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The impact of the Russian war against Ukraine on the reform of the common European asylum system

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ABSTRACT

This article analyses how the Russian invasion and the mass influx of Ukrainians have impacted the Europeanisation dynamics in EU asylum policy, notably the process of reforming the Common European Asylum System (CEAS). We argue that these extraordinary events have fostered a more consensual and cooperative mode of governance in EU asylum policy, which has facilitated the adoption of the Pact on Migration and Asylum. The Commission strategically used venues created for dealing with Ukrainian refugees to also tackle other migratory challenges in a more consensual manner. Furthermore, the negotiations of the Pact were facilitated by a convergence of member states around security– and migration control-oriented norms. Asylum rights were increasingly seen as a potential vulnerability in a geopolitical competition with Russia and other hostile governments. The objective of member states to have more tools to respond to crises' situations and the potential 'instrumentalisations' of migrants became drivers for completing the reform. As a result, migrants' access to the right of asylum will get more dependent on the political will of member states, notably in a perceived emergency.

Introduction

When Russia started a military invasion of Ukraine on 24th February 2022, the number of Ukrainians fleeing to the EU quickly skyrocketed. A week later, by the beginning of March 2022, around 650.000 people had arrived in the EU through Poland, Slovakia, Hungary and Romania (European Commission, 2022b, p. 2). The number of asylum seekers in the EU instantly reached peaks not seen in the EU since 2015. It was a possible scenario that the new mass influx of refugees following Russia's invasion would overburden the EU in terms of coming up with a common approach. The EU's asylum system was widely seen as 'failing' during the migration crisis of 2015 and 2016 (e.g. Lavenex, 2018; Scipioni, 2017; Trauner, 2016) and had not been reformed by the time Ukrainian refugees started to arrive in large numbers in spring 2022.

Yet, this did not happen. As one element of their response to the war, the EU's interior ministers activated the Temporary Protection Directive (TPD) on 4th March 2022

providing all newly arrived Ukrainians with a protection status (Council of the European Union, 2022). The EU's quick and unbureaucratic response was widely welcomed, with Ylva Johansson, the European Commissioner for Home Affairs, stating that 'this is Europe at its best' (European Commission 2022d). Roughly two years later, shortly before the 2024 European Parliament elections, the EU even managed to complete the reform of the Common European Asylum System. The European Commission had first proposed this reform in 2016, yet the EU's institutions had long struggled to complete it in view of polarised negotiations over contested issues such as the relocation of migrants within the EU (Zaun, 2022; Zaun & Ripoll Servent, 2022).

This article analyses how the Russian invasion and the mass influx of Ukrainians have impacted wider Europeanisation dynamics in EU asylum policy, notably the process of reforming the Common European Asylum System (CEAS). We argue that these extraordinary events have fostered a more consensual and cooperative mode of governance in EU asylum policy, which has facilitated the adoption of the Pact on Migration and Asylum. This governance mode has not been new but has emerged with Covid-19 and times of quasi-permanent emergencies. It has been conceptualised as 'coordinative Europeanisation' (Ladi & Wolff, 2021). Yet, coordinative Europeanisation in the asylum field has some specific characteristics and sideeffects given the human-rights sensitive nature of the field and long-standing problems of non-compliance with EU laws by certain member states.

With this research focus, the article seeks to contribute to our understanding as to how the war has impacted the European integration process at large (Genschel, 2022; Kelemen & McNamara, 2022) or specific policies such as enlargement and defence (Fiott, 2023; Panchuk, 2024). In the field of migration and asylum, most research thus far has focused on the EU's immediate response post-February 2022 (e.g. Letki et al., 2024; Moise et al., 2023; Rosina, 2023) or how war-fleeing Ukrainians were received in different EU member states (Andrejuk, 2023; Ceccorulli, 2023; Jauhiainen & Erbsen, 2023). There is also a more critical migration scholarship investigating as to why the EU has treated Ukrainians differently from other refugees (De Coninck, 2022). This perspective puts the issues of race and racism to the forefront. For instance, Black African students escaping Ukraine faced specific challenges and racial discrimination (Kingston & Ekakitie, 2024). Finally, our findings seek to contribute to opening up further research on the transformation of the relationship between the EU member states and EU institutions in times of crisis (Hartlapp et al., 2014; Ladi & Wolff, 2021; Nugent & Rhinard, 2019).

The article starts by discussing the Europeanisation literature before empirically looking at the processes of coordinative Europeanisation as they developed in reaction to the influx of Ukrainians. Methodologically, we unpack the Europeanisation processes in the asylum field by using a qualitative research design. Alongside the analysis of Council and Commission documents and press releases, a total of thirteen interviews with Members of the European Parliament (MEP), EU officials of the Commission and the Council as well as experts of civil society and international organisations allow us to understand the dynamics within and across EU institutions. The interviews were conducted from March to September 2023 and systematically coded by using the programme NVIVO. The coding was done in a combination of a deductive (developing a code structure based on the research question and interest) and an inductive (developing codes while working through the data) process. Based on this data, we are able to advance knowledge on the content and mechanisms of coordinative Europeanisation in the

field of asylum in times of crisis and to assess the extent to which Russia's war on Ukraine contributed to strengthening coordinative Europeanisation.

Conceptualising coordinative Europeanisation in times of crisis

This section discusses Europeanisation processes in the asylum field before and after the Russian invasion of Ukraine.

The contested Europeanisation of EU asylum policy

Europeanisation processes in the asylum field have been contested (Guild, 2006; Silvestre, 2019; Toshkov & de Haan, 2013). Already in 2001, Sandra Lavenex (2001, p. 852) identified two central tensions characterising the Europeanisation of the field, namely 'the tensions between state sovereignty and supranational governance, and the tensions between internal security considerations and human rights' issues'.

Regarding the mode of governance, scholars have argued over the actual role and standing of member states in the field. Some believed that the gradual communitarisation of the Justice and Home Affairs (JHA) policies has reduced the member states' room of manoeuvre to cherry-pick favourable 'venues' of decision-making in which they were protected from (supranational) actors with competing interests (Kaunert & Léonard, 2012; Thielemann & Zaun, 2018). Other scholars argued that member states have continued to dominate the policy-making process by ensuring that the 'core' of asylum and other JHA policies remained stable during legislative negotiations (Hadji-Abdou & Pettrachin, 2023; Trauner & Ripoll Servent, 2016) or by relying on their transgovernmental networks and EU agencies (Fernández-Rojo, 2021; Lavenex, 2009).

Regarding the substantive questions, the tensions between human rights' considerations and internal security concerns, which Lavenex already constated in her study of 2001, have only deepened over the years (see e.g. Léonard & Kaunert, 2019). Internal security considerations have become intermingled with sovereignty concerns, for instance regarding the mandatory relocation of asylum seekers which was opposed particularly in Eastern Europe (Zaun, 2018). A group of member states has been actively seeking to evade the legal constraints deriving from international and European refugee protection norms (FitzGerald, 2019). Instead of hosting asylum seekers inside the EU, these states have sought to externalise protection responsibilities and close the EU's external borders for migrants without proper documentation (Giuffré, 2020; Müller & Slominski, 2021). However, other member states and EU actors such as the European Parliament have often continued to advance a more liberal, human rights-based framing, considering the right of asylum as a central element of a 'normative power identity' (Lavenex, 2019).

These tensions regarding on how to govern the field as well as to combine human rights and internal security considerations were highly visible during the negotiations on a reformed CEAS post-migration crisis of 2015 and 2016 (Ripoll Servent, 2019; Vinciguerra, 2021). An increasing polarisation after the migration crisis and a reluctance of member states to accept (directly applicable) regulations contributed early on to controversies (Silvestre, 2019). Member states proactively sought to establish winning coalitions or join blocking minorities (Zaun, 2018), with hardly any member states

sitting on the sidelines of the negotiations (as it was the case for the adoption of earlier EU asylum laws) (Zaun & Ripoll Servent, 2022). Populist government engaged in 'unpolitics' understood as the rejection of previously shared institutional practices and norms such as qualified majority voting and consensus seeking (Zaun & Ripoll Servent, 2022). The field was described to have strong 'status quo tendencies' regardless of external pressures to reform (Hadji-Abdou & Pettrachin, 2023).

Towards coordinative Europeanisation post-Russian invasion

The Russian invasion was a 'focusing event' (Andrejuk, 2023), which impacted EU policy dynamics and paradigms. We seek to capture these changes by applying the concept of 'coordinated' Europeanisation', which has emerged as a mode of governance with Covid-19 and times of 'permanent emergency' (Wolff & Piquet, 2022). Crises have become 'now part of its normal mode of policymaking' (Wolff & Ladi, 2020, p. 1029) and the EU has gained an ever-growing institutional knowledge of handling 'crises' (Rhinard, 2019).

This form of Europeanisation is characterised by a high degree of adaptability, informality, inter-crisis learning and interdependence between EU institutions and its member states (Ladi & Wolff, 2021). The coordination between the European Commission and the EU member states may become more pragmatic and solution oriented. Coordinative Europeanisation is a 'bottom-up process where the member states are actively involved in the policy-making process early on in order to guarantee the highest level of implementation possible' (Ladi & Wolff, 2021, p. 1). The European Commission inhibits a strong coordinative role, building on its expansive experience of dealing with prior crises. Furthermore, the recognition of a high level of interdependence in a crisis situation has led to 'an increased demand for an adequate response from the EU' (Ladi & Wolff, 2021, p. 3).

Which factors may allow a shift to coordinative Europeanisation? We suggest analysing the Russian war and the influx of Ukrainians as a change in the EU's structural environment, which has had an impact on both the cost–benefit calculations as well as the belief and norm systems of the key actors (see also North, 1990; Trauner & Ripoll Servent, 2015). The shift towards more coordinative Europeanisation can be explained primarily by a rational-choice institutionalist perspective, notably the EU's institutions' calculations of costs and benefits. Seen the scale of the refugee challenge created by the Russian invasion, the Commission and the member states quickly considered the adoption of the TPD as the most viable option. The TPD created new cooperation platforms and institutionalised closer coordination. This was strategically used by the European Commission to foster a dynamic supportive for the adoption of the new Pact on Migration and Asylum. As the empirical sections show, the Commission nudged member states into cooperation and coordination by providing good services and avoiding conflicts over implementation. These conflicts had the potential to derail the relations of the Commission with certain member states as their non-compliance with EU asylum rules was an issue of concern (Gebauer, 2024; Goldner Lang, 2020; Goldner Lang, 2020; Schmälter, 2018; Trauner & Stutz, 2021).

The Commission is known to act strategically and assess political costs when deciding for infringement proceedings (Kelemen & Pavone, 2023). It may even take into account

possible election outcomes in member states to decide on whether to advance a case (Cheruvu, 2022). In the particular case of asylum policy, the Commission may strategically use policy forums in which it regularly interacts with member states to install a 'softer' approach towards law enforcement. By avoiding conflict over law enforcement, the Commission may want to make member states concentrate fully on law making in the field. Indeed, the reform of the Common European Asylum System was a central legislative objective of the Commission under von der Leyen between 2019 and 2024. Regardless of its formal treaty powers, the Commission often is a 'highly constrained actor' (Kreppel & Oztas, 2016, p. 1139) when it comes to agenda setting. The institution relies on the 'policy preferences of the other legislative actors and their relative congruence with Commission goals' (Kreppel & Oztas, 2016, p. 1139). This is of high relevance for the asylum field, where the lawmaking process has traditionally been dominated by member states (Trauner & Ripoll Servent, 2016).

Yet, we argue that the shift towards coordinative Europeanisation cannot be explained by a purely rationalist explanation. The Russian war also subtly shifted the normative frames and belief systems (Clemens & Cook, 1999; Weible, 2005) underlying the EU's asylum system. The invasion has led to a profound shift in the way the EU has viewed its geopolitical environment and standing. In simple terms, many actors at European and member state levelhave felt threatened by Russia's war against Ukraine and sought to increase the EU tools to defend the Union against potential future aggression (Fiott, 2023; Maurer et al., 2023). A group of member states, notably those neighbouring Russia or Belarus, has increasingly framed 'asylum rights' as one of the potential vulnerabilities in a geopolitical contest with Russia (and other hostile governments). This development did not start with the Russian invasion. As mentioned, tensions between internal security considerations and human rights have always characterised the Europeanisation processes in the field (Bourbeau, 2013; Lavenex, 2001; Longo & Fontana, 2022). Yet, the Russian invasion made more EU actors converge around security and migration control-norms in the reformed EU asylum system.

The Russian War and the reform of EU asylum policy

This section shows in more detail as to how the solution-oriented and coordinative way of dealing with the influx of Ukrainians has had spill-over effects on other aspects of EU asylum policy. It has contributed to more cooperation and a more accommodating, if not conflict-shy approach of the European Commission vis-à-vis certain contested migration practices of member states. The underlying objective was to keep on board the member states for the reform of the CEAS.

Coordinating the temporary protection for Ukrainians

Compared to migrants from other world regions, Ukrainians were in a favourable position in terms of getting *physical* access to the EU's territory – and, in consequence, the right to an asylum procedure. Ukraine has enjoyed a visa-free regime with the EU since May 2017 implying EU border controls and visa restrictions did not prevent Ukrainians from entering the Union although non-white people and non-Ukrainian nationals coming from Ukraine have reportedly faced some discrimination and problems (Kingston &

Ekakitie, 2024). On 2nd March 2022, the Commission proposed to apply the TPD to Ukrainians.

A majority of member states agreed on the Commission's assessment that a temporary protection regime for Ukrainians would be the most viable solution. In view of the Russian invasion, the member states displayed 'a spontaneous and very rapid wave of solidarity' implying that 'there was no hesitation to activate the TPD' (Interview B). Poland asked for assurances that there 'would be no Dublin-like transfer mechanism' (Interview J) implying that other member states could send back Ukrainians to Poland as a first country of entry. The only concern of other member states concerned as to whether the Hungarian government under Viktor Orbàn would allow a unified EU response (Interview A). The Commission played a 'really engaged role in this, notably Commissioner Johansson'. The interplay between a Commission keen to take leadership and the support of member states finally led to a quick activation of the TPD.

The coordinative Europeanisation approach helps to understand why this instrument was promoted. Policy learning from earlier crises and a rational calculus of the scale of the emergency were key factors. The EU member states had no capacity to process each and every asylum application so the TPD was seen as 'good enough' (Wolff & Ladi, 2020) to have a solution at short notice. Some member states focused on protecting Ukrainians; others on the protection of asylum procedures, namely making sure there would be no crisis of their capacity to administer these refugees' applications. Their different interests made them all agree on the TPD:

> Safeguarding the asylum procedure was definitely a top priority for the EU Member states [...]Those countries that were quite critical towards a Common European Asylum System were the ones that really pushed for the protection of Ukrainians, in particular Eastern European countries – starting with Poland (Interview C).

It was not only about safeguarding the Common European Asylum System (CEAS) as a whole but also its individual elements. Bigger member states such as France and Germany were keen to protect the irrespective national systems. Their national administrations dealing with asylum applications such as the 'Office Français de Protection des Réfugiés et Apatrides' (OFPRA) would have been unable to process such huge numbers of applicants (Interview H).

Once the TPD was activated, the Commission took the lead to create a 'Solidarity Platform' for its smooth implementation. Already before the Russian invasion, the idea of such a platform in the asylum field had been discussed, e.g. by the French government (Interview H). A lesson learned from a prior crisis was that the implementation of EU-adopted crisis measures is important to avoid populists portraying the EU's response as a failure (Interview B). The solidarity platform has helped member states to exchange best practices and more specifically 'information regarding their reception capacities and the number of persons enjoying temporary protection on their territories' (Council of the European Union, 2022). The identification of best practices on transfers by bus or train, and the redistribution on European territory took place quickly (Interview H). The meetings were regular and contributed to reasonably quick reactions.

> They set up meetings between the member states and the Commission services, many including UNHCR and IOM. This created a very good format in which member states and

the Commission could discuss and share the latest information. This blueprint network works (interview G).

Coordination is at the heart of the 10-point plan 'for a stronger European coordination on welcoming people fleeing the war from Ukraine'. The Solidarity Platform deals with the coordination of issues relating to transport and information 'bring[ing] together experts from the transport and interior affairs community as well as relevant European Agencies' (European Commission, 2022a).

The Commission has chaired the platform, which was seen by its participants as an 'extremely effective instrument. A lot of coordination is ongoing with the Ukrainian government and Moldova' (Interview D). With important strains on the Moldovan reception capacity, the Solidarity Platform, together with EU Integrated Political Crisis Response (IPCR), have been in charge of 'the coordination of ongoing Member States' solidarity efforts, assess any emerging needs and propose a way of addressing them' (European Commission, 2022a). The IPCR was indeed the 'solidarity mechanism' of the Council during the height of the crisis and was gathering every week (Interview H). Given the difficulties to agree on solidarity mechanisms in the field of asylum (Tsourdi, 2020), the solidarity platform illustrates how a focus on a very technical level of transport coordination has enabled to move forward. Developing pragmatic solutions enabled the EU to be a crisis-responder. Like in prior episodes of the Covid-19 pandemic, this type of crisis-oriented solution has no specific legal status, and aims at first delivering a rapid response to the challenge at hand.

> The Ukrainian legal regime was specific, but the mechanism created to share the information can be used for other situations – and has already been used for other situations. For instance, the blueprint network has been used for the Belarus situation. So, the learning from the Ukraine situation are these tools, these sharing and the data creation. The way the member states came together with the Commission, the analysis and the data sharing are a benefit beyond the Ukraine crisis (Interview G).

More consensual practices spill over to the asylum field

The Russian invasion and the influx of Ukrainians allowed the EU's institutions to re-energise the reform of the CEAS. Since 2015, immigration and asylum were very divisive topics amongst EU member states. According to a French official in the Council,

> We were a bit desperate to make any progress on the CEAS reforms. The adoption of the TPD by unanimity has restored a positive dynamic but it has reduced the ability of EU member states to welcome more refugees (Interview H).

A more pragmatic and solutions-oriented approach emerged in the negotiations. According to an MEP involved in the CEAS negotiations, the Russian war in Ukraine has certainly enhanced.

> The commitment of member states to come to a deal on the Pact. It has fuelled their cooperation and their awareness that they need to work together and have common solutions. […] they are now more serious in trying to find a solution to the Pact than before (interview E).

It has been a declared priority for the European Commission to complete this reform process. As a matter of fact, the institution has become more lenient in its treatment

of member states that are non-compliant with EU asylum laws. States such as Hungary, Greece, and Croatia have been accused of limiting the number of asylum seekers arriving at their territory by embarking on legally contestable practices including push-backs and prolonged detentions. The accusation that the Frontex agency was complicit in Greek push-back operations led to the resignation of Fabrice Leggeri, its then director (Guild, 2021; Politico, 2022). According to Amnesty International (2023, p. 187), almost 160,000 push-back cases took place alone at the southern border of Hungary during 2022. Another challenge of non-compliance has been that states at the external border of the EU (notably Italy) have been often seen to avoid fingerprinting newly arrived asylum seekers in order not to beresponsible for their asylum applications (Trauner, 2016).

In principle, the Commission could react to these non-compliance issues of member states by launching more infringement proceedings and enforcing compliant behaviour. However, the Commission assessed that a strict enforcement approach would make it more difficult to reform the CEAS. According to Tineke Strik, the shadow rapporteur of the negotiations on the screening and instrumentalisation regulations,

> I often hear from the Commission: we need to have the member states on board for the Pact. Therefore, we cannot irritate or provoke them. That also stands in the way of infringement proceedings, at least as an argument (Interview E).

As a matter of fact, the Commission has increasingly used the coordination platforms created for the implementation of the TPD for Ukrainians to address other (non-)compliance issues. 'For instance, we file complaints, substantiated complaints about what Greece is not complying with. Then the Commission says: we are not doing anything about this … because we have the task force [that] is already working on it' (Ibid). There has hence been a 'softer' approach to dealing with or discussing contested practices in (informal) talks. The platforms created by the Ukrainian influx have provided the Commission with a venue to discuss mediatised migration practices and/or compliance issues in a more consensual way. This more conflict-shy approach has (implicitly) aimed at ensuring that member states remain committed to the reform of the CEAS. It is important to highlight that a more political approach to dealing with non-compliance has been detected in other policy fields too, resulting in substantially reduced infringement proceedings in the EU (Kelemen & Pavone, 2023).

The Commission and participating members increasingly expanded the scope of action given to the 'Solidarity Platform' initially installed for Ukrainian refugees. This platform became a 'very strange animal' (Interview E) since it also started to deal with migration challenges in Greece, as well as pilot projects in Romania and Bulgaria. It moved from becoming a practitioners' platform for a specific migration challenge – the influx of Ukrainians – to an EU venue forcoordinating and handling migration issues more generally. For the Mediterranean, it is about 'establish[ing] a platform and voluntary mechanisms by which asylum seekers should be relocated from European states at the EU's external border (the MED5 countries) to other European states' (European Commission, 2022c). This platform 'enables member states to share what their needs are. There has even been transfers from one member state to another when it comes to resources' (Interview D).

Accommodating national emergency regimes within the reformed CEAS

The Russian invasion contributed to a profound shift in the way in which the EU has viewed its geopolitical environment and standing, with a more security – and control-driven understanding of asylum gaining traction. The Commission has been described to be 'under massive pressure to legislate for exceptions to the prohibition of non-refoulment' (Interview G). If this type of exception becomes EU law, the contested/non-compliant behaviour of member states may no longer be a 'legal' issue. Several interviewees believed that this was a key reason for proposing the instrumentalisation package and demonstrating self-constraint in terms of law enforcement. 'The motivation was to preserve the legal order as it isand to preserve the capacity of member states to comply with this legal order' (ibid).

A different negotiation dynamic emerged in the asylum field post-February 2022 compared to the situation post-migration crisis of 2015 and 2016. As a Council official recalls, in 2016, 'there were very strong feelings about Dublin: why was it not working? How should it be made to work again?' (Interview M). This led to intense controversy about solidarity and the relocation of asylum seekers within Europe (Zaun, 2018), leading to the attempt to nudge or even coerce some member states into accepting a relocation quota.

As of 2022, Russia's war on Ukraine has accentuated the EU's focus on externalisation, thereby decreasing the salience of the debate on EU-internal solidarity. Several member states, notably in the East, perceived asylum rights as one of the societal 'vulnerabilities' potentially exploited by Russia. In the summer and autumn of 2021, the Belarusian regime under Lukashenko organised the arrival of several thousands of migrants from Middle Eastern and African countries and sought to incentivise their onward journey into the EU. Poland, Lithuania and Latvia reacted by adopting emergency laws and erecting border fences to Belarus. Migrants were prevented from entering the EU's territory and systematically pushed back (Berzins, 2022). Many consider the 'EU-Belarussian border crisis' a prelude of what may come if Russia wants to attack the EU by weaponising migration (on this concept, see Greenhill, 2010; Greenhill, 2022). A better protection against the 'instrumentalisation' of migration (not only but in particular) at the Eastern border became a central point in the reform of the EU's asylum policy.[1]

The national emergency laws of Eastern European member states have been prolonged several times in view of the Russian invasion of Ukraine and, at the time of writing, have still been in force towards asylum seekers from other regions. The Lithuanian Prime Minister Ingrida Šimonytė suggested that the state of emergency would be extended in border areas 'until the current policy of turning irregular migrants away is formalised in law' (quoted in Zulonaitė, 2023). Poland has decided to install a permanent fortification system, called 'Shield-East'. By 2028, the country shall be protected from hostile Russian actions including 'pushing migrants illegally into the country' by fortifying the border to Russia and Belarus along some 700 kilometres with anti-drone surveillance and border constructions (DW, 2024). According to civil society actors, the pushbacks at the Eastern Polish borders have become a standard practice also under Donald Tusk as new Polish Prime Minister. Over 4.000 cases took allegedly place between December 2023 and May 2024 (ECRE, 2024).

By and large, the European Commission, the member states and other EU actors sub-scribed to this new normative framework ascribing higher importance to security and control when dealing with (potential) asylum seekers. For instance, shortly after Russia's invasion, Frontex claimed that 'crisis management [is now] a permanent feature of EU border management' (Frontex, 2022, p. 1; see also Carrera et al., 2023, p. 76). The controversial emergency measures taken by Poland, Lithuania and Latvia at their borders to the East were largely accepted by the other member states and the European Commission (European Commission, 2021c; European Council, 2021). When the debate on push-backs intensified, Commissioner Johansson criticised these practices and asked for more transparency at the Polish-Belarusian border. 'Pushbacks should never be normalised. Pushbacks should never be legalised' (European Commission, 2021a). However, no infringement procedure was launched by the Commission against the three states regarding their border practices.

The experience of the EU-Belarusian border and concerns about Russia weaponising the migration issue directly informed the Council debate on reforming EU asylum laws. A range of member states pushed for restrictions and a less rights-based policy.

> In our internal Council discussions on instrumentalization and other possible instruments …
> the member states which are, let's say, critical of migrants – Poland, Hungary, and others, also
> Greece to some extent – have used these debates and instruments to call for a maximum
> relaxation of the asylum rules (Interview B).

On 15 December 2021, the European Commission (2021b) proposed an 'instrumenta-lisation package', which *de facto* sought to legalise several practices used by the three Eastern European states. The package allowed for curtailed rights of asylum seekers in case a third country 'instrumentalises' them. While the proposal's point of departure was the EU-Belarusian border crisis, a whole range of member states sought to get tailor-made derogations too. 'For example, Cyprus wanted to be able to include its problems with Turkey in this definition [of instrumentalization]; Greece too. In fact, everybody wanted to have his own situation being governed by instrumentalisation [tools] without even a concrete crisis or outside of times of crisis' (Interview B). This did not remain unchallenged, however. Other Council members pushed for narrower interpretations of a situation of 'instrumentalisation'. This led to Poland temporarily blocking the negotiations based on the argument that the law would no longer become a useful tool to govern the situation at their external border (ibid), notably if compared to the possibility of continued national emergency legislation.

The question of instrumentalisation became a highly discussed issue. Some member states insisted that CEAS reform cannot be completed without this instrument. This led to a compromise proposal. The rules to react to a perceived 'instrumentalisation' were inserted in a proposal for a regulation addressing 'situations of crisis and force majeure in the field of migration and asylum' (Council of the EU, 2024). They were meant to enhance the member states' toolbox for emergencies of different types. Upon assessment of the Commission and an approval decision by the Council, a concerned member state can request various solidarity measures and may temporarily deviate from the EU's rules regarding the registration and processing of asylum seekers. 'Border procedures' can be applied to all 'instrumentalisation' cases (under normal circumstances, such procedures

concern only some categories of migrants, notably those having a nationality with a positive recognition rate of under 20%).

The instrumentalisation rules were highly contested, as were other aspects of the Pact including fast-track border procedures, more possibilities to use detention and a strong reliance on the 'safe third country' concept. On 7 April 2024, just before the EP voted on the legislative package, a group of 161 civil society organisations asked the Members of the European Parliament to vote against it as it 'will have devastating implications for the right to international protection in the block' (Statewatch, 2024). The EP did not adhere to this request and adopted the Pact.

Overall, the Pact has become a highly complex legislative body of over 10 instruments and 1,425 pages of A4 format (De Bruycker, 2024). Its adoption in the EP and the Council has also been influenced by other (more short-term) factors such as the time-pressure to deliver an outcome before the European Parliament elections of June 2024 and the shifting behaviour of migration-hostile governments such as the Italian one under Georgia Meloni (e.g. Politico, 2023). Yet, these short-term dynamics and strategies were underpinned by an increasing convergence of EU actors around security norms and considerations. Regarding instrumentalisation, this can clearly be traced to the altered European security context post-Russian invasion. A group of member states pushed the Commission to either accept semi-permanent national emergency legislations or to incorporate comparable emergency measures into the EU's asylum *acquis*, which finally happened.

Conclusions

This article has analysed Europeanisation dynamics in the wake of the Russian invasion and the refugee flow from Ukraine. It argues that these events had a considerable impact on the reform of the Common European Asylum System completed in May 2024.

The EU's response to the arrival of war-fleeing Ukrainians was closely coordinated under the European Commission. The core features of coordinative Europeanisation as identified in the literature, notably inter-crises learning and a high degree of flexibility and adaptability, were present in the EU's response to the Ukrainian refugee challenge. The Commission was put in charge of a new 'EU Solidarity Platform' to implement the temporary protection regime for Ukrainians. The institution increasingly and rationally used this platform to also tackle other migratory and governance challenges in the EU. At the same time, it became more reluctant to coerce member states into compliance (through infringement proceedings) and preferred to tackle EU rule violations through dialogue and support (in this respect, see also Kelemen & Pavone, 2023).

The European Commission was keen to use the cooperative dynamic created by the EU's handling of the Ukrainian refugee issues to achieve a key legislative objective of the 2019–2024 mandate, namely the adoption of the Pact on Asylum and Migration. These negotiations were revitalised through the quick activation of the temporary protection directive in March 2022 and a growing consensus on the (migration-control) priorities of the legislative package. The Russian war and high(er) migratory numbers in Europe have empowered security-oriented EU actors presenting asylum as a potential vulnerability in a geopolitical competition with Russia. Poland and other Eastern Europeans played an important role in handling the Ukrainian influx and framing the EU negotiations. From a belief-system point of view, Russia's war against Ukraine has made it

more appropriate, even normatively desired for EU member states to respond restrictively against any potential 'instrumentalisation' of migrants by foreign countries.

In brief, the Ukrainian refugee challenge has contributed to a closer (yet also more conflict-shy) relationship between the European Commission and different member states. Coordinative Europeanisation in asylum policy produces an outcome that can seem paradoxical. The member states now cooperate and coordinate more than in the years after the 2015/2016 migration crisis, which has facilitated the adoption of the Pact. At the same time, they have also come to diverge more in their national standards, due to the semi-permanent emergency regimes of some member states and a weak compliance record with EU asylum law standards of others (Gebauer, 2024; Goldner Lang, 2020; Schmälter, 2018). It is doubtful that the reformed CEAS will reverse this trend once fully implemented in 2026. It has 'europeanised' key aspects of the national emergency regimes of Eastern European member states and strengthened security– and control-oriented norms in EU asylum policy. Getting (physical) access to the right of asylum will get even more dependent on the political will of member states. While the efforts of governments to achieve such an outcome are not entirely new (Mourad & Norman, 2020) or even unique for Europe (Betts, 2010), the Russian war against Ukraine has fast-tracked this development in the EU.

Expert interviews

Interview A: Expert of the European Council on Refugees and Exiles (ECRE), in-person, 16 March 2023.
Interview B: Official of the Council of the EU, in-person, 8 February 2023.
Interview C: Expert of the International Centre for Migration Policy Development (ICMPD), online, 10 March 2023.
Interview D: Official of the European Commission, online, 8 March 2023.
Interview E: Tineke Strik, Member of the European Parliament, 28 March 2023.
Interview F: Expert of the European Council on Refugees and Exiles (ECRE), in-person, 16 March 2023.
Interview G: Official of UN organisation cooperating with EU, online, 3 February 2023.
Interview H: Official of the French Permanent Representation, online, 26 May 2023.
Interview I: Member of European Parliament, in-person, 19 September 2023.
Interview J: Official of the council of the EU, online, 01 September 2023.
Interview K: Luxemburgish civil servant, online, 15 September 2023, Brussels.
Interview L: Slovakian civil servant, online, 31 August 2023.
Interview M: JHA Counsellor of EU member state, in-person, 23 September 2023.

Note

1. In general, the Russian invasion has affected also other ways in which the EU cooperated externally on migration issues. Given increased prices for wheat and agricultural products, 'we felt the need to strengthen our relationship with [migrants'] countries of origin. There has been, for instance, an acceleration of the conclusion of a Frontex agreement with Moldova in only a few months. Similar negotiations have been undertaken with Senegal and Mauritania (Interview H).

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