives, for the APDr (Indicator D) (where the prorogated deadline gives 1827 days to the EU Member States to transpose such a directive) if the country is already in line with the disposition or it transposes the directive in 500 days, it scores 100 points, if the transposition is between 501 to 1000 days, 70 points, from 1001 until 1500 days, 40 points, from 1501 to 1827 days, 10 points, over 1827 there is non-compliance and thus the country will score 0 points. As for the days of transposition of the RCDr (indicator G) (where the deadline gives 751 days to the EU Member States to transpose such a directive) if the country is already in line with the disposition or it transposes the directive in 200 days, it scores 100 points, if the transposition goes between 201 to 400 days, 70 points, from 401 until 600 days, 40 points, from 601 to 751 days, 10 points, over 751 days a non-compliance is registered and therefore the country will score 0 points. Analogously, for the days of transposition of the QDr (indicator J) (where the deadline gives 732 days to the EU Member States to transpose such a directive) if the country is already in line with the disposition or it

transposes the directive in 200 days, it scores 100 points, if the transposition goes between 201 to 400 days, 70 points, from 401 until 600 days, 40 points, from 601 to 732 days, 10 points, over 732 there is non-compliance and therefore the country will score 0 points.

The score *ratio* will be useful to create the rank in order to determine the leaders' and the laggards' countries based on their scores. Thus, the scores obtained by each country will be added and then a rank of 16 countries will be shown.

The rank is useful to answer both Diff. Impl. RQ1 and Diff. Impl. RQ2 since it allows us to understand first, if there is evidence for such a differentiation and, second, which are the leaders and the laggards countries.

Diff. Impl. RQ3, instead, aims at assessing if these leaders and laggards may be clustered by referring to political and economic, and geographic characteristics.

Three variables have been employed to create the clusters: the GDP per capita, the political party at the Government, and the geographic position. The year of the data is uploaded in 2017 (that is the last year of the present work).

The GDP per capita is a measure of a country's economic output that accounts for its number of people since it divides the country Gross Domestic Product by its population. It has been chosen to represent the economic condition since it is considered one of the most reliable data of the country's economic condition (Eurostat) and it represents the major economic incentive for migration (Neumayer 2005b). The higher the GDP per capita, the better the economic conditions. It has been computed in constant US dollars in 2017 and retrieved on the World Bank database. In order to differentiate the countries based on each GDP per capita, the data have been split into quartiles. The first cluster is thus composed by the countries having a GDP per capita lower than 14,307.4523 \$ (in thousands); the second cluster grouped the countries with a GDP per capita up to the first quartile and lower than 26,522.1538 \$ (in thousands); the third cluster instead groups the countries with a GDP per capita up to the median and lower than 44,224.6826 \$ (in thousands); the last cluster is formed by the countries that have a GDP per capita between 44,244.6826 \$ and 53,744.429 \$ (in thousands).

The second variable is the political party at the Government in 2017. It may be representative of the political conditions of the countries since the Government addresses the domestic asylum policy. The countries have been split into five clusters based on its governmental political coalition: right-wing, center-right wing, left-wing, center-left wing, and center. They are provided by the minister of the interior of each country.

The last variable is represented by the geographic position in the European map of the countries. Basically, the countries have been split in three clusters namely: North-Continental, South, and East. Table 3.8 summarizes the variables employed to cluster the countries and their measurements.

Table 3.8. Dimensions, variables and measurement ratio for clustering the EU Member States

Dimension	Variable	Ratio
Economic	GDP per capita	Cluster A=<14,307.4523\$; Cluster B=<26,522.1538\$; Cluster C=<44,224.6826\$; Cluster D=<53,744.430\$
Political	Government party/coalition	Cluster A= right wing; Cluster B= center-right wing; C= left wing; D= center-left wing; Cluster E= Center
Geographic	Geographic position	Cluster A= North-Continental; Cluster B= South, Cluster C= East.

Source: own elaboration

The last interrogative of this analysis Diff. Impl. RQ4 concerns the possible explanation of the Differentiated Implementation in the EU Member States in asylum matters (if any) by employing the typology proposed by Stubb (1996). In particular it will be inspected if there is a differentiation on the basis of the time, the space, and on the matter in the different implementation of the revisited directives.

The Multi-speed Europe will be detected (if any) by referring to the time of transposition of the directives. In particular, it will be assessed if some country transposed the directive faster than others in order to find ‘fast countries’ and ‘slow countries’ by creating a new rank based on the average of the days the countries employed to transpose the EU directives in domestic law.

The Variable geometry will be detected by referring to the geographic position of the countries. Thus, it will be detected if the Differentiated Implementation by space is present.

The *À-la-carte* Europe will be detected by analyzing the compliance of the countries with the revisited directives and looking if they comply with a specific directive rather than one another and thus by choosing, as from a menu, with which directive prefer to comply. Table 3.9 summarizes the categories and their measurement ratio.

Table 3.9. Stubb's typology and their measurement ratio for Differentiated Implementation.

Type	Measurement ratio
Multi-Speed Europe	Speed of the domestic transposition
Variable Geometry	Geographic position
À la Carte Europe	Choosing as from a menu a directive rather than others

Source: own elaboration

Before to go in-depth with the analysis, it seems useful to recall all the RQs that will be answered in this thesis (Table 3.10).

Table 3.10. RQs of the thesis

INTENDED EUROPEANIZATION	Int. Europeanization RQ1 <i>Is there evidence for Intended Europeanization of asylum policy across the EU Member States in the analysed period?</i>	Int. Europeanization Sub RQ1a: <i>Did the RTB trend effectively take place in the 2008-2017 period?</i>
		Int. Europeanization Sub RQ1b: <i>Did convergence effectively take place in asylum recognition rates across the 28 European Member States in the same period?</i>
	Int. Europeanization RQ2 <i>Which are the determinants of the asylum recognition rates trend in the 2008-2017 period?</i>	
DIFFERENTIATED INTEGRATION	Diff. Int. RQ1 <i>did the differentiated integration is present in the EU asylum policy in the 2008-2017 period?</i>	
	Diff. Int. RQ2 <i>Is there evidence for Multi-Speed Europe, Variable Geometry or À la Carte Europe in the EU asylum policy?</i>	
DIFFERENTIATED IMPLEMENTATION	Diff. Impl. RQ1 <i>Is there evidence for Differentiated Implementation in 16 EU Member States in the domestic transposition of the revisited directives?</i>	
	Diff. Impl. RQ2 <i>Who are the leaders and who are the laggards' countries in the transposition in the domestic law of the revisited directives?</i>	
	Diff. Impl. RQ3 <i>Is it possible to group the countries that respond similarly in the transposition of the revisited directives on the basis of the GDP per capita, of the Government party in charge, and of their geographic position on the map?</i>	
	Diff. Impl. RQ4 <i>Following the Stubb's categorization (1996), may the variables composing the categories explain the Differentiated Implementation present in the European Union in the revisited directives?</i>	

Source: own elaboration

CHAPTER 4

EMPIRICALLY TESTING THE INTENDED EUROPEANIZATION OF THE EU ASYLUM POLICY

*«When exploring the nature of globalization, one should answer some simple questions
about its driving forces, major actors and principal means.*

The result may be astonishing: globalization, according to its current meaning, has never truly existed.

Modern history was shaped by Europeanization and Americanization

– two quite different, if not oppositional trends.

This fact explains both the rise and the decline of the existing world order»

Vladislav Inozemtsev (2006) Two Faces of Globalization: Europeanization vs. Americanization

Following the concept proposed in the introduction and Chapter 1 of Intended Europeanization⁶⁴, this chapter aims at assessing if the process of Intended Europeanization is present in the EU asylum policy across the 28 EU MSs as a consequence of the Common European Asylum System (CEAS) purpose: the common legislation across the member countries. The CEAS aims at achieving a common legislation in asylum matters by proposing a set of legislative instruments (both binding and non-binding).⁶⁵

The Intended Europeanization will be here scrutinized by assessing if a harmonization of policies across the 28 MSs is present. This assessment will be done through an analysis of two expected consequences of a common legislation in asylum policy. Following Toshkov and de Haan (2013), the common legislation in asylum policy could lead to two expected consequences: the race to the bottom (RTB) and the convergence in the asylum recognition rates. The RTB is a process that leads to a decrement of the rates concerning the asylum because, having the same legislation, the countries will try to shirk their responsibility to the neighboring countries. The convergence instead, concerns the same or at least similar asylum recognition rates.

⁶⁴ Just to recall the concept, Intended Europeanization is meant as a voluntary action with respect to a well-defined purpose. Intended Europeanization is a process of change implying the construction, the diffusion and the institutionalization of formal rules that are first defined at the EU level and then transferred to the MSs that must comply with the EU norms.

⁶⁵ See Chapter 2 on this point.

This **chapter aims at testing if the Intended Europeanization of asylum policy is present** across the 28 EU Member States in the 2008-2017 period. The assessment will be done by testing the race to the bottom and the convergence (verifying if they perform according to the expected trends) and by employing the asylum recognition rates as main indicator of both RTB and C⁶⁶.

The analysis will be split into two parts that will be in-depth explained in the following: the first part aims at providing an overview of the current scenario of the EU asylum policy; the second, aims instead at presenting a more accurate analysis on the specific topic of this thesis, namely the Europeanization of asylum policy.

This chapter is structured as follows: first, the methodology employed and the Int. Europeanization RQs – already exposed in Chapter 3 – will be briefly recalled (4.1); then, past attempts to measure the RTB, the convergence, and the asylum recognition rates trend will be highlighted (4.2). The subsequent sections will be devoted to the analysis of the race to the bottom, the convergence and the determinants of the recognition rates trend (in section 4.3, 4.4, and 4.5, respectively). Section 4.6 will refer to a further analysis of the RTB and the convergence by using the Subsidiary and the Geneva recognition rates and the applications of five origin countries only. In section 4.7 the main conclusion of this analysis on Intended Europeanization will be drawn and it will be answered the RQs of this chapter.

4.1 How to assess the Intended Europeanization

Intended Europeanization, as defined in the introduction chapter and Chapter 1, is a voluntary action with respect to a well-defined purpose that implies a coercion from the EU towards its Member States. In the present work, the coercion refers exclusively to formal rules concerning the set of legislative instruments in the asylum policy field.

⁶⁶ For an in-depth analysis of the Methodology employed to assess the Intended Europeanization, see Chapter 3.

Following this perspective, this chapter aims at assessing if there is evidence for Intended Europeanization in the EU asylum policy in the 2008-2017 period by testing if the two expected consequences⁶⁷ of the common legislation in asylum matters are present.

As already explained in the previous chapters, in this work, harmonization coincides with the proposed definition of Intended Europeanization. Hence, if evidence for legislative harmonization across the member countries is found, then it is possible to argue that the Europeanization of asylum policy is present. As well, harmonization means common legislation. Therefore, the presence of a common legislation in asylum matters has been verified through an analysis of the RTB and the convergence by employing the asylum recognition rates as outcome⁶⁸.

In this thesis, the RTB and the Convergence are both two expected consequences of the asylum common legislation, and two necessary conditions of the Intended Europeanization of this policy area⁶⁹. The main literature in this field argues that, if these two conditions are confirmed, then the Europeanization of asylum policy can be argued.

To recall what already presented in Chapter 3, the RQs concerning the Intended Europeanization are:

Int. Europeanization RQ1: Is there evidence for Intended Europeanization of asylum policy across the EU Member States in the analysed period?

Since the Intended Europeanization is analysed through its main expected consequences (namely the race to the bottom and the Convergence) this RQ has been split into two Sub RQs in order to assess if both are confirmed.

- *Int. Europeanization Sub RQ1a: Did the RTB trend effectively take place in the 2008-2017 period?*

⁶⁷ The consequences are the Race to the Bottom and to the Convergence. See chapter 3 for details.

⁶⁸ On the meaning of outcome and on the method to calculate the asylum recognition rates see Chapter 3.

⁶⁹ In this case, thus, the expected consequences of a common legislation in asylum matters and the two conditions of Europeanization of asylum policy coincide.

- *Int. Europeanization Sub RQ1b: Did convergence effectively take place in asylum recognition rates across the 28 European Member States in the same period?*

Since the asylum recognition rates is the main indicator, it will be dwelt on the determinants of the recognition rates' trend, by checking if some (social, economic, political) conditions may have affected these rates. This will be analysed through a multiple regression analysis in which the asylum recognition rates are the dependent variable and a set of economic, political and social features of both destination and sending countries will be employed as independent variables⁷⁰.

- *Int. Europeanization RQ2: Which are the determinants of the asylum recognition rates trend in the 2008-2017 period?*

4.2 Measuring the Europeanization of asylum policy: old attempts

This paragraph aims at drawing up the past attempts to assess the Europeanization of asylum policies by employing the expected consequences of a common legislation in asylum matters underlined so far. Furthermore, it has the aim to underline the old attempts to study the determinants of the asylum recognition rates trend.

Past attempts to measure the Europeanization of asylum policies are already done by scholars. In particular, they referred to the above-mentioned expected consequences (namely the RTB and the convergence) and by employing the asylum recognition rates as the main outcome indicator. The literature usually considers as the major outcome indicators of asylum policies the number of asylum applications received, the number of positive decisions made by the individual Member States, and the asylum recognition rates (Toshkov and de Haan 2013).

⁷⁰ See Chapter 3 for the complete collection of both independent and dependent variables, their meaning and their measurements.

4.2.1 Race to the bottom

The concept of race has been employed in many policy areas (welfare migration, fiscal policy, social policy, asylum policy, environmental policy, etc). This paragraph aims at excursing the most relevant studies concerning the RTB in different policy fields and, subsequently, a special focus on the asylum policy will be done.

Kvist (2004) examined if concerns (caused by the Eastern EU enlargement) about welfare migration have led to strategic interactions among the 15 EU MSs implying the RTB process. The author employed this concept as a downward bias in restriction and benefit accessibility and generosity (*ibidem*, p. 303). Kvist analysed the domestic restrictions on the free movement of labour and adjustment in social policy in the 15 EU MSs. He found that all countries made national adjustments concerning social policy and mobility issues. In particular, he demonstrated that the countries engaged in strategic interactions by 1) deciding on policy measures when other MSs have done the same, 2) justified their policy changes with reference to policy stances of other MSs, and 3) got ideas from abroad. Furthermore, he found that countries with the smallest restrictions on labour market access have been the most active in adjusting their social policy. Thus, the author, found evidence for a RTB process since the EU countries restricted their policy in order to prevent welfare migration.

Mendoza and Tesar (2005) studied the race to the bottom in the fiscal economy field by comparing the EU MSs. They found no evidence for a RTB among the European countries when using the dynamic Neoclassical general equilibrium model of tax competition that incorporates the externalities of tax policy.

A further field of policy that employed the concept of RTB is the environment. Woods (2006) assessed the role that the inter-state competition may play in domestic environmental enforcement. In particular, he assessed to what extent the stringency of state enforcement is affected by the enforcement level of the neighbour countries. The analysis refers to the U.S. States in the last decade of the past century. Woods used the multiple regression analysis where the dependent variable is the level of violation of the “State Inspectors Violation Regulation”. The

independent variable is the “enforcement gap”.⁷¹ Furthermore, the author employed a set of relevant political, social, and economic control variables that may influence the State enforcement activity. The author found that the behaviour of competitor States may cause a State to reduce the stringency of its regulatory enforcement and thus providing evidence for a race to the bottom in environmental policy.

Let us Focus now on the studies about the RTB in the asylum policy field. As said in the previous chapter, the idea that applying the same legislation on asylum policy (as the CEAS hoped) could counterintuitively lead to a race to the bottom is quite consolidated in the Europeanization literature. As hinted before, the RTB is considered one of the most problematic expected consequences of the Europeanization of asylum policy effect. Several scholars indicate this phenomenon as “dangerous”: for instance, following Toshkov and de Haan (2013), the RTB would be one of the most alarming phenomena in the Europeanization of asylum policy process. Since the CEAS is a soft law instrument, Member States are not obliged to follow its guidelines and it is thus plausible that the countries could try to shirk the responsibilities of asylum seekers to the neighboring countries.

An opposite view supports instead the idea that the harmonization of national legislation on asylum policies predicted by the CEAS, should ideally prevent the race to the bottom among them: MSs, having the same legislative framework, should not compete with each other striving for more restrictiveness, and should not lower their standards compared to other countries to reduce their immigrant numbers (Kaunert 2009).

Two studies are going to be recalled here: the first one aims at assessing whether a RTB is present in Europe in the first decade of the new millennium and found no evidence for it. An opposite result is produced by the second study, which aims at assessing the toughness of asylum policies by employing a new index and arguing that the EU Member States decreased their asylum recognition rates.

The first study, by Toshkov and de Haan (2013), tested the race to the bottom hypothesis in 27 EU Member States plus Norway and Switzerland in 12 years

⁷¹ «To assess the impact of the enforcement gap when a state's enforcement activity exceeds the average of its competitors, the model employs a specification by which the enforcement gap is multiplied by a dummy variable that equals 1 when the enforcement gap is positive (i.e., when $\text{Enforcement Gap} \geq 0$), and 0 otherwise» (Woods 2006 p. 181).

(1999-2010) in a double step. They differentiated the asylum recognition rates in refugee status under the 1951 Convention and refugee status for humanitarian reasons⁷². In their study, they used the absolute numbers of admitted people in order to test whether these numbers decreased or increased. After the analysis of these rates and numbers, they first concluded that most of the major destination countries did not decrease their recognition rates and their admitted people in the analyzed period. Hence, no race to the bottom among the analyzed countries in the 2000-2010 decade took place. Secondly, they examined whether a race to the bottom is present taking into account the major sending countries to the EU⁷³. Also in this case they could argue that no trend towards a race to the bottom has been present among the sending countries. Thus, they rejected their hypothesis concerning the RTB.

The second study, made by Hatton (2009), unlike the previous one, argued that the asylum recognition rates decreased during the analysed period. For the sake of accuracy, it has to be said that Hatton did not intend to study the race to the bottom directly, but the toughness⁷⁴ of asylum policies instead.

To this goal, Hatton built an index in which he showed that the EU Member States tightened their asylum policies in the 2002-2006 period. He argued that the asylum recognition rates in these years decreased. Nevertheless, the trend is not uniform: in the same period, some countries such as Poland and Sweden loosened their asylum policies, while others like Denmark, Netherlands, and the UK changed their policies by toughing the admission standards.

⁷² As already stated in the previous chapter, the first one concerns the refugee under the 1951 Convention; the subsidiary protection refers to people seeking asylum but are not qualifying as refugees under the Directive 2004/83/EC

⁷³ Namely (in alphabetical order) Afghanistan, Eritrea, Iran, Iraq, Nigeria, Pakistan, Russia, Serbia, Somalia and Turkey.

⁷⁴ Toughness of asylum policies means in Hatton's view, the procedures adopted by the countries in order to toughen the *«access to the country's territory, toughening the procedures to determine refugee status and making the living conditions for asylum applicants less palatable»* (Hatton 2009, p. F183).

4.2.2 Convergence

Like the RTB, the concept of convergence is often employed in the literature in many policy fields. Radaelli (1998) for example, studied the policy transfer of the EU policy through the concept of isomorphism in three EU policies: the Economic and Monetary Union, the fiscal economy, and the regulation on media concentration. The author found that the EU policy transfer has led to a process of isomorphism since the EU public policies are characterized by imitation rather than innovation. In this sense, the isomorphism can be associated with the concept of convergence where the EU countries try to imitate each other in order to comply with the EU dispositions.

Saraceno (2009) studied the family policy homogenization in the EU. Through different analyses concerning the grants for children under five years, on the months for the parental leave, and the percentage of old people receiving home services, the author found strong differences among the EU MSs in this field of policy. Saraceno also argued that the institutions, the labour markets, and the cultures of the EU MSs are very differentiated, so it is not expected a kind of convergence of this field of policy in the future (ibidem, pp. 4-5).

A further policy area where studies inspecting the convergence among the EU Member States is the National Health Service policy. Neri (2009) compared the UK's National Health Service (NHS) and the Italian's *Sistema Sanitario Nazionale* (SSN) in order to assess if there are similarities and/or differences in their health services through an excursus of the legislative instruments on that policy field across the last part of the past century and the present one. The author did not find evidence for convergence across the examined years between the two countries. Especially, after 2000, Neri argued that while the Italian's SSN attention was focused on the spending control (and thus diminishing the number of medical services), the English Government's aimed at increasing the number of medical services to their citizens in order to diminish the waiting times. This has led to a differentiation in terms of policy in this field.

In the following, as already done with the RTB, the past measurement attempts in the asylum policy area will be reviewed.

The idea underlying convergence is that the use of the same legislation on asylum policy, should lead to a convergence of policies and outcomes: «*The convergence idea is conditioned on a policy dynamic that leads the individual member states to adopt more similar, although not necessarily stricter, policies as a response to Europeanization*» (Toshkov and de Haan 2013, p. 665). The reason why we expect variation in asylum recognition rates across the European Union is that, despite the EU is part of the Geneva Convention, the European Convention of Human Rights, and the United Nations Convention against Torture – and hence, the Member States have the same formal obligations on the treatment of asylum claims – there are big differences in the interpretation of the above-mentioned legislative tools (Noll 2000, Neumayer 2005a).

Lots of attempts to (directly or indirectly) measure the convergence in asylum policy have been made. The majority of researches on convergence in asylum matters has led to mixed results. In fact, the three studies that are going to be recalled here found two opposite findings. The first and the second contributions (Holzer and Schneider 2001; Toshkov and de Haan 2013) found evidence for convergence in asylum recognition rates, contrarily to the third study (Neumayer 2005a).

Holzer and Schneider (2001) studied the determinants of asylum recognition rates in 15 Organization for Economic Cooperation and Development (OECD) countries, Western European countries, and the EU in the 1983-1995 period. They examined whether the asylum recognition rates are influenced by economic and political factors of destination countries. In their analysis, they also found evidence for convergence in recognition rates across the examined countries.

In line with this last study, Toshkov and de Haan (2013) applied the coefficient of variation to test the convergence hypothesis in 29 countries in the 2000-2010 period and argued that evidence for convergence is to be detected among the examined countries.

Oppositely to these two works, Neumayer (2005a) also applied the coefficient of variation in order to analyse how the asylum recognition rates (refugee status under Convention and refugee status for humanitarian reasons) vary across 16 Western European countries in the 1980-1999 period. He indeed estimated a substantial

variation in asylum recognition rates in the analysed countries. Hence, no evidence for convergence was found.

These different findings may be the result of the different time spans analysed: in this view, the role played by the time and by the happened events is fundamental in the determination of the convergence in asylum recognition rates. This is a particularly intriguing view, which will be further developed when studying the determinants section.

4.3 Testing the Race to the bottom

This section aims at assessing if the RTB across the 28 EU Member States in the 2008-2017 period has taken place. As argued before, the RTB is considered by some part of the scholars as one of the major risks of a common legislation in asylum policies in the EU. The asylum recognition rates could decrease because each country could try to shirk the responsibility of the asylum claims to the other Member States. Nevertheless, empirical findings seem to reject the risk conjecture. In fact, as Kaunert (2009) argued, the common legislation should prevent the race to the bottom because no competition for more restrictiveness among the MSs should take place, and thus should not lower their standards compared to other countries to reduce their immigrant numbers. And this is in fact what seems to have happened.

As said, the analysis will be made by employing the usual indicator in this policy area: the asylum recognition rates.

In the following lines it will be scrutinized the RTB in a time span not yet examined in the literature, namely 2008-2017. In order to address the race to the bottom issue, it will be checked by looking at the asylum recognition rates increasing or decreasing pace (Table 4.1).

Table 4.1. Asylum recognition rates in the EU MSs (2008-2017).

COUNTRY/TIME	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Δ 2017- 2008
Belgium	0,27	0,20	0,22	0,26	0,23	0,29	0,40	0,54	0,60	0,52	0,25
Bulgaria	0,44	0,42	0,27	0,31	0,27	0,88	0,94	0,91	0,44	0,36	-0,08
Czech Republic	0,15	0,19	0,35	0,47	0,24	0,38	0,38	0,34	0,33	0,12	-0,03
Denmark	0,59	0,48	0,41	0,37	0,36	0,40	0,68	0,81	0,68	0,34	-0,24
Germany	0,41	0,36	0,23	0,24	0,29	0,26	0,42	0,57	0,69	0,50	0,09
Estonia	0,50	0,20	0,38	0,17	0,18	0,18	0,36	0,44	0,68	0,61	0,11
Ireland	0,08	0,04	0,02	0,05	0,11	0,18	0,38	0,33	0,23	0,86	0,78
Greece	0,00	0,01	0,03	0,02	0,01	0,04	0,15	0,42	0,24	0,43	0,42
Spain	0,05	0,08	0,22	0,29	0,20	0,23	0,44	0,31	0,67	0,34	0,29
France	0,16	0,14	0,14	0,11	0,14	0,17	0,22	0,26	0,33	0,29	0,13
Croatia ⁷⁵					0,14	0,14	0,11	0,22	0,35	0,32	0,18
Italy	0,48	0,39	0,38	0,30	0,81	0,61	0,58	0,42	0,39	0,41	-0,08
Cyprus	0,00	0,29	0,17	0,03	0,08	0,21	0,76	0,77	0,66	0,51	0,51
Latvia	0,50	0,25	0,50	0,22	0,17	0,26	0,26	0,12	0,52	0,74	0,24
Lithuania	0,62	0,28	0,08	0,08	0,14	0,31	0,38	0,47	0,70	0,77	0,15
Luxembourg	0,38	0,24	0,15	0,03	0,02	0,10	0,14	0,24	0,61	0,66	0,27
Hungary	0,44	0,22	0,25	0,17	0,32	0,08	0,09	0,13	0,08	0,31	-0,13
Malta	0,53	0,66	0,63	0,55	0,90	0,84	0,73	0,84	0,83	0,68	0,16
Netherlands	0,52	0,47	0,46	0,43	0,40	0,49	0,67	0,80	0,72	0,49	-0,03
Austria	0,27	0,22	0,25	0,31	0,28	0,30	0,76	0,71	0,72	0,56	0,29
Poland	0,65	0,38	0,12	0,15	0,21	0,24	0,27	0,18	0,12	0,25	-0,41
Portugal	0,67	0,53	0,42	0,57	0,43	0,44	0,48	0,53	0,54	0,52	-0,14
Romania	0,16	0,21	0,16	0,07	0,14	0,64	0,47	0,36	0,62	0,60	0,44
Slovenia	0,03	0,17	0,22	0,10	0,17	0,18	0,47	0,35	0,64	0,63	0,59
Slovakia	0,24	0,57	0,31	0,53	0,43	0,37	0,61	0,62	0,84	0,67	0,42
Finland	0,42	0,36	0,37	0,41	0,50	0,51	0,54	0,57	0,34	0,48	0,06
Sweden	0,27	0,30	0,31	0,33	0,39	0,67	0,77	0,67	0,70	0,44	0,17
United Kingdom	0,30	0,27	0,24	0,32	0,36	0,38	0,39	0,37	0,32	0,31	0,01
<i>EU average</i>	<i>0,34</i>	<i>0,29</i>	<i>0,27</i>	<i>0,25</i>	<i>0,28</i>	<i>0,35</i>	<i>0,46</i>	<i>0,47</i>	<i>0,52</i>	<i>0,49</i>	<i>0,15</i>

Source: own elaboration on Eurostat data

Table 4.1 shows the asylum recognition rates in the European Union countries in the 2008-2017 period. The last row is the EU average and the last column is the difference in percentage points between the first year (2008) and the last year (2017) scrutinized.

Countries that present a negative trend are 8 out of 28 (Bulgaria, Czech Republic, Denmark, Italy, Hungary, Netherlands, Poland, and Portugal). Nevertheless, these negative trends are very low for almost all these 8 countries. Only Denmark (-24%)

⁷⁵ It only covers the period 2012-2017 due to an absence of data prior to that date.

and Poland (-41%) have a decrement of domestic asylum recognition rate higher than 20%. The EU average trend is therefore positive.

The countries that increased more their asylum recognition rates are Ireland (78%), Slovenia (59%), Cyprus (51%), Romania (44%), Greece (42%), and Slovakia (42%). Except for Ireland and Greece, these countries are “new entries” in the European Union since Slovakia, Slovenia and Cyprus joined in 2004 and Romania in 2007. It is, therefore, reasonable to argue that, since the examined time span is 2008-2017 and those countries entered later, they dramatically increased their recognition rates in order to better converge with the other Member States. Nevertheless, this topic is not further scrutinized here, and appropriate tests with consistent data would be needed in order to support this argument.

Table 4.1, thus, shows that the RTB in the asylum recognition rates is not present. On the contrary, it seems that the countries are constantly increasing their asylum recognition rates.

Summing up, by considering the overall results displayed in table 4.1 it is possible to state that no RTB across the European Union MSs is currently happening.

As a consequence, it is possible to negatively answer the Int. Europeanization RQ1. In order to test the robustness of this analysis, a further indicator has been employed: the hosted refugees rates. This indicator is computed by dividing the absolute number of refugees hosted by the EU MSs and the population of such a State (the data have been retrieved on WorldBank year 2017). The table⁷⁶ shows that also these data increased instead of decreasing (as the RTB forecasts). Thus, also in this case, the RTB is not confirmed.

In order to in-depth analyze the Intended Europeanization of asylum policies the next paragraph aims at testing the second expected consequence of a common legislation in asylum matters, namely the convergence in asylum recognition rates across the EU Member States.

⁷⁶ See Appendix 1.

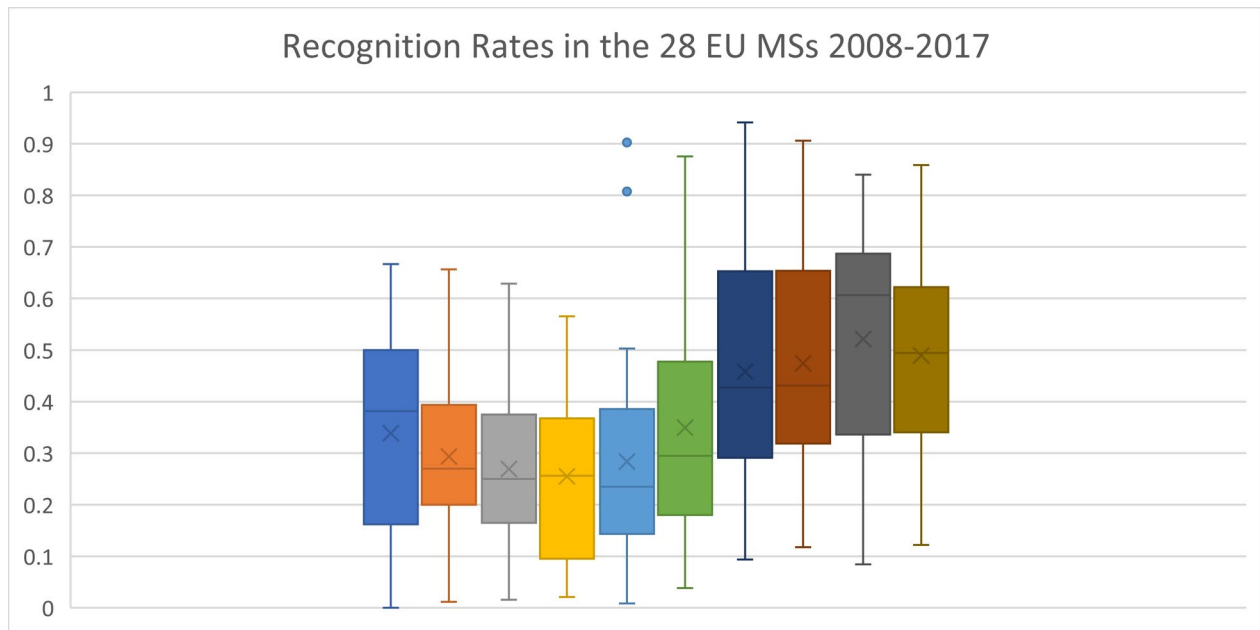
4.4 Testing the convergence

As hinted before, the second expected consequence of a common legislation in asylum policy tested in this chapter is the convergence in asylum recognition rates. The convergence forecasts similar quotas in the above-mentioned rates as an effect of a common legislation in asylum matters. In particular, as explained in Chapter 3, here convergence will be considered as present if the recognition rates range of variation across the countries is not higher than 0.2 in a certain year.

As well, we already recalled that previous analyses on the convergence in asylum recognition rates have led to different outcomes and that they investigated two different time spans: the 1980-1999 period, and the first decade of the new millennium until 2010. More recent years have not been explored yet.

This research aims at filling this gap by scrutinizing the convergence in the last decade in a time span still uncovered thus far (2008-2017). The asylum recognition rates will be analyzed in order to detect if they do account for similar proportions across the 28 EU Member States (Figure 4.1) and thus to draw a second assessment on the Europeanization process.

Figure 4.1. Asylum recognition rates in the 28 EU Member States across the 2008-2017 period.



Source: own elaboration on Eurostat data

The boxplots presented in Figure 4.1 refer each to a year in a ten-year period (from 2008 to 2017 respectively from left to right). The dots outside the boxes represent the outliers, the cross represents the median and the line represents the average. The figure shows that only in 2009 and 2010 the range of variation is lower than 0.2 (excluding the whiskers). In all other years, the range overcomes this threshold. The range of variation increases starting from 2011, in particular from 2014 until 2016 when it reached 0.9 (including the whisker). Additionally, in these three years also the average rate increased: in 2016 it surpasses 0.6 whereas that far it had always been lower than 0.5.

To sum up, since no similar quotas in asylum recognition rates period result, it is plausible to argue – differently from Toshkov and de Haan (2013) and in line with Neumayer (2005a) – that no convergence is present in the asylum recognition rates in the 28 European countries across the 2008-2017 period.

The un-convergence in the asylum recognition rates in the EU can be considered as a failure of one of the most important principles of the CEAS, that of achieving convergence in asylum policies in the European Union and then an equal distribution of refugees. Many scholars associated this failure to the inappropriate guidelines given by the EU to manage the asylum issues. EU policies in asylum matters are still based on the separation between asylum seekers and economic migrant flows. In this respect, Longo (2017) argues that the definition of refugee based on the 1951 Convention is obsolete. Today the violence against people is in fact considered as a war strategy, so it is very difficult to distinguish between peace areas and war areas (Kaldor 1999, Longo 2017). Furthermore, a fundamental topic is that the asylum seekers are not free to decide in which country to apply for the refugee status because of the principles of the Dublin Convention. This Regulation can be justified only if asylum seekers can expect equal and fair treatment no matter where their asylum claim is processed (Neumayer 2005a, p. 63). But such a condition is not guaranteed. *«While there are many different aspects to the processing of an asylum claim, whether the claim is finally recognized represents a very important feature to the asylum seeker. [The EU] have still a long way to go before they offer anything resembling a unified or at least convergent chance of recognizing asylum claims»* (ibidem, p. 63).

The obsolescence of the EU asylum policy is only one of the possible interpretations of the un-convergence across the analysed countries. Hence, further and complementary interpretations will be attempted in the following, while discussing the findings of this work.

As argued by some literature, the asylum policy common legislation– as the CEAS purpose – could lead to a race to the bottom and to convergence in asylum recognition rates.

This work showed instead that no RTB is present in the analysed (2008-2017) period. The trend of the asylum recognition rates increased in fact across the scrutinized time span, instead of diminishing.

With the presented data it is possible now to provide a negative answer to the Int. Europeanization Sub RQ1a concerning the RTB.

Furthermore, no convergence in asylum recognition rates across the EU Member States in the examined period has been detected being the range of variation of the asylum recognition rates of the analysed countries in the considered time span dispersed, instead of concentrated. Hence, also the second condition is not respected.

Thus, it is possible to negatively answer the Int. Europeanization RQ1 by stating that since no common legislation has been found in the asylum policy field in the considered time span, no Intended Europeanization of asylum policy is present.

4.5 The determinants. Past measurement attempts

As outlined at the beginning, the asylum recognition rates trend will be in-depth scrutinized in order to check the determinants of convergence or un-convergence by employing the multiple regression analysis.

Multiple regression models dealing with the determinants of asylum recognition rates are rare. Empirical studies on this topic have been employed by Holzer, Schneider and Widmer (2000), Holzer and Schneider (2001), and Neumayer

(2005a). These three studies cover about two decades (the 80s and the 90s). The independent variables employed by these studies are quite similar and mirror social, economic, political, and historical conditions of both destination and sending countries. The dependent variable is in all cases the asylum recognition rates.

Holzer, Schneider and Widmer (2000) studied the handling of about 180,000 asylum applications in Swiss Cantons in the 1988–1996 period to explain the different chances of asylum seekers with similar backgrounds to have their application positively recognized. They employed variables such as: age and gender of the asylum seeker, the size and main language of the canton, the percentage of foreigners residing in the cantons, and the residents' attitudes toward asylum seekers. As a result, cantons with lower recognition rates are those with a centralized asylum administration system. This trend peaks where a high share of resident foreigners as well as negative attitudes toward asylum seekers by the part of the residents are present.

The second study widens the perspective in order to compare a group of countries rather than focusing on a single national State. Holzer and Schneider (2001), in fact, studied the determinants of asylum recognition rates in Western Europe, EU, and 15 OECD Countries in the 1983-1995 period. In their study, they employed political variables (such as the political orientation of the government and the electoral success of right-wing extremist party), economic variables (such as economic growth, inflation and the unemployment rate) and the total number of asylum applications. They concluded that economic and political variables do not affect the recognition rate. Nevertheless, the absolute number of asylum applications gives a negative impact on the recognition rates in the examined countries.

Again, in a comparative perspective, Neumayer (2005a), scrutinized the recognition rates of 16 Western Countries in the 1980-1999 period by employing a multiple regression analysis with the recognition rates as the dependent variable and 10 independent variables. First of all, he splits two different types of recognition rates: the decisions according to the 1951 Geneva Convention and the decisions for humanitarian reasons. The independent variables employed by the author are GDP per capita, the unemployment rate, the share of votes in general national parliamentary going to the right-populist party, the average number of total asylum

seekers in the destination Country in the past two to five years, the average number of asylum seekers from a specific origin Country who have applied to a destination Country in the past two to five years, the total number of past applications, a self-created autocracy, rights violation, domestic war and pocide and genocide index. Neumayer concluded that the economic conditions of the destination country have a high impact on the recognition rates (differently to what claimed by Holzer and Schneider), while the political conditions in destination countries are not significant (this instead consistently to Holzer and Schneider's results). Furthermore, the recognition rate is higher for asylum applications from autocratic countries, that have a high incidence of human right violations and a great level of genocide or pocide events.

The multiple regression analysis on the determinants of the recognition rates trend will be here employed comparatively, where all EU Member States are part of the analysis.

4.6 Analyzing the determinants

Once answered the Int. Europeanization RQ1 concerning the Europeanization of asylum policy and once stated that there is no evidence for such a Europeanization, a further analysis presented in this chapter has the aim to understand the reasons for the asylum recognition rates trend across the analysed countries.

More in detail, this step aims at answering a further research question – that is Int. Europeanization RQ2 – *Which are the determinants of the asylum recognition rates trend in the 2008-2017 period?* – in order to understand if some social, political, economic as well as historic conditions may affect the asylum recognition rates trend.

4.6.1 The multiple regression analysis

As hinted in Chapter 3, in order to assess the determinants of the asylum recognition rates trend, a multiple regression analysis has been employed. The dependent variable is the asylum recognition rates (split into three phases) while the independent ones are: the unemployment rate and the Gross Domestic Product per capita for the economic conditions of the destination countries; the share of the votes to the populist radical right parties in the last national elections for the political conditions of the destination countries; the past asylum applications in each destination country for the historical conditions and the human right violation degree and the inter-state war degree for the social conditions of the sending countries – as well as the control variable year (Table 4.2).

Table 4.2. Independent variables grouped by dimension and their meaning.

Dimensions	Independent variables	Meaning
<i>Economic condition of the destination country</i>	UNEMPLOYMENT	Unemployment rate per country and per year
	GDP PER CAPITA	GDP per capita per country and per year
<i>Political condition of the destination country</i>	%POPULIST	Share of votes to PRRPs in the last national elections
<i>Immigration history of the destination country</i>	PASTASYAPPLOG	Logarithm of the average of past asylum applications
<i>Social condition of the origin country</i>	RIGHTVIOLATIONCENTER	Human right violation degree
	INTERWARCENTER	Inter-state war degree
<i>Control variable</i>	YEAR	Year

Source: own elaboration

Since the dependent variable has been split into three phases, three different models are presented. The three phases refer to three important socio-political events: 2008-2010 the triggering of the economic global crisis; 2011-2014 the Arab Spring emergence; 2015-2017 the refugees’ “crisis” in Europe.

The presumption is that the independent variables differently impact the dependent according to these three major events. Table 4.3 shows the multiple regression analysis taking into account this subdivision.

Table 4.3. Multiple regression model. Dependent variables: asylum recognition rates 2008-2010; 2011-2014; 2015-2017.

	2008-2010	2011-2014	2015-2017
CONSTANT	16,466 (20,471)	-151,434 (15,780)	25,808 (23,310)
GDP PER CAPITA	-8,602** (0,000)	-2,596** (0,000)	3,292 (0,000)
UNEMPLOYMENT	-0,020*** (0,003)	-0,014*** (0,002)	-0,011*** (0,002)
POPULIST	0,002*** (0,001)	-0,001** (0,001)	-0,005*** (0,001)
PASTASYAPPLOG	-0,034*** (0,004)	0,009* (0,005)	0,000 (0,005)
RIGHTVIOLATIONCENTER	0,013 (0,012)	0,028* (0,015)	-0,008 (0,014)
INTERWARCENTER	-0,026*** (0,010)	-0,020 (0,016)	0,017 (0,015)
RIGHTVIOLATION*INTERWAR	0,001 (0,013)	-0,026* (0,015)	-0,009 (0,014)
YEAR	-0,008 (0,010)	0,076*** (0,008)	-0,012 (0,012)
Adjusted R square	0,275	0,250	0,176
N	377	503	386

* Statistically significant at 0,1 level

** Statistically significant at 0,05 level

*** Statistically significant at 0,01 level

Source: own elaboration

The discussion of the three models will follow these two steps: first, the presentation of the findings per year and their possible implications and justifications (section 4.6.1.1 to 4.6.1.3),; subsequently, a general comment on all models taken together will be provided by analyzing what changed – and why – in the three time phases (4.6.2).

4.6.1.1 The first phase: did the economic crisis play a role in the determinants of the recognition rates trend?

In the first model (2008-2010) it is supposed that the global economic crisis started in 2008 played an important role in the determination of the accepted asylum applications and, therefore, in the overall asylum recognition rates. The economic troubles hitting almost all countries, may in fact, affect the GDP per capita, as well as the (un)employment rate and they could consequently curb the asylum recognition rates. The economic difficulties of the EU Member States and the attempts to solve them could have concentrated the efforts of the MSs in recovering their domestic economy and thus led to depress the asylum recognition rates, perceiving the arrival of new incomers as an added economic overload.

If this reasoning holds true, then the first dimension – the economic one – should be very significant. Thus, the variables GDP per capita and the unemployment rate should depress the asylum recognition rates.

The findings show that this holds true for both variables. Nevertheless, referring to the expected impact of the variables, higher GDP per capita tends to depress the asylum recognition rates differently to our previsions. It is in fact argued in this chapter that countries with high GDP per capita should increase the recognition rates. The explanation can be precisely the global crisis, during which the countries may tend to reject the asylum requests being more focused on their domestic (mainly economic) issues.

Moreover, according to our expectations, whether the unemployment rate is high the asylum recognition rates should tend to decrease. The results show that this is the case. Both the economic variables (unemployment and, as said, counterintuitively also GDP) depressed in fact the asylum recognition rates in the global crisis phase.

This allows us to consider this event as important to explain the determinants of the asylum recognition rates trend.

Looking again at table 4.2, the other variables affecting the recognition rates in this first phase are the share of votes to the PRRPs, the past asylum applications, and

the inter-state war degree. Differently to our previsions, a high inter-state war degree is associated with a low recognition rate.

Different from our expectations is also the votes shares for populist parties. In fact, if this share is high, the recognition rate seems to increase (instead of decreasing).

The variable Past asylum applications is instead in line with our expectations that is the higher, the lower recognition rates.

The variables considered in this first model (2008-2010) explain more than a quarter of the determinants of the recognition rates trend across the EU (Adjusted $R^2=0.275$).

Finally, since the two economic variables employed (GDP per capita and the unemployment rate) are both significative and tend to depress the asylum recognition rates, it is plausible to answer that the global crisis played an important role in the determination of the asylum recognition rates trend.

4.6.1.2 The second phase: how much the Arab Spring is significant for the recognition rates trend?

The second model (2011-2014) is aimed at assessing whether the Arab Springs played a role in the determinants of the recognition rates trend in the EU. In this case, as explained in Chapter 3, the triggering of the Arab Springs in December 2010 and the consequents riots in some African and Middle East countries, should increase the asylum recognition rates according to the principle of non-refoulment stated by the 1951 Geneva Convention. Therefore, it is plausible to argue that this event affected the recognition rates in this phase, being the MSs obliged to accept asylum requests by people that are escaping from their origin (not safe) countries. If this holds true, then the asylum recognition rates should increase in the cases in which the social conditions of the origin country are affected by wars and/or a high degree of human right violation. Nevertheless, only the latter is significant in the model, while the threats to inter-state war turns out to be irrelevant. A possible interpretation of this finding may rely on a study by Sarkees, Wayman and Singer (2003), when conducting an excursus on the inter-state, intra-state and extra-state

wars in the 1816-1997 period in the world. They argued that in the first part of the twentieth century the international wars were more numerous than the internal wars, but that after World War II the number of “external wars” has diminished despite an increase of intra-state wars. The authors showed that in the twentieth century “only” 84 international wars occurred against a number of 143 civil wars (ibidem, p. 61). Thus, following Sarkees et al. (2003)’s argument, it is possible to claim that while the inter-state wars variable is not significant, the intra-state wars could be. Unfortunately, the variable intra-state war could not be considered in our model for lack of data and an in-depth test of this claim could not be pursued.

Referring instead to the other variables of the second model⁷⁷ significant are also the unemployment rate, the GDP per capita, the past asylum applications, the share of votes for the PRRPs, and the control variable year.

If the unemployment rate and the GDP per capita are high, the asylum recognition rates tend to decrease. This is consistent with the first phase and with our expectations. It is plausible to explain this trend by referring again to the global crisis. In fact, despite starting in 2008, the economic recession is still ongoing.

The past asylum application, instead, changed direction with respect to the first period. In fact, the higher the amount of past application, the higher the asylum recognition rates. This may be explained because of the high number of asylum requests sent in those years following the Arab Spring event. The vote share to the PRRPs also changed direction with respect to the previous phase. In fact, according to our previsions (see again table 4.2), if PRRPs’ vote share is high, the asylum recognition rates tend to decrease. Hence, in line with our assumptions, countries having a high share of votes for those parties tend to tough their admission policies and, therefore, depress their asylum recognition rate.

The last significant variable in this second model is the control variable (year) that allows us to claim that the recognition rates definitely increased in this period, regardless of all other variables. This can be explained, again, with the start of the Arab Springs. In fact, in that period, the human right violation degree increased, and the asylum recognition rates increased as well, since, according to the principles stated by the 1951 Geneva Convention and the 1967 New York Protocol, in such a

⁷⁷ See again Table 4.3

situation, the destination states examined lots of compulsory asylum requests. Therefore, these rates, inevitably, increased.

The variables employed in this model explain exactly a quarter of the determinants of the asylum recognition rate trend across the EU (Adjusted $R^2=0.25$).

Finally, referring to the main question of this paragraph it is plausible to think that the Arab Spring, started in the last part of 2010, played an important role in the inexorable increasing of the asylum recognition rates: the human right violation degree is in fact very significant only in this phase, while in the previous one, as well as in the next phase, it seems to be not significant. This can be associated with the compulsory asylum requests sent by people coming from the Arab Springs' countries.

4.6.1.3 The third phase: The role played by the refugees' "crisis"

This last phase (2015-2017) aims at assessing how important has been the so-called refugees' crisis in the explanation of the determinants of the asylum recognition rates trend across the EU MSs.

As for the previous Arab Spring phase (2011-2014) it is presumable that the social conditions of the sending countries matter. Hence, the variables human right violation degree and inter-state war degree were expected to be very significant in this third model. Nonetheless, our findings do not confirm this expectation: the social conditions of the sending countries are in fact not significant. In this second period, only two variables are significant: the unemployment rate and the share of votes to the PRRPs. In both cases a high percentage of these variables is associated with a lower recognition rate, thus confirming our assumptions.

These two variables reflect the nowadays European scenario, marked by strong unemployment rates in some Member States and by the increasing consensus toward the radical right populist parties that in several cases are now in charge in some MSs governments.

Nevertheless, the refugees' "crisis" phase, seems to be much too long as reference point. The increasing number of applications has been in fact registered only in the

second part of 2015 and of early 2016. Thus, it is plausible that 2017 (that is not affected by an increasing of asylum applications) dilutes the impact of the event. Nonetheless, the last model is the least explicative of the three: its variables explain only the 17,6% of the variance. Other researches in this field and in particular in these years are therefore needed in order to test this interpretation and to measure the determinants of the asylum recognition rates.

Thus, it is plausible to argue that the refugees' "crisis" – the pivotal global event in this phase where the number of applications increased exponentially – is not an explaining factor of the asylum recognition rates trend across the EU Member States. Thus, differing from the other two pivotal events of the first (global crisis) and second (Arab spring) phase.

4.6.2 Determinants of the asylum recognition rates' trend across the EU. The importance of the events

This section aims at in-depth discussing the main findings of the three models in order to better understand how much the major events on which the phases have been shaped, affected the asylum recognition rates, and what role has been played instead by the other variables.

The models presented in table 3 displayed a very heterogeneous situation. Some variables seem to be very significant in some phases and not significant any longer in other periods. For example, the inter-state war degree is very significant in the first phase (2008 – 2010) and not significant at all in the others (2011-2014 and 2015-2017). The only two variables that are very significant in the whole analysed time span are the unemployment rate and the share of votes for the PRRPs in the last national elections.

In the first phase – the global economic crisis period – the higher the unemployment rate, the lower the recognition rates, as supposed. This holds true also in the second and in the third phase (respectively the Arab Spring and the migration "crisis" phases).

As for the share of votes for the PRRPs, in the first phase, the higher the percentage, the higher the asylum recognition rates, thus disconfirming our expectations. Nevertheless, this could be explained by the lower shares these parties scored in those years in comparison to the current political scenario. In fact, in the second and in the third phases, the higher the share of votes for the PRRPs the lower the recognition rates, in this case confirming our provisions. This can be explained by the increasing consensus for the populist radical right parties in the world that in some cases are governing countries of the European Union.

As for the GDP per capita, it is significant⁷⁸ in the first two phases but not in the third. In 2008-2010 and in 2011-2014 the asylum recognition rate is going to decrease if the GDP per capita is high. This finding is in contrast with our provisions, but a plausible explanation is possible. The period covered coincided with the global economic crisis: it is, therefore, plausible to think that the destination countries increased their rejections of the applicants as a consequence of their suffering from the global crisis.

Also the past asylum applications to the Member States is significant in the first two analysed phases. Nevertheless, in the first period if the past asylum applications sent to the MSs are high, the recognition rates tend to decrease for a sort of “crowding effect” while in the second analysed phase, the higher the past asylum applications, the higher the asylum recognition rates, thus disconfirming our expectations. This may be the effect of the increase of asylum applications caused by the Arab Spring and the fact that the countries have been obliged to accept according to the Geneva Convention. Counterintuitively, instead, the direction of the inter-state war degree – significant only in the first phase – that if high, the asylum recognition rates tend to decrease. Following the 1951 Convention, persons who are fleeing from their origin country for wars have the right to be hosted in the subscribing States. A possible interpretation is given by the study conducted by Sarkees, Wayman and Singer (2003), which showed that in the last century the number of inter-state wars decreased despite the intra-state wars. Hence, the low size of inter-state wars in the origin countries employed in the analysis may be not explicative as much as the intra-state wars.

⁷⁸ Which however could not be explored for lack of available data.

The human right violation degree is significant in the second phase. As expected, the higher this degree, the higher the asylum recognition rates according to the Geneva Convention principles.

In the same way, the control variable is significant in the second phase that allows us that the recognition rates are increasing regardless of the other variables. This may be caused by the compulsory acceptance due to the receiving countries in cases of human rights violation. This happened in the Arab Spring because of the riots and the EU countries were obliged to accept asylum requests from those countries. Nevertheless, the explanation of the model of this last period is only 17,6%. The adjusted R square is higher in the previous ones (27,5% for the first phase, 25% for the second) but still not particularly high. Future researches in this field that could help to find some other variables affecting the asylum recognition rates are thus needed.

Finally, it is possible to claim that the happened events deeply affected the MSs' decisions on which asylum requests should be accepted and which ones rejected. When the global economic crisis explodes, we supposed that the economic conditions should influence the asylum recognition rates and, in fact, countries with high GDP per capita and high unemployment rate decreased their asylum recognition rates.

In the Arab Spring period, instead, we supposed that the social conditions of the origin countries matter. In fact, the higher this degree, the higher the recognition rates. Furthermore, we supposed that in the Arab Spring period the number of asylum applications should increase and the asylum recognition rates as well. As we have seen in table 2, during the second phase, the higher the asylum applications, the higher the asylum recognition rates. Additionally, very significant seems to be the variable year that tells us that the recognition rates are increasing in that period regardless of the other variables. This could be caused by the people running from retaliation that may happen after the Arab Spring.

In the last phase, we also supposed an increment in the asylum applications and in the human right violation degree, but they are not significant. Nevertheless, reflecting the nowadays political and economic scenario, the only significant variables are the share of votes for the PRRPs in the last national elections and the

unemployment rates (that is still high across the EU MSs). Both these variables depress the asylum recognition rates.

To summarize, the asylum recognition rates trend is increasing throughout the whole period in the EU. When analyzing the determinants of such a trend, it is possible to see a strong difference when splitting the period into three phases as seen. Thus, it is plausible to argue that the three models are influenced by the context and by the happened events in that period.

4.7 Empirically Testing the Europeanization of asylum policy. A focused overview

The Europeanization of asylum policy tested in the previous paragraphs by employing the expected consequences of the CEAS – namely the race to the bottom and the convergence – and by using as indicator the asylum recognition rates, displayed a mixed situation.

The recognition rates increased across (almost) all Member States in the analysed period (2008-2017). Thus, no race to the bottom has been found for these countries. As for the convergence, the recognition rates per year are very dispersed among the EU countries, hence also displaying a situation of non-convergence.

Since both the expected consequences of the CEAS has been disconfirmed, the answer to Int. Europeanization RQ1 resulted to be negative. Hence, no evidence for Intended Europeanization of the asylum policy in the 2008-2017 period in the 28 EU countries has in fact been found.

Nevertheless, as argued before, the analysis conducted thus far can be considered as a wide overview of the phenomenon, having considered all types of international protection and the overall number of asylum applications from all countries.

In order to be more accurate and to avoid the bias explained in Chapter 3 (section 3.1), this paragraph aims at testing the same expectations by considering, on the one hand, only the properly European international protections (and not the domestic ones) – namely the refugee Status under the Geneva Convention and the

Subsidiary Protection – and, on the other hand, only the top five refugees’ sending countries in the year 2017.

4.7.1 Analysing the Race to the bottom and the Convergence by eliminating domestic protections and by inserting only five sending countries

This subsection aims at assessing again if a RTB is present across the 28 EU Member States in the 2008-2017 period. However, differently from the previous analysis and as already explained in Chapter 3, here only the recognition rates concerning international protection under the Geneva Convention and the Subsidiary Protection and only the recognition rates of the top five sending countries of 2017 (namely Afghanistan, Iraq, Nigeria, Pakistan, and Syria) have been computed.

The average EU MSs recognition rate for each top-five sending country will be calculated for each year and it will be reviewed if there is an increment or a decrement (race to the bottom) from 2008 to 2017 (Table 4.4).

Table 4.4. EU MSs average recognition rates for the top five sending countries (differentiated for international protection under the Geneva Convention (Gen.) and Subsidiary Protection (Sub)) towards the 28 EU MSs. 2008-2017. Figures in percentage points.

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Δ 2017- 2008
Afghanistan Gen.	0.07	0.07	0.1	0.1	0.09	0.14	0.18	0.16	0.21	0.31	0.24
Afghanistan Sub.	0.13	0.24	0.24	0.21	0.22	0.24	0.21	0.20	0.20	0.19	0.06
Iraq Gen.	0.21	0.16	0.14	0.18	0.18	0.16	0.22	0.39	0.39	0.3	0.09
Iraq Sub.	0.17	0.25	0.19	0.13	0.15	0.18	0.23	0.23	0.22	0.22	0.05
Nigeria Gen.	0.01	0	0	0.01	0.01	0.02	0.05	0.05	0.04	0.04	0.03
Nigeria Sub.	0.04	0	0.02	0.01	0.01	0.01	0.05	0.04	0.01	0	-0.04
Pakistan Gen.	0.04	0.02	0.05	0.09	0.07	0.08	0.11	0.08	0.07	0.09	0.05
Pakistan Sub.	0.01	0.02	0.01	0.01	0.02	0.02	0.05	0.03	0.02	0.04	0.03
Syria Gen.	0.09	0.12	0.12	0.14	0.23	0.26	0.38	0.43	0.51	0.48	0.39
Syria Sub.	0.02	0.06	0.02	0.08	0.35	0.5	0.39	0.33	0.38	0.37	0.35

Note: No data for Croatia until 2011.

Source: own elaboration

In all cases, except for the Subsidiary Protection for Nigeria – which shows a decrement of 0.04 – data point out an increment of the recognition rates. Some countries, such as Afghanistan Geneva Convention (+0.24), Syria Geneva Convention (+0.39) and Syria Subsidiary Protection (+0.35), incremented their rates more than 20 percentage points. Given that 9 out of the 10 considered cases increased instead of decreasing their rates, it can be argued that no RTB is present in the analysed decade.

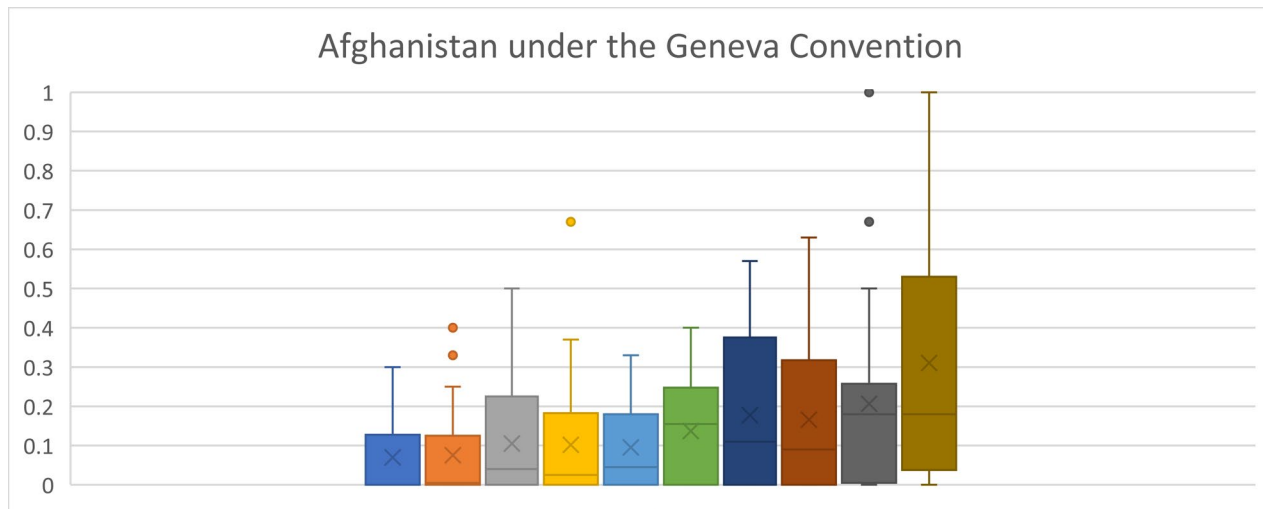
Nevertheless, a partial different interpretation may be in order if considering as the starting point of this analysis, the year before the refugees’ “crisis”, namely 2014. Starting from 2014, in fact, a slight decrement of recognition rates occur in 7 cases out of 10 namely Afghanistan Subsidiary Protection (-0.02), Iraq Subsidiary Protection (-0.01), Nigeria Geneva Convention (-0.01), Nigeria Subsidiary Protection (-0.05), Pakistan Geneva Convention (-0.02), Pakistan Subsidiary Protection (-0.01) and Syria Subsidiary Protection (-0.02).

Despite this decrement from 2014 until 2017, it is not possible to talk about a RTB for at least two reasons: 1) the decrement is very little; 2) in the years of the refugees crisis has been registered a strong increment in the asylum applications and, nonetheless, the decrement on asylum recognition rates has been very limited, meaning that in absolute numbers, the MSs accepted more asylum seekers than in the previous years.

Hence, as confirmed by the findings displayed in Table 4.4, also when testing the Intended Europeanization of asylum policy under stricter conditions, no claim for a race to the bottom in the analysed period can be made. This confirms the first, more general, analysis presented in paragraph 4.3.

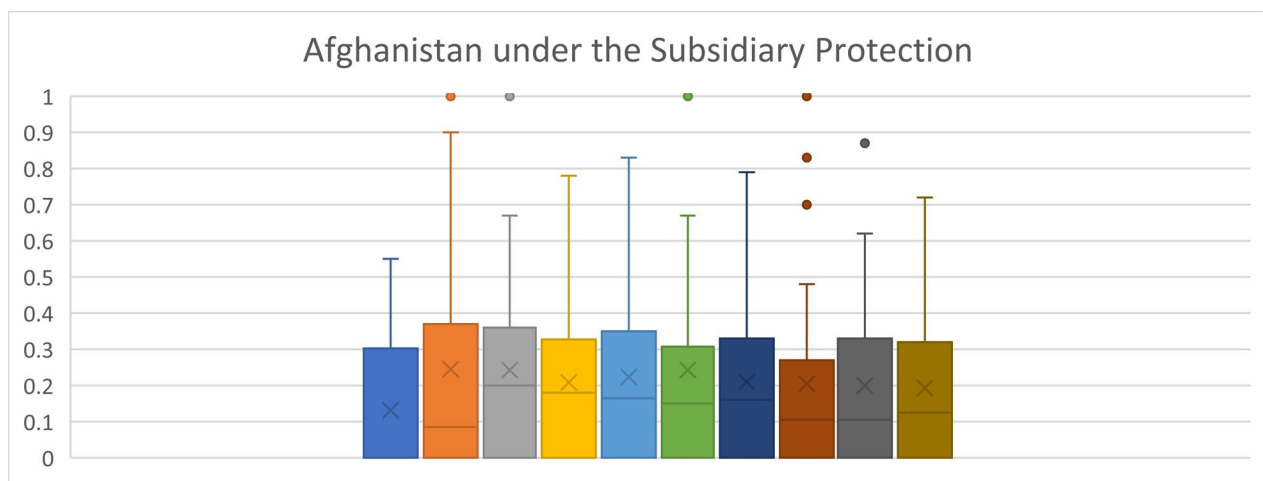
The convergence is the second expected consequence of a common legislation in asylum policy. It refers to similar quotas in asylum recognition rates across the EU Member States (with divergences not higher than 0.2) As has been done in paragraph 4.4 the convergence will be here scrutinized by referring to only the asylum recognition rates. In particular, it will be only inspected in the international protection granted under both the Geneva Convention and the Subsidiary Protection. Again, the asylum recognition rates for only the top five sending countries will be inspected. Thus, two different figures per each of the top five sending countries will be displayed.

Figure 4.2. Asylum recognition rates under the Geneva Convention for Afghanistan in 2008-2017. Dots representing countries and boxes representing years.



Source: own elaboration

Figure 4.3. Asylum recognition rates under the Subsidiary Protection for Afghanistan in 2008-2017. Dots representing countries and boxes representing years.



Source: own elaboration

Figures 4.2 and 4.3 show the asylum recognition rates for the Afghanistan citizens under the Geneva Convention and the Subsidiary Protection respectively. The dots represent the countries and the boxes represent the years (from the blue representing 2008 to the brown representing 2017).

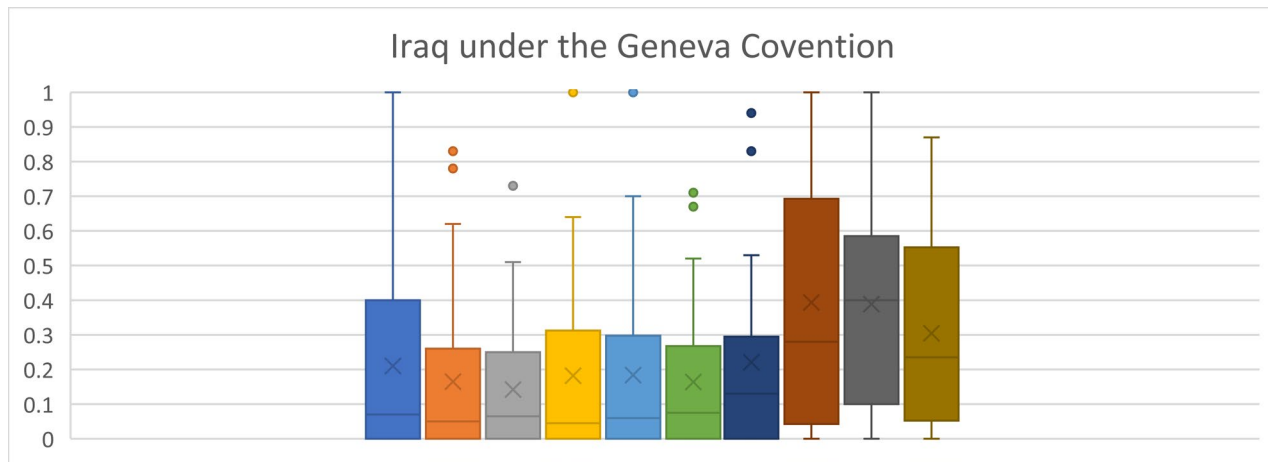
Figure 4.2 shows a situation where the first six years (2008-2013) the countries are quite convergent in their recognition rates. In 2014 the scenario started to change in which the recognition rates range started to increase from 0.2 in the previous

years to 0.4 in 2014. In 2015 and 2016 the range started to decrease but it still remains over 0.2. In 2017 the un-convergence is quite clear with a scissor of 0.5. Thus, it seems that the recognition rates granted to the Afghan citizens under the Geneva Convention is quite convergent until 2013. Subsequently, the situation changed and from 2014 an un-convergence in these rates is displayed (particularly for the last analysed year).

Figure 4.3 shows the asylum recognition rates for Afghan citizens under the Subsidiary Protection. The range for this kind of international protection is higher than in international protection under the Geneva Convention. Opposite to the data showed about Geneva Convention, here the range is quite static, and it is from 0 to 0.40. Being thus, this scissor quite high, no evidence for convergence has been found in this analysis.

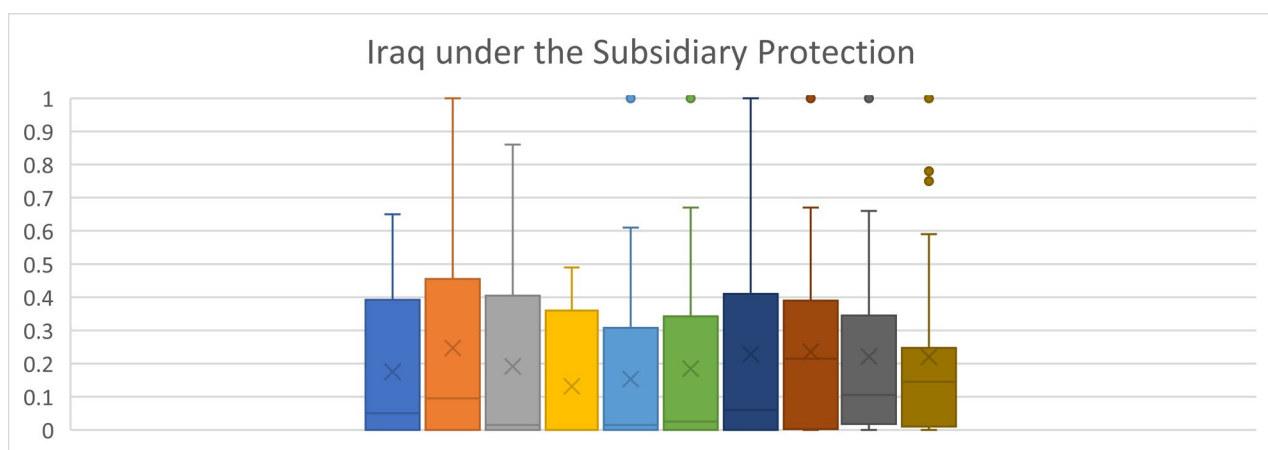
To conclude, no evidence for convergence has been retrieved for Afghan asylum recognition rates neither under the Geneva Convention nor under the Subsidiary Protection. In fact, the range in both the international protection presented in Figure 4.3 and 4.4 are roughly over 0.3. Evidence for convergence can be only retrieved in the first years of the Geneva Convention where the range is not over 0.25 (particularly in the first two years it is less than 0.15).

Figure 4.4. Asylum recognition rates under the Geneva Convention for Iraq in 2008-2017. Dots representing countries and boxes representing years.



Source: own elaboration

Figure 4.5. Asylum recognition rates under the Subsidiary Protection for Iraq in 2008-2017. Dots representing countries and boxes representing years.



Source: own elaboration

Figures 4.4 and 4.5 show the asylum recognition rates for citizens from Iraq that received the international protection for both the Geneva Convention and the Subsidiary Protection.

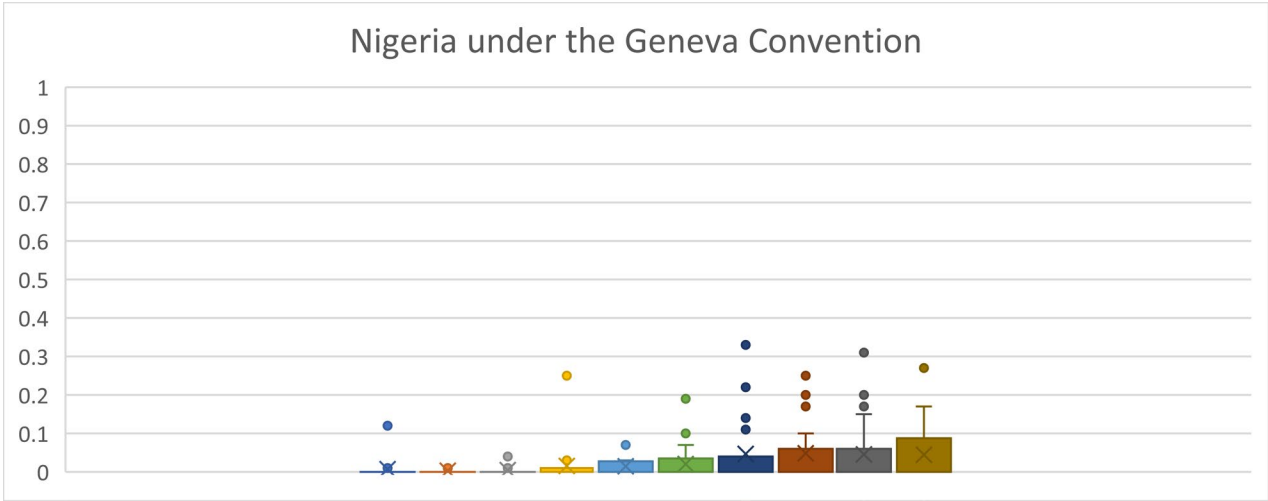
Figure 4.4 shows a range of recognition rates across the 28 EU Member States quite variegated. In fact, the range of variation is very high and there are many outliers. Focusing on the first seven years the variation is about 0 to 0.4. Thus, no convergence is ongoing. As for the last three years, the situation became clearer. In fact, the variation is roughly from 0.1 to 0.7. Since the range of variation is high

across all the analysed years it is plausible to argue that no convergence is ongoing in Iraq for the international protection granted under the Geneva Convention.

Figure 4.5 shows the international protection granted for Iraqi people under the Subsidiary Protection. The situation, compared with the previous figure, is not much different. In fact, the range of variation across the EU countries is very high. In almost all the cases it is over 0.4. Contrarily to the previous figure, in the last three years the range of variation is limited compared to the previous years. It is plausible to think that in these years (where a massive influx of asylum seekers was arriving) the countries preferred to apply the Geneva protection instead of the Subsidiary one.

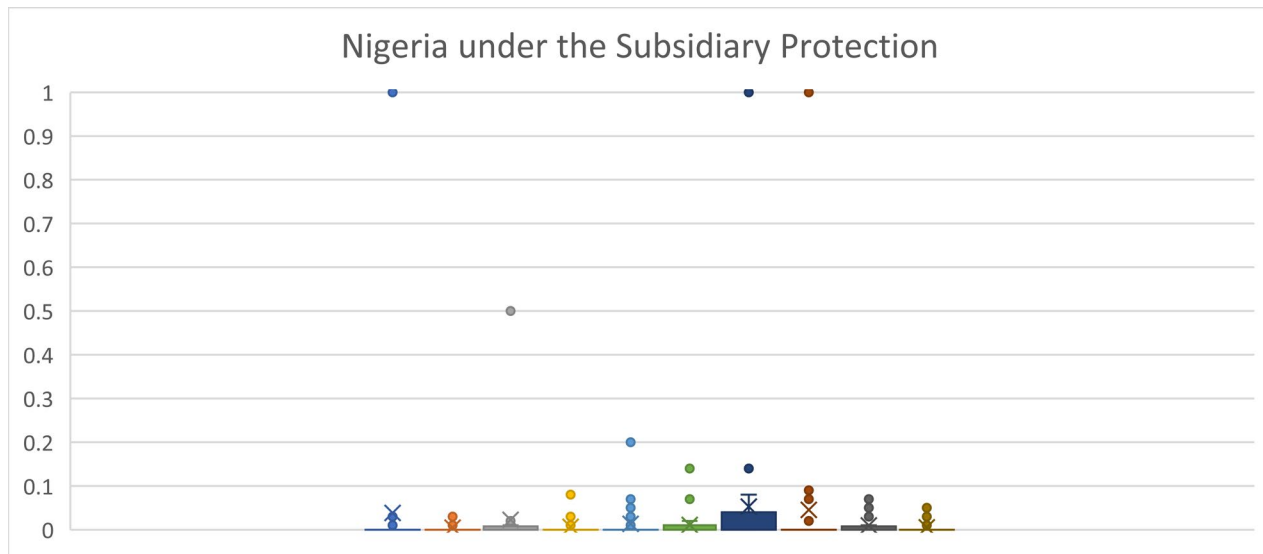
To conclude, the range of variation for asylum recognition rates across the 28 EU countries for Iraqi people for both the analysed international protection is quite high. Indeed, in all the cases it is over 0.2. Hence, no evidence for convergence can be retrieved in the analysed countries for Iraqi international protection.

Figure 4.6. Asylum recognition rates under the Geneva Convention for Nigeria in 2008-2017. Dots representing countries and boxes representing years.



Source: own elaboration

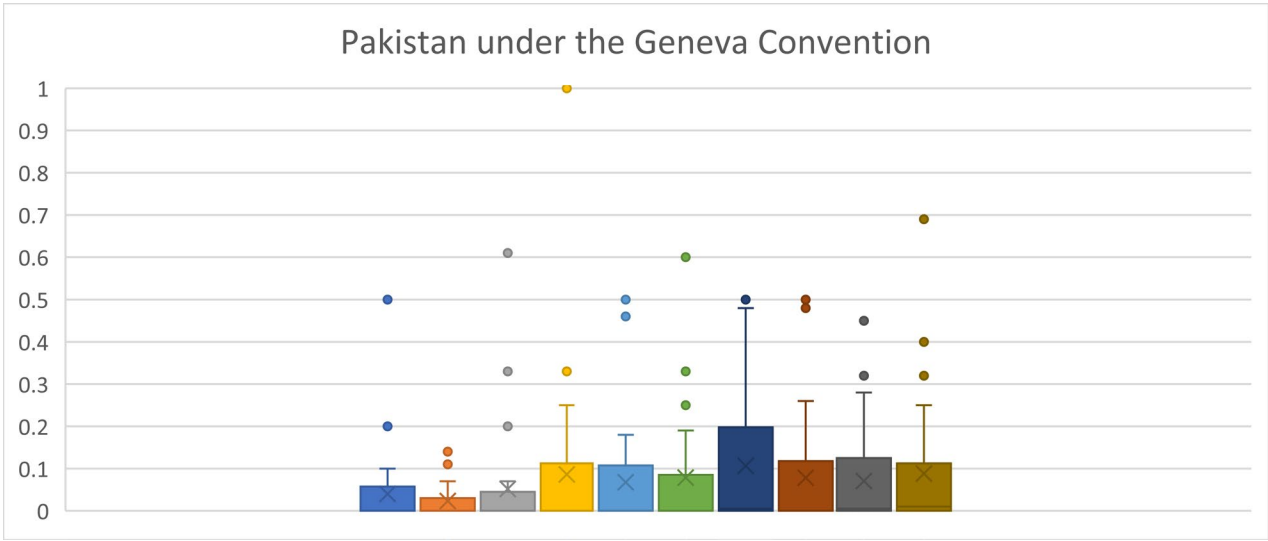
Figure 4.7. Asylum recognition rates under the Subsidiary Protection for Nigeria in 2008-2017. Dots representing countries and boxes representing years.



Source: own elaboration

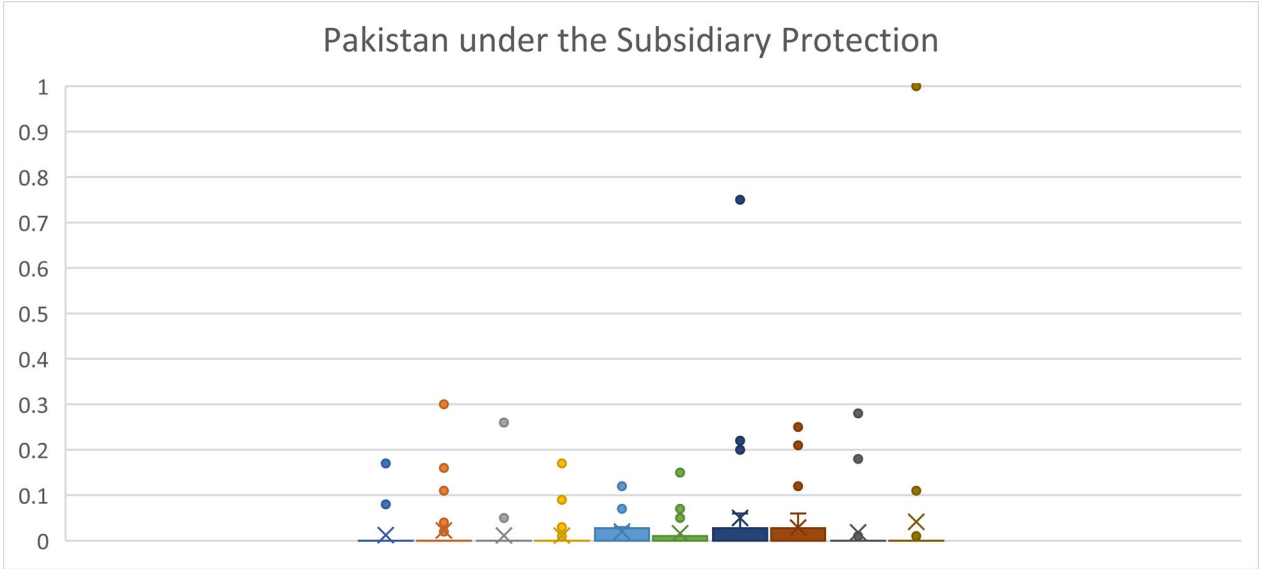
Figures 4.6 and 4.7 show the international protection granted for Nigerians people under the Geneva Convention and the Subsidiary Protection respectively. In spite of some outliers, the situation for both the figures is quite clear. The range of variation is between 0 and 0.1 in all the years and in all the international protection granted. Thus, there is evidence for convergence across the whole analyzed period. Even if the convergence for Nigerian people is quite clear, it is worth to better read the asylum recognition rates. In all the analyzed years, except for some outliers, the EU Member States recognized less than 0.5 out of 10 Nigerian asking for asylum. Following this perspective, a few of these asylum seekers have the right to be hosted by the EU countries as refugees. Hence, it is plausible to think that the most part of the Nigerian asylum seekers are, instead, economic migrants. So, the convergence, in this case, seems to be a result of convergent ideas to who reject instead of convergence in the asylum policy field.

Figure 4.8. Asylum recognition rates under the Geneva Convention for Pakistan in 2008-2017. Dots representing countries and boxes representing years.



Source: own elaboration

Figure 4.9. Asylum recognition rates under the Subsidiary Protection for Nigeria in 2008-2017. Dots representing countries and boxes representing years.



Source: own elaboration

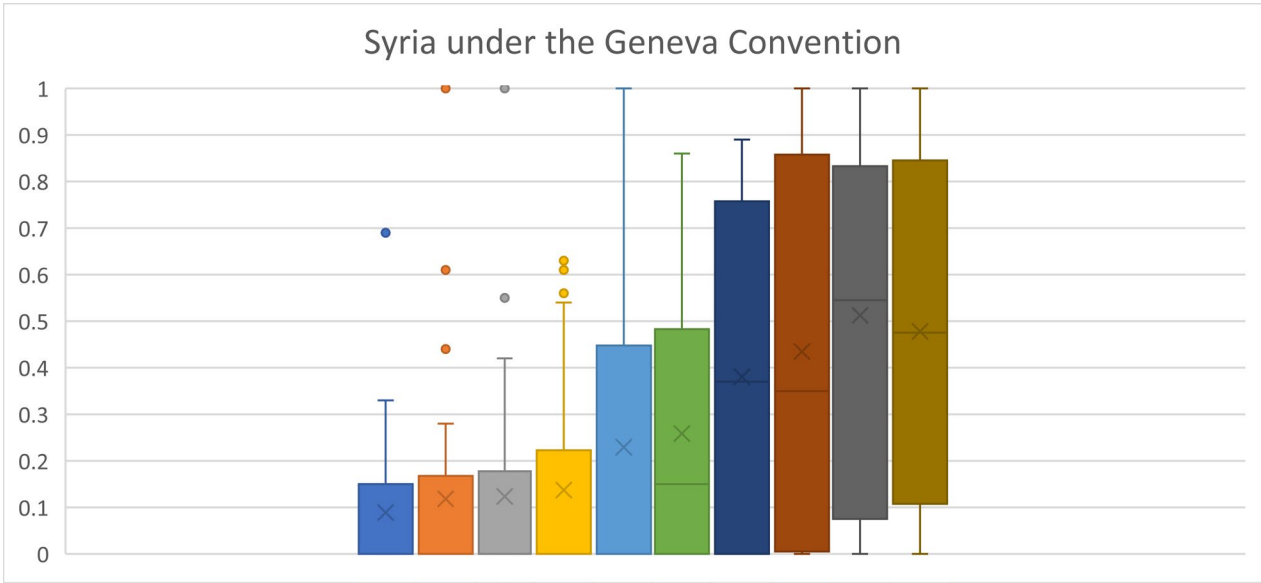
Figures 4.8 and 4.9 show the asylum recognition rates for Pakistani people under the Geneva Convention and under the Subsidiary Protection respectively.

Figure 4.8 shows that, in spite of some outliers, there is evidence for convergence across the analyzed countries. In fact, the range of variation is roughly between 0 and 0.15 in all the years (except for 2014 where the range arrives at 0.2).

Figure 4.9 also shows a situation in which there is evidence for convergence. The range of variation here is a bit more restricted (between 0 and 0.05). As in the case of international protection for Nigerian people, also in this case the rates are tiny. If only inspecting the Subsidiary Protection, the Pakistani people that received international protection is less than 1 out of 20.

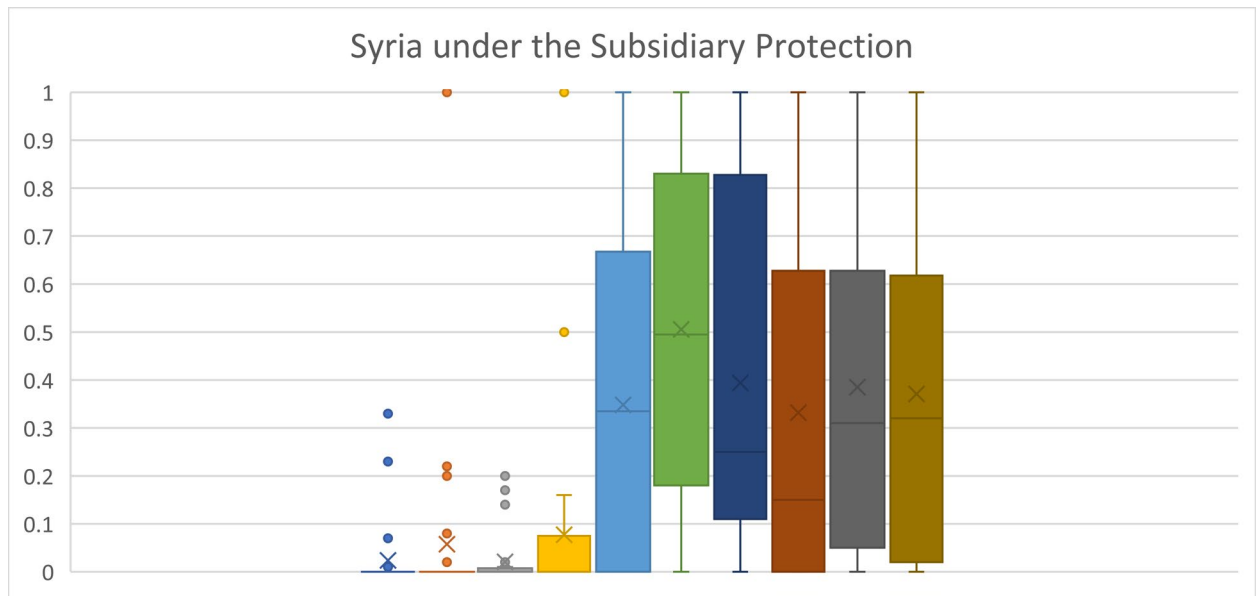
Hence, figures on both Nigeria and Pakistan show evidence for convergence in asylum recognition rates, for both the international protection measures under scrutiny.

Figure 4.10. Asylum recognition rates under the Geneva Convention for Syria in 2008-2017. Dots representing countries and boxes representing years.



Source: own elaboration

Figure 4.11. Asylum recognition rates under the Subsidiary Protection for Syria in 2008-2017. Dots representing countries and boxes representing years.



Source: own elaboration

Finally, Figures 4.10 and 4.11 show the asylum recognition rates for the Syrian people across the 28 EU countries in the 2008-2017 period always under the Geneva Convention and the Subsidiary Protection respectively.

Figure 4.10 shows a quite convergent situation in the first four years (from 2008 until 2011) with a range of variation between about 0 and 0.22, despite the outliers. The scenario starts to change in 2012 where the range of variation increased (roughly from 0 to 0.45). In the subsequent years the range of variation increased exponentially founding no evidence for convergence in asylum recognition rates for Syrian people that granted international protection under the Geneva Convention. Particularly in 2015 – that is the year of the refugees’ “crisis” – the range of variation is about between 0 and 0.8, showing a situation where some countries accepted 8 people out of 10 and others that accept less than 1 person out of 10.

Figure 4.11 shows more or less the same situation of figure 10. In fact, there is evidence for convergence only from 2008 to 2011 in which the range of variation is about between 0 and 0.1. In the following years, in conjunction with the Arab Springs, the range of variation grew. Thus, no evidence for convergence in asylum recognition rates has been found for the Syrian people under the Subsidiary

Protection. Hence, for both the international protection measures no convergence is ongoing in the selected period.

To conclude, it seems that evidence for convergence has been found for the first two years in Afghanistan for the Geneva Convention, in Nigeria and in Pakistan for both the international protections, and in Syria for the first four years for both the international protections.

Nevertheless, if better inspecting these countries, that convergence is only found in cases of rejections. As shown in Figures 4.6 to 4.9, Nigeria and Pakistan have a very low range of variation but it started from 0 in all the years and the mean in all these cases is lesser than 0.1. Probably, convergence in asylum recognition rates in the EU is only guaranteed in cases of rejection instead of acceptations. In fact, as shown for example in Syria, the convergence is present when most of Syrian people have not the right to be accepted. In conjunction with the Arab Springs the number of people having this right increased and evidence for un-convergence in that years has been found. This gives us the impression that some countries continued to grant asylum to the same number of asylum applicants, no matter if a bigger number has this right. On the contrary, other countries, according to the EU agreements, increased their rates of acceptance in order to grant asylum for people having this right.

The Europeanization of asylum policy has started between the 80s and the 90s and it culminated in the Common European Asylum System that had the aim to achieve a common legislation in asylum policy. Race to the bottom and convergence are among the expected consequences of such a common legislation. Consistently with the first general analysis on asylum, already presented in the previous paragraphs, also in the more confused analysis (restricted to only some protection measures and to some countries) neither race to the bottom nor convergence in asylum recognition rates seems to be ongoing in the 28 EU Member States across the 2008-2017 decade.

This has allowed us to argue that no Intended Europeanization of asylum policy is overall present across the EU in the selected period, hence, it is possible to answer negatively to the Int. Europeanization RQ1.

Moreover, the findings of the analysis of the determinants of the asylum recognition rates trend through the multiple regression analysis⁷⁹ has shown the variables that most affected the recognition rates trend turned out to be the GDP per capita, the vote to the PRRPs, both the social condition of the origin countries and the control variable year.

4.8 Conclusion: failed Europeanization of the EU asylum policy. What has happened?

This chapter aimed at assessing whether the EU Member States achieved the main goal stated by the CEAS, that is, the asylum policies harmonization which, as argued in the introduction, coincides with the Intended Europeanization. The assessment has been done by referring to the main expected consequences that the literature identified as the result of a common legislation on asylum matters, namely the race to the bottom (RTB) and the convergence.

The race to the bottom has been tested by referring to the asylum recognition rates. The analysis displayed the increase in the recognition rates trend, thus letting to negatively answer Int. Europeanization RQ1 about the RTB.

The convergence has been analysed by checking if the recognition rates range of variation is lower than 0.2. In that case, it is plausible to think that convergence in asylum recognition rates is present. Nevertheless, it has been shown that no evidence for convergence emerged. Instead, a strong un-convergence in asylum recognition rates across the EU Member States in the analysed period has taken place.

Thus, both the expected consequences have been refuted in the analysed period. This allows us to answer negatively also to the Int. Europeanization research question 1 about the presence of Intended Europeanization of asylum policies.

Furthermore, an attempt has been made to understand the determinants of the asylum recognition rates trend. To this goal, a multiple regression analysis has been employed by using the recognition rates as the dependent variable and a set of

⁷⁹ For details see Appendix 2.

variables grouped by four dimensions (the economic condition, the political condition and the historical condition of the destination countries and the social condition of the origin countries) as independent variable. The conclusion of this further analysis draws a situation where a series of events during the analysed period affected the asylum recognition rates, and, on the basis of these events, the significance of each considered variable changes. The more significant dimensions in the whole analysed period are the economic and the political conditions of the destination countries. This allows us to claim that the EU MSs tend to accept or reject the asylum applications by referring first to their own domestic conditions rather than to other exogenous factors.

The following two chapters will try to discover the main determinants of the lack of Intended Europeanization here emerged. To this goal, two further concepts will be employed, mining from the integration theories, namely the differentiated integration⁸⁰ and a newly introduced concept, that of Differentiated Implementation⁸¹.

⁸⁰ See Chapter 5.

⁸¹ See Chapter 6.

CHAPTER 5

The differentiated integration in asylum policy: the role played by the derogations

*«Here we have the Schengen agreement,
and the truth is that for years we trusted each other
and set border controls on the outer borders of the European Union.
And as was the case with the economic and monetary union,
with this step, regarding the management of the Schengen area,
we did not go all the way in terms of political solutions»*
Angela Merkel's speech (2016).

In the previous chapter it has been argued that no evidence for an Intended Europeanization is present in the asylum policy area. both its expectations (the race to the bottom and the convergence) have been proven disconfirmed.

This chapter, following the flow chart presented in the introduction, aims at answering if instead a differentiated integration in the asylum policy area is present and if it could partly explain the lack of Intended Europeanization. A possible differentiated integration will be therefore assessed by evaluating if some countries are entitled to diverse derogation rights and if they consequently decided to opt out to this field of policy.

The differentiated integration in the EU has not risen academic attention that much (Brunazzo 2017). Nevertheless, it has recently become the core point of political discussions and academic thoughts (Holzinger and Schimmelfennig 2012).

Given the main assumptions of the European Union on its unity and integration as pivotal, the concept of differentiated integration might challenge this idea (Brunazzo 2017). Differentiated integration is caused by a lack of a *finalité* of the European Union and, therefore, the EU countries decide to act differently to the others. Nevertheless, it has always been assumed by European citizens and EU Governments that all Member States will achieve the same level of integration (ibidem). This assumption started to lose supporters after the 2008 economic crisis that forced the EU Governments to rethink the final aim of the European Union and that the EU common purposes may be not shared by all the Member States (ibidem).

During the (almost) 70 years of the EU, many examples of differentiated integration can be observed. Already in the Treaty of Rome, some elements of differentiation could be detected (Brunazzo 2017). Later some examples of opting out are the EMU⁸², harmonization of VAT⁸³, Schengen Agreements⁸⁴, EUROCORPS⁸⁵, EUROMARFOR⁸⁶, citizenship derogations and so on) (Stubb 1996). However, the differentiated integration debate is mounting only in the last years and there is a consensus among the EU political leaders that it could become a plausible new scenario for the future evolution of EU integration.

This chapter aims at assessing if in asylum policy there is evidence for a differentiated integration. In particular, it will be explored if among the 28 Member States some countries decided to opt out from a subset of legislative instruments linked to the Common European Asylum System (CEAS), which – as it has been explained in Chapter 2 – is the general EU legislative framework in this policy area. The chapter is structured as follows. First, a short overview of the differentiated integration, of its main typologies and old measurement attempts, will be provided (section 5.1); then, the methodology employed for measuring its presence in asylum policy and the new research questions will be specified (section 5.2); in the subsequent section (5.3) the analysis will be conducted in order to assess the possible current differentiated integration and to understand if it may fit in one of the types proposed by the literature; finally, in section 5.4 the findings will be discussed and it will be argued if the differentiated integration may have been one of the determinants that caused the lack of Intended Europeanization described in Chapter 4.

⁸² The Economic and Monetary Union (EMU) is an umbrella term that recalls the policies aimed at converging the economies of the EU Member States. Denmark and the United Kingdom opted out.

⁸³ The EU value-added tax (VAT) is a value-added tax on goods and services within the EU. The harmonization of VAT in the EU implies that the Member States are required to adopt a VAT that complies with the EU VAT code. Many regions of some countries opted out.

⁸⁴ Ireland and the United Kingdom opted out.

⁸⁵ The European Corps (EUROCORPS) is an intergovernmental military corps stationed in Strasbourg, France counting approximately 1,000 soldiers. The only opted-in EU countries are Belgium, Italy, France, Germany, Spain, Luxembourg and Poland.

⁸⁶ The European Maritime Force (EUROMARFOR or EMF) is a military force carrying out naval and air operations. The only opted-in EU countries are France, Italy, Portugal and Spain.

5.1 Differentiated Integration. Definitions and main types

Differentiated integration is a highly debated concept and an extremely thorny one. Several European studies scholars and stakeholders have tried to define this concept by employing different terms: two-speed, multi-speed, step-by-step, graduated integration, variable integration, concentric circles, variable speed, pick-and-choose, flexible integration, structural variability, magnetic fields, etc... (Stubbs 1996). This paragraph aims at providing an excursus of the most widespread definitions about this concept and at showing its most employed typologies.

Dyson and Sepos (2010, p. 4), for example, define the differentiated integration as *«the process whereby European States, or sub-state units opt to move at different speeds and/or towards different objectives with regard to common policies. It involves adopting different formal and informal arrangements (hard and soft), inside or outside the EU treaty framework»*. In these terms, the States' differentiation can be promoted by sub-state units, can be based on formal or informal agreements, and can create clusters of different States divided by historic, functional, or geographic criteria (Brunazzo 2017).

Differently to this definition, Koller (2012) emphasizes the participation (or not) of the countries to the EU agreements by defining the differentiated integration as an integration or cooperation where only a defined number of States (Member States or non-Member States) take part in. This definition clarifies how differentiation entails two concepts: the integration (in which common policy or formal institution should be created) and the cooperation (that refers to a different, less formal, collaboration among States) (Brunazzo 2017). Furthermore, this definition shows that differentiated integration can regard both EU Member and non-Member States (ibidem).

Holzinger and Schimmelfennig (2012) claim that the differentiated integration can be present in three cases (or a combination of them): when the European Union's formal or informal rules and policies are applied only by a little cluster of Member States; when these policies are applied by non-Member States; when Member States do not adhere to EU policies and/or a cluster of non-Member States do adhere.

The concept of differentiated integration has been further developed by scholars and, by clustering some dimensions and elements of the phenomenon, different typologies have been identified.

The classic and most known typology is that proposed by Stubb in 1996, who employs three different variables to distinguish the differentiated integration: time, space, and matter, according to which, different types of differentiated integration can be singled out (Table 1).

Time determines a *Multi-speed Europe* where the Member States decide to pursue the integration at different times and a different pace. In this case, a cluster of States decides to go faster in the integration than others. This does not imply that the first-integrated countries renounce to the EU aim of complete integration: the other States will in fact join the integration when they will be ready (Stubb 1996, Brunazzo 2017). Following Wallace and Wallace (1995) the Multi-Speed Europe concerns a twofold economic motivation: on the one hand there are the rich countries that are afraid to be stopped by poor countries; on the other hand, the latter, are afraid not to be able to advance with the integration without the richest countries help. Thus, this concept has always been matched with pessimistic scenarios and economically difficult situation (Brunazzo 2017).

When space is considered, a *Variable geometry* Europe emerges. A cluster of (more developed) States decides to integrate more deeply than other (less developed) ones on a certain issue or policy. This type takes into account the deep diversity of European States' politics, economics, and culture and therefore accepts that a certain level of permanent differentiation among the States will persist (Stubb 1996).

The third variable is the matter. In this case, a *Europe À-la-carte* emerges, where «*The culinary metaphor of Europe à-la-carte allows each Member State to pick and choose, as from a menu, in which policy area it would like to participate [...] maintaining a minimum number of common objectives*» (Stubb 1996, p. 288). This type is related to the idea that the Member States choose – by doing different kinds of calculations – in which field of policy they wish to integrate more or less (Brunazzo 2017).

Table 5.1. Types of differentiated integration proposed by Stubb (1996).

Variables	Time	Space	Matter
Type of Differentiated Integration	Multi-Speed Europe	Variable Geometry	<i>À-la-carte</i> Europe
Definition	A cluster of MSs goes forward with the integration with the assumption that the other countries will follow them later.	Differentiation by space. It assumes unavoidable (and unsurmountable) differences among the MSs and admits a permanent and/or irreversible separation between more and less developed countries.	The MSs choose as from a menu, in which policy they want to participate.

Source: own elaboration on Stubb (1996).

Nevertheless, this classical typology has a major flaw. As stressed by Holzinger and Schimmelfennig (2012), the distinction between the three variables of time, space, and matter is imprecise and overlapping. As explained by the authors: «*The problem with this classification is that its dimensions are not analytically distinct. Whereas the distinction between temporary and permanent differentiation holds, space and matter are by definition involved in all types of differentiation. Differentiation always has a territorial aspect, as some countries or regions do not participate in integration; and it always a sectoral aspect, because it applies to specific policy or rules*» (ibidem, p. 296).

The authors thus propose a typology based on six binary dimensions of differentiation:

1. permanent / temporary differentiation;
2. territorial / purely functional differentiation;
3. differentiation across nation States / multi-level differentiation
4. differentiation takes place within the EU treaties / outside the EU treaties;
5. decision-making at EU level / at regime level
6. only for Member States / also for non-Member States or area outside the EU territory.

On the basis of these dimensions, the authors recognize ten types⁸⁷ of differentiated integration (Table 5.2). Each type differentiates from all the others by at least one criterion, while sharing some other criteria. Nevertheless, even so, they do not cover all possible combinations of differentiated integration (Holzinger and Schimmelfennig 2012, p. 298).

Table 5.2. Overview of types of differentiated integration proposed by Holzinger and Schimmelfennig (2012)

Dimension										
1	Temporary	Permanent								
2	Territorial									Functional
3	Differentiation at nation-state level							Multi-level differentiation		
4	Only inside EU treaties				Also outside EU treaties			Only inside	Also outside EU treaties	
5	EU decision-making						Club decision-making (intergovernmental)			
6	Only member states			Also non-members	Only members	Also non-member states		Only members	Also jurisdictions outside EU	
	1	2	3	4	5	6	7	8	9	10
Models	Multiple Speed	Multiple Standards	Avantgarde Europe	Core Europe, Concentric Circles	Flexible Integration	Variable Geometry	Europe à la carte	Optimal Level of Jurisdiction	Flexible Co-operation	FOCJ
Examples	Many in secondary law	In secondary law, e.g. environmental policy	EMU, basic rights charta	EMU; EEA, associated states	Enhanced Co-operation, Bologna (at the start)	Schengen	Bologna	Competence allocation in Lisbon Treaty	EUREGIOS	No example
References	Grabitz (1984); Stubb (1996, 2002)	Scharpf (1999)	Club von Florenz (1996)	Schäuble and Lamers (1994)	Centre for Economic Policy Research (1995)	Stubb (1996)	Dahrendorf (1979)	Fischer and Schley (1999)	Holzinger (2001)	Frey and Eichenberger (1996, 1997)

Source: Holzinger and Schimmelfennig 2012, p. 298.

Holzinger and Schimmelfennig's typology is clearer and more exhaustive compared to that proposed by Stubb. Nevertheless, this is also not exempt from critics. As underlined by Brunazzo (2017), some types, such as that of the *Functional Overlapping Competing Jurisdictions* (FOCJ), lack examples. Furthermore, some types of differentiation are still not foreseen by the typology. The case of a Member State that decides to opt out from the EU and that can be considered as a type of permanent differentiation (Brunazzo 2017), is the most striking example. Additionally, different types of differentiation can be present in the same public policy such as the European Monetary Union (EMU) that can be

⁸⁷ They labelled the differentiated integration types as models of differentiated integration.

considered as an *Avantgarde Europe* as well as a *Core Europe* (ibidem). Finally, this typology, although more specific compared to that by Stubb, it is clearly «*more complicated, oversized and redundant*» (ibidem, 17).

A further typology is that proposed by Tekin and Wessels (2008), who employed six categories (Table 5.3): *Core Europe* (Member States willing to integrate more, do decide to pursue their goals); *Directoire* (a kind of intergovernmental cooperation among few Member States on some policies); *Variable geometry* (the same as argued by Stubb, see again Table 5.1); *À-la-carte Europe* (as well, see again Table 5.1); *Treaty-based flexibility* (a kind of flexibility pre-defined by the treaties or a case-by-case differentiation); *Withdrawal by a single Member State* (that refers to the opt out of an EU Member State such as the case of the UK in 2017) (Brunazzo 2017; Tekin and Wessels 2008; Faber and Wessels 2006).

Table 5.3. *Typology of Differentiated Integration proposed by Tekin and Wessels (2008).*

Type of differentiation	Definition	Examples
Core Europe (Avantgarde)	Functional and/or constitutional deepening by a group of “willing” and “able” MSs to attract others to follow	Political and monetary union
Variable geometry	Sectoral integration of different groups of MSs with opt-outs accepting that not all Member States might join the fully integrated group	EU3/EU5 coalitions
Directoire	Intergovernmental cooperation between a few large MSs (EU3, EU5) excluding smaller States by definition	Opt-out of Great Britain and Denmark from the EMU
<i>À-la-carte</i> Europe	Ad hoc groups of interested States engaged in limited functional or sectoral cooperation outside the TEU framework	Agreements with Norway, Switzerland and Island
Treaty-based flexibility	Pre-definite flexibility; Case-by-case flexibility; enabling clauses;	Forced cooperation on the divorce between spouses of different nationalities.
Withdrawal by single Member States	Complete opt out of one or more MSs	Brexit

Source: own elaboration on Tekin and Wessels (2008) and Brunazzo (2017).

The possible differentiated integration process has been tackled by different scholars. In the following, two studies on differentiated integration in migration and asylum policy will be in-depth scrutinized.

Monar (2010) studied the opting in and opting out from the Area of Freedom, Security, and Justice (AFSJ)⁸⁸. This area is very complex since it covers six distinct fields of policy making: asylum, immigration, border controls, judicial cooperation

⁸⁸ The Area of Freedom, Security and Justice (AFSJ) is a collection of home affairs and justice policies established by the EU in order to ensure security, rights and free movement within the European Union.

in civil matters, police cooperation, and judicial cooperation in criminal matter. The author investigates the possible differentiation in the AFSJ area by employing official sources. He found that three EU Member States opted out from the AFSJ on the basis of the Protocols⁸⁹ annexed to the EU and EC Treaties: Denmark, Ireland, and the United Kingdom. These Protocols entitles these countries with special derogations, which allow their opting in or out from this area.

Adler-Nissen (2009) explored the opts out of Denmark and the United Kingdom in the Justice and Home Affairs (JHA)⁹⁰. The author employed 57 in-depth interviews with national representatives and officials from the European Commission and the Council of Ministers, official materials and documents from the negotiation process in order to argue that even if these Member States formally opted out from the JHA, they are not necessarily excluded from the decision making process. She demonstrated that even if a differentiation process is ongoing in JHA for the two analyzed countries, the *«British and Danish representatives participate in the shaping of new EU legislation even in politically sensitive policy areas covered by their JHA opt-outs»* (ibidem, p. 76). This is possible because, differently to, for example, the EMU and the Eurogroup, the division among opted-in and opted-out countries are more blurred in JHA where, for instance, *«the UK can be a pace-setting country on initiatives against illegal immigration while remaining a quasi-outsider in Schengen»* (ibidem, p. 76). The author also added some interviews in order to argue that even if some countries are outliers (specifically Denmark and the UK), they however participate in the decision-making process.

Thus, as these two studies explained, it seems that the differentiated integration is present also in the immigration and asylum policy area. Hence, in the following, it will be in-depth scrutinized if there is evidence for a differentiated integration in a subset of legislative instrument of the CEAS.

⁸⁹ Protocol No. 22 On the Position of Denmark and Protocol No. 21 On the Position of The United Kingdom and Ireland.

⁹⁰ The Justice and Home Affairs Area (JHA) is one of the configurations of the Council of the European Union. His tasks refer to different legislations including free movement of persons, asylum and immigration. It was the original name of the third pillar of the European Union.

5.2 Differentiated integration's research questions

In order to address the specific research question of this chapter, namely:

Diff. Int. RQ1: is a differentiated integration present in the EU asylum policy?

The analysis will focus on a subset of legislative instruments implemented under the CEAS.

The above-described attempts to analyze the differentiated integration in asylum policy, employed official sources to understand who opted out from the agreements in asylum matters. Here, the same Protocols annexed to the EU and EC Treaties employed by Monar (2010) will be used to assess the differentiated integration in a subset of legislative instruments implemented under the CEAS. This subset of policy instruments consists of some of the core tools directly stemming from the CEAS, plus some not-purely-CEAS instruments (which however are strictly related to the asylum framework as well).

Just to recall them, the tools directly related to the CEAS are: the Temporary Protection Directive, the Dublin II Regulation, the Eurodac Regulation, the Reception Condition Directive (RCD), the Asylum Procedures Directive (APD), the Qualification Directive (QD), the Dublin III Regulation, the Eurodac Regulation (recast⁹¹), the Reception Condition Directive (recast) (RCD-recast), the Asylum Procedure Directive (recast) (APD-recast) and the Qualification Directive (recast) (QD-recast) (Table 5.4).

The further set of secondary legislation instruments – not directly implemented under the CEAS framework, but strictly related to the European asylum framework – comprises instead: the Family Reunification Directive, the Long-Term Residents Directive, and the Returns Directive.⁹² This additional subset of legislative

⁹¹ The recasting of legislation means the adoption of a new legal act, when an amendment is made to a basic instrument.

⁹² These three legislative instruments have been employed even if they are part of the common immigration policy of the European Union and not strictly of the asylum policy. The EU asylum policy area is closely connected to the EU immigration policy which has important implications related to the residence rights and to the benefits of the refugees and of the beneficiaries of subsidiary protection (EASO 2016).

instruments has been chosen by referring to the European Asylum Support Office EASO (2016) that denoted these as the most important secondary legislation approved under the CEAS, although not approved directly under it. Indeed, the EASO analyzes them as instruments that helped to build the European Asylum System.

Official sources, namely the TEC, the TFEU, and Protocol No 21 and 22 of the TFEU, have been employed to assess this.

Table 5.4. Subset of legislative instruments employed in the analysis.

	Secondary Legislation Instruments
CEAS	Temporary Protection Directive
	Dublin II Regulation
	Eurodac Regulation
	RCD
	APD
	QD
	Dublin III Regulation
	Eurodac Regulation (recast)
	RCD (recast)
	APD (recast)
	QD (recast)
Non CEAS	Family Reunification Directive
	Long-Term Residents Directive
	Returns Directive

Source: own elaboration on EASO 2016, table p. 19.

Furthermore, this chapter tries to understand if this kind of differentiation fits in one of the three types described by Stubb (1996). These types will help us to understand if the possible differentiation is permanent or temporary, and if there is a differentiation based on time, space, or matter. For this goal, the three types – namely the Multi-Speed Europe, the Variable Geometry, and the À-la-Carte Europe – will be our starting point.

Hence, the second research question addressed in this chapter is:

Diff. Int. RQ2: Are there evidences for Multi-Speed Europe, Variable Geometry, or À-la-Carte Europe in the EU asylum policy?

To recall, Stubb developed his typology on the basis of three different variables: Multi-Speed refers to the time, Variable Geometry to space, À-la-Carte to matter. In particular, the Multi-Speed Europe refers to a differentiated integration type in which a set of common aims are pursued by a group of Member States – which are able to do it and want to integrate to a particular policy – by forecasting that the other Member States will follow them in the future (Stubb 1996). Hence, the Member States maintain a common objective (the integration) but they are willing to do it at different times. Furthermore, the Multi-Speed Europe is a non-permanent type of differentiation (Brunazzo 2017). The variable geometry, on the contrary, admits unsurmountable differences within the integrative structure among the Member States thus allowing permanent and irreversible differentiation between countries, those more developed and integrated and those less (Stubb 1996). Hence, in this case, the variable geometry assumes that a permanent and irreversible differentiation among the States will be in act (Brunazzo 2017). The last type of differentiated integration is À-la-carte or pick-and-choose Europe. This type allows each Member State to choose – as from a menu – in which policy area it wants to participate (Stubb 1996). This type of integration is based on the idea that there is no final integration goal, which all Member States have to comply with. In this type, the countries decide their degree of integration by reckoning different strategic calculations (Brunazzo 2017).

Despite the critics, as discussed in section 5.1, the Stubb's typology seems to be the most appropriate for our aims, in particular in order to understand if a differentiated integration process in asylum policy is ongoing and of what type.

The analysis of differentiated integration, as originally conceived by Stubb, is usually performed by comparing several countries and by taking into consideration several and different policy areas. Here the analysis will instead focus on a single policy area – the asylum policy – and in particular to a subset of secondary legislation instruments implemented. The main principles of Stubb's typology will be employed by applying them to the specific asylum context, in order to shed light on the kind of integration performed by the MSs in this policy area.












































5.3 Who opts out? Differentiated integration for Denmark, Ireland, and the United Kingdom

The CEAS has been approved by 25 countries out of the 28 EU Member States. The three European countries that decided to opt out – completely or partially – are Denmark, Ireland, and the United Kingdom⁹³.

In order to precisely assess the possible differentiated integration, the analysis has been restricted to a subset of the CEAS' secondary legislation instruments⁹⁴.

On this legislative subset, Denmark, Ireland, and the UK opted differently, as showed in Table 5.5.

Table 5.5. Opt-in and opt-out of Denmark, Ireland, and the United Kingdom in the considered subsets of secondary legislation instruments in CEAS (plus related instruments).

		Denmark	Ireland	United Kingdom
CEAS	Temporary Protection Directive		 → 	
	Dublin II Regulation			
	Eurodac Regulation			
	RCD			
	APD			
	QD			
	Dublin III Regulation			
	Eurodac Regulation (recast)			
	RCD (recast)			
	APD (recast)			
	QD (recast)			
Not CEAS	Family Reunification Directive			
	Long-Term Residents Directive			
	Returns Directive			

Source: own elaboration on EASO 2016 table p. 19.

Denmark, Ireland, and the United Kingdom are entitled to various opt-outs from the border control, asylum policy, police and judicial cooperation provisions that are part of the Area of Freedom, Security and Justice (AFSJ). If Denmark fully

⁹³ It is worth remembering that UK is considered since the time span investigated by the thesis is the 2008-2017, thus still including UK as a MS.

⁹⁴ See Table 5.4.

opted out from all the legislation on AFSJ, Ireland and the UK participate in a mixed way. Denmark's full opting out, also includes asylum policy, which is part of the AFSJ. Hence, this country was (and is) not obliged to implement those Treaties' provisions or any other secondary legislation relating to the CEAS (EASO 2016). Ireland and the UK, on the contrary, accepted to join several provisions under the AFSJ such as the Temporary Protection Directive, the Dublin II Regulation, the Eurodac Regulation, the APD, the QD, and the Dublin III Regulation. The United Kingdom also opted in the RCD and the Eurodac Regulation (recast). Thus, these countries are not bound by all other instruments adopted pursuant to the Area of Freedom, Security and Justice, but they can decide to opt into an instrument if and when they decide to (EASO 2016). Ireland, for example, originally decided to opt out of the original Temporary Protection Directive and the Reception Condition Directive. Nevertheless, later, it decided to opt in as for the Temporary Protection Directive, thus becoming bound by its provisions according to the Commission Decision 2003/690/EC⁹⁵ (first row in table 5).

However, the non-participation of Denmark, Ireland, and the UK differs in terms of their motivation for derogation in the Freedom, Security, and Justice area (Tekin 2011).

The United Kingdom and Ireland opted out consistently with their unwillingness, or inability, to completely eliminate the internal borders within the European Union⁹⁶; while Denmark decided to opt out because of its concern about the supranational policy making in this sensitive area⁹⁷ (Saccomando 1994, Sion-Tzidkiyahu 2008, Adler-Nissen and Gammeltoft-Hansen 2010, Tekin 2011).

To recap, three countries out of the 28 EU Member States decided to not participate in the secondary legislation instruments object of our analysis. Denmark decided to opt out of all these instruments, while Ireland and the United Kingdom opted in

⁹⁵ It is the Commission Decision of 2 October 2003 on the request by Ireland to accept the Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

⁹⁶ For instance, they are not part of the Schengen Area.

⁹⁷ For example, Saccomando (1994) found three reasons why Denmark is reluctant to accept the EU provisions. The first one refers to the fact that Denmark could lose its identity in a unified Europe because of its small size. The second one is related to the first and refers to the possibility that the country will be swallowed up by its neighbor: Germany. The author explained that a historic fear and animosity toward Germany is well-known. The last concern of Denmark is that the EU could undermine its social welfare system and its standard of living (ibidem).

only partially. Hence, it is possible to answer the first Diff. Int. RQ1 by arguing that a differentiated integration process is present in the analyzed legislative instruments, with countries that completely (Denmark) or partially (Ireland and the UK) opted out.

In order to answer Diff. Int. RQ2, it will be now descriptively analyzed if this evidence of differentiated integration corresponds to one of the three types proposed by Stubb (1996). This will be pursued by taking into account the full (Denmark) or partial (Ireland and the UK) opt-out options.

Multi-Speed Europe, refers to time, in particular, it detects if a core group of Member States pushes integration further, and a set of countries follows them later. Despite one of Denmark's priorities, when it joined the EU, was to build a safe Europe in which common asylum policy's guidelines and measures to combat terrorism and cross-border crime were included, this country did not participate in any of these initiatives (Adler-Nissen 2014). Some dispositions in the Treaty on the Functioning of the European Union (TFEU) explicitly refer to Denmark, opening up to the possibility that this country may decide to opt in certain measures. Protocol No. 22⁹⁸ of the TFUE, in fact, explains that despite the EU will limit the participation of Denmark and its cooperation with the other Member States in the Justice and Home Affairs Policy Area, in the same Protocol, it is noted that the EU is «*wishing (emphasis added) therefore to establish a legal framework that will provide an option for Denmark to participate in the adoption of measures proposed on the basis of Title V of Part Three of the Treaty on the Functioning of the European Union and welcoming the intention of Denmark to avail itself of this option when possible in accordance with its constitutional requirements*» (Protocol No. 22, TFUE, 2012, p. 326/299). Furthermore, also in Article 4 of the Annex, it is noted that Denmark can communicate, at any time after the adoption of a measure by the part of the EU, its intention to the European Council and the European Commission to accept that measure. In a nutshell, the TFUE gives dispositions on the possibility for Denmark to follow the other Member States in the current Freedom, Security and Justice area.

⁹⁸ Protocol No. 22 On the Position of Denmark.

The situation of Ireland and the United Kingdom is different since these countries already partially adopted some of the legislative instruments employed in the analysis. Nevertheless, they are not obliged to take part in all the policies enacted in the Justice and Home Affairs policy area, since they have some derogations. Article 3 of the Protocol No. 21⁹⁹ of the TFEU states that each of the two countries may notify to the President of the European Council in writing, within three months after that a proposal or initiative has been presented to the Council, that it wishes to take part in the adoption and application of the proposed measure. Furthermore, analogously to Denmark, Article 4 of the Protocol specifies that each of the two Member States may manifest, at any time after the adoption of a measure, its intention to the European Council and to the European Commission to adopt that measure. This was the case recalled before, when Ireland first opted out of the Temporary Protection Directive, but then it decided to opt in a few years later.

Against this background, which conclusion can be drawn on the Multi-Speed differentiated integration, by looking at the opting out countries in this policy area? It seems that in all three cases, the TFEU gives dispositions – respectively with the Protocol No. 22, Article 4 for Denmark and with the Protocol No. 21, Article 3 and Article 4 for Ireland and the United Kingdom – to the Member States to decide to opt in if they choose to apply to such a measure.

Hence, the condition argued by Stubb (1996) about a group of Member States that desire to go faster in the integration – and so to proceed with the implementation of a policy – and the assumption (or at least the hope) that other EU countries will follow them later, seems to be satisfied. A Multi-Speed type of differentiated integration seems therefore to be present in the policy sub-sector we are considering.

If the variable driving the Multi-Speed Europe is time, Variable Geometry depends instead on the geographical space. This type of differentiated integration does not admit that some countries will follow the more integrated ones in the future, but implies a sort of fixed, permanent, and irreversible separation between the opt-out and the opt-in countries (Stubb 1996).

⁹⁹ Protocol No. 21 On the Position of The United Kingdom and Ireland.

There is a strong agreement among scholars that in the field of migration and asylum, the variable geometry method of differentiated integration fits most (Stubb 1996, Tekin 2011, Favilli 2018). Favilli (2018) argued that this would be the EU differentiated integration's type in the asylum policy area, where some countries (notably Denmark, Ireland, and the United Kingdom) are not bound by EU norms (at least not to the whole spectrum of the EU legislation on asylum) and another group of non-EU States participates to this policy area (namely Island, Liechtenstein, Norway, and Switzerland). Following this interpretation, Tekin (2011) stated that «*the opt outs of Denmark, Ireland and the UK [in the field of Justice and Home Affairs] form part of a broader set of variable geometries*» (Tekin 2011, p. 208).

Even Stubb (1996), contradicting its own definition, argued that the third pillar of Justice and Home Affairs (JHA) can be considered a good example of variable geometry, in which a group of Member States pursues a deeper integration than others¹⁰⁰ (Stubb 1996).

A differentiated integration by space is evident since three different countries opted out from the analyzed legislative instrument but, following the Protocols No. 21 and No. 22 – on the Positions of Ireland and the UK, and Denmark, respectively – and strictly applying Stubb's category, it is arguable that no variable geometry type of integration is present, since the opt-out countries may decide to opt into a legislative instrument at any time. In this sense, the condition stated by Stubb (1996) related to the «*permanent or irreversible separation between a core of countries and lesser developed integrative units*» (Stubb 1996, p. 287) would not be satisfied. In fact, as argued above, articles 3 and 4 of the Protocols leave an open door in this field for the three countries that opted out of the legislative instruments. Hence, it is not possible to talk about variable geometry differentiated integration, although a differentiation by space on the basis of the legislative instruments analyzed is present.

The last type of differentiated integration proposed by Stubb (1996) is the *À-la-carte* Europe, based on the matter. This type presumes that each country can decide

¹⁰⁰ Stubb argued that the differentiation in migration and asylum fits in the variable geometry. Nevertheless, his argument dates back to 1996, when dispositions on the possibility to opt in the asylum policy area for the EU Member States did not exist yet (see Protocol No. 21 and Protocol No. 22 of the TFEU).

to join in a policy regime in which it is interested (Holzinger and Schimmelfennig 2012) and refuse others, thus allowing a flexible integration on the basis of the policy area (Koenig 2015). In a few words, the countries may decide to adhere to certain policies and to refuse others, according to different strategic calculations (Brunazzo 2017).

The cases of Ireland and the United Kingdom perfectly fit into this type of differentiated integration. In fact, they opted only into that set of instruments, which they were interested in: Ireland to 6 out of 14 in the Asylum policy¹⁰¹; the UK to the same instruments as Ireland plus the Reception Condition Directive and the Eurodac Regulation (recast) (EASO 2016) (8 out of 14).

Denmark, on the contrary, opted out completely. As said, it can decide to opt in at any time, but that has not happened yet. Therefore, Denmark does not follow the *À-la-carte* Europe type in asylum policy. Nevertheless, if it will decide to opt in, even to just one legislative instrument proposed in Table 5.1, this country will then fit it.

To sum up, and in order to answer Diff. Int. RQ2, the analysis of the asylum policy – by taking into account a subset of CEAS, related provisions, and by applying the Stubb typology – showed a mixed picture (as displayed in Table 5.6). If in fact, for the Multi-Speed type of differentiated integration all the opt-out countries seem to fit, for the Variable Geometry and the *À-la-Carte* Europe types the situation is much more puzzled. In the Variable Geometry type, no country is fitting, while for the last model only Ireland and the UK are fitting.

¹⁰¹ Just to recall (see Table 5.1 again), Ireland opted only into the Temporary Protection Directive, to the Dublin Regulation II, to the Eurodac Regulation, to the Asylum Procedure Directive, to the Qualification Directive and to the Dublin Regulation III.

Table 5.6. Differentiated integration types for the opting out countries in asylum policy (CEAS and related legislative instruments).

	Multi-Speed Europe	Variable Geometry	À-la-Carte Europe
Denmark	✓	✗	✗
Ireland	✓	✗	✓
United Kingdom	✓	✗	✓

Source: own elaboration.

5.4 Conclusion: Differentiation in asylum policy integration. Is the differentiated integration the reasons for the lack of Intended Europeanization?

This chapter aimed at exploring first, if in the EU asylum policy area, a differentiated integration process is present, and secondly if this differentiation could fit in one of the Stubb's types of differentiated integration.

The analysis has been conducted by taking into account the 28 EU Member States and a subset of secondary legislative instruments by employing official sources. The result is that differentiated integration is present as far as the asylum policy area is concerned. Hence, it is plausible to answer positively to the first research question (Diff. Int RQ1).

Furthermore, in order to answer the second research question (Diff. Int. RQ2), as showed in Table 5.6, there are many types of differentiated integration in the asylum policy. In fact, if the Multi-Speed type is fitting for the three opt-out countries and no variable geometry is showed, there is evidence for *À-la-Carte* Europe only for Ireland and the UK because Denmark decided to completely opted out to all the CEAS subset.

Three main conclusive remarks may be raised.

First, a single type of differentiated integration does not entirely cover or exhaustively describe the asylum policy area. Indeed, more types often overlap each other. It is difficult to think that in a fluid context – such as that of a European

Union, which in 60 years provided six enlargements and some more developments (both widening or restricting the membership) are not unlikely to happen – the asylum policy could be squeezed into a static type. It is instead more plausible to argue that in such a sensitive policy area, much can change at any time in order to respond e.g. to massive fluxes of asylum seekers, or to domestic electoral needs, or to new domestic EU policy orientations. Overlapping among the differentiated integration types thus seems to be physiological in such a European scenario.

Secondly, and consequently, the differentiated integration types seem to be neither definite nor definitive: they are instead fluid and interchangeable. The currently opting out countries, having the possibility to opt in, could change their stances in the future, and consequently, modify the type of differentiated integration that best describes this policy area. Just to make an example, if Denmark, now fitting in a Multi-Speed Europe type, would decide to opt into a certain asylum legislative instrument, it could fit in both the Multi-Speed Europe and the *À-la-Carte* Europe. Furthermore, all types could be infringed at any time, should the three opting-out countries decide to comply opt into the whole legislative subset. In this case, no differentiated integration will be present.

Thirdly, merely with the opting out of three countries only, already a picture of flexible and undefined types is present. Should the condition realize where more countries decide to opt out, the differentiated integration picture could complicate even more. This could be true even if a single country would not comply with the EU legislative instruments (or part of them), constant shifts and overlaps are probably the usual conditions in the contemporary EU.

Hence, having assessed that the differentiated integration is present in a subset of legislative instruments concerning the CEAS, is it plausible to think that this differentiation could be one of the reasons for the lack of Intended Europeanization in the asylum policy area?

Since the countries entitled to the derogation rights are Denmark, Ireland, and the UK, it is plausible to think that the asylum recognition rates should increase (and therefore, show evidence for a race to the bottom¹⁰²) and should be dispersed for

¹⁰² See Chapter 3 and Chapter 4.

these countries only. Nevertheless, as seen in Chapter 4¹⁰³ the asylum recognition rates are dispersed and increased not only for the opted-out countries but in all the EU. Hence, though evidence for a differentiated integration in this policy area is detectable, this cannot be considered a reason influencing the lack of Intended Europeanization described in Chapter 4.

In the next chapter, it will be searched if there is evidence instead for a *Differentiated Implementation* as a possible cause for the lack of Intended Europeanization. In particular, it will be assessed if 16 countries differently implemented three EU pivotal Directives concerning the asylum policy area.

¹⁰³ Chapter 4, Table 2 and Figure 1.

CHAPTER 6

Differentiated Implementation in the EU asylum policy: leaders and laggards in a set of EU directives transposition

*«Improving the quality of our lives should be the ultimate target of public policies.
But public policies can only deliver best fruit if they are based on reliable tools
to measure the improvement, they seek to produce in our lives»*

José Ángel Gurriá Treviño

This chapter aims at assessing a further possible determinant for the lack of Intended Europeanization that resulted from the analysis described in Chapter 4. This further possible determinant could be what will be here defined Differentiated Implementation.

As seen in the previous chapter, differentiated integration (that in the flowchart has been defined as determinant A) does not fully explain the lack of Intended Europeanization. Denmark, Ireland, and the UK were in fact entitled to some derogation rights in asylum policy and, therefore, they decided to opt out of certain legislative instruments in this policy area, thus showing evidence for a differentiated integration. It was expected, therefore, that if the differentiated integration played a fundamental role in the lack of Intended Europeanization, the differentiation should be present only for the three opt-out countries.

On the contrary, it has been shown that the asylum recognition rates increased, and are dispersed, in all the analyzed countries and not only for the three opt-out Member States. Thus, the differentiated integration does not completely explain the lack of Intended Europeanization of asylum policy.

This chapter, following the flow chart presented in the introduction, analyzes the possible determinant B for the lack of Intended Europeanization, namely the Differentiated Implementation¹⁰⁴.

¹⁰⁴ In this work, the words implementation and transposition coincide since for implementation it is meant here the transposition of an EU directive.

The EU directives, differently to the EU regulations, are not directly applicable to the Member States but they need the domestic transposition to be in force in a MS (Acosta Arcarazo and Geddes 2013).

Therefore, Differentiated Implementation is a concept employed to identify the differentiation in the transposition of an EU directive by the part of the MSs.

Thus, the condition to be satisfied to talk about Differentiated Implementation is that the countries transposed in a differentiated way a set of EU directives.

This concept is not usually employed by scholars to define this differentiated transposition and it is a novelty in this domain. Being new, it is useful to clarify that this concept does not refer to the implementation of public policies, but it concerns the differentiated transposition of an EU directive only.

This approach seems particularly appropriate in this work for two interrelated reasons: as said, differently to the EU regulation, the EU directives need the transposition into domestic law to enter into force. Thus, it is possible that some country may not completely comply with such a directive when transposing it into domestic law.

The second reason refers to the amount of the discretion granted to a Member State when transposing an EU directive. «*Discretion refers to the room for manoeuvre member states are given in the directives they are charged with implementing*» (Arregui, Thomson and Torenviled 2007, p. 688). In cases of the EU directives the discretion is wide, hence the Member States can comply with a certain directive by not making substantial change in its politics and culture. Therefore, it is plausible that a differentiation in the transposition of a certain directive may be effectively present.

Following these premises, it will be scrutinized to what extent EU countries differently implemented three legislative instruments of the CEAS in order to detect the Differentiated Implementation (if any).

Despite the concept of Differentiated Implementation is not employed as such in the scientific literature to identify the domestic transposition of an EU directive, different other concepts and labels present important similarities. In particular, about the concepts of “leaders and laggards” in policy making (Arndt, Heichel and

Knill 2011; Börzel 2000), of harmonization (Consterdine 2019) and of a general approach of non-compliance (Börzel 2000) are reasonably to be considered as previous studies on Differentiated Implementation.

In this work, the transposition of three EU Directives aiming at harmonizing the asylum policy area – namely the Asylum Procedure Directive (recast), the Reception Condition Directive (recast), and the Qualification Directive (recast)¹⁰⁵ by the part of the Member States, will be in-depth scrutinized. The analysis has been conducted to understand if the MSs transposed these directives in a differentiated way or not and thus, if evidence for Differentiated Implementation could be found.

To recall the steps thus far: since no evidence for an Intended Europeanization in asylum policy in 2008-2017 has been found through the analysis of the differentiated integration, in Chapter 4 it has been argued that the CEAS – the main policy instrument of Intended Europeanization in asylum matters – has not reached its goal.

Now, this chapter aims at verifying an alternative and complementary explanation for the lacking Europeanization, namely that of a Differentiated Implementation possible determinant B) In particular, it will be explored the accuracy in the implementation of this set of directives' requirements to verify if such an explanation holds.

To do that, An *ad-hoc* rank will be created to this purpose: the higher the position of a country in the rank, the higher the level of its compliance with the directives' requirements; vice versa, the lower the position, the lower the accuracy in the implementation of the directives.

On the basis of their scores, two clusters of countries will be created (leaders and laggards) and they will be compared to other clusters created on the basis of other variables (economic, geographical, and political) in order to understand if the Differentiated Implementation of these directives may be explained by other characteristics.

¹⁰⁵ For the sake of straightforwardness these will be labelled as “revisited directives” or just “directives”.

Furthermore, by employing again the typology proposed by Stubb (1996), this chapter aims also at assessing if these types may be useful to describe also the Differentiated Implementation, if any, in the EU asylum policy after having assessed the differentiated integration through them in Chapter 5.

The chapter is structured as follows: first, a literature review on the past attempts of measurement of Differentiated Implementation will be presented (section 6.1); subsequently, the main research questions, will be exposed (section 6.2); the analysis and the rank created in section 6.3 and the clusterization in section 6.4; the following part will be devoted to Stubb's typology (section 6.5); finally the conclusion will be drawn (section 6.6).

6.1 Leaders and laggards. Examples of Differentiated Implementation in environmental and asylum policy

Some analyses have indirectly dealt with aspects very close to the Differentiated Implementation and may be considered as the first measurement attempts of this phenomenon.

For instance, Börzel (2000) and Arndt, Heichel, and Knill (2011) studied the legislative instruments' implementation of some countries in environmental policy. Analogously, Consterdine (2019) studied the legislative tools' implementation.

Börzel (2000) studied the compliance of two EU Member States (Germany and Spain) in environmental policy. The author aimed at testing if the bad reputation of Southern EU Member States of being laggards held true by referring to five environmental EU Directives, namely: the Drinking Water Directive¹⁰⁶, The Directive on the Combating of Air Pollution of Industrial Plants¹⁰⁷, the Large Combustion Plant Directive¹⁰⁸, the Access to Environmental Information

¹⁰⁶ Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption.

¹⁰⁷ Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants.

¹⁰⁸ Council Directive 88/609/EEC of 24 November 1988 on the limitation of emissions of certain pollutants into the air from large combustion plants.

Directive¹⁰⁹ and the Environmental Impact Assessment Directive¹¹⁰. She tested Spain's and Germany's compliance with these five EU directives by analyzing their legal domestic transposition and considered as compliant a country when four conditions are respected: 1) a certain directive was completely and correctly transposed into domestic law, 2) a national law was modified or repelled when contrasting an EU directive, 3) resources and administrative infrastructures were provided in order to put these directives into practice, and 4) the competent authorities encouraged other policy makers to comply with the new directive by monitoring the transposition. The author thus, analyzed the domestic transposition by employing legal sources and by testing if the above-mentioned four conditions were respected.

The findings demonstrated that both Germany and Spain were reluctant to introduce the legal change to ensure the correct transposition. Compliance only improved when domestic actors encouraged internal pressure for adaptation on public authorities and policy makers.

In sum, evidence for a Differentiated Implementation emerged: the author argued that Germany had a better compliance record than Spain, which registered a persistent non-compliance. Nevertheless, this discrepancy was not considered due to the incapacity of Spain to effectively implement EU directives, but to the fact that those countries having less power and less advanced environmental policies, such as the southern EU Member States, are more likely to face policy misfits than the northern ones, which often have merely to upgrade their already advanced policies.

Although employing the same approach used in this thesis, this first example of measurement of Differentiated Implementation did not aim at quantifying the Differentiated Implementation among States but mainly at assessing if the Mediterranean syndrome (La Spina and Sciortino 1993) held true in environmental policy.

¹⁰⁹ Adopted in 1993 it will broaden public access to environmental information in order to increase transparency and openness (Börzel 2000).

¹¹⁰ EIA Directive 85/337/EEC assesses the potential impact of certain public and private projects on the environment.

The subsequent measurement attempt, instead, similarly to what will be here presented in the following, aimed at assessing which are the laggards and the leaders' countries in environmental matters by creating a rank. Arndt, Heichel, and Knill (2011) created a rank according to the countries' ambition to protect the environment with policy measures. In particular, they determined environmental leaders and laggards in terms of policy performances. This research has been conducted by comparing 24 countries¹¹¹ across three decades. The authors employed the ENVIPOCON¹¹² dataset to define each country score. In particular, they focused on 21 policy developments since 1970 until 2000 and, by using the dataset, studied the effective implementation of this set of policies (Table 6.1).

¹¹¹ In alphabetic order: Austria, Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Switzerland, United Kingdom and United States of America.

¹¹² Environmental governance in Europe. The impact of international institutions and trade on policy convergence. The project was founded in 2003 by the European Union's program "Improving the human research potential and the socioeconomic knowledge base".

Table 6.1. Ranking for each year (1970-2000) for 24 countries in environmental policy

Rank	Country	Classification
1	Germany	Top leader
2	Austria	
3	Switzerland	
4	Italy	Leader
5	Hungary	
6	Belgium	
7	France	
8	Netherlands	Upper Midfielder
9	Sweden	
10	United Kingdom	
11	Japan	
12	Spain	
13	Norway	Lower Midfielder
14	Slovakia	
15	Finland	
16	Portugal	
17	Denmark	
18	Ireland	Laggard
19	Bulgaria	
20	Romania	
21	USA	
22	Greece	Absolute laggard
23	Poland	
24	Mexico	

Source: own elaboration on Arndt, Heichel and Knill (2011), p. 8.

Both EU and non-EU countries have been selected for this analysis. The authors found that many countries, commonly assigned with a leader role in environmental protection, turned out instead to be laggards. Analogously, some countries commonly considered as underperforming were positioned quite high in the policy performance rankings (Table 6.1). Also for this second study, it is possible to argue that there is evidence for Differentiated Implementation: some “top leader”

countries (Germany, Austria, and Switzerland) accurately implemented the policies, while the “absolute laggards” (Greece, Poland, and Mexico) did not follow the policy guidelines when implemented their national policy.

The last measurement attempt considered here, is the one proposed by Consterdine (2019). The author aimed at mapping the current state of the CEAS transposition in some EU Member States to understand if it led to convergence and harmonization in the EU¹¹³ asylum policy. In order to proceed with the analysis, the author identified three directives – the Asylum Procedures Directive (recast), the Reception Conditions Directive (recast) and the Qualification Directive (recast) – and one regulation – the Dublin Regulation III. She found 19 indicators to analyze the Member States compliance with them. She compared the EU instruments with the effective domestic legal transposition in order to found similarities and differences (if any). The author demonstrated that the selected countries have overall successfully complied with the EU requirements. Nevertheless, there is evidence for Differentiated Implementation since during the transposition in domestic legislation, some significant difficulties are to be found and a wide variation on asylum procedures, reception conditions and Dublin appeals has been detected.

Even if these measurement attempts are very different (in terms of goals, policy sector, countries, indicators) from the analysis in this chapter, they are extremely useful for our rank. The analysis proposed in section 6.3 is indeed a mix of these past attempts and the rank by Arndt, Heichel, and Knill (2011) and many Consterdine’s (2019) indicators have been employed.

6.2 Differentiated Implementation’s Research Questions

This paragraph displays a summary of the research questions, lists the countries that will be part of the analysis, describes the data and the indicators employed, as well

¹¹³ The Consterdine’s study refers to 20 EU Member States namely in alphabetic order: Austria, Belgium, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Spain, Sweden and the United Kingdom.

as the measurements and the criteria employed for computing and deriving the score ratio, the rank, and finally the clustering.¹¹⁴

Since this section has different interrogatives, the research question has been split into four steps.

The first refers to the effective existence of a Differentiated Implementation in the EU Member States in the revisited directives:

Diff. Impl. RQ1: Is there evidence for a Differentiated Implementation in 16 EU Member States in the domestic transposition of the revisited directives?

Diff. Impl. RQ1 is the core of this chapter since it aims at assessing if 16 countries implemented three pivotal directives of the CEAS in a differentiated way. Should it be the case, then, Differentiated Implementation is likely to play a role in the lack of Intended Europeanization in asylum policy.

Once assessed if a Differentiated Implementation is present (or not), a more accurate analysis will be devoted to examine such a differentiation by identifying leaders and laggards in the transposition of the considered directives.

Thus, the second research question sounds like follows:

Diff. Impl. RQ2: Which are the leaders and the laggards in the transposition of the revisited directives?

The third step refers to the possible identification of clusters of countries that present similar political, geographic, and economic¹¹⁵ features and that have similar behaviors in the transposition of the revisited directives. Some indicators such as *the GDP per capita, the Government party in charge, and the geographic position on the map of the countries* will be considered. Thus, the third research question is:

¹¹⁴ For a complete description of the methodological choices, see Chapter 3.

¹¹⁵ These features are represented by the GDP per capita in 2017, the Government party in charge in 2017, and the effectively geographic position in the European map.

Diff. Impl. RQ3: *Is it possible that the Differentiated Implementation of the revisited directives may be explained by economic, political or geographical factors?*

The last step aims at identifying if some of the country's behavior may fit in one of the types proposed by Stubb¹¹⁶ (1996) and therefore if a type of the differentiated integration may be useful to explain the Differentiated Implementation. The last research question thus will sound like this:

Diff. Impl. RQ4: *Following the Stubb's typology (1996), may these types explain the Differentiated Implementation present in the European Union in the revisited directives?*

To answer the research questions referring to the effective legal transposition of the revisited directives, 16 EU Member States¹¹⁷ will be considered: Austria, Belgium, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Hungary, Italy, Malta, Netherlands, Poland, Portugal, Romania, and Sweden. The data have been retrieved from the European Council website and on the Asylum Information Database (AIDA). 11 indicators have been employed to verify the effective transposition in the domestic law of the three revisited directives (Asylum Procedure Directive (recast), Reception Condition Directive (recast) and Qualification Directive (recast)).¹¹⁸ On the basis of their degree of compliance with the directives' requirements different scores have been assigned to each country. Finally, the rank has been built by referring to the countries' scores.

¹¹⁶ The Stubb's categorization is composed by the Multi-Speed Europe, the Variable Geometry and À la Carte Europe. See Chapter 5 to learn more.

¹¹⁷ No sufficient data for the other Member States (namely, Czech Republic, Estonia, Latvia, Lithuania, Luxembourg, Slovenia, Slovakia and Finland) have been found; Denmark, Ireland and the United Kingdom have been not included since their derogation in asylum matters (See Chapter 5). Spain has been also excluded since it did not transpose the directives yet: The Proyecto de Real Decreto aimed at introducing the implementing regulation for the 2009 act, but the transposition of the recast acquis is not even at a draft stage (Consterdine 2019). It should be therefore considered a completely laggard. Nevertheless, Spain has been excluded since it did not transpose the directives and the analysis conducted here has the aim to inspect the differentiation in the effective transposition of the revisited directives.

¹¹⁸ For details about the directives, the indicators employed, the score ratio, and the methods used to create the rank, see Chapter 3.

6.3 Differentiated Implementation: leaders and laggards in asylum directives

This paragraph aims at answering the first two Diff. Impl. research questions concerning the effective Differentiated Implementation in the revisited directives and the presence of countries better performing according to the EU dispositions. Following the score ratio presented in Chapter 3, it has been created a rank¹¹⁹. Table 6.2 displays the rank.

Table 6.2. The rank of Differentiated Implementation in the transposition of the revisited Directives and their classification.

Rank	Country	Score	Classification
1	Netherlands NL	490	Leaders
2	Portugal PT	490	
3	Sweden SE	470	
4	Hungary HU	460	
5	Austria AT	420	Upper Midfielders
6	Germany DE	420	
7	Italy IT	420	
8	Greece GR	410	
9	Belgium BE	380	Lower Midfielders
10	France FR	370	
11	Romania RO	370	
12	Malta MT	340	
13	Bulgaria BG	320	Laggards
14	Croatia HR	300	
15	Poland PL	240	
16	Cyprus CY	180	

Source: own elaboration

Strong differences among the countries' scores in the implementation of the revisited directives emerge. If, in fact, the group of the leaders (led by Netherlands, Portugal, Sweden, and Hungary) scores between 490 and 460 points, the laggards' cluster (represented by Bulgaria, Croatia, Poland, and Cyprus) scored only between 320 and 180 points. This allows us to positively answer the first Diff. Impl. research

¹¹⁹ See Appendix 3.

question. In fact, is quite clear that a differentiation among (at least) the leaders and the laggards' groups is present.

Looking at Table 6.2 it is also possible to answer the second Diff. Impl. research question. Indeed, the leader cluster is composed of Netherlands, Portugal, Sweden, and Hungary while the laggard cluster is composed of Bulgaria, Croatia, Poland, and Cyprus. Netherlands and Portugal are the two top leaders of this rank scoring both 490 points. Nevertheless, these two countries seem to not have too much in common. Portugal is a South country with a smaller GDP per capita compared to the Netherlands that is instead a North-Continental country with high GDP per capita. The same holds true for the two absolute laggards (Poland and Cyprus). These variables will be taken into account in the next section.

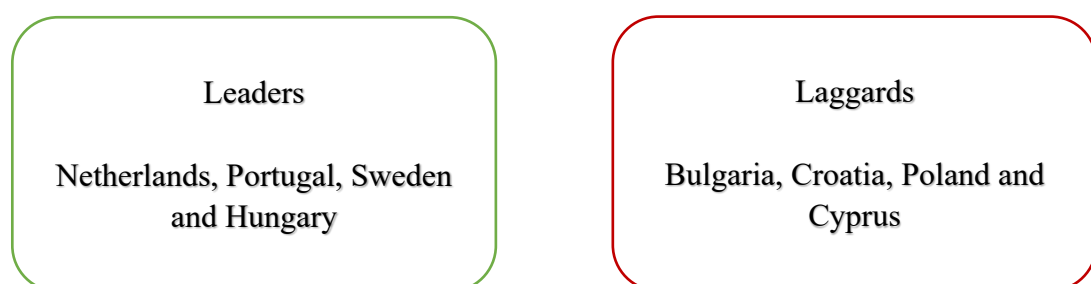
6.4 Differentiated Implementation: clustering the countries

This section aims at assessing if the groups of the leaders and the laggards may somehow be related to economic, political, and geographic features.

It is useful to stress that this is a descriptive analysis and a more sophisticated study is needed to understand the effective correspondences among the leaders' and the laggards' countries and their economic, political and social conditions.

Figure 6.1 displays the four clusters based on the countries' implementation of the revisited directives.

Figure 6.1. Clusters of leaders and laggards in the implementation of the EU directives.



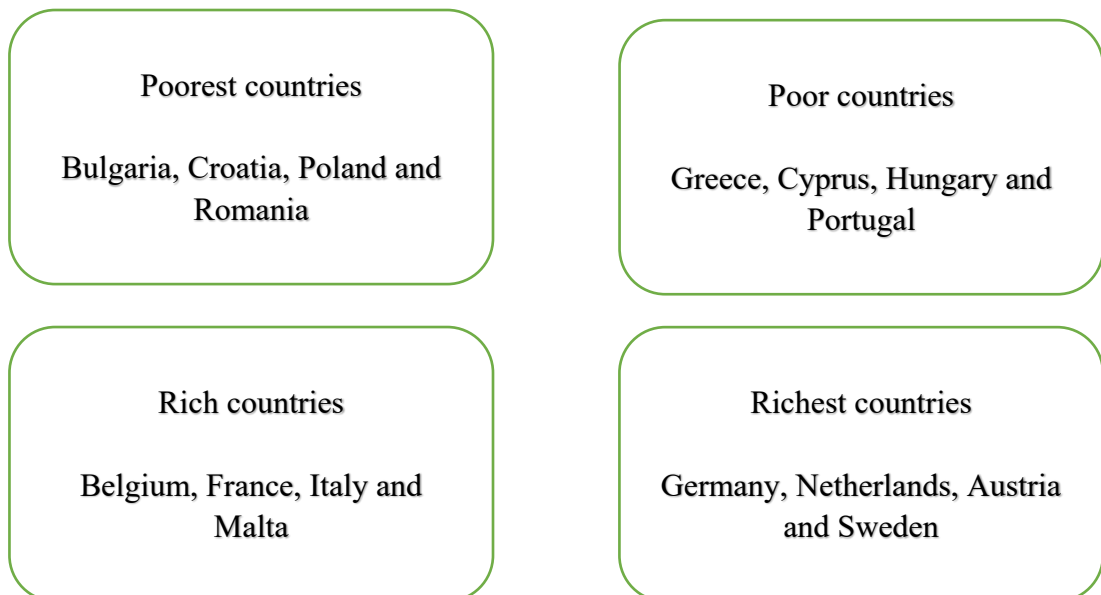
Source: own elaboration

Having defined the two groups (Figure 6.1) the second step is to overlap them with other clusters created on the basis of a set of variables.

The first variable is the GDP per capita. The clustering method employed is the differentiation in quartiles. The group of the poorest countries is composed of those scoring a GDP per capita lower than the first quartile, the group of the poor countries by those between the first quartile and the median, and so on until the fourth quartile (richest countries). In this way, the 16 countries will be split into four clusters¹²⁰.

Figure 6.2 displays the four clusters and the countries in each of them.

Figure 6.2. Clusters according to GDP per capita.

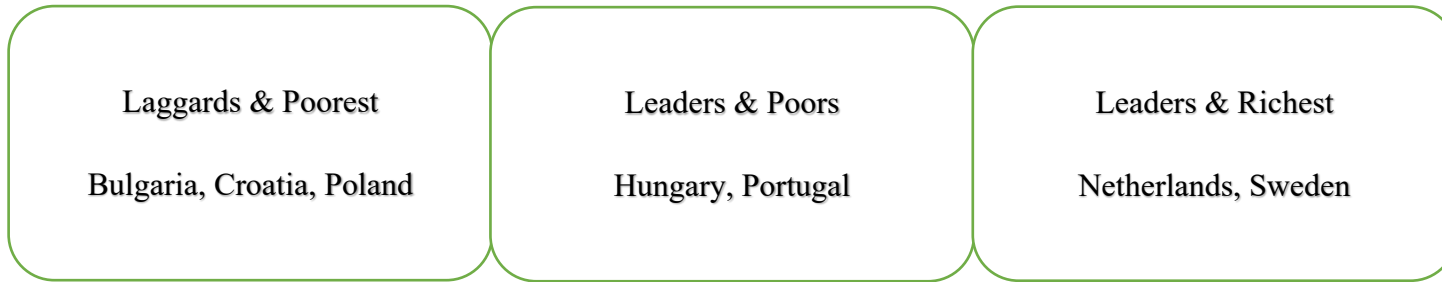


Source: own elaboration on World Bank data, 2017

By overlapping the leaders/laggards clusters (Figure 1) with the GDP per capita clusters (Figure 6.2) some overlapping result (Figure 6.3).

¹²⁰ See Chapter 3, Table 5 to see the ratio used to define the clusters.

Figure 6.3. Overlapping between leaders/laggards and GDP per capita clusters.



Source: own elaboration

The first group in Figure 6.3 shows that three countries (Bulgaria, Croatia, and Poland) out of four among the laggards also belong to the poorest countries clusters according to the GDP per capita. There is a correspondence also between the leaders and the poor groups: Hungary and Portugal fit in both. Analogously, a correspondence between the leaders and the richest countries is found as for Netherlands and Sweden.

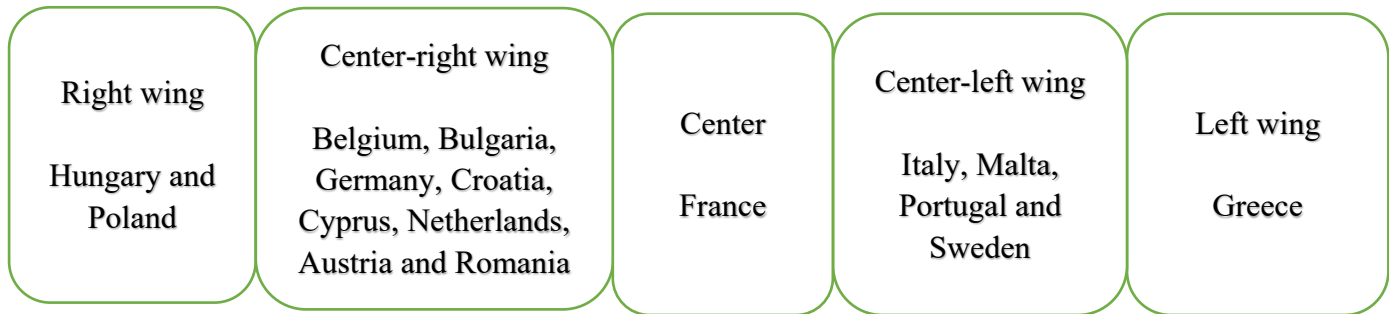
At least partially, it can be argued that the poorest countries tend to implement the directives with less accuracy. Nonetheless, Figure 6.3 also shows that two leaders (Hungary and Portugal) fit in the poor cluster and other two leaders fit in the richest countries (Netherlands and Sweden).

In sum, it seems that the poorer the countries, the lower their accuracy when implementing the revisited directives, while the other direction of the relation (the richest, the higher the accuracy) is more mixed.

The second variable aims at assessing if the political condition has played a role in the differentiated implementation of the revisited directives. The variable refers to the coalition in government in 2017. The clusters have been created according to the political orientation, namely into right wing, center-right wing, left wing, center-left wing, and center (Figure 6.4)¹²¹.

¹²¹ The political orientations of the countries have been retrieved from the official websites of each political party at the Government.

Figure 6.4. Clusters according to coalition government's political orientation (2017).



Source: own elaboration from data retrieved from the websites of the respective Ministries of Interior.

By confronting the Leaders & Laggards and the countries grouped on the political orientation of the Government in 2017, an overlap between the center-right wing's and the laggards' countries clusters seems to be present.

Figure 6.5. Overlapping between leaders/laggards and political orientation of the coalition government in 2017



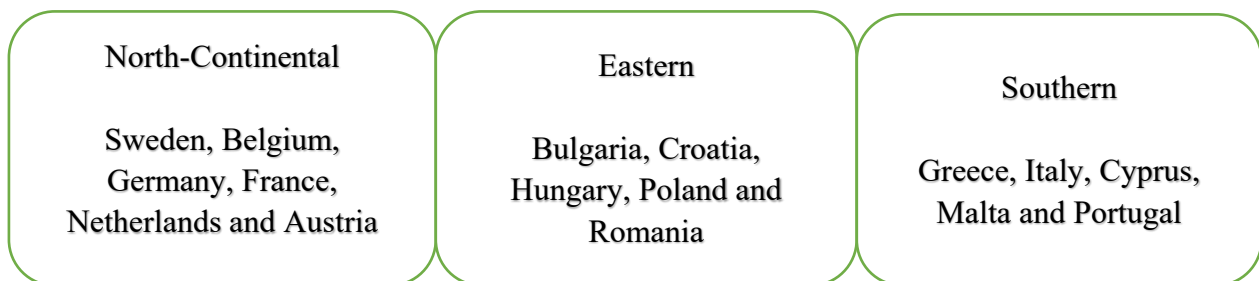
Source: own elaboration.

Bulgaria, Croatia, and Cyprus fit both in the laggards and in the center-right wing clusters. Nevertheless, there are lots of center-right wing countries (namely Belgium, Germany, Netherlands, Austria, and Romania) that fit in other clusters. Thus, even if a certain correspondence exists for some center-right wing countries, it does not hold true for other countries. In this case, thus, the correspondence between the two clusters seems to be too much partial to state that a real correspondence is present.

As for the political variable, the only correspondence between Laggards and Center-right wing countries has been considered since no other correspondences seem to be present.

The last variable considered here refers to the geographical position. The chosen clusters¹²² are: North-Continental (Sweden, Belgium, Germany, France, Netherlands, and Austria), Eastern (Bulgaria, Croatia, Hungary, Poland, and Romania) and Southern countries (Greece, Italy, Cyprus, Malta, and Portugal) (Figure 6.6).

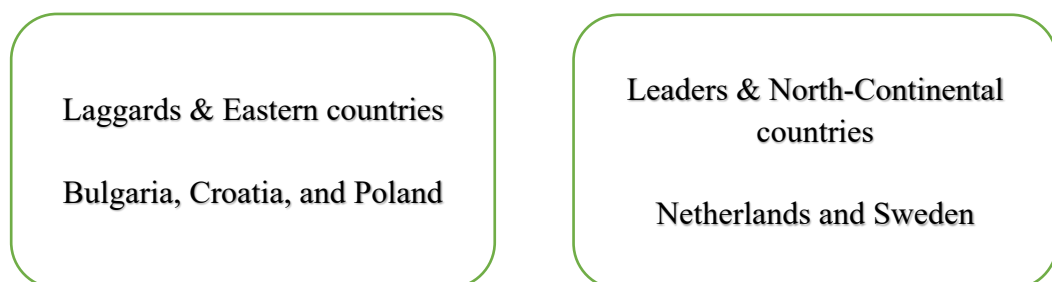
Figure 6.6. Clusters according to the geographical position.



Source: own elaboration

As for this last variable, the more remarkable overlappings are those between Eastern and laggards and between North-Continental and leaders (Figure 6.7).

Figure 6.7. Overlapping between leaders/laggards and geographic position on the map.



Source: own elaboration

As for this variable, a correspondence between part of the Eastern (Bulgaria, Croatia, and Poland) and the laggards countries exists: these countries were not

¹²² The clusters have been created by referring to their effective position on the European map.

particularly accurate in implementing the revisited directives. The reason could be the enduring cultural difference between the East and the West European Union, although no generalization can be state since Hungary – an Eastern country – is instead one of the leader countries.

A partial correspondence between leaders and North-Continental countries is also present. In fact, Netherlands and Sweden fit in both clusters. The other two leader countries (Hungary and Portugal), however, fit in two different clusters (Eastern and Southern respectively).

This evidence let us argue that the geographic position does not explain the Differentiated Implementation of the revisited directives.

In sum, the variables employed to understand the possible determinants of the Differentiated Implementation of the EU directives tell us that the overlappings between clusters are not particularly strong in explaining this compliance and thus Differentiated Implementation. In fact, even if in some cases there are evidences for correspondences (for example, between laggards and poorest countries) it is not possible to argue that the strong differences in the implementation of the directives can be explained by these factors.

Therefore, trying to answer the third Diff. Impl. research question, it can be state that – at least on the basis of the merely descriptive analysis conducted here – economic, political and geographic conditions of the EU countries can hardly explain the Differentiated Implementation of the revisited directives.

The next section aims at assessing if an explanation for the Differentiated Implementation of the EU directives based on the Stubb's typology (1996) is possible.

6.5 Explaining the Differentiated Implementation by time, space, and matter

The previous chapter aimed at assessing if a differentiated integration in a subset of legislative instruments implemented under the CEAS was present. The analysis was conducted by employing the typology proposed by Stubb (1996), who

differentiated three variables (time, space, and matters) and created three types of differentiated integration, namely Multi-Speed Europe, Variable Geometry, and *À-la-Carte* Europe.

To briefly recall, time determines a *Multi-speed* Europe where the Member States decide to pursue the integration at different times and at a different pace. In this case, a cluster of States decides to go faster in the integration than others. This does not imply that the first-integrated countries renounce to the EU aim of the complete integration: the other States will in fact join the integration when they will be ready. Space determines a *Variable geometry* Europe. A cluster of States decides to integrate deeply than others on a certain issue or policy on the basis of their geographic position.

À-la-Carte Europe is related instead to the idea that the Member States choose – by doing different kinds of calculations – in which field of policy they wish to integrate more (or less). The Member States choose as from a menu, in which policy they want to participate. Even if this typology is usually employed to test the differentiated integration¹²³, here it will be employed in order to see if this holds also for the Differentiated Implementation, and thus if the countries that implemented the three EU directives may fit in these types.

Diff. Impl RQ4 sounds like follows:

Diff. Impl. RQ4: *Following the Stubb's typology (1996), may these types explain the Differentiated Implementation present in the European Union in the revisited directives?*

In order to understand if a Multi-Speed Europe is present, this section will refer to the time transpositions of the revisited directives. In particular, the average of the days passed since the publication on the EU Official Journal of the three revisited directives until the domestic transposition for each country (Indicator D¹²⁴, G¹²⁵,

¹²³ For the analysis on differentiated integration in asylum policy see Chapter 5.

¹²⁴ Days passed since the Asylum Procedure Directive (recast) publication on the EU Official Journal until the domestic transposition.

¹²⁵ Days passed since the Reception Condition Directive (recast) publication on the EU Official Journal until the domestic transposition.

and J¹²⁶) will be calculated and a new rank will be created in order to see if there are fast and/or slow countries (Table 6.3).

Table 6.3. Time transposition of the EU directives in domestic law rank.

Rank	Country	Days (average)
1	Portugal PT	500
2	Germany DE	687
3	Hungary HU	694
4	Netherlands NL	722
5	Austria AT	753
6	Sweden SE	783
7	Italy IT	808
8	Romania RO	866
9	Poland PL	869
10	Greece GR	900
11	France FR	950
12	Malta MT	991
13	Croatia HR	1,041
14	Cyprus CY	1,088
15	Bulgaria BG	1,296
16	Belgium BE	1,525

Source: own elaboration.

Table 6.3 displays the rank according to the average number of days for transposition of the revisited directives. As shown in the table, there is a strong difference among the countries: the faster country is Portugal (500 days in average to transpose the directives), the slower Belgium (1,525 days). Since the span between the first and the last ranked is over 1,000 days, it is possible to argue that a differentiation by time is effectively present, at least for the analyzed countries and directives.

This rank somehow reflects the leaders' and laggards' rank (Table 6.2). In fact, most countries barely changed their rank – usually of a position or two – or they even remain in the same position. Nevertheless, two outliers, namely Belgium and

¹²⁶ Days passed since the Qualification Directive (recast) publication on the EU Official Journal until the domestic transposition.

Poland, resulted: they ranked 9th and 15th in the leaders and laggards rank and 16th and 9th in the time transposition rank, respectively. It can be supposed that Belgium employed a lot of time to transpose the EU directives into domestic law (1,525 days in average) but implemented with more accuracy the conditions stated by the directives. On the contrary, Poland, has been faster to transpose the directives (869 days in average) but it did not respect all provisions they contained.

Overall, the current situation in the implementation of the directives results to be very differentiated across the analyzed countries. Hence, it is possible to answer that a differentiation by time is present in the implementation of the revisited directives and, therefore, that a Multi-Speed Europe type is present since the time of transposition is widely differentiated across the countries.

The second type (namely variable geometry) has already been tested in the previous paragraph when the leaders' and laggards' clusters have been overlapped to the geographical position of the countries (Figures 6.6 and 6.7). As explained before, no differentiation of this type seems to be present for the analyzed countries, notwithstanding the partial overlapping between the laggards countries and the Eastern cluster¹²⁷. Thus, it is possible to argue that no differentiation on the basis of the geographical position is currently present and that no variable geometry is present.

Finally, as far as *À-la-Carte* Europe category is concerned, when looking at the implementation of the directives, the countries seem to have no clear preference for the implementation of a specific directive rather than of another. For example, every country implemented the requirement of indicator B (that refers to the legal assistance for asylum seekers in appeal) and the requirement of indicator E (that refers to the formal access to the labor market for refugees). These two requirements are provisions of two different directives (the APDr and the RCDr respectively). Also, the provisions stated by the QDr have been respected since all the countries respected the minimum amount of years for the residence permit for refugees (1

¹²⁷ As explained, even if a partial overlapping between the laggards countries and the Eastern cluster is present (in particular for Bulgaria, Croatia and Poland), Hungary impedes such a generalization since it belongs to the leader countries.

year for refugees under the Subsidiary Protection and 3 years under the Geneva Convention). Thus, since the countries did not choose as from a menu which directive to implement, it is possible to argue that no differentiation based on the matter is present.

Once replicated the analysis of the Differentiated Implementation by applying the three Stubb's types, it is possible to answer Diff. Impl. research question 4 (namely: *Following the Stubb's typology (1996), may these types explain the Differentiated Implementation present in the European Union in the revisited directives?*).

Even if there is no evidence for a variable geometry and for À-la-Carte Europe, a Multi-Speed Europe seems instead to be present in the analyzed countries. In fact, the time transposition of each country and for each directive, as displayed in Table 6.3, is strong differentiated across the countries.

Hence, the Differentiated Implementation of the three revisited directives may be (at least partially) explained by referring to the time variable since some countries are able to implement such legislative instruments faster, by forecasting that the other Member States will follow them in the future.

6.6 Answering the research questions: the Differentiated Implementation in the EU

This chapter is aimed at assessing if a differentiation in the implementation of the revisited directives is present in sixteen EU countries. Additionally, it aims at assessing which are the countries that better implemented the directives and the ones that instead implemented only partially the provisions stated by the legislative instruments. The countries have been labelled as, respectively, leaders and laggards. Then, a further goal of the chapter was to understand if the differentiation may be explained by political, economic, or geographic factors and by the Stubb's categorization of differentiated integration (1996).

This analysis has been done in order to assess if the possible determinant B – namely the differentiation in the transposition of three EU directives – may explain the lack of Europeanization registered in Chapter 4.

In the following, the four research questions of this chapter will be step-by-step answered. In conclusion, it will be stated if the ongoing Differentiated Implementation may be considered one of the possible determinants of the lack of Europeanization of asylum policy.

1) The first research question asked if a Differentiated Implementation is present in the European Union by referring to three EU directives in asylum matters implemented under the CEAS. The Diff. Impl. RQ1 sounds like follows:

Diff. Impl. RQ1: Is there evidence for a Differentiated Implementation in 16 EU Member States in the domestic transposition of the revisited directives?

After having created a rank (Table 2) it seems quite clear that a differentiation among the countries is present. In fact, there is a differentiation score between the leaders and the laggards clusters of over 200 points. In the case of the first (Netherlands and Portugal) and the last position (Cyprus) the difference is over 300 points.

2) The second research question aims at answering which are the laggards and which are the leaders in the three employed EU directives. In short, it asks which are the countries scoring high and which scoring low. The Diff. Impl. RQ2 thus sounds:

Diff. Impl. RQ2: Which are the leaders and the laggards in the transposition of the revisited directives?

Table 2 displayed the rank of the Differentiated Implementation of 16 EU countries about the three EU directives. As showed, the four countries scoring high in the rank (and thus labelled as leaders) are Netherlands (490 points), Portugal (490 points), Sweden (470 points), and Hungary (460 points). On the contrary, the four

laggards' countries (scoring therefore low in the rank) are Bulgaria (320 points), Croatia (300 points), Poland (240 points), and Cyprus (180 points).

3) The third research question refers to possible correspondences among the leader and laggard clusters and further groups created on the basis of the GDP per capita, the political coalition at the Government, and the geographic position in order to understand if these variables may explain the Differentiated Implementation of the revisited directives. The Diff. Impl. RQ3 thus, sounds like follows:

Diff. Impl. RQ3: Is it possible that the Differentiated Implementation of the revisited directives may be explained by economic, political or geographical factors?

By overlapping the clusters, some correspondences seem to be present. Nevertheless, most of these correspondences seem to be falsified by other overlaps that are contrasting. It allows us to argue that these variables cannot influence the Differentiated Implementation of the revisited directives. But it is possible that these countries implemented in a differentiated way the directives on the basis of a combination of these and others (not here analyzed) variables.

4) The last research question aims at assessing, by following the categorization proposed by Stubb (1996) that is usually employed to assess the differentiated integration, if the differentiation across the countries may be explained by time, space and matter and thus if the countries may fit respectively in the Multi-Speed Europe category, in the Variable geometry category and/or in the À-la-Carte Europe category. Hence, the Diff. Impl. RQ4 is:

Diff. Impl. RQ4: Following the Stubb's typology (1996), may these types explain the Differentiated Implementation present in the European Union in the revisited directives?

In order to answer this research question a sub-RQ has been drawn aims at assessing if one or more of the Stubb's types is present. Since there are no differences among the geographic position of the countries compared to their position in the rank, no variable geometry is ongoing. The same holds true for the À-la-Carte Europe category since the countries implemented all the provisions stated in the directives. Of course, there are who better respected the conditions, but any country did not implement at all a provision. Hence, there are not countries that preferred to implement a directive rather than one another thus, no À-la-Carte Europe is present for the analyzed countries.

Different is instead the situation of the Multi-Speed Europe category. In fact, it seems that a differentiation based on the time variable is present (Table 3). Indeed, there are countries such as Portugal that spent in average 500 days to transpose such directives and countries such as Belgium that spent more than 1,500 days to do it.

In a nutshell, our findings showed that: 1) a differentiated implementation is present; 2) the cluster of leader countries is formed of Netherlands, Portugal, Sweden, and Hungary. The laggard cluster is instead composed of Bulgaria, Croatia, Poland, and Cyprus; 3) the variables employed (GDP per capita, political party at the Government, and geographic position) do not explain the differentiation; 4) a Multi-Speed category of differentiated integration is useful to analyze the Differentiated Implementation since there is a strong differentiation on the basis of the time in the implementation of the EU directives.

To conclude, and following the flow chart presented in the introduction, is it possible thus that the Differentiated Implementation (possible determinant B) has led to the lack of Intended Europeanization shown in Chapter 4?

It is worth to remind that the Intended Europeanization coincides with harmonization. Thus, if there is common legislation in asylum policy then it is possible to talk about Intended Europeanization.

As seen in Chapter 4 (by analyzing two expected consequences of the common legislation in asylum matters) no harmonization is present and thus, no Intended Europeanization is ongoing.

As showed in this chapter, in particular in Table 2, there is a strong difference in the implementation of the three revisited directives. It seems that these implementation differences have countered the common legislation causing therefore, the lack of Europeanization in asylum policy.

In fact, if the Intended Europeanization is coinciding with common legislation and the countries differently implemented the CEAS provisions, it is possible to assume that no harmonization of legislative instruments is present because the different implementations of the CEAS legislative tools by the part of the MSs. This have therefore led to a lack of Intended Europeanization in asylum policy.

CONCLUSION

The Differentiated Implementation as a side effect of the Intended Europeanization

The Europeanization of public policies has attracted a lot of scholarly attention, and has been widely studied, especially between the last part of the previous century and the first part of the new millennium. Many scholars have proposed different definitions of Europeanization of public policies, measurement methods of this phenomenon, and of its main outcomes. Despite the proliferation of studies published in this field, no shared definition on the meaning of the term Europeanization has been found. The same applies to its possible outcomes, and to its reach. Rather the contrary: many of the proposed definitions contrast each other. In this thesis, to analyze the Europeanization of the EU asylum policies – and in particular to understand if the EU Member States accurately transposed in a coordinated way a set of legislative instruments concerning the Common European Asylum System (CEAS) – an *ad hoc* definition of the concept was employed, mining from some of the most consolidated ones. This was labelled “Intended Europeanization” and conceives *Europeanization as a voluntary action with respect to a well-defined purpose*.

In this perspective, Intended Europeanization is *a process of change* (Radaelli 2003, p. 41) that implies *the construction, the diffusion and the institutionalization of [...] formal rules [...] which are first defined and consolidated at the EU level* (Radaelli 2000, p. 4) and then transferred to the Member States that must comply with the new norms.

Following the above-mentioned definition, this thesis assessed the possible evidence of an Intended Europeanization of asylum policy¹²⁸. The analysis was conducted in the 2008-2017 decade and across the 28 EU MSs to understand if the

¹²⁸ See Chapter 4 on this point.

main purpose of the CEAS (namely the asylum's common legislation) had been reached.

The Intended Europeanization was assessed through the analysis of its expected consequences: the race to the bottom (RTB) and the convergence in the asylum recognition rates.

Hence, it was assessed if the asylum recognition rates decreased (and therefore, proving evidence for RTB), and if the countries tended to recognize a similar quota of asylum seekers (thus proving evidence for convergence).

The analysis showed that the asylum recognition rates increased during the whole period for almost all the EU countries. Analogously, the EU average of the asylum recognition rates is positive. Hence, no evidence for RTB was found. As well, no evidence for convergence was found since the countries registered remarkable variations in their asylum recognition rates trend.

Since the two expected consequences of asylum common legislation were disattended, no evidence for Intended Europeanization of asylum policy can be claimed in the 2008-2017 period as for the 28 EU MSs.

As a consequence, according to the Europeanization mechanisms presented in Chapter 1 – namely Imposition, Coercion and Institutional Compliance – in the EU asylum policy area, despite the presence of an European model (which is a model that the MSs must follow and it is composed of the CEAS and the set of primary and secondary legislation tools introduced in the asylum policy area to achieve the common legislation), no evidence for Europeanization can be claimed as well. In other words, the Europeanization mechanisms failed to Europeanize this policy area.

This lack of Intended Europeanization was further scrutinized in order to understand its possible drivers. Two possible determinants of such a limited Intended Europeanization were inspected.

The first was the role that may have played a set of derogations in asylum matters conceded by the EU to some MSs. The second, was the possible differentiation when transposing the EU rules into domestic law.

Concerning the derogations, it was employed the concept of *differentiated integration* – that is a process whereby permits that European countries decide to move at different speed or towards different purposes concerning the achievement of common policies – in order to understand if some legislative instruments may have countered the main purpose of the EU asylum policy and, therefore, may have led to this lack of Intended Europeanization.

In particular, the focus was on the derogations conceded to Denmark, Ireland, and the United Kingdom in the Area of Freedom, Security, and Justice, and particularly on a subset of legislative tools concerning the CEAS. Since Denmark completely opted out of all these tools, while Ireland and the UK decided to choose as from a menu (Stubb 1996) in which instruments to opt in, evidence for an asylum policy differentiated integration at least for these three countries was found.

Hence, to what extent the differentiated integration determined the lack of Intended Europeanization in asylum policy? Is it possible that these opt-out decisions favoured this lack of Intended Europeanization?

To answer these questions, the asylum recognition rates trend was referred to, once again. In particular, it was inspected if the three opt-out countries registered a different recognition rates trend compared to the other EU MSs. Reasonably, if the differentiated integration played a role as a determinant of failed Intended Europeanization, then the recognition rates trend should be different (and, in particular, it should increase, and it should be un-convergent) only for the three opt-out countries. Since these three countries are not obliged to implement the CEAS legislative tools, their recognition rates should reasonably be different from the others. An in-depth analysis of the recognition rates trend though, showed that the data are instead increasing and not convergent in all the countries. Said otherwise, no difference is appreciable between the opt-out countries and the 25 EU MSs with no derogations. Hence, although a differentiated integration in asylum policy is

present, it seems not to be among the main determinants of the failed Intended Europeanization.

Studies of differentiated integration have exclusively focused on explaining variations in the level and intensity of participation in European policy regimes. Yet, even though differentiation appears to function as an institutional strategy to overcome heterogeneous member state preferences and capacities at the level of treaty and EU secondary law, studies of differentiation in the implementation of public policy are missing.

This thesis tried to fill this gap by moving beyond the study of decisions to commit to EU policies “on paper”. To understand what makes the EU work, it is in fact needed to know how European integration works in practice. EU member states have a lot of discretion when applying EU Directives, but also EU soft law. This leads to an immense diversity of “practical policy solutions” in the EU.

In this sense, it was inspected the second possible motivation for the lack of Intended Europeanization: the Differentiated Implementation of the asylum legislative tools – that is a possible differentiation when the EU countries transpose an EU directive concerning, in this case, asylum.

This analysis is useful since the EU directives are not directly applicable and need the domestic transposition to come into force in a MS. Reasonably, the Differentiated Implementation could exactly lead towards a lack of Intended Europeanization. Differentiated Implementation is in fact the opposite of harmonization¹²⁹: if the countries differently transpose the EU provisions, even if the transposition is considered compliant with a certain directive, it is not possible to find a common legislation in asylum policy.

The assessment was done through an analysis on the transposition of three CEAS directives by the part of 16 EU MSs. In particular, it was inspected if the countries have complied with a set of directives’ requirements.

¹²⁹ It is useful to remind that in this thesis the concept of Intended Europeanization and that of harmonization coincide.

The analysis showed that, even if the domestic transposition is compliant with the EU directives, a strong differentiation in the transposition is present.

Hence, it is possible to claim evidence for a Differentiated Implementation in the EU asylum policy. Nonetheless, to what extent Differentiated Implementation played a role in the lack of Europeanization in asylum policy?

Evidence showed that the differentiation in the transposition of the directives played a fundamental role in this lack of Intended Europeanization in asylum policy. If Intended Europeanization is – as it is conceived in this thesis – a synonymous for harmonization, when Differentiated Implementation is present, no Intended Europeanization can be present as well, being the two phenomena opposite to each other. In fact, no harmonization can be detected if the countries differently transpose the EU directives.

Is it therefore possible to claim that the main determinant of the limited Intended Europeanization is the Differentiated Implementation of the asylum policy?

A straightforward answer to this question is not that easy. It is quite clear that the two concepts are contrasting, but it is still very hard to disentangle their mutual causal relation.

The core question, thus, is far more intricate, namely: is the Differentiated Implementation of the asylum legislative instruments that caused the limited Intended Europeanization, or is the lack of Intended Europeanization that caused the Differentiated Implementation?

Probably a self-feeding process is ongoing, where the countries tend to implement the EU legislative tools by not making substantial changes to their cultural and political identity. This on its turn, leads inevitably to a lack of harmonization tools in the EU, since each country tries to transpose the new EU rules by complying both with the EU requirements and its own domestic culture.

Until the EU will concede a certain discretion to its MSs when implementing asylum legislative instruments, it will be probably impossible to achieve a common

legislation. The countries will presumably always try to transpose this legislation by matching the directive to their culture.

Differentiated Implementation does not cause Intended Europeanization. But the contrary holds true as well: Intended Europeanization does not determine Differentiated Implementation. More simply, if one of both is present, evidence for the other one is problematic.

To sum up, despite the EU attempts to harmonize the asylum policy legislation, the mechanisms employed – e.g., the use of a European model in order to coerce the MSs to comply with its requirements – did not reach their purpose. No harmonization of asylum policy was detected in the analyzed period in the EU MSs. This allows us to argue that the existence of a European model is not the right path to follow to reach a common legislation in asylum matters. Maybe, it might be useful to use different paths, to rethink about the Europeanization mechanisms, and their possible side effects.

In the case of asylum policy, therefore, the EU attempt to Europeanize this policy area was a failure. It led instead to a side effect: the Differentiated Implementation.

This thesis leaves an open door to future researches on the EU asylum policy integration and implementation. First of all, the analysis on Intended Europeanization and Differentiated Implementation could be rerun in other policy areas with their respective legislative tools.

Furthermore, Europeanization of asylum policy could be explored by referring to a set of specific legislative instruments to see if all MSs complied with them and to find evidence for a sort of "legislative Europeanization".

A further path of analysis could envisage some specific case studies and in-depth scrutinizes to find evidence for Intended Europeanization or Differentiated Implementation. These analyses could be based on the implementation of a wider set of legislative instruments by the part of a specific country by checking if it respected the directive's requirements in this policy area.

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APPENDIX 1

Race to the bottom in refugees hosted by the EU Member States

Table A1.1. Number of refugees hosted in the EU MSs (2011-2016). Variation 2016 to 2011 in absolute numbers and percentage points.

COUNTRY/TIME	2011	2012	2013	2014	2015	2016	Δ 2016-2011 (Δ%)
Austria	47,073	51,730	55,598	60,747	72,216	93,250	46,177 (98.09)
Belgium	22,402	22,024	25,629	29,179	35,314	42,168	19,766 (88.23)
Bulgaria	5,688	2,288	4,320	11,046	16,557	17,814	12,126 (213.18)
Croatia	782	690	656	679	308	304	-478 (-61.12)
Cyprus	3,503	3,631	3,883	5,126	7,067	8,484	4,981 (142.19)
Czech Republic	2,449	2,805	2,979	3,137	3,644	3,644	1,195 (48.79)
Denmark	13,399	11,814	13,170	17,785	27,326	33,507	20,108 (150.07)
Estonia	50	63	70	90	168	322	272 (544)
Finland	9,175	9,919	11,252	11,798	12,703	18,401	9,226 (100.55)
France	210,207	217,865	232,487	252,264	273,126	304,546	94,339 (44.87)
Germany	571,685	589,737	187,567	216,973	316,115	669,482	97,797 (17.10)
Greece	1,573	2,100	3,485	7,304	13,088	21,484	19,911 (1265.79)
Hungary	5,106	4,054	2,440	2,867	4,393	4,748	-358 (-7.01)
Ireland	8,249	6,327	6,001	5,853	6,125	5,731	-2,518 (-30.52)
Italy	58,060	64,779	76,264	93,715	118,047	147,370	89,310 (153.82)
Latvia	95	125	160	183	208	349	254 (267.36)
Lithuania	821	871	916	1,007	1,093	1,288	467 (56.88)
Luxembourg	2,855	2,910	920	1,108	1,332	2,046	-809 (-28.33)
Malta	6,952	8,248	9,906	6,095	7,075	7,948	996 (14.33)
Netherlands	74,598	71,909	74,707	82,494	88,536	101,744	27,146 (36.38)
Poland	15,847	15,911	16,438	15,741	14,065	11,747	-4,100 (-25.87)
Portugal	408	483	598	699	853	1,194	786 (192.64)
Romania	1,005	1,262	1,770	2,182	2,598	2,905	1,900 (189.05)
Slovakia	546	662	701	799	820	990	444 (81.31)
Slovenia	142	176	213	257	292	462	320 (225.35)
Spain	4,228	4,510	4,637	5,798	6,457	12,989	8,761 (207.21)
Sweden	86,615	92,872	114,175	142,207	169,520	230,164	143,549 (165.73)
United Kingdom	193,510	149,799	126,055	117,234	123,067	118,995	-74,515 (-38.50)
EU average	48,108	47,842	34,893	39,085	47,218	66,574	18,466 (38.38)

Source: own elaboration on UNHCR Statistical Yearbook 2012, 2013, 2014, 2015, 2016 and 2017 data.

Table A1.1 shows the trend of the refugees hosted by the European Union Member States across the 2011-2016 period as well as the overall EU average. The last row is the EU average, the last column is the difference between the first year (2011) and the last year (2016). This difference assesses whether the trend in time is positive or negative both in absolute numbers and in percentage points. Normal rows indicate positive trends, bold rows designate instead negative trends. The data show that most of the EU MSs have positive figures, whilst only 6 out of 28 countries (namely Croatia, Hungary, Ireland, Luxembourg, Poland and the United Kingdom) display negative trends. Negative rates are moderate for all of them, with the exception of the UK that lowers its number of almost 40% but in absolute numbers of over 74,000 refugees. It is useful to remember that the UK is entitled with a set of derogation rights in asylum policy¹³⁰.

Two out of the six countries that decreased their numbers (Hungary and Poland) are part of the Viségrad group¹³¹. As it is well known, one of the peculiar aspects of this group is its reluctance to accept migrants in their territory. The others Viségrad countries, although increasing their absolute numbers, they did so by a very small figure. While Czech Republic (1,195) and Romania (1900) increased their absolute numbers of refugee hosted of over 1,000 people, Slovakia increased these number of only 444 people. All of them are very far from the EU average (18,466 people).

The countries that instead increased most their numbers of hosted refugees are Austria (46,177), France (94,339), Germany (97,797), Italy (89,310) and Sweden (143,549). These countries are marked by a remarkable GDP per capita and, especially for the Scandinavian and the Continental countries they are very palatable by the part of the migrant (Debresser, Kuschminder and Siegel, 2015).

By referring to the percentage points' variation, it is possible to distinguish among three groups of countries that display a high delta.

The first group comprises those countries that dramatically increased their percentage because of their starting low numbers (Bulgaria 213.18%, Cyprus 142.19%, Denmark 150.07%, Estonia 544%, Finland 100.55%, Latvia 267.36%,

¹³⁰ For details about the derogations in asylum policy see Chapter 5.

¹³¹ The Viségrad group is composed by (in alphabetic order) Czech Republic, Hungary, Poland, Romania and Slovakia.

Romania 189.05% and Slovenia 225,35%). For example, Estonia increased its percentage by 544% but, in absolute numbers, it means only 272 more hosted refugees from 2011 to 2016, thus still being very far from the EU average (18,466). The second group includes the so-called Mediterranean route countries. The countries of this group are the “first disembarkation countries” (Greece 1265.79%, Italy 153.82%, Portugal 192.64% and Spain 207.21%)¹³².

The third group counts a single country, which is an exception: Sweden (165.73%) in fact highly incremented its percentage of hosted refugees although starting from an already high level of numbers. Sweden was the fourth country in 2011 in the number of hosted refugees (86,615). Only France, Germany and the UK had more hosted refugees in the first analysed year (respectively 210,207; 571,685 and 193,510). Nevertheless, France and Germany increased their percentage by more limited percentage points. The UK even decreased its score. Sweden instead, may be considered as an exception for it was the only one that, even if it already was one of the highest starting countries, increased its delta by over the double.

In overall terms, the table shows that most of the EU countries increased their numbers of refugees in the 2011-2016 period.

On the basis of this analysis, also when employing the refugees hosted by the EU countries, no evidence for a race to the bottom across the analysed countries in the scrutinized period is to be detected.

¹³² The Mediterranean route is one of the most used paths by asylum seekers. They go through the Mediterranean in order to go towards Greece, Italy, Spain and Portugal that are the first arrival countries from people escaping from wars or natural catastrophes.

APPENDIX 2

Multiple regression analysis

After having tested the Intended Europeanization through the RTB and the Convergence by only referring to the Geneva Convention status and the Subsidiary Protection¹³³, this Appendix will focus on the determinants of such an un-convergence in asylum recognition rates have been in-depth scrutinized.

Differently to the previous multiple regression analysis¹³⁴, here the time span is not divided in three phases in order to see what changed in the entire period in the EU. The independent variable is the sum of the asylum recognition rates under the Geneva Convention and the Subsidiary Protection for the five major sending countries (just to recall them: Afghanistan, Iraq, Nigeria, Pakistan and Syria).

The dependent variables are the same of the previous analysis except for the past asylum application for lack of data (Table A2.1).

¹³³ See Paragraph 4.7.

¹³⁴ See Paragraph 4.6.

Table A2.1. Multiple regression model. Dependent variables: sum of Geneva and Subsidiary's asylum recognition rates for Afghanistan, Iraq, Nigeria, Pakistan and Syria.

	2008-2017
CONSTANT	-50,396 (6,457)
GDP PER CAPITA	1,291E-6 (0,000)***
UNEMPLOYMENT	-6,474E-5 (0,002)
POPULIST	0,001 (0,001)**
RIGHTVIOLATION	0,091 (0,019)***
INTERWAR	0,098 (0,017)***
YEAR	0,025 (0,003)***
Adjusted R square	0.131
N	1400

* Statistically significant at 0,1 level

** Statistically significant at 0,05 level

*** Statistically significant at 0,01level

Source: own elaboration

The model shows that the significant variables are the GDP per capita, the votes to the PRRPs, the Right violation degree, the Interstate war degree and the control variable represented by the years.

In particular, the countries having a higher GDP p.c., shows an increment in the asylum recognition rates. This allows us to argue that the “richest” MSs tend to accept a wider number of asylum seekers. Thus, differently to the findings presented in the previous models, here the higher the GDP p.c., the higher the asylum recognition rates as assumed when inserted the GDP p.c. in the model¹³⁵.

Not in line with our assumption, instead, is the vote to the populist parties variable. In fact, the higher the vote to the PRRPs, the higher the GDP per capita. Hence, the

¹³⁵ See Paragraph 3.1.

presence of PRRPs people to the government increases the asylum recognition rates instead of depressing it as assumed.

In line with the assumption presented in Chapter 3, the trend of the right violation degree and the interstate war degree variables influences the asylum recognition rates: the higher these degrees, the higher the asylum recognition rates since the asylum seekers of territories having high degree of right violation as well as interstate war, have more possibilities to be accepted when apply for asylum.

The last significant variable in this model is the control variable (year) that allows us to claim that the recognition rates definitely increased in this period, regardless all other variables. This can be explained, by referring to the increasing wars and right violation degree to African and Middle East countries. In fact, this permits that people arriving from these territories have higher possibilities to be accepted following the statement of Geneva and the Subsidiary protection. In such a situation, the destination states examined lots of compulsory asylum requests. Therefore, these rates, inevitably, increased.

The variables considered in this model (time span 2008-2017) explain a bit more than the 13% of the determinants of the un-convergence in recognition rates (Geneva + Subsidiary) across the EU (Adjusted $R^2=0.131$).

APPENDIX 3

Countries' scores to create the Differentiated Implementation rank

This appendix aims at illustrating how the countries scores have been assigned. Hence, in the following, the compliance of the 16 analyzed countries to the three revisited directives (namely the Asylum Procedure Directive will be in-depth scrutinized.

The first analyzed country is **Austria** which implemented indicators A, B, C and E and thus scoring 50 point for each implementation. It employed 754 days to transpose the APDr (indicator D) and thus scoring 70 points, 754 days to transpose the RCDr (indicator G) and therefore scoring 0 points and 750 days to transpose the QDr (indicator J) and thus scoring again 0 points. Austria transposed the time limit for access to the labor market (indicator F) by inserting 3 months and thus scoring 70 points. Furthermore, it transposed the minimum duration of the residence permit for refugees under the Geneva Convention (indicator H) by inserting 3 years and under the Subsidiary Protection (indicator I) by inserting 1 year and thus scoring 40 point for each indicator. In sum, Austria scored 420 points in the rank (Table A3.1).

Table A3.1. Austria's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	1	50
B	1	50
C	1	50
D	754 days	70
E	1	50
F	3 months	70
G	754 days	0
H	3	40
I	1	40
J	750 days	0
Total		420

Source: own elaboration

Belgium analogously to Austria, implemented indicators A, B, C and E and thus scored 50 points for each implementation. It employed 1609 days to transpose the

APDr (indicator D) and thus scoring 10 points, 1609 days to transpose the RCDr (indicator G) and thus scoring 0 points and 1357 days to transpose the QDr (indicator J) and thus do not scoring any points. Belgium transposed the time limit for access to the labor market (indicator F) by inserting 4 months and thus scoring 60 points. Additionally, it transposed the minimum duration of the residence permit for refugees under the Geneva Convention (indicator H) by inserting 5 years and under the Subsidiary Protection (indicator I) by inserting 1 year and thus scoring respectively 70 and 40 points. In sum, Belgium scored 380 points in the rank (Table A3.2).

Table A3.2. Belgium's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	1	50
B	1	50
C	1	50
D	1609 days	10
E	1	50
F	4 months	60
G	1609 days	0
H	5	70
I	1	40
J	1357 days	0
Total		380

Source: own elaboration

The third analyzed country is **Bulgaria** that implemented indicators B and E and did not implemented indicators A and C and thus scoring 100 points. It employed 1654 days to transpose the APDr (indicator D) and thus scoring 10 points, 842 days to transpose the RCDr (indicator G) and thus scoring 0 points and 1402 days to transpose the QDr (indicator J) and thus do not scoring any points. The country transposed the time limit for access to the labor market (indicator F) by inserting 3 months and thus scoring 70 points, it transposed the minimum duration of the residence permit for refugees under the Geneva Convention (indicator H) by inserting 5 years and under the Subsidiary Protection (indicator I) by inserting 3 years and thus scoring 70 points for each indicator. In sum, Bulgaria scored 320 points in the rank (Table A3.3).

Table A3.3. Bulgaria's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	0	0
B	1	50
C	0	0
D	1654 days	10
E	1	50
F	3 months	70
G	842 days	0
H	5	70
I	3	70
J	1402 days	0
Total		320

Source: own elaboration

Croatia implemented indicators B and C and did not implemented indicators A and E scoring therefore 100 points. The country employed 1206 days to transpose the APDr (indicator D) and thus scoring 40 points, 1206 days to transpose the RCDr (indicator G) and thus scoring 0 points and 710 days to transpose the QDr (indicator J) and thus scoring 10 points. The country transposed the time limit for access to the labor market (indicator F) by inserting 9 months and thus it scored 10 points. Furthermore, the country transposed the minimum duration of the residence permit for refugees under the Geneva Convention (indicator H) by inserting 5 years and under the Subsidiary Protection (indicator I) by inserting 3 years and thus scoring 70 points for each indicator. In sum, Croatia scored 300 points in the rank (Table A3.4).

Table A3.4. Croatia's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	0	0
B	1	50
C	1	50
D	1206 days	40
E	0	0
F	9 months	10
G	1206 days	0
H	5	70
I	3	70
J	710 days	10
Total		300

Source: own elaboration

The fifth analyzed country is **Cyprus** that only implemented indicator B and thus scoring 50 points. Cyprus employed, analogously to Croatia, 1206 days to transpose the APDr (indicator D) and thus scoring 40 points, 1206 days to transpose the RCDr (indicator G) and thus scoring 0 points and 853 days to transpose the QDr (indicator J) and thus do not scoring any points. The country transposed the time limit for access to the labor market (indicator F) by inserting 9 months and thus scoring 10 points. Furthermore, the country transposed the minimum duration of the residence permit for refugees under the Geneva Convention (indicator H) by inserting 3 years and under the Subsidiary Protection (indicator I) by inserting 1 year and thus scoring 40 points for both the indicators. In sum, Cyprus scored 180 points in the rank (Table A3.5).

Table A3.5. Cyprus' transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	0	0
B	1	50
C	0	0
D	1206 days	40
E	0	0
F	9 months	10
G	1206 days	0
H	3	40
I	1	40
J	853 days	0
Total		180

Source: own elaboration

France implemented indicators B, C and E scoring therefore 150 points. It employed 763 days to transpose the APDr (indicator D) and thus scoring 70 points, 763 days to transpose the RCDr (indicator G) and thus scoring 0 points and 1323 days to transpose the QDr (indicator J) and thus do not scoring any points. The country transposed the time limit for access to the labor market (indicator F) by inserting 9 months and thus scoring 10 points. Furthermore, the country transposed the minimum duration of the residence permit for refugees under the Geneva Convention (indicator H) by inserting 10 years and under the Subsidiary Protection (indicator I) by inserting 1 year and thus scoring respectively 100 and 40 points. In sum, France scored 370 points in the rank (Table A3.6).

Table A3.6. France's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	0	0
B	1	50
C	1	50
D	763 days	70
E	1	50
F	9 months	10
G	763 days	0
H	10	100
I	1	40
J	1323 days	0
Total		370

Source: own elaboration

Germany analogously to France implemented indicators B, C and E scoring therefore 150 points. The country employed 846 days to transpose the APDr (indicator D) and thus scoring 70 points, 497 days to transpose the RCDr (indicator G) and thus scoring 40 points and 719 days to transpose the QDr (indicator J) and thus scoring 10 points. Germany transposed the time limit for access to the labor market (indicator F) by inserting 3 months and thus scoring 70 points. Furthermore, the country transposed the minimum duration of the residence permit for refugees under the Geneva Convention (indicator H) by inserting 3 years and under the Subsidiary Protection (indicator I) by inserting 1 year and thus scoring 40 points for both the indicators. In sum, Germany scored 420 points in the rank (Table A3.7).

Table A3.7. Germany's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	0	0
B	1	50
C	1	50
D	846 days	70
E	1	50
F	3 months	70
G	497 days	40
H	3	40
I	1	40
J	719 days	10
Total		420

Source: own elaboration

Greece analogously to France and Germany implemented indicators B, C and E scoring therefore 150 points. The country employed 1012 days to transpose the

APDr (indicator D) and thus scoring 40 points, 1012 days to transpose the RCDr (indicator G) and thus scoring 0 points and 677 days to transpose the QDr (indicator J) and thus scoring 10 points. Greece was already in line with the disposition of indicator F and thus it scored 100 points. Furthermore, the country transposed the minimum duration of the residence permit for both refugees under the Geneva Convention (indicator H) and Subsidiary Protection by inserting 3 years and therefore scoring respectively 40 and 70 points. In sum, Greece scored 410 points in the rank (Table A3.8).

Table A3.8. Greece's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	0	0
B	1	50
C	1	50
D	1012 days	40
E	1	50
F	Already in line	100
G	1012 days	0
H	3	40
I	3	70
J	677 days	10
Total		410

Source: own elaboration

Hungary implemented indicators A, B, C and E scoring therefore 200 points. It employed 766 days to transpose the APDr (indicator D) and thus scoring 70 points, 766 days to transpose the RCDr (indicator G) and thus scoring 0 points and 549 days to transpose the QDr (indicator J) and thus scoring 40 points. Hungary transposed the time limit for access to the labor market (indicator F) by inserting 9 months and thus scoring 10 points. Furthermore, the country transposed the minimum duration of the residence permit for refugees under the Geneva Convention (indicator H) by inserting 5 years and under the Subsidiary Protection (indicator I) by inserting 3 year and thus scoring 70 points for each indicator. In sum, Hungary scored 460 points in the rank (Table A3.9).

Table A3.9. Hungary's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	1	50
B	1	50
C	1	50
D	766 days	70
E	1	50
F	9 months	10
G	766 days	0
H	5	70
I	3	70
J	549 days	40
Total		460

Source: own elaboration

Italy implemented indicators B and E scoring therefore 100 points. It employed 811 days to transpose the APDr (indicator D) and thus scoring 70 points, 811 days to transpose the RCDr (indicator G) and thus scoring 0 points and 801 days to transpose the QDr (indicator J) and thus did not scoring any points. Italy transposed the time limit for access to the labor market (indicator F) by inserting 2 months and thus scoring 80 points. Furthermore, the country transposed the minimum duration of the residence permit for both refugees under the Geneva Convention (indicator H) and under the Subsidiary Protection (indicator I) by inserting 5 years and scoring respectively 70 and 100 points. In sum, Italy scored 420 in the rank (Table A3.10).

Table A3.10. Italy's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	0	0
B	1	50
C	0	0
D	811 days	70
E	1	50
F	2 months	80
G	811 days	0
H	5	70
I	5	100
J	801 days	0
Total		420

Source: own elaboration

Malta implemented indicators B, C and E scoring therefore 150 points. It employed 898 days to transpose the APDr (indicator D) and thus scoring 70 points, 898 days to transpose the RCDr (indicator G) and thus scoring 0 points and 1176 days to

transpose the QDr (indicator J) and thus did not scoring any points. The country transposed the time limit for access to the labor market (indicator F) by inserting 9 months and thus scoring 10 points. Furthermore, the country transposed the minimum duration of the residence permit for both refugees under the Geneva Convention (indicator H) and under the Subsidiary Protection (indicator I) by inserting 3 years and scoring respectively 40 and 70 points. In sum, Malta scored 340 points in the rank (Table A3.11).

Table A3.11. Malta's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	0	0
B	1	50
C	1	50
D	898 days	70
E	1	50
F	9 months	10
G	898 days	0
H	3	40
I	3	70
J	1176 days	0
Total		340

Source: own elaboration

Netherlands implemented indicators A, B, C and E scoring therefore 200 points. It employed 754 days to transpose the APDr (indicator D) and thus scoring 70 points, 754 days to transpose the RCDr (indicator G) and thus scoring 0 points and 657 days to transpose the QDr (indicator J) and thus scoring 10 points. The country transposed the time limit for access to the labor market (indicator F) by inserting 6 months and thus scoring 40 points. Additionally, Netherlands transposed the minimum duration of the residence permit for both refugees under the Geneva Convention (indicator H) and under the Subsidiary Protection (indicator I) by inserting 5 years and thus scoring respectively 70 and 100 points. In sum, Netherlands scored 490 points in the rank (Table A3.12).

Table A3.12. Netherlands' transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	1	50
B	1	50
C	1	50
D	754 days	70
E	1	50
F	6 months	40
G	754 days	0
H	5	70
I	5	100
J	657 days	10
Total		490

Source: own elaboration

Poland only implemented indicator B thus scoring 50 points. It employed 809 days to transpose the APDr (indicator D) and thus scoring 70 points, 809 days to transpose the RCDr (indicator G) and thus scoring 0 points and 990 days to transpose the QDr (indicator J) and thus scoring 0 points. The country transposed the time limit for access to the labor market (indicator F) by inserting 6 months and thus scoring 40 points. Furthermore, Poland transposed the minimum duration of the residence permit for refugees under the Geneva Convention by inserting 3 years and under the Subsidiary Protection by inserting 2 years and thus scoring in both the cases 40 points. In sum, Poland scored 240 points in the rank (Table A3.13).

Table A3.13. Poland's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	0	0
B	1	50
C	0	0
D	809 days	70
E	0	0
F	6 months	40
G	809 days	0
H	3	40
I	2	40
J	990 days	0
Total		240

Source: own elaboration

Portugal implemented indicators B and E thus scoring 100 points. It employed 313 days to transpose the APDr (indicator D) and thus scoring 100 points, 313 days to transpose the RCDr (indicator G) and thus scoring 70 points and 873 days to

transpose the QDr (indicator J) and thus it did not score any points. Portugal transposed the time limit for access to the labor market (indicator F) by inserting 1 month and 1 week thus scoring 80 points. The country then transposed the minimum duration of the residence permit for refugees under the Geneva Convention by inserting 5 years and under the Subsidiary Protection by inserting 3 years and thus scoring in both the cases 70 points. In sum, Portugal scored 490 points in the rank (Table A3.14).

Table A3.14. Portugal's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	0	0
B	1	50
C	0	0
D	313 days	100
E	1	50
F	1 month and 1 week	80
G	313 days	70
H	5	70
I	3	70
J	873 days	0
Total		490

Source: own elaboration

Romania implemented indicators A, B and E thus scoring 150 points. It employed 911 days to transpose the APDr (indicator D) and thus scoring 70 points, 911 days to transpose the RCDr (indicator G) and thus scoring 0 points and 776 days to transpose the QDr (indicator J) and thus it did not score any points. Romania transposed the time limit for access to the labor market (indicator F) by inserting 3 months and thus scoring 70 points. Furthermore, the country transposed the minimum duration of the residence permit for refugees under the Geneva Convention by inserting 3 years and under the Subsidiary Protection by inserting 2 years and thus scoring in both the cases 40 points. In sum, Romania scored 370 points in the rank (Table A3.15).

Table A3.15. Romania's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	1	50
B	1	50
C	0	0
D	911 days	70
E	1	50
F	3 months	70
G	911 days	0
H	3	40
I	2	40
J	776 days	0
Total		370

Source: own elaboration

Sweden implemented indicators A, B and E thus scoring 150 points. It employed 1269 days to transpose the APDr (indicator D) and thus scoring 40 points, it was already in line with the RCDr (indicator G) and thus scoring 100 points and it employed 1079 days to transpose the QDr (indicator J) and thus it did not score any points. The country was furthermore already in line with the indicator F concerning the time limit for access to the labor market and thus scoring 100 points. Additionally, Sweden transposed the minimum duration of the residence permit for refugees under the Geneva Convention by inserting 3 years and under the Subsidiary Protection by inserting 1 year and thus scoring in both the cases 40 points. In sum, Sweden scored 470 points in the rank (Table A3.16).

Table A3.16. Sweden's transpositions and relative scores.

Indicator	Domestic Transposition	Score
A	1	50
B	1	50
C	0	0
D	1269 days	40
E	1	50
F	3 months	70
G	Already in line	100
H	3	40
I	1	40
J	1079 days	0
Total		470

Source: own elaboration

