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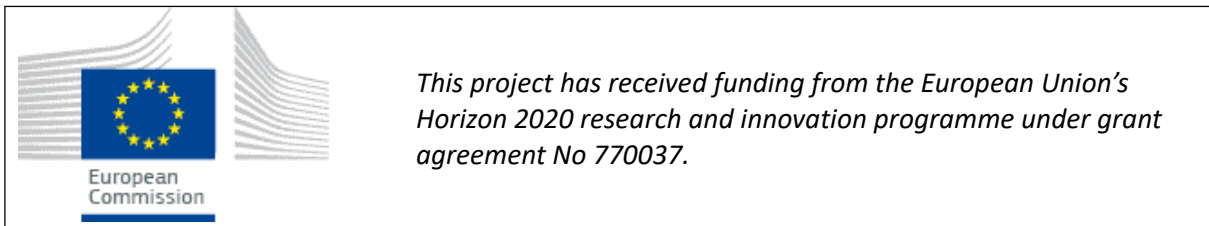
Report on a variety of ideal-typical Common European Asylum Systems

Vincenzo Gomes and Jeroen Doomernik

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Prof. Birgit Glorius and Dr. Melanie Kintz
Technische Universität Chemnitz
Institut für Europäische Studien
Humangeographie mit Schwerpunkt Europäische Migrationsforschung
09107 Chemnitz

http://www.tu-chemnitz.de/phil/europastudien/geographie

Vincenzo Gomes and Jeroen Doomernik
University of Amsterdam (UvA),
Amsterdam
v.g.r.gomes@uva.nl;
j.m.j.doomernik@uva.nl;

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Abstract

Since the influx of asylum seekers in 2015 and 2016 many scholars and journalists have pointed to the responsibilities and failures within European asylum policy. It was argued that the current set of regulations and directives fundamentally expect some common solidarity between the Member States. However, even if there existed a form of solidarity among Member States before the summers of 2015 and 2016, this feeling has dissipated since. The insights from research done within the CEASEVAL project and outside of it has led to many questions on the sustainability and equity of the current asylum and migration policy framework in the EU. One of the most pressing questions is: what should an ideal-typical CEAS look like? To answer this compelling question, this paper critically assesses the strengths and weaknesses of the current CEAS, investigates alternatives, and tries to develop a solution that might bring us close to an ideal CEAS, for instance by involving sub-national actors, such as cities. While analyzing, we consider the fundamental aims of the CEASEVAL project that are fair responsibility-sharing between Member States with full compliance to international protection standards. Furthermore, we take as a guiding principle that the interests of receiving societies as well as those of refugees and other beneficiaries of international protection are served with the optimal retention of their human capital through speedy integration.

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List of Acronyms and Abbreviations

AfD	Alternativ für Deutschland
AMF	Asylum and Migration Fund
AMIF	Asylum, Migration and Integration Fund
ANCI	Associazione Nazionale Comuni Italiani
CEAS	Common European Asylum System
CEMR	Council of European Municipalities and Regions
CLIP	Cities for Local Integration Policies
CSO	Civil Society Organisation
EC	European Commission
ECB	European Central Bank
ECRE	European Council on Refugees and Exiles
EIB	European Investment Bank
EP	European Parliament
EU	European Union
EURODAC	European Dactyloscopy
FEMP	Federación Española de Municipios y Provincias
ICMPD	International Centre for Migration Policy Development
ISF	Internal Security Fund
LRAs	Local and Regional Authorities
MFF	Multiannual Financial Framework
MMC	Mayors Migration Council
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
PEGIDA	Patriotische Europäer Gegen Islamisierung Des Abendlandes
PICUM	Platform for International Cooperation on Undocumented Migrants
TFEU	Treaty on the Functioning of the European Union
TPD	Temporary Protection Directive
VNG	Vereniging van Nederlandse Gemeenten

1. Introducing an ideal-typical 'Common European Asylum System'

During 2015 and 2016 the world's attention focused on refugees arriving on Southern European shores, or walking through forests in the Balkans. Pictures of people living in provisional camps under dehumanizing conditions, of dead people on beaches and of militarized zones at inner-European borders and in train stations spread through the world. These conditions were a result of a lack of safe options to arrive in Europe for those fleeing war and dictatorships, as well as a lack of proper reception facilities in countries at the external borders of the EU. Many scholars and journalists have pointed to the responsibilities and failures within European asylum policy, even going as far as to argue the so-called refugee crisis is not a refugee crisis, but rather a 'policy crisis' (Den Heijer et al. 2016: 607). According to Den Heijer et al., the policies in the European Union [EU] that determine the legal framework on asylum and migration governance, the 'Common European Asylum System' [CEAS], "fosters disobedience and free-rider behavior" (Den Heijer et al. 2016: 614). In addition, the current set of regulations and directives fundamentally expect some common solidarity between the Member States. However, even if before the mass influx of 2015 a form of solidarity among Member States existed, this feeling has dissipated since.

These insights have led to many questions on the sustainability and equity of the current asylum and migration policy framework in the EU. Corral-Verdugo et al. argue that "the unequal distribution of resources and benefits among people negatively affects all kind of social functioning, including the spheres in which economically affluent individuals live and prosper" (Corral-Verdugo et al. 2010: 2). Hence, "inequity is one of the most evident manifestations of lack of sustainability in human societies" (Ibid). For this reason, one of the most pressing questions is: what should an ideal-typical CEAS look like? To answer this compelling question, this paper will critically assess the strengths and weaknesses of the CEAS, investigate alternatives, and develop a solution that might bring us close to an ideal CEAS by involving sub-national actors, notably cities. While analyzing, we will consider the fundamental aims of the CEASEVAL project that are fair responsibility-sharing between Member States with full compliance to international protection standards. Furthermore, we take as a guiding principle that the interests of receiving societies as well as those of refugees and other beneficiaries of international protection are served with the optimal retention of their human capital through speedy integration.

The variables we use to define and determine the scope and structure of this paper are: solidarity, responsibility-sharing, equity, and human capital. Wagner, Kraler and Baumgartner established in Work Package 6 for the CEASEVAL research project that there are multiple definitions of solidarity (Wagner et al. 2018: 5), therefore, the authors whose work on alternatives for a CEAS we analyze use slightly different definitions. However, in a conceptual understanding they note that Betts et al. use solidarity as the acknowledgment of shared interest (Betts et al. 2018). This is "understood by many as a matter of will, as otherwise it would have been an 'obligation' rather than 'solidarity'" (Wagner et al. 2018: 5), simultaneously this "emphasizes the intrinsic link between solidarity and responsibility" (Ibid). For this paper we use this more pragmatic and conceptual understanding of solidarity because of the variety of forms of solidarity shown in the academic literature we review. While considering the four general forms of solidarity provided by Knodt and Tews (2017). Furthermore, we follow Baumgartner and Wagner who determine in another CEASEVAL-paper that they "depart from the most recent discussion on the Dublin reform proposal by the Presidency of the Council, which establishes a number of ways to share responsibilities" (Baumgartner and Wagner 2018: 3). The main element in which responsibility-sharing should evolve among Member States, according to the proposal, is a

"mechanism for the distribution of asylum applicants across Europe". Other measures to invoke and enhance responsibility-sharing are by means of financial support by the EU and a financial contribution to the Union's budget; technical and operation assistance at external borders, by a newly formed European Union Asylum Agency, and in the field of return; and assistance by the EU Civil Protection Mechanism (Baumgartner and Wagner 2018: 4). Moreover, the third variable is closely linked to solidarity too. As Wagner et al. (2018) paraphrase Goldner Lang (2013) who mentions that "fairness (the willingness of those Member States exposed to a lower number of migrants, refugees and asylum seekers to assist the ones in need of help and support, primarily those forming the external Union border)" (Wagner et al. 2018: 4) is one of the facets of solidarity. Fairness, or as we prefer equity, features a normative component (Le Grand 1992: 11), "leading to what is conceived to be right" (Corral-Verdugo et al. 2010: 187). Hence, the concept of equity indicates in this context that the relationship between EU Member States should be based on the willingness to share responsibilities. The last variable we use to analyze the variety of alternatives for the CEAS and on which we base our ideal CEAS features the concept of human capital. Human capital theory "explains migration using an economic model [in which] people migrate to places where their human capital – formal education and training, as well as their other 'valued-adding' features – will attract higher profits" (Colic-Peisker and Walker 2003: 339). In light of the CEASEVAL project we believe that the ideal CEAS considers not necessarily the increased utility of human capital through the refugees' migration but would ideally result in its retention with a prospect of successful integration in a host society.

The structure of the paper is as follows: first a concise introduction to the legal framework of CEAS will be provided, in which special attention is paid to the Dublin Regulation, as the corner stone and most criticized part of the CEAS; and the Temporary Protection Directive [TPD], as an institutional framework which already exists within the CEAS that has often been pointed to for its potential capacities to solve many of the commonly observed problems. Second, we will briefly discuss the concept of solidarity and the various forms it adopts in EU law and regulations. Third, the most common critiques on the CEAS are reviewed. These are the problem with the concept of solidarity; the dilemma of free-riding; and the fact that the CEAS is wrongly designed for its current purpose. In addition, we argue that most scholars assess the CEAS from either a human rights-based perspective, or a more economic, 'burden-sharing' perspective focusing on solidarity between EU Member States. We will outline the main characteristics of these views and after this assess on the working of the CEAS deriving from those views. Fourth, proposals for alternatives to the CEAS are outlined and analyzed, based on these concerns for both human rights and solidarity. Finally, we identify a 'third way' coming from scholars of multilevel governance, in which the local level is conceptualized as a significant political actor, possibly resulting in an entirely different type of legal framework, and the use of experimentalist governance. We will see that the two dimensions on which most scholars differ are at the one hand divergence or convergence of EU policy; and at the other hand the level of coercion or the freedom of movement refugees will face within the CEAS.

2. The Legal Framework of the Common European Asylum System

The CEAS sets out standards and procedures for the asylum procedure, reception conditions, qualification, registration and allocation of asylum-seekers. The main tool on which Europe's asylum policies rely is the Dublin Convention of 1990 that predates the CEAS (Doomernik and Glorius 2016). The Dublin Convention was created in the wake of the Schengen Agreement and the negotiations on both policy frameworks were dominated by a small number of North-Western liberal democracies. "Moreover, the countries that joined the EU in 2004 could not renegotiate these agreements or 'opt-out'" (Guiraudon 2018: 159). However, this was necessary as the Northern EU Member States "were reluctant to give up border control at borders they shared with countries that were known for their weak border enforcement" (Betts, Costello and Zaun 2017: 82). The Northern EU Member States only wanted to accept free movement without borders if the Southern EU Member States would participate "in the Dublin system and take responsibility for refugees that entered the Schengen area through them" (Ibid).

This Dublin Convention would regulate the allocation of refugees and is currently widely seen as the corner stone, and major flaw, of the CEAS (Den Heijer et al. 2016; Guild et al. 2015; Thielemann 2010). Carrera et al. (2017) argue that "the 'country of first entry' rule […] puts profound capacity and specific structural pressures on frontier EU member states in the Mediterranean" (Carrera et al. 2017: 4). The rules set out in the Dublin Regulation determine which Member State is responsible for assessing and receiving the asylum application. The Member State responsible "shall be determined on the basis of the situation obtaining when the applicant first lodged his or her application for international protection with a Member State" (Council of the European Union 2013). In the case of an unaccompanied minor, article 8 of the Dublin III regulation, notes that the responsible Member State is the state where a "family member or a sibling of the unaccompanied minor is legally present" (Ibid). When the asylum applicant has a family member who is beneficiary of international protection in a Member State, that Member States shall be responsible for examining the application, this is also the case when the family member has not yet been granted with international protection (Ibid). Although the Southern EU Member States share the EU's external borders, Betts, Costello and Zaun (2017) discuss that the Southern EU Member States hadn't foreseen that they would become "top recipients […] as they were countries of emigration at the time and did not have a history as countries of asylum" (Betts, Costello and Zaun 2017: 88). The distribution of asylum-seekers was already at the start of the talks on a CEAS a subject to discussion. According to Ripoll Servent two potential distribution mechanisms were discussed, in the early 1990s (Ripoll Servent 2018: 88). "The German presidency proposed a system based on a 'capacity principle' to redistribute people seeking temporary protection" (Ibid). "The idea […] was to share the number of asylum-seekers in proportion to population, territory and GDP" (Ibid). The other potential distribution mechanism focused on the 'responsibility principle', which meant "that whoever let asylum-seekers into the Schengen territory should be made responsible for them. This logic naturally translated into the 'first country of entry principle': if a Member State was not able to control its border or provided a visa that allowed an asylum-seeker to enter the territory, then it should also bear the 'burden' of the application" (Ibid). Hence, asylum-seekers were depicted as a 'burden' for the Member States.

Already by the late 2000s, The European Commission [EC] had connected the Member States' reception conditions and the Dublin system, "noting that 'poor reception conditions could even lead to a distortion of the system for determining responsibility in respect of an asylum claim (Dublin

system)'" (Scipioni 218: 1366). Therefore, Zaun argues that "the malfunctioning of the Dublin system was at the heart of the 2015/2016 crisis when border countries were unable to deal with the massive strain on their already weak asylum systems and asylum-seekers would largely self-relocate to other Member States" (Zaun 2018: 45). Besides the fact that the Dublin system resulted in the unfair distribution of asylum-seekers and "puts disproportionate pressures on reception capacities in 'frontier states'" (Carrera et al. 2017: 4) it also has its effect as a deterrence measure, "aimed at discouraging irregular migrants and at strengthening the border controls of EU external border countries" (Thielemann 2018: 79). Furthermore, as the Dublin system "provides incomplete and undermines a fair sharing of responsibility, the responsibility-sharing it currently offers is based on a highly decentralized system in which states have significant discretion" (Betts, Costella and Zaun 2017: 53). This is supported by Berger and Heinemann who claim that "standards for receiving asylum-seekers have continued to vary widely, as have the durations and results of application procedures" (Berger and Heinemann 2016: 2). Berger and Heinemann go even further by stating that they perceive the Dublin system as unviable and undesirable (Berger and Heinemann 2016: 10), because the Dublin system "create[s] a system of burden-sharing that is randomly determined by geography and the contingencies of refugees' main entry point or intra-EU migration flows. The massive inequities resulting from these factors undermine the democratic acceptance and legitimacy of [the] CEAS" (Ibid).

Moreover, less commonly known, however, is that the CEAS also provide a Temporary Protection Directive designed for emergency situations with a 'large influx' of refugees. In historical perspective, "since [the] inception [of] EU policies on migration and asylum [they] were incomplete with respect to emergency measures" (Scipioni 2018: 1363). "This changed with the Treaty of Amsterdam, [which] dealt with 'temporary protection' during mass displacements" (Ibid). The Temporary Protection Directive "was the first effort at standardization that envisaged the establishment of minimum standardizing reception conditions, qualifications for international protection status, and procedures to be followed in granting such status" (Scipioni 2018: 1364) and, therefore, was a first attempt in developing the CEAS. The Temporary Protection Directive does not rely on the Dublin Directive. It includes the suspension or bypassing of normal asylum procedures to provide protection to those who have had to leave their country or region of origin, or have been evacuated and are unable to return to safe and durable conditions because of the situation prevailing in the country (Koser and Black 1999; Guild et al. 2015). Betts, Costello and Zaun argue that EU Member States can provide temporary protection by the so-called "Humanitarian Admission Programmes (HAPs) … [that are] … defined as the process by which 'countries admit groups from vulnerable refugee populations in third countries as to provide temporary protection on humanitarian ground'" (Betts, Costello and Zaun 2017: 410 – 42). However, during the crisis in 2015 no Member State has requested the activation of the Temporary Protection Directive, in fact it has never been triggered so far. Franssen argues that there are various reasons for this. Firstly, the definition of 'large influx' is too broadly defined (Franssen 2011: 212 – 213); secondly, a qualified majority is needed to apply the Directive (Franssen 2011: 227), and thirdly, Member States are afraid that applying the Directive will function as a pull factor for asylum-seekers to come to the EU (Franssen 2011: 386). For most Member States it is therefore more attractive, from a political perspective, to apply the Dublin system, because it provides the opportunity to shift responsibilities to other Member States.

This historical perspective and legal framework of the CEAS determine the lack of solidarity amongst EU Member States, which negatively affected the crisis in the EU during the mass influxes of 2015 and 2016. However, "solidarity has served as a fundamental norm or motive for peaceful integration since

the beginning of European integration after the Second World War" (Knodt and Tews 2017: 47). The term was even included in all treaties (Ibid). Moreover, "article 80 of the Treaty on the Functioning of the European Union […] institutionalizes the principle of solidarity in the border control, asylum and immigration policies of the [EU]" (Parusel and Schneider 2017: 33). The policy paper 'Solidarity in Europe. Alive and Active' which was published in October 2018, stated that "[t]he EU Treaties explicitly refer to solidarity in a number of provisions, including the values and objectives of the Union (solidarity 'between generations' and 'among Member States') and particular policies where the 'principle' or 'spirit' of solidarity is to be applied" (European Commission 2018: 5). But, "there is no easily discernible common interpretation of the limits and application of solidarity in legal terms" (Ibid). Therefore, to come up with a set of ideal-types it is necessary to fully understand this principle of solidarity in the context of EU asylum and migration governance. The next paragraph will elaborate on this.

3. Solidarity as the cornerstone of the EU asylum and migration framework

As discussed in the previous paragraphs, solidarity has been somehow expected to be the center of the CEAS but is infamously characterized by the lack of it. Therefore, a closer look at what solidarity is and how we could understand solidarity in the context of EU asylum issues is necessary.

One of the most cited authors on solidarity has been the sociologist Emile Durkheim. He defined two types of solidarity. At the one hand, mechanic solidarity, which is to be found in highly segmented archaic communities with small units, clans or families (Lukes 2013: 102). At the other hand, organic solidarity which is to be found in highly developed societies with a high degree of labor division and a strong ideology of individualism (Ibid). In this latter type of society; members of society must think and calculate with 'the Other'. In these societies, solidarity is based on future calculations: acts of solidarity rest on the assumption that they will generate acts of solidarity towards them in an unknown and unpredictable future (Ibid). Some have argued that a shared identity and feeling of belonging within the EU is necessary in order to establish solidarity within the EU (Faist 2000; Offe 2001). However, as Knodt and Tews argue "we have to construct solidarity at different levels at the same time and among individuals and [M]ember [S]tate" (Knodt and Tews 2017: 48 – 49). "Solidarity is first and foremost an "idea of a reciprocal relationship between members of a group"" (Knodt and Tews 2017: 49) Durkheim's approach shows that this is not the case. Rather, Durkheim shows that 'Others' are the fundament on which solidarity is built (Ibid).

According to Thielemann, the existing literature on the unequal distribution of asylum-seekers in the EU is strongly related to solidarity and offers three main reasons for it. First, there are structural pull-factors "such as existing migrant networks, geographic location, historic or language ties" (Thielemann 2018: 63) all these factors have demonstrated to be an influence when asylum-seekers choose a country of destination (Aksel and Içduygu 2019; Bernát et al. 2019; Dimitriadi and Sarantaki 2019; Paraschivescu et al. 2019a; Paraschivescu et al. 2019b). Second, besides structural pull-factors there are policy pull-factors too. For example, Member States that have a "more open immigration policy regimes are expected to be more attractive to migrants. This is linked to the idea that states can be expected to try to use stricter policies to counteract structural attractiveness, a dynamic that has at least partly been curtailed by moves towards EU policy harmonization" (Thielemann 2018: 64). Finally, there are other EU policy measures that influence the distribution of asylum-seekers and cause its unequal nature. One of the main culprits is the "Dublin Regulation, which allocates responsibilities for the processing of asylum seekers and allows Member States to return applicants to the country through which they first entered the EU" (Ibid). Thielemann notes that the logic of the EC to favor "EU policy harmonization as a burden-sharing instrument" (Thielemann 2018: 74) is that the harmonization of important asylum policies such as "national asylum procedures, legal standards and reception conditions, as envisaged in creating a CEAS, is bound to reduce those secondary movements of asylum seekers which are mainly due to the diversity of applicable rules, and could thus result in a more fair overall distribution of asylum applications between [Member States]" (Ibid). However, in order to achieve this harmonization many scholars have argued that some sort of solidarity is important.

That 'some sort' of solidarity is described differently by various authors. Many scholars have pointed to the various types of solidarity that are included in EU law. Sangiovanni writes about national solidarity, Member State solidarity and transnational solidarity distinguishes between Member State

solidarity and social solidarity (Sangiovanni 2013). Knodt and Tews (2017) provide a table where various forms of solidarity are schematically analyzed (Knodt and Tews 2017: 51):

Table 1: Forms of solidarity

	Horizontal	Vertical
Individual actors	Transnational solidarity	Supranational solidarity
Collective actors	International solidarity	Intergovernmental solidarity

Within multilevel systems, such as the EU, solidarity can occur within or across government levels. For this reason, Knodt and Tews created a horizontal and vertical axis to explain solidarity in the context of the EU. Knodt and Tews argue that on the one hand "[t]he horizontal dimension refers to solidarity within one government level, be it supranational, national or subnational" (Knodt and Tews 2017: 51). On the other hand, "[the] vertical solidarity spans different levels" (Knodt and Tews 2017: 51). In addition, solidarity can be addressed by individual as well as collective actors (Knodt and Tews 2017: 51).

Transnational solidarity "is based on similar living conditions of the individuals […] who unite to reach a common goal" (Ibid). In the context of the EU, transnational solidarity means that "organized interest groups must always aim to organizes across national borders when addressing European policy" (Ibid). Supranational solidarity "creates solidarity [directly] between European citizens [and] aims at the creation of comparable […] living conditions" (Ibid). Durkheim's 'organic' solidarity is strongly associated with supranational solidarity and "implies that it is not exclusively focused on the European level but on complementing or overarching solidarity at the national or subnational levels" (Knodt and Tews 2017: 52). Knodt and Tews state that "intergovernmental solidarity addresses national Member States as collective actors within the multi-level system of the EU and the vertical dimension without taking into account individual citizens" (Ibid). At last, international solidarity is described as the phenomenon that "involves collective actors on the horizontal dimension as it is carried out beyond European borders into the international sphere" (Ibid).

Sangiovanni argues that "demands for social solidarity at all levels of governance can be understood as demands for a fair return in the mutual production of important collective goods" (Sangiovanni 2013: 217), however, Thielemann discusses that "the 'non-excludability characteristics' of public goods" (Thielemann 2018: 69) lead to under-provision and that "contributions to public goods are therefore expected to be provided at inefficient or suboptimal levels" (Ibid). Thielemann adds to this that "public goods lead to actions that are rational from an individual's perspective, but that can be suboptimal (or even disastrous) from a collective viewpoint" (Ibid). Hence when we look at the issue of refugee protection we can identify this as a 'public good'. "A state's refusal to protect refugees or efforts to divert refugee flows onto other countries can be expected to lead to increased instability and heightened insecurity as a result of tensions at the border, irregular onward movements and tensions with other states which might end up being the new target countries for such migrants as a result of such restrictive policies by other states (Thielemann 2018: 70).

Transnational solidarity is horizontal solidarity between individual actors that work together and feel for each other across borders. Many NGO's work like this but also movements like Occupy. Supranational solidarity is about the establishment of common rules for every actor within the system,

such as common European citizenship or the common market. International solidarity is about solidarity with external countries outside of Europe, where European norms and values are transferred to other countries, and intergovernmental solidarity is solidarity between Member States. We will analyze the CEAS and the proposed alternatives along these types of solidarity. As we will see, there are often combinations of solidarities at play: for instance, a combination of supranational solidarity where common rules are formulated, and intergovernmental solidarity, where states compensate each other. At the end of this paper, we will propose to broaden this view on solidarity by also including the local level. The local level provides a bridge between intergovernmental solidarity, and transnational solidarity over borders. Furthermore, scholars have argued that solidarity in an international context entails the cooperation of countries, in which common causes are the goal, which often requires the transcending of national sovereign interests. This requires high investments of all participants (Hirsch Ballin et al. 2016: 22). In our case solidarity means that every Member State takes part of the responsibility of accepting asylum claimants. In other words, solidarity as the acknowledgment of shared interest.

One final remark should be made. Even though the type of thinking that comes with a framework on burden-sharing (e.g. the specific ways in which costs and benefits are shared) is useful to us, the language plays a role here, as Parusel and Schneider (2017) and Guild et al. (2015) (among others) have remarked. In this framework, refugees are depicted as a burden on receiving countries, as something negative. However, paraphrasing philosopher Michael Sandel in Guild et al. "refugees are not solely a burden to be off loaded in a revenue stream, they are rather human beings in peril" (Guild et al. 2015: 40). Refugees are more productively to be conceptualized as human capital. However, based on our literature review, we must conclude that most scholars operationalize refugees mainly as a 'burden' e.g. by only calculating what they cost and not what they contribute.

Although much work is done to research the concept of solidarity, according to Wagner et al. "there has been only relative little progress in substantiating solidarity in practical terms" (Wagner et al. 2018: 4).

3.1 The quality and equitability of protection

Some authors do not approach refugee as a 'burden to be shared' but argue instead that the reception of people in need of protection is a responsibility under international law and a moral duty. These authors, holding the so-called human rights perspective, thoroughly study and assess the quality of protection and equitability of the system from the perspective of the refugee. They look whether essential requirements of justice in the treatment of foreigners are satisfied. By quality of protection scholars assess whether refugees are protected and treated according to international standards, most notably the Geneva refugee convention and the European framework on human rights. Scholars such as Parusel and Schneider (2017) deal with the equity of the system, and conceptualize equity, or fairness, as equal chances for refugees, mainly in terms of acceptance rates and procedures. In addition, various authors remark on the interrelatedness of the dimensions of solidarity at the one hand and quality and equity of protection at the other hand. "Fair, harmonized asylum outcomes are a precondition for solidarity regarding the sharing of responsibilities for asylum seekers between the Member States, and vice-versa, a responsibility-sharing system can help to achieve an approximation of asylum decisions" (Parusel and Schneider 2017: 38). Scholars argue that if true solidarity is

established, individual countries do not need to make their policies as unattractive as possible, and the protection of human rights will be better established. At the other hand: the unfair and unequal system, where practices and treatments for refugees are very different in different countries, is also a main cause for the failure to establish solidarity and mutual burden sharing, as discussed in earlier paragraphs.

In the next paragraph we will assess the concepts of responsibility-sharing, solidarity, harmonization, secondary movement and the politicization of asylum.

4. Assessing the CEAS

4.1 Solidarity and burden sharing in the current CEAS

Scipioni stated that "migration scholars have highlighted that migration policy, both at the national and international levels, seems to be particularly prone to failure" (Scipioni 2018: 1357). The challenges that the current CEAS is facing are therefore not surprising. It makes sense that in combination with Wagner et al.'s statement that the EU made "little progress in substantiating solidarity in practical terms" (Wagner et al. 2018: 4), these challenges are not simply solved.

As demonstrated in the table 1, solidarity in the context of the CEAS too contains various forms. The most recognizable form is 'international solidarity'. The goal of the CEAS is to provide asylum-seekers and refugees with minimum standards of protection, and fair and effective asylum procedures. In order to achieve this the CEAS sets to harmonize the asylum framework in the Member States and make sure that asylum-seekers have the same rights, living conditions and equal opportunities to make a positive asylum claim and building a new life. For this reason, the EU Member States need to show solidarity with each other. However, since the individual Member States, nation states, are not the only actors involved in the EU's multilevel governance system, the CEAS demonstrates that 'intergovernmental solidarity' is necessary for the CEAS to work. For example, the cooperation between different EU agencies on asylum issues, but also the different institutions on asylum issues among the Member States have to show some solidarity to cooperate adequate. These forms of solidarity have in common that they neglect the individual actor, which is impossible for the CEAS to work. One of the main obstacles for the CEAS right now is the negative general attitude of EU citizens towards asylum issues such as the reception, and the distribution of asylum-seekers. Therefore, we see 'transnational solidarity' across the EU, where organized interest groups advocate against the arrival of new asylum-seekers, such as PEGIDA in Germany and the Netherlands, or advocate in favor of the arrival of new asylum-seekers, such as PICUM in Italy, France and so on. At last, 'supranational solidarity' flourishes in the ideas of EUROCITIES, where local, sub-national, national, and international governments need to work on solving the current asylum policy crisis in the EU.

The current CEAS stimulates free-riding (Berger and Heinemann 2016: 1) in which various EU Member States create new deterrence measures and "establish more restrictive refugee policies than their neighbors in an attempt to shift burdens onto other states" (Thielemann 2018: 71). The establishment of these deterrence measures could be seen as a symptom of "an underlying collective action failure" (Betts, Costello and Zaun 2017: 15). Scipioni argues that these deterrence measures, which result in policies that feature the lowest common denominator, "are an integral part of a cyclical process of integration" (Scipioni 2018: 1357). First, these policies, "as a consequence of the lowest common denominator" (Scipioni 2018: 1358), compel EU Member States to "introduce incomplete governance structures" (Ibid). Second, Scipioni notes that the national leaders, who are partially responsible for the incomplete governance structures, after some time need to indicate that the agreements made result in inadequate policies. And third, eventually "these 'incomplete governance structures should generate functional spillovers that help spark future crises" (Ibid), from then the whole process starts again. Carrera and Lannoo identify this process as the foremost policy problem and argue that it is caused by the fact that the CEAS is undermined by a "systemic double gap in solidarity" (Carrera and Lannoo 2018: 2) that results in various collective action problems. The first gap in solidarity is linked with the uneven distribution of responsibilities for asylum in the EU (Ibid). The second gap relates to the "structural incapacity to observe EU standards and rights in processing individuals seeking

international protection in the EU" (Ibid). These gaps are supported by Thielemann who argues that a move to "more binding instruments, better monitoring and less discretion" could help to overcome the collective action problems (Thielemann 2018: 78) and, therefore, could interrupt the cyclical process that Scipioni mentioned. Following this argumentation, the problem with solidarity and the unequal distribution of responsibilities could positively be affected by judicial harmonization, the sharing of resources and physical burden-sharing, which means the sharing of asylum-seekers (Thielemann 2018: 69).

Another challenge of the CEAS is that the initial design of the CEAS was not based on solidarity or collective burden-sharing but rather on domestic or national concerns, as was discussed in paragraph 2. This results in the fact that a small number of countries, get large amounts of the responsibility. In 2016, 5 Member States were responsible for 82% of all asylum applications (Eurostat 2019a). In the 2017 Delmi rapport, Parusel and Schneider calculated what a more equal distribution would mean for individual Member States (Parusel and Schneider 2017: 73). They found that some Member States were disproportionally affected by the refugee influx in 2016 (Parusel and Schneider 2017: 125). This argument is supported by the research done by the International Centre for Migration Policy Development [ICMPD]. In their infographic for the Horizon2020 CEASEVAL project they argue that in the context of the Dublin IV proposal 7 countries are overburdened (e.g. Austria, Germany, Greece, Iceland, Italy, Luxembourg and Sweden) (CEASEVAL 2018). The bulk of Member States remain below their possibilities and take only a fraction of the asylum-seekers that they could have taken according to their economic strength and population. These are above all the states of the 2004 and 2011 eastern enlargements as well as Spain and Portugal, although the numbers of Spain are increasingly changing (Eurostat 2019b). Interesting to note is that the percentages of the Visegrád countries are very small in the distribution system (Poland: 5,2%, Hungary: 1,3%, which is less than they took in 2016, The Czech Republic: 1,6%, Slovakia: 0,8%) (Ibid). A way to overcome the critique of mainly Czech, Hungary and Slovakia would be to make a little more of a progressive system in which the strongest shoulders bear the heaviest weight, as proposed by the EP. In this proposal the EP designed a corrective allocation mechanism, the so-called "fairness mechanism" (Radjenovic 2019: 4) that features "a new automated system to monitor the number of asylum application received and the number of persons effectively resettled by each Member State (Ibid); a reference key "to show the indicative share of the total number of asylum applications made in the EU that each Member State would receive if they were allocated according to country's size and wealth" (Ibid). This key would be equally weighting on the size of the population as well as the total gross domestic product of the Member State; and a fairness mechanism that should be applied when Member States are disproportionately affected by the number of asylum applications (Radjenovic 2019: 5). A Member State is confronted with disproportionate numbers when they bear at least 150 percent of the reference share (Ibid).

4.2 Quality of protection in the current CEAS

Besides the challenges with solidarity, the quality of the protection the CEAS offers is another main challenge. According to Elspeth Guild, who has analyzed the logic of the EU as an economic and monetary union rather than as a union of human rights, this stems from the initial design. She starts her analysis with noting that "according to its treaties, the EU has only two tasks, establishing a common market and an economic and monetary union […] human rights were not part of the original schema of the EU" (Guild 2006: 631 – 632). However, a remark has to be made as the Amsterdam

Treaty ensured that the "European integration has been firmly rooted in a shared commitment to freedom based on human rights, democratic institutions and the rule of law" (European Parliament 1999).

The first thing that has to be mentioned, is the fact that the borders of the EU are strictly controlled, and that cooperation with external partners is extended, together with the fact that visa requirements for refugee producing countries are very strict, this results in almost no options for a safe arrival in the EU. Leading to tragic losses of life as well as violations of human rights, especially in cases where the EU cooperates with third countries (Den Heijer et al. 2016; Guild et al. 2015). The enlargement of the EU also ensured that the cooperation with neighboring countries altered, and the EU is now trying to closely cooperate with countries such as Romania, Albania, Turkey, Libya and even farther south Niger and Mali. These countries do not guarantee proper protection of human rights (Carrera and Lannoo 2018: 7). In addition, a third country such as Libya is infamous for its modern-day slavery, the illegal detention and the common abuse and torture of refugees (The Guardian 2019; CNN 2018). Carrera and Lannoo argue that "in light of the extraterritorial scope of the European Convention of Human Rights […] EU and Member States would still be responsible for human rights violations [in third countries]" (Carrera and Lannoo 2018: 7). Moreover, they note that "sending people rescued at sea back to countries such as Libya to have their asylum applications assessed there would be tantamount to denying these people their rights to international protection and condemning them to inhumane and degrading treatment and torture […] nor is it clear whose law would apply in these 'disembarkation platforms'. If EU asylum standards would not be applicable, this would mean 'less EU' in this area. It would make the sustainability of the system entirely dependent on third states' willingness to cooperate over time" (Ibid). Although there are still various questions regarding the introduced regional disembarkation platforms or arrangements, the EC's interpretation of it evolved in three possible scenarios. The first scenario focuses on "a regional arrangement for disembarkation in EU Member States" (ECRE 2018: 5) which "implies greater cooperation or even an agreement among coastal states on disembarkation responsibilities [and] is likely to require a mechanism for sharing of responsibility for those disembarked" (Ibid). The second scenario the EC envisages features "a regional arrangement for disembarkation in third countries" (Ibid), which means that "those rescued in the territorial waters of third countries by third country vessels and by vessels under an EU Member State flag, could be disembarked in a third country participating in the regional disembarkation arrangement". The last scenario they proposed emphasized on the possibility to externally process asylum application and/or return procedures in a third country (Ibid). This scenario currently "presents 'significant legal and practical challenges'" (Ibid).

Furthermore, scholars have observed that the CEAS fits into a tendency in which migration policy becomes more and more restrictive and has been actively used as a legitimation for restrictive policies in nation states (Bonjour and Vink 2013; Kraus and Pietikanen 2008). In addition, they have criticized this because it results in a negative impact on resources of refugees, as well as their capacities for participation in social, economic and political life. However, there is an academic debate about this criticism, Thielemann and El Enany conclude that "EU asylum laws have frequently led to an upgrading of domestic asylum laws in several member states […] standing in sharp contrast with the view that harmonization has typically involved tougher policies" (Thielemann and El Enany 2010: 215). Most likely, this has to do with what has been observed earlier in the paragraph: Southern and Eastern EU Member States often did not develop an asylum policy at all, so for them the implementation of CEAS policies are automatically a policy upgrade (Byrne 2003: 343), whereas it compelled western EU

Member States to implement tougher asylum policies. Because of the lack of burden sharing, countries have an incentive to make their asylum policy as unattractive as possible even though Thielemann and El Anany can only find very weak evidence that countries with stricter policies find themselves with relatively smaller burdens.

4.3 Equity in the current CEAS

Due to the current Dublin III Regulation, refugees are forced to settle in countries of first arrival, and have little to say about this, reflecting an assumption that there is a level playing field in the EU regarding procedures, reception and chances (Den Heijer et al. 2016: 1672). However, scholars have convincingly shown that there is no level playing field, there are huge differences between Member States regarding recognition rates, procedural standards, reception conditions, and content of protection (Parusel and Schneider 2017; Doomernik 2018). This results in unfair chances for refugees, as well in more obstruction and a larger burden for countries such as Germany. The CEAS only provides for minimum standards, which means that both in terms of regulation as well as in terms of implementation differences occur. For instance, if we look into regulation: in some EU Member States, the asylum procedure takes 4 months (ECRE 2016a: 1), in others 6 months (ECRE 2016a: 2); in some Member States it takes years before you are granted a permanent status, while in others it is easier. The implementation of policies differs too per country due to different procedural traditions, administrative environments and understandings of the role of the judiciary (Den Heijer et al. 2016: 1673). Parusel and Schneider demonstrate that these differences are resulting in unfair outcomes (Parusel and Schneider 2017: 28). They assessed for 5 nationalities the acceptance rate per country and show large variations in approval rates per country. Kosovars had ranges between 45% (Italy) and 0% (Denmark, Luxemburg, the Netherlands) (Parusel and Schneider 2017: 93), Afghans had a 97% protection rate in Italy in 2016; whereas it was not even 2% in Bulgaria (Parusel and Schneider 2017: 100). Also, for Syrians the differences between states were very large: for 21 Member States acceptance rates were above 90%, however, in Hungary it was as low as 9.5% (Parusel and Schneider 2017: 102). Also, the types of protection status and rights that are granted vary in different countries. Hence a level playing field on asylum regulations and the implementation of policies in the EU is far-fetched.

In short, even though the CEAS is mainly assessed in terms of its ability to guarantee solidarity among Member States as well as its ability to guarantee protection and equity to refugees in light of the Geneva Convention, this review demonstrates that the CEAS has not been designed with either of these two principles as its main goal. It is not surprising then, that both in terms of solidarity, and human rights perspectives, scholars assess the CEAS as performing insufficient.

5. Alternatives to the CEAS

What we have seen above is a lack of solidarity, burden-sharing, quality of protection, and equity in the context of the current CEAS. Moreover, in paragraph 4 we demonstrated how these dimensions are intertwined, and reinforce each other, as well as create tradeoffs. Hence, as is stated in a 2018 OECD rapport: "One key lesson learnt from the 2015/2016 refugee surge in Europe is although the information systems may be in place, given the inevitable remaining uncertainties there is no guarantee that policy makers will act upon it in a timely manner, especially if political or financial costs are involved" (OECD 2018: 9).

In light of the CEASEVAL project we constructed a roadmap of ideal-typical CEAS' that demonstrate the certain policy options of the CEAS. If we want to organize asylum and migration governance within the EU framework the following options might be possible. Figure 1 demonstrates that starting in 1999 with the summit in Tampere the EU policymakers had one ideal-typical CEAS in mind, namely a centralized common European asylum system. However, since 1999 the features of the EU and its Member States, including the external world, changed drastically. For this reason, four alternative ideal-typical CEAS' emerged. The first ideal-type focuses on sovereign asylum systems within the EU framework in which the Member States are not willing to transfer sovereignty to an EU agency. This is basically a status quo situation in which the Dublin Regulation is a cornerstone of the asylum and migration governance framework in the EU. The second ideal-type might be the cooperation among sovereign asylum systems. This ideal-type distinct from the former ideal-type by the fact that the EU Member States are willing to transfer some of their powers to the EU, namely for relocation and distribution of asylum seekers, to manage asylum and migration governance. The third ideal-type might be called 'mini-Schengen' or 'coalition of the willing'. In this policy option it might be possible that Member States who are willing to cooperate closer on asylum and migration governance and retain optimal protection for refugees do so, while the other EU Member States who are reluctant do not participate in this system. However, this would cause the uncoupling of freedom of movement within the EU and the EU membership. The fourth and last ideal-type might offer a situation that is more unconventional as it suggests Member States to transfer some of their sovereignty to lower levels of government and the EU. In this decentralized common European asylum system it might be possible to retain optimal protection of refugees and manage asylum and migration governance in cooperation.

Figure 1: Ideal-typical roadmap for the CEAS
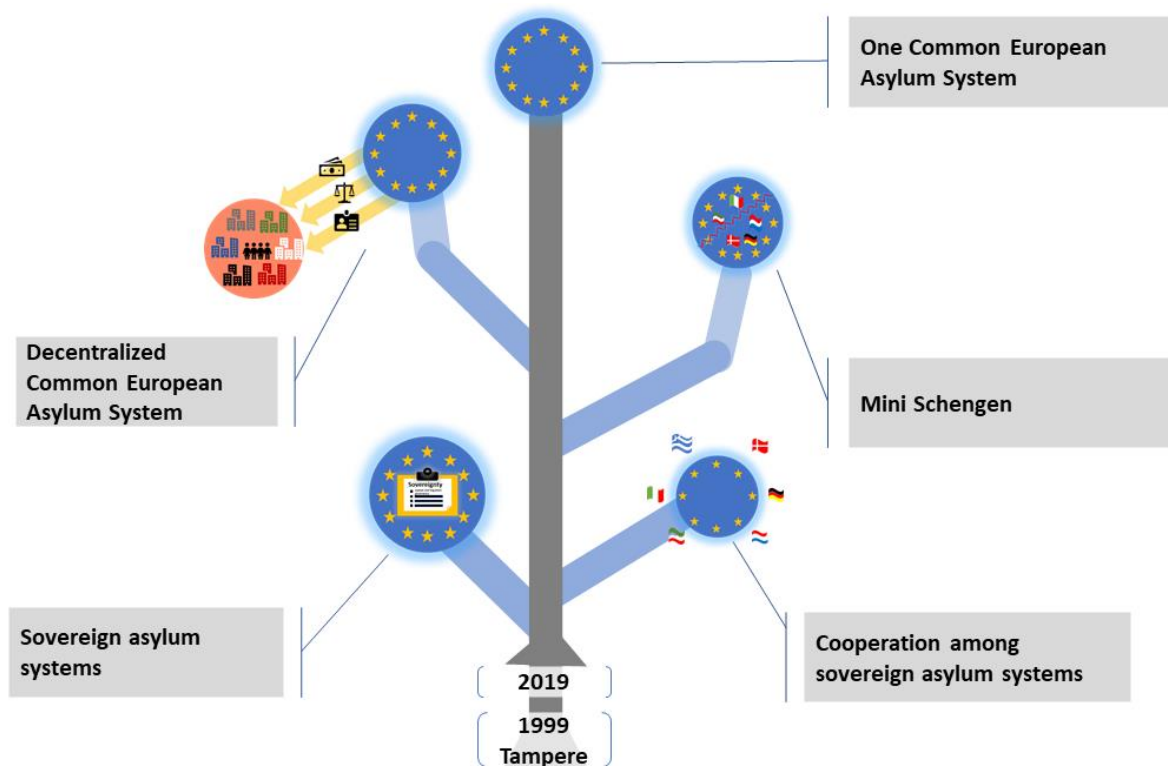
To come to these four ideal-types the ICMPD developed a variety of possible 'building blocks', as shown in figure 2, that are necessary when following the roadmap of figure 1. Hence, if we want to manage asylum and migration on EU territory there are some possibilities regarding the distribution of asylum seekers.

Figure 2: Building blocks for ideal-typical CEAS'

(Source: presentation by Martin Wagner, ICMPD at CEASEVAL Conference on 30-09-2019)

The four ideal-types of the CEAS that we sketched include one or two of these building blocks regarding distribution. For instance, one might argue that in the first ideal-type where there is a status quo situation the distribution of asylum seekers will be done according to the Dublin Regulation and/or conditional solidarity. While in the case of the second ideal-type, where the Member States agreed to transfer some sovereignty to the EU, the distribution of asylum seekers is done more on the basis of corrective allocation and/or flexible solidarity. Furthermore, regarding the borders of Member States each ideal-type will feature one of these building blocks and might also affect the willingness or reluctance of Member States to cooperate with the EU Border Agency and to what extent. This eventually decides on how the EU borders are perceived by the Member States, hence, are they deemed to be totally closed off or is there room left for a hotspots approach at the EU borders?

If we elaborate on these four broad ideal-types a variety of more specified alternative policy options emerge and are in fact discussed by scholars. These scholars argue that until now, the only attempts to make the CEAS a more burden-sharing system, have been ad hoc attempts. More systematic changes in the form of an automatic distribution key have been proposed by the EC, but until now turned out to be politically unfeasible. In the coming paragraphs, a review of proposed alternatives will be outlined. This review is by no means exhaustive but provides an overview of the various directions authors have thought of. Even though all authors agree on the fact that the CEAS has to be redesigned, we will demonstrate that there is quite some disagreement on how exactly. What becomes visible is that there is a division between authors who have a more moral focus, where human rights and equity is seen as the most important outcome; compared to scholars who have a more economic perspective on solidarity and see a fair division between Member States as their main focus. The largest difference is the focus not only on allocation but also on protection measures in the first group, as well as the requirement that refugees should have a say in their own allocation as well. It seems that especially this last requirement, which of course strongly intersects with the level of protection in countries, is hard to combine with a pure burden sharing approach where refugees are more operationalized as non-agentic 'trading objects' or 'public goods'. Finally, a 'third way' is identified in paragraph 6, where the focus is shifted from the national and European level, towards the local level, resulting in a more bottom-up and pragmatic view on European asylum and migration policy. We suggest that, when we consider the fundamental aims of CEASEVAL and the retention of human capital, the local solution coupled with an experimentalist governance approach might lead to the most ideal CEAS. The direct funding of local governments by either the AMIF or straight from the Union's budget will result in a mechanism that is able to fairly share the responsibility of Member States with full compliance to international protection principles and the definition of refugee hood as stated in the Geneva Convention. In addition, the mutual recognition of protection status between Member States would stimulate the retention of asylum-seekers' human capital

In the following part, all alternatives will be discussed, and assessed on both the dimensions of solidarity and equity. Important to note is that these alternatives are not mutually exclusive per se, but rather provide different emphases and paradigms to the CEAS.

5.1 Refugees as human capital

Crosscutting alternative 1: Facilitating a Migration Union - No coercion and a "central bank" for refugees

Guild et al. propose a new CEAS in which coercion (implicated within the Dublin system where refugees have no choice and are transferred to their countries of arrival) is avoided and fundamental human rights are respected (Guild et al. 2015: iv). The fundamental changes with the current system are that Guild proposes that the EU should provide safe access to Europe, and the protection of beneficiaries should be mutually recognized by all Member States (Guild et al. 2015: iv – v). Furthermore, the Dublin Regulation should be reformed by centralizing asylum decisions within a European agency and establishing consensual distribution keys (Guild et al. 2015: 39).

So, referring to the developed ideal-types as demonstrated in figure 1 and to the 'building blocks' that would support this alternative in figure 2. This alternative resembles the most with 'one common EU asylum system' in which the distribution of asylum applicants is managed by a fair distribution system instead of the Dublin Regulation. This fair distribution system would be lead by a newly developed EU asylum agency that operates from EU centers at the EU borders in order to make the EU accessible. Moreover, in this alternative there is room for the current freedom of movement as agreed in the Schengen Agreement. Furthermore, resettlement schemes are most likely to increase in numbers. In the following paragraphs we elaborate on the proposals made by Guild et al.

The first change they propose is the avoidance of coercion. First, the authors propose an agency, which, 'like the European Central Bank' [ECB] is responsible for processing asylum applications and determining responsibilities across the EU (Guild et al. 2015: 38). This agency should distribute refugees on the basis of a so called 'consensual distribution mechanism' in which the word consensual mainly points to the refugees: they should have a choice in a 'reasonable range of options' regarding their country of arrival (Guild et al. 2015: iii). This idea is supported by Carrera and Lannoo, who claim that "the EU managed to overcome the huge doubts about the soundness of EU banks, and restore trust in the financial system by creating the ECB" (Carrera and Lannoo 2018: 5). For this reason, they argue that "the EU should […] put all its efforts in developing a Migration Union based on more intra-EU institutional solidarity and supervision" (Ibid). The mandate of such a new EU asylum agency "would be entrusted with coordinating and applying a new model for distributing responsibility for processing asylum applications and supervising [Member States] in carrying out that responsibility"(Ibid). Betts, Costello and Zaun make a similar argument by noting that an EU agency should base the distribution of asylum-seekers on the preferences of asylum-seekers. This "preference matching would be most effective when combined with a renegotiated Dublin agreement that clearly and equitably allocates responsibilities as a basis for a preference matching scheme" (Betts, Costello and Zaun 2017: 103).

The second change Guild et al. propose is safe access to the EU. The authors recommend lifting or suspending visa requirements and carrier sanctions for those nationalities in greatest need of refuge (Guild et al. 2015: i). Furthermore, the EU should work more pro-actively on a range of humanitarian evacuation programs for instance through implementing humanitarian visa, resettlement and humanitarian admission, wide family reunification possibilities and student visa (Guild et al. 2015: 9 – 13). They argue that "the denial of safe access is rooted in visa policies" (Guild et al. 2015: 6). Before the founding of the EU and its internal market there were less though visa policies in place. Scholars

like Hein de Haas noted that "until the 1990s there were rarely drownings of migrants in the Mediterranean" (Guild et al. 2015: 4). This suggests that "the introduction of mandatory visas for nationals of almost all North African and Middle Eastern countries (except Israel) has made it much more difficult for people to [come to the EU] by safe, regular means such as scheduled flights and ferries" (Ibid). However, in December 2018 the EC proposed regulations on European Humanitarian Visa, which is an initial attempt to grant safe access to the EU via adequate EU-wide visa policies (European Parliament 2018).

Thirdly, the authors suggest mutual recognition of positive asylum decisions accompanied by mobility rights at an earlier stage for protection beneficiaries. They argue that this would "address many of the incongruities, hardships and problems that are associated with the current Dublin system" (Guild et al. 2015: 23). Refugees are the only group that cannot make use of free movement within the EU and are literally treated in the same way as 'trade objects' where countries of first arrival are responsible for certification and warehousing. This perfectly reflects the dominance of the more economic view on refugees. At present, there is no obligation under EU law for Member States to recognize positive decisions to grant refugee status or subsidiary protection made by other member states. According to Guild et al. article 78 TFEU obliges the EU to "adopt measures for a Common European Asylum System comprising […] a 'uniform status of asylum for nationals of third countries, valid throughout the Union', and a 'uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection" (Guild et al. 2015: 22). The authors work out 2 scenarios:

The first scenario is based on the mutual recognition of an asylum claim by EU Member States directly after receiving protection status (Guild et al. 2015: 29). In order for this to work, new EU regulation on the "transfer of protection […] would be needed to regulate the legal position of those taking up residence in another state, requiring the second state to accord all Qualification Directive rights associated with the concerned person's status" (Guild et al. 2015: 30). Hence, mutual recognition would imply "a degree of flexibility and recognize the agency of a refugee, whose right to stay in the EU is based on common EU standards and criteria that should be applied in a consistent manner" (Ibid). As a concluding remark, Guild et al. note that this scenario will most likely foster the concern of Member States who "might fear that they would attract a significant number of people who would seek access to their labor markets and social welfare systems at the earliest opportunity" (Ibid). Thus, a model as proposed in the first scenario "would […] potentially need to be preceded by other measures aimed at ensuring all Member States are strongly encouraged, and assisted as required, to establish and maintain well-functioning asylum systems that ensure fulfilment of the rights of refugees immediately upon recognition" (Ibid). The second scenario focuses on the policy that currently asylum-seekers receive after five years a protection status which would be altered to 2 years instead (Ibid). In this scenario refugees or asylum-seekers will be able to receive long-term residence status much faster, which will benefit their integration as they will be able to join quicker their "extended family, or to take up work or other opportunities in a Member State with which they have close connections" (Guild et al. 2015: 31). Both scenarios require strict harmonization and a common establishment and maintaining of well-functioning asylum systems. Furthermore, the mutual recognition "would reinforce the operation of the CEAS in line with key EU principles of free movement of persons and solidarity" (Guild et al. 2015: 23).

In terms of a framework for solidarity, the authors do not go into detail, but criticize the idea of Member States compensating other Member States financially when money is used "to buy their way out of their protection responsibilities" (Guild et al. 2015: 50), because of the aforementioned moral problems in conceptualizing refugees as burden. The solidarity they propose is solidarity of 'common rules' which would resemble Knodt and Tews' idea of transnational solidarity. However, it might be reasonable to expect that in this scenario, human capital will be unequally divided over the EU.

ECRE proposes a similar scenario to Guild et al., where consensual distribution from the vantage point of the refugees is central (ECRE 2017: 9). Also, an alternative to Dublin is proposed, in which the existing connections between Member States and asylum-seekers, as well as the preferences of asylum-seekers have to be considered, linked to a system of fair responsibility-sharing between Member States (Ibid). This matching of preferences is supported by Betts, Costello and Zaun as they argue that it would be the most effective way to distribute asylum-seekers when major reforms on Dublin are negotiated (Betts, Costello and Zaun 2017: 103). Safe legal access to the EU is emphasized. Guild et al. add that "serious reflection should be given to the creation of a centralized EU agency charged with decision-making powers to assess asylum claims" (Guild et al. 2015: 37). Furthermore, in contrast to Guild et al. (2015), ECRE favored in 2005 a 'financial burden sharing instrument' that compensates for the costs of hosting and processing asylum claims, which could compensate Member States receiving higher numbers of refugees (ECRE 2005: 4). Finally, they proposed to centralize procedures through the setting up of joint responses to crisis, and a Return fund and Integration fund (Ibid).

To conclude, all human rights-based views converge on more harmonization and centralization but disagree on the amount of free choice refugees should receive within this model. For this reason, ideal-typical alternative 1 demonstrates similarities both with the concept of supranational solidarity as well as with international solidarity. The supranational features are most evident in the establishment of common rules for everyone in every Member State. The proposals by Betts, Costello and Zaun and ECRE, on the matching of preferences of asylum-seekers, the mutual recognitions of asylum claims by Member States, and the lifting of strict visa regulations "[are] aimed at the creation of comparable […] living conditions" (Knodt and Tews 2017: 51). However, although "organized interest groups must always aim to organizes across national borders when addressing European policy" (Ibid), this does not mean that they are not dependent on the willingness of Member States to cooperate. Therefore, Alternative 1 demonstrates similarities with international solidarity too. Knodt and Tews describe international solidarity as the phenomenon that "involves collective actors on the horizontal dimension as it is carried out beyond European borders into the international sphere" (Knodt and Tews 2017: 52). While there is a case for what Guild et al. and ECRE propose, current political reality demonstrate that the individual Member States, particular regarding topics addressing their sovereignty, are reluctant to transfer power to the EU.

5.2 Refugees as burden

Crosscutting alternative 2: Honoring the Temporary Protection Directive

Another proposal done by scholars such as Bačić Selanec (2015) is to further develop the TPD. Although the TPD technically is not an alternative to the CEAS, the appropriate use of the TPD within the CEAS could be a solution. As we introduced above, everyone who falls under the directive will be

protected for 3 years and all Member States are equally responsible for this protection, hence the TPD provides for more Member State solidarity. Important to note is that only the Member State to which persons with an asylum claim are transferred to "pursuant to the quota system of the temporary protection scheme [are responsible] and not the Member State in which they took their first step onto Union territory" (Bačić Selanec 2015: 98). The Dublin system is thus not in use when the TPD is activated.

In contrast to the alternative proposed by Guild et al. the allocation of asylum-seekers is in this context coercive in nature and results into much more solidarity then currently results from the Dublin Regulation. Although more solidarity is assumed this solidarity is only based on certain conditions, namely the conditions of the TPD. As this alternative does not pursues common rules but does purse the sharing of responsibilities between EU Member States, this alternative crosscuts resembles the most with two developed ideal-types. It contains both features of the ideal-type 'cooperation among sovereign asylum systems' as well as features of 'sovereign asylum systems'. In this alternative it is therefore most likely that the EBCG will increase its importance in the EU's asylum and migration governance.

Furthermore, many scholars have wondered why this already existent directive has not been applied, and instead ad hoc provisions that were inefficient have been established (Sardelić 2017; Ineli-Ciger 2016). Especially because asylum claims originated only from a few countries (Syria, Iraq, and Afghanistan) this is also the logic of the TPD. In a study for the EC, Beirens et al. have argued that there are several procedural and legal factors that have prevented activation: first of all, the absence of a clear definition regarding situations where it could have been applied (Beirens et al. 2016: 16). Bačić Selanec argues that "the textual ambiguity [of the TPD] was most likely left there for a reason, so as to provide more leeway for the Council and the Commission in the expected political struggles with Member States when pushing for the activation of the temporary protection mechanism" (Bačić Selanec 2015: 102). Secondly, the cumbersome procedure prevented the TPD to be activated (Beirens et al. 2016: 19). Beirens et al. argue that the length of the procedure, starting from the occurrence of a mass influx to the actual implementation in Member States is too long and in addition the unclear definitions, which result in too much political discretion makes it almost impossible to activate the TPD (Beirens et al. 2016: 20 – 22). The last factor that is an obstacle to the activation of the TPD is the unpredictability regarding the application of the solidarity clause, where Member States have to cooperate with each other with regard to transferring persons, while the TPD did not define how to (Beirens et al. 2016: 24). In contrast to the procedural and legal factors proposed by Beirens et al., Bačić Selanec has suggested that Member States have not used the TPD for political reasons: by sticking to the Dublin Regulation and acting as if there was no alternative, Member States could blame not the system but border Member States (Bačić Selanec 2015: 113).

However, during the war in former Yugoslavia, many countries used a policy very similar to the TPD. The advantage was that in this time the spreading of refugees over countries was not so unequal, so there was more room for cooperation between EU Member States and, has also proven that it is actually possible to arrive at frameworks for the sharing of human capital. However, the long-term effects of the TPD might not be different from a 'normal' asylum procedure. Many people that received a similar form of temporary protection opted for and received long term residence. Also, the quality of protection differed strongly in various countries (Dahlman 2016: 12). According to table 1, as discussed in paragraph 3, we argue that this alternative resemblance the most with the model based

on intergovernmental solidarity. Alternative 2 is characterized by the fact that it aims not for common rules but rather for a model where Member States share a responsibility together. Knodt and Tews note that in the multilevel system of the EU the Member States are addressed by intergovernmental solidarity without considering individual citizens (Knodt and Tews 2017: 52).

Crosscutting alternative 3: Permanent mechanism – corrective distribution key as proposed by the EC

Other scholars propose a permanent mechanism enabling Member States to share asylum responsibilities. The basis of this argument is that a fair sharing of responsibilities will not be achieved without some form of coercion. According to Hatton this stems from the operationalization of refugees and asylum-seekers. Hatton operationalizes refugees as a 'public good' (Hatton 2005: 114), along the lines of Olson's collective action problems (Olson 2002: 14). Thielemann argues that if a state refuses to grant asylum or neglects its obligation to offer protection it will "divert refugee flows onto other countries" (Thielemann 2018: 70) and increase the instability of the region. For this reason, the scholars who propose Alternative 3 to the current CEAS see no other option than to achieve the sharing of responsibilities with a coercive distribution of asylum-seekers.

Referring to figure 1 and the developed ideal-types this alternative crosscuts with the ideal-type 'cooperation among sovereign asylum systems' and 'one common European asylum system'. The corrective allocation of asylum applicants should be managed by an EU asylum agency that operates in hotspots.

For refugee allocation: 'cooperative policy making can lead to socially optimal asylum policies whereas independent national policy making cannot' (Hatton 2005: 117). Hatton proposes deeper harmonization of procedures and standards across the whole range of asylum policies as well as a stronger monitoring system (Hatton 2005: 111). A centrally operated 'burden sharing mechanism' is needed (Hatton 2005: 117). The burden sharing mechanism should consist of a formula for redistributing asylum applications that would replace the Dublin Regulation. It can be considered a broad consensus that fiscal or economic wealth of a country as well as size are the main predictors to handle refugee intake. A commonly used formula has been 40% focused on the size of the population, 40% will be determined by the GDP, 10% of the formula will be based on the past number of asylum-seekers and the last 10% will be defined by the unemployment rate in the Member State (European Parliament 2015; European Commission 2015).

The Dutch Advisory Council for International Affairs proposes a slightly altered version of this same scenario, based on a so-called 'corrective mechanism'. The Advisory Council proposes a permanent mechanism based on a corrective distribution, enabling Member States to share asylum responsibilities (Hirsch Ballin et al. 2016: 21). A corrective distribution means that distribution only takes place if a country receives a disproportionately high number of refugees. Based on a fictional ideal distribution, it can be calculated which country, receiving a disproportionately low number of refugees, should be given responsibility for them. Hotspots with officials from other Member States can in these cases be installed in countries with a high influx of refugees. The European Council should be given the power to adopt a distribution key to establish a fair sharing of responsibilities. The Advisory Council believes that further harmonization of the CEAS is essential (in border protection, registration, asylum procedure, integration and return and illegal stay). The EU should evaluate the

implementation of the CEAS more thoroughly. Furthermore, they propose free intra-EU mobility for refugees two years after they received their status, under certain conditions and for work and study. They argue that within 10 years the EU should adopt a uniform asylum status and complete free mobility within the EU for refugees. Finally, The EU should work more together in the registration of asylum-seekers and assessment of asylum applications.

The Advisory Council believes that further harmonization of the CEAS is essential. Asylum applicants have to be confident that their application will receive equal treatment in any of the Member States. The Dutch state is advised to emphasize the collective and shared missions of Member States to offer international protection, to advocate amending the Dublin Regulation and further harmonization of the CEAS, the future prospect of mobility for asylum-seekers, and greater use of resettlement and the creation of safe legal avenues for migration to the EU. This model is also clearly based on a supranational model of solidarity. Supranational solidarity is about the establishment of common rules for every actor within the system, such as common European citizenship or the common market. The most important differences between Alternative 1 and 3 are that in the latter a form of coercion is indispensable and that in the initial proposed distribution key the individual preferences of the asylum-seeker are not considered. Therefore, Alternative 3 in contrast to Alternative 1 demonstrate some similarities with the concept of intergovernmental solidarity. Alternative 3 mainly addresses the Member States in EU's multilevel system without considering individual citizens (Knodt and Tews 2017: 52).

Crosscutting alternative 4: Coalition of the willing – less commonality in the CEAS

Hirsch Ballin et al. proposed the idea of a 'coalition of the willing'. This means to come to closer cooperation on asylum issues with Member States that are able and willing to maintain an effective and humane asylum policy (Hirsch Ballin 2016: 21). Thus, on the terrain of asylum, differentiated integration of Member States should take place. This proposition supports a less common approach and for this reason is not merely a different manner in how the EU could organize asylum and migration governance but is a totally different approach of cooperating on asylum issues in the EU. Hirsch Ballin et al. note that in order to prevent free-riding, non-participating Member States should financially contribute to the coalition of the willing (Ibid). Furthermore, although it remains unclear whether they mean with resources, staff, or in efficiency they propose that the protection of the external borders should be improved. The Dutch Advisory Council on International Affairs supports the establishment of the European Border and Coast Guard Agency but warns that the operations of this agency should be democratically legitimate and controlled by the European Council (Hirsch Ballin 2016: 18). Furthermore, national armies or the military police can be used to protect the Greek-Turkish sea border, as the Advisory Council did not think that the proposed 1500 extra border control officers were sufficient (Hirsch Ballin 2016: 18). However, at the same time the principle of *non-refoulement* should be honored, and solidarity with Turkey and Lebanon (in the form of resettlement programs to Europe from these countries) is important (Hirsch Ballin 2016: 19). It is often emphasized that also these countries cannot bear the burden on their own.

This alternative features the most with the ideal-type 'mini-Schengen' in which fair distribution on specific terms and conditional solidarity are key. It is important that the EU controls the external EU

borders which could be managed by the EBCG. Furthermore, in this alternative it is likely that resettlement schemes with third countries increase in the mini-Schengen area.

This proposal basically extends the table provide by Knodt and Tews (2017) in the sense that it opens up the possibility to create different boundaries as to which extent solidarity applies. Within these newly established boundaries, the models of supranational, intergovernmental, and even international solidarity are used. The supranational characteristics of solidarity in Alternative 4 are focused on the fact that Hirsch Ballin et al. favor to aim comparable living conditions (Knodt and Tews 2017: 51) in all Member States, however, as they mention that asylum issues can be seen as a collective action problem non-participating Member States should financially support the others. Although Hirsch Ballin et al. support the aim for comparable living conditions in all Member States they do not elaborate on the preferences of the individual, therefore, this proposal possess features from intergovernmental and international solidarity. Intergovernmental solidarity is demonstrated by the fact that Member States are addressed as collective actors on a vertical dimension in the EU. Features of international solidarity are mainly addressed in the context of resettlement programs with 'third' country like Turkey and Lebanon.

Crosscutting alternative 5: The multi-dimensional burden sharing comparative advantage approach

Thielemann (2018) argued that solidarity and the allocation of human capital can happen on one or more dimensions. He said that "multi-dimensional burden-sharing regimes are those that do not seek to equalize burdens or responsibilities on one particular contribution dimension alone, but instead operate across several contribution dimensions" (Thielemann 2018: 4). In practice this means that "some multi-dimensional regimes are based on an explicit compensation logic" (Ibid). Another type of "multi-dimensional burden-sharing mechanism is based on an implicit trading logic which recognizes that states contribute to international collective goods such as refugee protection in different ways" (Ibid). Thielemann is in favor of a multi-dimensional form of burden-sharing using 'implicit trading' where the disproportionate efforts in one dimension are compensated on other dimensions. This proposal is based on the theory of comparative advantage and assumes that some countries can contribute to some collective goods relatively more cheaply than another country (Thielemann 2018: 7). Examples of comparative advantages in the context of migration are proactive and reactive measures. Proactive measures "seek to alleviate push-factors and aim at preventing a refugee crisis to develop" (Ibid). In the past some countries have sent peacekeeping troops to a region in order to decrease the number of refugees coming to their countries. In this context proactive measures "should be taken into account in calculating the amount of refugees a country should receive" (Ibid). In contrast, "reactive measures aim at dealing with the crisis once it has occurred" (Ibid). An example of a reactive measure has been the willingness of certain EU Member States, namely Germany and Sweden, to grant asylum to as many asylum-seekers as possible during the mass influxes of 2015 and 2016. In this model, these countries should be also considered when distributing asylum-seekers.

The examples that Thielemann give are crosscutting the ideal-types: 'cooperation among sovereign asylum systems' and 'sovereign asylum systems'. The use of so-called 'implicit trading' schemes demands a certain flexibility in the Member States solidarity and most likely favors Member States who close migration deals with third countries. In addition, the external processing of asylum

applicants might stimulate the preservation of the Schengen area. This means, in evidently, that the EU external borders need to be closed off, which could be managed by the EBCG.

Thielemann describes this is as a more 'implicit trading model' where countries can use their comparative advantages: we see empirically that some countries contribute disproportionally to peace keeping missions, e.g. reacting proactively, whereas others contribute to refugee reception, e.g. reactively (Ibid). Arguments in favor of this proposal are that EU citizens are in favor of more burden-sharing and supranational approach to asylum policy, and harmonization does result in better policy (but there is debate about this). However, Thielemann unfortunately does not elaborate on how this model can put to practice and how rules should be established. We argue that Alternative 5 would work both with a model of intergovernmental solidarity and supranational solidarity. First of all, this model demonstrates intergovernmental solidarity as the Member States are seen as the collective actors who can operate differently but need to cooperate in an EU multilevel system in order to achieve solidarity. Secondly, features of supranational solidarity are demonstrated in the fact that this model proposes to establish common rules for every actor within the system, whether it is a Member State who is proactively or reactively involved. Moreover, supranational solidarity "implies that it is not exclusively focused on the European level but on complementing or overarching solidarity at the national or subnational levels" (Knodt and Tews 2017: 52).

Crosscutting alternative 6: Market based refugee sharing system – decentralized trading scheme following the emission trading scheme

Alternative 6 is based on a market-based refugee sharing system within the EU, such as the in Kyoto agreed emission trading scheme. This alternative model was first proposed by Peter Schuck who came to this alternative by looking at the problem of refugee sharing differently. He noted that "virtually all discussions of refugee law and policy focus on the acute vulnerability of refugees" (Schuck 1998: 283). By itself it is not strange that scholars are looking at the problems with refugees this way, however, [Schuck takes] these remorseless facts as tragically given" (Ibid). He focuses on "the burdens that the sudden, massive refugee flows that are now endemic pose on states" (Ibid). According to Schuck, the responses of EU Member States to the crisis have harmed and continue to harm any scheme of international human rights protection (Ibid). As a result of these responses Member States are more reluctant to accept asylum-seekers, thus, we need to find a solution that eases the burdens of mass influxes "in exchange for a set of obligations that [Member States] are more willing to accept and implement (Ibid). In Schuck's opinion, "this can only be accomplished by distributing obligations more widely and fairly among states over time" (Ibid).

This sixth alternative crosscuts a bit with all the developed ideal-types from figure 1. Schuck strives for a decentralized system in which asylum applicants can be 'traded' following a scheme that is similar to the emission trading scheme. However, in this situation the decentralization means that from a central international organization, i.e. an EU agency like a newly developed EU asylum agency, powers are transferred to the Member States. Hence, on the one hand Member States relinquish their sovereignty to a centralized agency, while on the other hand this agency allows them to regain some of their sovereignty. This model, therefore, demonstrates, features of the ideal-types 'one CEAS', 'decentralized CEAS', 'cooperation among sovereign asylum systems' and 'sovereign asylum systems'. Moreover, the Member States will work with upper caps, i.e. maximum/minimum amount of asylum applicants that

they allow on their territory, which they can trade with other countries. In this situation it might happen that some Member States are willing to grant access to more applicants than other Member States and eventually form a so-called 'coalition of the willing'. Hence, this alternative features the ideal-type 'mini-Schengen' too.

For this reason, Schuck arrived in 1997 with the following "proposal [that] seeks a refugee protection system that can simultaneously achieve four major objectives: [first], maximization of protection resources; [second], observance of human rights principles; [third], respect for political constraints; and [finally], administrative simplicity" (Schuck 1997: 270; Schuck 1998: 301). According to this proposal each EU Member States should be encouraged to "allocate whatever resources it possesses or can mobilize to the refugee protection strategy or strategies – root cause, temporary protection-cum repatriation, and resettlement –that can be achieved to the greatest extent at the least cost" (Schuck 1997: 271; Schuck 1998: 301). In addition, the distributing scheme of Schuck "should ensure that refugees actually receive the protection to which international human rights law already entitles them" (Schuck 1997: 271; Schuck 1998: 302). Moreover, the current political constraints to a sustainable and equitable distribution system should be acknowledged and the EU institutions and practices in place need to "take due account of those constraints" (Ibid). At last, Schuck favors a decentralized decision-making structure in order to work genuinely; this would leave most of the initiative to the individual Member States instead to EU agencies (Ibid).

He proposes a framework similar to the Kyoto emission-trading scheme. In this model, an international agency, in the context of the EU an EU agency, would assign a refugee protection quota to each Member State on the basis of which Member States would then be allowed to trade their quota by paying others (with money or in kind). Schuck argues that Member States are "motivated largely by their perceptions of national self-interest" (Schuck 1998: 312). In addition, Member States "vary enormously in both the attitudes and the resources that they bring to refugee policy" (Ibid), some Member States are willing to "devote substantial resources to refugee protection while other [Member States] do little but pass the buck" (Ibid). In a sense, this happened during the crisis in 2015 when the EU paid financial compensation to most popular destination countries.

Furthermore, following Schuck's argument the EU would be a perfect stage to implement this system as Schuck states that "a regionally structured system would possess several important advantages over a more global one" (Schuck 1998: 285 – 286). First of all, "it could exploit a tradition of regional responsibility for localized refugee flows and solutions" (Ibid). Secondly, in Schuck's opinion "the greater commonality of interests and values that regions tend to share, and the more intense patterns of interaction that they exhibit [the more administratively manageable it makes]" (Ibid). For these reasons, a system in which a Member State is able to decide whether it protects "the quota refugees itself […] it could transfer part or all of its quota obligation to another [Member State] in a voluntary, public transaction" (Schuck 1998: 313). In practice, this would mean that the Member State that transfers pay the state to which it transfers to, according to Schuck it is possible to include 'third' countries to this regional burden-sharing system, which means that EU Member States also to, e.g. Turkey, can transfer their quota obligations (Schuck 1998: 313). This system should foster and "satisfy three criteria of fairness: consent, broad participation, and proportionality" (Schuck 1998: 307).

Similarly, to Thielemann's model, this alternative does not specify whether the solidarity should be more based within Member States or on a supranational level. Hence, we assume that both

international solidarity and intergovernmental solidarity features in Alternative 6. As Knodt and Tews note "intergovernmental solidarity addresses national Member States as collective actors within the multi-level system of the EU and the vertical dimension without taking into account individual citizens" (Knodt and Tews 2017: 52). In this alternative it is most likely that an EU agency will decide on the quota obligations and oversees the 'refugee transactions. In this context, Member States participate in the multilevel governance structure of the EU and, therefore, need to demonstrate intergovernmental solidarity. On the other hand, it could be argued that the Member States participate in such a regime without interference of the EU because they are able to trade their 'refugee transactions' with safe 'third' countries. In this context, the EU Member States need to demonstrate international solidarity as they are "collective actors on the horizontal dimension […] beyond European borders into the international sphere" (Ibid).

6. The role of the local level in an ideal-typical CEAS

Besides the alternatives offered in the aforementioned paragraphs, there is a vast stream of literature arguing for a more local approach to issues such as asylum and migration in the EU. Some of these authors argue from a more theoretical standpoint, and do not connect their view directly to the CEAS, such as Barber (2013), Baubock (2003) and Sassen (1991), however, their ideas are worth noticing and reviewing here in relation to the CEAS. Others, such as Doomernik and Ardon (2018), Glorius et al. (2019), and papers published by city networks, like EUROCITIES (2015), have linked their perspective on the increasing importance of the local government in asylum and migration issues in the EU. In addition to this, "[s]ince migration is extensively regulated at national level, it is assumed that uploading migration to the European level makes 'law' the expected tool for harmonization or even coordination" (Cardwell 2016: 8). However, various scholars offer new modes of governance. For example, Sabel and Zeitlin propose an experimentalist governance that "is a recursive process of provisional goal-setting and revision based on learning from the comparison of alternative approaches to advancing them in different contexts" (Sabel and Zeitlin 2011: 3). In the following paragraphs we will discuss the 'local' approach in asylum and migration management and elaborate on the opportunities and challenges of new modes of governance in the context of asylum and migration governance on the local level. This alternative, therefore, refers the most to the ideal-type 'decentralized CEAS' in figure 1.

Benjamin Barber and Saskia Sassen have noticed the political power and agency of cities in today's globalized world. According to them, certain global issues are actually local issues, even if they are dealt with on state level, and cities have the political ability and competence, as well as the political relations to deal with those issues themselves. For example, Sassen argued in 1991 that a new type of city appeared, namely the global city that "concentrate[s] control over vast resources, while finance and specialized service industries have restructured the urban social and economic order" (Sassen 1991: 4). Migration and asylum are examples of such issues. Most immigrants arrive in cities, work and go to school in cities, find houses in cities, do groceries and look for health care in cities (CEMR 2018: 3). Furthermore, cities have to deal with them, regardless of their national membership status (Doomernik and Ardon 2018: 92 – 93). The increased research interest on the lower levels of governance became more apparent after the mass influxes of 2015 and 2016 (Doomernik and Ardon 2018: 91). Glorius and Doomernik argued that "a growing academic appreciation of the importance of multi-level governance, notably in the [EU], has come together with the highly visible realities of the said 'crisis' which have largely played out at the local level" (Doomernik and Ardon 2018: 91; Doomernik and Glorius 2016: 438). This is further supported by the various initiatives of European cities to get more political influence in the decision-making and funds for migration and asylum issues.

The Urban Agenda for the EU, for instance, notes that "cities have shown to play an important role in promoting positive public perception of migrants and refugees and an understanding among the public of the need and obligation to grant them protection" (Parnership on Inclusion of Migrants and Refugees 2017: 5). Moreover, EUROCITIES is a network of European cities, which objective is to foster and reinforce the role of local governments in a multilevel governance structure. Both city networks have complained about the neglect of their role and preferences within the CEAS and have argued to give more space for local practices, also in terms of (financial) resources (EUROCITIES 2015: 3). These city networks argue that city authorities are responsible for social services and the social cohesion in their communities, but that "large and rapid inflows of migrants" (Ibid) challenge the existing

structures. For this reason, the city networks argue that "[t]hey should therefore be included, alongside national governments and NGOs, in the list of bodies that are eligible for emergency financial assistance in responding to migratory pressure" (Ibid). Furthermore, they argue that cities are able to "actively work together with local companies and employers and actively mediate between companies and refugees, also for internships and voluntary work arrangements" (Doomernik and Ardon 2018: 95). This line of argumentation follows a similar design as the argument made by Betts, Costello and Zaun. These authors note that with the distribution of asylum-seekers the preference of asylum-seekers should be considered (Betts, Costello and Zaun 2017: 103). This preference matching system would improve the allocation of refugees and "make the host society a better match overall with the incoming human capital" (Doomernik and Ardon 2018: 95). EUROCITIES adds to this that "no resettlement scheme can be successful if a reception place is not available at local level, if local civil society organizations are not involved and if awareness-raising and consensus building amongst the local population are not properly managed" (EUROCITIES 2015: 3). In short, they argue that the local authorities are indispensable when trying to create sustainable and equitable asylum reception and integration.

Baubock mentions an interesting challenge for the 'local turn' in asylum and migration governance, which is the notion of citizenship in such a context. Rainer Baubock elaborates on this in his article *Reinventing Urban Citizenships*, he argues that citizenship should be based on 'jus domicile', which means that "membership is not given on the basis of abstract notions of giving consent to enter a bounded community, but instead upon the mere reality of presence and residence in a place" (Baubock 2003: 150; Doomernik and Ardon 2018: 93). With this Baubock "criticize[s] postmodern perspectives [because] without these, urban citizenship would be reduced to a bundle of universal negative liberties provided by national or supranational institutions and would lose its significance as a status of equal membership in a shared political space" (Baubock 2003: 141). In practice, this would mean a form of city membership, including local voting rights, disconnected from the membership of a national state (Varsanyi 2006: 223). In fact, the EU already follows such a logic, due to the introduction of the EU citizenship, EU nationals are allowed to vote for local elections in European cities where they live and work but are not a national citizen (Varsanyi 2006: 223). For this reason, Baubock rhetorically asked: "Why would [an EU] citizen, who has just moved into a city of another Member State, qualify better for voting in local elections than a third country national who has lived there for many more years" (Baubock 2003: 152). Hence, Baubock and Varsanyi noticed a difference in which citizenship is acquired on the national- and local level. In contrast to state citizenship that is received by 'jus soli and jus sanguine', cities already rely more on membership based on 'jus domicile' (Baubock 2003: 234). Doomernik and Ardon support and elaborate more on this. They argue that "in European countries, notably the welfare states among them, national control regimes tend to be stricter, these do not prevent the irregular residence of immigrant and failed asylum-seekers. This can result in the de facto acceptance of their presence by city governments. In other words, citizenship can exist in practice without it being granted by law" (Doomernik and Ardon 2018: 93).

Although, aforementioned examples are specific for the European context, outside the EU there are also examples of city membership practices. For instance, in many cities in the US, immigrants without a status are given school board voting rights, driver's licenses, they can pay the in-state tuition fee of universities (instead of the tuition fees for non-nationals) or accept certain identity proofs (such as the Mexican Matriculas consulares) in lack of official passports. These are very concrete examples of local membership or 'citizenship' practices (Varsanyi 2006: 231). Doomernik and Ardon demonstrate that

besides rules of membership, "cities have their own political ideas on allocation, settlement [and] deportation" (Doomernik and Ardon 2018: 95). The authors note that cities in general "demand more involvement in decision-making on, for example, the "allocation of refugees at the EU and national level" (Ibid). Although cities do not possess formal power to change or to mitigate national policies, in practice Doomernik and Ardon argue that they are willing to undermine and "mitigate national restrictive policies" (Ibid). For example, they "include migrants into the city as residents, thereby reshaping the actual meaning of citizenship" (Ibid). In addition, the general trend in the Netherlands demonstrates that local governments want to have influence in the selection of asylum-seekers. In EU's current asylum governance regime "a recognized refugee is not at liberty to move to a location in the EU where chances for integration (for instance by finding employment) are highest. Cities therefore argue for a revised allocation model, out of solidarity with communities in border regions and with refugees trying to enter the EU" (Doomernik and Ardon 2018: 94). For instance, the rural areas surrounding Rotterdam (Westland) prefer asylum-seekers with an agricultural background and in Breda and Eindhoven, asylum-seekers with more technical skills are preferred, since they fit the local labor market. These examples in which local authorities are able to design and implement flexible policies in the context of asylum governance are partly due to the difficulties the EU is facing of "rising strategic uncertainty under condition of deep internal diversity and firm polyarchic constraints" (Sabel and Zeitlin 2011: 12) and offers opportunities for new modes of governance, such as experimentalist governance.

Sabel and Zeitlin argued that EU rulemaking is increasingly focused on experimentalist forms of governance in which an "iterative, multi-level architecture, broad framework goals […] and metrics for gauging their achievement are established by joint action of the EU institutions and the Member States, typically in consultation with relevant civil society stakeholders. 'Lower-level' units […] are given substantial discretion to advance these goals in ways adapted to their own local context" (Zeitlin 2015: 1 – 2; Sabel and Zeitlin 2011). In such a framework there would be no single sovereign institution that uniformly could design and implement policies. Especially in transnational domains, such as governance on asylum and migration. Cardwell argues that this form of governance uncouples "new [modes of] governance [such as experimentalist] from its synergy with 'good' governance and to instead consider that new governance may offer policy-makers opportunities to meet goals outside legislative processes" (Cardwell 2016: 3). Moreover, "[e]xperimentalist governance can be understood as a machine for learning from diversity (Sabel and Zeitlin 2011: 12). The context of the EU suits this form of governance well, as local authorities face similar problems with asylum across EU Member States and are able to learn from each local authority to solve them, "even though particular solutions will rarely be generalizable in any straightforward way" (Ibid). However, current policies on asylum and migration demonstrate that it is almost impossible to design generalizable policies that work in every differing context of EU Member States. De facto, asylum and migration governance in the EU features transnational domains, where the diversity of local conditions and practices makes adoption and enforcement a possible hindrance. For this reason, Sabel and Zeitlin offer local policymakers in the EU a design of a governance method that is unique for every local context. In this way the reluctance towards more harmonization and integration that affects the issues of solidarity in asylum governance could possibly be overcome. The Common European Asylum System then would be common in a sense that in each local level of each EU Member State, asylum governance would be a process of continuing feedback and continuing alteration in practice and policies. Cardwell supports this governance method as traditionally conceived law "does not always necessarily change behavior" (Cardwell 2016: 3 – 4).

New governance approaches, such as experimentalist governance, demonstrate "a multitude of arms at their disposal which may seek to fulfil goals in a less direct, more abstract way and through multi-level institutional frameworks" (Ibid).

However, in addition to providing opportunities new modes of governance also ensure some challenges. First, Cardwell argues that new forms of governance are most likely only negotiable in policy areas in which the EU Member States are less "sovereignty conscious" (Cardwell 2016: 7). He claims that these are more often policies in "recent areas of EU activity […] where legislation is limited […] where multiple actors are involved […] and where civil society has a significant involvement" (Ibid). Although asylum and migration management comply with some of these variables, research done on the politicization of asylum issues demonstrated that EU Member States differ "on the role and legitimacy of the EU" (Pasetti & Garcés-Mascareñas 2018: 19) to cope with asylum and migration management. Second, it is assumed that asylum and migration issues can be solved by 'hard' law and, for this reason, leave "little or no room for new modes of governance" (Cardwell 2016: 8). Cardwell notes that according to Sabel and Zeitlin, the premise of experimentalist governance is the increase of participation of a variety of stakeholders and an increase of "dynamic accountability and peer review" (Cardwell 2016: 18). These features of experimentalist governance should "discipline the state and protect the rights of citizens without freezing the institutions of decision making" (Ibid). In addition, these mechanisms will overcome the obstacles that occur due to political bargaining when policies are designed through traditional law. Hence, Cardwell notes that "these dynamic mechanisms provide effective ways of addressing longstanding accountability and rule-of-law deficits within the nation-state itself'" (Ibid). A third challenge that is posed by Cardwell is the issue of legitimacy. He argues that maybe new forms of governance are efficient in asylum and migration governance, but possibly "fail on legitimacy" (Cardwell 2016: 17), Pasetti and Garcés-Mascareñas support this as they note "the fewer the legitimacy, the fewer […] the willingness for more solidarity" (Pasetti & Garcés-Mascareñas 2018: 2). For example, a core feature of experimentalist governance is the absence of a coordinating actor. Lack of coordination means that there is no actor that "coordinate [the] efforts, has a precise enough idea of the goal, [is able] to give precise instructions to the other or reliably recognize when their actions do or don't serve the specified end" (Cardwell 2016: 18 – 19).

What would this mean in terms of a new scenario for the CEAS? In the local scenario, local self-government is strengthened. Both in terms of boundaries, membership and rights, as well as in terms of allocation and selection of asylum-seekers and refugees. Local authorities would be given more power, as in direct lines for funding and support from the EC or EU agencies to local governments will be established, both in accepting, allocating and placing asylum-seekers within their communities, as well as in providing the local rights frame. There would be a narrower cooperation between cities on the European level, as EUROCITIES and the Urban Agenda for EU strive for, and the protection of asylum-seekers would be more generous, considering the agenda's and standpoints of organizations as EUROCITIES. The experimentalist governance would be able to provide local authorities to find the adequate approach of peer-reviewing practices and ultimately would design a unique iterative mode of governance that provides every local context in its needs. However, it would also result in more divergence within the EU which might potentially be at odds with the EU's fundamental principles such as equal treatment/non-discrimination. Cities would follow their local logic and needs, providing the asylum-seekers within their communities with the rights and resources with which they provide their own inhabitants and are not bound by strict uniform EU legislation.

The scholars we've discussed do not agree on whether to establish a model of intergovernmental or supranational or even transnational solidarity. Besides this, there are two important dimensions on which the various alternatives differ. The first major debate is on the convergence or divergence of asylum governance in the EU. Most proposals of scholars are arguing towards more convergence, thus, greater harmonization and more centralization, most often top-down with EU institutions taking over the allocation of refugees and stronger monitoring of Member States. Almost all proposals, whether coming from a more rights based, or burden-sharing perspective agree on that there should be more centralized and harmonized procedures, in which refugees are processed centrally and distributed according to some formula. In addition, most authors seem to agree that the Dublin Regulation as an allocation scheme should be replaced. However, local actors argue for more leeway and space for the specific needs and roles of local practices. For instance, city networks and local governments have been complaining about the neglect of their role and preferences within the CEAS and certain scholars have argued for more local self-government, which instead creates an image of a more divergent approach to asylum governance: where the local conceptions of justice and reception are guiding. New forms of governance such as the experimentalist mode support these calls for a more local approach. Furthermore, the Dutch Advisory Council on International Affairs proposed a 'coalition of the willing', where only willing countries work together for improving the CEAS, compensated financially by the other Member States. This is another example of actors arguing more for divergence of asylum governance within the EU.

The second dimension that alternatives differ on is the level of coercion for refugees. In this second major debate, there is a clear distinction between the scholars arguing from a 'rights' perspective and those arguing from a burden-sharing perspective. Scholars who share a rights perspective and regard refugees as 'human capital', more often propose 'consensual distribution' e.g. preference matching of refugees for a range of countries, or for instance allocation on the existence of diaspora networks or on the basis of family ties. However, also the Dutch Advisory Council on International Affairs, who proposed the coalition of the willing, argued for a 'European Green Card' with labor visa for refugees and asylum-seekers throughout the entire EU (Hirsch Ballin et al. 2016: 12). In addition, scholars discussed a variety of forms of compensation. One of the options posed has been financial compensation instead of real allocation; however, some scholars are hesitant about financial compensation as it conceptualizes refugees to much as 'costs'. Others prefer financial compensation as it makes it possible for Member States with less developed asylum systems to demonstrate their willingness to share responsibilities by 'buying off' their refugee duty. Scholars argue that this will, therefore, guarantee better protection. In contrast, scholars with a burden-sharing perspective do prefer distribution or trading schemes, often including contributions on multiple dimensions or financial compensation. They argue that instead of a physical allocation of refugees also different compensations can be made: for instance, by taking more dimensions into account, such as stimulating the countries of origin economically, politically and socially and interfere with peace keeping missions in conflicts in the EU neighborhood or by designing a system like the Kyoto emission trading system for the distribution of asylum-seekers and refugees.

As already has been stated in preliminary paragraphs, what we actual propose with this alternative implies three fundamental changes to the current CEAS. The first fundamental change centers around the funding of asylum and migration governance. In the current framework the EU has funding tools that "complement the Member States' effort to the Union" (EPRS 2019). One main tool is the Asylum, Migration and Integration Fund [AMIF], the funds resources are implemented by the Member States

for national programs, by the EC for Union actions, for instance in the case of emergencies, and via indirect management by for example the ICMPD (Ibid). Supporting the importance of the local level in asylum governance should be coupled with a different approach in funding asylum and migration governance. For this reason, we endorse the proposition made by the Council of European Municipalities and Regions, who noted in '*EU Funds in the Area of Migration. Local and Regional Governments' Perspective'* (2018) that there should be a "possibility of partially providing direct funding to local authorities under AMIF resources" (CEMR 2018: 2).

The second fundamental change further fosters equity in the CEAS and stimulates a fair responsibility-sharing mechanism on the local level by acknowledging mutual recognition of a positive asylum decision. This would mean "that protection can be transferred without the adoption of specific mechanisms at European level" (ECRE 2014: 4), in this case asylum-seekers will experience more freedom to move from one Member State to the other and retain their human capital. ECRE noted that "in order for mutual recognition to succeed, mutual trust is needed between Member States. Mutual trust requires that Member States trust other Member States' legal systems and decision. It obliges them to accept and/or enforce a decision handed down by another Member State and attach the same legal effects to similar national judicial decisions, even if they were made by a different judiciary" (ECRE 2016b: 2). Similar propositions were made as early as 2009 when in a Communication from the Commission to the European Parliament and the Council in 2009 the idea of mutually recognizing positive asylum decision was proposed. The mutual recognition of positive asylum decisions is further encouraged by the fact that it is already "present in other areas of EU asylum law. The Dublin Regulation operates on the basis of mutual trust, the key ingredient needed in order for mutual recognition to work" (ECRE 2016b: 3).

The last fundamental change is centered around the notion of citizenship. Baubock, Varsanyi and Doomernik and Ardon point at the contrast between state citizenship and local citizenship. The former based on 'jus soli' and 'jus sanguine' or on naturalization after prolonged residence and (increasingly) having fulfilled national integration requirements, while the latter is received by a mere 'jus domicile' (Baubock 2003: 234). Although cities do not have the formal power to grant citizenship, they "include migrants into the city as residents, thereby reshaping the actual meaning of citizenship" (Doomernik and Ardon 2018: 95). Hence, informally cities already provide immigrants some sort of citizenship, regardless of legal status. The question thus arises, what could be gained if local governments were to receive more formal or discretionary powers and would thus be more closely involved in asylum and migration governance. It might, for instance, positively affect the retention and optimal allocation of asylum-seekers' and refugees' human capital.

7. Conclusion and evaluation

This review is by no means exhaustive but provides an overview of the various directions scholars have elaborated on and how these directions can be attributed to the ideal-types identified in figure 1. Even though scholars do agree that the CEAS has to be reformed, there is a lot of variation in the alternatives that have been proposed. Most striking characterization of the CEAS is that the issue of solidarity has been the cornerstone of it, but at the same time demonstrates the lack of it. We cited Thielemann as he wrote extensively on the issue of asylum governance in the EU. He argues that the unequal distribution of asylum-seekers in the EU is strongly related to the extent of solidarity in the EU. In addition, he notes that the logic of the EC to favor "EU policy harmonization as a burden-sharing instrument" (Thielemann 2018: 74) is that the harmonization of important asylum policies […] is bound to reduce those secondary movements of asylum seekers which are mainly due to the diversity of applicable rules, and could thus result in a more fair overall distribution of asylum applications between [Member States]" (Ibid). However, in order to achieve harmonization on this level, solidarity has demonstrated to be indispensable.

Knodt and Tews discussed various forms of solidarity. They argue that within multilevel systems, such as the EU, solidarity can occur within or across government levels. For this reason, Knodt and Tews created a horizontal and vertical axe to explain solidarity in the context of the EU, "the horizontal dimension refers to solidarity within one government level, be it supranational, national or subnational […] the vertical solidarity spans different levels" (Knodt and Tews 2017: 51). In addition, solidarity can be addressed by individual as well as collective actors (Ibid). This framework in which various forms of solidarity are identified is the result of many scholars who have done research in the issue of solidarity, however, Wagner et al. argue that "there has been only relative little progress in substantiating solidarity in practical terms" (Wagner et al. 2018: 4). When portraying solidarity on more practical examples, a distinction in approaching the issue of asylum-seekers and refugees in the context of solidarity could be made. In short, some scholars conceptualize asylum-seekers and refugees as 'human capital', however, based on the literature review, we conclude that most scholars operationalize refugees mainly as a 'burden', for instance by only calculating what they cost and not what they contribute.

Moreover, various scholars argue that the current CEAS stimulates free-riding in which various EU Member States create new deterrence measures and "establish more restrictive refugee policies than their neighbors in an attempt to shift burdens onto other states" (Thielemann 2018: 71). The establishment of these deterrence measures could be seen as a symptom of "an underlying collective action failure" (Betts, Costello and Zaun 2017: 15). For this reason, Thielemann argues that the problem with solidarity and the unequal distribution of responsibilities could positively be affected by judicial harmonization, the sharing of resources and physical burden-sharing, which means the sharing of people, i.e. asylum-seekers and refugees. In addition, besides the challenges with solidarity, the quality of the protection the CEAS offers is another issue. Guild argues that EU integration has been first and foremost an economic and financial goal rather than a move towards a union of human rights, this stems from the initial design. In short, even though the CEAS is mainly assessed in terms of its ability to guarantee solidarity among Member States as well as its ability to guarantee protection and equity to refugees in light of the Geneva Convention, the literature review demonstrates that the CEAS has not been designed with either of these two principles as its main goal. Hence, it is not surprising that both in terms of solidarity, and human rights perspectives, scholars assess the CEAS as performing

insufficient. For this reason, scholars have discussed various alternatives for the current CEAS

The first alternative proposes centers on the idea to facilitate a migration union in which a newly formed agency, based on the model of the European Central Bank, is in charge of establishing consensual distribution keys for the allocation of refugees. Hence, this CEAS would be characterized by the avoidance of coerced distribution of refugees, such as the Dublin Regulation, and respects the fundamental human rights. The most fundamental change in this proposed system is, in contrast to the current system, that the EU should provide safe access to Europe and the protection of beneficiaries should be mutually recognized by all Member States. This alternative approaches asylum-seekers and refugees as bearers of human capital.

The second alternative is to further develop and use the already existing Temporary Protection Directive. Important to note is that only the Member State to which persons with an asylum claim are transferred to "pursuant to the quota system of the temporary protection scheme [are responsible] and not the Member State in which they took their first step onto Union territory" (Bačić Selanec 2015: 98). The Dublin allocation system is thus not in use when the TPD is activated. In contrast to the alternative proposed by Guild et al. the allocation of asylum-seekers in this context is coercive in nature and results into much more solidarity then we are used to see in the allocation resulting from the Dublin Regulation. Furthermore, alternative 2 is characterized by the fact that it aims not for common rules but rather for a model where Member States share a responsibility together. Knodt and Tews note that in the multilevel system of the EU the Member States are addressed by intergovernmental solidarity without considering individual citizens (Knodt and Tews 2017: 52).

The third alternative demonstrates features of a permanent corrective distribution mechanism that has been proposed by the EC. This distribution mechanism would enable Member States to share asylum responsibilities. The basis of this argument is that a fair sharing of responsibilities will not be achieved without some form of coercion. According to Hatton this stems from the operationalization of refugees and asylum-seekers. Hatton operationalizes refugees as a 'public good' (Hatton 2005: 114), along the lines of Olson's collective action problems (Olson 2002: 14). Thielemann argues that if a state refuses to grant asylum or neglects its obligation to offer protection it will "divert refugee flows onto other countries" (Thielemann 2018: 70) and increase the instability of the region. For this reason, the scholars who propose Alternative 3 to the current CEAS see no other option than to achieve the sharing of responsibilities with a coercive distribution of asylum-seekers.

The fourth alternative is based on less commonality within the CEAS. Hirsch Ballin et al. proposed this idea as a 'coalition of the willing', in which Member States that are able and willing to cooperate closer do so. These Member States will maintain an effective and humane asylum policy. In short, on the terrain of asylum, differentiated integration of Member States should take place. In addition, Hirsch Ballin et al. argue that in order to prevent free-riding, non-participating Member States should financially contribute to the coalition of the willing (Hirsch Ballin et al. 2016: 21). This proposal basically extends the scheme of Knodt and Tews in the sense that it opens up the possibility to create different boundaries as to which extent solidarity applies. Within these newly established boundaries, the models of supranational, intergovernmental, and even international solidarity are used.

Alternative five is characterized by multi-dimensional burden-sharing and a comparative advantage

approach. Thielemann argues that solidarity and the allocation of human capital can happen on one or more dimensions. He said that "multi-dimensional burden-sharing regimes are those that do not seek to equalize burdens or responsibilities on one particular contribution dimension alone, but instead operate across several contribution dimensions" (Thielemann 2008: 4). In practice this means that "some multi-dimensional regimes are based on an explicit compensation logic" (Ibid). Another type of "multi-dimensional burden-sharing mechanism is based on an implicit trading logic which recognizes that states contribute to international collective goods such as refugee protection in different ways" (Ibid). In short, in this multi-dimensional form of burden-sharing, 'implicit trading' is used where the disproportionate efforts in one dimension are compensated in another dimension, this proposal assumes that some countries can contribute to some collective goods relatively more cheaply than another country (Thielemann 2008: 7).

The sixth alternative focuses more on a market-based refugee sharing system in which a decentralized trading scheme is used. According to Schuck, the responses of EU Member States to the refugee crisis have harmed and continue to harm any scheme of international human rights protection (Schuck 1998: 283). As a result of these responses Member States are more reluctant to accept asylum-seekers, thus, we need to find a solution that eases the burdens of mass influxes "in exchange for a set of obligations that [Member States] are more willing to accept and implement (Ibid). In Schuck's opinion, "this can only be accomplished by distributing obligations more widely and fairly among states over time" (Ibid).

The last alternative that is proposed features a slightly different approach, namely it focuses on the opportunities for and by local governments in the governance of asylum in the EU. Various scholars have criticized the lack of responsibilities for local authorities in the current CEAS. With this turn towards more responsibilities to local government, Baubock argues that there should also be a different form of citizenship. Baubock is in favor of a form of city membership in which local voting rights, disconnected from the membership of a national state are included. In fact, the EU already follows such a logic, due to the introduction of the EU citizenship, EU nationals are allowed to vote for local elections in European cities where they live and work but are not a national citizen (Varsanyi 2006: 223). For this reason, Baubock rhetorically asked: "Why would [an EU] citizen, who has just moved into a city of another Member State, qualify better for voting in local elections than a third country national who has lived there for many more years" (Baubock 2003: 152). Hence, Baubock and Varsanyi noticed a difference in which citizenship is acquired on the national- and local level. In contrast to state citizenship that is received by 'jus soli and jus sanguine', cities already rely more on membership based on 'jus domicile' (Baubock 2003: 234). In addition, this new local form of asylum governance is perfectly suited, according to Sabel and Zeitlin, for experimentalist governance. This form of governance features an "iterative, multi-level architecture, broad framework goals […] and metrics for gauging their achievement are established by joint action of the EU institutions and the Member States, typically in consultation with relevant civil society stakeholders. 'Lower-level' units […] are given substantial discretion to advance these goals in ways adapted to their own local context" (Zeitlin 2015: 1 -2; Sabel and Zeitlin 2011). In such a framework there would be no single sovereign institution that uniformly could design and implement policies, especially not in transnational domains, such as governance on asylum and migration.

Our review of alternative designs for and revisions of a CEAS leads us to suggest that fulfilling the fundamental aims we set out at the beginning could probably be best served by building coalitions of

the willing, including those at lower levels of government. We propose that this can be done by means of experimentalist governance in an EU framework which guarantees directly or via a continuous responsibility of the Member States the enumerated fundamental principles. Nevertheless, as elaborated in paragraph 6 it would imply three fundamental changes: first direct lines of support and finance connecting the EU level with those below the national level should be established; second, the acknowledgement of mutual recognition of a positive asylum decision fosters equity in the CEAS and stimulates a fair responsibility-sharing mechanism on the local level; and third, if local authorities were to receive more formal or discretionary powers and more closely involved in asylum and migration governance. It might, for instance, positively affect the retention and optimal allocation of asylum-seekers' and refugees' human capital, which is beneficial for the Member States.

8. Bibliography

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The research project CEASEVAL ("Evaluation of the Common European Asylum System under Pressure and Recommendations for Further Development") is an interdisciplinary research project led by the Institute for European studies at Chemnitz University of Technology (TU Chemnitz), funded by the European Union's Horizon 2020 research and innovation program under grant agreement No 770037.) It brings together 14 partners from European countries aiming to carry out a comprehensive evaluation of the CEAS in terms of its framework and practice and to elaborate new policies by constructing different alternatives of implementing a common European asylum system. On this basis, CEASEVAL will determine which kind of harmonisation (legislative, implementation, etc.) and solidarity is possible and necessary.