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European Migration Policy

The new Pact on Asylum and Migration through the Lens of Human Rights Compliance, Solidarity, and Accountability

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Abstract

Since 2015, the European migration policy has become a highly debated topic within the European Union (EU). After the European Commission (EC) failed to find common ground for a reform of the Common European Asylum System (CEAS) in 2017, they released a new pact on asylum and migration in September 2020. This paper analyses the newly released pact through the lens of solidarity, human rights, and accountability. Thereby, it represents a case study of migration policy response by the EU, which is examined using two qualitative content analyses. The first one analyses the new pact from the "New pact on Asylum" from the EC and the second focuses on interviews with experts in the field of European migration policy.

Under CEAS, there is a normative paradox between the EU's principles and its actions. This paper shows that the pact pushes towards more interstate solidarity for asylum procedures and aims for fairer distribution of responsibility among member states but fails to reach this objective. For instance, the pact does not include forms of state-migrant solidarity. The faster pre-entry screening and asylum procedures demonstrate an inherent risk of further human rights violations with a heavy focus on return as the default option. Due to human rights violations and the unwillingness of certain member states to cooperate, it is questionable to what extent the new accountability and control mechanism can succeed.

Overall, the EU's policy response by securitising migrants, is not appropriate since the arrival of migrants at EU borders is not per se a threat.

Keywords: *European migration policy, solidarity, human rights, accountability, asylum, migration, new pact, CEAS, just securitisation*

Abbreviations

AMMR	Asylum and Migration Management Regulation (same as RAM)
APD	Asylum Procedure Directive
APR	Asylum Procedure Regulation
AVRR	Assisted Voluntary Return or Reintegration
CEAS	Common European Asylum System
CFH	Charter of Fundamental Human Rights of the European Union
CFSP	Common Foreign Security Policy
CJEU	Court of Justice European Union
CNRS	French National Centre for Scientific Research
CS	Copenhagen School
DG	Directorate General
DRC	Danish Refugee Council
EASO	European Asylum Support Office
EC	European Commission
ECHR	European Court of Human Rights
ECRE	European Council on Refugees and Exiles
EP	European Parliament
EU	European Union
EUAA	European Union Asylum Agency
EURODAC	European Dactyloscopy
GDP	Gross Domestic Product
GSP+	Generalised Scheme Preferences +
ICRT	International Rehabilitation Council for Torture Victims
ICMPD	International Centre for Migration Policy Development
ISIS	Islamic State of Iraq and Syria
JST	Just Securitisation Theory (according to Rita Floyd)
LGBT	Lesbian, Gay, Bisexual and Trans
LIBE	Civil Liberties, Justice and Home Affairs Committee
MS	Member states
NGO	Non-governmental organisation
NPE	Normative Power Europe (according to Ian Manners)
Pact	New Pact on Migration and Asylum (published by EC September 2020)
QMV	Qualitative Majority Voting
RAM	Regulation on Asylum and Migration Management
RSA	Refugee Support Aegean
SAR	Search and Rescue
UNHCR	United Nations Higher Commission for Refugees

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1. Introduction

> We will take a human and humane
> approach. Saving lives at sea is not
> optional. And those countries who
> fulfil their legal and moral duties
> or are more exposed than others,
> must be able to rely on the solidarity
> of our whole European Union.
> Everybody has to step up there
> and take responsibility
>
> President von der Leyen, State of the Union Address 2020
>
> (European Commission, 2020a, p. 1)

The so-called "migration crisis" in 2015 has led to increased tension between member states in the European Union (hereafter EU). Due to their geographical location, Greece and Italy bear the main responsibility for the increased number of migrants[1] often arriving via Turkey or Libya. Nevertheless, the securitisation of migrants has taken place since the 1990s and led to the introduction of the Common European Asylum System (hereafter CEAS) in 1999. The CEAS aimed to implement minimum standards for asylum procedures for all member states whereby migration is often presented as a security issue (Moreno-Lax, 2018).

The CEAS consists of five legislative instruments and the European Asylum Support Office (hereafter EASO) as its agency. One of the Dublin regulations deals with the state's responsibility within asylum procedures. Migrants must apply for an asylum procedure in the country of first entry, which increases the pressure on Southern European member states. The asylum systems of these countries failed to process the increased number of asylum applications in 2015 and onwards. This failure has facilitated to establish inhumane camps and the creation of so-called hot spots with inhumane conditions for migrants (Eylemer & Söylemez, 2020).

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[1] According to UNHCR, the word migrant is used to collectively describe people moving to another country without persecutions or serious human rights violations. In contrast, refugees flee their country due to severe risks and receive protection after approving their asylum procedure. Asylum – seekers wait for the outcome of their asylum application to receive refugee status (UNHCR, n.d.) Since the status and motivations of people entering the EU are uncertain, the neutral word "migrant" is used as the collective term even though many might be eligible for refugee status.

There are two main dilemmas the member states and the EU institutions currently face. First, how to prevent illegal trafficking and human smuggling while protecting the individual trafficked person. Second, when the asylum status is approved, the equal distribution of refugees among member states represents a challenge as well as holding national governments accountable, when some governments securitise migrants as security threats (Floyd, 2019).

This paper analyses these dilemmas using the concepts of solidarity, human rights and accountability. The treaty of Maastricht outlines that the EU has a normative responsibility to lead by example by demonstrating "solidarity and respect towards people" (Rizcallah, 2019, p. 247) around the world. This refers to the theory of Normative Power Europe (hereafter NPE) (Manners, 2002). The concept of solidarity is as a fundamental normative principle of the EU. Thereby, it is essential to share responsibilities between member states and respecting fundamental human rights of migrants. Moreover, the Treaty of Lisbon states that the seventh normative principle of the European Union is social solidarity, which combines aspects of interstate, intergenerational and internal market solidarity, as mentioned in article 3-3 (C306, 2007). According to Rizcallah, "The EU has a value-based constitutive identity comprising among others human rights and solidarity, the respect of which constitutes a normative condition underpinning the whole system's viability." (2019, p. 241). She argues that solidarity is a crucial foundation of European integration and that the relationship between member states can be measured based on solidarity.

Next to this, the EU is obliged to follow international law. Since the introduction of the Geneva convention from the United Nations Higher Commission for Refugees (hereafter UNHCR) in 1951, every individual has the right to seek asylum. Moreover, human rights are the fundamental rights and the foundation of the EU. In 1948, the United Nations implemented the Universal Declaration of Human Rights (hereafter UDHR) as the first document to protect human rights internationally. Thirty articles define the fundamental human rights for every human being including the right to life in dignity and equality. Especially article 14 is important representing the right to seek asylum in another country (UN, 1948).

Hence, host countries and the UNHCR are obliged to protect asylum-seekers and guarantee a fair and safe asylum procedure under international law (Ferris, 2008). Besides, the right to seek asylum is integrated in article 18 under the Charter of Fundamental Human Rights of the European Union (hereafter CFHR) (Charter of Fundamental Human Rights by the European Union, 2000). Compliance with human rights is understood based on the declaration of human rights by the United Nations (UN, 1948).

Additionally, accountability is important to ensure "democratic means to monitor and control government conduct. It is important for preventing the development of concentrations of power and, finally, enhancing the learning capacity and effectiveness of public administration." (Bovens, 2007, p. 113). Besides, the lack of EC's control over national governments to ensure compliance with EU law, the demand for accountability, has increased with the implementation of the Common Foreign and Security Policy (hereafter CFSP) since foreign affairs and migration were strengthened under EU competencies. Thereby, the EU created several new agencies such as Frontex, the European Border and Coast Guard Agency without establishing accountability and control mechanisms. The lack of democratic oversight mechanisms within the EU became more acute due to the lack of accountability for the newly established agencies (Border Procedures: Not a Panacea, 2019).

Although the CEAS has undergone several changes, it still demonstrates an inadequacy to ensure a common European migration policy in line with the European values of solidarity, respect of human rights and accountability (Rizcallah, 2019). Due to the lack of solidarity of certain Eastern European countries with the rest of the Union, EU institutions have yet to find a solution for sharing responsibility regarding the migration systems. Simultaneously, the humanitarian crisis in refugee camps in the EU, Greece and Italy, but also in non-member states located at the EU external border such as Bosnia and Herzegovina, remain a challenge (Triandafyllidou & Dimitriadi, 2014).

In September 2020, the EC published "The new asylum package", afterwards referred to as the pact. The pact represents amendments of the CEAS concerning migration policies within the EU and was presented to the European Parliament (hereafter EP) with a strong focus on border controls, solidarity between member states and a more centralised solution on responsibility sharing. However, it is not yet approved by the EP or the Council.

1.1 Research Problem and Aim

The research aim is to identify the internal differences between CEAS policies and the pact regarding human rights compliance, accountability and interstate and state-migrant solidarity due to the paradox of the CEAS's goal to uphold normative principles and its weak implementation in practice. Furthermore, the research objective is to outline the potential of

the new pact to decrease the tension between policy and practice considering normative principles and justice within the paradigm of securitisation.

Since migration is a highly debated topic within the EU, the pact might only be a proposal but nonetheless plays a crucial role in shaping the future of European migration policies. The pact has an impact on migrants in Europe, the first countries of arrival and every other member state due to the aim of sharing responsibility.

Given its recent publication, there is a literature gap in comparing the CEAS and the pact. This paper aims to address this gap by providing qualitative content analyses of legal documents through the lens of solidarity and human rights compliance and by conducting expert interviews. Moreover, the research combines just-securitisation and normative power within migration policies to approach the research problem of the EU's moral responsibilities and itsactions. Thereby, this paper examines the case of the EU's migration policy response after 2015.

1.2 Research Questions

In the following, the research questions are divided into one primary and three sub-questions to fulfil the research aim.

Main Question:

How have the concepts of solidarity, human rights and accountability changed in the new asylum pact concerning aspects of just securitisation and normative power?

Sub-Questions:

1. How have the European Union's normative principles of human rights and solidarity been translated into the CEAS and the new pact on asylum?

2. Which opportunities and risks for solidarity, human rights, and accountability does the new pact present considering the current normative paradox?

3. How does the new pact securitise migrants and migration, and to what extent is this just?

Thereby, the main question combines the applied concepts and theories. The first sub-question outlines the descriptive analysis of differences between the current CEAS policies and the new

pact. This is answered by conducting a qualitative content analysis of the policy documents from the EC on migration. The other two sub-questions aim to explore the connection between the policies and practice and justice in securitisation and are answered through informant interviews.

Outline

1.3 Outline

This paper is structed as follows: After this brief introduction, the second section, starts with the outline of previous research related to the research questions in the context of European migration policies and the launch of the new pact. Afterwards, the theoretical framework for the analysis is constituted by the theory of Normative Power Europe (hereafter NPE) according to Manners (2002) and the just securitisation theory (hereafter JST) by Floyd (2017). Thirdly, the concepts of human rights compliance, solidarity and accountability are operationalised by adjusting the concepts to the EU migration environment.

The third chapter deals with the research design and the methodology. After justifying the case selection, the qualitative content analysis, according to Schreier (2014), is described. Afterwards, a policy analysis for CEAS and the new pact is outlined. Expert interviews with informants provide further input regarding the actions and outcomes of the policies under the tripartite analysis in NPE. In addition, the selection process for the chosen informants as well as the interview guide are presented. Finally, the strengths and limitations of this qualitative approach regarding credibility, validity and reliability are discussed.

In the fourth chapter, the results of both content analyses are presented. A comparative table shows the significant differences between CEAS and the new pact in regard to solidarity, human rights, and accountability. Secondly, the results of the coded interviews are illustrated.

Afterwards, the fifth chapter deals with the analysis and demonstrates the insights and limitations of the research and its main findings for the research questions by combining the analysed results, previous research and the theories.

Finally, the conclusion summarises the analyses and outcomes of this paper and provides insights for further research possibilities and presents implications for the future of European migration policies.

2.Previous Research and Theory

2.1 Previous Research
In the following subchapter, some of the previous contributions relevant to the research on CEAS and the new pact are outlined.

2.1.1 The Development of the Common European Asylum System
The CEAS was introduced in 1999 to ensure harmonisation of policy regulations between the member states based on the Geneva convention. Thereby, directives were established with minimum standards referring to the protection status and the Dublin regulation. The first reform took place in 2008 in the form of the "Policy Plan on Asylum" to improve the asylum processes and align them between the member states (European Commission, 2008). To ensure the proper implementation of the policies, the EC introduced the EASO in 2013. The increased number of migrants arriving in 2015 outlined the flaws of the CEAS, which led the EC to propose new reforms to enable responsibility sharing under the EU resettlement framework. In 2017, five out of the seven CEAS proposed amendments were integrated. However, the EC did not find common ground with all member states to reform the Dublin system and the Asylum Procedure Regulation.

A so-called "alliance of the willing" was created in 2019 after Greece demanded support due to the critical situation at the EU external border to Turkey. For several months, no member state reacted until ten agreed to accommodate 1800 refugees, mainly unaccompanied children, and families (European Commission, 2020c). As a reaction to these failed attempts, the EC presented the new pact of migration in September 2020 as amendments for the current CEAS (European Commission, 2020a).

2.1.2 The Problems with the CEAS
According to Rizcallah (2019), the CEAS faces several structural problems, which increase its inadequacy to provide a common European migration policy and uphold the values of the EU. She outlines that the Dublin regulation possesses a solidary deficit due to the lack of a mandatory distribution system among member states. This lack of interstate solidarity increases the pressure on member states along the external EU border in the South and East. In addition, the response from the EU institutions and its member states within the so-called migration crisis contradicts their values of human rights and solidarity due to the massive human rights violations and pushbacks within the Mediterranean Sea (Rizcallah, 2019).

Furthermore, Eylemer and Söylemez (2020) support Rizcallah's argument that CEAS does not uphold the EU's normative principles and is driven by state-interest and not the interest of migrants. Consequently, the EU is discredited as an actor within international politics. The main critics concern the EU's statement from 2019 about the end of the so-called migration crisis and that it does not incorporate the possibilities of a repetition of the rising number of migrants due to political, economic, or natural disasters outside of Europe.

Moreover, Moreno – Lax (2018) outlines the normalisation of perceiving migrants as a 'security threat', which turns human rights compliance into a securitisation tool. Thereby, human rights are used to bargain for certain outcomes or to protect borders instead of ensuring fundamental rights. In addition, one shared assumption is that uncontrolled borders are a risk to the homogeneity of a state. Particularly among East European countries the rising number of migrants has led to higher levels of anxiety and uncertainty among voters of right-wing political parties. After 2015, the construction of migrants as a security issue is demonstrated in the rise of voter turnouts for right-wing and anti-migration political parties in several member states (Iov & Bogdan, 2017).

The consequences of securitisation are visible in Greece which due to its geographical location is often the first country of arrival. This led to an increase in xenophobic reactions and voter turnout for right-wing parties during the financial crisis after 2008 due to the country's instability. "Greece, not only has failed to produce substantial results in migration control, but their consequences have been detrimental to migrants' livelihoods, as the European Court of Human Rights ruling decisions against Greece manifest in a number of cases" (Lazaridis & Skleparis, 2016, p. 180).

The phenomenon of failing to protect the most vulnerable when they need it the most is described as a paradox by Hannah Arendt in her book "The Human Condition" (1998). In an article, Banai and Kreide (2017) apply this to outline the securitisation of migration:

> 1. the discursive framing of social, economic and political challenges arising from mass migration, as urgent security threats to the receiving state and society;
> 2. Securitisation, then, means discursively framing something as a security problem, and, through this, triggering political measures to deal with it, thereby neglecting the fact that those measures enhance insecurity for precisely the group of people that were object of protection. (p. 906)

As a consequence, human rights violations take place along the EU border due to an unwillingness to implement migration policies that treat migrants respectfully (Moreno-Lax, 2018).

Furthermore, the European Border and Coast Guard Agency (hereafter Frontex) was implemented under CEAS as an active political player in foreign affairs. However, the primary responsibility of Frontex is established through "working agreements" with third countries. Thereby, the interpretation of how assisting member states is defined by Frontex. This leads to Frontex hindering migrants to enter the EU and apply for asylum. Moreover it demonstrates the lack of sufficient control mechanisms and accountability instruments for the EU's own agencies. Finally, it shows a contradiction between EU values and the actions of its agencies and policies (Banai & Kreide, 2017).

2.1.3 The Ethics of Asylum politics

The current debate deals with the ethical ideal theory of governments responding to be more inclusive towards migrants and, on the other hand, liberal democracies implementing more restrictions to protect their own citizens from perceived threats. The claim from governments to care for their citizens and refugees' right to seek for asylum are both legally valid and demonstrate a major dilemma within migration politics. Three main constraints are essential to consider according to Gibney (2004). First, the structural component that "the state is a particularistic agent, with a primary responsibility to promote the interests of its own citizens" (Gibney, 2004, p. 196). Second, the political aspect that governments can restrict access for migrants and must justify this to their citizens in a liberal democracy. Therefore, the rise of right-wing parties and public anxiety towards migration can be considered to hamper justice. Lastly, the ethical constraint of uncertainty regarding the cost of normative principles must be considered. By perceiving the state as an agent, it bargains to protect citizens and aims for the best outcome. The same happens on European level when member states negotiate the best deal in the interest of their citizens. Although Gibney (2004) recognises states' motivation to ensure security, he outlines the moral responsibility and normative principles to support refugees and provide assistance in crisis situations according to international law.

2.1.4 The New Aslyum Package

The new pact on asylum was introduced by the president of the EC Ursula von der Leyen as "a fresh start" to deal with migration, applying a "human and humane approach" and "rely on the

solidarity of the whole European Union" (European Commission, 2020a, p. 1). After the previous efforts from the Commission failed to find common ground among member states, the pact was released in September 2020. The main aspects deal with the European framework to share responsibility, strive for more agreements with third countries and more border controls in the form of pre-entry screening. Therefore, the approach to solidarity refers to relocation and return sponsorship by implementing flexible and permanent solidarity depending on the number of migrants arriving. However, the needs and rights of individuals are not at the centre of concern; instead, the pact emphasises new border centres outside of EU territory to assure faster asylum procedures outside of the EU.

To summarise, the literature review outlines current implementation issues with the CEAS, especially regarding human rights compliance and solidarity. As mentioned in the research aim, the proposed pact was recently published and not yet amended or implemented by the Council and EP. Therefore, the identified knowledge gaps are the lack of in-depth understanding of the pact compared to CEAS and its possible impact for migrants and member states.

2.1.5 Critics on the Asylum Package

Due to the recent release of the pact, in-depth analyses in journals are not yet available. Nevertheless, the European Council on Refugees and Exiles, an alliance consisting of 107 non-governmental organisations (hereafter NGOs), commented on the policy notes in July 2019. Their main criticism deals with implementing mandatory border procedures for pre-screening of people entering from non-member states without a visa. Thereby, the EC's aim to establish centres, for the pre-entry screening outside of EU territory , is discussed the following:

> It is incompatible with the presumption against the detention of asylum seekers and refugees laid down in international human rights law. Moreover, justifying prolonged detention of asylum seekers at the border by the need to secure their right to an effective remedy is simply perverse. (2019, p. 1)

Furthermore, several authors within the German institute for international and security affairs (afterwards SWP) commented on the pact in October 2020, emphasising increased concerns regarding human rights violations at the external borders. Thereby, they outline that human rights are also not protected under the current migration situation. Their main critiques towards the pact are the "solidarity-based distribution of new arrivals in the EU" (Angenendt et al., 2020, p. 1). The pressure on member states increases since the Visegrád states, namely Hungary, Poland, Czech Republic, and Slovakia as well as Austria, are not expected to change

their current path and accept quotas for a European distribution of migrants. Consequently, the status quo of illegal pushbacks on the Mediterranean Sea and human rights violations continues.

The EC aims to establish a more centralised solution whereby the focus lies on agreements with third countries and external border controls to decrease the number of migrants significantly. Thereby, the EC proposes a multi-layered system of solidarity between member states depending on the crisis situation with the aim of establishing faster asylum processes. Particularly regarding human rights compliance, it is raised with concern that "the Commission leaves it up to the member states to decide whether asylum seekers are to be held in detention centres during screening, accelerated asylum procedures and before repatriation." (Angenendt et al., 2020, p. 2).

In addition, the proposed system by the EC of "permanent" and "flexible"' solidarity requires all member states to aim for a pan-European solution which the Visegrád group strongly opposes. The authors summarise that the new pact poses a great risk of maintaining the status quo of human rights violations or even increasing the risks for potential asylum-seekers by transferring the asylum process away from EU territory and European law (Angenendt et. al, 2020).

2.2 Theoretical Framework

The theoretical framework aims to build the ground for the analysis. Therefore, the theory of just securitisation (Floyd, 2019) and normative power in Europe (Manners, 2011) are outlined.

2.2.1 Normative Power Europe

The EU has undergone some drastic changes from its initial purpose of an economic union towards establishing the Common Foreign and Security Policy in the Maastricht treaty. Thereby, Manners (2011) argues that the discourse around the purpose of the EU moved away from the EU as a military or civilian power towards the EU as a normative actor. In this context, the meaning of normative deals with how the EU should be or its role in setting international standards for ethical and moral behaviour. It is based on the understanding that the EU has internalised universal principles and norms and spreads these worldwide (Whitman, 2011). Manners (2002) argues that socio-economic factors, which influence the EU, are interdependent and symbiotic. Nevertheless, Manners (2011) differentiates between the EU as

a normative power due to the supranational elements of the EC and the claim from the EU to act ethically correct due to its normative power.

From the nine normative principles of the EU[2], the fourth principle is human rights in accordance with the ECHR to ensure fundamental human rights for individual and collectives on Union and national level which is particularly important in migration policy. This is followed by the sixth principle on inclusive equality and prohibition of any form of discrimination and the seventh principle, which outlines social solidarity for economic growth, internal markets and social justice as solidarity between member states.

Consequently, the EU has to be addressed as a holistic value sharing actor. Thereby, three forms of normative understandings are particularly important "live by example, be reasonable and do least harm" (Manners, 2008, p. 60). These lead to the theoretical framework of a tripartite analysis considering the constructive principles of the EU, its actions in policy making and their impact on outcomes.

When operationalising these concepts, constructive principles refer to the EU's approach to promote the principles and objectives in international politics. Virtue ethics focuses on the moral character or the interpretation of principles and how they are implemented to examine the extent to which a group supports them. Therefore, virtue ethics refers to the principle of living by example coherently and consistently by ensuring to uphold normative principles instead of only promoting them. Manners explains this by outlining that the EU is "not hypocritical in promoting norms which it does itself not comply." (2008, p. 56).

Secondly, "be reasonable" or its actions in policy-making refer to "a deontological approach to normative power by emphasising the rationalisation of duties and rules which guide the EU in its external actions" through engagement and dialogue (Manners, 2008, p. 57).

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[2] The nine normative principles are explained in the following: First, sustainable peace rooting in the emergence of the EU to prevent war between states and guarantee a peaceful living. Second, social freedom referring to justice and security but also including Schengen and free movement. Third, consensual democracy focuses on the rule of law, supporting democracy and human rights. Fourth human rights in accordance with ECHR ensure fundamental human rights for individual and collectives on Union and national level. The fifth normative principle deals with the supranational rule of law. Following the sixth principle on inclusive equality and prohibition of any form of discrimination. The seventh principle outlines social solidarity for economic growth, internal markets but also social justice as well as solidarity between member states. Sustainable development is the next to ensure economic growth under consideration of ecological and environmental aspects. Finally, the last principle deals with good governance (Manners, 2011).

Finally, the outcomes of the actions and laws are assessed in the third principle of "do least harm" based on the utilitarian understanding of judging an action based on its outcome and "the interplay between actors and consequences" (Manners, 2008, p. 59).

Figure 1 Normative Power Europe (Manners, 2008)
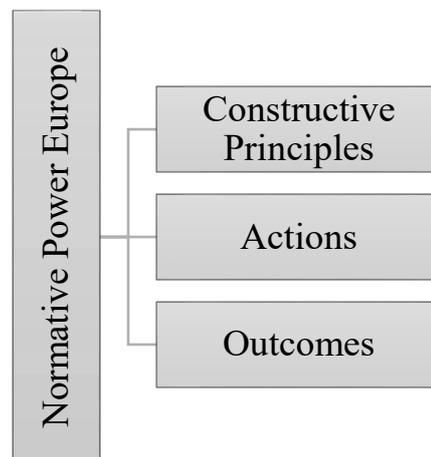
However, Manners (2011) outlines that the discourse about what is 'normal' within the normative principles is not clearly defined and is subjectively constructed by Western societies.

Manners' NPE theory (2008) has triggered a debate among scholars scrutinising the influence of normative principles within the EU. Due to limitations, the paper only investigates the critiques of Hyde-Price (2006) and Pace (2007).

In her criticism of NPE, Pace (2007) outlines that even though normative power is often understood as a positive aspect, several perspectives are not considered in Manners' analysis. The EU, as an international actor, spreads its western-oriented norms through external politics and "attempts to do what is best (what ought to be done) by expressing the EU's willingness to do what is right (irrespective of criticism from potential sources)" (2007, p. 1046). Thereby, the EU perceives itself as a "force of good", but Pace claims that "the construction of NPE has disempowered the EU's political role as a global actor" (2007, p. 1043). The rhetoric of the EU's actions is based on international law and norms. However, its actions on the ground are contradictory. Therefore, the EU hampers its actions due to its role as a normative power which creates a normative paradox between policies and practices, derogating the EU's reputation, trustworthiness and prestige in international politics (Rizcallah, 2019).

Hyde-Price (2006) criticises NPE from a realist perspective since the state is the main actor in international politics and the driving factor in European integration. Moreover, economic

and security interests are the primary concerns of member states and normative principles or human rights are only of secondary interest. Therefore, analysing the new pact and European migration policy from a realist or intergovernmental perspective would have made it possible to outline the role of member states as the driving factor instead of a supranational approach focusing on the EC. However, the new pact is published by the EC and is not yet accepted by the Council or the EP, therefore, it is too early to include them in this paper. Moreover, Manners (2002) disagrees with the realist perspective by outlining the EU normative principle of 'Do least harm' which presupposes those ethical considerations are made before taking actions. Finally, this paper argues that normative principles and NPE refer to the concepts of solidarity, accountability and human rights compliance (Manners, 2008).

2.2.2 Security and Securitisation

In the following, the theory of securitisation is outlined whereby the discussions involve the concepts of freedom vs security. Within the Copenhagen school (hereafter CS) of international relations, securitisation refers to labelling issues as highly relevant and urgent matters which require an immediate response to ensure "public order and national security" (Eroukhmanoff, 2017, p. 104). Thereby, securitising actors, identified by their institutional power, frame an issue as a threat rather than it being a natural threat. The identified actor (often states or EU institutions) go beyond politicising the debate. In addition, the audience has to be convinced that the referent subject is a threat to the referent object. Through social constructivism, securitisation is challenged by examining the influence of language and power within international politics (Balzacq et al., 2016).

In 1998, Buzan, Wæver and de Wilde (1998a) published the foundation of securitisation theory in their book '*Security: A New Framework for Analysis*', which outlines the various changes ininternational security issues and beyond, whereby refugees and migration are mentioned as potential threats.

Although, CS scholars agree that an issue is only securitised when the audience accepts it, the concept of the audience in terms of their meaning for securitising objects is still highly underdeveloped (Balzacq et al., 2016). Additionally, the CS securitisation approach is unable to improve the conditions of the most disadvantaged (Floyd, 2007).

Consequently, one of the main criticisms of the theory is the non-observance of human security. According to Floyd, human security is the "ideal that the individual is at the receiving end of all security concerns" (2011, p. 40). However, in "practice it focuses on the idea to

identify existential threats to individuals or groups within a society" (Floyd, 2011, p. 42). Nevertheless, exact definitions of the policymaking tool are difficult to assess due to its wide range of interpretations related to the fear of violent threats or broader threats like poverty or natural disasters. Therefore, human security can be considered as a weak analytical tool, although it is normatively strong (Floyd, 2011).

2.2.3 Just-Securitisation Theory

A better analytical and theoretical framework to analyse the normative components of securitisation is the just- securitisation theory (hereafter JST) developed by Floyd (2011). Due to the normative principles of the EU and the focus on the concept of solidarity and human rights, the normative aspects of securitisation are considered highly important and applied in this paper intending to "judge the moral rightness of any given securitisation" (p. 429).

The CS implemented de-securitisation as the favourable action of securitisation since the outcomes are not based on undemocratic policies or limitations of rights but rather moving the issue away from being a threat and towards standard politics (Buzan et al., 1998b). Thereby, de-securitisation shifts the attention and urgency away which might lead to less attention and support from politicians and the public in a crisis.

By presenting asylum-seekers and predominately Muslims as "a danger to public order, to living peacefully together, to the welfare state system, to the labour market, and to cultural identity" (Banai & Kreide, 2017, p. 907), EU institutions and state actors have applied securitisation to the so-called 'migration crisis' in 2015 and afterwards. By expanding the mandate for security agencies like Frontex, the discursive construction of the migrant as a threat increased (Iov & Bogdan, 2017).

Whereas the CS securitisation theory does not consider normative aspects, Webber and Sperling (2019) emphasise collective securitisation as a form of several actors performing security governance together like the EU. Floyd (2019) supports this by highlighting that collective actors have a normative responsibility to lead by example and have higher credibility. Consequently, she argues that securitisation can lead to policy change. CS mainly focuses on speech acts, referring to the framing of security issues and therefore does not encompass consequences such as policy change (Eroukhmanoff, 2017).

Floyd outlines three criteria to assess the morality of securitisation in JST. These are:
"(1) that there is an objective existential threat.
(2) that the referent object of security is morally legitimate; and

(3) that the security response is appropriate to the threat in question"

(Floyd, 2019, p. 427).

Thereby, the formula "securitisation = securitising move + security practice" (Floyd, 2011, p. 429) demonstrates that securitisation includes the warning about an existential threat and the action taken by all agents to prevent the perceived threat. Moreover, her approach helps to identify the underlying intentions of the securitisation actor by assessing the taken actions after the speech act, and to what extent they were taken with the primary aim to protect and safeguard the referent object. Thereby, the speech act itself is not referred to as a legitimate justification for securitisation but instead it depends on the actions taken by the actor (Floyd, 2019).

2.3 Concepts

In the following subchapter, the operationalisation of the concepts of human rights, solidarity and accountability are elaborated.

2.3.1 Human Rights and Asylum

The right to seek asylum and the definition of a refugee were formally established under the UNHCR Geneva convention in 1951, which are still considered the most relevant documents for refugees. Article 33 on non-refoulment is particularly important stating:

> The principle of non-refoulement, which prohibits the return of a refugee to a territory where his or her life or freedom is threatened, is considered a rule of customary international law. As such it is binding an all States, regardless of whether they have acceded to the 1951 Convention or 1967 Protocol. (UNHCR, 1951, p.5)

Article 33 ensures that a migrant cannot be prevented from entering a country to seek asylum with a fair asylum procedure even though, in practice, the assessment of the case is often influenced by political decisions (Moreno-Lax, 2018).

Besides the declarations of the UN, the EU introduced the CFHR in 2000. Here, article 18 also refers to the right to seek asylum within the EU (Charter of Fundamental Human Rights by the European Union, 2000). Additionally, fundamental human rights are assured in article 6-3 of the reform treaty and the European Convention to protect human rights (C306, 2007).

2.3.2 Solidarity

Solidarity between member states is a core value of the EU. Wallaschek (2020) differentiates between cultural, social, political, economic, and monetary solidarity. He argues that solidarity

is not a social phenomenon but instead actors are responsible to argue for solidarity in a public discourse. Thereby, cultural solidarity focuses on a common identity and history, shared rights to "undertake solidary actions" to support "universal justice and human rights" (Balzacq & Guzzini, 2015, p. 100). This is highly relevant since migration taps into the humanitarian values which are allegedly anchored in the common European identity. Furthermore, social solidarity deals with welfare policies that aim to redistribute resources within a state. Political solidarity aims to legitimatise political actions by implementing new forms of cooperation, or institutions like the implementation of new institutions such as the European Asylum Support Office (hereafter EASO). Monetary solidarity is mainly a risk-sharing mechanism and applied for financial liability and, therefore, less relevant for the migration discourse. Finally, economic solidarity refers to common supportive actions between member states and is less applicable to the so-called "migration crisis" (Wallaschek, 2020). However, the concept lacks recognition for the rights of individual and particularly minorities. Therefore, the state-migrant solidary dimension is added to the analysis.

Next to Wallaschek's concept, the EP distinguishes between internal and external solidarity regarding the migration discourse. Hereby, external solidarity aims to introduce agencies or agreements with third countries whereas, internal solidarity uses a proactive approach with measures such as "relocation, mutual recognition and operational support" (Dickson, 2019, p. 691). Moreover, internal solidarity includes interstate solidarity, which can measure relationships between various members of the EU. This is also translated into the CEAS in Article 67 and 80 which outline that it shall "be based on and governed by the principle of solidarity and fair sharing of responsibility between Member States" (Rizcallah, 2019, p. 248). Consequently, tensions between various EU institutions have evoked the question to what extent solidarity should be practised and towards whom. Thereby, the EP has claimed to uphold human rights by not undermining the credibility of the EU. In contrast, the EC outlined a step towards harmonising migration policies by demanding a high level of internal solidarity between member states to relocate migrants (Dickson, 2019). Moreover, external solidarity agreements with third countries like the EU-Turkey deal in 2016 are criticised due to the inhuman treatment and conditions of Syrian refugees in Turkey (Batalla Adam, 2017).

Due to time constraints, external solidarity, and partnerships with third countries are not a focus of this paper, instead the interstate and state-migrant dimensions are analysed.

In addition, scholars of realism argue that compulsory solidarity policies between member states would be against the state's self-interest. For states, the protection of their own

citizens, their internal labour markets and sovereignty play a crucial role in the decision-making process (Eylemer & Söylemez, 2020). Contrary to this understanding, it can be argued that solidarity is a fundamental value of the EU, and responsibility sharing is a mechanism to ensure peace and stability within the EU (Kattago, 2017).

2.3.3 Accountability

Besides human rights compliance and solidarity, the concept of accountability is crucial when analysing European migration politics. Since accountability is a somewhat ambiguous concept with various meanings depending on the actor (Bovens, 2007), the chosen approach is justified in the following.

Throughout the development of the EU from a steel and coal community to a polity with a common foreign affairs and security policy, the EU has developed multi-level governance bodies. One aim is to have several controlling mechanisms to assess the accountability of its actors. Whereas accountability can be understood as a virtue to assess the moral behaviour of politicians, this paper identifies accountability, as "a relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences" (Bovens, 2007, p. 107). This form can be classified as a social mechanism to hold an actor accountable after an incident.

Furthermore, accountability is related to transparency and trustworthiness. The EU has two main levels to ensure accountability within its polity. First, political accountability includes national parliaments and the EP. Second, national courts or the CJEU ensure legal accountability (Boven, 2007). National parliaments can be held accountable in case of treaty violations as it was the case in C-643/15 in 2017 when the CJEU decided that Poland's and Hungary's governments violated the treaty by disrobing the relocalisation directives. They were held accountable for not accepting migrants during the redistribution (CJEU - Joined Cases C-643/15 and C-647/15 Slovak Republic and Hungary v Council of the European Union, 6 September 2017, 2017).

3.Research Design and Methodology

A two-folded qualitative method approach is used in this paper. First, a qualitative content analysis (hereafter QCA) according to Schreier (2014) is conducted to compare the CEAS and the new pact based on the EC's released document in September 2020. Appendix 3 provides an overview of the analysed documents. Second, informant interviews are conducted with the

aim to analyse the differences between the policies and implementation of the CEAS and their concerns regarding the pact. Discussions regarding the case selection, data collection, chosen method and quality are outlined in the following sections.

3.1 Case Selection

This paper studies the case of European policy responses after the so-called migration crisis in 2015. Consequently, the focus is on EU institutions and member states between 2015 and 2020 to explain previous actions and policies, which led to the new pact. Therefore, the main object of the case is the launch of the new pact, which is based on amendments from the current CEAS. Hence, the policy documents of the new pact refer to the CEAS and an in-depth analysis of the directives and regulations is not required.

According to Lund (2014), the empirical world follows an analytical matrix for case studies, which can be divided into specific or general and abstract or concrete categories. Following his approach, this paper is a case of conceptualisation in an abstract but specific nature (Lund, 2014) due to researching through the lens of solidarity and human rights compliance in migration policies. Since generalisation is not a priority due to the EU as a sui generis institution, the claims focus on the concepts applied to the policies by including the ideal of normative principles. In addition, the EU plays a key role within international migration politics together with its moral obligations as a societal actor (Sperling & Webber, 2019), which justifies the high relevance of this research.

Even though case study design is a popular method within social science, the concept of case studies is still ambiguous among scholars. Yin & Campbell defines case studies as "an empirical inquiry that: investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomena and context are not clearly evident; and in which multiple sources of evidence are used" (2018, p. 23). Moreover, Verschuren (2003) outlines that qualitative methods are preferred within single case studies focusing on in-depth interviews or qualitative content analysis. For this paper, a case study design is used to narrow down the content of European migration policy and to conduct two qualitative content analyses, which represents the main analytical methods.

The chosen approach of a single case study is justified for various reasons. Campbell and Yin (2018) outline five rationales for single case studies. The fifth one focuses on longitudinal cases, which indicates studying the same subject at different points in time to argue how they developed through time. This research aims to compare the migration policy under CEAS and potential outcomes when implementing the new pact. Consequently, the involved institutions

and actors remain the same, and the only distinctive variable is timing. Another indication to argue for a single case study is the aspect that this paper does not aim for theory development but rather theory testing (Gisselquist, 2020) through NPE (Manners, 2008) and JST (Floyd, 2011).

Moreover, a comparative or cross-case study of the EU with another international organisation is less suitable due to the sui generis nature and the unique position of the EU within migration in terms of geographical and political terms (Anderson, 2017). Even though the UN established the "Global Compact for Migration" in 2018 (United Nations, 2018), the normative power and impact from the UN are difficult to compare to the influence of the EU as an international actor. Since the EU has a legislative supranational power for its member states whereas the UN is based on treaties. Additionally, the limited time frame hinders a comparative approach between the migration policy response of the EU and several member states.

The single case study, chosen for this paper, is considered an embedded case study instead of a holistic one, due to its clearly defined subunits, namely the chosen concepts of accountability, human rights, and solidarity. Thereby, all subunits/concepts relate to the overall case study (Yin & Campell, 2018) of a policy response.

According to Gerring (2009), a single case study allows gaining more profound knowledge on an object by testing the various variables within an observation. Since the first analysis only focuses on legal policy documents from the EC, it leaves out the CEAS implementation issues. Therefore, the interviews address these gaps and elaborate on the possible opportunities and risks of the new pact.

3.2 Data Collection

Two content analyses are conducted to determine first the proposed amendments for the new pact and second the informant interviews content. Therefore, NVivo was used for coding[3].

3.2.1 Policy Analysis

All migration documents released by the EC in September 2020 are analysed based on Schreier's (2014) approach to outline the changes in the concepts. The nine released documents provide a detailed overview of the proposed amendments in the new pact compared to the

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[3] The detailed coded paragraphs can be received upon request.

current CEAS. Saturation is reached when new documents do not add more relative content to answer the research questions (Bryman, 2016).

3.2.2 Informant Interview Method

Seven informant interviews were conducted. The interview partners are experts of European migration policy and, therefore, informants who possess in-depth knowledge about the research problem. Consequently, the interviews were phenomenological, aiming to gain a deeper understanding of the phenomenon (Choi & Roulston, 2018) of EU's migration policies. Thereby, the individual's perspective of the phenomenon is at centre during the interview.

The second and third research questions connected the new pact with just- securitisation (Floyd, 2011) and normative power (Manners, 2008) and were answered through informant interviews. Thereby, semi-structured interviews allowed the researcher to follow an interview guide with specific key questions for all conducted interviews. At the same time, it provided flexibility for in-depth clarifications and follow-up questions (Bryman, 2016).

Selection of interviewees

The seven interview partners were selected based on their job positions, experiences, and availability. A snowball method was used to contact relevant actors within and outside the network of the researcher. Afterwards, the informants forwarded the request for interviews to their network. It was insured that different positions and perspectives were examined as to reduce possible biases. In total, seven interviews were conducted with representatives from international organisations, NGOs, and universities. Due to the limited time for this research and the fact that all interviewees functioned as informants, the limited number of interviewees was justified. Moreover, all interviews were transcribed to allow proper coding.

Interview Guide for informant interviews

Furthermore, an interview guide with key questions was developed to increase the interviewees' reliability and make the interviews transparent and more comparable (Bryman, 2016). In the interview guide, key questions focused on the tripartite analysis (normative principles, actions, outcomes), the CEAS implementation problems and how the proposal of the new pact impacts the concept of human rights and solidarity. Appendix 2 displays the interview guide.

3.3. Data Analysis

3.3.1 Qualitative Content Analyses

Two content analyses were used as the methods to "systematically describe the meaning of qualitative data" (Schreier, 2014, p. 170). The benefits of this research design were the reduction of data and flexibility. Most importantly, QCA allowed to only focus on relevant data to answer the research questions, by cyclically applying a coding frame to adjust and redefine the frame in the testing period. The content analysis follows eight steps: defining a research question, segmenting the material, creating a coding frame, developing units for coding, testing the coding frame, evaluating the trial coding, carrying out the main coding, conducting, analysing and translating into findings (Schreier, 2012).

QCA acknowledges the "context and human relations when co-producing data and in the finding" (Schreier, 2014, p. 23). Therefore, it follows a holistic approach to include the context of the documents and the settings of the interviews.

For this paper, a concept-driven approach was used where the main categories of the coding frame derived from the theoretical framework of NPE (Manners, 2008). In particular, the tripartite analysis of principles, actions and outcomes formed the foundation of the QCA. This deductive approach allowed the researcher to systematically combine the theories and concepts by testing the frame until saturation was reached since no new categories were needed. This form of adding a data-driven component to the test period increased the reliability of the coding (Schreier, 2014).

The coding frames derived through concept and data-driven approaches. In the following paragraph, the coding frame of the policy analysis is elaborated. First of all, the three main categories/dimensions were based on the tripartite analysis by Manners for NPE: Principles, actions and outcomes (Manners, 2008). Principles referred to human rights and solidarity. Solidarity was further divided into external and internal solidarity according to Dickson's (2019) differentiation. Internal solidarity included state-migrant and interstate solidarity according to Wallascheck's (2020). For actions, JST (Floyd (2011) was applied to identify how migrants and migration were portrayed in the policy documents. Secondly, the responsibilities of the member state were determined using a data-driven approach where the material was studied, and relevant frames were added. Finally, the outcomes were assessed using the concept of accountability. Although the achieved outcomes of the policy document were not addressed in the data, it entailed information about the EU's control mechanisms. The policy documents coding frame can be found in Appendix 4.

For analysing the interviews, a deductive approach was applied. The coding frame related to the interview guide which was created based on the research questions, the concepts, and the theoretical foundations. Thereby, the coding frame followed the same approach by Manners' (2008), dividing the results into principles, actions, and outcomes. The interview coding frame can be found in Appendix 5.

First, QCA provided an analytical tool for the content by linking the categories. In the following, the main criteria to assess the quality of content analyses are described and how those were applied within this paper. Both the policy documents and the interviews use a QCA. In the segmentation and coding process, consistency is considered particularly important to assure that segments were coded similarly. Therefore, the test coding frame was applied again after two weeks to ensure that it was coded the same way. After adapting the coding frame, it was applied to the relevant sections in all nine policy documents.

Second, Schreier (2012) outlines the relevance of unidimensionality. This entails that each segment of the material is coded with one category, and category names are not double within the main category, also called dimension. Therefore, a hierarchal coding frame was created whereby the subcategories are related to the main category. In this paper, the dimensions were based on the tripartite analysis of NPE (Manners, 2008), namely principles, actions, and outcome. The coding frame demonstrates that no category name was used twice, and each subcategory was named and defined. The relations between the various subcategories were identified in the analysis and not during the coding process (Schreier, 2014).

Third, the criterion of mutual exclusiveness relates to how each unit of coding is only appointed to one subcategory. Therefore, QCA differs from other content analysis methods where multiple codes can be assigned to one segment (Schreier, 2014).

Finally, exhaustiveness and saturation must be considered to create a reliable outcome. First, exhaustiveness relates to the aspect that each unit of coding in the material can be assigned to at least one subcategory, which means the coding frame is adequate to cover the material. Exhaustiveness was ensured through the test coding. Second, for data-driven approaches, saturation indicates that no subcategory remains empty. Nevertheless, this paper mainly followed a concept-driven approach where empty subcategories were a potential finding for the analysis.

3.4 The quality of the research methods

Within qualitative research, the differentiation between internal and external validity is crucial. The internal validity is justified within the case and the casual relationship, whereas external is

related to the generalisation and applying it to more cases (Gerring, 2017). Within this research, internal validity and credibility are achieved using official EU policy documents issued by the EC, ensuring the quality of the chosen documents. Nevertheless, the informants' self-interests have to be considered when assessing the objectivity of the informant (Kuckartz & McWhertor, 2014). Since qualitative research is not based on statistics, generalising the outcomes is not the main intended goal. External validity is less applicable since the research focuses on the unique structure of the European institutions and cannot easily be applied to other cases (Kuckartz & McWhertor, 2014). Internal validity within the QCA is achieved by ensuring that the coding frame represents the chosen concepts and theories (Schreier, 2014). This is given by creating the coding frame based on the concepts and the interview guide.

In addition, credibility is given through triangulation by "using more than one method or source of data" (Bryman, 2016, p. 387). Besides applying the case study design to narrow down the social context, the primary method is the qualitative content analysis. Consequently, two methods were applied and two sources of data, namely the policy documents and informant interviews.

The choice of informants impacts the reliability and credibility of the research; therefore, the selection is justified based on their knowledge and work experiences related to migration policies. Moreover, interviewees did not represent their organisations but rather elaborated their responses based on their expertise in the field. For the QCA, reliability is mainly defined by "the extent that it yields data that is free of error" (Bryman., p. 167). Thereby, Schreier (2012) refers to the consistency of coding frames by comparing the coding material across time and with low consistency problems.

Several ethical concerns must be mentioned in the context of this paper. First, comparing interviews always includes the risk of biases. On the one hand, there is a bias from the informants to answer in a certain way; on the other hand, the interviewer can be biased to push or guide into a particular area (Roulston, 2014). Since only expert interviews were conducted, the interviewees functioned as informants, and their behaviour was not part of the study. All informants participated voluntarily, provided their permission for recordings, and allowed to state their name.[4]

Finally, confirmability relates to the objectivity of the study "while recognising that complete objectivity is impossible; the researcher can show that he/she has acted in good faith" (Bryman, 2016, p. 386). This applies more to interviews than policy analysis since the context

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[4] Besides Informant 1

of the documents cannot be influenced by the researcher. During the interviews, I have followed the interview guide with follow-up questions but reflected on my bias and aimed for objectivity to the extent possible by allowing the interviewees to elaborate on their perspectives.

3.5 Limitations

Furthermore, there is uncertainty about the future of the new pact since it is currently debated within the EP. However, this research clearly outlines why analysing the new pact is highly important to identify the inherent risk of human rights violations under the proposed amendments. The choice to only analyse documents released by the EC represents a strength due to the high quality and relevance of the policy documents. Instead of analysing secondary sources from authors where their bias or interpretation of the policies would have been assessed, coding the primary and official documents allows to leave this step out (Dulić, 2011).

Although the number of analysed documents was limited due to time and resource restrictions, the key documents by the EC from September 2020 were analysed where the new pact was introduced together with its proposed amendments and the impact on the CEAS. The theory of NPE (Manners, 2008) explains the moral responsibility the European Union has as an international actor. The aim is not to assess to which degree the EU is a normative power or its influence on third countries (Manners, 2011) but rather NPE's approach of principles, actions and outcomes are applied within the policy documents.

The main limitation deals with the time frame and the included constraints within the research scope to focus on the new pact and CEAS only based on three concepts. Therefore, the researcher decided to focus on interstate and state- migrant solidarity and not focus on external solidarity or partnership. Moreover, the Covid-19 pandemic and the inherent travel restrictions implied that interviews had to be conducted online through Zoom.

In addition, the issue of confidentiality occurred with informants to decide about anonymity or stating their names. Besides one, all informants provided permission to publish their names and organisations. It is important to consider that interviewees respond as experts in the field and not act as spokespersons for their organisations. Therefore, their responses can differ from the organisation's communication.

Furthermore, reducing data and interpreting data in a certain way is required within this paper due to time constraints. Therefore, QCA is the best suitable approach due to its flexible coding frame to adjust it to the policy analysis and the interviews (Schreier, 2014).

Moreover, Roulston (2014) argues that researchers can always increase data with more interviews and that there is no clear definition of the number of interviews required for sufficient data collection. Instead, the researcher must justify the choices made based on the circumstances of the research, the limitations, and the intended goal. An increased sample of interviewees improves the reliability; however, under the time and resource constraints (Bryman, 2016), the total number of seven interviews is sufficient to achieve the intended goal to review the new pact from different perspectives. The understanding that interview data is co-constructed instead of collected allows the consideration of the interview context, the relationship between the informants and the research to assess the quality and validity of the outcomes (Roulston, 2014). Informants were chosen to understand the differences between the policies and the practice that cannot be derived from a policy analysis since the policy documents do not address the implementation issues and only demonstrate the perspective of the EC. The various backgrounds of the informants allow analysing the research problem from different perspectives. The strength of this two-folded approach is evident regarding the theory of JSP from Floyd (2017), where the policy documents outlined how the EC securitise migrants and migration, and the conducted interviews evaluate the responses of the EC and put them into perspective.

4. Results

In the following chapter, the policy document analysis and the informants' interviews are jointly elaborated to compare the results. A detailed overview of the analysed documents can be found in Appendix 3.

One of the main differences between CEAS and the pact is the proposed implementations of several new regulations like the new asylum procedure regulation (hereafter APR), the regulation for Asylum Management (hereafter RAM), the regulation of addressing crisis and force majeure, the regulation for a common procedure and the regulation for border management. A regulation means a legally binding element that must be implemented in every member state identically. In comparison, directives represent a common goal, that member states can implement individually (European Union, n.d.). Under CEAS, Dublin II is the most important regulation. Since the new pact suggests implementing five regulations, this demonstrates the intention to aim for stricter rules and a step towards harmonisation within European migration policy.

4.1 The principles of the EU

Based on the tripartite analysis (Manner, 2008) and the coding frame, the normative principles of solidarity and human rights are outlined.

4.1.1 The approach to Solidarity between Member States of the EU

First, the concept of solidarity[5] is compared between the CEAS and the pact. Thereby, the focus is on solidarity between the different member states. Under the CEAS, the Dublin II regulation governs state-responsibility for asylum procedure based on the first country of arrival approach. This approach dictates that member states along the EU border are mainly responsible for asylum processes and does not support the approach of fair sharing of responsibility. During the so-called migration crisis in 2015, relocation for migrants from Greece became mandatory, which so far has not been a part of Dublin II. "The relocation of asylum seekers based on the 2015 Council Decisions has been the only time Member States were obliged to offer their solidarity in terms of relocation" (European Commission, 2020c, p. 1).

The EC admits that Dublin II has "a structural weakness … due to its absence of a functioning system for the fair sharing of responsibility among member states" (European Commission, 2020d, p. 22). Therefore, the EC states that "fragmented and voluntary ad hoc solidarity between Member States has put a disproportionate strain on member states of first

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[5] This paper focuses on internal solidarity, namely interstate and state- migrant solidarity and therefore does not focus on external solidarity in forms of partnerships with third countries.

entry, threatened the political cohesion among member states and put migrants in vulnerable situations at risk" (2020d, p. 6).

Furthermore, the new pact replaces Dublin II with RAM and promises a new common framework that "ensures a fair sharing of responsibility. … This includes a new solidarity mechanism to embed fairness into the EU asylum system, reflecting the different challenges created by different geographical locations" (European Commission, 2020a, p. 5).

The proposed new solidarity toolbox differentiates between two situations. There is a flexible solidarity mechanism and a mandatory solidarity mechanism for crises, which includes shortening asylum processes. The EC decides when a situation is defined as a crisis, and solidarity becomes compulsory. "In situations of crisis, of the solidarity mechanism set out in the proposal for a Regulation on Asylum and Migration Management, which provides for compulsory measures in the form of relocation or return sponsorship "(2020f, p. 13).

Hence, the so-called return sponsorship indicates that other member states are obliged to support the member state under pressure by supporting so-called relocation or return sponsorships. The other member states have eight months (within a crisis, four months) to return migrants not eligible for international protection from the member state under pressure. If this does not occur, the supporting member state must relocate migrants (European Commission, 2020c). As the EC outlines in the following:

> In situations of pressure, the Member States are required to submit their contributions via Solidarity Response Plans indicating whether they will undertake the relocation of return sponsorship or a combination of the two contributions. Such contributions will be calculated according to a key based on GDP and Population (50%/50%). (202d, p. 92)

Nevertheless, member states have other possibilities to support, e.g., with capacity building or financial means. Moreover, the approach with the first country of arrival remains (European Commission, 2020a).

The EC mainly argues for solidarity by relating to the common identity and the shared values of the EU, which relates to cultural solidarity, according to Wallascheck (2018). Moreover, financial solidarity through payments is applicable under specific circumstances. Social and economic solidarity are not applied in the analysed policies.

The proposed amendment is criticised by Informant 4, who contributes to research on migration at the University of Science Po, Paris. In her opinion, also the newly proposed solidarity

mechanism does not allow for solidarity if member states are not held accountable for their non-compliance:

> There is no solidarity between member states. … The only possibility would be to suppress or cut the … European funds for development of their region by saying … we are very strongly attached to solidarity; you receive funds from Europe, but you don't respect the principle of solidarity. It is compulsory to accept European rules as they [Poland, Hungary] don't accept them.

Moreover, the issue with the so-called asylum lottery is condemned by the informants. The term refers to the chances of an asylum applicant to be granted the right to international protection, which highly depends on the national asylum system since every member state has different procedures. The informants criticise this process since the chances are not equal, and the outcome of an asylum process might vary. Informant 1 with an academic background in migration and asylum law outlines:

> A different solidarity mechanism would help a lot, but as long as the asylum applications are examined by a few member states, the system is not going to be proved. If … 27 member states examine asylum applications. Maybe we will see some changes but when it comes to asylum law, the reason what is called asylum lottery is because not everyone organised asylum in the same way.

> Even though the pact is only a proposal, there are some concerns regarding its solidarity toolbox:

> Well, it is difficult for me to foresee the outcome of the solidarity fund and pool. First of all, because the proposals don't set up a mechanism to review member states obligations so it's not really clear … how they are going to negotiate it. – Informant 1

One trend visible is the trend towards a mandatory solidarity mechanism without opt-out possibilities like Informant 2, who works in the academic and INGO field, elaborates, *"something without an escape plan because now it seems a little bit that there is going to be an easy escape plan for some member states."* The main issues are the lack of taking on responsibility from other member states, and the missing fundamental change from Dublin II away from pressure on countries of arrival. With a background in advocacy for an INGO, Informant 6 explains the risks of the proposed amendment:

> The least popular form in that toolbox would be to resettle people from Greece and Italy … You can buy your way out of solidarity effectively by sending more border guards to the Turkish border.

With a background in asylum law for an INGO, Informant 3 expresses scepticism regarding the impact of the proposal:

> Anyhow, I think with the return sponsorships, it's not solving … the general issue of an unfair distribution of people or that some countries have to take a larger responsibility than other … and I really think that this could be done by working with the asylum seekers rather than against them.

4.1.2 The approach to Solidarity between the State and Migrants

In the next section, the concept of solidarity between the state and the migrant is elaborated. Within the documents, solidarity between the member states and a migrant is not explicitly mentioned. However, the new pact proposes an increased possibility for minors to be granted asylum by considering the "best interest of the minor" (European Commission, 2020c, p. 63) with simpler and faster asylum processes. In addition, the simplifications for family reunification are assessed as an improvement for the rights of migrants (Informant I; Informant 2). Many informants argue for a visible trend that solidarity within the EU is understood on an interstate level like Informant 3 who states that "it's definitely not solidarity towards people".

During the interview with Informant 4 from an international organisation for migration policy development, he explains that "Solidarity is discussed in the pact and in the European asylum system, mainly of interstate relations, that the countries need to support each other rather than support refugees"

4.1.3 EC's Approach to Human Rights and the violations under CEAS

Next, the concept of human rights compliance is highlighted. The EC mentions the following charter of the fundamental human rights in each analysed policy document, and applies it to the CEAS and the new pact:

> The proposal respects fundamental rights and observes the principles recognised in particular in the following acts: the Charter of Fundamental Rights of the European Union, the obligations stemming from international law, in particular from the Geneva Convention on the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms (2020b, p. 11; 2020c, p. 34, 2020d, p. 21; 2020f, p. 24)

Under the CEAS, human rights violations occur and increase after the so-called migration crisis in 2015. The main problems are the lack of compliance with EU law when implementing the CEAS leads to a normative paradox which Informant 3 outlines as: "You have human rights issues right now, that relates very much to non-compliance with the Common European Asylum System". Informant 7 from a Greek NGO states that "Non-compliance can actually be found in the vast majority of member states, in different categories of asylum".

One main issue identified relates to pushbacks where some agencies within member states and EU agencies like Frontex hinder migrants from entering EU territory to apply to an asylum procedure which represents a non-compliance behaviour of the Geneva convention and the international right to seek asylum. Informant 7 elaborates:

> Pushbacks are an asylum question. It's a human rights question. I think it's quite evident as a problem. Pushbacks are happening to the best of our knowledge and according to documentation in Greece, land border and sea border in Bulgaria, in Romania, in Hungary, in Italy, Slovenia, in Croatia, in France and Italy. … So, the examples are many, and the practice is the same. There are a few typologies that might be different, but the fundamental problem is very much the same.

Moreover, another identified risk is the potential rise of several human rights-related issues through the establishment of migration camps and the procedures for asylum applications. Thereby, the inhumane situation in camps under the CEAS is critical, and the lack of procedures on how to handle rejected asylum applications constitutes a risk. Informant 5 explains:

> The situation in camps in Moria, or in other islands that we have in so-called hotspots, is problematic. Because … if you say only those are allowed to enter who are eligible, then you must also create the follow-up procedures, if relocation does not work, then people cannot move from Greece or have to be locally integrated in Greece.

Since the new pact is only a proposal; the following results deal with the potential risks of human rights non-compliance based on the current situation and the proposed changes in the pact. The EC states:

> People seeking international protection who enter the EU need fair and quick access to asylum procedures, such as the right to seek asylum and the principle of non-refoulement. This remains the case also in situations of crisis. Also, the fundamental rights of those who are not in need of international protection need to be fully respected. (2020d, p. 64)

The EC ensures compliance with the fundamental human rights in each of their proposed amendments. One of the main changes in the new pact is the proposed regulation for border management and pre-entry screening to implement faster asylum procedures. During a five-day pre-entry screening outside of EU territory, the data of migrants are collected for EURODAC. Based on these data, authorities decide if someone is eligible to apply for international protection. During the process, migrants are not entitled to enter EU territory (European Commission, 2020b). Moreover, this new regulation is not linked to the Schengen border code, which regulates the movement between member states.

Two further issues are identified regarding potential human rights violations. First, the pre-entry screening outside of EU territory leads to grey areas where the implementation of EU law is not ensured (Informant 1). Informant 2 describes this as a "legal illusion, that people have not entered the territory, because only from the moments that people apply for asylum, the status becomes applicable". According to her, the regulation is too vague and needs more clarifications since migrants need the right to seek asylum to be granted protection during the process.

Second, the fast-pre-screening regulation "is quite unrealistic, and you [national authorities] could do quite a lot of harm to have a very fast track procedure and easily putting somebody into the return process" (Informant 5). Moreover, Informant 3 outlines that "evaluating the profile of somebody, when they enter the territory of the European Union is very difficult, it needs a long time to analyse the profile. So having a very rapid [decision] is very difficult".

Overall, a five-day pre-screening process is perceived as unrealistic. Especially for migrants with traumas and special needs, psychological support might be required to endure the asylum application process (Informant 6). The asylum case is assessed based on the overall return rates of the country of origin. This is criticised since asylum procedures rely on the applicant's individual situation and cannot be based purely on nationalities (Informant 1).

After the pre-entry screening is conducted, the EC proposes "that the border procedure shall have a maximum duration of 12 weeks from when the application is registered for the first time" (2020e, p. 14). During the process, the member state is responsible "to accommodate applicants subject to the border procedure not only at locations at external borders or transit zones but also in proximity to such locations" (European Commission, 2020e, p. 15).

The implementation issue of the proposed border procedure relates to the creation of more camps, which presents an inherent risk of overcrowding and terrible hygienic conditions

(Informant 1). It is doubtful to argue for efficient asylum procedures and fair outcomes without including the quality of the procedures as Informant 6 explains:

> If there are 100,000 people here, these people have rights and if all we care about is reducing their number, then what ends up happening is that we trample their rights, notably the right to actually seek asylum in safe territory.

Also, Informant 7 highlights his concerns:

> When the Commission proposes something like this, it actually legislates blanket detention of asylum seekers for the sole reason of seeking asylum in Europe, which for us is not only very dangerous as a political message, … but from a legal perspective, it is a very controversial position that in our view, can never be reconciled with the EU primary law, namely the right to liberty in the charter and the obligation to ensure that this only happens as a last resort measure for specific grounds only when it is necessary and proportionate.

Furthermore, the aspect of returning migrants is a heavy focus within the new pact. Currently, there is no EU policy on assisted voluntary return or reintegration (hereafter AVRR), and only 40 % of rejected asylum applications are returned. The EC proposes "to issue return decisions in the same act as the decision rejecting the asylum application, in order to make the return process quicker and prevent the misuse of asylum procedures" (2020d, p. 73).

Informant 3 works for a Danish INGO and outlines that this approach is already used in Denmark and other member states and has not led to severe human rights violations; however, Informant 7 highlights the potential risks that "Return cannot be the sort of default position and having asylum procedures just as a precursor to having the person returned."

He refers to the lack of follow-up procedures in terms of integration or relocation for migrants in member states leading to an increased number of homeless migrants. According to the informants, a concrete plan from the EC for dealing with people who cannot be returned is not sufficiently covered. Thereby, Informant 2 addresses this gap in the new pact regarding return sponsorship:

> What happens if people are not returned? What happens to people during their time that are waiting for the return … Which legal safeguards are implemented? How will their reception conditions be ensured that they are to the standard that the EU has itself agreed upon?

Furthermore, the issues of sea rescues under the CEAS are addressed and the concomitant criminalisation of NGOs (Informant 2, Informant 4). The EC aims to improve the human rights situation of migrants who are being rescued during sea operations by stating that "assisting

those in distress at sea is a moral duty and an obligation under international law" (2020e, p.7). Therefore, the step was perceived as important by Informant 4 .

To conclude, the experts are critical towards the potential human rights improvements, and their assessment differs from the EC statements. Overall, the "standards have dropped" (Informant 6) regarding the human rights situation in the new pact. Moreover, within the policymaking process, the standards are often lowered during the negotiations with the Council and the EP (Informant 1). This indicates that potentially the standards outlined in the policy paper might be revised by the EP or the Council and decrease further.

Informant 7 states that "the pact does not contribute at all to improve human rights compliance. The pact actually exacerbates some of the worst instances of violations of human rights that we've seen" by referring to the increased risk of detentions and a lack of accessibility to fair and humane asylum procedures.

4.2 Migration Policy Activities of the EU

4.2.1 The Ambiguity in the Migration Discourse
In the following subchapter, the actions of the EU are elaborated in terms of just- securitisation and the normative paradox between policies and practice. Therefore, the policy documents are analysed regarding the representation of migrants and migration. Overall, the policy documents focus on border management and control and less on migrants and their rights. The EC mentions the individual perspectives of the migrants when presenting the complex root causes of forced displacement or the proposed changes for family reunification and the special rights for minors. Additionally, migrants are presented as victims of trafficking networks. Thereby the EC outlines that:

> Trafficking networks abuse asylum procedures and use reception centres to identify potential victims. The early identification of potential non-EU victims will be a specific theme of the Commission's forthcoming approach towards the eradication of trafficking in human beings (2020a, p.9).

In comparison, the EC refers to the opportunities of migration as "well-managed migration, based on partnership and responsibility-sharing, can have positive impacts for countries of origin, transit and destination alike" (2020c, p. 17). For the EC, legal migration refers to economic migrants resettling to the EU through partnerships agreements. Thereby, they explain that "legal migration can bring benefits to our society and the economy" (2020c, p. 22).

However, there are no legal pathways to enter the EU for asylum seekers due to the current border management rules (Informant 2). Consequently, the differentiation between a migrant or a person seeking international protection is often missing and not clear. As Informant 2 elaborates:

> They [European Commission] are mixing those two [economic migrant, person seeking international protection] … to also allow to, like justify the fact that they are also going to mix up this element of return regulation and procedures. … The Commission has not been very precise on the wording chosen in many parts of the pact.

Regarding the migration situation from 2015, in the policy documents, the EC presents it as "refugee crisis of 2015-2016 which revealed major shortcomings, as well as the complexity of managing a situation which affects different Member States in different ways" (2020a, p.1). Therefore, they justify their proposed border manager regulation as a mandatory procedure. The policy documents outline that it "distinguishes between crisis situations that are caused by a mass influx of third-country nationals or stateless persons arriving irregularly being of such a scale and nature that it would render a member state's asylum, reception or return system non-functional" (2020d, p. 82). Although, the discussions within political science refer to "a so-called migration crisis" (Informant 1) or "fallout of this perceived political crisis" (Informant 6), the EC refers to migration as a challenge. The situation in 2015 is described as a "refugee crisis" (European Commission, 2020a, p.1). In addition, asylum is not part of the Schengen Borders Code, even though the codex refers to entry checks and clearly states that "migration and the crossing of external borders by a large number of third-country nationals should not, per se, be considered to be a threat to public policy or internal security" (European Border Schengen Codex: l77 p. 4). Nevertheless, in 2015 several member states reacted to the increased arrival of migrants by implementing border controls (Informant 2).

Furthermore, the risk of terrorism through migrants arriving at the EU's external border is reflected in two amendments. First, the pre-entry screening aims to identify if "the entry of the third-country nationals into the Union could pose a threat to internal security or public policy" (European Commission, 2020b, p. 22). Second, during the asylum procedure, there is a new option if an "asylum seeker has been identified as a potential security threat during the screening, to allow for their exclusion from the relocation process" (European Commission, 2020d, p. 80). Relocation refers to moving a migrant during or after their asylum process, e.g. outside of the refugee camps.

Overall, the policy documents mainly refer to migration as a challenge and emphasise the risks of people entering through the asylum procedure who aim to damage the member states or are connected to terrorist organisations. Additionally, migration as an opportunity is linked to economic migrants and partnership agreements which the EC refers to as legal migration. The individual perspective of people seeking international protection is not highlighted (European Commission, 2020a, European Commission, 2020c).

4.2.2 Securitisation of Migrants and Justice

After outlining the representation of migrants and migration within the policy documents, the three main elements of just-securitisation by Floyd (2019) are presented. The first one refers to the securitisation of migrants and presenting them as a security threat. Even though securitisation can help to increase the attention on a topic and lead to a prioritisation of the issue, it has a severe impact on human rights within the migration discourse. This risk is highlighted by several informants, where one points out the neglect of reasons for migration. "One of the main risks is dehumanising the persons that we are speaking about because we are talking about domestic risk instead of as a human. And we are not looking at the reasons why they [migrants] are coming" (Informant 2). Informant 6 stresses the gravity of the issue: "To view refugees through a lens of securitisation leads to fundamental flaws". Also, Informant 4 explains that in her opinion, "there is no threat. … Migration is a very normal question; it has always existed, it will always exist, there is no threat except of terrorism".

To summarise, the informants differentiate between the threat of migrants and terrorism and outline that "terrorists are not necessarily migrants who arrived through an asylum procedure" (Informant 3). Consequently, even further restrictions in the migration process are not necessarily related to lower number of people within terrorist organisations within Europe, instead the securitisation leads to dehumanising people who seek international protection.

Additionally, Floyd (2019) raises the questions of the moral legitimacy of securitisation related to the extent to which a securitisation is morally just and avoids harm. Informants doubted the extent to which they can provide answers for the moral indicators of securitisation due to the complexity of violations and securitisation which are taking place. Therefore, they object that the EU's policy response after 2015 is appropriate to the threat in question, namely migrants arriving in the EU. The responses are respectively increased border controls and the securitisation of migrants by presenting them as a threat. Informant 6 elaborates:

> To respond to the entire thing through a lens of securitisation is disproportionate and not justified in my view. … I mean, the objectives of securitisation are obviously, very different from the objectives of human rights and of people's rights. That is very difficult.

Here Informant 6 sheds light on the vicious circle between migration and the lack of legal pathways to seek asylum in the EU. Informant 2 similarly outlines:

> The EU is incentivising for criminal action to a certain extent. So, I think if we look at this from like … a turning around points, it's a bit difficult for me to see how this can be perceived as proportionate, … when it's actually a consequence of the EU's own policy.

Moreover, Informant 5 elaborates that migrants are not the threat, but that the asylum systems are not prepared for "external shocks", and the "creation of reception places" are essential lessons learned from 2015.

The discussion of the EU as a normative power deals with the potential paradox between the normative principles of the EU and their actions. In the policy documents, the EC refers to the values of the Union and the importance that "Europeans can trust that migration is managed in an effective and humane way, fully in line with our values" (2020a, p.28). "The EU has credibility and strength through its role in the international and multilateral context, including through its active engagement in the United Nations (UN) and close cooperation with its agencies" (European Commission, 2020a, p. 18). However, the paradox occurs when EU law is not implemented rightfully as outlined by all informants.

In addition, the EC refers to the partnerships of the EU and the UN engagement as proof of credibility. Even within the new pact, there is uncertainty about ensuring compliance with human rights when introducing the border management procedure (Informant 4). Related to the CEAS, all informants identify a normative paradox between the principles of the EU institutions and member states and their actions. Informant 3 states: "All the countries in the EU are based on the rule of law and respect of human rights, and it is definitely challenging to see that always been [the] case when it comes to asylum seekers in Europe."

Moreover, the UN established the Global Compact for Migration in 2018 on migration management, which was accepted by the majority of European member states as a non-legislative binding document (United Nations, 2018). However, the policy documents analysed in this paper do not mention or refer to the global compact. Informant 4 explains this in the following way:

> It [the Global Compact on Migration] is not mentioned because it is embarrassing for Europe, … and even if European countries mostly accepted the Marrakesh pact. They are not really in the mind of the Marrakesh pact with the European pact on immigration, and they are very strongly stressed by the refugee crises of 2015 and security issues. Which is still not the problem. The rise of migration is not a problem.

Furthermore, Informant 3 explains, "it sort of seems like you have placed this [the Global compact on migration] as something that applies abroad. So, the compact for refugees applies in Africa, so to speak, and then you have different policies within the EU".

Consequently, the EU's normative paradox might damage the EU's reputation as an international actor and in partnership negotiations. The potential damage in case the paradox does not dissolve is outlined by Informant 4 in the following:

> The European Union is proud to say it has also a … expectation towards itself to be leading on human rights. … They have projects where they promote their own human rights standards in other countries. And I think the European Union has in … this regard much to lose, if it does not take care that this process was quite out of hand in a way.

Informant 3 assumes that "the strong emphasis on trying to deter people from coming to the EU, definitely have an impact on EU's ability to for example, advocate for open borders to Syria's neighbouring countries."

To summarise, the paradox impacts the EU to negotiate with third countries about migration and increases the risk of further losing its role model function. Moreover, policies related to migration are more difficult to implement in partnership agreements.

4.3 Potential Outcomes of the new Pact

Finally, the outcomes of CEAS and the new pact are elaborated based on Manners' (2008) tripartite analysis. Three topics are addressed: responsibility, the potential changes and risks.

4.3.1 The Approach to Responsibility

As a third concept after human rights and solidarity, accountability is analysed. Accountability highlights the effectiveness of CEAS and the potential outcomes of the new pact of holding member states or the EU institutions/agencies accountable for their actions. Within the EU, the EC controls the proper implementation of EU law in the member states. Misconduct can lead to an infringement procedure, and a case in front of the CJEU like the one Hungary and Poland faced with the relocation mechanism case in 2017. Thereby, the decision by the CJEU to

sentence Hungary and Poland for non-compliance was an essential step under the CEAS to achieve more accountability (Informant 1). Furthermore, Informant 5 explains that the CEAS allowed some of the new member states who joined in 2004 to develop a migration and asylum system that they did not possess before due to their past belonging to the Soviet Union.

Under the CEAS, the EC must report amendments for directives to the EP and the Council two years after implementing. The new pact aims to turn several directives into regulations with the following assessment timelines: After three years, the EC must report measures of the implementation of the regulation to the EP and the Council. Every five years, the EC creates an evaluation report informing the EP and the Council about the development and the need for potential amendments (European Commission, 2020c).

In addition, the EASO, the agency under the CEAS, is replaced by the European Asylum Agency (hereafter EUAA) to continue supporting member states when implementing EU migration policies. However, the crucial new competency is to "improve the functioning of the CEAS through its task of regularly monitoring Member States' operational and technical application of the CEAS to prevent or identify possible shortcomings and to provide relevant support" (European Commission, 2020d, p. 96).

Furthermore, the pre-entry screening regulation provides an "obligation for the member states to set up an independent monitoring mechanism in order to ensure that the Charter of Fundamental Rights and other EU and international obligations are complied with during the screening" (European Commission, 2020d, p. 96).

Through RAM, the independent monitoring mechanism controls the pre-entry screening and the migration process in cases of detention. However, the mechanisms do not control all steps of the asylum process. Therefore, member states must report to the EC annually. Within the policy documents, the EC refers to the importance to ensure a consistent implementation of the regulations and respect for human rights. Moreover, the EC is required to monitor CEAS regulations and directives besides the newly amended pact (European Commission, 2020c).

There are several concerns regarding accountability; one is the current normative paradox or gap between EU law and its implementation. The unwillingness of governments to ensure human rights compliance or accept migrants under the CEAS creates distrust in the opportunities the new pact could provide (Informant 6).

Related to the demand for mandatory solidarity, Informant 2 states the need for consequences for member states in cases of non-compliance: "Financial consequences, or political consequences, and effectively starting infringement procedures would be some of the

possible consequences." Informant 4 goes one step further by stating: "There is no accountability. We are in pure short-term approach, both short-term and electorate populist approaches."

Informant 7 highlights two aspects related to the EC failing to hold member states accountable. First, the EC has shifted away from infringement procedures in the last years and referred to the upcoming changes in the migration law to ensure compliance in the future which means non-compliance takes place. Second, the competencies of EUAA are limited, so the responsibility to start infringement processes continue to lay with the EC. Informant 5 perceives the implementation of EUAA as the mechanism to ensure a rightful implementation of the independent monitoring bodies. Additionally, he outlines the difficult and complex political situation to reach a compromise on the EU level:

> Infringement procedures are long, tedious, and difficult politically and at the end of the day is always an issue to try to keep up the community of [the] European Union and not to jeopardise it over single implementation issues. So, this is always a balancing thing of leaders at the European level.

Also, Informant 7 stresses the risks of not overcoming difficulties between member states and continuing with the status quo, as the failed negotiations regarding amendments of CEAS in 2018. Moreover, the ongoing discussions about the accountability of Frontex and EU agencies are reflected in the debates as a risk for transparency and accountability of the EC (Informant 4).

4.3.2 Potential Chances and Damages with the new Pact

Finally, the chances and damages of the pact are outlined. Starting with the opportunities, the EC defines the purpose of the new pact as:

> This approach will build on progress made since 2016 but will also introduce a common European framework and better governance of migration and asylum management, as well as a new solidarity mechanism. It will also make procedures at the border more consistent and more efficient, as well as ensuring a consistent standard of reception conditions. (2020a, p. 3).

Regarding opportunities, the focus on protecting minors and family reunification improves the situation of their rights. Moreover, the push towards interstate solidarity can potentially increase the relocation and return processes among member states. Additionally, independent monitoring mechanisms can support the EC to detect human rights violations. However, the pact reveals several gaps in its potential implementation.

As mentioned earlier, grey areas outside EU territory during the pre-screening represent a legal paradox where EU law cannot be ensured together with the right to seek asylum (Informant 1). Moreover, informants outline the necessity of an independent monitoring body, but it is not "very clear how it [the independent monitoring mechanism] will look" (Informant 3).

Whereas Informant 5 explains that the new pact should be perceived as a starting point for negotiations within the EU despite the remaining open questions, most informants criticise the pact for not reaching far enough or developing new ideas within the migration discourse. Additionally, Informant 5 refers to the "lost vision of the CEAS". He elaborates that the EU "has to define its vision where the objectives and aims of the CEAS should lead". The pact aims to further harmonise European asylum procedures but does not push for similar asylum procedures.

In the following section, the risks and gaps of the pact are analysed. Informant 2 poses the following questions:

> The first issue is at the moment, if we look at European law and asylum and migration … the law is not well implemented. … Do we need new legal frameworks? Or do we need to ensure that current existing frameworks are being implemented?

Even when identifying potential gaps in the gap like the grey area during the pre-entry screening, it is still difficult to assess the possible consequences before the implementation. Due to the failed attempts to change migration policies within the last years, the informants are relatively pessimistic about the potential impact of the new pact.

"We haven't seen any true, let's say, innovative approach, but rather a repetition of some of the failed policies that the EU has been implementing over the past years" (Informant 7). Also, Informant 4 explains her concerns, "most of the proposals are very old proposals, like return, repatriation, development policies, and so on, 30 years of failure. So, I don't hope a lot from the new aspects of the pact."

5.Analysis

In the following chapter, the analysis combines the results, the theory and previous research. Since the new pact consists of proposed amendments of CEAS and is debated in the EP and the Council, the aim is to highlight the changed concepts and potential consideration.

First of all, the validity and reliability of the results are considered. Concerning the reliability, the number of interviews is limited, and generalisation for other cases is not intended. Even though informants are interviewed as experts and not as spokespersons for their organisations, the organisations' self-interest might influence and be reflected in their answers. In addition, the interview guide and follow-up questions increase the reliability of the results to identify potential contradictions in their responses. Internal validity is ensured by following the structure of the coding frames during the presentation of the results and the analysis.

5.1 Normative Principles

The first sub-question refers to translating the EU's normative principles of human rights and solidarity into CEAS and the new pact. Thereby, table 1 below demonstrates the main differences between the two concepts. Accountability is analysed in the second sub-question and not analysed to answer the first research question since it does not represent a normative principle of the EU.

Table 1 Comparison of CEAS and the New Pact regarding the sub-question 1

Concept	CEAS	New Pact	Difference between Concepts
Interstate Solidarity	Dublin II: focus on first country of arrival, solidarity is not a key component (European Commission, 2020a)	Dublin II replaced with RAM, differentiation between flexible and mandatory solidarity (European Commission, 2020c). Another member state is responsible for the return or relocation of people not eligible for international protection in a crisis based on the GDP and the population of a country (European Commission, 2020d)	Under the new pact, interstate solidarity is a key component, and member states have to support the country under pressure in a crisis (European Commission, 2020d.) An approach to aim for fairer responsibility-sharing. However, member states can avoid relocation by supporting with financial means or capacity building (European Commission, 2020e)
State – Migrant	Not a focus.	Not a focus.	State – migrant solidarity not a priority in either systems.
Human Rights Compliance	The EC concludes that it as structural weakness under CEAS lead to non-compliance (European Commission, 2020a)	Independent national control mechanism is responsible to ensure compliance during pre-screening (European Commission, 2020b)	More rights for minors and families are proposed in the new pact and new mechanisms to ensure compliance (European Commission, 2020a)

5.1.1 Interstate Solidarity

Referring to interstate solidarity in migration policy, the CEAS applies the Dublin II regulation, which establishes a system for asylum procedures based on the first country of arrival principle. However, Dublin II does not include a solidarity mechanism between member states, which leads to an unfair responsibility-sharing with the main pressure on the member states at the EU border in the South (Italy, Greece, Spain) (Angenendt et al., 2020). Therefore, the new pact and the regulation on migration management can be perceived as a policy response to replace Dublin II by introducing the solidarity toolbox and return sponsorship. The fundamental basis of Dublin II, namely the focus on the first country of arrival, remains under the new pact. However, in the new pact member states are required to support each other through relocating or returning migrants when a member state reaches out to report a crisis, and the EC triggers the mandatory solidarity contribution. As a consequence, in a crisis, member states are obliged to support the member state under pressure either by returning or relocating migrants within a given time frame. The contributions are based 50 - 50 on size of GDP and population (European Commission, 2020c). Nevertheless, member states can avoid relocation and return by providing financial support or through capacity building. Therefore, the two main concerns from the informants are that member states might be unwilling to accept migrants and pay their way out instead of contributing to fairer responsibility-sharing. Moreover, the newly proposed solidarity mechanism does not improve the unfair distribution of migrants since the first country of arrival remains responsible for the asylum procedure.

The concept of solidarity within EU's migration policies refers to the understanding of cultural solidarity from Wallascheck (2020) due to the heavy focus on the principles of the EU and the shared values which demand solidarity and support between member states (European Commission, 2020a). It becomes visible that the EC approaches interstate solidarity from a perspective of common identity since the EC requires the EP and the Council's support to implement the new pact. The argument that the EC demands cultural solidarity aligns with Wallascheck's (2020) analysis that humanitarian assistance is often anchored in the core values of the EU in the form of cultural identity. Additionally, the EC pushes towards more political solidarity by proposing the EUAA to replace the EASO. The implementation of new political agenciessuch as EUAA is used to legitimate policy processes (Wallaschek, 2020) which is important to generate a broader acceptance of the policies.

To conclude, Rizcallah (2019) refers to the solidarity deficit under the CEAS. This deficit is approached in the new pact by implementing interstate solidarity as a mandatory

component. Nevertheless, the possible implementation brings several concerns regarding the extent to which the objective of a fairer distribution mechanism can be achieved.

5.1.2 State – Migrant Solidarity

The internal solidarity between the member state and the migrant is elaborated. Neither the CEAS nor the new pact explicitly refer to a form of solidarity between member states and migrants. Due to the lack of harmonising regulations within the EU, each member state is entitled to its national asylum systems under EU policy. This leads to 27 different systems. Informant 1 refers to it as the so-called "asylum lottery" since the same case might be assessed differently depending on the country responsible for the application. Given that there is no European concept of solidarity towards migrants, European institutions and governments mainly understand solidarity from an interstate perspective.

5.1.3 Human Rights

The CEAS and the new pact refer to the same concepts of human rights compliance, namely the CFH, the Geneva convention on refugees and the fundamental human rights outlined by the UN (European Commission, 2020b). The conceptualisation of human rights is clearly defined through the various charters from the UN and the EU. Nevertheless, Rizcallah (2019), the SWP (Angedent et al., 2020), and all informants refer to the gap between fundamental human rights and severe human rights violations, which take place under CEAS. These violations occur in various situations, from illegal pushbacks through national authorities or Frontex, missing safeguarding aspects during asylum procedures or the inhumane situations in so-called hot spots migration camps like Moria in Greece.

The new pact outlines five trends regarding human rights. The first one refers to establishing a pre-entry screening, besides the increased focus on the border management regulation. Second, the trend for faster asylum procedures and third combining asylum and return procedures. The proposed five-day pre-entry screening outside of EU territory presents a vast potential for human rights violations to assess if a migrant is eligible to apply for asylum (European Commission, 2020b). Due to the complexity of asylum applications, individual assessment require time to ensure a fair outcome. Potentially harmful consequences are wrongly assessed asylum applications and the disrespect for non-refoulment when migrants are returned regardless of the potential risks, they face in their home countries.

Third, EU law is not applicable outside of EU territory. Informant 1 states that the pre-entry screening presents a risk for a grey area. In addition, the right to seek asylum is fundamental human right under the UN Charter, and the gaps in the policy documents and the grey area increase the risks for human rights violations.

Fourth, the EC aims to combine the procedures indicating that the moment an asylum procedure is rejected, the return procedure is started (European Commission, 2020c). Since the rights for safeguarding and assessable and fair asylum procedures are often violated under CEAS, the risk remains that migrants are wrongfully returned.

Fifth, the policy documents lack a clear differentiation between migrant, asylum-seeker, refugee, a person seeking international protection or economic migrant. The concept of human rights applies to every human being. However, people seeking international protection, asylum – seekers and refugees are entitled to specific safeguarding and protection regulations under international law. The risks of human rights violations increase by hampering the accessibility to the asylum processes or unclear definitions of migrant, asylum-seeker etc..

5.2 Risks and Opportunities

The second sub research question states: Which opportunities and risks for solidarity, human rights, and accountability does the new pact present considering the current normative paradox? To answer this question, NPE from Manners (2008) and the concept of accountability is are elaborated.

5.2.1 Normative Paradox

A normative paradox refers to the contradiction between the normative principles of the EU, e.g. solidarity and human rights compliance (Manners, 2008) and their actions under the CEAS, such as illegal pushbacks and human rights violations during asylum procedures (Moreno-Lax, 2018; Rizcallah, 2019). Manners' (2008) theory on normative power follows a tripartite analysis, namely constructive principles, actions, and outcomes. It is based on the three ideas of "live by example, be reasonable and do least harm" (Manners, 2020, p. 60). It is essential to consider that this paper does not aim to assess to which extent the EU is a normative power but instead emphasises the normative paradox and the potential negative consequences for the EU as an international actor. Thereby, Gibney's (2004) approach to ethics in migration policies is applied, which outlines that the member states possess normative principles and moral responsibilities towards migrants. He acknowledges the state interest and the bargaining of

governments to negotiate the best outcome for citizens. However, he refers to the compliance with international law for the right to seek asylum.

The normative paradox under CEAS is highlighted bis highlighted by Banai, Kreide (2017) and Moreno Lax (2018), as well as all informants. They also highlight how the EU does not implement the normative principles, it aims to promote in other countries. The first consequence is the damage of the European reputation, which can weaken the EU's position during negotiations with third countries when the EU insist on implementing human rights compliance while failing to comply on its external borders. Second, the EU is in a weaker situation when negotiating partnership agreements and demands certain minimum standards within migration policies; that the EU itself, does not live up to. In the long run, the EU harms its image as an international actor even though a realist perspective on politics still dominated the negotiation processes with economics or military as the main driven factors (Eylemer & Söylemez, 2020).

In this regard, the assessment within this paper focuses on the soft power skills of the EU. Manners (2008) focuses on the EU as an international and supranational actor outside of the EU and less on the ethically behaviour of the EU or its actions within migration policy. Manner states that the EU is "not hypocritical in promoting norms which it does itself not comply" (Manners, 2008, p. 56). This statement contradicts with the findings for this paper, and Manners (2008) does not include the assessment of normative paradox between the tripartite categories. As a result, his separation in normative principles, actions and outcomes form a sufficient coding frame to analyse the policy documents from the EC whereby the outcomes represent a normative paradox between principles and actions. Pace elaborates that the construction of the EU as a normative power "has disempowered the EU's political role as a global actor" (2007, p. 1043), which aligns with the findings of the paper.

Furthermore, the implications of this single case study as a policy response to the so-called migration crisis are elaborated. First, the sui generis nature of the EU is explored when analysing the complexity of the European migration system, considering that the CEAS relies on directives and 27 different national asylum systems. Second, the geographic location of the EU and its role in international politics hampers the possibilities to compare the EU system or generalise the outcomes of this paper. Consequently, the single case study is the best suitable approach to outline the policy response of the EU. Thereby, the fact that the EC does not refer to the Global Compact on Migration, which the UN implemented in 2018, is an important result itself. It strengthens the argument from Informant 4 that the EU perceives itself as the leader for human rights and does not feel the pact applies inside of the EU but rather abroad.

5.2.2 Accountability within the new Pact

As said by Informant 2, it becomes visible how complex the negotiation process between the EC, the Council, the EP, and civil societies is when analysing the new pact and how the EC aims to please the Council and the EP to avoid a second failure of the amendments like in 2018. Before assessing the potential risks and opportunities of the pact, the mechanisms for accountability are outlined. The EU has several mechanisms to control member states and the rightful implementation of EU law. For political accountability, the EC is the institution within the EU that must ensure compliance with EU law in member states and can start infringement procedures in front of the CJEU, which is the instance for legal accountability (Bovens, 2007). Moreover, specific time frames are defined for directives and regulations within which the EC must present the implementation results to the EP. With the current system, the member states are controlled by the EC, and the EC must justify its actions in front of the EP (European Commission, 2020d). Therefore, accountability within the EU is understood according to Bovens' definition (2007) as a social mechanism where member states and the EC can be held accountable for their actions in retroperspective. Nevertheless, the system has severe gaps within the migration policy. As outlined by Informant 6, first, the EC has decreased infringement procedures within the last years and argued for a change in policies to fill the gap. Second, the competencies of EU agencies like Frontex are questionable, as the ongoing debates demonstrate regarding illegal pushbacks supported through Frontex.

Besides proposing regulations instead of directives, the new pact request that the only EU agency under the CEAS, EASO is renamed into EUAA. Thereby, EUAA's competencies are increased to include controlling the rightful implementation of migration law on the national level. However, the power to start infringement processes remain with the EC (European Commission, 2020c). Hence, the possibilities of EUAA are limited. Moreover, member states must implement an independent monitoring mechanism to ensure respect for human rights during the pre-entry screening. Potentially, this can lead to an increased focus on compliance with EU law; however, the willingness of member states to agree an independent monitoring mechanism is questionable. Additionally, the proposal does not reach far enough since human rights violations occur throughout the asylum procedure and are not limited to the pre-entry screening (Moreno-Lax, 2018).

5.2.3 The Opportunities of the Pact

Furthermore, the opportunities of the pact are summarised. The EC refers to the pact as a "fresh start" (European Commission, 2020a, p. 1), presupposing improvements. However, Informant 4 states that many aspects refer to old ideas or failed proposals from 2018. One opportunity offered by this pact is a step towards interstate solidarity by adding the solidarity toolbox and the return sponsorship to the former Dublin II regulation. The implementation of this mechanism might demonstrate a fairer responsibility-sharing, especially for the Southern member states. From a human rights perspective, the proposed border management regulation and the pre-entry screening outline a risk for potential violations. Nevertheless, the rights of minors and family reunification are strengthened within the proposal, allowing asylum – seekers to seek procedure in a member state they feel connected to (European Commission, 2020d).

Additionally, sea rescues become an obligation that can decrease the criminalisation of NGOs that operate in the Mediterranean Sea (European Commission, 2020a) which might decrease the criminalisation of NGOs.

Finally, the new independent control mechanism on the national level has great potential to ensure human rights compliance during the pre-entry screening. Hence, the possible implementation demonstrates to what extent this objective will be met.

5.2.4 The Risks of the New Pact

The results demonstrate several risks and gaps in the proposed new pact elaborated in the following. Firstly, the risks for human rights violations increases due to the unclarity how detention camps or camps in so-called hotspot handle a potential increase of migrants arriving (Angenendt et al., 2020). Moreover, the legal conditions for the pre-entry screening outside of EU territory is critical since EU law and the right to seek asylum are tied to EU territory. These grey areas in the pact leave room for potential misuse and violations. Second, Informant 6 elaborates on the missing strategy on integrating or relocating migrants who are not eligible for international protection but cannot be returned is not sufficiently addressed in the new pact. The lack of plans for relocation and integration can deteriorate the situation for migrants.

Additionally, member states possess the option to avoid relocating migrants through the solidarity toolbox in crises by paying for an increasein capacity building. The responsibilities remain with the first country of arrival, located at the EU's external border like, Greece, Italy and Croatia.

5.3 Just- Securitisation

The last sub-question of the research deals with just – securitisation in terms of how the new pact securitises migrants and to what extent this can be perceived as just. This relates to the outcomes of the tripartite analysis as designed by Manners (2008). Securitisation refers to the presentation of a subject as a security issue. Thereby, the chosen language plays a crucial role to determine the speech act. The EC released nine documents in September 2020. Two deal with the implementation of RAM. Mainly the new border management that counts for almost 200 out of the 396 pages and an additional one on pre-entry screening (European Commission, 2020a). Only one document focuses on protecting migrants (European Commission, 2020c). The aspect that a large part of the released documents focuses on border management is a first indication that this is the driving factor for the proposed amendments. It neglects the most vulnerable ones who are subject to protection (Banai & Kreide, 2017).

Furthermore, the international right to seek asylum or the severe circumstances of refugees in their host countries are not highlighted in the pact. Instead of differentiating between migrants and asylum-seekers or applicants due to their different rights, the EC mainly refers to migrants and sometimes to people seeking international protection. However, the terminology differentiating migrants is not clarified throughout the pact. Nevertheless, migration as an opportunity refers to so-called legal migration, which indicates economic and highly qualified migrants who move to the EU through partnership agreements (European Commission, 2020a).

Additionally, the EC calls it a "refugee crisis" in 2015 which increases the securitisation of migrants. Although the Schengen Border Code excludes people arriving at the EU border from perceiving them as a security threat, the EC often refers to migrants as victims of traffickers, a threat or highlights the potential risks of terrorists entering the EU through asylum processes.

In comparison to 2015, the number of migrants arriving at the EU's border is down by more than 90 % (European Commission, 2020c) which means countries deal with less asylum applications. Nevertheless, the informants state that migration is still perceived as a security issue. Floyd's (2019) approach to analyse justice in securitisation refers to the approach to the extent in which the subject is actually an existential threat. Even though around 1 million migrants arrived in 2015/16, this has not demonstrated an existential threat and member states' financial stability as Informant 6 explains.

Furthermore, perceiving migrants as an existential threat when arriving in the EU dehumanise them and reduce their right to seek asylum and leads to the above-mentioned

violations. Terrorism is perceived as a threat to the EU and societies. However, it has to be considered that terrorism and migration are two different topics, and the generalisation and securitisation of migrants can not necessarily be perceived as morally legitimate.

Floyd's theory (2019) also includes assessing to what degree the policy response is appropriate to the threat in question. In this case study of the EU policy response, three facts are elaborated. First, as mentioned, the number of asylum applications decreased by more than 90 % compared to 2015 (European Commission, 2020a). Second, Informant 2 states that migration is a priority during partnership agreements with third countries and within the EU, whereby the discussions are often entrenched. Third, the lack of integration and relocation opportunities for refugees within Europe and the inhumane situations within so-called hotspot camps like Moria demonstrate that the securitisation of migrants drives the migration policy discourse. Hence, the policy response is not appropriate since migration is a phenomenon and as Informant 1 states cannot be stopped but managed.

Finally, Floyd's formula of "securitisation = securitising move + security practice" (2011, p. 429) is two folded since the agent (EU, national governments) warns about the threat before taking actions to prevent it. After speeches from politicians across the EU in 2015 and the rise of the right-wing movements warning about the security threat of migrants, the EC has proposed new regulations to react to the "threat" (Banai &Kreide, 2017). Consequently, the informants state that the European institutions and national governments securitised migrants.

5.4 Summary

The overall research question refers to the change of the concepts of solidarity and human rights and accountability in the new asylum pact considering aspects from just securitisation and normative power and is answered through the three sub-questions.

Regarding solidarity, the concept of interstate solidarity within migration policies is added to the new pact by implementing the solidarity toolbox to support the member state under pressure in crises. The concept of state – migrant solidarity is neither addressed under CEAS nor part of the new pact. Moreover, the concept of human rights compliance remains the same based on the UN's fundamental human rights, the Geneva Convention and the CFH. The rights for minors and family reunification are strengthened.

Additional to the current political accountability control mechanisms, the new pact proposed an advanced independent control mechanism to ensure human rights compliance during pre-screening (European Commission, 2020b). Moreover, the EUAA has a newly

proposed competence to control the rightful implementation of asylum procedures to increase accountability and the EU's normative responsibility is perceived through Manner's (2008) theory.

Finally, the securitisation of migrants de-humanises them and all informants perceive the current securitisation as unjust according to Floyd's (2019) theory.

6. Conclusions

To conclude, it becomes clear that the complexity of migration policy and the proposed amendments in the new pact are sophisticated. For this reason, the analysis chapter (4.2) should be considered as an in-depth answer to all research questions. This conclusion highlights the implications of the results, recommendations, and the relation to the research aim. Finally, potential research cases based on this outcome are explored.

The discourse about migration plays a crucial role for the relationship between the member states and in partnership agreements or negotiations with third countries. Therefore, the EU risks to further harm its reputation as an international actor due to the ongoing human rights violations which justifies the high relevance for this paper. Additionally, the high expectations from member states, civil society and external governments attract public attention to the new pact.

Furthermore, the research aim relates to identifying the internal differences between the CEAS and the new pact in terms of solidarity, human rights compliance and accountability, besides assessing the potential to decrease tensions between policy and practice considering normative principles and just securitisation. Additionally, this paper aims to contribute to decrease the literature gap to compare CEAS and the new pact.

The main findings are summarised as:

1. Although changing the Dublin II regulation and implementing RAM includes interstate solidarity within a regulation, there is the risk that member states pay for capacity building instead of supporting a member state under pressure in a crisis.
2. State-migrant solidarity is not a priority, and the focus on border management through pre-entry screening and returns outline a trend towards faster asylum procedures with lower standards.
3. The EC is not clear in terms of differentiating between migrants and people seeking international protection, "The grey areas of pre-screening and the legal situation outside of EU territory are examples of unclear procedures. Additionally, the unclarity of processes for migrants who cannot be returned or are not eligible for international protectionare an issue. These gaps portray potential risks of human rights violations and should be avoided. Therefore, the opportunity from the pact to narrow the normative paradox between policy and practice can be assessed as small and rather unlikely.

4. Political accountability has the potential to be enhanced through the implementation of national control mechanism during the pre-entry screening. Although the EUAA's new competence allows it to control the implementation of regulations, the responsibility to start infringement processes remains with the EC.

5. The policy response by the EU cannot be perceived as a form of just securitisation since the arrival of migrants in the EU cannot be portrayed as an existential threat, especially considering the humanitarian situation of refugees from Syria and other countries. Since the arrival of humans cannot be per se perceived as a security issue according to the Schengen Border Codex, the policy response is not appropriate. The EU securitises migrants and tolerates human rights violations along the borders.

In conclusion, the new pact does not generate innovative solutions to the existing weaknesses of the CEAS and instead lowers the standards for human rights. The decrease in asylum applications is not reflected in the EC's policy response. In addition, the pressing issues of people not eligible for international protection but who cannot be returned are not addressed. Despite the potential implementation of the pact, human rights violations and a lack of mandatory interstate solidarity would remain.

Possible recommendations are the de-securitisation of migration and the realisation that migration per se is not a security issue. Instead, the right to seek asylum is a fundamental human right, and the rightful implementation of EU and international law should be ensured. Since holding member states accountable for their human rights violations through sanctions or infringement procedures often failed in the past, there are doubts to what extent the new accountability and control mechanism can be successful.

Based on this paper, several interesting and challenging research subjects arise. Due to time limitations, this paper only focused on three concepts. Therefore, researching the conceptualisation of external solidarity and further deepen the understanding of the normative paradox in partnership agreements represent interesting research areas.

Since the new pact is only a proposal from the EC, analysing the amended and accepted pact from the Council and the EP represents an interesting research case to analyse the change of the concepts of human rights and solidarity. If the EC does not reach a compromise with the EP and the Council, this failure also presents a potential research subject to focus on. Thereby,

the paper could focus on the unwillingness of several member states to accept migrants and the potential consequences on the interstate dimension.

If the new pact is accepted, an analysis of the implementation after approximately two years could finally answer the extent to which the gaps between policies and practices changed compared to the CEAS.

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Appendix

Appendix 1 Court Decisions related to Migration Policies

In 2011, the European Court of Human Rights (hereafter ECHR) assessed several cases in which asylum-seekers, instead of applying for asylum in Greece, submitted their asylum applications in other member states. In the case of Ireland and Belgium, the governments tried to deport the asylum seeker back to Greece, their country of arrival. However, the ECHR ruled that:

> If there is a serious risk that the fundamental rights, under the Charter of Fundamental Rights, of the asylum seeker to be transferred may be breached in the Member State having primary responsibility, the other Member States may not transfer an asylum seeker to that Member State. (M.S.S. v. Belgium and Greece, Application no. 30696/09, 2011, p. 2)

Consequently, each member state has to ensure that the fundamental human rights of the asylum seekers are protected when returning them to the primarily responsible member state. Due to the situation in Greece, the court decided that human rights violations can be expected, and member states have to take responsibility for asylum-seekers**.**

This case is crucial since it demonstrates for the first time the failure of one EU member state (Greece) to align with the fundamental human rights but also the responsibilities of other MS to guarantee compliance with EU law before returning asylum seekers ((M.S.S. v. Belgium and Greece, Application no. 30696/09, 2011).

In 2017, the EC sued Hungary and Slovakia for rejecting to accept redistributed asylum seekers from Italy and Greece. Both MS argued that the Dublin III regulation held the country of arrival responsible for handling the asylum procedure. The Court of Justice European Union (hereafter CJEU) rejected Hungary's and Slovakia's action regarding the Relocation decision which was previously implemented by qualitative majority voting (hereafter QMV) in 2015. The ECJ agreed with the EC that the measures are in line with the European principles of solidarity and fair responsibility sharing according to article 80 TFEU.

Within the joint case, Poland argued that the "Relocation Decision put a heavier burden on Member States which are virtually ethnically homogeneous, like Poland and whose population are different, from a cultural and linguistic point of view, from the migrants to be relocated there" (C-643/15 and C-647/15, 2017, p. 5).

The CJEU heavily condemned this argument since asylum procedures are not based on nationalities. Their action was contrary to EU law and the European fundamental human rights.

Appendix 2 Interview Guide
Duration of interview: approximately 45-60 minutes
Introduction:
Introduction and welcome:
- My name and topic: Master in European Studies at the University of Gothenburg in Sweden
- Paper about CEAS and the new pact focusing on solidarity, human rights and accountability
- Introducing the informant and ask for missing aspects (e.g., their name, organisation and role)
- Ask to record the meeting and use their name in the paper
- How long have your worked with policies, in your organisation etc.?

The Objective of this interview:
- To explore the relation between the concepts of solidarity, human rights and accountability in the new pact in comparison to CEAS.

Principles
- Could you tell me your first reactions when the new pact on asylum was released in September 2020?
- What are the main gaps between CEAS and the new pact?
- What are obstacles/risks or opportunities with the new pact?

Solidarity:
- Tell me more about the new solidarity mechanism by the European Commission. What are the indications of it for the solidarity between the member states?
- How would you summarise the indications of return sponsorship on interstate solidarity? Does it provide a possibility for fairer responsibility sharing?

Human Rights:
- Tell me more about the concept of human rights in the new pact.
- How does the new proposed border management differ from the current CEAS?
- What are the implications of detention centres for human rights?
- How would you assess the proposal by the European Union to combine the asylum and return policy, especially the aspect on screening third-country national to stop the differentiation between people seeking international protection and migrants?

Normative Paradox:
- In several cases, the EU was portrayed as having a normative paradox between their values and their actions. What is your stake in this?
- Does the gap between policies and practice damage the image of the EU?
- What is your assessment of the new pact? Does it have the potential to narrow the gap between the policies and practice?
- What are the chances of human rights violations to increase or decrease?

Actions:

Securitisation:

- Many scholars claim that the EU is securitising migrants by portraying them as a threat and a security issue. Tell me more about your understanding.
- Within just securitisation the following has to be eligible to securitise in justice:

"(1) that there is an objective existential threat.
(2) that the referent object of security is morally legitimate; and
(3) that the security response is appropriate to the threat in question

- What is your opinion on her theory when assessing the EU's perspective?
- Would you agree with her statement or perceive migration as a security issue?

Outcomes:

- Going back to the normative paradox, the new pact aims to implement several mechanisms to monitor and evaluate the member states and the asylum procedures. Tell me more about your perception of the new mechanisms.
- Do you perceive this as a chance to increase the legal possibilities to hold member states and the EU institutions accountable?
- Tell me more about the current accountability mechanism within migration policies?
- Finally, I would like to look at the outcomes of the new pact.
- How would you summarise the main outcomes if the new pact will be implemented for people seeking international protection in the EU and migrants?
- What is needed for a fair asylum process in line with the EU values?
-

Ending:

- Thank you so much for your time.
- Any follow-up questions?

Appendix 3 Policy Documents

Table 2 Overview of Analysed Policy Documents

|	Name	Pages	Released When	From	Content
1	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on a New Pact on Migration and Asylum	29	23.9.2020	EC	Main Document to Communicate the Amendments
2	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817	53	23.9.2020	EC	Amendments proposal for screening of third nationals and external borders – Amendments
3	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU).	111	23.9.2020	EC	Amendments of Asylum and migration management
4	COMMISSION STAFF WORKING DOCUMENT Accompanying the document - Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on asylum and migration management and amending Council Directive (EC) 2003/109 and the proposed Regulation (EU)	107	23.09.2020	EC	Working document on migration management for Commission staff
5	Establishing a Common Procedure for international protection in the Union and repealing Directive 2013/32/EU	32	23.09.2020	EC	Amendments proposal for common procedure
6	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL addressing situations of crisis and	33	23.09.2020	EC	Amendments for addressing situation of crisis

	force majeure in the field of migration and asylum				
	COMMISSION RECOMMENDATION on an EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint)	12	23.09.2020	EC	Commission recommendations on EU mechanism for Migration Management
7	COMMISSION RECOMMENDATION on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways	12	23.09.2020	EC	Commission recommendations on legal pathways
8	COMMUNICATION FROM THE COMMISSION Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence	8	23.09.2020	EC	Communication on Commission Guidance for EU rules

Total 397 pages

Appendix 4 Policy Analysis Coding Frame

First, a simplified tree diagram of the policy analysis is displayed and afterwards the detailed overview of each coding category and the definition is presented.

Figure 2 Simplified Overview of Coding Frames from the Policy Analysis
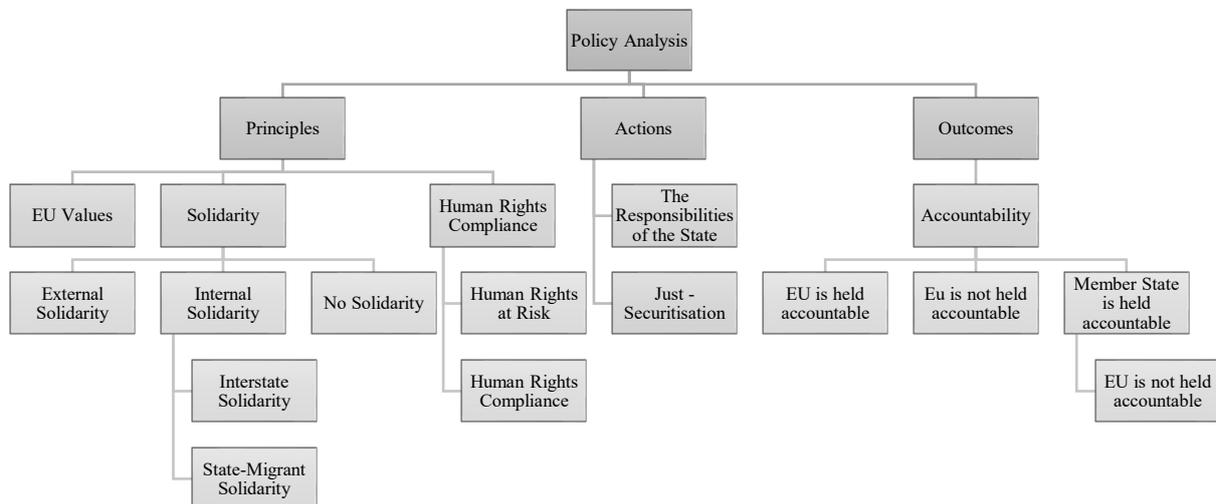
According to Schreier (2014), the coding frame has to exist out of at least to main categories also called dimensions. The Coding frame is therefore colour coded to outline the different levels.

Figure 3 Legend for Dimensions of Policy Coding Frame

| Dimensions/ Subcategories |
|---|
| Dimension 1 |
| Dimension 2 |
| Dimension 3 |
| Dimension 4 |
| Dimension 5 |

Table 3 Coding Frame from the Policy Analysis

Name	Description	Number of References
Actions	The actions of the EU refer to policymaking through engagement and dialogue.	0
Just - Securitisation	Just - Securitisation of migrants (Floyd, 2011)	0
Migrants - Individuals	Migrants are portrayed as individuals.	13
Migrants - Threat	Migrants are portrayed as a threat to national security.	12

Migration - Challenge	Migration is portrayed as challenge.	15
Migration Opportunity	Migration is perceived as an opportunity for a country.	6
Securitisation Other	Migration and migrant are portrayed as something else than a threat, a challenge, or individuals.	0
Responsibilities of the State	The responsibilities of the member State	3
Asylum - Procedure	The asylum- procedure as a responsibility of the member state.	0
Accessibility	The accessibility for migrants to start their asylum procedure.	1
Procedure accessible	The process is accessible for migrants.	5
Procedure not accessible	The process is not easily accessible	2
Process	The process to assess whether an asylum-seeker will be granted refugee rights.	0
CEAS Process Details	CEAS specific details for the process.	12
Process Pact	Details for the process with the pact.	23
The Right to Seek Asylum	Migrants have the right to seek asylum.	2
Right is ensured.	The right to seek asylum is given.	3
Right is not ensured	The right to seek asylum is not ensured.	1
Border Management	Border Procedures and management	20
Dublin Regulation	Dublin regulation to manage the distribution of asylum seekers or refugees.	6
Integration	Refugee stays in the country of their asylum process and integration takes place.	4
Relocation	Distribution of refugees or asylum-seekers between Member states.	6
Return	Refugee returns to a third country or home country.	19
Outcomes	The outcomes based on Manners (2008)	0
Accountability	Actors (EU, member states) are held accountable for their actions.	0
EU - Accountability	The EU institutions or EU related groups and their accountability.	0
EU - accountable	The EU takes responsibility for actions and is held accountable.	12
EU - not accountable	EU is not held accountable.	0

States Accountability	Member states accountability within migration policies.	0
States - accountable	States take responsibility for their actions and are held accountable.	16
States - not accountable	States are not held accountable for their actions.	0
Principles	The normative Principles of the EU	0
EU Values	EU values are mentioned.	10
Human Rights	Human Rights as a normative principle of the EU is addressed.	0
Human rights at risk	Human rights are at risk based on EU and international law.	10
Human Rights Compliance	Human rights are protected and ensured.	23
Solidarity	Solidarity as the normative Power of the EU	1
External Solidarity	External Solidarity between the EU, the refugee, the migrants and a third country.	0
Third -Country State - Refugee	External solidarity in terms of agreements with third countries for migrants.	15
Internal Solidarity	Internal Solidarity between member states or between the state and the refugee.	1
Interstate Solidarity	Solidarity between members states of the European Union.	32
Cultural Solidarity	Refers to the common European identity to undertake solidarity actions together (Wallaschek, 2020).	6
Economic Solidarity	Economic solidarity refers to supportive actions of economy and strategic cooperation (Wallaschek, 2020).	2
Other Solidarity	Other forms of solidarity between member states which is not economic, cultural, social or political (Wallaschek, 2020).	0
Political Interstate Solidarity	Political solidarity like creating new political- institutions to Forster cooperation (Wallaschek, 2020).	4
Social Solidarity	Social Solidarity refers to distributional policies behind the welfare system (Wallaschek, 2020).	0
State- Migrant Solidarity	Solidarity between a member state and a migrant.	7
No Solidarity	Non- solidaric actions between member states	1

Appendix 5 Interview Analysis Coding Frame

First, a simplified tree diagram of the interview analysis is displayed and afterwards the detailed overview of each coding category and the definition is presented.
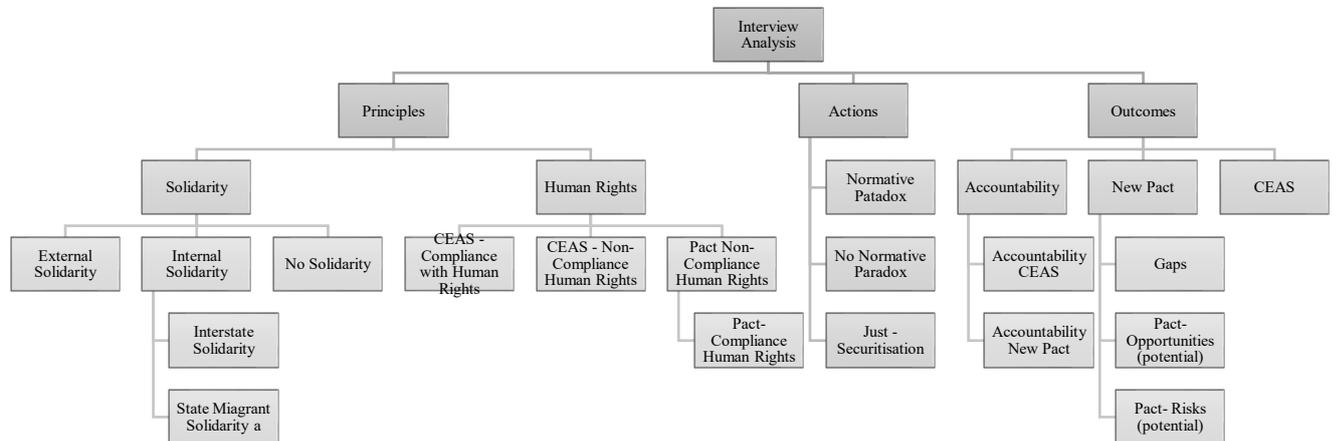
According to Schreier (2014), the coding frame has to exist out of at least to main categories also called dimensions. The Coding frame is therefore colour coded to outline the different levels.

Figure 4 Legend for Dimensions Interview Coding Frame

Dimensions/ Subcategories
Dimension 1
Dimension 2
Dimension 3
Dimension 4
Dimension 5

Table 4 Coding Frame from the Interview Analysis

Name	Description	References
Actions	The actions of the EU refer to policy making through engagement and dialogue (Manners, 2008).	0
Just - Securitisation	Just- Securitisation of migrants (Floyd, 2011).	1
Crisis in 2015	The migration situation in 2015 is described as a crisis.	1
Morally Legitimate	Information about the legitimacy of	2

	securitisation.	
Not a crisis in 2015	The migration situation in 2015 is not described as a crisis.	6
Policy Response appropriate	The policy response of the so-called migration crisis is legitimate and appropriate, according to Floyd (2017).	0
Policy Response not appropriate	Policy response of the so-called migration crisis is not appropriate.	7
Securitisation of Migrants	The securitisation of migrants by the EU is described.	10
Security Issue& Threat	Information about whether migrants and migration are perceived as a threat or a security issue.	4
No Normative Paradox	There is no paradox between the principles and actions of the European Union.	0
Normative Paradox	The normative paradox of the EU between the principles and actions is referred to.	8
Damage - international Actor	The paradox damages the reputation of the EU as an international actor.	3
Damages - Partnerships	The paradox damages partnerships between the EU and third countries.	7
No Damage	The paradox does not damage the EU.	0
Outcomes	The outcomes of the actions by the European Union as defined in the normative power theory from Manner (2002).	0
Accountability	Actors (EU, member states) are held accountable for their actions.	0
Accountability - CEAS	Actors (EU, member states) are held accountable for their actions under the current CEAS.	9
Accountability - New Pact	Actors (EU, member states) are held potentially accountable for their actions in the new pact.	9
CEAS	Outcomes and contradictions within the current CEAS.	2
New Pact	Potential outcomes of the new pact.	1
Gaps	Gaps in the new pact and unclarity how this will be implemented.	16
Pact- Opportunities (potential)	Potential Opportunities of the New Pact	4
Pact- Risks (potential)	Potential risks of the new pact.	10
Principles	The normative Principles of the EU (Manners, 2002).	0
Human Rights	Human Rights as one of the fundamental rights in the European Union.	0
CEAS - Compliance with Human Rights	Human rights compliance of the CEAS in practice or policies.	1
CEAS - Non- Compliance Human Rights	Human rights violations under the current CEAS.	5
Border Management	Human rights violations during the border	3

	management	
Illegal Pushbacks	Illegal pushbacks of migrants from EU countries or authorities.	4
Integration, Relocation and Return	Current human rights violations during these phases of the asylum process.	4
Procedure	Human rights violations during the procedure to assess the asylum status.	9
Pact Non- Compliance Human Rights	Potential non -compliance with human rights under the new pact.	1
Border Management & Pre-Entry Screening	Potential human rights violations during the pre-entry screening and the proposed border management procedure.	10
Integration, Relocation and Return	Potential human rights violations during integration, relocation and return.	9
Procedure	Potential human rights violations during the asylum procedure.	8
Pact- Compliance Human Rights	Potential compliance with human rights under the new pact.	1
Solidarity	Solidarity as one of the normative principles of the EU.	0
External Solidarity	External Solidarity between the EU, the refugee and a third country/externalisation of borders.	0
Internal Solidarity	Internal Solidarity within the European Union.	0
Inter- State Solidarity	Solidarity between members states of the European Union.	0
CEAS - Solidarity	Solidarity as described under CEAS and its current implementation.	5
Pact - Solidarity Toolbox	Solidarity as outlined in the new pact.	17
State - Migrant	Solidarity between the state and a migrant.	4
No Solidarity	Solidarity is not perceived as not being reality in the European migration policies.	2