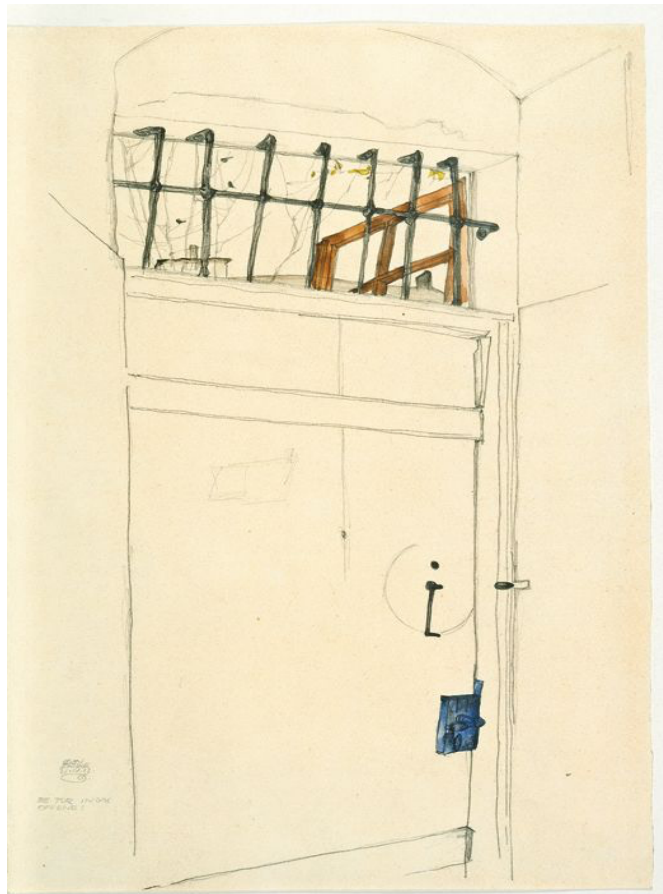# Knocking on Europe's door…

Investigating modes of governing and the principle of solidarity as EU member states respond to the asylum pressure on its southern borders

Egon Schiele, Die Tür in das Offene, 1912

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Abstract:

Two thousand and fourteen saw a drastic increase in asylum seekers knocking on Europe's door. A great many arrived at Europe's southern borders, with Italy as the main entrance gate, after having embarked on the dangerous journey across the Mediterranean. Due to the limited number of EU entrance countries and the growing pressure on these southern European countries, the Dublin Regulation, as the corner stone of EU's asylum policy, has increasingly become a contentious issue in the EU, fuelling conflict and distrust among the member states. On this background, the thesis sets out to investigate how the EU member states govern on the basis of Dublin, analysing 'modes of governing', the principle of solidarity, and the relation between the EU member states in attempting to answer this question. The thesis departs from classic European integration theories as a framework for understanding how the EU member states cooperate in the asylum area. Instead, the thesis proposes an original, theoretical distinction between *management* and *governance* as two different 'modes of governing,' which implies adding a normative perspective to theoretical perspectives on EU member state cooperation. These two modes of governing are investigated in relation to a particular case study, i.e. a conflict between Italy and Denmark that played out during autumn 2014. This conflict was related to Italy's responsibility under the Dublin regulation to obtain fingerprints in accordance with the EURODAC regulation. The case is analysed by way of a critical discourse analysis of a number of policy papers from Italy, Denmark and the Council of the European Union. Through this analysis, it becomes clear how the EU member states, in order to avoid a renegotiation of the Dublin regulation, have turned to *management* as the dominating mode of governing. This allows them to uphold that while the Dublin system might be a common framework, the responsibility for upholding its elements falls on the individual member states. Thus, a major result of the investigation is that solidarity between EU member states has so far been limited to compensatory *economic solidarity* (management mode of governing) to make up for the apparent lack of *intra solidarity* (governance mode of governing).

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1. Introduction

The idea behind this thesis emerged during a five-month internship at the Danish Embassy in Rome where I was working in the Embassy's political section. This period (autumn 2014) was dominated by a dramatic increase in irregular migrants knocking on Europe's door.[i] Europe as a desired destination drives a great many irregular migrants to embark on expensive and dangerous journeys in order to reach a European country.[ii] The routes to EU's southern borders traverse the Mediterranean, where thousands of people, after having paid human traffickers, risk their lives in old ramshackle boats or vessels in order to cross the sea. Some die trying to reach Europe, while others make it to shore, Italy currently being the main entrance gate.

Two thousand and fourteen became a record year in terms of irregular migrants fleeing over the Mediterranean, with Italy receiving around 170 000 irregular boat migrants.[iii] War, conflict and poverty in Africa and the Middle East are among the reasons behind this drastic increase that is currently challenging not only the Italian reception system but also the entire EU asylum system.[iv] The Dublin Regulation (henceforth: Dublin or Dublin system), in particular, serving as the corner stone of this system, is fuelling conflict and distrust among the EU member states. The key principle of Dublin implies that all responsibility for a given asylum application falls on the first country of entrance. Due to the limited number of entrance countries in the EU, and the growing pressure on these countries, this principle is increasingly becoming a contentious issue between EU member states. On the one hand, the southern member states are arguing for increased EU intra-solidarity, a fair sharing of responsibilities and essentially a renegotiation of Dublin. On the other hand, the majority of the other EU member states are maintaining that responsibility towards and compliance by existing rules and regulations are necessary. This has left the internal dimension (i.e. the asylum policy) of the EU's cooperation on irregular migration in a rut, which has caused the EU member states to turn their attention to the external dimension and to the one thing that they *can* agree on: stopping the irregular migrants from coming in the first place.[v]

Since my internship, and while EU leaders are wrecking their brains for solutions, the migration pressure on EU's borders is only increasing. On 20 April 2015, approximately 800 irregular migrants died, when a ship sunk in the Mediterranean, somewhere between

the Libyan and Italian border, causing an outcry from the international community alongside a strong appeal to the EU leaders to take action and prevent more people from dying in the Mediterranean.[1]

The premise of this thesis is that any real solution to the challenge of irregular migration must entail a political confrontation with the EU asylum policy, which includes asking the question: **Is Dublin the appropriate answer to the new challenge posed by the enormous pressure on EU's southern borders?** However, all solutions depend on a solid description and analysis of the problem, and it is this task that my thesis takes upon itself. However, before outlining the research focus I will briefly draw the contours of current research in this area.

1.1 Current research related to the subject

Irregular migration and the EU asylum policy are developed academic fields that cut across disciplines such as law, human rights, migration studies, anthropology, political science, and European studies.[vi] In this brief overview I shall limit my focus to the existing branches of research relevant for my particular focus.

Judicial studies have for obvious reasons intrinsically focused on the legal aspects of Dublin, including the judicial implications of the way Dublin determines responsibility among member states, the legal status of the principle of burden-sharing;[vii] and the role of the principle of solidarity.[viii] I mention this academic focus here, since the principle of solidarity will be present throughout the thesis.

Like the European leaders, political scientists have largely turned their attention to the development of the external dimension of EU's policy on irregular migration during the last couple of years. This branch is not explicitly relevant to my focus, although it does reflect a development that I will also touch upon here, namely the ever-increasing EU focus on border control, security, and the fight against crime as measures to keep irregular migrants away from EU's borders.[ix] However, there also exists a very well developed branch of political science literature tracing the institutional developments and integration

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[1] Crilly et al., "UN confirms 800 dead in shipwreck disaster: as it happened on April 20." (The Telegraph, 20 April 2015).

of the EU asylum policy, namely how EU member states cooperate on the EU asylum area (i.e. the internal dimension of EU's policy on irregular migration). Here, a prominent trend is to engage with classic EU integration theories (e.g. intergovernmentalism vs. neo-fucntionalism).[x] These studies, which have focussed their attention on the Council of the European Union (henceforth: the Council), investigating why and how the EU member states have gradually transferred sovereignty to the EU on asylum matters, and how they reach decisions, have applied theoretical concepts like *rational-choice*, *'bargaining power'*, *'spill over'* etc.[xi]

The present thesis will also primarily focus on the EU member states, and on the Council as their common platform, but it will contribute with an approach that leaves the old integration theories behind. In attempting this, I shall introduce a new theoretical toolbox based on a rethinking of governance and policy network theory.[xii] These strands of theory have seldom been employed in relation to studies of the EU asylum area, but this may primarily testify to a lack of academic endeavour amongst political scientists, who seem to be stuck in the framework of the old integration theories, in terms of approaching how member states govern the EU asylum area, thus failing to access these governing activities with a set of normative criteria. This thesis will use policy network theory and governance theory as a starting point for developing a new theoretical distinction between *governance* and *management*, as two different modes of governing that may account for this 'lack'. These core concepts will be introduced and clarified in the theoretical chapter, section 4.1.Thus, the thesis will contribute with a new approach to understanding how the EU member states rationalise and govern the asylum area.

1.2 Research focus and questions

What appears to characterize the EU asylum policy is that none of the member-states are keen to take responsibility or cooperate, in any real sense of the word, leaving us with the main research question of the thesis:

How do the EU member-states govern on the basis of Dublin?

As part of this question, and in order to answer it we must investigate three sub-questions:

1) **With a particular focus on Dublin, what 'mode of governing' characterises the EU asylum policy?**

2) **What is the role of the principle of solidarity, employed in the EU asylum area, alongside the judicial framework?**

3) **How does the growing number of asylum seekers affect the relations between the EU member states, focusing particularly on Denmark and Italy?**

In order to answer these questions, the thesis will focus on a specific case, namely the conflict between Italy and Denmark unfolding in the autumn 2014, relating to Italy's responsibility under Dublin to fingerprint all incoming irregular migrants.[xiii]

The thesis argues that in order to understand the current situation as well as the selected case, we need to scrutinise and rethink the concept of *governance*, as mentioned above. This will allow the thesis to propose and discuss a conceptual distinction between the heuristic ideal types *governance* and *management* as two different modes of governing.[xiv]

1.3 Structure of the thesis

The thesis will fall into six additional chapters. Chapter 2 will briefly outline the methodological approach of the thesis, before moving on to the third chapter that will provide an introduction to the European asylum system with a particular emphasis on Dublin and the principle of solidarity. This chapter will allow us to understand the framework of the EU asylum cooperation, which is a prerequisite for understanding the case.

The following chapter on theory (Ch. 4) will start by introducing existing conceptualisations of governance, and use these as a backdrop for defining how the concept will be used in the present thesis, and how it relates to the concepts of *government* and *governing*. From these definitions it will become clear that the present thesis focuses on governing and governance as something that is related to a *network* structure. Therefore, the term 'network' will be investigated as the structure in which the governing activities take place, and included in this is the possibility of network *failure*. This reflection will in turn lead us to the main theoretical argument, namely the presentation of *governance* and *management* as two different modes of governing. The final section of the

theory chapter will present a bridge to the analytic Chapter 6 by outlining how critical discourse analysis will be employed as the main approach in the analysis.

The case will be introduced in Chapter 5, where the network surrounding Dublin will be presented. The objective here will be to outline the Dublin network and further to consider whether or not it is possible to argue that it has failed, before progressing to the analysis in Chapter 6. Here I will conduct an analysis of the discourse(s) produced by the network actors as they attempt to respond to the threat of network failure. To put this analysis into theoretical perspective, the analysis will employ the conceptual difference between *management* and *governance* as an approach to understanding the social practice of the discourse. Finally, section 6.4 is intended to establish a bridge from the analysis to the discussion by pondering the concrete solutions, which the network was able to produce, faced with the threat of network failure.

The discussion in Ch. 7 will fall in three parts. The first section will offer a perspective on the 'answer' produced by the network as a response to the network failure, by asking if the economic solidarity offered to Italy by the other network actors was in fact a short-term solution for a long-term challenge? This will lead us to the following section, where the possibility for intra-solidarity and a re-evaluation of Dublin will be discussed, in light of the perseverance of one mode of governing over the other. The final section will discuss the relevance of the distinction between management and governance. The conclusion and concluding remarks of the thesis will relate the findings of the thesis to The Commission's proposal (dated 13 May 2015) on a new distribution system for asylum seekers in the EU.[xv]

Notes

[i] I use the term irregular migrant in accordance with the definition laid out by the International Organization for Migration (IOM), which states that an irregular migrant is "a person who, owing to unauthorized entry, breach of a condition of entry, or the expiry of his or her visa, lacks legal status in a transit or host country" (IOM, "Key Migration Terms." Last modified 14 May 2015).

[ii] Preliminary numbers from the European Border Agency FRONTEX indicate that around 270.000 irregular migrants came knocking on Europe's door in 2014, and out of this number approximately 80% sought asylum. In 2011 (the previous record year) the number was 141.000, and out of this total 50% sought asylum (Migrants at Sea, "Frontex, Preliminary Figures Indicate 270,000 Irregular Migrants and Asylum Seekers Reached EU in 2104 – Double Previous Record Set in 2011." Last modified 5 January 2015).

[iii] This was a dramatic increase from the previous record year in 2011, where the number was 62.300 (Consiglio Italiano per i Rifugiati, "Il punto su sbarchi di migranti e rifugiati e Operazione "Mare Nostrum" tutti i dati commentati dal CIR." Last modified 1 May 2014).

[iv] The Office of the United Nations High Commissioner for Refugees (UNHCR) stated in 2014 that the world finds itself in a humanitarian crisis with the number of 'forcibly displaced persons' reaching 51,2 million in 2014. The majority of these people are hosted in their neighbouring countries e.g. 1,5 million Syrians are living in refugee camps in Lebanon (UNHCR, "World Refugee Day - global forced displacement tops 50 million for first time in post-World War II era." Last modified 20 June 2014).

[v] This implies a focus on the external dimension of this challenge, thus a prioritisation of border control, the fight against human trafficking, security measures etc.

[vi] The human rights studies of the implications of the EU's current asylum policy are numerous and they contribute with a very interesting and far-reaching perspective on the consequences of the current policy. However I will not explicitly require into this perspective in this thesis due to its obvious limits.

[vii] Minos Mouzakis conducts an interesting judicial analysis of the tension between the principle of 'burden-sharing' and the implications of the way Dublin distributes responsibilities for asylum applications in the working paper "We need to talk about Dublin - responsibility under the Dublin System as a blockage to asylum burden-sharing in the European Union" (Mouzourakis, "We Need to Talk about Dublin," *Oxford Refugee Studies Center, Working Paper Series* 105 (2014)).

[viii] See e.g. Langford, "The Other Euro Crisis: Rights Violations Under the Common European Asylum System and the Unravelling of EU Solidarity," *Harvard Human Rights Journal* Vol. 26 Issue 1 (2013).

[ix] This implies multiple studies of 'securisation', 'Fortress Europa', Frontex, cooperation with third countries etc. See e.g. Geddes, *Immigration and European Integration: Towards Fortress Europe*? (Manchester: Manchester University Press, 2000); and Huysmans, "The European Union and the Securitization of Migration," *Journal of Common Market Studies* 38 (2000); and Baldaccini et al., *Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy* (Oxford: Hart Publishing, 2007). Thielemann and Armstrong make a particularly interesting contribution to this branch of research with their article: "Understanding European Asylum Cooperation under the Schengen/Dublin System: A Public Goods Framework" where they analyse security as a public good produced by the EU to the European populations (Thielemann and Armstrong, "Understanding European Asylum Cooperation under the Schengen/Dublin System: A Public Goods Framework," *European Security* 22 (2013): 148-164).

[x] Christian Kaunert and Sarah Léonart conduct an excellent analysis, using the classical integration theories, of the development of the EU asylum area from intergovernmentalism to supranationalism in the article "The European Union asylum policy after the Treaty of Lisbon and the Stockholm Programme: towards supranational governance in a common area of protection?" (Kaunert and Leonard, "The development of the EU asylum policy: venue-shopping in perspective," *Journal of European Public Policy* 19:9 (2012): 1396-1413).

[xi] See Guiraudon, "European Integration and Migration Policy: Vertical Policy-making as Venue Shopping," *Journal of Common Market Studies* 38 (2012): 251–271; and Thielemann and

Armstrong, "Understanding European Asylum Cooperation under the Schengen/Dublin System," 148-164.

[xii] These two theoretical fields have often been employed in tandem, in studies of EU policy areas, where the governing arrangements are less intergovernmental than the ones dominating the asylum area.

[xiii] It should be mentioned here that the conflict was not only bilateral, but a conflict between a number of member states and Italy. Because of the obvious limitations of this thesis, however, I have chosen to focus on Denmark.

[xiv] Notice that key concepts will be defined as they are introduced in the thesis.

[xv] I use the term asylum seeker in accordance with the definition laid out by the International Organization for Migration (IOM), who states that an asylum seeker is s person "who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant international and national instruments"
(IOM, "Key Migration Terms." Last modified 14 May 2015).

2. Method and Sources

The purpose of this chapter is to outline how I have approached my topic and selected my sources. In terms of my approach, I have chosen to separate it into a macro and a micro perspective. Reflections on these two levels will be followed by ontological and epistemological reflections, and the chapter will conclude with a brief section on the selection of empirical data and sources.

Macro perspective

The goal of this thesis is to investigate a particular case, in order to understand the broader context of how EU member-states govern on the basis of Dublin. The thesis aims to generate a new theoretical approach that will allow us to investigate the case and in turn, hopefully, answer the research questions set out in chapter 1.[xvi] This implies that the thesis will use the 'qualitative case study' method as a research approach, seeing that this particular method allows us to understand a complex issue by inquiring into the relation between a given case and its context (i.e. the research questions).[2] My qualitative case study approach is in line with Robert Kay Yin's understanding of case studies. Yin approaches the case study design within the social constructivist paradigm, and according to him such a design should be considered when: (a) the focus of the study is to answer "how" and "why" questions; (b) you cannot manipulate the behaviour of those involved in the study; (c) you want to uncover contextual conditions because you believe they are relevant to the phenomenon under study; or (d) the boundaries are not clear between the phenomenon and context.[3] The study of my thesis complies with all four criteria.

This also implies that the thesis falls within the social constructivist approach, which means that it will not seek to explain or uncover absolute truths that can be made generalizable, but rather shed light on the presence of different social constructs of reality within the defined contours of the case. The thesis thus places itself within the social

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[2] Baxter and Jack, "Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers," *The Qualitative Report* 13 (2008): 546.
[3] Yin, *Case study research: Design and methods* (Thousand Oaks, C.A: SAGE, 2003) and Baxter and Jack, "Qualitative Case Study Methodology," 546.

constructivist paradigm, where reality is continuously constructed and where truth is relative in the sense that it is regarded as dependent on actors' specific perspectives on it.[4] Thus, the aim of this thesis is to examine and add to the understanding of how the analysis of a particular case can be approached through a new and sharpened theoretical conceptualization of (in this case) governance and management. To explain how this will be carried out, we now have to turn our attention to the micro perspective.

Micro perspective

In order to analyse the micro perspective of this thesis, one can choose to look at the empirical data as comprised of political *texts* stemming from a number of sources. This approach – building on the linguistic turn and later coupled with the power analysis of Michel Foucault – has in recent decades seen a surge in a variety of approaches to discourse analysis. By using the approach of critical discourse analysis, I hope to uncover the rationalisations that go into the governing activities related to Dublin, and to expose the dialectical relationship between discourse and the social structure. Let me clarify my position here by stating that even though the thesis falls within the social constructivist paradigm, the social structure will not be viewed upon as an 'interactive accomplishment' (i.e. something that only exists in so far as it is created my members using a particular discourse).[5] This anti-realist standpoint is theoretically represented by Mumby and Clair.[6] I will rather subscribe to Norman Fairclough's realist social ontology that takes a dialectical-relational standpoint.[7] This implies analysing the relation between the 'discourse *per se'* and its 'non-discursive elements'.[8] My use of CDA will be further explained in section 4.6.

Ontological and epistemological reflections

The principles of discourse analysis are deeply rooted in social constructivism, i.e. the ontological perspective referring to our reality as an unstable "entity" continually

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[4] Searle, *The construction of social reality* (London: Simon and Schuster, 1995).
[5] Bryman, *Social Research Methods* (London: Oxford University Press, 2008), 508.
[6] Mumby and Clair, "Organizational Discourse" in *Discourses as social interaction. Discourse Studies Vol 2: A Multidisciplinary Introduction,* ed. van Dijk (Newbury Park: Sage, 1997).
[7] Fairclough, "Critical discourse analysis" in *Dictionary of critical realism,* Hartwig ed. (London: Routledge, 2006).
[8] Bryman, *Social Research Methods*, 509.

constructed and negotiated – not least through our use of discourse.[9] This in turn carries epistemological implications, seeing that *knowledge* is subjective and non-quantifiable.[10] For the researcher and the research process this implies that in order to obtain knowledge, we have to inquire into the subjective productions of it, hence the need for critical discourse analysis.

Selection of sources

I have chosen to focus my empirical material on a limited set of actors that are of particular relevance to my specific case. It is thus centred primarily on Italy, Denmark, the Council and secondarily also on the Commission. The empirical material presented in this thesis was gathered and produced during the autumn of 2014, and was selected with the purpose of shedding light on my particular case. This was done in order to extract an understanding from it, which can help answer my research question. The material consists of policy documents, leaked documents, statements, and press releases from EU as well as from Danish and Italian politicians and ministries.[xvii] My three primary sources that will be analysed by use of CDA are 1) A press release from the Danish Ministry of Justice 2) Council conclusions from a Council meeting and 3) A motion from the Italian Chamber of Deputies.[xviii] These primary sources are supported by an extensive number of secondary sources that I will draw on in chapter 5, 6 and 7, as the case is presented, analysed and discussed. These texts all serve different functions, belonging as they do to different genres, e.g. a press release has a different purpose than an internal meeting document from the EU Commission. I will account for these different functions as the texts are presented in the thesis. The time frame covered is centred on The Justice and Home Affairs Council meeting on 9 and 10 October 2014, and the material is selected accordingly. However, the broader period runs from August to December 2014. The events that took place during these months are of particular interest to my research focus, since they came in the wake of a summer where the pressure on EU's border increased substantially, thus putting the EU asylum system to the test, including the relationship between the member states, the principle of solidarity, and the need for political solutions.

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[9] Ibid., 508-509.
[10] Ibid.

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xvi Notice here that context is used to refer to the research questions formulated in section 1.2.

xvii It is important to notice here that although all the material was gathered during my internship at the Danish Embassy in Rome, none of the texts, quotes, events etc. presented in the thesis are in any way confidential or related to confidential material obtained at the Danish Embassy. Thus, all sources are publicly accessible.

xviii Note that the motion from the Italian Chamber of Deputies will only be employed as a perspective on the Council conclusions and the Danish press release.

3. EU's Asylum Policy

The Justice and Home Affairs (henceforth: JHA) area is one of the key areas of European integration, symbolically as well as substantially. It involves issues profoundly rooted in national, political, and judicial systems, and is directly related to questions of state sovereignty, making it a highly sensitive policy area for the EU.[11] This is no less true of the asylum policy that became an essential part of JHA with the Maastricht Treaty. The purpose of this chapter is to provide an introduction to The Dublin System. I shall begin with an introduction to the overall institutional and legal framework that governs the EU asylum area, including the institutional development of the EU cooperation on asylum and the principle of solidarity. These two sections will provide the necessary frame of reference for understanding The Dublin System to be presented in section 3.3. Throughout this chapter my focus is to provide a sufficient background for understanding: 1) how the EU member states have transferred sovereignty to the EU level, and 2) how they cooperate on this level and on what basis.[xix]

3.1 In Pursuit of a Common European Asylum System

The purpose of this section is to give a brief introduction to the evolution of the Common European Asylum System (CEAS) taking its first steps with the establishment of the Schengen area (i.e. open borders and freedom of movement) in 1990, when the Schengen Implementing Convention was signed. Thus, the need for a common approach to asylum and migration became evident with the establishment of the Schengen Area initiating a process of gradually dismantling the EU's internal borders.[xx] This process has been going on over the last 25 years. From the Treaty of Maastricht in 1993 to The Tampere Summit in 1999, where the objective of establishing a Common European Asylum System (CEAS), based on the Geneva Convention, was formulated for the first time.[12] According to the Tampere conclusions, the system was to include: "a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee

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[11] Lavenex, "Justice and Home Affairs - Communitarization with Hesitation" in *Policy-Making in the European Union,* ed. Wallace (Oxford: Oxford University Press, 2010), 458.
[12] Ibid, 458-461.

status".[13] It should be implemented through two phases, which the member states committed themselves to in The Tampere Programme (1999-2004), The Hague Programme (2005-2010), and finally The Stockholm Programme (2010-2014). The Stockholm Programme was established in the wake of the Lisbon Treaty coming into force on 1 December 2009.[xxi] The first phase of CEAS focused on harmonising national (internal) legislation, and the objective was to introduce common minimum standards.[14] This was attempted through a legal framework consisting of five main directives and regulations.[xxii] The second phase was planned as an evaluation of the effectiveness of the legal instruments agreed upon in phase one. It was presented in the Hague Programme in 2004, and was to be concluded by 2010.[xxiii] Phase two of CEAS was and is embedded in the Lisbon Treaty where cooperation on the asylum area moved away from simply setting minimum standards to attempting to create a legal basis for a common policy on asylum.[15] However, phase two of CEAS has been largely criticised for having failed to accomplish just that. This is partly due to what is regarded as a thin and insufficient legal framework, even though it has gradually acquired a more binding character.[16] Furthermore, it has been pointed out that the degree of legal harmonisation between the member states is still weak. Some scholars have even gone so far as to question whether or not the present legal framework qualifies as a common European policy, thus emphasizing that the legally binding character of CEAS has not resulted in a politically binding supra-structure able to ensure that e.g. solidarity would become a guiding principle for the EU asylum cooperation.[17] I shall elaborate on this point in the next section where I will attempt to give a short introduction to the concept of solidarity in relation to the asylum area. First, however, a brief overview of the institutional framework of the EU asylum area will be provided.

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[13] European Council, *Tampere European Council 15 and 16 October 1999 Presidency Conclusions,* 1999, 3.

[14] Kaunert and Leonard, "The European Union asylum policy after the Treaty of Lisbon and the Stockholm Programme: towards supranational governance in a common area of protection?" *Refugee Survey Quarterly* 31 (2012): 9.

[15] Ibid, 30.

[16] Collett, "Future EU policy development on immigration and asylum: Understanding the challenge," *Migration Policy Institute, Policy Brief Series* 4 (2014).

[17] Ibid.

The institutional framework of EU asylum cooperation

With the Lisbon Treaty, cooperation on asylum matters shifted from inter-governmental governance to trans-governmental governance, granting the institutional framework more influence on the decision-making process.[18] This implied a fusion between the traditional community method and more intergovernmental ones.[xxiv] The role of the European Parliament was thus strengthened with the Lisbon Treaty.[xxv] This meant that co-decision with the Parliament and QVM now came to apply to all aspects of the decision-making process in the area of asylum and irregular migration.[xxvi]

Clearly then, the Lisbon Treaty accelerated the transfer of national sovereignty to the EU level, which is reflected in the growing importance of nearly all EU institutions in relation to the asylum area. This development would be absolutely central if we were interested in understanding how and why the EU asylum policy is not more restrictive than it is today.[xxvii] However, when (as is the case here) our goal is to understand how the EU member-states have transferred sovereignty to the EU level, and in which way they cooperate on this level, the Council is still the primary arena to focus on, alongside the European Court of Justice (ECJ), the European Court of Human Rights (ECtHR), The Commission, and the specialised EU agencies.[19] The Council has largely remained an intergovernmental arena where state actors, senior EU officials, and national diplomats constitute the main players in terms of agenda setting and power play. However, seeing that the legal framework has become more binding and more specified, the workings of the Council have become increasingly complex, and the need for coordination and harmonisation has become more pressing.[20] This has created a need for assistance from transnational, seemingly neutral (the Commission) and 'apolitical' (European Asylum System Office, abbreviated as EASO) agents to assist the member states in implementing the legal framework. EASO's official mandate is to provide the member states with support in implementing CEAS.[xxviii] The tasks and responsibilities of EASO have developed and increased over the last decade, as a testimony to this expanding need for coordination.[21]

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[18] Lavenex, "Justice and Home Affairs - Communitarization with Hesitation," 458.
[19] Baldaccini et al., *Whose Freedom, Security and Justice?*, 40-43.
[20] Lavenex, "Justice and Home Affairs," 458, 468-469.
[21] Kaunert and Leonard, "The development of the EU asylum policy," 1403.

Another important feature of The Lisbon Treaty is that it significantly strengthened the role of ECJ and ECtHR with regard to asylum matters, thus increasing judicial control. In particular, the Court's preliminary jurisdiction, which used to be limited, was generalised.[22] This means that the Court has seen a drastic increase in asylum cases, which in turn has strengthened the ECJ's possibility of influencing the interpretation of the judicial framework.[xxix] A number of scholars have described this development as the *judicialisation* of the asylum area, that is: "the increasing influence of juridical texts and actors on asylum policy-making".[23] [xxx] This poses a challenge to member states because it means a gradual loss of national control over the interpretation of the EU legal framework. This in turn means that coordination and synchronisation (i.e. harmonisation) of the national asylum systems become increasingly important.[xxxi]

The development in the asylum area testifies, as I have tried to outline in this section, to a gradual transfer of national sovereignty to the EU level.[24] This transfer of sovereignty combined with a more binding legal framework has resulted in two noteworthy developments: a) an increased need for control and coordination, which has enhanced the importance of technical and bureaucratic agents, e.g. The Commission and EASO; b) the growing influence sphere of ECJ and ECtHR that has underlined the need for harmonisation and coordination between member states.

What we may conclude on the basis of these two sections is that the evolution of the legal framework and EU cooperation on the asylum policy has on the one hand resulted in more binding legal obligations, though not a strong legal harmonisation, and the apparent strengthening of EU supranational agents' influence on the asylum policy. These developments have pushed member states to cooperate and coordinate on a technical and operational level.[25] A logical consequence of this development is that the need for trust between member states has increased because the national asylum systems become intertwined and mutually co-dependent in order to make CEAS work, which will be evident in subchapter 3.3 on The Dublin System. However, as member states work closer

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[22] Kaunert and Leonard, "The European Union asylum policy after the Treaty of Lisbon and the Stockholm Programme."
[23] Kaunert and Leonard, "The development of the EU asylum policy," 1406.
[24] Guiraudon, "The Constitution of a European Immigration Policy Domain: A Political Sociology Approach" *Journal of European Public Policy* 10 (2003): 263-282.
[25] Lavenex, "Justice and Home Affairs - Communitarization with Hesitation," 476.

together and the EU works towards establishing a common asylum policy, the issue of solidarity becomes increasingly important.

3.2 The question of solidarity

Does the EU have a common asylum policy? Some might argue that The Dublin System and the other directives mentioned in subchapter 3.1 constitute a policy framework that qualifies as a common asylum policy. However, one important principle is missing from this equation, namely the question of solidarity that entered into the EU treaties and asylum vocabulary with The Amsterdam Treaty. As noted above, it was not until The Lisbon Treaty that a legal basis for a common approach to asylum, based on the principle of solidarity was secured. Article 80 in TFEU explicitly states that a common asylum policy should "build on the basis of solidarity"; however, it does not provide any legal measures for consolidating this solidarity.[26] In line with this, the Stockholm programme also anchors solidarity on a purely voluntary basis, as a principle to be achieved "through a broad and balanced approach".[27] Having said that, it should be added that a financial incentive was introduced with the European Refugee Fund (ERF) in 2000. ERF was replaced with The Asylum, Migration and Integration Fund (AMIF) in 2014. AMIF is aimed at promoting "the efficient management of migration and the implementation, strengthening, and development of a common Union approach to asylum and immigration" and it works to secure that "EU States which are most affected by migration and asylum flows can count on solidarity from EU States".[28] However, in practice the sums allocated to member states are widely regarded as being symbolic rather then compensatory, even though the budget from ERF to AMIF has been increased.[29] This *economic solidarity* allocated to 'affected' member states appears to be connected to the overall aim of AMIF, namely to secure 'the efficient management of migration', i.e. solidarity is granted in order to 'make the network work'.[xxxii] Another basis for solidarity is expressed in the above standing Article 80 in TFEU, where "fair sharing of responsibility" based on "solidarity between Member States" is called for.[30] Solidarity within the EU should, according to Article 80, be founded on a

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[26] Langford, "The Other Euro Crisis."

[27] The European Council, *The Stockholm Programme - an open and secure Europe serving and protecting citizens 2010/C 115/01,* 2010, 32.

[28] Asylum, Migration and Integration Fund (AMIF). Last modified May 5, 2015.

[29] Raspotnik et al., "Discussion Paper – The Issue of Solidarity in the European Union" (paper presented for the TEPSA Pre-Presidency Conference 14-15 June 2012)

[30] Official Journal of The European Union, *Treaty of the Functioning of the European Union, 26/10/2012*, 2012. Hereafter TFEU.

principle of 'fairness' in the way responsibility is distributed among member states on the asylum area. Notice here that there is a noteworthy difference between "solidarity between member states" and "solidarity from EU member states".[31] The first one indicates cooperation in terms of sharing the responsibility fairly, while the second connotes to the *economic solidarity* mentioned above, where the principle becomes more functional and compensatory. This distinction paves the way for two rather different ways of conceptualising of solidarity, namely *economic solidarity* (compensating member states economically for uneven responsibility laid on them) versus *intra-solidarity* (sharing responsibility through political cooperation).[xxxiii] This distinction will later be discussed in relation to management and governance. It is inscribed in CEAS after The Lisbon Treaty that rules and regulations alone do not qualify as a common policy. In order for them to become common policy they need to be regulated by some guiding principles, thus the increased focus on solidarity. However, if solidarity is to provide policy makers with a sense of direction – a foundation for governing – it obviously matters how it is granted and on what basis. This will be an important point as we now move on to the Dublin System.

3.3 The Dublin System

The Dublin System is the cornerstone in CEAS. As we shall see below, it is also, and simultaneously, what I would presume to call the lovechild, accidental child, and stepchild of EU's asylum cooperation. As a love child Dublin is an emblem of European integration and cooperation; as an accidental child Dublin is the system that happened as a mere consequence of a careless night, after which no one dares or wants to say that an abortion might be the better solution. Finally, as a stepchild Dublin sows the seeds of discord between his real father and his wicked stepmother, who secretly wishes he had never been born. As noted in subchapter 2.1, the Dublin System was introduced in 1990 with the Dublin Convention, implemented in 1997, and recast in 2003 with the Dublin II Regulation. Finally, in 2013 Dublin III saw the light of day. I will not trace this historical and judicial development of Dublin in detail, but instead focus on why and how the EU member states have cooperated on the basis of Dublin. In order to accomplish this,

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[31] Mitsilegas, "Solidarity and Trust in the Common European Asylum System" *Comparative Migration Studies* 2 (2014).

however, it will be necessary to inquire into the underlying rationale of The Dublin System, including how it works and why it was established in the first place.

A short explanation of the Dublin System

The Dublin Convention aimed to create a system that would clearly determine "the Member State responsible for examining an application for international protection lodged in one of the Member State".[32] [xxxiv] The Dublin Regulation establishes a hierarchy of criteria for identifying the member state responsible for processing the asylum claim in Europe. These criteria apply in the order in which they appear in the Regulation.[33] This implies giving first priority to family ties as a principle for determining which member state is responsible for processing the asylum claim. [34] However, as a cornerstone in this system the principle of 'country of first-entry' was introduced.[35] This key principle states that the country of first entry is responsible for processing the asylum claim of the entrant. The principle is intended to secure the quickest possible determination of the responsible member state. The country of entrance is required to register the asylum seekers in the EURODAC database upon arrival.[xxxv] If an asylum seeker has been registered in e.g. Italy and afterwards travels to Denmark to claim asylum there, she can, according to Dublin, be sent back to Italy because Italy was her first country of entrance. This mechanism was established in order to avoid secondary movement, with the underlying assumption being that asylum seekers should be prevented from making multiple asylum claims.[36]

Dublin as a lovechild

As already explained, the initial idea of The Dublin System was to create a system that would clearly determine and allocate responsibility among member states. The system was established as the backdrop of the internal market providing European citizens with the public good of free movement. The free movement of EU citizens, however, meant that the movement of third country nationals, crossing into EU territory illegally, went from being solely a national problem to becoming a European problem that had to be controlled on a

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[32] Official Journal of the European Communities, *CONVENTION, 97/C 254/01*, 1997, 1.

[33] Official Journal of the European Union, *REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013,* 2013, Article 7.

[34] Ibid. Article 8-11.

[35] Ibid. Article 13.

[36] Mouzourakis, "We Need to Talk about Dublin," 10.

common level.[37] Dublin was never first and foremost about providing the asylum seekers with a public good in the form of international protection.[38] The aim was to procure control and security in the face of the dismantling of Europe's internal borders, and was thus focused on providing European citizens with security as a public good [39] [xxxvi] Baldaccini, et al. quite properly ask in the title of the book 'whose freedom, security and justice' EU wants to promote.[40] The answer to this question is straightforward and unambiguous if we look to e.g. the Stockholm Programme aiming to establish 'an open and secure Europe serving and protecting *citizens*'.[41] On this matter the European countries can agree, so as a lovechild Dublin was the common European project of cooperating, in a politically sensitive area, on what is essentially seen as a 'burden', hence the significant expression 'burden-sharing', in order to provide European citizens with security.[xxxvii] The problem, however, is that a 'burden' is difficult to cooperate on and even harder to share, because at bottom everyone wants to pass it on. In light of this, Dublin has become the unwanted stepchild of a minority of member states, those being the least favoured by the current Dublin system.

Dublin as a stepchild

In situations where Europe's external borders are under pressure, The Dublin System becomes equally strained, and its inherent flaws become visible. In particular, the gap between countries with vulnerable external borders and countries with internal or less exposed borders becomes evident.[xxxviii] With the recent influx of asylum seekers trying to cross the Mediterranean, the borders of Italy, Malta and Greece have been under severe pressure, causing the strain put on these countries' reception systems to increase drastically. Furthermore the Tarakhel verdict (see endnotes xxix and xxxi) challenges the system even further. The essence of the verdict is that it prohibits returning asylum seekers to their country of entrance when "there are substantial grounds to believe that there is a

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[37] Baldaccini et al., *Whose Freedom, Security and Justice?*, 13.

[38] Thielemann and Armstrong, "Understanding European Asylum Cooperation under the Schengen/Dublin System."

[39] Geddes, *Immigration and European Integration*, 13. See also Mouzourakis, "We Need to Talk about Dublin," 24; and Kostakopoulou, "An Open and Secure Europe? Fixity and Fissures in the Area of Freedom, Security and Justice after Lisbon and Stockholm" *European Security* 19 (2000): 151-167.

[40] Baldaccini et al., *Whose Freedom, Security and Justice?*.

[41] The European Council, *The Stockholm Programme*, 32.

risk of degrading or inhumane treatment".[42] The automatic operation of Dublin is thus questioned here, if and when national authorities have to make an individual assessment of whether or not it is in compliance with human rights to send the asylum seeker in question back to his or her country of entrance.[43] The Tarakhel verdict and the issue of fingerprinting were among the main reasons why professor Marlene Wind argued on a conference on European Asylum Policy in March 2015 that The Dublin System has de facto broken down, because its key principle is partly violated by Italy and undermined by ECtHR rulings, thus revealing a system that is failing to answer the complex question of how the EU should cooperate in the asylum area.[xxxix] Some southern European border countries have argued for a new system, i.e. they may be regarded as the 'stepmother' of the Dublin system, wishing it had never been born in the first place, since it places a disproportionate 'burden' on them. The real parents of Dublin, instead, are the remaining member states who 1) push the stepmother-states to take responsibility for the child, i.e. complying with the commonly agreed rules (fingerprinting), and 2) urge them to harmonise their systems and abide by the commonly agreed standards. Obviously, the not-so-affected countries have less incentive to reconsider Dublin, since they might argue that the problem is not the child, but the stepmother.[44]

Dublin as an accidental child

Was Dublin an accident? That would probably be difficult to argue, and yet the Dublin Convention was not politically motivated in the same way that The Schengen Area was. Dublin happened more as a 'consequence' of the internal market, making it a remedy and not a cause in itself.[45] As Mouzourakis observes, Dublin was a short-term measure that eventually became permanent.[46] On this backdrop as well as the current problems relating to Dublin, one might wonder why member states have not opted to change the system substantially, or perhaps even abolish it all together.[xl] Here it is relevant to mention the fact that five EU countries process 72% of all asylum claims.[47] Thus, for the majority of EU member states Dublin simply (and conveniently) delegates the responsibility attached to

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[42] Mouzourakis, "We Need to Talk about Dublin," 14.
[43] Ibid.
[44] Langford, "The Other Euro Crisis," 238.
[45] Guiraudon. "European Integration and Migration Policy," 251–271.
[46] Mouzourakis, "We Need to Talk about Dublin," 9-10.
[47] EUROSTAT, "Asylum Statistics, 2015." Last modified 7 May 2015.

EU's common territory to a minority of member states.[48] Solidarity with this minority is limited to the allocation of resources through AMIF (i.e. an economic solidarity) and the reinforcement of FRONTEX (Europe's common border control agency).

The problems related to Dublin, conceptualized as an accidental child, as well as a stepchild creating discord and conflict between her parents (the member states), comprise a complex and wide ranging topic, which will be further explored in the analysis. Having now outlined the background and basic structure of EU's asylum policy, and the Dublin System in particular, the following chapter presents the theoretical foundations of the thesis.

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[48] Thielemann, and Armstrong, "Understanding European Asylum Cooperation under the Schengen/Dublin System," 148-164; and Thielemann, "Towards Refugee Burden-Sharing in the European Union State Interests and Policy Options" (paper presented at the Ninth Biennial International Conference of the European Union Studies Association, Austin, 2005).

Notes

xix Sovereignty in this context should be understood in the Westphalian meaning of the notion, where it refers to "the state's claim to exercise authority and effective control of political decision (i.e. power) within its territory" (Risse, "What to say about the State? *John F. Kennedy School of Government, Harvard University Social Theory and Practice* 32 (2006): 679.

xx The Schengen Implementing Convention (SIC) opened up the EU's internal borders thus establishing the Schengen Area. Parallel with SIC runs the establishment of the Dublin Convention that was the forerunner to what is now known as the Dublin III Regulation. The Dublin Convention was signed in 1990.

xxi TFEU (Treaty of The Functioning of the EU) replaced TEC (Treaty establishing the European Community) with the Lisbon Treaty, and it was inscribed in the treaties that the EU 'shall develop a common policy on asylum, subsidiary protection and temporary protection' (TFEU Article 78) and considerable amendments were made to secure a legal base for the measures needed for a common policy: Articles 77-80 in TFEU replaced the Articles 62, 63 and 64 (1) of TEC. The new Articles addressed border controls and visas (Article 77), asylum (Article 78), immigration (Article 79), and solidarity between Member States (Article 80).

xxii These five include: The Asylum Procedure Directive (2013/32/EU, 26 June 2013); The Reception Condition Directive (Council Directive 2003/9/EC, 27 January 2003); The Qualification Directive (2011/95/EC, 20 December 2011); The EURODAC Regulation (2000/2725, 11 December 2000) and of course The Dublin Regulation III (2013). Note that The Asylum Procedure Directive, The Qualification Directive and The Dublin Regulation are listed here in their latest versions adopted as part of phase two of CEAS. A recast of The EURODAC Regulation and The Reception Conditions Directive will enter into force 20 and 21 July 2015.

xxiii However it was postponed until 2012, and the final recasts of some of the directives were not made until the recast of Dublin II in 2013.

xxiv 'Community method' refers in very broad terms to a decision-making process that is institution-led as opposed to the intergovernmental method where the decision-making process is dominated by the member states (Pollack, "Theorizing EU Policy Making" in *Policy-Making in the European Union,* ed. Wallace (Oxford: Oxford University Press, 2010), 18-19).

xxv Until The Lisbon Treaty, the asylum area was largely governed by intergovernmental arrangements. It became part of the JHA third pillar established by the Maastricht Treaty in 1993, where the EU institutions received their first competencies on the area.

xxvi QMV is an abbreviation for Qualified Majority Voting, which refers to a voting method in the Council where each member state is given granted a number of votes roughly proportional to its population (Bomberg et al, *The European Union: How does it works*? (New York: Oxford University Press, 2008), 242. Currently a decision needs double majority, which means that it needs a 55 per cent majority of member states representing a 65 per cent majority of the EU's population to pass (Ibid., 53).

xxvii Kostakopoulou conducts an analysis of the changing institutional balance, focusing on the role played by The European Parliament in the liberalisation of the EU asylum area (Kostakopoulou, "An Open and Secure Europe?," 151-167.

xxviii The European Asylum Support Office established by Regulation 439/20101 was initiated as an attempt to assist member states with their practical coordination in the asylum area. The declared goal was to enhance the implementation of CEAS by supporting member states under pressure.

xxix The latest example is the Tarakhel verdict that challenged the whole Dublin system, which I will return to in the next chapter (see also endnote xxxi). EU law scholars have highlighted the importance of the role of ECJ and ECHR in relation to the protection of fundamental individual rights, since a number of case studies have shown that the court often interprets the law in order to accommodate the protection of these rights.

xxx Hence, judicialisation does not only bear witness to the strengthened role of the ECJ, but it also relates to the fact that with The Lisbon Treaty the EU Charter of Fundamental Rights was made legally binding (TFEU).

[xxxi] The prime example here is The Tarakhel verdict, where ECtHR ruled that an Afghan family could not be transferred back to Italy from Switzerland, unless Italy was able to ensure individual guarantees, i.e. that this family would be kept together and accommodated for in a way suitable for a family with small children. With the Italian authorities not able or unwilling to provide such security, the family could not be transferred back to Italy.

[xxxii] This is a point that the analysis will return to, including the notion of 'network'.

[xxxiii] Political cooperation understood as "behaviour designed to benefit the group rather than the individual" (Axelrod, *The evolution of cooperation* (New York: Basic books, 2006)**,** 13).

[xxxiv] This objective has remained unchanged in the current Dublin III Regulation, and when I refer to Dublin from this point and on, I will be referring to Dublin III Regulation.

[xxxv] The EURODAC system is contained in Council Regulation (EC) No. 2725/2000, 11 December 2000 "concerning the establishment of EURODAC for the comparison of fingerprints for the effective application of the Dublin Convention" (Official Journal of the European Union: *REGULATION (EU) No 603/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013*, 2013).

[xxxvi] This element has only increased with the fear of terror and rising xenophobic feelings throughout Europe, which is a point we will return to.

[xxxvii] The Council is no longer using the phrase 'burden' or 'burden sharing', but have shifted to the more neutral 'responsibility' and 'responsibility-sharing'. However 'burden' is still widely used by EU actors in relation to asylum seekers.

[xxxviii] At the present time, this is primarily a conflict between southern countries (Italy, Greece, Cyprus, Malta and Spain) and northern countries (Sweden, Denmark, Germany, Great Britain, etc.).

[xxxix] Marlene Wind is professor of political science at Copenhagen University and often consulted by Danish media for her expertise in matters regarding the EU.

[xl] Mouzourakis provides an interesting analysis of why the member states committed themselves to Dublin in the first place. See Mouzourakis. "We Need to Talk about Dublin," 9-11.

4. The Theoretical Perspective: Governance, Management, and Network

This chapter will elaborate on the concept of 'governance' with the purpose of proposing two heuristic *ideal type* concepts – *management* and *governance*. Teasing out a concept of governance relevant to our investigation requires taking a turn with already established meanings of 'governance', a concept that is widely used in political science publications. Therefore, prior to describing how it will be defined and employed in the present thesis, section 4.1 is devoted to outlining some of the existing conceptualisations of *governance*.[xli] This will allow me to tentatively outline how I will employ the concept, and how I relate it to 'government' and 'governing'. From these definitions it will emerge that the present thesis focuses on governing and governance as something that is related to a *network* structure. Hence, in sections 4.2 and 4.3 I shall explore 'network' as a structure in which the governing activities take place, and included in this is the possibility of network *failure*. The basic claim of this theoretical chapter is that the network structure produces and is itself produced by a certain *mode* of governing, which becomes especially clear in cases of network failure. This reflection will in turn lead us to section 4.4 where the main theoretical argument will be presented, namely that we need a distinction between *governance* and *management* as two different modes of governing. Finally, section 4.5 will briefly summarise the theoretical outcome of this chapter, before section 4.6 concludes with a presentation of how we might go about analysing modes of governing.

4.1 Governance within the existing literature

"Governance is said to be many things, including a buzzword, a fad, a framing device, a bridging concept, an umbrella concept, a descriptive concept, a slippery concept, an empty signifier, a weasel word, a fetish, a field, an approach, a theory, and a perspective".[49] This interesting judgement by Levi-Faur is quite accurate in terms of pointing to how widely used the concept of governance is, thus making it difficult to give a brief and general introduction to it.[xlii] A starting point, however, might be to say that the background for nearly all strands of *governance* literature is a gradual shift in the conceptualisation of the

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[49] Levi-Faur, "From 'Big Government' to Big Governance'?" in *The Oxford Handbook of Governance*, ed. Levi-Faur (New York: Oxford University Press, 2012), 3.

state.[50] With this shift followed the observation that policy-making was no longer state-centric, confined to a national *government*, but had become polycentric, involving a whole range of public and private actors.[51] [xliii] *Governance* in this perspective is used to grasp a shift, not only in conceptualisations of the state, but more precisely, in *government.* With this shift *governance* came to refer to "new processes of governing; or changed conditions of ordered rule; or new methods by which society is governed".[52] This implies that with the introduction of 'governance' governing was extricated from the hierarchical rule of *government*.

These new processes and structures of governing, confined to the theoretical framework of governance, arose as an answer to a social and political reality that became increasingly complex.[53] In order to respond to this growing complexity, the state, and as the cockpit of the state *government*, began delegating power and authority in three different directions: upwards, downwards and horizontally.[xliv] For the purposes of this thesis the relevant direction is upwards, i.e. how and why states delegate power and authority to a supranational level, and whether or not this movement also fosters political cooperation on a supranational level.[xlv] The concepts of global governance and, in particular, multi-level governance in relation to the EU, have been employed to understand the complexity of why and how states cooperate within an institutional framework on a supra-national level.[xlvi] From within both a multi-level and a global perspective, governance is conceptualised as being a *structure* that is different from *government*.[54] [xlvii] Governance as a structure can be comprehended in four different ways, namely as a market, a network, a hierarchy or a mixture of the three.[55] [xlviii] In all cases governance has until now been analysed as being synonymous with the structure it is employed to describe.[56] [xlix] However, as this chapter will argue, this might be a theoretical misconception that fails to grasp the normative dimension of the governance concept. On this background, it is possible to offer

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[50] Ibid, 6.

[51] Bevir, "Governance as Theory, Practice, and Dilemma" in *The SAGE Handbook of Governance*, ed. Bevir (London: Sage Publications Ltd, 2011), 15.

[52] Levi-Faur, "From 'Big Government' to Big Governance'?," 8.

[53] Ibid.

[54] Ibid.

[55] Börzel, "The European Union – a unique governance mix?" in *The Oxford Handbook of Governance*, ed. Levi-Faur (New York: Oxford University Press, 2012), 613.

[56] Bevir, "Governance as Theory, Practice, and Dilemma," 12-15.

the following brief definitions of government, governing, and governance – and how they will be employed in the present thesis.

Government

Government is understood here as the state's competence to govern through hierarchy.[57] Government is thus the body that exercises power over the state, based on an understanding of how something ought to be done, which reveals a value position.[l] The national populations elect the government, which gives it the necessary legitimacy to govern (i.e. to carry out their governing activities), which indicates a clear input legitimacy.[li]

Governing

Governing is the activities that public and state actors partake in with the purpose of solving collective problems or providing a collective good. This may involve attending to regional, national or supranational institutions as contexts for these governing interactions; and a desired outcome may be establishing a normative foundation for all those activities.[lii] Governing is thus understood as being essentially about problem solving, political cooperation and providing direction or solutions on the basis of a set of common rules and or values. These governing activities take place within a structure. For the purposes of this thesis governing will be investigated within the strand of governance literature influenced by policy network theory, i.e. thinking of governing as something that takes place within a network (i.e. a structure), constituted and re-negotiated by a set of rational actors.[58]

Governance

From my perspective, 'governance' will be conceptualised as a particular mode of governing that is produced by the structure (in this case the network), and the actors acting within the structure. As opposed to government, where governing activities are clearly legitimised because the national population has elected the government, governance and management as modes of governing on a supranational level will rather tend to focus on

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[57] Offe, "Governance: an "empty signifier"?" *Constellations* 16 (2009): 551.
[58] Kooiman et al., *Modern Governance* (London: Sage, 1993), 26.

legitimizing the governing activities through output-legitimacy, i.e. through the results they produce.[liii]

By *mode* of governing I mean that governance tells us something about the characteristics of the governing activities, yet without being equivalent to them. This also implies that my employment of governance presupposes a set of normative criteria in relation to governing.[liv] As mentioned above, this definition of governance means a departure from the bulk of existing governance literature, which tends to conceptualise governance as a 'catch all concept' equivalent to either the structure or process of governing.

With these three definitions in place, we now move on to an investigation of the network as the structure in which the process of governing takes place.

4.2. Network

The way in which *network* will be employed in this thesis is in accordance with the branch of policy network theory that investigates networks using the language of *governance*, which in turn implies that focus will be given to the way in which the network allows for a certain mode of governing.[lv] However, before investigating the mode of governing produced by the network, we need to inquire into how it works as a structure.

The basic idea behind policy network theory is the same as noted above, i.e. that a range of political problems or issues can no longer be solved within the confines of a national *government*. This has caused a number of scholars to define networks as a particular form of *governance.*[59] For the purposes of this thesis, it means that the challenges stemming from irregular migration cannot be tackled individually by national governments in the wake of having established the Schengen area, but require a supra-national network of actors.[lvi] The network to be explored in our context works in a 'shadow of hierarchy', as do

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[59] Mayntz, "Modernization and the Logic of Interorganizational Networks" In *Societal Change Between Market and Org*an, Child et al. (Avebury: Aldershot, 1993); Kooiman et al., *Modern Governance;* and Kenis and Volker, "Policy Networks and Policy Analysis: Scrutinizing a New Analytical Toolbox" in *Policy Networks. Empirical Evidence and Theoretical Considerations,* Bernd and Mayntz (Frankfurt: Campus Verlag, 1991).

the vast majority of networks.[lvii] *Hierarchy* is thus an important prerequisite for the network analysed here because it consists exclusively of public actors acting within a strong institutional framework.[lviii] The hierarchical delineations of the network that will be analysed in this thesis are a testimony to the fact that the activities of network actors are bound by common rules and regulations i.e. the EU member states have committed themselves to e.g. Dublin.

Two features characterise policy networks: interdependence and coordination.[60] I will briefly define them before moving on to a more comprehensive explanation. *Interdependence* relates to the fact that network actors are dependent on each other's resources in order to realise their objectives. This in turn means that *coordination* becomes necessary since actors need to act together within the network in order to realise their common objectives.[61] I will now explore these two characteristics further and tentatively relate them to the EU network that will be analysed in the next chapter.

Turning our attention to the feature of *interdependence* and *coordination,* one might argue that *interdependence* exists as the premise for interaction between actors within the network and vice versa, i.e. the network also creates interdependence.[62][lix] The network is thus to be conceived of as the sum of actors acting within it.[63] When these interdependencies arise, coordination among actors becomes necessary in order to reach a shared understanding and implement policy in areas of common interest (in our case: asylum policy). Here we should recall the point made in 3.1, namely that the transfer of sovereignty combined with a more binding legal framework has increased the need for coordination among EU member states i.e. it has strengthened their *functional* interdependence.

I emphasize *functional* above, because it might be is necessary to understand interdependence in two different ways, namely as *functional* interdependence or *political* interdependence. Functional interdependence is a prerequisite for a network's ability to function. It occurs when the network actors are mutually dependent on each other's ability

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[60] Enroth "Policy Network Theory" in *The SAGE Handbook of Governance*, ed. Bevir (London: Sage Publications Ltd, 2011,) 20.
[61] Ibid., 27.
[62] Ibid., 28.
[63] Ibid., 27.

to coordinate their own activities, in order to realise a common objective. This, however, is not necessarily followed by political interdependence. Political interdependence entails that the network is also regarded as serving not just a functional purpose, but also a political purpose, i.e. that network actors cooperate.[lx]

This leads us to the feature of *coordination*. Mark Bevir has defined coordination as something that happens when "two or more policy actors pursue a common outcome and work together to produce it" [64]. Bevir thus emphasises that coordination is not a given in a policy network; it is, rather, something that needs to be actively pursued and striven for.[lxi] This means that coordination is frail and completely dependent on the fact that all actors can count on each individual actor doing his or her part in order to make the network work, which again relates to the question of *interdependence* between actors. In order for a network to work, all actors must be able to coordinate their own activities; in our case this means ensuring that the national asylum systems functions in accordance with agreed upon EU rules; otherwise *coordination* becomes difficult.[65]

At this point the etymology of governing is of interest, namely that it stems from the Greek *kybernein* meaning to steer or direct. This origin of the word has often been employed in the governance literature alongside the metaphor of a boat, in order to emphasise the difference between steering a boat as opposed to rowing.[66] Why do I mention this here? Because an interesting question is: What happens when the network is confronted with problems that call for collective solutions because the network can no longer coordinate its interdependencies? Then you need a network with a collective steering capacity that makes common action possible, and a relation between values, action and regulation/law becomes visible as a guiding principle for a given collective action. In other words you need a network characterised by *political* interdependence. A network that relies solely on *functional* interdependence is frail, if it encounters a problem that needs to be solved, and network actors have individual perceptions of what that problem is.[67] [lxii] This leads us to the question of network failure.

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[64] Bevir, *Key Concepts in Governance,* London: Sage Publications Ltd, 2009, 56-57.
[65] Bevir, *Key Concepts in Governance*, 27.
[66] Levi-Faur, "From 'Big Government' to Big Governance," 5.
[67] Klijn and Edelenbos, "Meta-Governance as Network Management" in *Theories of Democratic Network Governance,* Sørensen and Torfing (Basingstoke, Palgrave Macmillian, 2007,) 9.

4.3 What if the network fails?

How can we analyse network failure, and how can we define it? Network failure has primarily been analysed as *governance* (i.e. systemic) failure, meaning that when the network no longer possesses the capacity for coordinating its interdependencies, it is bound to fail on a systemic level because the independent actors will have lost the capacity to coordinate their own activities. This qualifies as governance failure, according to the majority of literature on the subject.[68] However, this conceptualisation of network failure, where governance and network failure becomes one and the same, fails to make sense of the complexity of network failure. The main problem is the systemic conceptualisation of governance (i.e. governance as being equal to the network structure). This is a problem because it ascribes some normative criteria to the network, in the sense that it presupposes that there needs to be a common understanding of the validity of the objectives that the network evolves around, in order for it to qualify as governance. Nonetheless, such an approach fails to make the normativity in question a defining feature of governance. Jessop remarks, for example, that governance failure is difficult to detect but that it is likely to happen "when there is continuing disagreement about the continued validity of the shared objectives for networked cooperation for all partners".[69] [lxiii] Here Jessop points to the previously mentioned relation between law/regulation, values, and action, because when this relation is not considered valid by all actors, disagreement is bound to arise, and the network is likely to fail. My point here is that governance failure is difficult to detect if we only employ a systemic toolbox for our analysis, thus equating network and governance failure. In other words, we need to inquire into the *normative* dimension of governance and try to uncover the implied *governance* concept in order to avoid that 'governance' comes to signify all that happens, or would have to happen, for solving a collective problem of a given set of actors within a network.[70]

Here I propose to distinguish between two different conceptualisations of network failure:

1) On a systemic level we may talk about network failure when the network can no longer coordinate its interdependencies, because one or more network actors have lost the ability

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[68] See e.g. Jessop, "Governance failure" in *Encyclopedia of Governance,* Bevir et al. (London: Sage Publications Ltd, 2007) and Pierre and Peters, *Governance, Politics and the State* (London: Macmillan Press Ltd, 2000).
[69] Jessop, "Governance failure," 381.
[70] Offe, "Governance: an "empty signifier"?," 557.

to coordinate their own activities; and 2) on a normative level, we talk about network failure in Jessop's understanding "when there is continuing disagreement regarding the continued validity of the shared objectives for networked cooperation for all partners".[71] [lxiv]

The problem is that in order to understand the normative level of network failure, we need to critically address the conceptual boundaries surrounding *governance*. In other words, we need to move away from an understanding of governance as something that is synonymous with the network structure (i.e. the systemic approach), and instead analyse it as a mode of governing that is produced by the network, and the actors acting within the network.[lxv] If we assume a set of rational actors actively involved in making the network work, then it is a fair assumption that there is an internal connection between the actors, the policy that the network evolves around (in our case Dublin), and the rationalities that underlies it.[lxvi] In this respect, network failure becomes relevant because it is likely to reveal the rationalisation and mode of governing, as the network actors attempt to respond to the threat network failure. Hence, the relevant question emerging from this line of thinking is: What mode of governing does the network produce?

4.4 Governance and management

In order to understand the two above-mentioned conceptualizations of network failure, we now move on to the distinction between governance and management as two different modes of governing within a network.

Management

Management is one of the two modes of governing (governance ≠ management) that I propose in order to analyse governance failure – not just as a systemic failure but rather as the generator of a specific rationalisation working within the network.[lxvii] Management is a concept that has been used loosely within the governance literature, without ever having received a theoretical clarification.[lxviii] Therefore, it is necessary to start out by placing some terminological boundaries around management and how it will be used.[lxix]

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[71] Jessop, "Governance failure," 381.

George R. Terry defines management as activities aimed at "planning, organizing, actuating and controlling, performed to determine and accomplish the objectives by the use of people and resources".[72] This is a more elaborate development of Mary Parker Follett's definition, which simply states that management is "the art of getting things done through people".[73] In light of this, the goal of management becomes for a person to "direct the effort of others – not by performing the task himself".[74] A basic assumption of management theory is thus that problems and/or tasks can be identified, isolated and handled by delegating responsibility to actors that can be controlled, i.e. made accountable for their performance.[lxx] This poses an immediate challenge for thinking collectively within the management mode of governing, since according to this line of thinking network failure is likely to be tackled as a functional problem (e.g. a problem of coordination) that can be isolated and only involves a limited set of actors thus revealing a functional interdependence. In light of this, management becomes the process of reducing tasks and problems of network failure into parts (as opposed to looking at the whole), thus making them easier to identify and fix.

In this connection it is relevant to highlight the etymological difference between governance and management. As opposed to *governance*, a concept that (as already mentioned) is etymologically linked to governing, thus meaning to steer or direct, *management* or the verb 'manage' stems from the Italian *maneggiare* (to handle), which derives from the Latin word *manus* (hand). This etymological difference between the two words suggests that where governance indicates *direction*, management only indicates *reaction*. As touched upon above, management reduces complexity and isolates problems in order to be able to *react* efficiently.

Management thus becomes an internal logic produced by the network. According to this logic, 'making the network work' becomes a legitimate goal in itself, in the face of failure. This implies that the network is partly detached from the policy that it revolves around, i.e. the network becomes both the object and subject of governing, which means that the network is first and foremost accountable to itself. Put differently, the goal of the network is to make sure that it functions effectively.[lxxi] This essentially creates an self-referential,

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[72] Terry, *Principles of management* (New Delhi: Irwin, 1994), 5.
[73] Metcalf and Urwick, *Dynamic Administration: the Collected Paper of Mary Parker Follett* (New York: Harper and Row, 1941), 15.
[74] Tripathi and Reddy, *Principles of Management* (New Delhi: Tata MacGraw-Hill, 2008)*,* 2.

bureaucratic mode of governing, meaning that problem-solving does not derive its legitimisation from providing policy-oriented solutions, but from isolating problems (and actors) in such a way that they can be solved on a technical level, thus delivering efficient and targeted solutions. In order to do so, management reduces the above-mentioned complexity of the societal reality that network theory grew out of, or tried to respond to.[lxxii]

As noted above, management is closely related to the institutional setting of the network, i.e. bureaucracy.[lxxiii] The linkage between management and bureaucracy is well established in the literature, and bureaucracy can be seen as a logical extension of management.[75] German sociologist Max Weber is regarded as the theoretical father of modern bureaucracy, with his conceptualization of the rational-legal authority that serves to legitimise bureaucracy. Authority is perceived as being both legal and rational because it is exercised through a carefully organized bureaucratic system of impersonal rules and procedures attached to, in this case, the 'network'.[76] [lxxiv] Both management and bureaucracy are related to the hierarchical characteristics of the network analysed in this thesis. Hierarchy is a prerequisite in a bureaucracy because it ensures compliance by legal or regulative rules, thus using hierarchical measures to re-establish the means for coordination when dialogue and negotiations break down. The hierarchy thus becomes the central organisational principle of management.

The question that is difficult to answer within the mode of management is: How can values and politically motivated arguments be articulated as part of management? This leads me to the presentation of governance as a counter-concept to management – and thereby to the core of my theoretical argument.

Governance

In comparison with management, *governance* works in a different way. Faced with the threat of network failure, *governance* first and foremost asks the question *why* (policy-oriented), as opposed to *management* that asks *where* (network-oriented). Asking 'why' means inquiring into the nature of the policy that the network evolves around. This

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[75] Ibid, 28.

[76] Weber, *The Theory of Social and Economic Organisation* (New York, Oxford University Press. 1947), 97.

generates a mode of governing where defined goals (positive/negative) can be presented based on political reasoning and argumentation that indicates a set of political values. [lxxv]

As mentioned before, a well-functioning network requires a common understanding and acceptance of the laws, regulations, and values governing a given policy area, such as e.g. asylum that the network evolves around. The assumption that the ability to steer or provide direction depends on a transparent relation between law/regulation, values, and action, is the cornerstone of *governance.* This view is supported by Torfing's generic definition of governance as "the attempt to steer society through collective actions and forms of regulations that links values and objectives to output or outcome". [77] Torfing's understanding of governance and my conceptualisation of it, clarifies that governance is essentially a *political* concept, which means that it derives its legitimacy from establishing this relation as a basis for governing. This also implies that the output legitimacy of *governance* is dependent on whether or not this relation is clear. In this line of thinking, governance allows us to conceive of network failure as a policy failure, because *governance* directly links network failure to the policy that it evolves around, thus making the network accountable for a particular policy. This as opposed to management where the network is accountable only to itself.

Here one might of course object that governance in this form is nothing but a replicate of government, which renders it inadequate as a tool for understanding the complexity and interaction within a network. This, however, would be a misconception in light of the fact that governance, within the majority of governance literature, already presupposes that collective action within a network needs to be rooted in common values and/or objectives.[78] In other words, the governance literature already attributes a *normative* dimension to governance, but fails to conceptualize this dimension as a defining feature of governance, which brings us back to Offe's critique of governance as being solely "the management of interdependence".[79]

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[77] Torfing, "Governance networks" in *The Oxford Handbook of Governance*, ed. Levi-Faur (New York: Oxford University Press, 2012), 101.

[78] Bevir, *Key Concepts in Governance,* Jessop, "Metagovernance" in *The SAGE Handbook of Governance*, ed. Bevir (London: Sage Publications Ltd, 2011); and Kooiman, *Governing as Governance* (London: Sage Publications Ltd, 2003).

[79] Offe, "Governance: an "empty signifier"?,"551.

My conceptualisation of governance, as described above, draws inspiration from the 'deliberative turn' in theorising EU policy-making.[80] This 'turn' is commonly attributed to Jürgen Habermas' theory of 'communicative action' applied to a concept of 'deliberative democracy'.[81] [lxxvi] It was later developed by Thomas Risse, who in line with Habermas presents a 'logic of arguing' where political actors reason on the basis of their beliefs and values, and where a network actor (in our case) can be persuaded to change her course, if presented with a better argument. This process of deliberation is in both Risse's and Habermas' view a normative process.[82] This line of thought is relevant to my conceptualisation of governance, seeing that it is centred on network actors' ability to make visible the relation between laws/regulations, values, as a foundation for their governing activities.

With this said, let me now briefly summarise the above by contrasting management and governance on three parameters – legitimisation, accountability, and objective – before moving on to an explanation of how we can identify and analyse these two modes of governing. Management derives its legitimacy from making the network work, whereas governance derives its legitimacy from making the policy within the network work.[lxxvii] Within management the network is accountable to itself, seeing that the network is both the subject and object of governing. Within governance defined goals (positive/negative) can be presented based on political reasoning and argumentation that indicates a set of political values. Management, on the other hand, defines goals on the basis of deductive reasoning indicating a logical relation between the premise and the conclusion, thus essentially making additional political reasoning superfluous.[lxxviii] Bearing this in mind, we are ready to turn our attention to how these two modes of governing may be analysed, however first I will provide a preliminary conclusion of my theoretical findings and arguments.

4.5 Preliminary conclusion

This theoretical chapter has introduced and defined a range of concepts, and therefore it may be useful to sum up the main findings and relate them to each other in order to make

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[80] Pollack, "Theorizing EU Policy Making," 40.

[81] See Habermas, *The Theory of Communicative Action*, *vol. ii* (Boston: Beacon Press, 1985)

[82] Risse, ""Let's Argue!" Communicative Action in World Politics" in *International Organization* 54/1 (2000): 7.

them operational for the analysis. Below, I have created a table outlining how the two modes of governing relate to the network:

Table 1. Modes of governing

Modes of governing	Management	Governance
Network actors	Functional interdependence	Political interdependence
Network failure	Systemic failure	Normative failure
Objective	Make the network work	Make the policy work

What this table serves to clarify is that *management* is likely to occur as the response to systemic failure, revealing a functional interdependence between network actors, which reduces the objective of this mode of governing to 'making the network work'. *Governance*, on the other hand, is likely to occur as a response to normative failure, revealing a political interdependence between network actors, which implies that the network is centred on 'making a policy work'.

It is important to note that it is not a given that these modes of governing should not be able to coexist, i.e. they are not necessarily mutually exclusive. In fact, they may often be intertwined.[lxxix] Nonetheless, when employed as an analytical tool it is likely that one will occur as the dominating mode of governing. What is important here is that both management and governance can best be understood and analysed as rationalisations of governing, i.e. they tell us something about how the network actors rationalise their governing activities within a given network. Hence, a fruitful way to analyse rationalisations may be to embark on critical discourse analysis.

4.6 Analysing modes of governing

This thesis will employ Critical Discourse Analysis (CDA) as the main approach for analysing the mode of governing produced by the Dublin network. CDA is a broad field that entails neither a common theoretical framework, nor a shared methodology.[83][lxxx] However, the basic idea of nearly all strands of CDA is that "choices made by speakers (regarding vocabulary and grammar) are consciously or unconsciously principled and

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[83] Bryman, *Social Research Methods*, 506.

systematic, and that they are ideologically based".[84] This implies that discourse is intrinsically linked to relations of power. The critical aspect of CDA lies in making visible relations of power discernible through analysis. An important aim of my analysis (chapter 6) will be to uncover the discourses produced by the Dublin network, based on the assumption that this will allow us to inquire into which modes of governing (management ≠ governance) are produced by the network.

Norman Fairclough has developed a widely used model of CDA, and it is also this model that will be employed in my analysis.[lxxxi] The model has three dimensions, viewing discourse as being concurrently: a) a text (spoken or written); b) a discursive practice; and c) a social practice.[lxxxii] Fairclough regards the discursive practice as a social practice and vice versa, which implies that there is a dialectical relationship between a given discursive event (understood both as a text and a discursive practice) and the situations, institutions and social structures that frames it, i.e. social practice.[85] Thus, the three dimensions overlap, which implies that an analysis should not separate them but instead be aware of these interdependencies when describing, analysing, and explaining a given discourse. [86]

The analysis conducted here will fall in three parts: I will first look at the textual level. Here I have decided to inquire into processes of transitivity and agency, and how they form a given discourse. Having done this, I intend to analyse the discursive practice, where I will focus on the issue of legitimisation. How a given discourse is legitimised points to the social practice of the discourse. By this I mean that legitimisation is not inherent in agency. It is discursively constructed in order to explain why social practices exist and why they take the forms they do.[87] In relation to the present thesis, social practice should be understood as the network and the modes of governing produced by the network (i.e. a dialectical relationship). Below, I have briefly outlined how I will employ transitivity and legitimisation in my analysis.

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[84] Todolf et al., "What is Critical Discourse Analysis?" in *Quaderns de Filologia. Estudis Linguistics* Vol. XI, 9-34 (2006): 4.
[85] Ibid, 15.
[86] Fairclough and Wodak, "Critical Discourse Analysis" in *Discourse Studies. A Mutidisplinary Introduction. Discourse as Social Interaction*, ed. van Dijk (London: Sage Publications, 1997)
[87] Leeuwen, *Discourse and Practice – new tools for critical discourse analysis* (London: Oxford University Press, 2008), 125.

Transitivity

In the textual analysis I shall primarily look at processes of transitivity. This analysis will be supported by analyses of modality and metaphors. Transitivity means analysing the texture of the text, and it entails investigating how events and processes are connected to subjects and objects.[88] This implies looking at verbs in order to answer questions such as: Who is acting, which processes are at work, and who is merely conceived as an object?[lxxxiii] Such an analysis will help us understand who is being granted agency, i.e. who is empowered and over whom. In my analysis of transitivity, I shall employ Halliday's processes of transitivity. He operates with three main processes of transitivity: mental, relational, and material.[89] [lxxxiv] These three processes express different modes of thinking, being, and acting, i.e. states of mind, states of being, or states of doing. All three of these states are characterised by a group of specific verbs, e.g. relational processes tell us something about what the world *is,* and include verbs such as is, has, are, etc.[90] This approach is useful in a CDA because it allows for an actor-centred analysis that enables us to inquire into the object and subject positions, and how these are constituted in the text.

Legitimisation

Theo van Leeuwen distinguishes between four different forms of legitimisation: 1) Authorization: legitimation by reference to authority (tradition, custom, law, and/or persons in whom institutional authority of some kind is vested; 2) Moral evaluation: legitimisation by reference to value systems; 3) Rationalisation: legitimisation by reference to the goals and uses of institutionalised social practices and to the knowledge that society has constructed to endow these practices with validity; and 4) Mythopoesis: legitimisation through narratives that reward legitimate actions and punish non-legitimate actions.[91] These four different forms are not mutually exclusive; on the contrary, according to Leeuwen they often work together to form a given discourse.

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[88] Fairclough, *Critical Discourse Analysis: the critical study of language* (London: Longman, 1995), 177.
[89] Halliday, *Explorations in the Functions of Language* (London: Edward Arnold, 1973)
[90] Ibid, 35.
[91] Leeuwen, *Discourse and Practice,"* 105-106.

Notes

[xli] Because of the magnitude of this field it will not be possible to outline it in its entirety, therefore I will focus on those strands of governance literature, which I consider most relevant for my particular focus.

[xlii] 'Governance' as an academic term was introduced into political science in the 1980ies.

[xliii] 'Government' is understood here as the entity that has the competence to govern the state through hierarchy (Offe. "Governance: an "empty signifier"?" *Constellations* 16 (2009): 551). The state in turn is the entity under which a society is politically organised under a common law within prescribed boundaries (Ibid**)**.

[xliv] Here we might understand power and authority as part of the state's sovereignty, which means that power comes to mean the ability of the government to exercise effective control over the state and all political decisions concerning the state, and authority refers to the subjective rightness of this power (Dryzek et al., "Introduction" in *The Oxford Handbook of Political Theory,* Dryzek et al. (London: Oxford University Press, 2006), 14-16.

[xlv] It is not necessarily a given that the transfer of power and authority to a supranational level is necessarily accompanied by political cooperation, understood as behaviour designed to benefit the group rather than the individual (Axelrod, *The evolution of cooperation* (New York: Basic Books, 2006)**,** 13.

[xlvi] The global governance literature is found within the scholarly tradition of International Relations, where 'governance' typically defines a movement from anarchy to regulation at an international level, thus implicating more order and stronger institutions (Levi-Faur, "From 'Big Government' to Big Governance'?", 7.

[xlvii] 'Governance' may also be conceptualised as a process, a mechanism or a strategy (Ibid, 8)

[xlviii] Each of these conceptions has its internal logic: The market works according to an exchange logic, the network according to dialogue, and the hierarchy according to command (cf. Jessop, "Metagovernance" in *The SAGE Handbook of Governance* in ed. Bevir (London: Sage Publications Ltd, 2011), 115.

[xlix] This is also the case with the strands of governance literature that conceptualises governance as a process, a mechanism or a strategy. The general tendency is to use the governance concept as though it were equivalent to the structure, mechanism, process or strategy that it is used to capture.

[l] This implies that there is also an inherent normative dimension of government.

[li] Input legitimisation meaning that an EU institution can be legitimised by its democratic accountability to the electorate (Pollack, "Theorizing EU Policy Making" in *Policy-Making in the European Union,* ed. Wallace (Oxford: Oxford University Press, 2010), 39.

[lii] This definition is inspired by Jan Kooiman (Kooiman, *Governing as Governance* (London: Sage Publications Ltd, 2003), 3. Kooiman includes private actors in his definition of governing (Ibid, 4), but since private actors have no relevance in relation to the focus of this thesis, they have been excluded from the definition.

[liii] Output legitimisation meaning that the governing process can be legitimised by the efficiency of its policy outputs (Pollack "Theorizing EU Policy Making," 39.

[liv] Normative will be understood throughout the thesis as relating to the way something ought to be done according to a value position (Halman, "Political Values" in *The Oxford Handbook of Political Behaviour,* ed. Russel (London, Oxford University Press, 2007), 307.

[lv] A range of policy network and governance scholars conceptualise 'network' and 'governance' as though they were one and the same, or to be more precise: as if the network is a constitutive feature of governance and vice versa (see e.g. Jessop "Metagovernance."

[lvi] Here it is important to make clear that my use of network theory diverges from how it is typically employed, because I primarily use it to understand how a wide range of public actors and institutions cooperate on the asylum area in Europe.

[lvii] Fritz Scharpf developed the concept 'shadow of hierarchy', and claimed that all networks work in a 'shadow of hierarchy' (Scharpf, "Coordination in Hierarchies and Networks" in *Games in Hierarchies and Networks - Analytical and Empirical Approaches to the Study of Governance Institutions*, ed. Scharpf (Frankfurt, Campus Verlag, 1993) and Scharpf, *Governing in Europe -*

Effective and Democratic? (London, Oxford University Press, 1999). In relation to this thesis it signifies the supra-national centralisation of power present in EU decision-making, where it is generated by, on the one hand, majority rule in the Council (i.e. the threat of a majority decision motivates actors to reach an agreement) and on the other hand the fact that all agreements will be supervised by the ECJ and the Commission (Börzel, "The European Union – a unique governance mix?" in *The Oxford Handbook of Governance*, ed. Levi-Faur (New York, Oxford University Press, 2012), 617-618.

[lviii] Policy network theory arose primarily as an attempt to explain the increased interdependences between public and private actors with embedded interests in specific policy areas. The mixture of public and private actors, created the need for an informal network structure that opened up the formal decision-making process that no longer was confined to hierarchic *government* structures (Rhodes, "Policy Network Analysis" in *The Oxford Handbook of Public Policy*, Goodin et al. (Oxford, Oxford University Press, 2008), 426. However, leaving out private actors does not make network theory invalid, but it enforces the presence of hierarchy within the network, and makes my use of network theory some what untraditional.

[lix] Think e.g. of the increased need for harmonisation between EU member states (see section 3.1.)

[lx] Here we return to the point made in subchapter 3.1, namely that when states delegate power and authority to a supranational level, it does not necessarily have to be followed by political cooperation.

[lxi] Bevir determines coordination as "a driving force of governance and one of its goals" (Bevir, *Key Concepts in Governance* (London, Sage Publications Ltd, 2009), 56.

[lxii] However, here the hierarchical delineations of the network become important, seeing that they can 'force' a common view on the problem, which is a point that will be further clarified as we investigate the case.

[lxiii] Pierre and Peters likewise touch upon the difficulty of detecting governance failure: "Governance failure is difficult to observe because it can only be studied by observing its consequences, not the phenomenon itself" (Pierre and Peters, *Governance, Politics and the State* (London, Macmillan Press Ltd, 2000), 208.

[lxiv] By policy I understand the declared <u>objectives</u> that a network seeks to <u>achieve</u> and uphold.

[lxv] Within the existing governance literature this means turning my attention from system theory to interpretive theory (Bevir, "Governance as Theory, Practice, and Dilemma" in *The SAGE Handbook of Governance*, ed. Bevir (London: Sage Publications Ltd, 2011), 5. Interpretive theory inquires into the views, beliefs, and meanings of network actors (ibid., 164).

[lxvi] Governing within a network structure is a norm-generating process, i.e. it is also a rationalisation process (Levi-Faur, "From 'Big Government' to Big Governance'?," 9).

[lxvii] It is interesting that a distinction between network governance and network management exists in the governance literature on policy networks (see Enroth, "Policy Network Theory" in *The SAGE Handbook of Governance*, ed. Bevir, (London: Sage Publications Ltd, 2011), 29. Here network management simply signifies coordination, whereas network governance is not defined, but seems to encompass the totality of the workings of the network.

[lxviii] Claus Offe also remarks that the terminological boundary between management and governance is in need of clarification. In his seminal essay "Governance: An Empty Siginifier?" Offe states that this unclear boundary has led to a widely asserted conception of governance as the management of interdependence (Offe, "Governance: an "empty signifier"?," 551).

[lxix] Given the vastness of the literature on management, I have chosen to focus on the branch of management literature that concerns administrative management and is partly inspired by Max Weber.

[lxx] This is in line with Mintzberg who argues that three assumptions define management: 1) Particular activities can be isolated – from each other and from direct authority; 2) Performance can be fully and properly evaluated by objective measures, and 3) Activities can be entrusted to autonomous professional managers held responsible for performance (Mintzberg, "Managing government – governing management" *Harvard Business Review* May-June (1996): 78-79).

[lxxi] This supports the view of the member states as self-steering or self-coordinating actors (concerned with their respective national populations), and the network as a 'rowing' actor (i.e.

instead of steering actor) responsible for making the network work. The network actors do not primarily need to explain (i.e. make accountable) the policy that the network evolves around but rather the functioning of the network.

[lxxii] As Jessop remarks, the majority of governance literature presumes that the network constitutes a political response to an increased social complexity that can best be accounted for within networked forms of regulation (Jessop, "The rise of governance and the risks of failure: the case of economic development" *International Social Science Journal* 50 (1998): 32).

[lxxiii] When the state delegates power and authority to an institution such as the EU, it is likely to result in bureaucratic institutions as a platform for cooperation and coordination, because these institutions provide a functional governing space for highly political policy issues, such as policies pertaining to asylum and immigration.

[lxxiv] Weber uses the term office, i.e. he does not speak of networks.

[lxxv] Values and political values are used synonymously and refer to "deeply rooted motivations or orientations guiding or explaining certain attitudes, norms, beliefs, opinions, which in turn, direct political action" (Halman, "Political Values," 309).

[lxxvi] Deliberative democracy is a model of governing, where citizens or at least their representatives collectively deliberate with the aim of finding the best solutions for common problems, hence the notion of 'communicative action' i.e. democracy is realised through deliberation (Pollack, "Theorizing EU Policy Making," 39) and Habermas, *The Theory of Communicative Action*, 23.

[lxxvii] Notice here that they are two different forms of output legitimacy, however one is network oriented and the other is policy oriented.

[lxxviii] A logical relation between the premise and conclusion of a deductive argument implies that the conclusion is necessarily true and valid, which means that there is no or a limited need for political reasoning.

[lxxix] It would presumably be somewhat naïve to assume that governance can stand alone as a characteristic of the governing process that takes place in the EU network

[lxxx] Historically, CDA developed from Critical Linguistics, which emerged in the 1970ies at the University of East Anglia, drawing on British linguist Michael Halliday's functional view of language, i.e. the idea that language evolves under the pressure of the functions that the language has to serve. At the same time, CDA is also inspired and influenced by critical theorists such as Foucault, Gramsci and Habermas (Todolf et al., "What is Critical Discourse Analysis?" *Quaderns de Filologia. Estudis Lingüístics* Vol. XI (2006), 1.

[lxxxi] Fairclough defines CDA as an: "analysis which aims to systematically explore often opaque relationships of causality and determination between (a) discursive practices, events and texts, and (b) wider social and cultural structures, relations and processes; to investigate how such practices, events, and texts arise out of and are ideologically shaped by relations of power and struggles over power" (Fairclough, *Critical Discourse Analysis: the critical study of language* (London: Longman, 1995), 132-33.

[lxxxii] Discursive practice refers to: "the set of spoken and unspoken rules, norms and mental models of socially accepted behaviours that govern individuals' thought, act and speak" (Todolf et al., "What is Critical Discourse Analysis?,"14.

[lxxxiii] It is of course important here to note that an analysis of agency is always also an analysis of power, seeing that the ability to exercise control of the outcome of political decisions, is a question of agency.

[lxxxiv] Halliday actually defines no less than six processes of transitivity but the three left out here are subordinate to the three main processes selected here.

5. Presenting the Case

This chapter will present the case, and by doing so introduce the network surrounding Dublin. The objective here will be to shed light on the features of *coordination* and *interdependence* within the Dublin network, and further to consider whether or not it is possible to argue that it has failed.

The network surrounding the Dublin regulation consists of 28 national systems, and involves EU institutions, agencies, committees and the Council, where the 28 home and justice ministers try to coordinate and find common ground.[lxxxv] As noted in the introduction, Italy experienced a drastic increase in incoming irregular migrants in 2014, the majority of which had undertaken the dangerous journey over the Mediterranean, in order to reach Italy's southern borders.[lxxxvi] Italy's obligation to fingerprint these people became a challenge that the country for a long period of time was unable or unwilling to tackle. Over the summer and into the fall of 2014, a number of European countries, including Denmark, experienced a drastic increase in asylum applications, which coincided with the escalating numbers of irregular migrants arriving in Italy.[lxxxvii] This caused Denmark and other European member states to criticize Italy for not living up to the Dublin Regulation, seeing that a large percentage of the asylum seekers had passed unregistered through Italy.[92]

This criticism was the background for The European Committee of the Danish Parliament taking a trip to Rome and Sicily in September 2014.[lxxxviii] During this visit they inspected and inquired into the Italian receiving facilities and procedures, as well as met with relevant stakeholders in order to get an overview of the Italian migration challenge.[93] I highlight this visit because it is a good example of both *interdependence* and the need for *coordination* between network actors and the national systems.[lxxxix] Furthermore, the traffic of parliamentary hearing questions and answers, between the Ministry of Justice and the Danish Parliament, on the subject of Italy's compliance with Dublin throughout the

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[92] Appendix I. The Danish Ministry of Justice, "The Minister of Justice will put a stop to asylum shopping in Europe," 9 October 2014. See also, Justitsministeriet, "Justitsminister vil sætte ind over for asylshopping I Europa." Last modified, 9 October 2014.
[93] Folketinget, *Europaudvalgets udvalgsrejse til Rom og Sicilien 22. -24. september 2014.* Last modified 12 September 2014.

autumn 2014, highlights the political importance granted to this subject by the Danish politicians in Parliament and the Ministry of Justice.[94][xc] On 3 October a meeting was held in the European Committee where now former Danish Minister of Justice, Karen Hækkerup, stated that at the upcoming Council meeting she would underline the importance of full compliance with the Dublin and the rule of first entry, thereby demanding that Italy register *all* incoming asylum seekers directly upon arrival.[95][xci] In addition, Hækkerup issued a press release prior to the Council meeting, where she reiterated Denmark's position.[xcii] The attention granted to Italy's noncompliance with Dublin activated the need for the network actors to come together, hence the Council meeting that was held in Luxemburg on October 9 and 10, 2014 where the 28 Justice and Home ministers met to discuss, among other things, this issue.[96]

As touched upon above, the strong criticism of Italy by several member states' (network actors) demonstrates the functional interdependence between the national systems: If Italy's system is not functioning according to the agreed upon rules and regulations, it has a direct effect on the other network actors (national systems), in this case Denmark. In order to coordinate the functional interdependences that the Dublin-regulation creates between the national systems, the EURODAC system was established (see chapter 3). However, EURODAC can only function, if the member states coordinate their own activities according to agreed upon rules (i.e. Dublin). Here it is interesting to note that although Italy is bound by both Dublin and EURODAC to fingerprint all incoming irregular migrants, the weakness is that Dublin provides no sanctions when a member state deviates from what is prescribed. This point has been made by several legal scholars, and it is interesting because it points to the limit of rules and hierarchy within the network.[97]

This means that it becomes important to ask why Italy stopped fingerprinting. There are two explanations. The first one relates to the fact that the Italian reception system was

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[94] See e.g. Justitsministeriet, Udlændingeafdelingen, "Spørgsmål nr. 5 (KOM (2012) 0254) fra Folketingets Europaudvalg" (18 November 2014); Justitsministeriet, Udlændingeafdelingen, "Spørgsmål nr. 4 (KOM (2012) 0254) fra Folketingets Europaudvalg," 13 November, 2014; Justitsministeriet, Udlændingeafdelingen, "Spørgsmål nr. 3 (KOM (2008) 0820) fra Folketingets Europaudvalg," 12 December 2014.

[95] Justitsministeriet, Udlændingeafdelingen, "Spørgsmål nr. 5 (KOM (2012) 0254) fra Folketingets Europaudvalg," 18 November 2014.

[96] Council of the European Union, "Justice and Home Affairs Council, 9 and 10 October. Press Agenda." Last modified 8 October 2014.

[97] See e.g. Mouzourakis, "We Need to Talk about Dublin."

overburdened faced with the drastic increase of incoming irregular migrants, which meant that the Italian authorities lost the capacity to consistently fulfil this task. The second explanation is expressed in the documentary "Inside Italy's cancelled Mare Nostrum Rescue Mission" from 2014, where Vice Admiral in the Italian navy Filippo Foffi states: "Perhaps the controls that are carried out to avoid these types of escapes are not rock solid, but you must also consider that one country alone cannot be the holding place for these never-ending arrivals".[98] [xciii] This quote is interesting because it points to the fact that the Italian authorities deliberately stopped fingerprinting, because the drastic increase in incoming irregular migrants sparked Italy's dissatisfaction with the fact that they were left alone with the responsibility for handling this pressure.[xciv] In other words, Italy was dissatisfied with the way Dublin determines responsibility for asylum claims among member states (network actors).[xcv] Here we need to recall the two levels of network failure, the systemic level and the normative level. These two levels do not have to be interconnected. However, in our case they appear to be, since the cause of Italy's non-compliance with Dublin was also based upon a disagreement as to the validity of the shared objectives for networked cooperation, i.e. the normative level of network failure that has to do with the content of the policy that the network evolves around. What is interesting is how the network reacted to this threat of network failure: Did the actors involved account for the fact that a possible network failure was perhaps both a systemic failure and a normative failure? [xcvi] Another way to ask this question is: Did the network reveal itself as being only functionally interdependent or also politically interdependent? This is especially interesting in light of the point made above, i.e. that there are no judicial measures that prevent Italy from stopping to take fingerprints. In order to see how the network responded to this challenge, we now move on to an analysis of the discourses produced as the network found it self confronted with the imminent danger of network failure. These discourses relate primarily to the Council meeting and will assist us in answering the above questions as they guide us towards an understanding of what mode of governing is dominant.

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[98] JourneymanTV, "Inside Italy's cancelled Mare Nostrum Rescue Mission." *Youtube*. Last modified 29 October 2014.

Notes

^{lxxxv} The Danish system consists of the government (interpreting and setting guidelines), The Red Cross (responsible for the asylum centres), local and regional authorities (providing housing after asylum is granted), the police (often the first authority, irregular migrants encounter), Udlændingestyrelsen (casework), NGOs etc. Such a national network is a mixture of private and public actors, as opposed to the network analysed in this thesis, which only consists of public actors.

^{lxxxvi} Numbers from Frontex and Consiglio Italiano per i Rifugiati [The Italian Refugees Council] state that 170.757 migrants crossed Italy's border illegally in 2014. In 2013 that number was 42.925 (Consiglio Italiano per i Rifugiati, "Sbarchi di migranti in Italia: 42.925 nel 2013; già 2.156 nel gennaio 2014." Last modified 11 February 2015; and Consiglio Italiano per i Rifugiati, "FRONTEX: 278 mila migranti hanno raggiunto l'Ue nel 2014. In Italia arrivate 170.757 persone." Last modified, 7 February 2015).

^{lxxxvii} The number of migrants who sought asylum in Denmark in e.g. August 2014 was 2308 compared to 705 in the same month in 2013 (Ny i Danmark, "Tal på udlændingeområdet pr. 31.01.2015." Last modified 1 January 2015, p. 5).

^{lxxxviii} The Danish Parliament has 30 different working groups (i.e. committees), where members of parliaments are appointed to partake in discussions of legislative proposals in a range of different subject areas.

^{lxxxix} A Parliamentary Committee, in this case consisting of five politicians from the Danish Parliament and two officials from The Danish Ministry of Justice, does presumably not embark on a two-day study trip to Italy with a budget of 161.000 DKK (approximately 21.500 euro) if the objection of the trip is not of political importance. By this point, I wish to stress that Italy's reception system and practices are regarded as being significant, by Denmark as a network actor, which points to the fact that Denmark is dependent on Italy and that the need for coordination, or Italy's ability to coordinate its own activities, is of great political importance.

^{xc} In the time period August to December 2014, The Ministry of Justice received eleven hearing questions related to Italy's reception and asylum system. These included questions related to the Tarakhel verdict.

^{xci} In a hearing answer from 18 November, the Danish Ministry of Justice confirms that bilateral meetings were held with the Italian Minister of the Interior, Angelino Alfano on the subject of fingerprinting, during the Council meeting in October. An informal working lunch with all EU member states was also held on the topic. From the hearing answer it figures that all member states (including Italy) agreed that the rules and regulations of Dublin were to be followed (Justitsministeriet, Udlændingeafdelingen, "Answer to "Spørgsmål nr. 5 (KOM (2012) 0254) fra Folketingets Europaudvalg," 18 November 2014.

^{xcii} This press release will be analysed in section 6.1a.

^{xciii} The quote comes after a sequence where the documentary has shown how a Syrian family who arrived in Italy after being rescued in the Mediterranean, was able to get on a train and travel to a Northern European country, because the Italian authorities had not fingerprinted them. Thus, when Foffi is referring to 'controls' he is referring to the practice of fingerprinting all incoming migrants.

^{xciv} This is a very good example of how Dublin is seen as the stepchild of some of the Southern European member states, who have 'vulnerable borders' (see section 3.3.).

^{xcv} Italy used the Italian presidency of the EU that took place in the second half of 2014 to make a plea for European solidarity with the country's migration challenge, emphasizing that the Italian coastal border was also a common European border. Italian state secretary Sandro Gozi stressed this point in August 2014 at the Rimini Friendship Meeting, stating that: "L'Italia chiede coerenza alla Ue. La frontiera del Mediterraneo è una frontiera comune" Translation: "Italy calls for coherence in the EU. The border of the Mediterranean is a common border" (Gozi, "Immigrazione, Italia chiede aiuto Ue, domani riunione a Roma su Frontex Plus," *Reuters Italy* 25 August, 2014.

^{xcvi} I will use the term 'threat of network failure' instead of network failure; seeing that the texts that will be analysed in the analysis can be seen as expressing attempts to avoid network failure.

6. Analysing the Case

The case of Denmark vs. Italy will be at the centre of attention in this chapter. It may be regarded as representative for analysing the network surrounding Dublin, and at the same time it also allows us to investigate the modes of governing that appear as the network actors attempt to respond to the threat of network failure. Because of the limited space, the focus of my analysis will be on three main actors: Italy, Denmark, and the Council.[xcvii]

Section 6.1 will analyse the discourse produced by 1) The Danish Minister of Justice and 2) The Council, as they attempt to respond to the threat of network failure. The two texts (i.e. the press release from the Danish Ministry of Justice and the Council conclusions) are directly linked to the Council meeting and Italy's non-compliance with Dublin. Section 6.1.3 will compare and conclude on the discourses identified in the two texts, and offer a perspective on them by briefly involving a competing discourse i.e. the motion from the Italian Chamber of Deputies in section 6.1.4. Finally, section 6.2 will employ the conceptual difference between *management* and *governance* as an approach to understanding the social practice of the discourses. Section 6.3 is intended to establish a bridge from the analysis to the discussion (next chapter) by pondering the concrete solutions, which the network was able to produce, faced with the threat of network failure.

6.1 Constructing the network – modes of governance

As described earlier in section 4.6, I will employ Critical Discourse Analysis (CDA) as my main approach to the analysis of the selected texts. They will be analysed separately in order to emphasise that they were issued from different network actors. Note that all non-English quotes are provided in English (my translations) in the main text. The original quotes are provided in the endnotes.

6.1.1 The Danish Minister of Justice

The Ministry of Justice issued the press release "The Minister of Justice will put a stop to asylum shopping in Europe" on October 9, i.e. the same day that the ministers of justice

and home affairs gathered in Luxemburg.[xcviii] The press release takes up a full A4 page (thirty-seven sentences in the original version), with a twelve sentence long quote from the former Minister of Justice, Karen Hækkerup. It was published on the webpage of the Ministry of Justice, but was also issued to the entire press, where it was widely quoted. In particular, the expression 'asylum shopping' caught on in the media, and generated headlines such as "Denmark will pressure Italy: Stop asylum shopping" and "Hækkerup demands that Italy takes action to prevent asylum-shopping" (my translations).[99] This is important to note, because it reflects the purpose of the press release, namely to 'catch' the attention of the public and communicate an effective message. Here the press release needs to be seen in light of a heated public debate in Denmark about the increase in asylum applications over the summer and autumn 2014.[xcix] This debate has aimed to please a demand in parts of the Danish population for a restrictive policy towards immigration.

Text – analysing transitivity and agency

I am now going to illustrate how relational processes dominate the press release. Relational processes are static and say something about what the world is. They are states of being that are characterised by modal verbs such as: 'are', 'have', 'is', etc.[100] The prominence of relational processes in the press release is interesting, because if we look closer at these processes in the text, it becomes evident that a majority of them are assessments built on causal, deductive reasoning.

Let me offer two examples of relational processes from the press release and use them as a way to approach an understanding of what sort of discourse is at play and how it is legitimised.[c] The first example is from the first paragraph of Hækkerup's statement in the press release, where she states that, "It is crucial that all of them [the irregular migrants] are registered by fingerprinting, immediately upon arriving to Europe. Otherwise EU's asylum system and the Schengen cooperation cannot function" (my translation).[101] [ci] Notice here that *it is crucial* is in fact an assessment that becomes a causal explanation or an axiom, because of the following sentence beginning with *otherwise,* thus linking the practice of fingerprinting to the functioning of EU's asylum system, i.e. *the system cannot*

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[99] Munch, "Danmark vil presse Italien: Stop asylshopping," *Jyllandsposten,* 9 October 2014 and Kjøl-Mansøe, "Hækkerup kræver italiensk indsats mod asyl-shopping," *Politko,* 9 October 2014.
[100] Halliday, *Explorations in the Functions of Language* (London: Edward Arnold, 1973), 63.
[101] Appendix I, 11-13.

function if Italy does not fingerprint all irregular migrants (i.e. functional interdependence). The negative modal verb *cannot* signals this impossibility. Here it becomes clear that the responsibility for the functioning of the system is solely attributed to Italy. This is also evident in the second example: "The consequence of the inefficient registration <u>is</u> that the asylum cases in question <u>have</u> <u>to be</u> processed in Denmark and our neighbour countries, even though it <u>is</u> against the essential idea behind the EU rules"(my translation).[102] [cii] Again, the text is dominated by relational processes here, where especially *have to be* is noteworthy because it refers to the fact that it is an external circumstance (Italy's non-compliance) that makes Denmark's obligation to process these asylum claims necessary.[ciii] In other words, a considerable blame is placed on Italy in this context. This is reinforced by the following sentence, where it figures that Italy's malpractice goes against *the essential idea* behind the EU rules, which further emphasizes the guilt and blame assigned to Italy. The Danish expression '*i strid med*' (translated above as *against*) even connotes metaphorically to battle or strife, thus implying that Italy is actively battling against the essential idea of the Dublin system.[civ]

It is evident that Italy is granted agency in the two sentences analysed so far, but what about the asylum seekers? One could say that the asylum seekers are granted an 'intentionality agency' meaning that they are constructed, in the press release, as active agents intending to roam around Europe to shop for the best place to seek asylum, i.e. they are perceived as active consumers looking for the best European welfare system.[cv] However, these alleged 'asylum shoppers' only have agency because Italy has granted it to them, i.e. permitted them to "<u>misuse</u> the free movement" by not fingerprinting them: "large flows of asylum seekers are <u>allowed</u> to travel" (my translations).[103] Seeing that they are now arriving in *flows*, only underlines the gravity of the whole situation. By making this point, the press release states that a) the problem is that these asylum seekers are consumers intending to misuse the system, but more importantly b) these intentions would not be a problem if Italy would live up to the agreed upon rules and regulations. Hence, the core problem, as implied in this discourse, is that Italy is intentionally not living up to its obligations, thereby granting agency to a group of people that ought not to have agency.[cvi]

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[102] Ibid., 35-38.
[103] Ibid., 1-2.

Legitimisation

How is the discourse legitimised in the press release? What is the discursive practice? I would argue that the press release is a very good example of authorisation and theoretical rationalization working together. Theoretical rationalization is characterized by a discourse that refers to how things are, using explanations and definitions to support it.[104] The press release is marked by numerous causal explanations and axioms working through relational processes in the language, as we have just seen. This feature clearly indicates that a theoretical rationalization is at stake.[cvii] Furthermore, the press release is marked by a clear authorisation that takes on three different forms: personal authority, expert authority, and impersonal authority. Personal and expert authorisations are used to balance each other out in the press release, by which I mean that the expert authorisation is used to neutralize the subjectivity inherent in personal authorisation. As an example of this take e.g.: "It is believed that one of the reasons for this is that Italy is no longer routinely registering the large number of asylum seekers and illegal immigrants, who arrives in Europe over the Mediterranean" (my translation).[105] [cviii] Notice here that it is not necessary to make explicit who is doing the estimating and on what grounds. The statement is authorised not only because it is the Minister doing the estimating (personal authorisation), but also because the Ministry is the highest judicial expert authority in Denmark (expert authorisation). However, the most important form of authorisation at play in this press release is the impersonal authorisation, i.e. authorisation based on rules, laws, and regulations.[106] The strongest argument in the press release is rooted in Italy's non-compliance with the EU rules (Dublin).

How does this press release assist our understanding of the Dublin network and the mode of governing that characterize it? First and foremost it sheds light on the fact that the challenge stemming from the large flows of irregular migrants, is not seen as a common problem in relation to Dublin. It is seen as an Italian problem that is causing problems for the other network actors, *in casu*: Denmark.[cix] In this perspective it places the blame squarely on Italy, i.e. the problem can apparently be narrowed down to *one* network actor, who is not performing according to standard. Notice here that minster Hækkerup states that Denmark is willing to "help Italy with this (i.e. fingerprinting), if they ask for our help"

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[104] Leeuwen, *Discourse and Practice*, 76.
[105] Appendix I, 6-8.
[106] Leeuwen, *Discourse and Practice*, 108.

(my translation).[107] This indicates that solidarity with Italy is limited to helping Italy perform in order to make the network work. The authority of the network and the rules and regulations that govern it are the most powerful form of legitimisation in the press release.

6.1.2 The Council statement

After the Council meeting on 9 and 10 October, all member states signed a set of Council conclusions under the title "Taking action to better manage migratory flows". The document is five pages long, and was published on the webpage of the European Council. In this document the member states confirm the common commitment to "overcome the current polarization along the principles of solidarity/responsibility, and develop a common narrative and action at the EU level".[108] This commitment is spelled out in three pillars aimed at responding to the migratory pressure in "a structural manner and go beyond the immediate emergency measures".[109] [cx] The pillar most relevant for this analysis is the third pillar called "Action in the EU to uphold and fully implement our Common European Asylum System". The conclusions are divided into four different sections starting with an introduction and followed by three separate sections on the three pillars. I will now look at the last (i.e. fourth) section concerning the third pillar.

Text - transitivity and agency

As was the case with the press release, the Council's conclusions are also primarily dominated by relational processes, but in this text they are softened by the extensive use of modal verbs, e.g. 'must', 'should', 'needs' etc. These modal verbs are useful in a text like this, where the Council takes on a joint commitment to action, because they are often relatively ambiguous. As an example of this, take the verb 'should': The verb is used 25 times in the text and can have at least three different meanings, referring to an obligation, expectation, and/or advice.[cxi] Modal verbs are thus a way of stating intentions without

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[107] Appendix I, 21-22.
[108] Council of the European Union, "Council Conclusions on "Taking action to better manage migratory flows"," (conclusions presented at the Justice and Home Affairs Council meeting Luxembourg, 10 October 2014), 3-4, 1st section.
[109] Ibid., 18-19, 1st section.

making them binding.[110] In what follows, it will become clear how modal verbs and relational processes work to together in the text.

In the fourth section of the conclusions it figures that in the short-term perspective "EU needs to act to ensure the full and coherent implementation of CEAS".[111] Notice that it is the *EU* that *needs to act*, which emphasises both common obligation and agency in terms of implementing CEAS.[cxii] This, however, is contrasted by the following three lines where we find another relational process: "To this end Member States must prioritize to invest and build up capacity to ensure a flexible national system for reception and asylum, capable to respond to sudden flows".[112] Here it becomes clear that in order for the EU to be able to act together, the individual member states *must* invest in their national asylum systems, because it is these systems that need to be able to respond to sudden flows of immigrants. Notice further that this is the only time in the text that the modal verb *must* is used – otherwise it is *needs*, *should* and *could*, which distinctly specifies that this is a necessity. Furthermore, it is also interesting to notice the metaphors in the language here: *flexible national system*, *invest,* and *build up capacity* are all business buzzwords, thus connoting to the national systems as businesses that need to be *managed* in an effective way, so that they can produce value to the network as a whole. In any case, it is clearly indicated here that it does not fall upon the network (as a whole) to respond to these flows, but on the national systems. This task is placed on a national level, and much more technical level (i.e. one that can be coordinate through EURODAC), which points once again to the functional interdependence between network actors. This is also emphasised by the fact that following the last quotation there is a footnote concerning Italy: "For example in Italy, an in-depth revision of the reception and asylum system is underway".[113] Here Italy is singled out, and it is made clear that Italy's system will be revised in order to make sure that it functions according to standard.

Who is granted agency in this document? First and foremost it is interesting to observe that in these conclusions the perceived threat to the network is not the asylum-shopping migrants, but rather "the modus operandi devised by smuggling networks, which aims at

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[110] Fairclough, *Political Discourse Analysis: A method for advanced students* (New York: Routledge, 2012), 205.
[111] Council of the European Union: "Council Conclusions," 1-2, 4th section.
[112] Ibid., 2-4, 4th section.
[113] Ibid., 2, 4th section.

circumventing the EURODAC system."[114] As opposed to the Danish press release, the malpractice of one member state is not consistently singled out here; instead, attention is turned towards the *modus operandi* of the human-trafficking networks. The fact that these sinister networks are granted agency here turns attention away from the internal perspective towards the external perspective, i.e. the problem is not the EURODAC-system as part of Dublin, but instead it is outside threats to this system and the network evolving around it. The logical conclusion from this line of thought is that common action is needed to stop this *modus operandi* threatening the system.[cxiii] This external threat almost becomes a red herring in this context, because it points to the absence of any formulations on common action, when it comes to the internal dimension of the Dublin system.[cxiv] However, some attention is paid to the internal dimension, where support is provided for the task placed on the national systems: "At the same time, support should be given to Member States under pressure".[115] What is noteworthy here is that there is no clearly stated subject in the sentence performing the act of giving support, which makes the sentence, and the promise of support, very vague and abstract.[cxv]

Legitimisation

How is the discourse legitimised in these Council conclusions? What is the discursive practice? As with the press release, the dominant legitimization in these Council conclusions is authorisation. It takes on two different forms: personal authorization and impersonal authorization. The personal authorisation is in a sense straightforward, by which I mean that these Council conclusions are basically the Council placing tasks upon itself, as noted in the beginning. This implies that there is a certain degree of because-I-say-so logic in the conclusions, or perhaps, to be more precise, because-this-is-what-we-could-agree-on. However, the dominant authorization in the paragraph relating to Dublin is the impersonal authorisation. Here we should recall the sentence: "EU needs to act to ensure the full and coherent implementation of the Common European Asylum System".[116] Once again, here we find the impersonal authorisation that legitimises by referring to the rules and regulations (relating to e.g. Dublin), as was the case in the Danish press release.

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[114] Ibid., 5-7, 4th section.
[115] Ibid., 7-8, 4th section.
[116] Ibid., 1-2, 4th section.

How do these conclusions help our understanding of the Dublin network and the mode of governing that characterises it? First and foremost the document demonstrates how the question of Dublin is allocated to a national level – it belongs under the headline *III. Action at Member States' level – Reception and fingerprinting.*[cxvi] What is interesting is that this headline is part of the third pillar, *Actions in the EU to uphold and fully implement our Common European Asylum System*, in the first section of the Council conclusions. Notice here how the CEAS is *our* system*,* but it does not say EU action. Instead it uses the much more ambiguous *action in the EU*, implying that it might be a common system, but the responsibility of acting in order to uphold it, falls on the individual member states *in the EU.*

6.1.3 Concluding – what kind of discourse is created by the two texts?

What discourses can we extract from the Council conclusions and the press release? At least four discourses can be identified:

- The irregular migrants do not have agency – they are permitted agency (which is perceived as a threat to the functioning of the network);
- The source of network failure can effectively be isolated, and solved through hierarchy (compliance with reference to rules), on a technical level (e.g. a revision of the Italian reception system) or by constructing the national systems as business that must be run in an effective way, so they can produce value to the network as a whole;
- Responsibility to uphold the Dublin regulation falls upon the individual member states, and involves a considerable amount of blame, if it is not honoured;
- The internal challenge of handling the large flows of irregular migrants is not seen as a common problem in relation to Dublin. EU's common problem is the external threat facing the network, not the internal dimension.[cxvii]

These discourses all indicate that the network failure in relation to Dublin is regarded as nothing more than a systemic failure that may be fixed with either *an in-depth revision of Italy's reception facilities* or a simple reprimand aimed at reminding Italy of the country's responsibilities under Dublin.

Before moving on to the social practices of these discourses, I will briefly offer a perspective on them by turning my attention to a discourse that would collide on several levels with the above standing.

6.1.4 The missing discourse

Fairclough's approach to CDA implies that discourses will often be competing for hegemony.[117][cxviii] This is not the case with the discourses above. On the contrary, they seem to complement each other. However, before turning our attention to the social practice of these discourses, and for the sake of contrasting them, it will prove fruitful to turn our attention to two discourses that would presumably loose a fight for hegemony against the above standing.[cxix] Appendix II is an extraction from a motion stemming from the Italian Chamber of Deputies, dated November 3 2014. In this motion the Chamber lays upon the Italian government to take action under the Italian presidency of the EU, and push for a revision of Dublin. I will briefly highlight two proposals in this text that collide with the discourses in 6.1c. The first one grants the irregular migrants a positive agency by stating: "(…) In order for migrants to be guaranteed the freedom to choose in which country to submit their request for international protection" (my translation).[cxx][118] In the discourses identified in the Council conclusion and the press release, irregular migrants do not have agency, unless they have been granted agency by a network actor (i.e. Italy), which is perceived as something that is against the Dublin rules and threatening to the network's ability to coordinate. The second proposal in this short text advocates for a more fair distribution of asylum seekers across Europe: "Thus not leaving it with those countries, like Italy, who because of their sole location, are exposed to these massive entry flows" (my translation).[cxxi][119] However, this discourse would presumably also fall short confronted with the discourses outlined in section 6.1c, seeing that it appeals to a mode of governing where some sort of internal solidarity in the EU could be granted based on the following reasoning: Is it really 'fair' or 'sustainable' that all responsibility falls on Italy because of the country's geographical location? This would call network actors to reason from values not solely confined to 'making the network work', which in turn would require

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[117] Fairclough, *Critical Discourse Analysis: the critical study of language* (London: Longman, 1995).
[118] Appendix II, 2-3
[119] Ibid., 8-9

the network to view the network failure as a normative failure, and not only a systemic failure caused by one network actor.

With this perspective in mind, which I will return to in the discussion, we must now turn our attention to the social practice of the discourses outlined in subchapter 6.1.3.

6.2 Analysing management and governance – the social practice

How does a network of actors govern on the basis of a common system, where the responsibility for upholding the system is allocated individually?

In order to answer this question we need to recall the main difference between management and governance, namely that within governance defined goals (positive/negative) can be presented based on political reasoning and argumentation that indicate a set of political values. Within management, on the other hand, goals can be defined on the basis of deductive reasoning, indicating a logical relation between the premise and the conclusion, thus making additional political reasoning superfluous.

With a deductive argument we are forced to choose between the truth of its conclusion and the falsity of its premise, otherwise we would be contradicting ourselves. Let's take the following constructed sentence that sums up the discourses put forward in section 6.1.3: in order to fully implement CEAS (i.e. the common asylum system) or in order for the network to work, all member states must comply with Dublin. For this argument to be valid, we cannot without contradicting ourselves, deny that all member states must comply with the rules, unless we also deny its premise, which is the working of the network or full implementation of CEAS. Note here that the conclusion falls upon the individual member states, but the premise is common. Within such a rationalisation, political reasoning based on a set of values external to the functioning of the network becomes unnecessary. The relation between premise and conclusion is logical and self-evident, and does not need to be legitimised based on reasoning founded in political values.

Here we find a clear example of the management mode of governing. The discourses suggest that the threat of network failure is perceived as being systemic, thus revealing a

functional interdependence (i.e. a problem of coordination). Framing the source of a potential network failure as a systemic problem of coordination, allows the network to model the problem in such a way that it can be solved or *reacted* to in an effective manner.[cxxii] Faced with the threat of network failure, it appears as though the network asked *where* is the problem, and not *why* is there a problem, which again speaks of the perseverance of management. The question is furthermore easy to answer: *Where* is the problem? In Italy, i.e. the source of network failure begins and ends with Italy, as noted above.

The management mode of governing, however, is dependent on the presence of hierarchy, as noted in chapter 4. This became clear in the above standing discourses where Dublin and EURODAC were primarily referred to as rules and regulations that have to be followed because they are rules and regulations. No further explanation is thus needed. This implies that the hierarchical delineations of the network are used to make the individual member states understand their responsibility towards the network and commonly agreed upon rules and regulation, and where the management mode of governing furthermore makes it impossible to reason outside this logic.

The final section of this analytic chapter will now offer an additional perspective to the analysis by reviewing how the network actually answered to the threat of network failure, and how it accounted for the fact that Italy apparently no longer felt responsible towards the network i.e. the other network actors, pointing to the fact that Italy viewed the network failure as being not only a systemic failure, but also a normative failure.

6.3 How did the EU network solve this conflict?

This section will establish a bridge to the discussion (next chapter) by briefly looking into what actually came out of EU's response to the threat of network failure.

A document from the Italian government to the Italian authorities was leaked in October 2014. This document instructs the Italian authorities to use force if necessary in order to obtain fingerprints from *all* irregular migrants.[cxxiii] The first three lines of the document states that "(…) some Member States are with increasing insistence complaining over missing fingerprints of the many migrants who, after their arrival in in Italy, proceed to the

northern European countries" (my translation).[120] [cxxiv] The content of this document is supported by another leaked document from the European Commission. After the Council meeting, Statewatch leaked a Non Paper from the European Commission that was apparently discussed at the Council meeting. This paper consists of a set of best practices relating to the use of coercion and detention of irregular migrants who resist having their fingerprints taken. [121] [cxxv] The purpose of the paper is: "to present the Commission's services' suggested best practices for Member States to follow in order to ensure that their obligations under the Eurodac Regulation are fulfilled (and, thus, the integrity of the Dublin Regulation is maintained)".[122] This document is interesting because it emphasises the point already made, namely that the network perceived the network failure as a systemic failure that called for a 'technical' answer. The technical assistance to this systemic failure was provided by the Commission, a fairly technical actor in the network (see section 3.1). But how did the member states act to secure Italy's compliance?

This question implies that we must turn our attention to how the network dealt with Italy's plea for solidarity. As noted in in subchapter 4.3, Italy viewed the network failure as being more than a systemic network failure, but also a normative network failure, thus appealing to the other EU member states for solidarity and common EU action. At the press conference at the Council meeting on 9 October, it was announced that a common EU border control operation, *Triton*, would replace the Italian search and rescue operation, *Mare Nostrum*, which was initiated in the autumn of 2013, after approximately 300 irregular migrants died outside the Italian island of Lampedusa. Mare Nostrum was an expensive operation for Italy, costing the country 9 million euros per month, and it was a thorn in Italy's eyes that none of the other EU member states contributed to the operation financially.[123] Therefore, the launch of a common EU border operation was an outstretched hand from the other EU member states to Italy.

On 31 October, EU Commissioner Cecilia Malmström welcomed the new Triton operation by stating: "I am happy to announce that the Triton operation requested by Italy will start

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[120] Progetto Melting Pot Europa, "Circolare Ministero dell'Interno - Rilevamento impronte digitali migranti sbarcati." Last modified 21 October 2014.
[121] European Commission,"Best Practices for upholding the Obligation in the Eurodac Regulation to take fingerprints (LIMITE, doc: DS 1491/14, pdf) - Meeting document" from The Council of The European Union," 30 October 2014.
[122] Ibid., 2.
[123] EurActiv. "EU's Operation Triton to help Italy cope with migrants" EurActiv.com. Last modified 8 October 2014.

on 1 November as scheduled. Frontex has received sufficient offer of both equipment and border guards from the vast majority of Member States".[124] The timing of events and Malmström's comment in late October suggests that Italy's compliance with Dublin was a prerequisite for all EU member states' support to the Triton operation (i.e. equipment and border guards).[cxxvi] However, although the Triton operation, in all likelihood, was the outcome of a 'trade off agreement' between network actors, could it still not be regarded as an act of solidarity with Italy that challenges the management mode of governing identified in section 6.2? In a number of ways one could answer yes. It is possible to argue that adopting Triton was indeed an expression of solidarity with Italy's challenge, however the background for displaying this solidarity suggests that it was an 'economic solidarity' granted in order to make the network work, rather than the extension of 'intra-solidarity' based on a concern for the 'fairness' and 'sustainability' of the responsibility placed on Italy. This last point of the analysis leads us to the discussion, where these two conceptualisations of solidarity will be discussed in relation to the two modes of governing.

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[124] Malmström, "Commissioner Malmstrom welcomes the launch of the Triton operation," *European Commission Press release Database*. Last modified 21 October 2014.

^{xcvii} The role of the Commission will also secondarily be touched upon, however only very briefly in section 6.3.

^{xcviii} The press release is directly related to this meeting and serves to clarify the position and mandate of former Minister of Justice Karen Hækkerup prior to the meeting. The topic in question is, once again, Italy's non-compliance with Dublin.

^{xcix} The overall tendency in Denmark, among the majority of political parties (including the government), has been a sharpening of the rhetoric on asylum seekers. The Danish government even tighten the legislation for family reunification in the autumn 2014 as a response to the increasing numbers of asylum seekers (C.f. Statsministeriet, "Prime Minister Helle Thorning-Schmidt's Opening Address to the Folketing (Danish Parliament) on 7 October 2014." Last modified 7 October 2014**).**

^c There are 11 relational processes all together in the press release. I have chosen the two examples, based on their relevance to the case.

^{ci} "Det er helt afgørende, at alle registreres med fingeraftryk straks efter ankomsten til Europa. Ellers kan EU's asylsystem og Schengen-samarbejdet ikke fungere" (Justitsministeriet: "Justitsministeren vil sætte ind over for asylshopping i Europa." Last modified 9 October 2014).

^{cii} "Konsekvensen af den mangelfulde registrering er, at de pågældendes asylsager må behandles i Danmark og vores nabolande, uanset at det er i strid med grundtanken bag EU-reglerne" (Justitsministeriet, "Justitsministeren vil sætte ind over for asylshopping i Europa." Last modified, 9 October 2014).

^{ciii} By this point I wish to stress that Denmark is writing of the responsibility of the pressure on the Danish asylum system, by blaming it on Italy's noncompliance. This is obviously a convenient move for the Ministry of Justice.

^{civ} It is convenient for the Minister of Justice to be able to place the blame on Italy, because it enables her to indicate concrete action; i.e. Hækkerup will take action and insist that Italy complies with the rules. Here a situation that a country otherwise cannot control, i.e. the number of asylum seekers knocking on its door, becomes, as it were, controllable and something that the Minister can act against.

^{cv} Notice here that the term asylum-shopping is not new, it has been gradually introduced into the public discourse in Europe over the last couple of years. It has also undergone academic investigation. C.f. Moore, "Asylum-shopping in the neoliberal social imagery" *Media Culture and Society Studies II* (2013).

^{cvi} The metaphorical framework surrounding this group in the text further strengthens this point. The Danish *sætte ind mod* is an action that connotes to crime, and notice also that in line three the irregular migrants are not described as irregular migrants (the common terminology used in EU), but as illegal migrants

^{cvii} This is supported by the fact that statistical material is also used in the last section of the press release in order to add further weight to the argumentation.

^{cviii} "En af årsagerne vurderes at være, at Italien ikke længere rutinemæssigt registrerer det store antal asylansøgere og ulovlige indvandrere, der ankommer til Europa over Middelhavet" (Justitsministeriet, "Justitsministeren vil sætte ind over for asylshopping i Europa." Last modified 9 October 2014).

^{cix} This is also evident in the first four lines of the body of the press release where the growing numbers of asylum seekers in Denmark and its neighbouring countries is directly linked to Italy's malpractice.

^{cx} The three pillars are: Cooperation with Third Countries (with a specific focus on the fight against smugglers and traffickers), the strengthening of FRONTEX's ability to respond in a flexible and timely manner to emerging risks and pressures, and action in the EU to uphold and fully implement our Common European Asylum System.

^{cxi} In comparison *could* is only used eight times, *needs* is used five times and *must* is only used one time.

cxii The sentence is also an expression of a relational process, referring to how 'the world is', however the use of the modal verb *needs* instead of *has* underlines the necessity and/or obligation of the EU in terms of implementing CEAS.

cxiii This is also reflected in the fact that half of the document is focused on the first pillar, i.e. Cooperation with Third Countries (with a specific focus on the fight against smugglers and traffickers).

cxiv This threat is addressed in the first pillar of the Council conclusions, taking up more than 1/3 of the conclusions Furthermore it is noticeable that two out of three pillars are focused on the external dimension of the migration challenge, reinforced management of borders and cooperation with third countries (in order to stop smuggling networks).

cxv This vague promise of support is followed by a concretisation of its limitations: "in order to support Member States under pressure, all Member States should make full use of existing tools under the Dublin Regulation*"*(Council of the European Union: "Council Conclusions," 18-20, 4th section) The important part here seems to: *existing tools*, clearly indicating that Dublin and the existing tools relating to it stand firm.

cxvi This stands in stark contrast to these initial formulations in the Council's conclusions, where it figures that the new routes to Europe's borders have to be "carefully monitored since they could potentially create new pressures to which Europe as a whole needs to be ready to respond in a timely manne*r"* (ibid., 12-14, 1th section). However, this quote relates to the external dimension of the migration challenge, and not the internal dimension, as does apparently also the introductory sentence in the conclusions where the council commits it self to: "develop a common narrative and action at the EU level" (Ibid., 4, 1th section).

cxvii This external threat is covered in the Council conclusions' first and second pillar.

cxviii Fairclough borrows the hegemony concept from Italian theorist Antonio Gramsci, where it refers to a structure of domination. In Fairclough's use of the concept, it implies: "paying attention to how particular discourses become hegemonic in particular organizations" (Bryman, *Social Research Methods*, 509). Hegemonic referring to how a particular discourse can gain dominance over another.

cxix Here I use the word discourse cautiously seeing that I am not actually conducting a discourse analysis on this text.

cxx "(…) affinché ai migranti sia garantita la libertà di scegliere in quale Paese presentare la propria richiesta di protezione internazionale" (Camerei dei Deputati, XVII LEGISLATURA, Allegato B, Seduta di Lunedì 3 novembre 2014). Last modified 3 November 2014.

cxxi "(…)non lasciando soli quei Paesi, come l'Italia, esposti per la loro semplice posizione geografica ai maggiori flussi d'ingresso"(Ibid.).

cxxii Here it is useful to recall that where governance indicates *direction* management only indicates *reaction.*

cxxiii The document includes a flyer (translated to six different languages) that is to be handed out to all incoming irregular migrants directly upon their arrival. On this flyer it says that "The Police Authorities will anyway obtain pictures and fingerprints, even with the use of force, if necessary" (my translation) (Progetto Melting Pot Europa, "Circolare Ministero dell'Interno - Rilevamento impronte digitali migranti sbarcati." Last modified 21 October 2014).

cxxiv "Peraltro, alcuni Stati membri lamentano con crescente insistenza, il mancato fotosegnalamento di numerosi migranti che, dopo essere giunti in Italia prosguono il viaggio verso i Paesi del nord Europa"(Progetto Melting Pot Europa, "Circolare Ministero dell'Interno."

cxxv The need for such a set of best practices came in the light of Italy's noncompliance with Dublin, and it figures from the document that these best practices were needed seeing that the member states have different laws on practices when it comes to the use of coercion and detention (European Commission, "Best Practices for upholding the Obligation in the Eurodac Regulation to take fingerprints."

cxxvi The agenda from the Council meeting shows that all migration related policy areas were covered 9 October during the day, including the agenda item "Taking action to better manage migration flows" and late that same day Triton was formally announced (Council of the European

Union, "Justice and Home Affairs Council, 9 and 10 October. Press Agenda." Last modified 8 October 2014).

7. Discussion

This discussion will fall in three parts. Section 7.1 will give a perspective on the 'answer' produced by the network as a response to the threat of network failure, by asking if the economic solidarity offered to Italy by the other network actors was in fact a short-term solution for a long-term challenge? This will lead us to section 7.2 where the possibility for intra-solidarity and a re-evaluation of Dublin will be discussed in light of the perseverance of management as the dominating mode of governing. The final section 7.3 will discuss the appropriateness of the distinction between management and government as an approach to investigating how the EU member states govern on the basis of Dublin. This section will thus include reflections on the strengths and weaknesses of the theoretical framework developed in this thesis.

7.1 A short-term solution for a long-term challenge?

As a perspective on the analysis one could ask whether it is not reasonable to require that Italy comply with common rules, and make sure that its reception and asylum facilities live up to the common standards? If Italy cannot be trusted to coordinate its own activities, how can an interdependent network of 28 member states work? And why should the remaining 27 member states offer any kind of solidarity, if Italy is not living up to its responsibilities? These are good and valid questions. Nonetheless, in light of the current pressure on EU's borders, lately brought to everybody's attention by the tragedy on 20 April 2015 in the Mediterranean, and the political challenge that this pressure presents, they are perhaps also one-sided and short-termed.

It is important here to note that that it would be mistaken to portray Italy as an innocent victim of cruel circumstances. Italy does not have a good track record when it comes to migration issues, and there might be good reasons for the EU network not to trust Italy on these matters.[125] One should not be oblivious to this fact.[cxxvii] It is, however, reasonable to argue that we need to consider that the blind-eyed focus on Italy's noncompliance with

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[125] Pavan, "Can/Will Italy be held accountable for its 'push back' policy in relation to international refugee, human rights and European Union law?," *London School of Economics, Migration Studies Unit Working Papers* 2011/2012 (2011): 22.

Dublin has perhaps become a scapegoat for the EU network, which allows them to avoid the question that I posed in the introduction: Is Dublin the appropriate answer to the new challenge posed by the enormous pressure on EU's southern borders? Even if Italy complied with Dublin, and the other EU member states granted economic support through FRONTEX and AMIF, which is currently the case, we need to ask whether or not it is sustainable in the long run that four or five EU member states are left with the disproportionate pressure that the drastic increase of incoming irregular migration is currently placing on these first countries of arrival, without severe political consequences, both in terms of compliance with human rights conventions and in terms of the internal cohesion of these arrival countries.[cxxviii]

This indicates that a revision of how Dublin distributes asylum seekers among the EU member states is a necessary part of a long-term solution, which reiterates the importance of Marlene Wind's claim, previously cited in this thesis, namely that the Dublin system has de facto broken down, seeing that her quote implies that the member states are currently only 'fixing' what is essentially a broken system.[cxxix] However, such a revision would presumably require a different kind of solidarity and a different mode of governing within the network than the ones identified in the analysis of this thesis. This leads us to the next section.

7.2 The internal cohesion in Europe – the need for a distribution key - and the question of solidarity

Intra-solidarity based on fair sharing of responsibility is the other conceptualization of solidarity that I emphasized in section 3.3 along side the economic solidarity. Such a principle of solidarity would be hard pressed based on the findings of this thesis, i.e. a management mode of governing. However, the need for a long-term political solution is growing, and it is inevitable that such a solution would need to take into consideration the extension of intra-solidarity in the EU, based on a common concern for cohesion in the EU as a whole and in the individual member states.[cxxx] This would require a political confrontation with the Dublin principle of the country of first entry.[cxxxi]

There is a growing branch of literature investigating the possibilities for a new distribution key for asylum seekers between EU member states. I shall briefly present one of these

proposals below, in order to assess whether or not such a solution is feasible within the current mode of governing the asylum area in the EU.

The EUI working paper 'Tradable Refugee-admission Quotas: a policy proposal to reform the EU Asylum Policy' presents a market-based solution to the distribution of asylum seekers within the existing institutional framework of the EU, based on the conclusion that providing refugee protection is looked upon by member states as an international common good, and that is costly, which justifies qualifying it as a 'burden'. [126] [cxxxii] In very broad terms the proposal suggests a market-based model that progresses in three steps: 1) Introducing a basic model for tradable refugee quotas among EU member states; 2) adding refugees' and asylum seekers' preferences, and 3) considering receiving countries preferences.[127] This proposal includes taking into consideration factors such as the member states' GNP, population size etc.[128]

It does not fall within the limits of this thesis to discuss how the proposal proceeds in terms of calculating these refugee quotas. However, the underlying assumptions of the proposal are of considerable interests to the particular focus of this thesis.

What this proposal does not account for, is the willingness of the EU member states to commit themselves to such a distribution model, i.e. to ask the following question: Is there a governing mode amongst the EU member states that allow for such a proposal to become a reality? [cxxxiii] In light of my findings, there are at least three problems connected to the proposal: a) Asylum seekers are granted a positive agency;[cxxxiv]; b) for the member states to commit themselves to such a distribution model, the responsibility of the asylum seekers would have to be looked upon as a common challenge; [cxxxv] and c) nothing in my findings suggest that the member states are eager to provide asylum seekers with international protection.[cxxxvi] The proposal is in many ways concurrent with the 'missing' discourse analysed in section 6.1.4, from the Italian Chamber of Deputies.

However, this discourse and the policy proposal would necessarily require some form of intra-solidarity, which in turn depends on a different mode of governing than the one

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[126] Rapoport and Moraga, "Tradable Refugee-admission Quotas: a Policy Proposal to Reform the EU Asylum Policy" *EUI Working Papers* 101 (2014): 9.
[127] Ibid., 9
[128] Ibid., 11.

currently dominating the asylum area, i.e. management. Why? Because intra-solidarity based on a common responsibility for cohesion in the EU goes beyond a deductive, logical mode of governing (i.e. *management*), where network actors conceive of themselves as being solely functional interdependent. Here it becomes relevant to return to the point made in 3.3, namely that maybe Dublin simply arose as an attempt to accommodate for the functional interdependence between member states created by the establishment of the Schengen area (i.e. Dublin as an accidental child). An interdependence that was never followed by a politically binding supra-structure able to ensure that e.g. solidarity would become a guiding principle for the EU asylum cooperation (see section 3.1). Thus Dublin has remained a convenient way for the real parents of Dublin (perceived as a stepchild) to delegate the responsibility attached to EU's common territory to a minority of member states (the stepparents of Dublin). This means that member states might have transferred power and authority to the supranational EU level on asylum matters, but its has however not been accompanied by any real sense of political cooperation, understood as 'behaviour designed to benefit the group rather than the individual' among the networks actors that could provide their governing activities (related to Dublin) with any sense of direction.[129] This also implies that the intra-solidarity needed if the EU member states were to consider a proposal such as the one outlined in this section, has no foundation, which means that the EU network is currently stuck with short-term solutions based on compensatory economic solidarity to the long-term challenge of irregular migration.

This leads me to the critical question: Why do we need a distinction between governance and management?

7.3 Why do we need a distinction between governance and management?

Many academic studies have focused on the increased role played by EU bureaucrats, administrative procedures, and technocratic rule for the governing process and policy implementation in the EU.[cxxxvii] So do we really need another concept for the academic study of this development? What can a distinction between management and governance

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129 Axelrod, *The evolution of cooperation*.

contribute with in this context? As this thesis has demonstrated, a distinction between governance and management is necessary in order to describe what happens when management as the dominating mode of governing is no longer left with the seeming apolitical and 'neutral' EU agencies mentioned in section 3.1, but takes centre stage as the dominant rationalisation behind governing activities carried out in an intergovernmental forum such as the Council. So far there has been little academic endeavour to evaluate these governing activities from a normative standpoint, which could bring it closer to the etymological roots of governing meaning: something that allows the political actors to *steer* or *direct*.

What I have tried to argue in this thesis is that there is a need for theoretical tools that allow us to inscribe the normative dimension of government (i.e. how something ought to be done according to a value position) into the rationalisation of governing on a supranational level, hence the introduction of the distinction between *management* and *governance*. However, management and governance are not mutually exclusive, and just as it would be naïve to assume that governance can stand alone as a characteristic of the governing process that takes place in the EU network, it is on the contrary problematic if and when management comes to stand alone as the dominating mode of governing. This final point leads us to the conclusion.

Notes

[cxxvii] It does however not fall within this thesis to track the Italian history on handling irregular migration, so I only mention it here to avoid a one sighted victimisation of Italy. See e.g. Marianna Pavan for an interesting account of Italy's policy on irregular migration and asylum under former prime minster Silvio Berlusconi (Pavan, "Can/Will Italy be held accountable.)"

[cxxviii] The human rights implications of EU's asylum policy and how the EU has answered to the challenge of the drastic increase in irregular migrants crossing the Mediterranean Sea has been highlighted by numerous NGOs, see e.g. the article "Refugees and migrants risking their lives to get to Europe"(Amnesty International, "Refugees and migrants risking their lives to get to Europe," Last modified 28 July 2014)

[cxxix] Take e.g. Italy. Italy's unwillingness or inability to fingerprint all incoming irregular migrants is only a small part of the difficulties the country's asylum system is experiencing. The system is currently brought to its knees, which the Tarakhel verdict, mentioned in section 3.3, is also a testimony to. Currently 200 asylum seekers, who were registered in Italy but travelled north afterwards, reside in Danish asylum centres. They cannot be send back to Italy because the country cannot issue these individual guarantees, however the Danish authorities have so far refused to process their asylum claims. Therefore these 200 people are currently stuck in the Danish asylum centres for an indefinite time period. The above standing situation clearly supports Wind's assessment.

[cxxx] I mention cohesion in this context because it seems to be a missing argument from the public debate. However it is relevant to ask, what it requires (economically, socially and politically) for a country like Italy if they were to receive between 150.000-170.000 irregular migrants on an annual basis for a time period of e.g. five years.

[cxxxi] When the German chancellor Angela Merkel was in Denmark on an official state visit in April 2015, she said for the first time that maybe the time has come for the EU member states to begin discussing a new distribution mechanism for asylum seekers (Nielsen, "Merkel: Spørgsmålet om en fordeling af flygtninge presser sig på" *Politiken*, 28 April, 2015). However at the emergency council meeting after the tragedy on 20 April, only a limited number of member states declared themselves willing to partake in a voluntary replacement programme for asylum seekers that would replace 5000 asylum seekers among the participating member states.

[cxxxii] The authors Hillel Rapoport and Jesús Fernández-Huertas Moraga are both economists at The European University Institute in Florence.

[cxxxiii] The proposal states in relation to its perception of international refugee protection, as a public good that conceptualizing refugee protection as a common good is dependent on the fact that the EU member states and their populations care about asylum-seekers. I will follow up on this point in my conclusion.

[cxxxiv] As my analysis showed asylum seekers are not granted agency in the dominating discourses constructed by the network.

[cxxxv] I will repeat a previous point here: the asylum system may be common, but the responsibility of upholding it falls on the individual member states.

[cxxxvi] Here I am of course aware of the fact that the EU member states have an international obligation (to the Geneva Convention) to offer protection, but it does not appear from my findings to be high on their political agenda to live up to this obligation.

[cxxxvii] See e.g. Hofmann and Türk, *EU Administrative Governance* (Massachutes: Edward Elgar, 2006).

8. Conclusion

As the ink dries on the last pages of this thesis, the Commission has presented a "European Agenda on Migration" on 13 May 2015.[130] This plan includes an emergency resettlement plan for asylum seekers based on a mandatory and automatic relocation system to distribute asylum seekers within the EU when "a mass influx emerges".[131] From this agenda it figures that the current system is failing to respond to the challenges posed by the large influx of irregular migrants, and that it is a human rights imperative for the EU to take action in the wake of the recent tragedy in the Mediterranean on April 23. [cxxxviii] BBC quotes EU Commission President Jean-Claude Juncker saying: "I will argue for the introduction of a system of quotas. We will propose a system of relocation throughout the European Union - solidarity must be shared".[132]

The arguments put forward by the Commission as the background for the proposal and Juncker's emphasis on solidarity as something that must be shared, are very much in line with the two main arguments in my discussion: that any long-term solution is dependent on intra-solidarity, and that it must include a revision of the Dublin criteria of country of first entry. Furthermore, the recent proposal is a noteworthy example of how governance can function as a rationalisation of governing, seeing that it suggests a solution to a problem based on political reasoning and argumentation that indicates a set of political values.

Now it is necessary to ask: Does this proposal not hold a promise of a change in the way the EU asylum area is governed? My tentative answer would be: yes and no. It looks like a first step on the right way forward. However, we should not forget that the Commission might have the power to draft legislation, but in the end, it needs the support from the EU member states, and this may well turn out to be quite difficult to achieve.

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[130] European Commission, "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A European agenda on migration." Last modified 13 May 2015.
[131] Ibid.
[132] Juncker, "UK not bound by EU quota plan for housing migrants," *BBC News* 12 May 2015.

While there is common support from the EU member states for the head of the EU's foreign service Federica Mogherini, as she attempts to get the UN Security Council to put a blue stamp on a EU military intervention that would seize and destroy smugglers' ships before they go into the water, the initial reactions to the Commission's proposal from the majority of EU member states have been less supportive, to put it mildly.[cxxxix] Bearing this in mind, let us turn our attention to the main findings of this thesis, as they will assist our understanding of why the Commission's proposal will find it self in rough waters as it faces the 28 member states in the Council, which will be the concluding reflection of this thesis.

8. 1 Findings of the thesis – answering the research questions

What problems do the findings of this thesis pose for the likelihood that the proposal from the Commission will be favourably received by the member states? This question is especially interesting seeing that the premise of the thesis was that any real solution to the challenge of irregular migration had to entail a confrontation with EU's asylum policy, including pondering the question of whether or not Dublin was the appropriate answer to the new challenge posed by the increased pressure on EU's southern borders.

The thesis set out to investigate how EU member states govern on the basis of Dublin which implied investigating 1) modes of governing the EU asylum area; 2) The principle of solidarity; and 3) the relation between the EU member states in wake of the large influx of irregular migrants, with a particular focus on Italy and Denmark. In order to answer these questions, the thesis embarked on an investigation of the case centred on Italy's non-compliance with Dublin, and the reactions that this produced from the other EU member states, focusing on Denmark. I will summarise how I have answered these three questions, before I elaborate on how my research findings contribute to answering the overall question as well as the questions posed above.

As a way of approaching my case, the thesis proposed a conceptual difference between *governance* and *management* as two different **modes of governing**. In order to detect these 'modes of governing', I investigated the EU member states as a network of interdependent actors. The findings of the thesis suggested *management* as the dominating mode of governing on the basis of Dublin, which meant that the governing activities was rationalised by a system-oriented, deductive, and bureaucratic governing mode, thus

revealing the network as being first and foremost functionally interdependent, seeing that they responded to the threat of network failure as though it was primarily a systemic failure. Here we should recall the schematic distinction between governance and management that was outlined in the theoretical chapter:

Table 1. Modes of governing

Mode of governing	Management	Governance
Network actors	Functional interdependence	Political interdependence
Network failure	Systemic failure	Normative failure
Objective	Make the network work	Make the policy work

The absence of political interdependence (*governance*) between the network's actors had implications for **the relation between the EU member states** (i.e. the network actors). I my introduction I posed the following question: How does the growing number of asylum seekers affect the relations between the EU member-states, focusing particularly on Denmark and Italy. The analysis showed that while the member states share a common asylum system (i.e. Dublin), the responsibility for upholding this system falls on the individual member states, i.e. Italy in this case. The allocation of responsibility involves a considerable amount of blame, if not honoured, seeing that non-compliance reveals a negligence of the *common* system. The growing number of asylum seekers is thus affecting the relation between member states in the sense that it reiterates the above standing dynamics within the network, and reveals that the network actors view themselves as being solely functional interdependent in relation to Dublin. This turned out to have implications for the solution produced by the network as a response to the threat of network failure, i.e. how they extended solidarity to Italy.

In chapter 3 the thesis discovered the basis for two different understanding of **the principle of solidarity** in the EU: *economic solidarity* implying that member states can be compensated economically for uneven responsibility laid on them, versus *intra-solidarity,* where responsibility is shared through political cooperation and based on a concept of 'fairness'. These principles became relevant as I investigated how the network answered to the threat of network failure. Here it was evident that the extension of solidarity to Italy

was granted in order to make the network work, i.e. by compensating Italy for the 'burden' placed on the country due to its geographical location. This *economic solidarity* ensured that the network avoided a confrontation with the question of whether or not Dublin remains an appropriate answer to the new challenges posed by the drastic pressure on EU's southern borders, because it could be granted within the existing system.

The above standing findings are illuminating in terms of understanding how the member states govern on the basis of Dublin, seeing that they point to a largely technical cooperation incapable of governing in any normative sense of the word (i.e. governance), thus revealing Dublin as an 'accidental child' born in wake of the functional interdependences created by the Schengen area, but never followed by a politically binding supra-structure that could ensure that e.g. intra-solidarity would become a guiding principle for the EU asylum cooperation. This has left the EU member states in a situation where they are failing to do anything else than *react* to the challenge of irregular migration, making it unlikely that they would be willing to commit to the Commission's proposal.

8.2 A concluding perspective

I will provide a concluding perspective to the findings of this thesis by asking if management prevails as the dominant mode of governing the EU asylum area, because the European populations would rather not have to be confronted with the implications of the EU asylum policy?

I ask this question, because we should remember that national populations vote for governments, and it is representatives from these governments that form the network that is sitting around the Council table governing the asylum area. These governments are first and foremost accountable to the voters that elect them in their home countries, and currently these populations are becoming increasingly worried, in many EU countries, about migration from third countries.[cxl] Xenophobia is on the rise in a growing number of European countries, and a lot of parties, currently in office around Europe, are experiencing that they are losing votes to right-wing parties.[133] [cxli]

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[133] Langford, "The Other Euro Crisis," 222.

Here the network-oriented, deductive, and bureaucratic governing mode of management that surrounds the Dublin regulations becomes a blessing in disguise.

Allow me to be somewhat provocative: There is no pressing national demand, among the European populations, for politicians to legitimise why they are discussing best practices on how to use detention and coercion on asylum seekers, in fact, on the contrary. Is it instead possible that a large part of Europeans would rather live in blissful oblivion of the steps taken to make sure that Dublin functions? There seems, however, to be a demand for political statements on how the EU will take action to prevent these people from coming to Europe in the first place, including simplifications of the challenge posed by irregular migration, e.g. that Italy's non-compliance is undermining the whole common system, and that this is the reason why e.g. so many asylum seekers came to Denmark in 2014. These are simple effective messages that are probably more likely to generate votes than political reasoning based on solidarity with either the asylum seekers or the other European countries.

Realising that asylum seekers cannot vote and hence have no voice in the European public sphere, the need for those who do have a voice to raise it and push the EU politicians to take action to develop a long-term and intra-solidary solution, is so much the greater. However, this would require a new mode of governing the EU asylum area. A tragedy as the one that occurred in April may help strengthening these public voices. It is also likely to add to the political pressure on individual member states, as they consider whether the time has not come to demonstrate political leadership by responding adequately to the persisting sound of asylum seekers knocking on Europe's door.

Notes

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cxxxviii The EU launched a 10-point plan that included, among others, action to "destroy the vessels used by the smugglers" and considerations on "options for an emergency relocation mechanism" for migrants (European Commission, "Communication from the Commission.")

cxxxix However Germany, one of the biggest EU countries, has received the Commission's proposal on a positive note. Germany is also among the five member states that take in 72% of all asylum seekers in Europe.

cxl Notice here that section 3.3 remarked how asylum cooperation was essentially about providing the European population with a public good, namely security.

cxli Take Denmark as an example: Here the old parties, and especially the Social Democrats, who are currently in office, have lost votes to the right-wing party Dansk Folkeparti for a number of years. This has resulted in a political discourse on asylum and migration in Denmark that many political commentators have characterised as a 'race to the bottom', which implies that the political parties are competing to see who can produce the most restrictive asylum policy.

Bibliography

Books and articles

Axelrod, R. *The evolution of cooperation*. New York: Basic books, 2006.

Baldaccini, A. et al. *Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy*, Oxford: Hart Publishing, 2007.

Baxter, P., and Jack, S. "Qualitative Case Study Methodology: Study Design and Implementation for Novice Researchers" in *The Qualitative Report* 13 (2008): 544-559.

Bevir, M. "Governance as Theory, Practice, and Dilemma" in *The SAGE Handbook of Governance,* ed. Bevir, M. London: Sage Publications Ltd, 2011.

Bevir, M. *Key Concepts in Governance.* London: Sage Publications Ltd, 2009.

Bomberg, E. et al. *The European Union: How does it works?* New York: Oxford University Press, 2008.

Börzel, T. A. "The European Union – a unique governance mix?" in *The Oxford Handbook of Governance*, ed. Levi-Faur, David. New York: Oxford University Press, 2012.

Bryman, A. *Social Research Methods*. London: Oxford University Press, 2008.

Byrne, R. "Harmonization and Burden Distribution in the Two Europes" *Journal of Refugee Studies* 16 (2003).

Collett, E. "Future EU policy development on immigration and asylum: Understanding the challenge" *Migration Policy Institute, Policy Brief Series* 4 (2014).

Crilly, R. et al. "UN confirms 800 dead in shipwreck disaster: as it happened on April 20." *The Telegraph*, 20 April 2015.

Enroth, H. "Policy Network Theory" in *The SAGE Handbook of Governance,* ed. Bevir, M. London: Sage Publications Ltd, 2011.

EurActiv. "EU's Operation Triton to help Italy cope with migrants." *EurActiv,* 8 October 2014:

Fairclough, N. "Critical discourse analysis" in *Dictionary of critical realism,* ed. Hartwig, M. London: Routledge, 2006

Fairclough, N., and Wodak, R. "Critical Discourse Analysis" in *Discourse Studies. A Mutidisplinary Introduction. Discourse as Social Interaction*, ed. van Dijk, T. A. London: Sage Publications, 1997.

Fairclough, N. *Critical Discourse Analysis: the critical study of language.* London: Longman, 1995.

Fairclough, N, and Fairclough, I. *Political Discourse Analysis: A method for advanced students,* New York: Routledge, 2012.

Geddes, A. *Immigration and European Integration: Towards Fortress Europe*?, Manchester: Manchester University Press, 2000.

Hofmann, H.C.H., and Türk, A.H. *EU Administrative Governance.* Massachutes: Edward Elgar, 2006.

Gozi, S. "Immigrazione, Italia chiede aiuto Ue, domani riunione a Roma su Frontex Plus." *Reuters Italy,* 25 August 2014:

Guiraudon, V. "European Integration and Migration Policy: Vertical Policy-making as Venue Shopping" *Journal of Common Market Studies* 38 (2000): 251–271.

Guiraudon V. "The Constitution of a European Immigration Policy Domain: A Political Sociology Approach" *Journal of European Public Policy* 10 (2003): 263-282.

Habermas, J. *The Theory of Communicative Action*, vol. ii. Boston: Beacon Press, 1985.

Halliday, M. A. K. *Explorations in the Functions of Language*. London: Edward Arnold, 1973

Halman, L. "Political Values" in *The Oxford Handbook of Political Behaviour,* ed. Russel, J. London: Oxford University Press, 2007

Huysmans, J. "The European Union and the Securitization of Migration" *Journal of Common Market Studies* 38 (2000).

Jessop, B. "The rise of governance and the risks of failure: the case of economic development." *International Social Science Journal* 50 (1998): 29-45.

Jessop, B. "Metagovernance" in *The SAGE Handbook of Governance*, ed. Bevir, M. London: Sage Publications Ltd, 2011.

Jessop, B. "Governance failure" in *Encyclopedia of Governance,* ed. Bevir, M. Sage Publications Ltd: London, 2007.

Juncker, C. "UK not bound by EU quota plan for housing migrants." *BBC News,* 12 May 2015.

Kaunert C. and Leonard, S. "The European Union asylum policy after the Treaty of Lisbon and the Stockholm Programme: towards supranational governance in a common area of protection?" *Refugee Survey Quarterly* 31 (2012): 1-20.

Kaunert C. and Leonard, S. "The development of the EU asylum policy: venue-shopping in perspective." *Journal of European Public Policy* 19 (2012): 1396-1413.

Kenis, P., and Volker S. "Policy Networks and Policy Analysis: Scrutinizing a New Analytical Toolbox" in *Policy Networks. Empirical Evidence and Theoretical Considerations,* eds. Bernd, M. and Mayntz, R. Frankfurt: Campus Verlag, 1991.

Kjøl-Mansøe, R. "Hækkerup kræver italiensk indsats mod asyl-shopping." *Politko*, 9 October 2014.

Klijn, E. H. and Edelenbos, J. "Meta-Governance as Network Management" in *Theories of Democratic Network Governance,* eds. Sørensen, E and Torfing, J. Basingstoke: Palgrave Macmillian, 2007.

Kooiman, Jan (ed). *Modern Governance*. London: Sage, 1993.

Kooiman, Jan. *Governing as Governance*. London: Sage Publications Ltd, 2003.

Kostakopoulou, D. "An Open and Secure Europe? Fixity and Fissures in the Area of Freedom, Security and Justice after Lisbon and Stockholm." *European Security* 19 (2010): 151-167.

Langford, L. M. "The Other Euro Crisis: Rights Violations Under the Common European Asylum System and the Unravelling of EU Solidarity" *Harvard Human Rights Journal* 26 (2013).

Lavenex, S. "Justice and Home Affairs - Communitarization with Hesitation" in *Policy-Making in the European Union,* ed. Wallace, H. Oxford: Oxford University Press, 2010.

Leeuwen, van T. *Discourse and Practice – new tools for critical discourse analysis.* London: Oxford University Press, 2008.

Levi-Faur, D. "From 'Big Government' to Big Governance'?" in *The Oxford Handbook of Governance*, ed. Levi-Faur, D. Oxford University Press: New York, 2012.

Malmström, C. "Commissioner Malmstrom welcomes the launch of the Triton operation," *European Commission Press release Database,* 21 October 2014.

Mayntz, R. "Modernization and the Logic of Interorganizational Networks." in *Societal Change Between Market and Org*an, Child J. et al. Avebury: Aldershot, 1993.

Metcalf, H. C., and Urwick, L (eds). *Dynamic Administration: the Collected Paper of Mary Parker Follett.* New York, Harper and Row, 1941.

Mintzberg, H. "Managing government – governing management." *Harvard Business Review* May-June (1996).

Mitsilegas, V. "Solidarity and Trust in the Common European Asylum System." *Comparative Migration Studies,* 2 (2014).

Moore, K. "Asylum-shopping in the neoliberal social imagery." *Media Culture and Society Studies II* (2013).

Mouzourakis, M. "We Need to Talk about Dublin." *Oxford Refugee Studies Center Working Paper Series* 105 (2014).

Mumby, D., and Clair, R. "Organizational Discourse", in *Discourses as social interaction. Discourse Studies, Vol 2: A multidisciplinary Introduction,* ed. T.A.van Dijk . Newbury Park: Sage, 1997.

Munch, S. "Danmark vil presse Italien: Stop asylshopping." *Jyllandsposten*, 9 October 2014.

Nielsen, R.D. "Merkel: Spørgsmålet om en fordeling af flygtninge presser sig på." *Politiken*, April 28 2015.

Offe, Claus "Governance: an "empty signifier"?" *Constellations* 16 (2009): 550–562.

Pavan, M. "Can/Will Italy be held accountable for its 'push back' policy in relation to international refugee, human rights and European Union law?" *London School of Economics, Migration Studies Unit Working Papers* 2011/2012 (2011).

Pierre, J. and Peters, B. G. *Governance, Politics and the State.* London: Macmillan Press Ltd, 2000

Pollack, M. A. "Theorizing EU Policy Making" in *Policy-Making in the European Union,* ed. Wallace, H. Oxford: Oxford University Press, 2010.

Rapoport H., and Moraga J "Tradable Refugee-admission Quotas: a Policy Proposal to Reform the EU Asylum Policy." *EUI Working Papers* 101 (2014).

Raspotnik, A. et al. "Discussion Paper – The Issue of Solidairty in the European Union." Paper presented at the TEPSA Pre-Presidency Conference 14-15 June 2012.

Risse, M. "What to say about the State?" *John F. Kennedy School of Government, Harvard University Social Theory and Practice* 32 (2006); 671-698.

Renzi, M. "Statement to the European Parliament, July 2 2014, Strasbourg." 2 July 2014.

Risse, T. *Governance Without a State?*. New York: Columbia University Press, 2011.

Risse, T. ""Let's Argue!" Communicative Action in World Politics." *International Organization* 54/1 (2000): 7.

Rhodes, R. A.W. *Understanding Governance. Policy Networks, Governance, Reflexivity and Accountability.* Philadelphia, Open University Press, 1997.

Rhodes, R. A. W. "Policy Network Analysis" in *The Oxford Handbook of Public Policy*, Goodin R. et al. Oxford: Oxford University Press, 2008.

Scharpf, F. "Coordination in Hierarchies and Networks" in *Games in Hierarchies and Networks - Analytical and Empirical Approaches to the Study of Governance Institutions,* ed. Scharpf, F.W. Frankfurt: Campus Verlag, 1993.

Scharpf, Fritz. *Governing in Europe - Effective and Democratic?* London: Oxford University Press, 1999.

Searle, J. *The construction of social reality.* London: Simon and Schuster, 1995.

Statsministeriet. "Prime Minister Helle Thorning-Schmidt's Opening Address to the Folketing (Danish Parliament) on 7 October 2014." 7 October 2014.

Sørensen, E., and Torfing, J. (eds): *Theories of Democratic Network Governance.* Basingstoke: Palgrave Macmillian, 2007.

Terry, R. G. *Principles of management (8th edition).* New Delhi: Irwin, 1994.

Thielemann, E. "Towards Refugee Burden-Sharing in the European Union State Interests and Policy Options." Paper presented at the Ninth Biennial International Conference of the European Union Studies Association, Austin, 2005.

Thielemann, E. and Armstrong, C. "Understanding European Asylum Cooperation under the Schengen/Dublin System: A Public Goods Framework", *European Security 22(2)*, 148-164, 2013

Tripathi P.C., and Reddy, P. N. *Principles of Management.* New Delhi: Tata MacGraw-Hill, 2008.

Todolf, J. et al. "What is Critical Discourse Analysis?" *Quaderns de Filologia. Estudis Lingüístics* XI (2006): 9-34.

Torfing, J. "Governance networks" in *The Oxford Handbook of Governance*, ed. Levi-Faur, D. New York: Oxford University Press, 2012.

Yin, R. K. *Case study research: Design and methods*. Thousand Oaks, C.A: SAGE, 2003. Weber, Max. *The Theory of Social and Economic Organisation*. Oxford University Press: New York, 1947.

Dryzek, J. S. et al.: "Introduction" in *The Oxford Handbook of Political Theory,* ed. Dryzek, J. S. et al. London, Oxford University Press, 2006

Policy documents analysed in the analysis

Camerei dei Deputati. "XVII LEGISLATURA, Allegato B, Seduta di Lunedì 3 novembre 2014." Last modified 3 November 2014: http://www.camera.it/leg17/1008?idLegislatura=17&sezione=documenti&tipoDoc=assemblea_file&idSeduta=0323&nomefile=allegato_b&back_to=3

Council of the European Union. "Council Conclusions on "Taking action to better manage migratory flows", Justice and Home Affairs Council meeting Luxembourg, 10 October 2014." Last modified 10 October 2014:
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/145053.pdf

Justitsministeriet. "Justitsministeren vil sætte ind over for asylshopping i Europa." Last modified 9 October 2014: http://www.justitsministeriet.dk/nyt-og-presse/pressemeddelelser/2014/justitsministeren-vil-s%C3%A6tte-ind-over-asylshopping-i-europa

Policy documents – Denmark, Italy and the EU

Council of the European Union. "Justice and Home Affairs Council, 9 and 10 October. Press Agenda October 8 2014." Last modified 8 October 2014:
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/145001.pdf

European Commission. "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A European agenda on migration." Last modified 13 May 2015.

European Commission. "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions- on enhanced intra-EU Solidarity in the field of asylum. An EU agenda for better responsibility-sharing and more mutual trust, Brussels, 2.12.2011 COM (2011) 835 final." Last modified 2 December 2014: http://ec.europa.eu/dgs/home-affairs/news/intro/docs/201112/1_en_act_part1_v6.pdf

European Commission. "Best Practices for upholding the Obligation in the Eurodac Regulation to take fingerprints" (LIMITE, doc: DS 1491/14, pdf)." Last modified 30 October 2014: http://www.statewatch.org/news/2014/dec/eu-com-coercive-fingerprintting-migrants-ds-1491-14.pdf

European Council. "The Stockholm Programme - an open and secure Europe serving and protecting citizens (2010/C 115/01)." Last modified, 11 June 2010: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XG0504(01)&from=EN

European Council. "Tampere European Council 15 and 16 October 1999 Presidency Conclusions." Last modified 19 May 1999: http://aei.pitt.edu/43337/1/Tempere_1999.pdf

Justitsministeriet, Udlændingeafdelingen. "Answer to "Spørgsmål nr. 5 (KOM (2012) 0254) fra Folketingets Europaudvalg." Last modified 18 November 2014: http://www.ft.dk/samling/20121/kommissionsforslag/kom(2012)0254/spm/5/svar/1172602/1421906.pdf

Justitsministeriet, Udlændingeafdelingen. "Answer to "Spørgsmål nr. 4 (KOM (2012) 0254) fra Folketingets Europaudvalg." Last modified 13 November 2014: http://www.ft.dk/samling/20121/kommissionsforslag/kom(2012)0254/spm/4/svar/1172607/1421920.pdf

Justitsministeriet, Udlændingeafdelingen. "Answer to " Spørgsmål nr. 3 (KOM (2008) 0820) fra Folketingets Europaudvalg." Last modified 12 December 2014: http://www.ft.dk/samling/20081/kommissionsforslag/kom(2008)0820/spm/3/svar/1182135 /1435451.pdf

Folketinget. "Europaudvalgets udvalgsrejse til Rom og Sicilien 22.-24. september 2014." Last modified 12 September 2014: http://www.ft.dk/Folketinget/udvalg_delegationer_kommissioner/Udvalg/Europaudvalget/ Rejser/Vis.aspx?itemid=%7BAD5136BF-5224-400B-A81B-4199DF5469EF%7D

Official Journal of the European Communities: *CONVENTION* 1997 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41997A0819(01)&from=EN

Official Journal of the European Union: *REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June*), 2013 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF

Official Journal of the European Union: *REGULATION (EU) No 603/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013*, 2013: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0603&from=EN

Official Journal of The European Union. "Treaty of the Functioning of the European Union. 326, 26/10/2012." 2012: http://eur-lex.europa.eu/legalcontent/EN/TXT/HTML/?uri=CELEX:12012E/TXT&from=EN

Progetto Melting Pot Europa. "Circolare Ministero dell'Interno - Rilevamento impronte digitali migranti sbarcati." Last modified 21 October 2014: http://www.meltingpot.org/IMG/pdf/circolare_impronte.pdf

Statistical material and webpages

Amnesty International. "Refugees and migrants risking their lives to get to Europe". Last modified 28 July 2014: http://www.amnesty.org.uk/refugees-migrants-asylum-sos-europe-european-union-borders#.VVm9C5Ptmko

Asylum, Migration and Integration Fund (AMIF). Last modified 5 May 2015. http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/index_en.htm

Consiglio Italiano per i Rifugiati. "Sbarchi di migranti in Italia: 42.925 nel 2013; già 2.156 nel gennaio 2014." Last modified 11 February 2014: http://www.cir-onlus.org/index.php?option=com_content&view=article&id=1083&catid=13&lang=it&Ite mid=143

Consiglio Italiano per i Rifugiati. "Il punto su sbarchi di migranti e rifugiati e Operazione "Mare Nostrum" tutti i dati commentati dal CIR." Last modified 1 May 2014: http://www.cir-onlus.org/it/?option=com_content&view=article&id=1230:il-punto-su-sbarchi-di-migranti-e-rifugiati-e-operazione-mare-nostrum-tutti-i-dati-commentati-dal-cir&catid=13&Itemid=143&lang=it

Consiglio Italiano per i Rifugiati. "FRONTEX: 278mila migranti hanno raggiunto l'Ue nel 2014. In Italia arrivate 170.757 persone." Last modified 7 February 2015: http://www.cir-onlus.org/index.php?option=com_content&view=article&id=1590&catid=45&lang=it&Itemid=143.

EUROSTAT. "Asylum Statistics 2015." Last modified 7 May 2015: http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics

IOM. "Key Migration Terms." Last modified 14 May 2015: https://www.iom.int/key-migration-terms

JourneymanTV. "Inside Italy's cancelled Mare Nostrum Rescue Mission" *Youtube*. Last modifed 3 May 2015: https://www.youtube.com/watch?v=fjVLyRTrQNE

Migrants at Sea. "Frontex, Preliminary Figures Indicate 270,000 Irregular Migrants and Asylum Seekers Reached EU in 2104 – Double Previous Record Set in 2011." Last modified January 5 2015: http://migrantsatsea.org/2015/01/05/frontex-preliminary-figures-indicate-270000-irregular-migrants-and-asylum-seekers-reached-eu-in-2104-double-previous-record-set-in-2011/

Ny i Danmark. "Tal på udlændingeområdet pr. 31.01.2015." Last modified 31 January 2015: http://www.nyidanmark.dk/NR/rdonlyres/E3C50EA0-BD36-4DDD-9C8D-7AAF44DE1F12/0/senestetalpaaudlomrpdfpdf.pdf

UNHCR. "World Refugee Day - Global forced displacement tops 50 million for first time in post-World War II era." Last modified 20 June 2014: http://www.unhcr.org/53a155bc6.html

Frontpage

Wikimedia Commons. *Egon Shiele, Die Tür in das Offene, 1912.* *http://commons.wikimedia.org/wiki/File:Egon_Schiele_Die_T%C3%BCr_in_das_Offene_-_21-4-1912.jpeg*

"The Minister of Justice will put a stop to asylum shopping in Europe"

Thursday October 9 2014

Inadequate registration and fingerprinting in cases where people enter Europe illegally through Italy, in order to seek asylum in other EU countries, allows for the misuse of the principle of free movement. At the Council meeting October 9 and 10, the Minister of Justice will insist that Italy takes their responsibility to register these people seriously.

Throughout the last year, Denmark has seen a drastic increase in the number of asylum seekers, who are not registered in the European asylum register. A similar development can be registered in our neighbouring countries. It is believed that one of the reasons for this is that Italy is no longer registering the large number of asylum seekers and illegal immigrants, who arrives in Europe through the Mediterranean, on a routine basis.

The Minister of Justice, Karen Hækkerup states:

I understand that the refugee situation in the Mediterranean is a huge challenge for the Italian authorities. However, this does not change the fact that it is unacceptable that large flows of asylum seekers are permitted to travel unregistered through Europe, thus circumventing the rules for dealing with asylum seekers. It is crucial that all of them are registered by fingerprinting, immediately upon arriving to Europe. Otherwise EU's asylum system and the Schengen cooperation cannot function.

The latest asylum numbers in Denmark and our neighbouring countries clearly show that there is a need to take action against this asylum shopping that is currently undermining the entire system, Therefore I have asked the Italian Minister of the Interior for a meeting, where I will insist that Italy takes responsibility for the registration and obtainment of fingerprints. On this note, I would also like to emphasize that we, in cooperation with the EU's Support Office, are willing to help Italy with this, if they ask for our help

The asylum situation in Denmark and Europe

Northern Europe is currently faced with large flows of asylum seekers, especially from Syria. A large number of these asylum seekers, who are now coming to Europe, have entered through Italy. According to numbers from the EU border agency, Frontex, more than 20.000 boat refugees are currently arriving to the Italian coasts every month.

Denmark has also seen an increase in the number of asylum seekers. Contrary to the beginning of the year, where we saw a decline in the number of asylum seekers, there has been a significant increase during the past months. In August, 2.287 people applied for asylum in Denmark; the majority of them from Syria.

The EU asylum system is based on the principle that asylum seekers must be registered, and have their asylum case processed in the their first European country of arrival. This is practice was established to prevent asylum seekers from abusing the principle of free movement in the EU, thus orienting themselves towards specific countries (the so-called "asylum shopping").

The consequence of the inefficient registration is that the asylum cases in question have to be processed in Denmark and our neighbour countries, even though it is against the essential idea behind the EU rules.

”Justitsministeren vil sætte ind over for asylshopping i Europa” (original text)

Torsdag 9. oktober 2014

Mangelfuld registrering og optagelse af fingeraftryk, når personer indrejser ulovligt til Europa via Italien, gør det muligt at misbruge den fri bevægelighed til at rejse til andre EU-lande og søge asyl. Justitsministeren vil på rådsmødet i Luxembourg 9. og 10. oktober insistere på, at Italien tager registreringsforpligtelsen alvorligt.

Danmark har gennem den seneste tid oplevet en kraftig stigning i antallet af asylansøgere, som ikke er registreret i EU's asylregister. En tilsvarende udvikling ses i vores nabolande. En af årsagerne vurderes at være, at Italien ikke længere rutinemæssigt registrerer det store antal asylansøgere og ulovlige indvandrere, der ankommer til Europa over Middelhavet.

Justitsminister Karen Hækkerup udtaler:

"Jeg har stor forståelse for, at flygtningesituationen i Middelhavet er en kæmpe udfordring for de italienske myndigheder. Det ændrer ikke ved, at det er uacceptabelt, at store strømme af asylansøgere får lov til at rejse uregistreret gennem Europa i strid med reglerne for behandling af asylansøgere. Det er helt afgørende, at alle registreres med fingeraftryk straks efter ankomsten til Europa. Ellers kan EU's asylsystem og Schengen-samarbejdet ikke fungere.

De seneste asyltal i Danmark og vores nabolande viser tydeligt, at der er behov for at sætte ind mod den asylshopping, der i øjeblikket er ved at underminere hele systemet. Jeg har derfor bedt den italienske indenrigsminister om et møde, hvor jeg vil insistere på, at Italien skal få styr på registrering og optagelse af fingeraftryk. Jeg vil samtidig understrege, at vi i samarbejde med EU's asylstøttekontor står klar til at hjælpe Italien med dette, hvis de beder om vores hjælp."

Asylsituationen i Danmark og Europa

Nordeuropa oplever i øjeblikket store strømme af asylansøgere fra især Syrien. En meget stor del af de asylansøgere, der i øjeblikket kommer til Nordeuropa, er indrejst via Italien. Ifølge tal fra EU's grænseagentur, Frontex, ankommer der over 20.000 bådflygtninge om måneden til de italienske kyster.

Også i Danmark stiger antallet af asylansøgere. Hvor vi i starten af året oplevede et fald i antallet af asylansøgere, er der over de seneste måneder sket en markant stigning. I august måned søgte 2.287 personer om asyl i Danmark. Flertallet var fra Syrien.

My translation:

"Lays upon the government, under the rotating presidency of the European Union, to play a role in encouraging a review of the Dublin system criteria, in order for migrants to be guaranteed the freedom to choose in which country to submit their request for international protection, thus eliminating the 'obligation to submit it in the country of first entry, with particular attention to the possibilities of family reunification for minors; On the same supranational level, (lays upon the government) to promote the adoption of a administrative system for handling new arrivals which distributes this responsibility among the totality of the EU member states, thus not leaving it with those countries, like Italy, who because of their sole location, are exposed to these massive entry flows".

Original text:

"Impegna il Governo: nell'ambito della presidenza di turno dell'Unione europea a svolgere un ruolo di impulso per la revisione dei criteri del «sistema di Dublino» affinché ai migranti sia garantita la libertà di scegliere in quale Paese presentare la propria richiesta di protezione internazionale, eliminando l'obbligo di avanzarla nel Paese di primo ingresso, con particolare attenzione ai minori e alle loro possibilità di ricongiungimento familiare; nel medesimo ambito sovranazionale, a promuovere l'adozione di un sistema di gestione delle spese di accoglienza che ponga questi oneri in carico alla totalità degli Stati, non lasciando soli quei Paesi, come l'Italia, esposti per la loro semplice posizione geografica ai maggiori flussi d'ingresso".