SOLIDARITY IN CRISIS

THE ROLE OF SECURITY IN EU POLICIES OF ASYLUM AND BORDER CONTROL IN RELATION WITH SOLIDARITY BETWEEN MEMBER STATES

Suvi Vilches

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ABSTRACT

Solidarity between European Union Member States towards each other in the field of asylum policies and border control is closely related to the role given to security. By analyzing in detail policy measures within this field the role of security and the framing of institutional solidarity to take certain forms becomes visible.

The European Union has within the past year been faced with something that is often labelled as a refugee crisis. This crisis is partly due to the increase in asylum-seekers, combined with the longer process of securitization of asylum in the Union. This crisis mode, and the significant emphasis placed on internal security within, against the perceived threat from asylum-seekers has also affected the solidarity between the Member States.

Treaty of the Functioning of the European Union sets common asylum policies and the policies under border control to be governed by the principle of solidarity and fair-sharing of responsibility. As solidarity, on the other hand, is always a politically constructed concept, some meaning must be given to it and this meaning is dependent on the context in which it is being used.

This thesis focuses on the current meanings given to solidarity between the Member States as shown in the policy measures aimed as ´solidarity measures`. Legal analysis to outline the details within solidarity measures concludes that while measures under ´financial solidarity`, ´operational solidarity` and ´physical solidarity` can surely be considered as expressions of solidarity, they at the same time also make sharing responsibilities ´fairly` difficult, as the framing of solidarity, based on internal security makes different forms of collective action in this field politically unfeasible.

These financial, operational and physical solidarity measures all paint a similar picture of solidarity between the Member States. When analyzed with the method of frame analysis, it becomes clear that the politically constructed ideas of threat and crisis have influenced the way solidarity is framed in the current EU context. Solidarity between the Member States is transformed to resemble one-sided responsibility and punishment. It is shown how institutional solidarity in the field of asylum is also based on security motivations, feelings of emergency and on preventing as many asylum-seekers from arriving in the Member States as possible. So while the future direction of the EU remains to be seen, currently, solidarity is in crisis.

1 INTRODUCTION

1.1 Introduction to the Topic

The removal of internal frontiers and the creation of the Schengen Area of free movement has been one of the major success stories in the European Union The EU is often described as being based on mutual trust and shared values across the Union. But in 2015 the European Union Member States were faced with a situation that seemed to have caught them off guard, when over 1 million people arrived in the Union through irregular migration routes, with most applying for asylum. This led to something often referred in the EU as a ´refugee crisis`, which then eventually led to barbed wires, walls, tent villages, and to a very controversial political deal on returning asylum seekers to Turkey. This has put the whole basis of the European Union – the free movement of goods and persons, and the liberal values promoting human rights - to a serious test. And it has called into question the level of solidarity that the EU Member States have for each other in the field of common asylum and border policies. This intra-EU solidarity is the focus of this thesis.

The current ´crisis` with the significant increase in arrivals has, for the first time, put the Common European Asylum System (CEAS) to a real test. CEAS has been evolving gradually to its current form during the past 25 years and is meant to improve cooperation within the Member States. The unexpectedly high number of arrivals came at a time when solidarity and trust among the EU Member States was already at a lower point than before, primarily due to the severe economic hardship in the Member States due to the financial crisis that started in 2008 and the Euro's slow recovery. Along with the rise of populist, right-wing, national movements and the reassertion of national identities across Europe, this crisis has forced even the liberal parties across the Member States to reconsider their stance on migration and asylum (Lehne 2016). This securitization around asylum has happened simultaneously with the development of the common system, eventually affecting the Member States ability to reach EU-wide decisions and the ways solidarity towards other members of the community is seen.

Despite of all political challenges and different approaches taken in the Member States, the EU's primary law, namely Article 80 of the Treaty of the Functioning of the European Union (TFEU), states that the policies in the field of asylum, migration and border control (as in those in Articles 77-79 TFEU), "*shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.*" So there is a certain level of acknowledgement for the principle of solidarity in the EU. This is the legal frame for the institutional solidarity which I am interested in this thesis. the focus of this thesis.

But besides of this general principle in the TFEU, there is no clear definition on solidarity. I argue in this thesis that the concept of solidarity between the Member States is rather highly context-related. I investigate the meanings given to this article 80 TFEU's principle and reveal the role given to security in the field of asylum and border control in relation to the meanings given to solidarity between the Member States of the Union. I show in this thesis how the solidarity between the Member States of the Union is framed to be based on security, echoing the ideas of emergency and prevention.

1.2 Main Objective

This thesis focuses on the question of the relationship of solidarity between the member states of the European Union and of security in the field of asylum and border control. Through policy analysis I show the meanings given to intra-EU solidarity and how the strong role given to the states internal security interests has affected the transformation of this concept and the policy proposals made in attempts to promote solidarity between the Member States and proposing solutions to the problems within common asylum and border control policies. I also argue that the current crisis mode within the EU has also affected the concept of institutional solidarity, therefore hindering the possibilities for political cooperation among the Member States of the Union.

This thesis focuses on institutional solidarity. Institutional solidarity refers to solidarity that is being promoted at the institutional level and between the EU Member States, as opposed to, for example, solidarity shown between individuals or from institutional actors showing

solidarity towards individuals. Aside from being mentioned in Article 80 TFEU, the requirement for this institutional intra-EU solidarity is also stated in the Article 3(3) of the Treaty of the European Union: *"The Union shall promote economic, social and territorial cohesion, and solidarity among Member States"* and in Article 4(3) which states general duty for the Member States to follow *"the principle of sincere cooperation"*. This implies that the Union and Member States have a duty of assistance towards one another, also in matters of border checks, asylum and immigration and this principle of sincere cooperation is a guiding obligation of the Union (Vanheule et al. 2011, 29-31).

All the policies under Article 80 TFEU should thus meet the principle of solidarity and fair sharing of responsibility. But for solidarity and sharing of responsibility to be effective, other appropriate measures must be taken to put this principle in use. And before this, most importantly some meaning must be given to solidarity, to determine the goals for these chosen policy measures, as it is a politically constructed concept.

I analyze policy proposals that have their legal base in Articles 77-79 and should therefore always promote solidarity and the fair sharing of various asylum- and border-related responsibilities. Main focus is given to policy measures that all have been determined as necessary by various political actors in the EU to promote solidarity between the Member States of the Union. I unpack their substance and thus the meaning given to the principle of solidarity between the Member States. By analyzing them in detail, the actual level of responsibility sharing and the potential for fair-sharing is investigated. I show how the meaning given to the principle of solidarity is actively constructed to take certain forms.

The analysis loosely follows the often referred division of responsibility sharing by Gregor Noll (2003), where he divides the responsibilities into ´sharing norms`, ´sharing money` and ´sharing people`. Sharing norms and its limited potential for fair-sharing is discussed as part of chapter 2's contextualization. Financial responsibility-sharing (sharing money) and, the physical burden-sharing (sharing people) is, on one hand, combined with practical cooperation, which could be referred as ´sharing operations`. A newer aspect within this intra-EU solidarity discourse is also the aspect of solidarity as responsibility of one or few Member States and the view of solidarity as a punishment. I analyze all of these above mentioned four aspects to offer insights into their ability to promote solidarity and fair-sharing between the Member States by analyzing the most relevant policies to promote solidarity given during the

current ´crisis`, since the Summer of 2015. Some particularly important questions here are the challenge of identifying and agreeing on how to define responsibilities and, secondly, the political challenges in sharing them ´fairly`. Many of these challenges relate to the current EU-wide discourse that treats asylum-seekers as threats to the Member States' internal security and reflects the EU's ´crisis mode`.

The main objective of this thesis is to reveal the current meanings given to solidarity and responsibility-sharing in the field of asylum and border control in the EU and to show how the role given to security hinders the EU's ability to share these responsibilities fairly. I show that internal security concerns create a certain picture by framing institutional solidarity, thus affecting the policy measures proposed within this field. I will clarify this next.

1.3 Methodology

1.3.1 EU Law Analysis

The main objective of this thesis is to reveal the appearance of solidarity between the Member States in the field of asylum and border control and the role of security in framing this concept. As this thesis is about the concept of solidarity, is it important again to state that solidarity, as well as other concepts used in this thesis, are constructed and have a transformative nature. This is to say, that throughout the thesis I take the view of social constructivist research, and focus on the meanings given to the concept of security and the forms given to it as it is being framed. Being framed. The aim throughout the thesis is discuss the legal potential of current ´solidarity measures` to promote fair-sharing of responsibilities and on definitions given to solidarity. Thus, this thesis has its emphasis on the juridical possibilities of the measures to promote solidarity and fair-sharing of responsibilities between the Member States. This thesis is, first and foremost, a legal analysis, drawing from previous scholarly work. This analysis is then supported by other, more social scientific approaches to create context and is also inspired by frame analysis. I do this to draw a broad picture of this current topic, the frames that operate within the current context and, the forms solidarity has been given in the current state of the Union.

The primary data for the analysis are the policy proposals for solidarity measures within the field of asylum and border control in the EU in 2015-2016. I use various Commission Communications and chosen regulation proposals to reveal their content and to show how solidarity between the Member States and the fair-sharing of responsibilities is shown in them. I reveal their potential to work as solidarity measures and their ability to actually promote ´fair` responsibility sharing, affected by the meanings given to the principle.

This thesis is done as desk-work, drawing on scholarly work, including recent blogs entries, followed until early Summer of 2016 as the topic was very current at the moment of writing. Most influential to me have been the works of Gregor Noll from University of Lund Evangelia Tsoudi from ULB Brussels, Steve Peers from University of Essex and Valsamis Mitsilegas. Mitsilegas is the head of law department in Queen Mary College in Oxford. Most of the other scholars I use in the analysis to help theorize the issue are actively contributing experts within EU asylum law. This thesis is also inspired by the works of Elko Thielemann, Carolyn Armstrong and Gregor Noll on the questions of public good and motivations for collective action. This thesis is also partly built on studies commissioned by the European Parliament (*What system of burden-sharing between the Member States for the reception of asylum-seekers* by Eiko Thielemann, Richard Williams and Christina Boswell from 2010 and *The Implementation of Article 80* by Dirk Vanheule, Joanne van Selm and Christina Boswell from 2011).

I have followed the topic through Statewatch, EU Observer and EurActiv, all of which closely cover the developments in the field of asylum and border legislation in the EU. This thesis can be seen as a continuation of my training as a lawyer specialized in EU law, as well as my interests and studies in discourse framing in the EU, and on tools of securitization at the EU's borders, drawing from constructivist securitization theories and the works of Didier Bigo and Thierry Balzacq.

1.3.2 Frame Analysis

I show in this thesis, the connections between solidarity among the Member States of the European Union, the forms of responsibility sharing and the role of security. To reveal this

relation and the current meanings given to institutional solidarity, I use aspects of frame analysis to supplement the legal analysis.

Frame analysis is a broad theoretical approach, which can well be used in multi-disciplinary work. Frame analysis, or framing theory, is based largely on Ervin Goffman's (1974) views of social frames as "*processes of interaction, interpretation and contextualization*. Frames determine what is relevant and irrelevant and they suggest appropriate behavior (Goffman 1974, 24). Other way to say this is to understand frames as "*tools to promote particular version of reality*" (Vliegenhart and van Zoonen 2011, 107).

Frames are thus part of collective struggle over meaning and they assume intentionality (ibid. 112). As frames are understood as intentional and contextual, it is then more accurate and important to talk about ´framing` instead of ´frames`, as "*framing is active, processual phenomenon that implies agency and contention at the level of reality construction. It is active in the sense that something is being done, and processual in the sense of a dynamic evolving process*" (Benford and Snow 2000, 614). These products of framing are ´collective action frames` (ibid, 614). These collective action frames are the focus of this thesis. I show how there are certain collective action frames in the field of asylum and borders in the EU, building on the assumption of threat and security, and they affect the concept of solidarity, the meaning given to it, and thus the collective action taken in this field.

I conduct this analysis of framing in the EU's policies in the field of common asylum policies and border control loosely based the works of Robert D. Benford and David A. Snow (2000) and their idea of generating frames through strategic process of frame amplification (where other strategic processes within framing for them are frame bridging, extension and transformation) (ibid, 624). This thesis focuses on security and solidarity and especially to how security plays a significant role in defining solidarity. I take this connection to be based on the dominant discourse of security and securitization of asylum and migration in the EU, which I will turn to next. Thus I take the framing in this field to be mostly frame amplification, which involves "*the idealization, embellishment, clarification or invigoration of existing values or beliefs*" (Benford and Snow 2000, 624).

In policy-making, context framing can be said to be a process in which political actors convert a *problematic situation into a problem* and what then gets produced in this framing process is

"both a model of the world and a model for subsequent action in that world" (van Hulst and Yanow 2016, 98). This definition is similar to Benford and Snow's concepts of diagnostic and prognostic frames. Diagnostic frames define and explain a certain situation and are used for ascribing responsibility or blame and focus on identifying a problem. Prognostic frames are providing solutions for the diagnosed problems (Benford and Snow 2000, 614-617).

I use framing theory again in the context of solidarity being a concept that has to be socially constructed and given meaning to and by taking the ´big problem´ in the EU to be the securitization of asylum, meaning a discourse where asylum-seekers are viewed as a threat, as a problem and as a burden to the societies. I explain my stance next under the theoretical reflections.

1.4 Theoretical Framework

1.4.1 The Transformative Nature of Solidarity

The main focus of this thesis is on policy measures that are created in efforts to promote solidarity between the EU Member States in the field of asylum and border control. I aim to analyze some of the political measures that have been labeled as solidarity measures and the appearances of solidarity present in them. I also wish to reveal the connection between security and solidarity. I show the role that is given to internal security and to the ´crisis mode` into which the EU has placed itself.

In order to show the framing present, this chapter first shows how the concept of solidarity can be defined in countless ways and is highly context-related. This so-called transformative nature of the concept also means that it can be framed in various ways. The next chapter focuses on security as the context in which the framing of solidarity takes place, and how the meanings given to solidarity between the Member States of the Union are formed in this context.

Article 80 of TFEU, the main legal definition for institutional solidarity, states that the policies within the field of immigration, asylum and border control "*shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications,*

between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter, shall contain appropriate measures to give effect to this principle". But before we can even try to analyze whether the latest chosen measures have been appropriate or effective in promoting solidarity between the EU's Member States, we need to try to define what this institutional solidarity even could be in the European Union and look more closely at the goals it has.

Solidarity in itself is, of course, an old concept, relating back most notably to the French Revolution, and then used differently in different times and in various disciplines. It can be referred to as "*everything from the problem of the twenty-first century to a largely empty feel-good slogan*" (Ross 2010, 23). In the report commissioned by the European Parliament in 2010 (Thielemann et al. 2010), solidarity with other countries was defined after broad interview round with various political actors to be a concern for other members of the same group and carry a recognition of special obligations between the members of a group. Solidarity was said to exist within the group "*when they are committed to abide by the outcome of some process of collective decision-making or to promote the wellbeing of other members of the group, perhaps at significant cost to themselves*" (ibid. 156). These all refer to the views that solidarity does not have to be just about self-sacrifice without any self-benefits, but that there can be interest-based motivations for collective action. So solidarity could be defined as being about securing fairness for a group, while also simultaneously having the possibility for self-benefits for individual members (Ross 2010, 29). With these views solidarity would require some interest-based motivations for collective action to promote solidarity to be politically feasible.

Most importantly solidarity has to be understood to have an active character. Therefore solidarity should be analyzed through a virtuous circle of three interrelated constituent elements of creation, expression and sustainability, as emphasized for example by Malcolm Ross (2010, 25-26). For Ross, the expression of solidarity is mostly a legal phenomenon, mostly done through legal framework in which solidarity operates and develops, but the creation and durability of solidarity are then dependent more on social and political factors. Solidarity can thus take various forms, depending on these social and political factors, (ibid 35-36.), which is the point of entry for this thesis too. I will thus offer a brief review of the

political context and interest-based motivations in the field of asylum and border control for these current solidarity measures in the next chapter 2.

Article 80 includes two other terms that need to be given meaning: fair-sharing and necessity. According to the article EU should act in this field, when pursuing the goals of the EU make it ´necessary` and that the responsibility between Member States should be based on ´fair-sharing`. Just like solidarity, the concept of fair sharing of responsibilities is not defined in terms of its goals. But fair-sharing can be said to be based on three central ideas: It seeks to alleviate unduly heavy burdens falling on certain states; these unduly heavy burdens must be identified and calculated somehow; and thirdly, calculating these relative capacities is a politically sensitive task (Gray 2013, 180), which leads us, again, back to the need to view certain concepts in their political context. Fair-sharing is analyzed together with solidarity, in attempt to understand the solidarity measures and the meaning given to solidarity between Member States.

Necessity is also context-related and what is deemed necessary depends on who is defining it and mostly of the goals the measure aims to pursue. In general though, ´when necessary` refers to EU's two important legal principles, as defined in the Treaty and which are to guide all legal action within the Union: proportionality and subsidiarity. That means that in the field of asylum and border control, the Union should act "*if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States*" (Article 5(3) TEU). And for these measures to be proportionate to their set goal they "*must be appropriate and necessary to achieve its objectives*" (Article 5(4) TEU). But the framing of necessity is, again, ultimately a political act and context-related and all these definitions and actions, ultimately, are political decisions, taken in certain context and political atmosphere. In the current EU this context echoes strongly the security interests of the states and the perceived threat to it by asylum-seekers.

1.4.2 Solidarity Based on Security, Emergency and Prevention

This thesis aims to show the current connection between intra-EU solidarity and security. I analyze the chosen policies in the light of security and point out how the concerns for Member States' internal security are framing solidarity between the Member States and the measures proposed as solutions. The significant role of security in determining the solidarity amongst the Member States of the EU is due to the broad ´securitization` of asylum within the Union. With securitization security threats as socially constructed and in the EU this has lead asylum-seekers to be perceived as threats to society, its values and public order. This securitization of asylum is the point of departure for the analysis, and assumes this securitization to be the `big problem` in this field, thus also affecting not just the relations towards asylum-seekers but also between the Member States.

I thus build my analysis on securitization theories views on how labeling or describing an issue as a security issue changes how it is perceived, therefore legitimizing certain types of policy measures which otherwise would not necessarily be prioritized (Betts 2009, 191). It should be noted, that I do not aim to focus on securitization per se. I do not investigate in this thesis whether the field of asylum and border control in the EU is being securitized or the tools how it is done and maintained, but take this process as given. I will show the historical process of securitization of asylum more in chapter 2.4, providing context for the current solidarity measures and framing institutional solidarity. During the analysis I then reveal how this dominant discourse on security and threats and seeing asylum-seekers as burdens plays a role in framing institutional solidarity and how this then eventually is frame amplification.

When focusing on security, I utilize sociological securitization theories (versus the more philosophical, often referred as the Copenhagen School by its Danish founder Ole Wæver) to set focus on the relations between politics and security and by analyzing political practices, instead of purely language (Balzacq 2013; Balzacq et al. 2010). The Copenhagen School is also explicit in its skepticism regarding the prospects of securitization beyond the state (Rychnovská 2014, 11), whereas I follow the works of Didier Bigo and Thierry Balzacq, amongst others, in focusing on EU level discourse and actions taken within the Union. I take the EU and its' components of the Commission, the Parliament and the Member States as a particular type of setting with its own audience, which can both ´speak` as well as ´act`

(borrowed from Rychnovská 2014, 10, who uses this to justify her work on the UN Security Council) and is an interesting composition for analyzing framing and meanings given to a concept.

So what is more specifically the frame around institutional solidarity in the field of common asylum policies and border control in the current EU? I show by analyzing current policies in detail, that solidarity within the Member States is framed to be based on security, emergency and prevention (Mitsilegas 2014, 188). I follow here the analysis of Valsamis Mitsilegas, who, in 2014, by analyzing various policy papers and EU's agencies came to this conclusion. Mitsilegas' conclusion was also that the concept of solidarity is exclusively based on the needs and interests of the Member States and that the EU promotes a concept of solidarity which is then state-centered and securitized, reflecting crisis mentality. (Mitsilegas 2014, 186.) His analysis is more purely a legal analysis, but I use his idea of solidarity based on emergency and prevention as the theoretical lens for frame analysis.

I show how the current policies are framed based on these three interrelated aspects of security, emergency and prevention. Thus, with regards to the role given to security, I showhow the current policy proposals place a great emphasis on solidarity in emergency situations, and less on the need for more permanent changes to promote fair-sharing by amending some structural imbalances. I also show how these ´solidarity measures` are not only to support Member States in dealing with asylum-seekers, but also to a large extend to prevent the entry of asylum-seekers in the Union in the first place. Therefore, the analysis will show how perceived security concerns are in the current context framing the concept of institutional solidarity.

1.5 Delimitations

The topic around refugee and migration flows to Europe and the current state of crisis is broad and extremely challenging. There are no clear-cut answers to all the questions, as this topic also has a broad global aspect of inequality tied to it. It is therefore important to clearly frame the research.

As the research is geared towards institutional solidarity, the aspect of solidarity towards the asylum-seekers is mostly out of the scope for this analysis, even though they can be referred as the ´main recipients` of solidarity (Mitsilegas 2014, 188). I have also left solidarity within integration and legal migration out of the scope of the thesis, and so the need for co-operation and solidarity measures in the field of migration and integration is not analyzed in detail. Even though it should be noted that these measures fall under the Articles 77-80 TFEU and solidarity in integrating third country nationals between Member States could potentially also offer great benefits. Supporting the welfare of immigrants for example could be seen as a public good for all EU Member States, especially since social unease often easily spill over beyond state borders (Vanheule et al. 2011, 21-24; 60-61), affecting internal security; which has a strong emphasis under the asylum policies and border control, the other two fields within the Article 80 TFEU.

This thesis will not cover the controversial return deal of migrants between the European Union and Turkey, agreed upon in March 2016 as this is not really a presentation of solidarity between the Member States (For criticism against this deal, see for example the Council of Europe 2016.) This deal, as well as other forms of action towards asylum-seekers taken through Europe, could be best approached as ´state of exception`, if they were to be looked at from a security angle. Here the focus would be in the increased power of government in supposed times of crisis, where rights can be diminished and rejected, blurring the distinctions of (for example) the legal and illegal, state and law, war and peace, law and violence and the political and the juridical (Agamben 2005, 23).

Notably, this Turkey- deal has been seen by many as some kind of precondition for intra-EU solidarity, which can also be taken as an example of the present security paradigm and the role given to emergency and prevention within the EU's asylum approachThe German Counselor, Angela Merkel, for example, said in late April 2016 that "*Now that the number of refugees coming to Europe has lessened, we have an opportunity to find together a European solution,*" (EurActive 21.04.2016). Lars Løkke Rasmussen, the Prime Minister of Denmark, shared this view, when he mentioned the Turkey-plan to have the potential to be a "*game changer*". He was ready to discuss Europe's responsibilities only after the borders are to be effectively closed (Politiken 09.03.2016, translations by the author).

2 CONTEXTUALIZATION

2.1 Purpose of this Chapter

In order to investigate the solidarity measures within the EU, one must first define the meaning of solidarity. The main objective of this thesis is to unveil the relationship between institutional solidarity and security in the field of common asylum policies and border control. I reveal the current appearances of solidarity within this field and the meaning given to solidarity through political construction and framing an issue in certain ways. I argue that the construction of solidarity is best understood as highly context-dependent, taking into account the power relations among the actors and the weight of the historical and political context in which these actors operate. This chapter then provides the necessary contextualization to understand the current policy proposals and the meaning given to solidarity between the member states.

I focus here briefly on the historical development of this field to provide understanding for the current proposals, as they build on 25 years of previous development. I also show briefly how asylum and migration is being securitized within the EU. I also go through aspects on political feasibility for collective action over time based on various interest-based motivations. I point out how politically generated ideas of ´threat` and `crisis` then influence the way solidarity amongst Member States is being framed in the current European context.

2.2 Setting up the Common System

The development of the EU's common policy in the field of asylum and migration has evolved gradually over the past 25 years. The first Dublin Regulation came into force in 1990 setting up, for first time in Europe, the guidelines to determine the state responsible for processing an asylum claim. This process has then eventually led to the gradual evolvement of the Common European Asylum System (CEAS). The collection of regulations based on articles 77-79 TFEU includes currently around 50 directives and regulations on asylum,

borders and visa policies, irregular migration, immigration, detention and expulsion as well as on legal migration, admission and residence policies (Groenendijk 2014, 315).

The Area of Freedom, Justice and Security was created in the Tampere Council Meeting in 1999 and was meant to create *"an open and secure European Union (...) on the basis of solidarity"* (European Council 1999, para. 4) and started the first phase of the development of CEAS. The common assumption during the first phase of CEAS was that legal harmonization alone would remove inequalities between Member States, which then would take away the incentive from asylum-seekers to move between states. The common minimum standards were also expected to remove the incentive for Member States to compete with each other in reception conditions. This alone was expected to lead to better responsibility-sharing. This assumption, however, has proven to be wrong, with the severe ´race to the bottom` on asylum conditions between Member States, where the common standards have been seen as maximum level, not as the bare minimum that they were meant to be (Tsourdi 2016, 6). On the other hand, harmonization has even sometimes stood in the way of more fair responsibility sharing, as it has potentially raised asylum related costs in some countries without simultaneously taking into consideration the pull-factors within the countries (Thielemann et al. 2010, 134; for different pull-factors, see for example Cummings et al. 2015). Therefore, it became very clear that other measures would be necessary if the common asylum system was to be effective and the responsibility to be shared more equally.

The Tampere Program was followed by the Hague Programme in 2004, stating the need for the so-called second phase of development of common asylum system to be *"based on solidarity and fair sharing of responsibility including its financial implications and closer practical cooperation between Member States"* (European Council 2004, para 1. 2 and 1.3). This stage included, amongst other measures, the establishment of the border agency Frontex in 2004, with its goal to integrate and standardize border control and surveillance operations, and thus increase practical co-operation (Council Regulation (EC) No 2007/2004). The Hague Programme was then replaced with the Stockholm Programme in 2010.

The Commission Action Plan implementing the Stockholm Programme stated that *"it is more necessary than ever to (...) strengthen solidarity, particularly between Member States as they collectively shoulder the burden of a humane and efficient system"* (COM (2010) 171 final). In reality, the Member States had a largely different take on this, as they were more focused

on preventing the alleged abuse of the asylum system. This lead to heavy criticism towards the Action Plan, and some in the Council even called it "*a clear act of provocation*" (Carrera 2011, 241). Nevertheless, in 2011, in the aftermaths of the Arab Spring, the European Commission issued a new Communication for "*enhanced intra-EU solidarity*" and proposed that the strengthening responsibility sharing should be reinforced around four axes: practical cooperation and technical assistance, financial solidarity, allocation of responsibilities, and the improvement of tools for governance of the asylum system (COM (2011) 835).

In 2012, the Member States then stated a need for "*Common Framework for genuine and practical solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows*" (European Council 2012). This statement is seen at least by some as a plea for genuine and practical solidarity; "*an open tool box*" meaning that the Member States were seen at that point to agree that there was a need for using both the already existing measures, as well as the possibility to adopt new policy measures if needed (McDonough and Tsourdi 2012b, 75-76).

In the spring of 2015, the Commission then launched *the European Agenda on Migration* (COM (2015)240, final) to improve EU's ´migration management`. According to the Commission, migration management in the EU is a shared responsibility. The European Parliament, on the other hand, has repeatedly, latest through its report on the situation in the Mediterranean, demanded "*a more holistic EU approach to migration*", stressing the need to situate asylum policies within a broader regional and global context (European Parliament 2015/2095).

In early April 2016, the Commission published the communication "*Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*" (COM (2016) 197). Steve Peers sees this communication to be outlining a third phase for CEAS, even when this wording is not actually used anywhere in the paper (Peers 2016a). The communication set again the solidarity to be the key focus of the future of the common system. "*The EU needs a robust and effective system for sustainable migration management for the future that is fair for host societies and EU citizens as well as for third country nationals and countries of origin and transit. For it to work, this system must be comprehensive, and grounded on the principles of responsibility and solidarity*" (COM (2016) 197, 3).

Comprehensive system, grounded on the principles of responsibility and solidarity would obviously need the Member States of the European Union to cooperate under this system also in the future. I will now discuss some of the elements of collective action in the asylum and border control and the political feasibility for such action, with active framing and the role of security in mind.

2.3 The Motivations for Collective Action

Above, I shortly introduced the main developments and policy goals in the field of asylum and border control in the EU. I will now introduce, shortly, the more theoretical aspects behind these collective actions and the interest-based motivations to accept proposed policy proposals.

The need to share responsibility for asylum-seekers collectively has, of course, in general been long recognized and visible already in the Geneva Refugee Convention from 1951. On the other hand, the preamble of the Convention only sets a responsibility to protect the asylum-seeker to that specific state in which territory the individual asylum-seeker is. Therefore, according to international law, the states do not have any legal obligations towards asylum-seekers outside of their own territory. This makes offering international protection ´public good` with the possibility of some countries becoming ´free-riders`, if we are to use game-theory vocabulary, as done for example by Thielemann and others (2010), Thielemann and Armstrong (2011; 2012), Suhrke (1998), and Noll (1997; 2003). The Common European Asylum System, and the Dublin Regulation as a key part of it are created to prevent this kind of free-riding in the EU (Thielemann et al. 2010, 31).

CEAS is thus meant to share responsibilities for asylum-seekers among the EU Member States. But what have been and are the various motivations to agree to cooperation and to overcome collective action failure for the European Union Member States? The most traditional form of co-operation in the EU is the establishment of the common market and the free movement of goods, capital and citizens, and this form of integration has mostly been described as a win-win situation to all actors. The more redistributive agreements on the other hands tend to create winner and losers. Therefore a motivation for collective action has to exist and to be analyzed in order to understand some actor's decision to co-operate

(Thielemann and Armstrong 2013). Thus they require interest-based motivation for collective action.

Interest-based motivations in the field of asylum and border control have defined to include firstly ´insurance based logic`, where CEAS has been taken as a guarantee against mass flows of refugees so that a state would not end up having to deal with the issue alone. Secondly, interest-based motivations relate to ´adhering other international obligations` which here refer to the threat that collective actions failure would pose to other policy objectives (Thielemann et al. 2010, 31; 156-157; Noll 1997, 427; the logic of insurance originally from Suhrke 1998, 398). More broadly these interest-based motivations in the EU can be related to ´issue-linkage`, used in international relations literature (see particularly Betts 2009), and where an action in issue area X will lead to pay-off in relation to issue area Y, making collective action politically feasible (ibid. 43-44).

So firstly, when assessing the public good, it is critical to always define the particular public good in question, to determinate the goal that is being promoted with a certain cooperation measure. In the area of asylum and border control in the EU, the public good in question has earlier been defined to be either the free movement within the Union, international protection of refugees or the internal security within the EU (Thielemann et al. 31). This means that the cooperation in the field of asylum and border control has only taken place in the EU when the actors have had an interest for it, and therefore a need for it, making it politically feasible to act.

Thielemann and Armstrong (2013), for example, have shown that when it has come to the Dublin Regulation there has been "*contribution trading across multiple collective good dimensions*". This is to say that there have been interest-based motivations and a strong link between the Dublin Regulation on one hand and free movement on the other. This follows the logic of adhering other policy goals, introduced above. Thielemann and Armstrong namely point out that the citizens of many of the Union's external border countries are among the top ten nationalities benefiting most from the opportunities of free movement within the Union (ibid.158-160). Recently this pattern of free movement has been found to be valid in the UK, where 80 percent of the increase of EU-citizens residing there came from just six EU Member States, including many countries at the EU's external borders (The Independent, 12.04.2016). This might also explain for maintaining the Dublin system, even though it has encountered

throughout the years enormous amount of criticism. For example, the Commission itself stated in the spring of 2016 that *the current Dublin system was not designed to ensure a sustainable sharing of responsibility for applicants across the Union"* (COM (2016) 270 final, 3) This issue-linkage to free movement, as shown by Thielemann and Armstrong might explain why the frontline Member States ever agreed upon this system, let alone to amend it twice.

There are also other potential motivations to maintain Dublin and they relate more to the perceived security threats. The motivations of actors for the Dublin system can also be analyzed more through its symbolic value to the Member States. Mouzaurakis (2014) has for example pointed that the so-called ´deflection objective` and the ´efficiency objective` of the Dublin system have not been very successful, but that Dublin is more about the symbolic value of showing control (ibid 8). This refers to the Member States' interests in internal security and maintaining their national sovereignty. Also Richard Williams has noticed this and argues that because of the toxic political atmosphere, the Member States are willing to tolerate this ineffective and costly system and participate in political theatre just in order to *"signal to the public their control over asylum seekers and the asylum system"* (Williams 2015, 12).

This role of internal security and the perceived threats against it have played a big role in shaping the collective action measures in the field of common asylum and border control in the EU. The role of security and the perception of asylum-seekers as a threat also have a large role under the current proposals for solidarity measures. To better understand the context of the 2015 and 2016 policy proposals, I therefore introduce next the main points of how asylum has been securitized in Europe.

2.4 Asylum as Securitized in the EU

This thesis shows how the role of internal security plays a key role in framing solidarity and actions taken between the Member States, as it has a significant role in shaping the chosen policy options. In this chapter I will show how asylum and migration policies in the EU are being securitized. This chapter shows that internal security and the perceived threats to it from asylum-seekers and migrants is not a new topic in the EU. Rather, this securitization has taken

place simultaneously with the development of common policies in the field of asylum. Securitization is in this thesis taken as something that has happened and as the dominant discourse at the moment within this policy field. Jeff Huysmans, for example, argued already in 2000 that this `Europeanization` of migration has directly securitized migration by integrating migration policy into an internal security framework (Huysmans 2000, 770). Huysmans describes in his article *Securitization and European integratio*n this development of a restrictive migration policy and the social construction of migration into a security question. This development is related to a wider ´politicization` in which immigrants and asylum-seekers are portrayed as a challenge to the protection of national identity and maintaining welfare (ibid, 751). It is embedded in wider societal, political and professional processes that articulate an endangered society, where Western European welfare states face an array of challenges. These have in Europe included economic and financial globalization, the rise of poverty, the deterioration of living conditions in cities, the revival of racist and xenophobic parties and movements, the estrangement of the electorate from the political class, and the rise of multiculturalism. In this setting migration has been increasingly presented as a danger to public order and cultural identity; "*it has been securitized*" (Huysmans 2000, 752).

From the point of discursive approach, the connotations of the term ´burden-sharing`, which is also used in this thesis, needs to be acknowledged. This term is often used in the media and in political discourse when talking about solidarity and sharing responsibilities for asylum-seekers. But with exclusively referring to them as burdens, it has focused solely on the impact of ´flows` to the Member States (Thielemann et al. 2010, 26). When this then has been combined with the logic of abuse and with the use of term ´asylum-shopping`, this all is contributing to the securitization of asylum in the EU (Mitsilegas 2014, 185). Another important discursive tool within securitization has been the deliberate fragmentation of labels. This means that the usage of the label ´refugee` has been narrowed down and restricted and instead replaced with new labels (such as asylum-seeker, immigrant, economic migrant and many other terms within the Member States). These new labels then have worked as "instruments of control, restriction and disengagement" (Chimni 2010, 13). This all has led to significant change of policy paradigm. Where many European states once regarded asylum as a right, they now increasingly treat it more like a favor to the asylum-seeker. Asylum is now more a humanitarian act, and comes with far less rights than before (Fassin 2016).

Christina Boswell wrote already in 2000 that the nationalism in the Member States practiced for example by stigmatization of asylum-seekers is likely to have repercussions for race relations in European states (Boswell 2000, 553-554). With all these elements combined, it might not even be an exaggeration to state, as Malcolm Ross notes, that the traditional class conflict in the European countries has been widely replaced by a conflict between the citizens and the migrants (Ross 2010, 37).

The current ´European refugee crisis` is very closely tied to all of these aspects of asylum-seekers as threats and the security discourse within this field. I argue that this affects collective action and promoting solidarity and fair responsibility-sharing between the Member States and has to be taken into consideration when analyzing all the policy measures in this field. Seeing asylum-seekers as threats to the societies and this framed crisis are important elements when interested in the current constructions of the concept of intra-EU solidarity.

2.5 ´Europe's Refugee Crisis`

Since the Spring of 2015 the European Union has been described as being faced with a massive and out of the control ´refugee crisis´ (or more and more often actually now referred as ´migration crisis´). It is often called - deliberately or not - as the worst refugee crisis since the Second World War in Europe, but this has shown not to be true. In 1990s, after the Balkan war, Europe was hosting refugee to the amount that equals to 0.5 percent of its population. In 1956, on the other hand, Austria was hosting Hungarian refugees to amount that equaled up to two percent of its then population. Both of these numbers are much more than any of the EU Member States, or particularly EU in general, was hosting in 2015 or 2016 (Postel et al. 2015). Also compared to the numbers of displaced people in their region of origin, where 60 million people are currently forcibly displaced (ibid), the numbers arriving to Europe are insignificant. So the question to be asked then really is why these numbers of arrivals managed to create a significant crisis in Europe? Particularly considering that it is today, even when recovering from the economic crisis that has faced Europe since 2008, still from historical perspective in a relatively strong state (Goodwin-Gill 2016, 1).

If the answer is still to look at the numbers, then, at least, the numbers should be looked at more locally. In the Greek islands, for example, the pure number of arrivals has been a crisis

in itself, even if the numbers have not accounted for crisis everywhere in Europe (ibid, 1). But mostly all of this can be directly answered by linking it back to securitization. The situation in Europe is actively framed through discursive measures which are building up the crisis mentality because of the potential threat facing it. Certain frames are thus used in Europe to influence the public opinion regarding the situation and then justifying certain political measures, including, obviously, the measures within the field of asylum and border control. Therefore, the construction of the concept of a crisis is a necessary step in understanding intra-EU solidarity and its current appearances in the field of asylum and border policies.

The crisis in Europe can be analyzed by viewing it as a ´perfect storm`. Spijkerboer (2016) defines a perfect storm to be "*a disastrous event which happens because a number of problems occur simultaneously and where the interaction of these different elements reinforces these problems*". He mentioned that the perfect storm that hit Europe in 2015 had eight inter-related elements. The first three elements were (1) the major global refugee crisis, combined with (2) serious under-funding of international organizations and (3) minimal resettlement of refugees at a global level. The crisis was then worsened with (4) the prohibition of travel, as well as with the so called (5) intended ripple-effect, which refers to EU's action to intentionally make it illegal to leave and seek protection. This situation has been made worse by (6) the lack of harmonization of the asylum system, as shown earlier and by (7) the systematic underestimation by the politicians of the situation that should have not really come as a surprise.

This underestimation left Europe, in 2015, unprepared when it came to reception facilities, immigration offices etc. As these institutions then become overwhelmed, it created the idea that the numbers were more than the EU could handle (Spjikerboer 2016; see also Postel et al. 2015). Evangelina Tsourdi has recently referred this to be an "*asylum policy governance crisis*" (Tsourdi 2016, 6). The finalization of the perfect storm in Europe has come by (8) the exploitation of these problems by the politicians, which relates this all again back to the role given to security and active framing.

So, in the end, the crisis that has hit Europe is not as much about numbers, as it is political will and thereof the ability or inability to make collective decisions. It is also more a crisis of solidarity, as the crisis mode and the security paradigm has being able to give institutional solidaritycertain meanings. After here providing the context in which the current proposals

are given and operate, I will now show this framing is affecting these policies aimed at solving the crisis and to promote solidarity. I will show how the question of institutional solidarity is framed to be based on security, emergency and prevention of asylum-seekers into the Member States territory. I will also show how the current crisis mode has amplified the frames of security and responsibility.

3 FINANCIAL BURDEN-SHARING

3.1 Calculating the ´Burden`

The following fours chapters reveal the current meanings given to institutional solidarity within the EU's common policy on asylum and border control. I show, by outlining in detail, the substance of certain policies and policy proposals within this field, how there are certain meanings given to solidarity and fair-sharing of responsibility between the Member States. I show how the issue is being framed and the role given to security through the alleged security needs.

I discuss four different forms of solidarity: financial solidarity, operational solidarity, physical solidarity and finally solidarity as responsibility and punishment to firstly see how the concept of solidarity is being expressed in legal rules and to uncover their potential for sharing responsibilities ´fairly`. Secondly, I show the current frames given to institutional solidarity. These following four chapters show that the views of institutional solidarity within the EU are largely based on security, emergency and prevention.

I start this investigation of current meanings with financial burden-sharing and especially with the need to try to understand what constitutes financial responsibilities that should be shared between Member States. According to the Article 80 of the Treaty of the Functioning of the European Union, the policies and their implementation in the field of asylum, migration and border control should meet the principle of solidarity and fair sharing of responsibility, including its financial implications. TFEU thus gives financial cooperation a sort of special status in this context, compared to the other forms of solidarity. Therefore, it is logical to start the analysis with this aspect of solidarity. Monetary help has also historically been the most often used policy measure for sharing the burden in this field.

Solidarity between the Member States is closely linked to the concept of fair-sharing, as will be discussed throughout the thesis. Can solidarity even be promoted without sharing responsibilities ´fairly`. What kind of solidarity would that then be? As I am here interested in ´sharing money` (adopting again one of the categories from Noll, discussed earlier) and sharing ´the burdens` and the questions relevant are the following: How to share money

fairly? How to calculate the cost and the burdens that arise from various asylum and related policies and which of them should be covered so that the sharing would occur in the spirit of solidarity? This chapter paints a picture of the difficulties of identifying various asylum-related costs, as well as costs relating to border control, which then means that sharing them also becomes difficult.

´Burden-sharing` as part of international cooperation in the field of asylum has been seen as a necessity ever since the 1951 Geneva Refugee Convention, as already discussed. Burdens under the Convention are defined to be the costs to the Member States that arise from processing asylum claims and from hosting asylum seekers (Wagner and Kraler 2015, 7). If this is taken as a starting point for determining these asylum-related costs for the Member States of the European Union, the question becomes, what are these the asylum-related costs to the Member States of the European Union? The broadly referenced report made by Elko Thielemann's group (2010) on identifying asylum-related cost presented the following questions: What are the asylum-related costs borne by the Member States? Which of these costs could be shared at a European level? How could these costs be shared? These are the questions that need to be answered before the costs can even be attempted to be distributed fairly. And these costs to the Member States need to be identified the best way possible. This has turned out to be a very challenging task in the European Union.

To try better to identify these asylum-related costs to the Members States, they should first be divided into direct, indirect and intangible costs (Thielemann et al. 2010). So what are then these direct costs to the Member States? These, again, need to be taken apart in order to better identify them and calculate those costs that should be distributed at the EU-level. Difference needs to be made at least between costs that follow from the implementation of the common EU directives that set certain common standards for the Member States and then between direct costs that are more associated with national policy choices. The latter include for example relatively high reception costs due to long application periods and the level of detention used differently in different countries, leading to higher cost level (ibid, 37-44).

Indirect asylum-related costs, on the other hand, refer to cost that are not directly measurable. Indirect asylum-related costs are mostly costs relating to access to general public services, and so include for example costs to the education or health care system that arise together with the number of asylum-seekers. The biggest problem with measuring indirect costs is that many

countries do not specifically budget or record these costs to be asylum-related (ibid, 36-37). So there are both significant differences in accounting practices and also conceptual difficulties in defining asylum-related costs among the Member States. With this common understanding lacking, the sharing of these financial burdens as fairly as possible becomes difficult already from the beginning.

This talk about direct and indirect costs, and debate around burdens in general, revolves strongly around the absolute numbers of asylum-seekers in each country. This view is too narrow to share responsibilities fairly, as is does not take into account the differences in the Member States capacities to actually respond to the numbers of arrivals (Wagner and Kraler 2015, 15). In reality, the pressure on Member States and their capacity to handle the numbers of asylum-seekers vary greatly. Therefore, indicators of measuring capacity, such as the country's GDP, population size and population density could create a better picture of the state's capacity and lead to better understanding of responsibilities and to ways to share them more equally. At the same time it is important to acknowledge, that even relatively small variations in the types of indicators used produces noticeable differences in results (Thielemann et al 2010, 18-19). This makes burden-sharing even more difficult. These differences in states capacities to receive asylum-seekers are still one of the most important aspects of solidarity and fair-sharing, and should be kept in mind throughout the analysis of intra-EU solidarity.

Fair-sharing can be simply referred as a method of allocating responsibilities between states participating in a solidarity arrangement and to include three central ideas, as done by Harriet Gray (2013). (1) Fair-sharing of responsibilities seeks to alleviate unduly heavy burdens falling on certain states within a certain solidarity arrangement, and (2) this requires means of recognizing burdens and calculating state's relative capacities to receive asylum-seekers. (3) These calculations are always politically sensitive, as differences in them will result in different outcomes and thus shifting the burden to someone else (ibid, 180).

The question of sharing the asylum-related costs fairly between Member States becomes even more difficult as some of these costs could actually be avoidable. These kinds of potentially avoidable asylum-related costs include, for example, long asylum procedures and the broad use of detention, which is very costly to the states. The United Kingdom, for example, spends two-thirds more per asylum application than Sweden. This is largely due to the fact that in the

UK the use of detention accounts for 25 percent of the total costs, whereas in Sweden the cost for detention has amounted only to less than 4 percent of the total asylum-related costs (Thielemann et al 2010, 18.) So here the question becomes whether it is then fair that all states need to participate in covering these costs, if they could just be avoided with different policy choices. Would that be promoting solidarity between the Member States?

The current European system of responsibility-sharing is also creating costs that then need to be distributed. According to a recent estimate from the Commission, the direct and indirect costs of the Dublin system in 2014 were approximately 1 billion Euros. The Commission states how the transfer times within the system are long and the rate of actual transfers small, which both having significant implications on the indirect costs and the overall efficiency of the system. The Commission also acknowledges that use of detention in the Member States is high as is to "*counteract absconding*", and this absconding to generate other indirect costs (COM (2016) 270 final, 11), and it is thus quite understanding on these costs. Therefore, it can be stated again that firstly, the task of determining how to share asylum-related costs within the Member States is difficult. Another challenge is to define, and politically decide, on how broadly these costs should be divided at the European level.

In addition to direct and indirect costs, there are also asylum-related intangible costs to the Member States. Therefore, their role should be taken into consideration as well, when deciding which costs should be divided at the EU-level and amongst all Member States. Intangible costs in this context are various social and political costs to the host community that are caused by asylum-seekers and persons granted international protection. As an example of an intangible cost, Thielemann and others (2010, 36-37) mention the impact that an asylum center potentially has for the local community. The exact calculations for these kinds of political and social costs are always difficult or impossible and therefore the potential for even distribution for these costs is also limited and politically sensitive. This again makes sharing all these asylum-related responsibilities fairly very difficult in the first place.

It should also be noted again, that this kind of discourse framed only around costs doesn't include any aspects about the potential benefits to the host societies. Such benefits could potentially include, for example, long-term benefits for the state's economy (ibid, 28). This framing then contributes to the general securitized discourse on asylum-seekers by referring to them simply as burdens and then framing solidarity with aspects of security and prevention.

So here I have shown that calculating various costs in this field and then coming to political decision on their distribution is a politically challenging task. Still, some asylum-related costs have been paid with EU-level funds. These funds are at least meant as ´solidarity measures`.

3.2 The Asylum, Migration and Integration Fund

In attempts to share the burden of asylum-related costs fairly, these costs are being partly compensated in the EU with various funds. But as pointed out in the previous chapter, the calculations of costs or their fair-sharing is not an easy task and the understanding of solidarity reflects on choices made.

Financial aid to Member States, in general, has always been a core part of the European cooperation. Financial aid has always, since the beginning of the European Community, been seen necessary in helping to bring stability to the European region (Vanheule et al. 2011, 39). There are several regional funds to benefit the Member States also in their asylum-related costs, even as they are not purely asylum or migration funds. Member States can for example get EU funds to cover costs for vocational training programs and therefore include those for asylum-seekers or assistance to various infrastructure projects, including for example building asylum centers, as the Commission mentions in its Communication towards enhanced solidarity (COM (2011) 835 final, 6) This financial aid has not been given for only altruistic reasons, but rather because there has been interest-based motivations, as it has been linked to prosperity and security to all Member States (Vanheule et al 2011, 39).

Then there are also EU funds that are more particularly assigned to cover asylum-related costs. The Asylum, Migration and Integration Fund (AMIF) was established in 2014 (Regulation 516/2014) and it replaced the European Refugee Fund (ERF). AMIF was supposed to bring more flexible and adequate resources for sharing the financial burden between the Member States. One of the fund's four specific objectives is institutional solidarity, as AMIF is meant to be "*making sure that EU States which are most affected by migration and asylum flows can count on solidarity from other EU States*". The total funds of AMIF for the seven years are set to 3.1 billion euros (compared to the much lower number of 630 million of the previous ERF) (European Commission 2016a).

But to actually allocate funds within these solidarity measures, according to the principle of solidarity, they ought to be divided fairly. So here we return to the previous part on calculating the costs and the difficulties in identifying the actual burdens and state's capacities and to the political nature of such calculations. Both the previous ERF and now AMIF use rather absolute than relative numbers when calculating costs and the pressures for the Member States. Therefore the AMIF is barely just following in the footsteps of the ERF, even though it was meant to increase the level of intra-EU solidarity. This means that it still disproportionately favors larger Member States which receive higher absolute volume of applications but whose asylum systems are at the same time also well-developed. This is done at the expense of some the smaller Member States that receive higher relative numbers compared to their capacities and who for example require assistance in the development of their asylum systems and receptive capacity. Thielemann and Armstrong for example calculated in 2012 when the new regulation was on the preparatory stage, that when the absolute numbers are used as the key indicator, the UK, France and Germany would collectively receive about 35 % of the total funding within AMIF. Malta and Cyprus on the other hand, which both at that time were facing the highest relative numbers, would have only received about 1% of the total funding within the AMIF (Thielemann and Armstrong 2012, 8-9.) This approach does therefore not put enough value on ´burdens` and is then not able to really promote fair-sharing. Therefore, the potential for the Asylum, Migration and Integration Fund to be a real solidarity tool is very limited, despite its somewhat significant budget.

Interestingly, the Commission originally wanted to combine part of the funding from the AMIF with the willingness to receive asylum-seekers via intra-EU relocation. This measure could have increased the funds ability to promote intra-EU solidarity, as it would have better redistributed some of the responsibilities. But here it was the European Parliament that relinquished this compulsory objective from the regulation. European Parliament is often described in this field as the opposing force for the Council's restrictive position in asylum related matters, but Minos Mouzourakis for example sees that the restrictive views are now stemming directly from the national parliaments or from public opinion within the Member States in the European Parliament as well, caused by the securitization discourse (Mouzourakis 2014, 14-16).

So even as the financial form of solidarity is particularly mentioned in the Treaty to be taken into question within the area of asylum, migration and border control, it is not enough for true fair-sharing of responsibilities. This is evident, especially since it has other limitations as well. Financial aid alone, for example, can't deal with the challenges to reception conditions, caused by high numbers of asylum-seekers, as already noted back in 2010, before the current levels (Thielemann et al. 2010, 139-140). So these challenges need to be encountered with other solidarity measures, if the EU would actually aim to promote fair-sharing. The EU has still tried to tackle the current crisis with more financial help, as I show next.

3.3 EU Emergency Support Mechanism

Greece has, without a doubt, been hit the hardest of all the EU Member States with the large numbers of arrivals within the past years. In Greece the pure numbers of arrivals amount to a crisis, even when this is not the case on European level. The country's own difficult financial situation has exacerbated this crisis. Therefore, Greece has received significant financial aid through various mechanisms. (Neville et al 2016, 23). Still in the early Spring of 2016, when the so called Balkan route out of Greece was closed, and the situation in Greece got rapidly worse, an additional tool to face the impact of a crisis was introduced, as the Commission proposed to establish so called Emergency Assistance Instrument. This came after the Council had in February called for the EU to start to deal with something that, by their estimate, had turned from a migration crisis into a humanitarian crisis (Pétin 2016). Therefore, the Council decided to release 700 million euros over three years for humanitarian relief operations within the EU (Council Decision 6977/16). It should be noted that this instrument establishes a larger framework for emergency support for all types of natural and manmade disasters (ibid), and is therefore not exclusively just for Greece, even though it, of course, was written with Greece in mind.

The Emergency Assistance Instrument can be taken as a huge shift in paradigm: It made it possible to distribute humanitarian aid within the EU, as the need for humanitarian relief for third-country nationals was now materializing in the EU's own territory. This need, though, simultaneously shows clearly the failures of the EU, as there really should not be a need for

humanitarian relief in Europe in 2016.The EU could have had the potential to handle 1 million asylum-seekers in an organized manner (Pétin 2016).

Is this instrument then even an effective solidarity measure? Is it able to promote solidarity and fair-sharing? How does it frame solidarity? What is the meaning given to solidarity between Member States? The European Commissioner for Humanitarian Aid and Crisis Management Christos Stylianides said when this measure was released that there is no magic formula for crisis, but this fund *"will help to ensure that we can provide a European solution"* (EU Observer 02.03.2016). Others saw this measure as presentation of solidarity from a particular angle. For example Juha Sipilä, the Prime Minister of Finland said in March 2016 that *"the other Member States still have solidarity towards Greece"*, and that this humanitarian aid works as a prove of this (Helsingin Sanomat 08.03.2016). So to Sipilä the intra-EU solidarity presents itself in this very conditional way, where the other Member States are still showing solidarity to Greece, who now really has to take care of its own part.

This crisis measure is again showing how institutional solidarity is used within the frames of emergency, and not offering structural changes. It is also emphasizing the link between solidarity and some Member States responsibility to do their part. And while this kind of help is not enough to solve the crisis, it also tries to take away the fact that the crisis in Greece is not just a humanitarian crisis, but a political one. It is a crisis of political will and solidarity, and amplifying the views of institutional solidarity being based on security, emergency and prevention, not so much on true political cooperation to help those in need; whether those in need are asylum-seekers or other Member States.

4 OPERATIONAL SOLIDARITY

4.1 The Hotspot-Approach

I showed above how purely financial burden-sharing is not enough to share the responsibility fairly between the Member States of the Union. I now focus on practical cooperation, also known as the operational solidarity, between Member States of the European Union. After the financial responsibility-sharing, this practical, solidarity has often been seen as the easiest form of burden-sharing to agree to. In this chapter I show again how solidarity between the Member States is being given certain meanings, thus also leading the political cooperation to take certain forms.

Operational solidarity is currently grounded in various legal measures based in Articles 77-79 TFEU. The participation in these measures is legally binding and they establish element of mutual support among Member States. They can thus be referred as "*arguable solidarity measures*" (McDonough and Tsourdi 2012a, 10). These measures include EU's border agency, Frontex, the European Asylum Support Office (EASO) (ibid, 10). Also the newer so-called hotspot-approach that has gained ground in the EU since the late Summer of 2015 belongs in this group of ´practical solidarity measures`.

The alleged ´refugee crisis` has also led the Commission to give new proposals for the future practical cooperation within this field. The Commission aims to strengthen the two above-mentioned agencies and improve the potential for institutional solidarity. But what kind of solidarity are they actually presenting? Are these measures really contributing to improving the fair-sharing of responsibilities among the EU's Member States in the field of asylum and border control?

Let's first look at the so-called hotspot-approach, as the practical cooperation in the field of asylum and border in the EU is currently largely promoted through this. These ´hotspots`, shortly, are identification and registration centers, currently located in Italy and Greece, "*aiming to provide coordinated on-the-ground operational support to frontline states in dealing with large scale of arrivals*" , as stated in the European Agenda on Migration (COM (2015) 240 final) which set that the EASO, Frontex and the European Policy Office Europol

should work on the ground together with the Member States in question to identify and register all incoming migrants (ibid).

The hotspots carry an array of legal problems, including the use of detention and therefore also severe human rights violations have been identified to have taken place in them (see for example Webber 2015 and Human Rights Watch 2016 on the conditions on three hotspots in Greece in mid-May 2016). There also is a problem relating to the rule of law, as this approach is basically only based on the European Agenda on Migration, which is only a Communication from the Commission. That is to say that there is no clear regulation especially for the hotspots (Neville etal. 2016, 29). Very problematic is also the current plans to give the new European Border and Coast Guard Agency the key role in this approach. This violates the multi-agency nature of the approach as it would - at the expense of other agencies and functions - put even more of its focus on controlling borders (ibid, 6-7). So again, the approach adopted here can be said to be part of the larger paradigm of internal security and keeping the asylum-seekers out the EU's territory.

What about the aspect of promoting solidarity between the EU Member States? The hotspots-approach is at least framed to be part of operational solidarity and helping to share the responsibilities better among the Member States. This ´comprehensive assistance` measure to the frontline states is still severely misleading. Francesco Maiani (2016) for example shows how that this approach leaves most or all of the main costs - including reception, processing, detention and expulsion - solely to the host states, without them being shared at the EU-level. Therefore it really cannot be stated to promote fair-sharing of responsibility. Moreover, this measure aims only to assist the frontline states to take full responsibility under the current regulation, by registering all arrivals, and does not aim to share these responsibilities among all Member States.

Therefore hotspot-approach does not aim to share the burden equally. The meaning given to institutional solidarity is rather emphasizing the responsibility of the frontline states to do their share in preventing the perceived security threats in arriving to other Member States. This same framing is visible also within the plans of empowering EASO and Frontex.

4.2 EASO and the EU Agency for Asylum

The Common European Asylum System (CEAS) is meant to coordinate the Member States asylum systems. The European Asylum Office (EASO) was established in 2010 (Regulation 439/2010) to improve this coordination. Due to this coordination role however, EASO has also faced a lot of criticism.

The coordination role, namely, does not allow EASO to address any structural deficiencies within CEAS. (Tsourdi 2016, 6). Its regulation, for example, specifically states that the Agency shall not have any power in regarding asylum decisions taken by the Member States and thus, EASO has not been able to promote actual fair burden-sharing within the EU by, for example, harmonizing these decisions and the very disparate recognition rates with the Member States (Hatton 2015, 615).

So in April 2016, as part of the Communication "*Towards a reform of the Common European Asylum System* (COM 2016, 197), a plan to replace EASO and create a new EU Agency for Asylum was revealed. The Commission plans to increase the Agency's role. This echoes for example the views of the European Parliament, which, in 2015, stated a need to develop EASO "*from a collection of experts from Member States into a fully-fledged Union agency providing operational support to Member States and at the external borders*" (European Parliament 2015/2095, recital 68).

One indication of the bigger role for the new Agency is the planned increase in staff, from about 150 to around 500 (Peers 2016b). But how else is this agency meant to promote intra-EU solidarity and fair responsibility-sharing? It is still not meant to be replacing the national authorities and is thus simply to remain a coordination office. But the Commission's proposals would give it power to intervene if Member States are not taking necessary remedial action or if the state is facing an emergency situation. This means that the new Agency could suggest changes to national practices and if there were then no compliance from the Member States in question, the Agency could intervene, without the consent from the Member State in question. The assistance in these cases would be, according to Commission, "*case-handling and reception related support*" (COM (2016) 197 final, 13). This ´enhanced support` is meant to make sure that there is no incentive for the Member States or the asylum-seekers to break the common European rules (Peers 2016a). This shows

again how solidarity measures are seen necessary in cases of emergency, to prevent the inflows of asylum-seekers to EU This solidarity measure is setting the responsibilities for one Member State to ´show solidarity` to the rest and do its part, or this solidarity measure will be launched against it.

The Commission acknowledges that in order for this solidarity measure to work, it needs sufficient financial means (COM (2016) 197 final, 13). Just like all these operational agencies, this new one would have its own budget into which the states would contribute. This means that the funding is dependent from the Member States and realistically they will need interest-based motivations for this collective action. They are most likely only to keep funding when cost for solidarity is outweighed out by the benefits that the Member States see in these forms of collective action, thus making it politically feasible.

In the longer term, if true fair-sharing would be truly pursued in the EU, there should be more structural changes. This would mean for one, that this new agency would be given the role to make EU-wide first-instance decisions. Pursuit of joint decisions is something that is actually already set in the TFEU. The Commission realistically acknowledges though, that this option is somewhere on the far horizon (Peers 2016a), as it would not be politically feasible in the current discourse to promote for more collective action in this field. So whereas this current proposal has some potential to increase cooperation in the field of asylum and to offer support to Member States when facing a crisis, it is, at the same time, still promoting the same idea of solidarity than the hotspot-approach. It sets most of the focus on the frontline states and expects them to fulfill their responsibilities, in order to show solidarity to other members of the community. The proposed measures also reflect the ideas of security and prevention of misuse of the system as well as emergency and crisis mode. No real structural changes are proposed, leading this proposal to amplify the current frame on institutional solidarity.

4.3 The European Border and Coast Guard

The cooperation at the EU's external borders is currently organized through Frontex. This border agency's main tasks, as set in its regulation (Council Regulation (EC) 2007/2004) include the training of border guards, risk analysis, research, operational support, border surveillance, and support for deportations. Frontex has also been equipped, since 2014, with

European Surveillance system (Eurosur) that connects Frontex with real-time information exchange with the Member States border systems (Regulation 1052/2013 EU). Frontex and Eurosur do promote certain forms of operational solidarity with their current tasks, including this 24/7 information-exchange. The Member States border guards can also, for example, share experiences and learn from each other as part of their cooperation. Some see this as an added value for Frontex, and therefore, to be the justification for this kind of collective action. This view was often shared in the large survey for political actors and officials conducted by Vanheule and others in 2011. Some officials suggested that these measures, if correctly implemented, would, in themselves, be a form of solidarity (Vanheule et al. 2011, 93).

But with the rapidly rising numbers of irregular border crossings, a need for a new improved form of cooperation at the borders emerged in the EU. In December 2015 the Commission published a proposal for a European Border and Coast Guard Authority (COM (2015), 671 final). An agreement for establishing this new Authority was then agreed by the Council and the European Parliament on the 21st of June 2016 (Consolidated regulation PE-CONS xx/16PE-CONS xx/16 – 2015/0310(COD). This will bring together a reinforced and renamed Frontex as the European Border and Coast Guard Agency (EBCG) and the Member States' border guard authorities under the umbrella of a European Border and Coast Guard (EBCG), making them jointly responsible for the management of the external borders.

Principle of solidarity and fair-sharing is generally applicable to all areas falling within the Articles 77-79 TFEU. So even as, historically, the management of borders has been left for the states, as it is a core part of state's sovereignty, under Article 80 the Member States should cooperate and this cooperation should promote solidarity. This is due to the fact that no proposed limitations to it were accepted when this Article was originally drafted (Vanheule et al 2011, 36-37). And this new authority does also have some potential to increase practical solidarity. It will, for example, establish a rapid reserve pool of border guards with the goal of deploying 1500 national guards in less than three days when necessary. In general, the human resources of the Agency are expected to be doubled compared to Frontex by 2020 (European Parliament Press Release 30.05.2016).

`Integrated border management´(Article 4) is defined for the first time in this policy. Integrated border management is based on Article 77 of TFEU, which has an objective for gradual introduction of an integrated management system for external borders. This

cooperation at the external borders, thus, also falls under Article 80 TFEU and should therefore promote solidarity between the Member States and fair-sharing of responsibilities. This integrated border management means that the Agency is responsible for operational and technical strategy for the European borders. Even as the Member States are still to adopt their own strategies, they have to be ´coherent´ with this strategy (Peers 2015). This new authority can therefore be defined as "*an important next step in the progressive Europeanisation of external border management*" (Neville 2016, 5), but it might also place unrealistic expectations for this new form of cooperation. It can't, for example, suddenly fix the structural flaws within the external border management. It should also be noted that the Member States could have supported Frontex all along with necessary resources to improve its effectiveness, leading to an increase in operational solidarity, but they have chosen not to do so (ibid, 5). For these reasons, the actual potential for this to work as a solidarity measure remains to be seen.

The reasons behind the proposal to set up EBCG can be described as interest-based motivations for protecting other obligations. This becomes clear, for example, through the Commission, when justifying the proposal by stating that it is expected to "*help to manage migration more effectively, improve the internal security of the European Union, and safeguard the principle of free movement of persons" (*European Commission Press Release 09.09.2015). The EBCG, therefore, links together the efforts to maintain the Schengen area of free movement and the security concerns of the Member States. This view sees institutional solidarity, in this form, necessary to reach these goals of internal security and free movement, again framing cooperation between the Member States to be based on security.

The new proposal has faced significant criticism too, on its security based approach. "*Migrants are not security threat*" states for example Frontexit, a broad collective of European and North-African human rights organizations, opposing the new agency, as it argues that reinforcing this " *quasi-military apparatus*" will put migrant's and refugees' rights at risk (Frontexit 2016). This new agency is also a good example of *solidarity based on delegation* (Mitsilegas 2014, 188), as are the other forms of practical solidarity too. This is to say that these measures are all to a large degree aimed at preventing asylum-seekers arriving to the Member States and the implementation of this kind of solidarity is best to take place through operational cooperation, versus the Member States themselves having to take action

themselves. In other words, when "*debate is around asylum-seekers is highly politicized, centralized institutions are expected to provide answers* (Farcy et al. 2016).

So here I show, again, how the measures for operational solidarity are yet again part of the current larger securitized discourse on asylum-seekers and framing of institutional solidarity to be based on security, emergency and prevention. This is even more clearly visible under the plans for physical solidarity, making responsibility-sharing measures even more politically difficult, as I make clear next.

5 PHYSICAL SOLIDARITY - ´SHARING PEOPLE`

5.1 Fair-Sharing of the Burden

After showing that operational solidarity, especially in its current forms, is not enough to share asylum-related responsibilities in the EU fairly, partly as they present solidarity in the light of security, emergency and prevention, I now analyze the potential for physical solidarity on fair-sharing of responsibilities. It becomes clear that this form of responsibility-sharing is politically very challenging, due to its close link to sovereignty of the states and the right of states to determine those people allowed within their territory, and again then the role of security.

Physical solidarity refers here to transfers of either asylum-seekers or protected persons between states, which can either take form of relocation or resettlement. I only cover here relocation, which, in this context, refers to the transfers of third country-nationals from one Member State of the EU to another Member State. Re-settlement, on the other hand, refers to transfers of asylum-seekers or those who are already granted international protection directly from a third country to one of the Member States, which is out of the scope of solidarity between Member States and this thesis. It should still be noted, that the current interest within the Member States for re-settlement of individuals with already granted internal protection over relocation echoes the same broader public discourse on asylum-seekers arriving to Europe. As noted earlier, in this discourse the asylum-seekers are seen to be ´just` economic migrants, abusing the system versus the ´real refugees` re-settled directly from the camps.

Relocation measures to move asylum-seekers from one Member State to another have been very small-scale until recently, and there has only been some ad-hoc programs. Participation in these programs has also been voluntary, both for the Member States receiving these asylum-seekers and to asylum-seekers as well, which Williams (2015, 17) refers as ´double voluntarism`. EUREMA I and II programs to relocate individuals from Malta during 2011-2012 are good example of these previous relocation plans. Within these programs 500 people, in total, were relocated to other Member States. This number in the end was so insignificant that is was outweighed by the number of persons returned to Malta based on the Dublin rules within the same time period (Williams 2015, 17). Therefore, they did not end up sharing the

asylum related responsibilities more equally across the EU. Evangelina Tsourdi has, for example, therefore, recently called these programs as "*merely political tokens*" (Tsourdi 2016, 7).

The tragedy in Lampedusa in 2013, which created public outrage, brought in at latest a broader interest for relocation (Wagner and Kraler 2015, 29). Both the Commission and the European Parliament has seen mass relocation to have potential. The Commission's view on the importance of relocations can be found for example in the 2015 European Agenda on Migration: "*To deal with the situation in the Mediterranean, the Commission will, propose triggering the emergency response system (…) This step will be the precursor of a lasting solution. The EU needs a permanent system for sharing the responsibility for large numbers of refugees and asylum seekers among Member States. (…) Member States will need to show solidarity and redouble their efforts to assist those countries on the frontline* (COM (2015) 240 final, 4). The European Parliament, on the other hand, stated in its call for a more holistic approach, that the "*new system for the management of the Common European Asylum System must be based on solidarity and a fair sharing of responsibility*" (EP 2015/209, recital 17).

Many scholars also favor relocation. Thielemann's group, for example, showed already in 2010 in their thorough report that only physical relocation would be the sufficient policy tool to share fairly the indirect and intangible asylum-related costs of the Member States, as financial and practical solidarity alone were shown not to be able to sufficiently share these costs (Thielemann et al 2010, 44), as I have also shown to be the case with the current proposals within financial and practical solidarity.

Mass transfers of persons, on the other hand, contain also an array of problems. The matter of EU-level decisions within this issue is also politically very sensitive. Some of these problems in relocation relate the agency and dignity of the asylum-seekers themselves and the role that should be given to their consent for the intra-EU transfer - as they actually are the main recipients of these solidarity measures. But there are different schools of thought when it comes to the asylum-seekers right to participate in the decision-making. Luara Ferracioli for example states, that the goal of refugee protection regime is simply to ensure that refugees receive the sort of protection that they need "*in order to lead minimally decent lives*" (Ferracioli 2014, 142-143) and therefore, they don't have the right to choose the country where they want to live. She feels, that this view is needed in order to internationally maintain

a process where as many people as possible will continue to receive protection. Matthew Gibney agrees, as he writes, that according to international law, the refugees are only entitled to a place where their basic rights are respected and have no moral claim to decide on where they want to live. At the same time he still states that integration and rebuilding one's life is going to be easier to some individuals in some countries than others, based on for example language and cultural ties, and to some extent this should be respected (Gibney 2014, 459-460; see also Kuosmanen 2013, 109-111). This question of agency and integration should though also be important from the Member States point of interest. An isolated person in one Member States is easily an isolated and marginalized person for the entire EU, as the negative side effects can easily spill over the internal borders (Di Filippo 2016a, 6-7). But, if I use the wording from Fassin, the public notion of the asylum in the EU has turned from right into favor (Fassin 2016), as I argued earlier. Within this broader discourse of security this has most likely affected the view of asylum-seekers. This securitization has rather limited the rights given to the asylum-seekers and thus also the possibilities to increase the agency of the asylum-seekers within the asylum process.

Two important questions in relocation also have to be made clear from the beginning: Whether the participation on these measures should be voluntary or mandatory to the Member States, and is voluntary participation fair and promoting intra- EU solidarity and fair-sharing on the best possible way and who should these relocation measures apply to? Should it be more limited in scope and only apply to individuals who have already been granted international protection or could asylum-seekers also be relocated? Well, firstly, it can be pretty easily stated that voluntary participation is not fair. Voluntary participation on collective action also goes against EU's core values. Guy Goodwin-Gill, for example, has called voluntary participation as *"a blatant disregard of the EU's organising principles"* (Goodwin-Gill 2016, 8). Gray shares this view and calls voluntary relocation plans to be *"regrettable on an international level, but unacceptable within a European Union committed to close integration between Member States"* (Gray 2013, 176). These mean that only partial participation in the collective action measures within this field is very problematic and does not promote fair-sharing between the Member States of the community.

Secondly, if participation then is mandatory, it still has to be politically decided who can be relocated. Relocation has in the past largely only involved individuals with already

recognized claim for international protection (Wagner and Kraler 2015, 13), but such limited relocation would probably not be able to contribute significantly in sharing the responsibilities with the frontline states. But as the decision taken outside of the national states also means limiting the state sovereignty by forcing Member States to accept people within their borders, making broad relocation measures and fair-sharing also politically challenging. The EU-level decision to make them accept individuals to their territory relates, namely, closely to sovereignty and the principle of subsidiarity, making this form of solidarity sharing even more difficult than sharing responsibilities via ´solidarity based on delegation`.

According to the Commission, relocation meets the requirements of subsidiarity and proportionality, as relocation is ´necessary` to achieve fair sharing of responsibilities between Member States by relieving a Member States with a disproportionate burden. That is because "[*B*]*y definition, this requires EU action*" (COM (2016) 270 final, 7). But as I have pointed out earlier as well, also the definition of necessary is ultimately a political decision, to be taken always in certain context. I now turn to see the political feasibility and the frames given to those relocation plans proposed in 2015 and 2016.

5.2 Emergency Crisis Relocation Mechanism

In September 2015, with the significant increase in arrivals to the European Union the Council decided (Decisions 2015/1523 and 2015/1601) to set up two emergency relocation tools to transfer in total 160 000 asylum-seekers from Greece and Italy to the other Member States. Both of these measures are based on Article 78(3) TFEU, allowing the Council to adopt provisional measures in the event of emergency situation characterized by a sudden inflow of nationals of third countries. This measure then also falls under the Article 80 TFEU and should have the goal of promoting solidarity and fair-sharing between the Member States.

Relocation, therefore, is meant to be a solidarity mechanism in the EU. But to share the responsibilities - or burdens as they are mostly referred to also within the discourse of physical solidarity - these burdens must first of all be recognized. So it must be determined how much asylum-seekers should be relocated from the frontline states; how much help would constitute fair, and secondly, which Member States they should be transferred into. Here again the Member States capacities to receive asylum-seekers needs to be acknowledged

in order the measures to have the potential to share these responsibilities ´fairly`. Still and maybe even more than in other forms of solidarity measures, these determinations are politically difficult.

Within these emergency relocation plans the distribution of the asylum-seekers is based on the host state's size of the population, its GDP, the average number of asylum applications per million inhabitants and the unemployment rate (COM (2015) 450 final, 15). In other words, it was here the Commission and the Council that determined that these chosen indicators would best reflect the countries capacities to receive asylum-seekers and by applying them, the distribution of asylum-seekers among the Member States would happen then as fairly as possible.

The reality of showing solidarity through relocation has, though, been extremely difficult. At the time of writing in the Summer 2016 where only this limited emergency crisis scheme has been adopted by the Council, and even that with only majority vote, with some Member States heavily opposing any mandatory transfers, the implementation has been extremely slow. By mid-June 2016 only 2,280 (1,503 from Greece and 777 from Italy) from 160 000 planned transfers had actually taken place. The report on the progress of the relocation shows that five Member States (Austria, Croatia, Poland, Hungary, and Slovakia) have not relocated a single applicant (COM (2016) 416, 1-2). Hungary and Slovakia, who were outvoted in the Council have also filed a court case against mandatory quotas in the European Court of Justice (EU Observer 30.09.2015; EU Observer 18.11.2015), which certainly sets big question marks on the potential for relocation to promote solidarity and fair-sharing between the Member States.

The Member States also seem to be using relocation regulation for their own purposes, as supported by the low numbers above. The Member States are, according to the Commission, for example using the possibility to set preferences for transferred individuals, just as a means to actually exclude as many candidates as possible, when these references were originally only supposed to be a way to facilitate better integration in the new host state. Some Member States have also used only general references to national security or public in their attempts to exclude applicants, even as the EU legal rules always require individuals reasoning, (COM (2016) 165 final, 9-11). Member States are thus not acting in the spirit of fair-sharing, but their actions become understandable when viewed in the context of framing, where solidarity

is mostly relating to security and prevention. So again, these are all signs of the significant role of security, securitized discourse and the perceived fear of the state's internal security.

From the institutional solidarity view, emergency relocation has other problems as well. Even though it is framed to be a ´significant help` to the frontline Member States, this word is misleading. These countries are still left responsible for fingerprinting all migrants, following the hotspot-approach. This means that Greece and Italy are still responsible for all the estimated arrivals and in best case only 160 00 are planned to be then relocated (Maiani 2016), leaving also most of the costs to these states, as I mentioned earlier as well. This, of course, is also assuming the best-case scenario, in which the other Member States would actually be fulfilling their part of the responsibilities, which has not been the case so far.

Secondly, temporary emergency relocation plans are only meant to be transferring asylum-seekers who are ´in clear need of protection`, meaning that the EU-wide recognition rate for their country of origin is over 75%. Others are to stay as a responsibility of the frontline state. Unfortunately, it also means that these already over-burdened frontline states are also faced with all ´bad cases` (Maiani 2016). Maiani is here referring to those who do not necessarily have an asylum motif, eventually leading to the use of costly detention and their subsequent deportation, for which the frontline state is still responsible (Maiani 2016). This really then cannot be sharing the burden fairly between all the members of the community, but only to be framing solidarity to take a form of responsibility of the frontline states. These measures, again, promote security, as they are preventing asylum-seekers from arriving to other Member States, and as they are only still emergency tools. No structural solutions to the imbalances in numbers of asylum-cases are even attempted to be offered within these measures.

5.3 Permanent Crisis Relocation

At the same time as the temporary relocation plan was accepted in September 2015, the Commission also proposed to establish a more permanent crisis relocation mechanism, applicable to all Member States if they were to be facing a crisis, introduced by mass-influx of asylum-seekers. This broader emergency instrument used mostly the same justifications and criteria as the temporary relocation mechanism, but was never proved in the Council, as it did not want to commit to a permanent relocation policy.

Still, in the April 2016, the Commission came out with two policy options for future relocation, as part of its Communication *Towards a reform of the Common European Asylum System.* One of them was, in large parts, reminiscent of the pending September proposal, with two adjustments: Relocation under this now called ´corrective fairness mechanism` would be applicable to all asylum-seekers with a ´reasonable likelihood of being granted international protection`, instead of the previous 75 % recognition rate threshold. Secondly, it would include a ´reference threshold` used to trigger the need for relocations (COM 2016, 197). In its more detailed proposal, the Commission then plans to set up an automated system for the registration of all applications in the EU, where these numbers would be followed on a daily basis. If a number in a Member State should exceed 150% of its ´reference share`, this fairness mechanism would be automatically triggered (COM (2016) 270 final). In the proposal for the EU Agency for Asylum, which was given at the same time, the responsibility for monitoring this reference key is given to this new agency (COM (2016) 271 final, 2).

There are problems within this model as well in terms of promoting fair-sharing of responsibilities. Firstly, this fairness mechanism would have a ´forward-looking basis`, meaning that once it has been triggered, it would take into account all new applications. The system would, therefore, start in all Member States at zero and only register applications from the moment it is launched (COM (2016) 270 final, 7). This means that this measure would not be the solution to countries that already now are overburdened, as it would not take into account applications made before establishing this new system. In this sense it has only limited possibility to be act as a responsibility-sharing mechanism to solve the current crisis.

Secondly, this permanent relocation mechanism would only apply in the case of crisis. Therefore the Dublin system would be maintained in the EU as the main rule (COM (2016) 197 final, 7). So even as the Article 80 TFEU´s specific wording should mean that it´s a generally applicable principle and should not be limited to only emergency situations (McDonough and Tsourdi 2012a, 9), this mechanism would only be able to treat "*the final symptoms and not the root causes of a disease*" (Di Filippo 2016b). This is particularly unfortunate since this current ´crisis` is expected to last for a long time (ibid). It is yet again a form of institutional solidarity based on emergency.

Thirdly, monitoring and enforcement of relocation would also be challenging and costly, especially if the Member States are reluctant to cooperate. There must be an incentive for the

Member States to participate, if other interest-based or purely moral, more altruistic motivations are lacking. Therefore, the Commission decided, in 2015, that Member States not showing solidarity through temporary relocation measures are obliged to pay a fine to the level of 0,002% of the state's GDP. But this was soon realized not to be enough to make the states cooperate. For example in France this percent of GDP divided by 30 000 (which is France's quota under the temporary relocation plan), is equivalent to 1,600 Euro per asylum-seeker (Di Filippo 2016a). This level has led to the opposite of the intended result, where the country rather pays the fine than accepts asylum-seekers under intra-EU transfers (ibid). This becomes understandable when relocation is analyzed in the securitized atmosphere, based on threats to internal security.

This might have been the reason why, in the April 2016, proposals the Commission set the fine to be 250 000 Euro per turned down applicant. The Commission did not, however, justify the logic behind this number in any way. And, therefore, it is not without problems. Steve Peers for example calls this to be on *"an obviously absurd and disproportionate level"* (Peers 2016a). Peers suggest that the Commission has most likely meant this a negotiating position, but that it can easily backfire. His view is supported by the statement of one of the loudest critics against relocation, the Hungary's Prime Minister Victor Orbán. Orbán has pointed out that 250 000 Euros amounts to 40 years' average salary in Hungary and *"is the strongest possible propaganda against the European Union"* (Hungary today 06.05.2016). Earlier in the spring Orbán had already accused the EU for trying to create *"the United States of Europe which would swallow up nation states"*, calling the states to *" ring the alarm bells"*, which is direct reference to the 1848 Hungarian Revolution against the Habsburgs (New Europe 15.03.2016).

To improve the political feasibility of the relocation plan, many have also tried to link it together with other political interest, namely being part of the Schengen Area. One of the first ones spelling out this connection between distributing asylum responsibilities and the Schengen Area of free movement was the Swedish Prime Minister Stefan Löfven in his speech at the European Parliament: *"Quite simply, if we are to share an external border and have free movement between our countries, we must also share a system of asylum reception. And I cannot see how countries that do not participate in the common asylum system can participate in Schengen cooperation either."*(Speech by Prime Minister Stefan Löfven at

European Parliament, Strasbourg 9 March 2016). The Prime Minister of the Czech Republic, Thomas Sobotka on the other hand has stated that he cannot rule out legal action if the EU tries to enforce permanent relocation system (EurActive 18.04.2016). So the future for even this relocation measure doesn't seem very optimistic, regardless of these attempts to link it to free movement. The political will for responsibility-sharing in the EU is limited, and the institutional solidarity is affected by the ideas of security, prevention and emergency.

5.4 Relocation based on ´Distribution Key`

Despite of the Member States reluctance to show solidarity through relocation, the Commission still sees potential for a large-scale distribution. This is evident through the second option that the Commission brought on the table in April 2016 in its Communication towards a reform of the CEAS (COM (2016) 197). This second option would have meant that the current Dublin system would have been replaced with a completely new centralized system of assigning responsibility.

Responsibility for processing asylum applications would not have been based anymore on the first country or arrival, but to be shared according to assigned ´distribution key`. This would have been a revolutionary system in its scale, but the idea as such is nothing new. These ´distribution keys` are being used in a smaller scale to share responsibilities for asylum-seekers within the Member States at the local level, and as discussed earlier, the other relocation plans are also set to take some states capacities into consideration.

This proposal from the Commission to redistribute the responsibilities on this scale was not well received by the Member States. It did not even lead to any further preparatory work in Spring 2016, as the Commission decided to pursue the more permanent emergency relocation mechanism discussed above. But this second option, even as more theoretical, still needs to be unpacked here in order to reveal more on its legal potential on responsibility-sharing and the meaning given here to solidarity between the Member States.

According to the Commission's preliminary plans, the responsibility would have been allocated with a `key` based of the state's relative size, wealth and ´absorption capacities` (COM (2016) 197, 8), simultaneously acknowledging that better design for distribution on this

scale would be necessary. According to the Commission *"further reflection could be given to the design of the key, in particular as concerns the account to be taken of criteria such as the refugee population in Member States and unemployment levels as well as the other efforts made including through resettlement* (COM (2016) 197, 8). Distribution key can then be designed in many ways, taking various capacities into consideration in its attempt to share responsibilities for asylum-seekers as fairly as possible.

But, again, who is to determine what is fair here? Are these keys able to take into account all various aspects within states capacities to receive asylum-seekers? Should all aspects even be given value?

There are a variety of capacity indicators to choose from, many of them debated by scholars, most recently in detail by Wagner and Kraler (2015). These indicators for distribution key can, firstly, be divided into ´justice-based criteria` and ´outcome based criteria` (ibid, 11). Justice-based criteria include, for example GDP, population size, size of the territory and the number of refugees already present. Outcome based, or ´soft` indicators, such as impact on inter-ethnic relations or a civil conflict or impact on internal security is the second option to base the distribution of responsibilities. These soft criteria are used to various degrees within the Member States when dividing responsibilities between the municipalities (ibid, 11). Also state's ´integrative abilities`, for example, past experience with integration or the level of racism, could be taken into consideration. But including these kinds of criteria also has huge potential problems. These abilities are extremely difficult to measure with any degree of objectivity. Simultaneously, such indicators would also most likely just show more about the state's unwillingness to receive refugees than its actual ability to do (Gibney 2015, 456-457).

Ultimately, the choice of indicators to measure the Member States' capacities to receive asylum-seekers is always a political and somewhat arbitrary decision. And as shown earlier, even relatively small changes in the use of the capacity indicators will lead to significant changes in the reception capacity and here this would mean relatively big changes in the numbers of responsibilities to receive asylum-seekers, process their claims and then either responsibility to integrate them or facilitate their return operations (Wagner and Kraler 2015, 31), all politically difficult tasks for the Member States within the current discourse of security and abuse.

Now I have shown that capacity indicators would have the potential to lead to more fair responsibility-sharing, some more than others, depending on the political decision taken. But this kind of responsibility-sharing would also come with various problems. Firstly, all mass relocation programs are logistically challenging and also often possess legal difficulties. As Francesco Maiani reminds, this should be pretty clear to everyone already based on the short experience of the temporary emergency relocation plan from Greece and Italy, but also more clearly based on the long experience with the Dublin system (Maiani 2016). Any distribution key would again also have to be implemented and enforced, and the question would be how to force Member States to fulfill their obligations under a distribution key mechanism, as well as the question of instance giving this role (Wagner and Kraler 2015, 30-31).

Challenges relating to relocation based set distribution key would also include determining how asylum-seekers would be allocated to certain Member States in the first place and whether some overriding criteria used in order to improve the integration potential (Di Filippo 2016b). According to the Commission, overriding criteria here over the distribution key decision would only be the possession of a visa or residence permit, family or dependency links and the best interest of the child (COM (2016) 197, 8), all others would just be sent to one of the 28 Member States. The Commission does not in its Communication clearly explain how this distribution would be done and how decide which individual goes to which state, or the possible role given to the integration potential or the asylum-seekers agency within this measure.

And as I mentioned, the political feasibility of distribution key in the current EU is still very limited, which the Commission also knows. The Vice President of the Commission, Frans Timmermans, was therefore heard saying in 2016 that the Commission is "*putting forward these two options in an open way to launch a debate (...) but in political terms it is not realistic to talk about it today*" (The Guardian 06.04.2016). This opposition from the Member States to participate on transfers and especially on large-scale measures is based on this issues closeness to state sovereignty. The Member States are not willing to hand in their decision-making power to the EU-level. As pointed already many times within this thesis, the so-called security paradigm and treating asylum-seekers as a threat to society is by no means a new phenomenon in the EU. But it looks like the constructed crisis and the crisis mode within

the Union and in the Member States has enforced this paradigm, making it even more impossible for the Member States to give up their national decision-making powers.

The EU's general approach in the current securitized political reality is known as ´migration management`, as for example in the 2015 Agenda on Migration. The ultimate goal is to ´manage` the migration, which is sort of a euphemism to keep the inflows as level as possible and is thus a preventive approach. Under this approach and the current political atmosphere, all policy proposals that are seen to carry some potential for larger numbers of arrivals are to hit to wall of opposition from the Member States. Any further attempts to promote solidarity and fair-sharing would potentially just lead to more counter acts.

Large-scale relocation plans, like relocation based on distribution key, are also viewed by many in the EU as ´pull-factors` for larger inflows of migrants. The logic behind this argues that relocation would guarantee asylum-seekers a way past the frontline states, making it unacceptable, as the Member States do not want any more asylum-seekers into their territory. This point is then weighting more than helping frontline states out with better responsibility-sharing.

This view, again, is closely linked to the views of seeing all asylum-seekers abusing the host states systems and actually being ´just` migrants. For example Donald Tusk, the President of the European Council stated in April 2016 that: "*Relocation is and will be one of the key elements of the European solution to the crisis. In this aspect we need solidarity, I have no doubt. But we would make a mistake if it became the main tool of our policy, because it would be a simple incentive for further, even greater migration flows. This would be something like an encouragement for possible new migrants and this is why we have to be very cautious (...)*" (Final remarks by President Donald Tusk to the European Parliament plenary session 13.04.2016).

Tusk here shares the view with many Eastern and Central European countries. When asked about other policy options, the diplomats from these countries were still "*willing to participate in other forms of solidarity though*", which to them meant sending staff or equipment to process claims or to protect the borders from irregular crossings (EU Observer 06.04.2016). Member States would then be willing to participate in measures showing solidarity through delegation, but they are unwilling to take more active role themselves when

the role given to security is so large, making it even harder to give up parts of their sovereignty.

The question of security and sovereignty all relate closely to the lack of trust between the Member States. This lack of trust is visible, for example, where some Member States are partly held responsible for the asylum-flows in the first place. Robert Orsi, for example, writes in his opinion piece, that he believes that other Member States are never going to "*put their national security in the hands of the continent's most corrupted bureaucracies, one of the reasons why this traffic exists in the first place*" (Orsi 2015). This lack of trust and emphasis on some states responsibility is then linked to the meanings of solidarity based on security and prevention.

So I can only conclude that the appearance of solidarity between the Member States in system based on distribution keys would potentially, at least, be more towards ´true` solidarity and fair-sharing of responsibility, but the real potential to work as a solidarity measure remains very unlikely in the EU, where asylum-seekers are treated as threats, leading the Member States to base their acts n perceived national interests, while simultaneously blaming each other.

6 SOLIDARITY AS A RESPONSIBILITY AND PUNISHMENT

6.1 Solidarity at the European External Borders

This part of the analysis on policy measures within the field of asylum and border control focuses on views that emphasize the responsibilities that one or few Member States have towards the rest of the community. Sometimes these views take a form of a punishment. Intra-EU solidarity is aimed towards those states that are not fulfilling their responsibilities.

These views have gained more ground in the EU lately, as was shown in the previous chapters, where many responsibility-sharing mechanisms actually ended up focusing mostly on the frontline states responsibilities. These views emphasize trust and mutuality that is necessary for the community to work. The Austrian Foreign Minister Sebastian Kurz has, for example, said that: "*Greece has previously been offered help, but wouldn't take it – and who can blame them, if it is so much easier just to usher people through to the centre of the continent*" (while simultaneously in this interview calling the EU to be "*acting like a human trafficker*") (The Guardian 08.03.2016).

In May 2015 Frans Timmermans, the Vice-President of the Commission said that "*Solidarity goes hand in hand with responsibility. This is why our proposals include the strong requirement that asylum rules are properly applied, and that Member States do everything they should to prevent abuse (…) This is essential for migration policies to be well accepted in society*" (European Parliament Press Release 27.05.2015). Here his emphasis is on the trust and on the views that frame asylum-seekers abusing the system and posing, thus, opposition in the member States. Frontline states responsibilities become significantly important when this topic is politically sensitive, due to the securitization of asylum in the EU.

Not surprisingly then, by the Spring 2016 the Commission specifically mentions responsibility and solidarity together to be the grounding principles of fair system: "*The EU needs a robust and effective system for sustainable migration management for the future that is fair (...) For it to work, this system must be comprehensive, and grounded on the principles of responsibility and solidarity*" (COM (2016) 197, 3). All of these statements above link

together solidarity, responsibility and the trust to the assumption that others will take care of their responsibilities. So even as solidarity is understood to be based on mutuality, where the states are both willing to provide assistance to others, as well as willing to receive assistance from other states (Wagner and Kraler 2015, 9), the focus has lately been on the side of the frontline states responsibilities, instead of all members obligation to offer help. This meaning given to solidarity becomes clear when analyzing EU's action at the external borders.

This view ´to keep one's house clean` can firstly be found on internal border closures based on the Schengen Borders Code. Institutional solidarity here takes a form of punishment, as ´not showing solidarity` to the community will lead to border closures. This is closely linked to the views of seeing this solidarity through the lenses of security and prevention.

Border closures and the temporary abolishment of the Schengen Area of free movement became a reality in EU in late fall of 2015 and early 2016, when five Member States (Austria, Germany, Denmark, Sweden and Norway) closed their borders and implemented border checks after blaming Greece for not fulfilling its responsibilities at its borders. The logic behind this public scapegoating of Greece was the Schengen Borders Code (SBC). SBC states that if there are "*serious deficiencies in the carrying out of external border control*" the other Member Countries can adopt temporary border closures (Article 29 of Regulation (EU) 2016/399, ex Article 26). In May 2016, the Commission recommended for the Council that these borders checks but should be limited to "*what is strictly necessary to respond to the serious threat and to safeguard public policy and internal security*" (COM (2016) 275 final, 11-13) but allowed these Member States to continue these borders checks for another additional six months.

These measures at the internal borders do not, however, contribute to fair-sharing of the burden of asylum flows or burdens at the external borders. Only meaning given to intra-EU solidarity here is punishment. Solidarity is used against a state for not properly handling one's own responsibilities. This same take can be found in the newly agreed regulation for the European Border and Coast Guard.

This newly agreed regulation (Consolidated regulation PE-CONS xx/16PE-CONS xx/16 – 2015/0310(COD)) will entitle member states, amongst other things, to temporarily re-introduce border closures, if another member state refuses to let border guards come in.

Article 18 of this regulation namely states the "*in the event of disproportionate pressure at the external border*", Member State needs to implement measures proposed by the Agency and if needed the Council could decide to send in teams from the EBCG. If then Member State is not complying with this and not agreeing to let the border teams in, "*thus rendering the control of the external borders ineffective to such an extent that it risks putting in jeopardy the functioning of the Schengen area*", border closures per Article 29 of the Schengen Borders Code can be adopted.

It is important to note, that the European Parliament and Council did significant changes to the original proposal from the Commission. They firstly agreed to set the decision to intervene and send deployment teams to be on the Council, and not on the Commission. This is a way of taking power back to national level from the EU-level (European Parliament Press Release 30.05.2016).

Secondly, and most importantly, they changed the Commission proposal the consequences of non-compliance. As now agreed, internal border checks can be adopted, if a Member State is not following the Agency's recommendations. The original, very controversial proposal from the Commission would have allowed Commission to deploy these teams also without the consent from the country in question (COM (2015) 671 final, 34-35). The LIBE Committee within the European Parliament, which is responsible for regulations within this field, interestingly agreed with the original proposal and would have allowed temporary interventions (European Parliament Press Release 30.05.2016). So instead of border closures, the consequence of non-compliance would have been that the new border agency would have taken over border control of an individual state, limiting significantly its sovereignty.

The new measures to be taken at the external borders all are based on Article 77. These measures thus fall under Article 80 TFEU. The EU is thus allowed to establish new measures ´when necessary` and fulfilling the requirement of subsidiarity and proportionality, to promote the principle of solidarity and fair-sharing of responsibility, making sovereignty in the EU `*reflexive*` (Besson 2004, 22-23), or to be understood as "*floating conception*" (Velluti 2014, 70). According to the Commission the proposal to send in EBCG even without the consent of the state in question was ´necessary` and thus justifiable, as "*the control of the Union's external borders is a common and shared interest which must be carried out in accordance with high and uniform Union standards, the objectives of this proposal cannot be*

sufficiently achieved by the Members States" and since it is *"intended to respond to the new challenges and political realities faced by the Union, both as regards migration management and internal security"* (COM (2015) 671 final, 6).

Not everyone beside the European Parliament and the Council agreed with the Commission either. Steve Peers for example questioned the original proposal right after it was published in December 2015, by arguing it to go against Article 4(2). He saw that this Article requires the EU to respect Member States' essential state functions, *"including ensuring the territorial integrity of the State and leaving internal security solely to Member States"* (Peers 2015).

The Member States are most likely worried of something referred as ´snowball effect` (Vanheule et al 2011, 18) where border issues are difficult to separate from broader migration and asylum matters. Then the states in need feel that a short-term program of assistance in border management could include factors of longer-term conditionality and would lead in questioning other parts of the state's system beyond the borders. This snowball effect means that action at borders is based on a given need for action in other areas, leaving the Member States worried about future interventions in other policy areas, further limiting their sovereignty. This is of course even more unacceptable in the current EU when the Member States are obsessed with the perceived internal security threat.

European Commission President Jean-Claude Juncker stated still after the institutions had found common ground, that: **"***As of now, Europe treats the protection of its borders as a common mission of solidarity***"** (European Commission Press Release, 22.06.2016). As I have showed earlier, the European Border and Coast Guards has some potential to increase operational solidarity within the EU, by for example increasing the numbers of personnel in the agency. At the same time this proposal still carries largely the same view of solidarity as these border closures: it set most of the expectations to the frontline states and their role in fulfilling their responsibility and practicing solidarity towards rest of the Union. Ultimately, the new authority is meant to secure the free movement and the internal security within the Union, and is less focused on other aspects of solidarity or fair-sharing of responsibilities. According to the Council the main objective of this new policy measure for the border management is to: *"ensure and implement, as a shared responsibility, the European integrated border management at the external borders with a view to managing migration effectively and ensuring a high level of security within the EU, while safeguarding EU-*

internal free movement and in full respect for fundamental rights" (Council of the EU, Press Release 22.06.2016)

This new solidarity measure for border management also mostly provides temporary tools, as the border interventions and border closures are only temporary solutions to problems that are actually more structural by nature (De Bruycker 2016, 14). It also provides very little to promote fair-sharing, as it rather, again, takes solidarity as a form of punishment against irresponsibility, and the frontline states being the ones that have to show solidarity to others. The view of solidarity between the Member States and the common responsibility for the European borders is, again, framed to be based on security, emergency and prevention.

So here I have shown that currently solidarity often takes the form of relatively one-sided responsibility and punishment at the European borders. This emphasis on responsibilities can also take the form of infringement measures against Member States of the Union.

6.2 Solidarity through the European Court of Justice?

Member States of the European Union have the obligation to cooperate and follow the common rules of the Union. This is clear already based on the goals set in the articles in the Treaty of the European Union, especially Article 4(3), which states the need for ´sincere cooperation´. "*The Union and the Member States shall, in mutual respect, assist each other in carrying out tasks which flow from the Treaties, and the Member States shall take any The Member States shall take any appropriate measure, general or particular, to ensure fulfillment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.*" The Commission (based on Article 258 TFEU) or the other Member State (based on Article 259 TFEU) can take action against Member State that is not fulfilling its obligations, as this could jeopardize the common goals of the Union.

The 2011 study of the scope and scope and implications of the Article 80 TFEU, based on the views of the political actors and officials in the EU Member States, proposed that solidarity between the Member States "*includes at a minimum a duty of cooperation through implementation, policing and penalization of infractions of EU law*" (Vanheule et al 2011, 6). It can be stated from this, that the state actors agreed on the need to enforce the rules in order

to fill out the requirements set in Article 80. In spring 2016 the Commission Vice-President Frans Timmermans, while commenting on stepping up the infringement procedures against Member States, said that the Commission would be enforcing the existing relocation plans "*to the full*," as "*there is no a la carte solidarity in this union*" (Deutche Welle 04.05.2016). For these reason the Commission has since September 2015 adopted 58 letters of formal notice and reasoned opinions against Member States in the area of EU asylum acquis (COM(2016) 85 final, 21-22). These are the first formal steps in the EU's infringement procedure leading at the end to the European Court of Justice. Earlier in 2015 the Commission stated that particular focus is given to the obligation to fingerprint, the obligation to ensure material reception conditions and the obligation to systematically issue and execute return decisions (European Commission Press Release 09.09.2015).

So the Commission has set its goal to be the make the Member States to take responsibility also in the area of asylum and border control, possibly through the European Court of Justice. In the Commission's eyes this way of fulfilling one's responsibilities is promoting intra-EU solidarity. And as said, this aspect of being responsible of implementing EU-wide decision is, as such, nothing new in the Union, but rather one of the key aspects of it functioning. Still it sets, again, at least some of the responsibilities to the frontline states. States that in the first place are having clear troubles of fulfilling these responsibilities, because of the uneven burden-sharing within this field. Therefore, the Commission should pay close attention to, or particularly, in this field, to the distinction between unwillingness and inability to comply (Bieber and Maiani 2014, 1089). Although admittedly it is sometimes hard to draw a line between these two and it is, yet again, ultimately a distinction with political nature.

These mentioned infringement procedures that have already taken place have been based on EU's secondary law, on non-compliance based on various directives. But what about EU's primary law, would it make it possible for the Commission, or possibly another Member States to take up an infringement procedure against some Member States? More particularly, what is the legal role of Article 80 TFEU?

As I have argued throughout this thesis, solidarity is a concept that is transformative and politically constructed. Some meaning must always be given to it. This is often the case with all legal norms, especially at the EU-level, as all of them need to meet the requirements of universality and generality. So historically, it has often been the courts that have shaped the

actual content of the legal rules. The Court of Justice of the European Union (CJEU) already has a number of landmark rulings in various fields that show that it can have a truly transformative impact on national legal systems (Velluti 2014, 70). Ross (2010), on the other hand, believes that the CJEU would likely accept solidarity as an EU constitutional principle and therefore subject to application by the Court as primary law. But given the court's prior jurisprudence the principle would most likely be applied differently in different sectors of EU law. Thus the prior rulings based on solidarity, which have for example addressed tension between the common market and social duties owed to citizens are only limited help in understanding the meaning of solidarity in this field. These then don't answer the questions on the exact meaning of solidarity based on Article 80 (Ross 2010, 23-27).

Not much help for the original meaning of the Article 80 can be found in the drafting process either. We remember that general principle to include solidarity for the areas of asylum, immigration and border control policies, without limitations to its scope was actually "explicitly welcomed" (Vanheule et al. 2011, 6), but other than that, the document available to public do not really give much to discover the original meanings of Article 80 TFEU or how the Court of Justice would then interpret them. It is also unclear based on these, whether the drafters meant the principle to be enforceable or not (ibid, 36). If the origins were to be analyzed, the meanings should be viewed through the French legal tradition. This is because the working groups in the EU broadly base their work on the French and German legal traditions (Noll 2016, 3) and in the context of solidarity this would particularly mean the concept based on the French Revolution. If then understood this way, there would need to exist a political community for the solidarity to exist and be practiced within. But for Noll, according to his presentation "*Failure by Design*?" there is no such community, evident latest since the Union discarding the drafter Constitution. He rather argues that Article 80 TFEU is without this base so contradictory in its legal construction that it cannot actually lead to any practical results, especially not in front of the Court of Justice (ibid, 3-4).

Others, on the other hand, are more optimistic. Article 80 TFEU can also be read as entailing both an obligation on engaging with others as well, and obligation of reaching a fair result. This follows that this Article could be invoked in CJEU. Either the Commission or another Member State could then take infringement action against another Member State for its failure to take its fair share of responsibility in the implementation of the EU's common

policies (Farcy et al. 2016). But here, again, the concept of fair-sharing would have to be taken into account and should be reminded that ,as shown in this thesis, agreeing upon ´fair` is not a simple task.

The emphasis in these kinds of calculations is also often on the alleged fairness to the Member States. However, these national interests are not necessarily aligning with the EU-level policy goals. Pointed out already in the report by Vanheule and others, the broader goals of the Union, as stated for example in the Article 2 TEU, should be taken into consideration when determining levels of solidarity and fairness in responsibility-sharing (Vanheule et al. 2011, 37), as solidarity is seen as "*a proactive means of making the Treaty effective, which strengthens economic and social cohesion within the EU* (Vanheule et al 2011, 6). McDonough and Tsourdi agree with this as they remind about the sincere cooperation under the Article 4(3) TEU and point this being the significance of the Article 80. This should function then *to benefit the EU as a whole* (McDonough and Tsourdi 2012b, 75-76). So if a case actually could be taken to the Court of Justice based on Article 80 TFEU for failing to meet the requirements of solidarity and fair-sharing of responsibility, the Court could potentially lean towards these interpretations and give less emphasis on the states interests. This would, of course, then again leave some asking whether a decision taken is ´fair` to them or not and what would then happen in the implementation stage of this decision.

It would be interesting to see the Court of Justice's view on the role given to alleged internal security threats and the framing of solidarity to be seen to be based on security, when trying to define fair-sharing of responsibilities. But the future of the Article 80 and its potential implications to the meanings given to solidarity within the European Union remain to be seen. Right now it can be concluded based on the findings within this thesis, that institutional solidarity in the field of asylum and border control that attempts to promote sharing responsibilities fairly is limited and framed a certain way. I conclude my analysis in the next chapter with a deeper look on solidarity as politically constructed concept. This concept is be based on the ideas of security, emergency and prevention, as shown to be the defining features within the current solidarity measures.

7 SOLIDARITY BASED ON SECURITY

I conclude my analysis with this discursive chapter, which sets the focus on crisis and security as the key concepts for understanding institutional solidarity. I here build on the aspects that I have laid out so far within the thesis and discuss political feasibility for future collective action within the EU's asylum and border control policies.

The need for collective action as such to ´share the burdens` has been recognized since the 1951 Genova Refugee Convention. During 2015 and 2016 the European Commission has also repeatedly argued that there is a need for solidarity and fair-sharing of responsibilities between the Member States of the Union. In April 2016 for example the Commission stated that: "*The EU needs a robust and effective system for sustainable migration management for the future that is fair for host societies and EU citizens as well as for third country nationals and countries of origin and transit. For it to work, this system must be comprehensive, and grounded on the principles of responsibility and solidarity*" (COM (2016) 197, 3).

Besides the understanding that there should be collective action to share responsibilities to answer challenges more effectively, all Member States are also still bound by the same legal understanding of the ´refugee`, based on the Geneva Convention and by the same obligations through EU legislation. Also, from a numerical perspective, the European refugee crisis is not really a crisis of numbers (except in Greece). A rich continent of over 500 million people could integrate 1 million new people amongst them with collective decisions, if it had really been motivated to do so. (Goodwin-Gill 2016.)

So the question here is then this: Why is there such a significant refugee crisis in Europe and why is it so hard to find European solution to the problems and promote intra-EU solidarity between the community members? The answer lies in framing, as I have shown in this thesis. Certain frames are used in Europe to influence the public opinion regarding the situation and justifying certain political measures. This means that as asylum is securitized in the EU, also solidarity between the Member States in the field of asylum is framed to reflect this idea of a threat that needs to be prevented. Policy measures within this field that are meant to be promoting solidarity and fair-sharing of responsibility are based on this idea of security threat. Solidarity is then given the meaning that support these alleged security needs. This has led to

reinforcing the frames of security. Solidarity between the Member States is currently based strongly on security, emergency and prevention, which Mitsiligas (2014, 188-189) discover to be the base of solidarity in the EU asylum approach also in his legal analysis. As discussed during the thesis, securitization of asylum is certainly not a new phenomenon in the EU, but rather the EU's current crisis mode has curbed the insecurities.

This kind of solidarity frame is a ´prognostic frame` providing solutions for the previously diagnosed problem (Benford and Snow 2000, 614). That is to say that the current ways of framing institutional solidarity is providing solutions to the security threat from the asylum-seekers to the Member States. This frame then ´resonates` (ibid, 619) well with the existing discourse around asylum policies. The current measures are thus reflecting the prior discourse and building on that, just with some new intensity that has come with the current crisis mode. This framing within the EU is ´frame amplification`, as it is clarifying and invigoration already existing values (ibid, 624). This prognostic frame of institutional solidarity is on the other hand effective, as it has credibility; it resonates well.

Credibility that every framing needs to succeed, consists of three factors: (1) frame consistency, referring to other articulated beliefs, claims and actions; (2): empirical credibility, which refers to the apparent fit between the framing and events in the world and; (3) status or perceived expertise of the frame articulator or claim maker (ibid 62-621). Within the issue of solidarity between the Member States the claims for certain frames are mostly made by various political actors within the EU organization and from Member States, with certain political status and perceived expertise. Claims for solidarity to base on security, emergency and prevention can in the current EU be read as reflecting the larger problem of asylum and the public opinion with the Member States. They are also consistent with prior beliefs and actions, as they just follow the longer historical development of securitization. Therefore, the EU and its Member States have been successful in their effort to frame solidarity between them to be based on their perceived security needs.

The three interrelated elements of solidarity, namely creation, expression and sustainability (Ross 2010, 25-26), can also be understood to support this. The expression of solidarity in the current regulation and regulation proposals in the field of common asylum and border control policies are reflecting the current dominant political discourse within Europe, maintaining thus the larger security discourse within the European Union.

61

Institutional solidarity in the EU in the field of asylum and border control is shown in this thesis to be limited in scope and leaving countless legal questions behind. I have also shown that the frame of security emphasizes solidarity as ´keeping one's house clean`, placing much of the focus on the frontline states' need to handle of their responsibilities, as opposed to the other Member States obligation to help in order to try share the responsibilities more fairly. Still, as the Commission recently pointed out, that migration "*has been and will continue to be one of the defining issues for Europe for the coming decades. Underlying trends in economic development, climate change, globalisation in transport and communications, war and instability in neighbouring regions, all mean that people will continue to seek to come here*" (COM(2016) 197 final,2).

In other words, the current crisis is going to last a long time and the root causes behind the flows are destined to last. There would thus be a clear need for cooperation and more responsibility-sharing now and in the future as well.

Collective action failure is also going to be costly to the Union. In it Communications from February 2016 for example the Commission lays down some numbers. Estimates suggest that if the Member States do not start cooperating, even under the already proposed solidarity measures, and the Schengen Area is thus not able to be saved, the systematic reintroduction of border control on long term basis would cost somewhere between 5 and 18 billion euros in direct costs alone. If some indirect costs, for example the impact on tourism, are also taken into account the cost would be somewhere between 10 and 20 billion (COM (2016) 85 final, 14).

But the EU seems incapable of responding to this need for collective action for better responsibility-sharing. This is due to framing, as the chosen frame also potentially affects the future policy options available (ibid 631). Benford and Snow argue that "*the extent to which political options constrain or facilitate collective action is partly contingent on how they are framed*" (Benford and Snow 2000, 631).

If there was political will, the EU could adopt more collective solutions to deal with the inflow of asylum-seekers, by allowing more EU-level decision-making. There are various measures proposed already within the EU and supported by experts and scholars working in this field. One of these more collective solutions would be the relocation based on distribution

key, discussed earlier. Others include joint processing of asylum-cases on EU-level, combined with mutual recognition of residence throughout the Union. Both would have significant potential to increase the level of fair-sharing of responsibilities. Joint processing of asylum cases is something I already briefly touched upon as a future role for the asylum agency. This pursuit of joint EU-level decision making on asylum cases by one instance has actually been on the EU agenda since The Hague Programme and the aim for gradual integration for this is also currently stated in the Article 78 TFEU. Mutual recognition, which is also written in the TFEU, would mean that an individual who has been granted international protection in one Member States could reside freely in all of the Member States as his right to residency would be recognized EU-wide. This mutual recognition could help to integrate refugees better as they could move freely for work or to connect with families and communities, thus also eventually benefiting the Member States. But for mutual recognition to work, there would need to be a high level of trust between the Member States on everyone fulfilling their responsibilities correctly (ECRE 2014, 15; Guild et al. 2010, 24-26), which is something that is currently lacking in the EU.

This lack of trust and the perceived threats to the Member States' societies have led to Member States favoring individualistic responses to the ´asylum problem`. This framing of institutional solidarity has made the ´true` fair-sharing of asylum-related costs and other responsibilities difficult. It is not politically feasible in the current state of the Union to increase collective action in this field. Member States strong interest in their internal security seems to be leaving financial as well all other interests aside. So as collective action in asylum and border control is framed by internal security and at the same time the low level of trust between Member States, Member States are not willing to hand in their decision making power to the EU-level. Member States want to keep the control - or at least the perceived image of control - themselves.

As increased cooperation between the Member States to tackle the questions of asylum-responsibilities is not politically feasible, migration and asylum are heading towards becoming the make-or-break issue in the Union. The possible future directions of the EU are summarized for example by Stefan Lehne on this piece to Carnegie Europe (2016). In "*How the Refugee Crisis Will Reshape the EU",* Lehne outlines three possible scenarios for future integration: Revival of integration; pursuing integration with ´the willing` or a looser union

(Lehne 2016). The first option seems quite unlikely at the time of writing, when the Member States are reluctant to make even the smallest decisions or implement the decisions already made, as evidenced by the only 2000 relocated asylum-seekers out of agreed 160 000 within the temporary emergency relocation plan. At the time of writing, the United Kingdom also voted leave the EU, with the discussions largely centered on migration and asylum-seekers. The full impact of this resignation from the EU remains to be seen in the years to come. But short term, at least, it is hard to see it leading to the option of reviving the collective action in the rest of the Union. The second option is also not very likely as this enhanced cooperation in the Union has historically always been based on Germany and France being the core of this enhanced cooperation. But, as it stands now, France is not willing to take more responsibility in this field. (See for example Fassin 2016 on France's ´moral crises`).

So that leaves the last option. The current crisis mode and lack of trust has left the European Union in a situation that will lead to a ´ever looser Union` (Lehne 2016). This is a word play on EU's historical mantra of ´ever closer Union`. As Lehne sees it, this crisis of cooperation doesn't mean that the Union will fall apart, as the economic interests will keep it somehow together. But that crisis of cooperation and solidarity can spread to other policy areas. This can lead to the implementation of the EU legislation to suffer and potentially hinder important future projects, such as for example the energy union or driving stronger common foreign policy (Lehne 2016).

So to conclude, this reluctance towards collective action, even when it ends up being costly and has potential significant future effects, is due to the constructed crisis of asylum-seekers across Europe. The perceived threat from asylum-seekers and migrants to the states internal security and society is played out to be so significant that it affects the abilities to take collective action. And if action is taken, it has a limited chance of succeeding in sharing the responsibilities more equally among the Member States. Institutional solidarity rather takes a form that echoes strongly the role given to security.

I have in this thesis shown how all the ´solidarity measures` are limited in their ability to share responsibilities fairly. All of these policy measures in this field that are chosen to promote solidarity and to solve the problem reflect a crisis mentality and are attempts to solve emergencies. At the same time, structural imbalances within the common asylum system and in border control are left mostly untouched, despite having shown Article 80 TFEU to be a

general principle that should be used in structural issues as well. Member States also see solidarity best promoted through delegation. This solidarity by delegation, where cooperation and fair-sharing happen through EU organization can be understood by the Member States reluctance to take more action themselves, for example, by actively participating in relocation plans. Lastly, solidarity within these policy measures is framed to protect the state and its internal security and thus policy measures are geared towards preventing the entry of asylum seekers to their territory in the first place. I can thus conclude that solidarity in the field of asylum and border control is - probably more than ever - based on security, emergency and prevention.

8 CONCLUSIONS

Solidarity between European Union Member States towards each other in the field of asylum policies and border control is closely related to the role given to security in its Member States. This is the conclusion of this thesis, based on detailed analysis of policy measures aimed at promoting solidarity between the Member States.

Treaty of the Functioning of the European Union (TFEU) sets common asylum policies and the policies under border control to be governed by the principle of solidarity and fair-sharing of responsibility. There is thus a certain level of agreement for this principle. On the other hand, there is no clear understanding of the original meaning of this Article 80. Solidarity as a concept is also highly context-dependent, as showed in this thesis. Solidarity has a transformative nature and thus the expression of solidarity in legal measures interrelated with social and political factors. Article 80 of TFEU also states that the EU should take common action ´whenever necessary´, but the definition of necessity is also ultimately a political decision.

Since the Summer of 2015, the EU is faced with something that is often labelled as a refugee crisis, leading some Member States to build walls and fences. Simultaneously, the Member States have been unwilling to increase collective action within the field of asylum and border control, or when measures have been adopted, they have strongly reflected certain views of necessity and solidarity. Things did not, of course, have to go this way. Despite the perceived crisis, Europe still could have dealt with the influx of arrivals in an organized way. But this crisis is partly due to the increase in asylum-seekers, combined with the longer process of securitization of asylum in the Union.

This crisis mode and the significant emphasis placed on internal security against the perceived threat from asylum-seekers have led to affecting the solidarity between the Member States. The concluded legal analysis shows how measures under ´financial solidarity`, ´operational solidarity` and ´physical solidarity` can surely be considered as ´solidarity measures`. At the same time they also make fair-sharing of responsibilities difficult, as the framing of solidarity, based on internal security makes different forms of collective action in this field politically unfeasible.

Fair-sharing of responsibilities is a key part of the principle of solidarity. But as shown, defining asylum-related costs and other responsibilities is, in the first place, difficult and agreeing on ´burdens` to be shared is ultimately a somewhat arbitrary decision, with significant political implications. This is especially the case in the current securitized political reality, as it shifts the burdens between the Member States. I have in this thesis explained how identifying asylum-related costs in order to share them is fairly difficult and ultimately is a political decision. I have also demonstrated how the whole discourse around costs and burdens is making responsibility-sharing more difficult.

I have also shown how financial and practical solidarity, especially in their current forms are not enough to share asylum-responsibilities fairly. Focusing on the financial aid is also taking away the political nature of the current crisis. That this European crisis is not a crisis by the numbers, but more a crisis of political will. I have also pointed out how the current solidarity measures promote the idea of solidarity through delegation, where promoting solidarity is left to organizational level.

I discuss in this thesis of Member States reluctance to agree on more collective solutions. Relocation of asylum-seekers from one Member State would be one of these more collective solutions. Relocation is also not without problems, many of them relating again to the difficulties in defining the right level of burden-sharing and the states capacities. Relocation, especially in broad scale would still also have the potential to better responsibility-sharing. But as the decision taken outside of the national states also means limiting the state sovereignty by forcing Member States to accept people within their borders, it makes this form of responsibility-sharing even more difficult. With the current state of the Union, this form of cooperation seems impossible.

Many of these difficulties to promote better responsibility-sharing can be explained by framing. Certain frames are used in Europe to influence the public opinion regarding the situation and justifying certain political measures. This means that as asylum is securitized in the EU, solidarity between the Member States in the field of asylum is framed to reflect this idea of a threat that needs to be prevented. Policy measures within this field that are meant to be promoting solidarity and fair-sharing of responsibility are based on this idea of security threat. I have shown through this thesis how solidarity is then given the meaning that supports these alleged security needs.

The future of the Common European Asylum System, which has been evolving in the EU over the past 25 years on the principle of solidarity that should be its guiding line, is uncertain. There is a possibility that this alleged European refugee crisis has curbed the security threat to the point where it might lead to hindering integration in other policy areas as well, which would then have far-reaching consequences. On the other hand, as solidarity is transformative by nature, there is a possibility that it can be given other meanings if the political atmosphere changes, thus potentially leading to more responsibility-sharing. It would also be interesting to see the Court of Justice's view on the role given to alleged internal security threats when trying to define fair-sharing of responsibilities and the future of Article 80. But for now, the future of the Article 80, as well as the future direction of the EU as a whole, is unclear. I can on the other hand conclude based on this thesis that, at least for now, solidarity between Member States is clearly in crisis.

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APPENDIX: ARTICLES 2-4 TEU, ARTICLES 77, 78, 80 TFEU

TREATY OF THE EUROPEAN UNION (TEU)

Article 2

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 3

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

Article 4

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member States.

3. Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

Article 5

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

TREATY OF THE FUNCTIONING OF THE EUROPEAN UNION (TFEU)

Article 77

1. The Union shall develop a policy with a view to:

(a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;

(b) carrying out checks on persons and efficient monitoring of the crossing of external borders;

(c) the gradual introduction of an integrated management system for external borders.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

(a) the common policy on visas and other short-stay residence permits;

(b) the checks to which persons crossing external borders are subject;

(c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;

(d) any measure necessary for the gradual establishment of an integrated management system for external borders;

(e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

3. If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 20(2)(a), and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament.

4. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Article 78

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;

(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;

(c) a common system of temporary protection for displaced persons in the event of a massive inflow;

(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;

(e) criteria and mechanisms for determining which Member States is responsible for considering an application for asylum or subsidiary protection;

(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

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

Article 80

The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.