

## ***EU harmonisation of asylum legislation***

*To what extent is the implementation of binding forms of legislation effective in terms of burden-sharing?*

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School of Management and Governance  
European Studies Bachelor Thesis

Isabel Hofstätter - s0210978

Supervisor: Dr. Ann Morissens  
Co-reader: Dr. Minna van Gerven-Haanpaa  
Colloquium: 27<sup>th</sup> of July 2011

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### ***Abstract***

The EU Member States' interest in effective burden-sharing mechanisms to equally distribute asylum applications across the European Union is high. Alongside direct burden-sharing mechanisms such as financial transfers and physical dispersal, the indirect burden-sharing mechanism that is applied within the EU is the *harmonisation of its asylum legislation*. During the 1980s, this harmonisation was brought about by soft law, which consists of non-binding forms of legal action. The Amsterdam Treaty of 1997 changed the situation considerably, as the EU is now able to implement, in addition to soft law, binding forms of legislation with respect to asylum, which are considered hard law. Having in mind this legal development and the expectations attached to it, this research will answer the question: *To what extent has the application of EU hard law for the harmonisation of national asylum policies been effective in terms of burden-sharing by diminishing national asylum policies' influence on their national asylum burden?* Two assumptions underlie this research: first, that asylum seekers go to those countries where they see a higher chance of being recognised as refugees, and second, that the implementation of hard law measures since 2001 has eliminated the possibility for countries to be rather lenient or harsh in recognizing asylum seekers as refugees, as any disparities in their national policies have given way to equal standards across the Member States' asylum procedures. It is hypothesised that after 2001, firstly, the 'asylum burden' converges among EU Member States, and secondly, that this is due to a convergence of asylum policies. The quantitative analysis presented in this paper provides support for the second expectation, while the first one must be refuted. It appears that after 2001 hard law measures have been effective in diminishing the Member States influence on their burden, but not in increasing burden-sharing among them.

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## ***Chapter 1 – Introduction***

The number of asylum seekers entering the EU and applying for asylum kept on rising steadily between 1980 and 2000. Short-term and ad-hoc answers to this phenomenon were national restrictive measures, which were expected to deflect asylum seekers and shift the “burden” of applications to neighbouring or third countries. As binding EU law regarding standards and admission criteria of asylum seekers did not exist during those years, it was each Member States' individual decision how to counter the problem of rising asylum numbers, and most of them decided for the implementation of restrictive policies. The long-term consequence of the rising number of asylum seekers took place on the EU constitutional level, and had a significant impact on the Member States' freedom of action. With the ratification of the Amsterdam Treaty, migration and asylum were incorporated into the Community pillar, and consequently, they have been negotiated on the supranational level since 1997. Member States had to delegate some of their sovereignty on matters of migration and asylum to the EU, and in addition to the Member States, the European Commission has the right to initiate laws. Asylum is said to be under 'shared responsibility'.

The Amsterdam Treaty has therefore brought about a switch from soft law to hard law with regard to asylum. While soft law includes non-binding forms of legal action, such as conventions, resolutions or conclusions, hard law entails binding forms of legal action, which are regulations, decisions and directives. In article 63 of the Treaty of Amsterdam amending the Treaty establishing the European Community, “a series of measures on asylum” are called for, as long as they are “in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties” (EC, 1997). Thus, the new millennium began with important negotiations on the design of hard law measures, which in some cases turned out to be difficult and long-lasting.

The main driving force behind EU asylum cooperation, be it via soft or hard law, is the redistributive effect that is expected to result from it. While EU harmonisation was originally supposed to provide for burden-sharing via "the spirit of solidarity" and "the equity of distribution" (Thielemann, 2003), the changes brought about by the Amsterdam Treaty extended the EU's possibilities for action, and it decided to arrive at burden-sharing by applying a top-down approach, by which the distribution of asylum seekers over the EU is currently managed and controlled via hard law. However, this approach is widely criticised especially by NGO's who say that "'Liberty' and 'Rights' are pushed into the background in favour of 'Security'" (Proasyl, 2001). Critics are highly sceptic concerning the EU measures' compatibility with human rights, and more specifically with art. 14 of the Universal Declaration of Human Rights: “Everyone has the right to seek and to enjoy in other countries asylum from persecution” (United Nations, 2011). The EU is said to be positioned at the

crossroads: Fortress Europe or cosmopolitan EU<sup>1</sup>? Its reputation as a full promoter of human rights is at stake, due to the inhumane conditions that asylum seekers are currently exposed to in border countries such as Greece and Italy. While both countries claim to be overburdened with refugees coming from crisis regions in Africa and the Balkans, their appeal to 'European Solidarity' to share the sudden burden is mainly ignored by the remaining Member States. Additionally, the deployment of the EU border-security agency FRONTEX<sup>2</sup> has been highly debated with regard to the protection of the right to seek asylum. Among less contentious tasks, the agency organises joint operations on open waters, such as the Mediterranean sea, where it is on patrol in order to decrease the number of arrivals on EU territory across the sea. According to critics, this underpins the idea of Fortress Europe, as refugees and asylum seekers appear to be only selectively let into the EU.

The current situation at the EU's borders puts the success of hard law harmonisation into question. Is the claim made by Greece and Italy not to be able to cope with the current influx of asylum applicants a sign of a malfunctioning EU harmonisation in this field? Is it a sign for hard law being an unsuccessful burden-sharing mechanism? Or is it merely a temporary crisis, which cannot be considered an indicator for flaws in the process towards a Common European Asylum System? Open questions such as the foregoing underline the necessity for studies on the effectiveness of EU hard law with regard to its redistributive effect. This research will be a first approach in this respect, and the effect of hard law is going to be studied by looking at its defining characteristic which distinguishes it from soft law: its influence on the freedom of action of the Member States, and consequently on the relationship between national laws and national burden. Therefore, the main research question is formulated as follows: *To what extent has the application of EU hard law for the harmonisation of national asylum policies been effective in terms of burden-sharing by diminishing national asylum policies' influence on their national asylum burden?*

The importance to the European Member States of finding adequate responses to increasing numbers of applications is based on the fact, that neither one of the Member States wants to be faced with a higher number of applications than any other. Hence, on the EU level the harmonisation of asylum policies is viewed as a mechanism to ensure the equal distribution of the asylum burden. Adopting Boswell's classification, harmonisation is a "form of indirect burden-sharing, whereby redistribution is achieved by trying to address the causes of the current inequitable pattern of distribution" (Boswell, 2003). One general assumption with regard to the unequal distribution is, that it is caused by unequal asylum systems within the European Member states, which in turn lead to the so-called "asylum shopping", by which refugees selectively apply for asylum in those countries with relatively generous asylum

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<sup>1</sup> According to Hansen (2010), the metaphor of "Fortress Europe" has been referred to since the mid-1980's, and denotes the EU's increasing focus upon security-oriented migration measures, instead of unconditionally preserving the human right to asylum. He points out, that the EU currently puts effort into re-branding its image to "cosmopolitan EU", by claiming that „Europe is not inward-looking“.

<sup>2</sup> Frontex was called into being by Council Regulation 2007/2004 on 26<sup>th</sup> of October 2004. Its main task is to provide Member States with support when it comes to the protection of their borders.

systems (Böcker and Havinga, 1998; Suhrke, 1998; Boswell, 2003; Vink and Meijerink, 2003). Hence, the *cause for the inequitable pattern of distribution* that ought to be addressed by EU harmonisation is the *difference between the national asylum policies*.

Previous research on the effects of policy on the burden-sharing of asylum applications among the EU Member States has been concerned with the time period from 1980 to 2000, and it led to diverse conclusions. While Böcker and Havinga (1998) have studied national asylum policies and their effects on the distribution of the burden of asylum applications, they found out that national policies do make a difference. The application of a restrictive measure in one country produced an increase in asylum applications in the neighbouring states. In contrast, Thielemann (2004) put forward, that it is not the restrictive measures that are taken by states on the individual basis, but rather structural factors<sup>3</sup> that account for the disparities in asylum burden across Western Europe. Consequently, he concludes that the ongoing harmonisation effort by the EU is not adequate in order to improve burden-sharing.

With respect to the change by the EU to hard law measures, the aforementioned conclusions by the authors provide diverse expectations for this research. If, indeed, national policies are the reason for an unequal distribution of the burden, then the introduction of hard law and the more stringent harmonisation of asylum policy across the EU would be expected to bring along also more burden-sharing. However, according to Thielemann (2004), one would rather expect that hard law measures will not make much difference, as he claims that structural factors determine the disparities.

The proposed research emanates from a study by Vink and Meijerink (2003) in the sense that it is a continuation of their work. The authors found initial support for an implicit burden-sharing thesis during the time period 1982 to 2001. According to them, the sharing of soft norms lifted the heavy burden that the more 'generous' states had to suffer, and enabled them to implement restrictive measures and thereby shift some of the burden to the more 'laggard' states, or even non-Member States. They concluded this from their data, which revealed, firstly, a correlation between national asylum policies and national asylum burden and secondly, a simultaneous convergence of the proportional burden that each Member States had to bear. Both aspects are going to be looked at in this research, too, by updating Vink and Meijerink's dataset for the time period 2002 to 2009, and calculating both correlation and convergence within those years. Subsequently, it will be possible to compare the results with those put forward by Vink and Meijerink, and consequently conclude on the effects of the change from EU soft to hard law in the field of asylum.

Starting from the assumptions, firstly, that asylum seekers go to those countries where they see a higher chance of being recognised as refugees, and secondly, that the Member States have implemented the EU's binding hard law concerning equal standards in all national

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<sup>3</sup> As put forward by Thielemann (2004): "However, policy differences are of course only one of several determinants for a protection seeker's choice of host country; other structural factors, such as historic networks, employment opportunities and a host country's reputation are often equally important"

asylum procedures, the research hypothesises, that the implementation of hard law measures has led to a further convergence of the asylum burden among the Member States between 2002 and 2009 by diminishing national policies' influence on the national asylum burden. In order to clarify the research objective, sub-questions have been formulated:

- *How did the overall EU asylum burden develop during the period from 1982 to 2009?*
- *How did burden-sharing develop over the period from 1982 to 2009?*
- *What effect did each Member States' asylum policy have on its asylum burden during the time period of 2002 to 2009?*

While the first two sub-questions are of descriptive nature and cover the period from 1982 to 2009, the third sub-question will be explanatory and the focus will be on the period from 2002 to 2009. This choice for the respective time-frames is based on the following logic: The answer to the first question will provide background knowledge on the overall trend of asylum applications in the EU over the last three decades, thereby providing a context into which the results of the paper can be placed. As to the second question, its result will serve as more than just background knowledge. In order to find an answer to the main research question, it will be necessary to describe the development of burden-sharing after the change to hard law measures in 2001. However, by looking at a longer time period than 2002 to 2009, a possible change brought about by the introduction of hard law measures can be described more accurately due to the fact that a reference point is given, which in this case is the development that took place before 2001, and therefore during the application of EU soft law measures. The result that will be attained for the second question will display whether a convergence of the national asylum burdens can at all be observed in the EU after the introduction to hard law. With respect to the third question, the effect of national asylum policy on national asylum burden from 2002 to 2009 will be explained. The choice for this shorter time period is appropriate, because the answer to this sub-question is supposed to shed light on the *effect of hard law* on national policies' influence on asylum burden. The effect can, however, only be measured after the first directive has been transposed into the national legal systems. In the case of Directive 2001/55/EC, which was proposed by the Commission in 2000, the European Council implemented it in July 2001 and the deadline for transposition was set for December 2002. After a short explanation of the social and scientific relevance of this research, the most important concepts to the topic under study are described in chapter 2. Hence, a conceptual framework is put forward upon which the assumptions and hypotheses of this research are based. Furthermore, a literature review is presented, that takes into account

the most important previous empirical research in this area. Chapter 3 includes the methodology and research design with which the analysis, chapter 4, is conducted. Conclusions from this analysis will be drawn in chapter 5.

### ***Social and Scientific Relevance***

The result of this study will add to existing knowledge for the following two reasons: Firstly, foregoing quantitative research has been looking at the development of EU harmonisation of asylum policy and its effects on burden-sharing before 2000. Research has mainly been finalized around 2003, which means that there is still a great need for the analysis of data for the period after 2000. Secondly, resulting from the former, there is a lack of studies focusing on the effectiveness of the new EU measures in the field of asylum, the recently implemented and transposed directives that aim at harmonising the Member States' procedures.

But why, in the first place, is it important to study the effectiveness of hard law measures on the development of burden-sharing within the EU after 2002 by looking at the relationship of national asylum policy with national asylum burden? The aim of today's EU policy measures in the field of asylum is to increase burden-sharing among the Member States by making them apply certain standards concerning asylum procedures, which are laid down in the respective directives. This is also supposed to impede Member States of applying national restrictive measures, which have led to the so-called 'race to the bottom' before 1999. The switch to hard law measures was therefore mainly a means to harmonise national asylum procedures and assure asylum seekers equal standards when it comes to their individual asylum processes, regardless of the country where they lodge their applications. However, as today the possibility for a race to the bottom is smaller, due to the standards which Member States have to comply, it is important to analyse how this change in policy has affected the distribution of asylum applications among the Member States. The statistical analyses will show, whether in comparison to the data analysis of Vink and Meijerink (2003), burden-sharing has increased, stayed constant, or even worsened. Consequently, the study is significantly relevant as it aims at confirming, challenging or disconfirming other findings (Punch, 2006).

## ***Chapter 2 – Conceptual Framework***

### ***A new Asylum Paradigm?***

Currently, several scholars are debating over the emergence of a new asylum paradigm. It is said to have come along with the changes occurring in, and the pressure exerted over the international refugee regime (Joly, 2010; Crisp, 2003). According to Crisp (2003), this new asylum paradigm is "based on the notion that the movement of refugees, asylum seekers and irregular migrants can be effectively 'managed', thereby ensuring that such population movements take place in an orderly, predictable and organized manner". In Europe, the driving forces behind this development were the end of the Cold war, the abolishment of internal borders, and the spread of the neo-liberal model among European Member States. "Migration cannot be understood in isolation from the wider political economic orientation of

European integration” (Hansen, 2010). This underlines the shift towards the emerging notion that the 'management' of asylum, refugee, and illegal migration flows is the right way to deal with asylum within the EU. The EU's turn towards more security-oriented migration measures has led to it be referred to as “Fortress Europe” (Hansen, 2010) since the 1980's.

The EU tries to 'manage' or 'control' asylum flows via the harmonisation of the asylum procedures in the single Member States. It did so via soft law until the Amsterdam Treaty, and thereafter the EU implemented hard law measures in order to arrive at its goal – the fair distribution of the 'asylum burden' among its Member States. In the following part, the most important concepts that are relevant to the topic under study will be presented, and it will be made clear, in how far they will inform the analytical part of this paper.

### ***Burden-Sharing***

It was in the preamble of the Convention relating to the status of refugees of the year 1951, that the contracting parties called into being the concept of burden-sharing, by “considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation” (UNHCR, 2010). As early as in the 1950's, the concept was used to appeal to international solidarity and the willingness of states to engage into “international cooperation” for the sake of alleviating those states that are faced with “unduly heavy burdens” after granting protection to refugees. In the academic debate, the question of how to share the burden in connection to refugees is mainly a question about splitting the costs that derive from granting protection to refugees. According to Vink and Meijerink (2003), “the concept of 'asylum burden' usually refers to all costs for host states that may be incurred by the process following an initial application for asylum, such as administration and examination of asylum claims, temporary housing and legal assistance of asylum applicants, societal integration of recognized refugees, and the removal of 'bogus' asylum seekers”. Likewise, Thielemann (2003) states that international burden sharing incorporates the “question how costs of common initiatives or the provision of public goods should be shared between states”.

According to the latter, the following two important questions are raised by burden-sharing: Firstly, the question of the motivation of states to engage into the practice of burden-sharing and secondly, that of patterns, by which one may be able to account for unequal distributions of burdens across countries. Thielemann (2003) sheds light on both of these questions by referring to the two principal logics of social action that persist in political sociology: the 'logic of expected consequences' and the 'logic of appropriateness' or, accordingly, the cost-benefit approach versus the norm-based approach.

As stated by the UNHCR (2001), “burden-sharing is a key to the protection of refugees and the resolution of the refugee problem”. This positive effect that is attributed to the concept has led to a situation, in which it is widely applied in diverse contexts and on diverse



governance levels. According to Boswell (2003), this wide application of the concept has a negative side to it, too. “Over the past decade it has been used—or abused—by different protagonists to justify quite divergent policies: from the dispersal of asylum seekers or refugees among countries, to the evacuation of Kosovo refugees from Macedonia, to more recent proposals for reinforcing protection of refugees in their region of origin” (Boswell, 2003).

Table 1 (Boswell, 2003) displays the variety of burden-sharing mechanisms. As can be seen, the mechanisms can be classified according to the level on which they are applied - national, intra-European or International – as well as according to their direct or indirect nature. On the intra-European level, examples for direct burden-sharing mechanisms are the European Refugee Fund (ERF) and the Kosovo Humanitarian Evacuation Programme (KHEP). On the contrary, the *indirect burden-sharing* mechanism of the EU is the *harmonisation of asylum legislation*. It is this kind of burden-sharing mechanisms with which this research is concerned. Therefore, the following section will distinguish between the two instruments for legal harmonisation used by the EU – *soft law* and *hard law* – and put forward how both concepts have been used in the field of asylum up to now.

Table 1: Examples of Burden-sharing Mechanisms			
	Direct burden-sharing		Indirect burden-sharing
	Financial Transfer	Physical Dispersal	Influence incentive structure
National	Center-periphery financial flows	Dispersal of asylum seekers	
Intra-European	European Refugee Fund	Kosovo Humanitarian Evacuation Programme	EU harmonization of asylum legislation
International	Financing refugee camps in regions of origin (1950s concept)	Resettlement	Recent proposals for reception in the region

### ***From Soft Law to Hard Law***

It has already been mentioned in the introductory chapter, that the main difference between the two concepts of soft and hard law is that hard law is binding on the Member States, while soft law is not. In the following, the concepts are further elaborated upon.

Soft and hard law normally operate next to each other in an international system, also in the EU. “The principal forms of legislative action which the Community may adopt are set out in Article 249 EC. In legal terms, the most important are regulations and directives, although there are also many softer forms of law provided for in the Treaty, or which have

evolved in practice” (Craig and de Búrca, 2008). It becomes clear, that while both forms of law co-exist, hard law forms are considered to be more important. Hard law is brought about via regulations, directives, and decisions. While “a regulation shall be binding in its entirety and directly applicable in all Member States, (....) a directive shall be binding as to the result to be achieved, upon each Member state to which it is addressed, but shall leave to the national authorities the choice of form and methods” (Craig and de Búrca, 2008). Decisions are not going to be outlined in detail, as they are not relevant to the analysis of this paper.

Some scholars believe that only hard law can push European Integration forward as “integration requires clear guidance, uniform treatment, sanctions to deter non-compliance, and justiciability and thus can only come about through treaties, regulations, or directives” (Trubek et al., 2005). And indeed, Craig and de Búrca (2008) also present the directive as “one of the main instruments of harmonisation used by the Community institutions to bring together or co-ordinate the disparate laws of the Member States in various fields”. Nevertheless, for the European Integration process, both forms of law have important functions.

The EU legal development in the field of asylum is illustrated in table 2, and the following paragraph will shortly outline the most important step in the EU harmonisation of asylum legislation. The thick line in the Table marks the shift from soft law to hard law, and it becomes clear that it has been brought about by the Amsterdam Treaty in 1997. Approximately ten years before, “co-operation began in the mid 1980s, when it was decided that controls at internal borders would be abolished” (Böcker, 1998). By signing the Schengen Agreement, Member States agreed to the increasing territorial integration within the EU. However, concerning asylum, the consequences of this agreement were oppositional: “Member States were adopting measures and practices increasingly territorially limiting to asylum seekers” (Guild, 2006). Furthermore, by eliminating internal borders, the EU felt the need to strengthen its external borders, what contributed to it being referred to as a Fortress. During this time period, the Member States' conduct was not legally bound by EU law, and the two instruments in place merely provided normative content as to the handling of asylum claims. On the one hand, “the Dublin Convention, which was signed in 1990 and came into force in 1997, makes the 'country of first asylum' responsible for any given application; this country will have to take back asylum seekers who apply to other member states” (Böcker, 1998). On the other hand, the London Resolutions and Conclusion set the agenda for asylum and refugee protection for the next 15 years. According to Guild (2006), “all three measures were of unclear legal status, not being EU law, nor international treaties nor any other obvious form of international agreement”. As outlined in the introductory chapter, soft-law harmonisation in the field of asylum was characterized by the 'leeway' that national governments had concerning their asylum policies, which corresponds to the statement made by Guild (2006). Consequently, harmonisation was achieved by a bottom-up approach, by which soft law rather led to a shifting of the asylum burden from one country to the next,

Table 2: EU asylum legislation

COM proposal	Council Approval	Deadline Transposition	Soft law	Hard law
<b>1985 – Schengen Agreement</b>				
1990	<b>1997</b>	-	Dublin Convention	
1992		-	London Resolutions and conclusion	
<b>1997 – Amsterdam Treaty</b>				
<b>1999 - Tampere European Council Meeting → Tampere Programme</b>				
2000	<b>July 2001</b>	Dec 2002		<b>Directive 2001/55/EC</b> → minimum standards for temporary protection in the event of a mass influx of displaced persons
2001	<b>Jan 2003</b>	Feb 2005		<b>Directive 2003/9/EC</b> → minimum standards on reception of asylum seekers
2001	<b>Feb 2003</b>	March 2006		<b>Regulation 2003/343/EC</b> → establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national
2001	<b>April 2004</b>	Oct 2006		<b>Directive 2004/83/EC</b> → minimum standards on the qualification of persons as refugees
<b>2004 - The Hague European Council Meeting → The Hague Programme</b>				
2000-2002	<b>Dec 2005</b>	Dec 2007		<b>Directive 2005/85/EC</b> → minimum standards on the procedures for granting or withdrawing refugee status
2008				<b>COM 2008/240</b> → Proposal for Amendment of Council Regulation 2003/343/EC

than to a fair distribution of the asylum burden over all Member States. “Among the most telling aspects of the treatment of asylum seekers in these two conventions is that they are the objects of state acts. They have no effective rights, nor is either instrument designed to give voice to their protection. They are the passive bodies on whom is visited the will of the Member States” (Guild, 2006).

The law on asylum became more stringent and straightforward after 1997. By incorporating the asylum domain into Community competence, the Amsterdam Treaty provided the *legal mandate* for the Union to act on issues of migration and asylum. Put differently, since the Amsterdam Treaty, the EU is able to take legislative action with binding effects on the Member States. Two years later, at the Tampere European Council meeting in

1999, the goals set out within the Treaty were reaffirmed by the drawing up of a 'Tampere programme' which "contains the goals of establishing a common European asylum system, a common system for the management of migration, co-operation with countries of origin and transit, and fair treatment of third country nationals" (Niessen, 2004). The Tampere programme can be said to have provided the *political mandate* for EU measures in the field of asylum. "The asylum agenda was set around the following issues: determination of the State responsible for the examination of an asylum application; temporary protection in the event of a mass influx of refugees; common minimum conditions on reception of asylum seekers; common definition and criteria for qualification for different forms of protection; and common asylum-determination procedures" (Niessen, 2004). The provisional deadline for the achievement of the above was 2004.

In order to reach the goals set out in the Tampere Programme, after 2001 the EU made use of its two most important forms of legislative action, regulations and directives (Craig and de Búrca, 2008) – a step that marks the shift to hard law in the field of European asylum harmonisation. While the content of the directives was new, regulation 2003/343/EC, on the other hand, replaced the Dublin Convention of 1990 with Community legislation, and is also commonly referred to as Dublin II. It therefore has its roots in the development of soft law, and its objective is the identification of the Member State responsible for examining an asylum claim.

In November 2004, the 'The Hague programme' was adopted, which underlined the need for the Common European Asylum System (CEAS), and provided the political mandate for a second phase of legislative harmonisation with regard to asylum law, to be completed by 2010. With the exception of Directive 2005/85/EC, this programme has not conjured up any new hard law instruments. The Commission has, however, adopted both a Communication on 'Strengthened Practical Cooperation' in 2006, as well as a Green Paper on 'the future Common European Asylum System' in 2007. Furthermore, as can be seen in table 2, Regulation 2003/343/EC is currently amended for the third time. The renewed amendments are supposed to "enhance the system's efficiency and to ensure that the needs of applicants for international protection are comprehensively addressed under the responsibility determination procedure" (Guild, 2006).

Before turning to chapter 3, in which the methodology and research design are going to be explained, the next section will outline some of the most important previous empirical studies that have been conducted in the field of asylum harmonisation and especially concerning its effect on burden-sharing.

### ***Previous Empirical Research***

“Ever since the number of asylum seekers in Western Europe began to increase in the 1980s, policy makers and legislators have invested much time and effort into measures aimed at reducing the influx” (Böcker and Havinga, 1998). Likewise, researchers have put time and effort into testing those measures' effectiveness, and will continue doing so in the years to come. Therefore, the literature review in the following part of the paper will outline the most important empirical findings on the topic of burden-sharing with respect to refugees in the EU.

In their research, Böcker and Havinga (1998) point out two features that have dominated the debates on asylum policy by policy makers and legislators. Firstly, they are mainly preoccupied with numbers and statistics, which are supposed to justify restrictive measures. For example, „proponents of restrictions made a habit of pointing, firstly, to the rising number of asylum applications, and secondly, to the decline in the refugee recognition rate to press home their claim that the country could not manage the influx and that many asylum applicants were not really in need of protection” (Böcker and Havinga, 1998). Secondly, there has been a tendency by policy makers and legislators within individual countries „to overestimate their own contribution to the reception of refugees and they all seem to have the fear of taking in too large a share of the asylum seekers when compared to other European countries” (Böcker and Havinga, 1998). Böcker and Havinga underline, that the limitations of certain statistics were merely neglected. The *ad hoc* conclusions derived from them, however, sometimes led to a chain reaction, meaning that countries tend to adapt national policies to those introduced in neighbouring countries, in order not to be confronted with those asylum seekers which will be neglected by their neighbours. In their study, Böcker and Havinga (1998) use data from Eurostat in order to look at the changes with respect to the destinations of asylum seekers coming into the EU during the time period of 1985 to 1994. The widespread assumption is, that “the introduction of measures to reduce the influx of asylum seekers in one country will produce rising numbers in neighbouring countries” (Böcker and Havinga, 1998). To test this assumption, the authors focus on the most dominant shifts that have taken place in the period from 1985 to 1994, and try to explain those shifts with specific national policies that had been introduced right before the shift. They come to the conclusion that “measures that restrict the possibility of entering a country appear to be particularly effective. Measures aimed at discouraging potential asylum seekers by depriving asylum seekers of the right to work sometimes also affect the influx from specific countries of origin” (Böcker and Havinga, 1998). Nevertheless, due to the multitude of measures that have been taken in the receiving countries, certain shifts cannot be attributed to particular measures. This multitude is also believed to have led to the drop of asylum applications at the end of the observed period. However, it is important to note, that this is partly also due to decisive developments in the countries of origin (Böcker and Havinga, 1998).

On the basis of their research, Böcker and Havinga claim that there is a connection between national measures to influence asylum flows and the actual distribution of asylum applications. To say it differently, national measures seem to make a difference. From the perspective of policy makers, this realization calls for effective burden-sharing among EU Member States, which makes burden-sharing one of the driving forces behind asylum cooperation (Suhrke, 1998).

Thielemann is one of the authors, who highly contributed to the academic debate on burden-sharing in the field of asylum, and two of his studies are going to be presented in the following. In one of his articles, he focuses on the underlying motivation of states to engage into burden-sharing, and what theoretical approaches might explain certain patterns that exist due to differences in "Member States' willingness to accept burdens within the EU's emerging forced migration regime" (Thielemann, 2003). By means of the example of the Kosovo crisis and the resulting overburdened Macedonia, the author came to the following conclusions: Firstly, "Member State's relative willingness to accept burdens in this particular case cannot be explained with reference to the greater free-riding opportunities of smaller states"; secondly, "free-riding in the provision of a particular good will be inversely related to the proportion of excludable outputs that the regime provides"; thirdly, "there is so far little evidence that the norms of solidarity and equity have significantly influenced the actions of Member States in moving towards a burden-sharing regime in the area of forced migration"; and fourthly, "a country's willingness to receive refugees is positively related to its more general commitment to norms such as physical protection and distributive justice" (Thielemann, 2003).

In his article *"Why Asylum Policy Harmonisation Undermines Refugee Burden-sharing"*, Thielemann (2004) focuses more on the direct effect of harmonisation measures on burden-sharing. Contrary to the claim that "policy convergence in the field of asylum is seen as the key toward more equitable burden-sharing and less competition for the most effective deterrence measures", Thielemann (2004) shows that "while European efforts to coordinate national asylum legislation and harmonise policy at the EU level appear to have deflected substantial numbers of asylum seekers to less developed countries, they have done little to address the issue of unequal distribution of asylum burdens among Western European states". Instead of differences in the restrictive measures by European countries, it is rather structural factors that account for the disparities in asylum burdens across Western Europe. Thielemann (2004) concludes that in this case the harmonizing measures taken on the EU level are "misplaced", and will not lead to the wanted outcome.

Neumayer (2005) approaches the topic of EU harmonisation in the field of asylum from a different angle than those scholars mentioned before. In his article *"Asylum Recognition Rates in Western Europe"*, Neumayer (2005) studies the determinants of asylum recognition rates within the Western European countries, by focusing on the extent of variation in origin-specific recognition rates. He comes to the conclusion, that there are large differences in countries' recognition rates, and that there is no sign for their convergence.

This is problematic, as “in the face of substantial cross-country differences in asylum recognition rates, the chances of becoming recognized as a refugee or otherwise being allowed to remain in the country resemble a lottery where the odds of winning are contingent on the country in which the claim is processed” (Neumayer, 2005). Neumayer takes account of one shortcoming of his analysis, which is that the variables used therein “might fail to detect more subtle influences of economic and political conditions in destination countries on recognition rates”. Among those variables, he points to “the reception conditions and the generosity of welfare benefits to asylum seekers” (Neumayer, 2005). The author calls for further research on the reasons for the lack of convergence, which keeps asylum claims “that appear to be the same in terms of merit” treated differently in different states.

The study by Vink and Meijerink (2003) is especially important to review in this section, as it is replicated in some respect within this research. The authors studied the development between national asylum burden and national asylum policy in the then 15 Member States of the EU during 1982 and 2001, as well as the interaction effect between the two variables. By using log-linear analysis, they found out that they interact, and therefore concluded that within the time period, any shift in national asylum burden could be accounted for by national asylum policy. Their study covers the time period, in which exclusively soft law measures on asylum prevailed on the EU level. As stated by the authors, “under the unanimity of the Maastricht Treaty [European asylum cooperation] has remained limited to the lowest common denominator (and often non-binding) policies” (2003). Based on their results, Vink and Meijerink (2003) hypothesized that EU soft law legitimated a “curb on generosity among traditional main receiving countries”, resulting in a more equal distribution of applications among the Member States due to the normally more generous ones becoming, or making themselves, less attractive to asylum applicants. They considered this a “first indication of a very implicit process of burden-sharing in the EU” (Vink and Meijerink, 2003), and it remains to be seen, whether this 'first indication' has been the starting point for a further increase of burden-sharing in the following years, or whether respective data displays no significant changes or even a reversal of the trend put forward by Vink and Meijerink (2003).

## Chapter 3 – Methodology

### **Research Design and Operationalisation**

In order to find an answer to the research question, the relationship between *national asylum policy* and *national asylum burden*, the two main variables in this study, must be analysed by doing *explanatory research*. Furthermore, the research will have a *longitudinal design*, as data is going to be collected for a period of 27 years, from 1982 to 2009. The two variables need to be operationalised, so that data can be collected. The operationalisation is adopted from the study by Vink and Meijerink (2003), making it possible in the analysis to compare their outcomes to the ones in this study.

Firstly, for the dependent variable – **national asylum burden** - the *number of asylum applications* lodged within a state are considered to be a valid indicator. As "larger countries can also be expected to host a larger number of asylum seekers" (Vink and Meijerink, 2003), the disparities between the absolute number of asylum applications in the single Member States also result from their different sizes. Therefore, the number of applications is divided by the population size of a country in a specific year, and the national asylum burden consequently denotes the number of asylum applications per million inhabitants in each Member States. This way, the national asylum burdens are made comparable. While there are other criteria to which the number of asylum applications within a country can be set into relation, as for example the GDP, Vink and Meijerink (2003) justify their choice with the fact, that the interest lies on the development of the asylum burden over time, for which this criterion is most commonly employed.

$$\text{National asylum burden} = (\text{nr of applications in year } x) / (\text{total population size in year } x)$$

Secondly, the independent variable, **national asylum policy**, is indicated by the *recognition rates* within the countries. Recognition rates are going to be calculated as follows: The number of positive decisions within a country will be divided by the number of asylum applications that were lodged within the country in a respective year. Just like Vink and Meijerink (2003), the positive decisions will only include those by which protection was granted "(in the first instance) based on the Geneva Convention or on humanitarian grounds, including various national arrangements for complementary forms of protection". This number adequately indicates the generosity of domestic asylum policies. In fact, it is interesting to note, that the height of the Member States' *recognition rates* reflects the result of the asylum policy applied in a Member State. Therefore, national asylum policy is measured by its outcome.

$$\text{National asylum policy} = (\text{nr of positive decisions in year } x) / (\text{nr of asylum applications in year } x)$$



### ***Case Selection and Sampling***

The units of observation of the research will be the single Member States of the EU. As this is the set of units examined, it is also called the target population. In this research, it is possible to study all units that are of interest, and therefore a so-called '*census*' is being analysed. A sampling method is therefore not necessary.

In order to make statements about this target population, cases must be selected, which are then analysed. These are the units of analysis. The research will be concerned with a large number of cases, which is due to two important characteristics of the research: First, it has a longitudinal design, covering a period of 27 years, and second, the research studies the EU Member States, whose number varies throughout the time period from 15 to 27 states. Consequently, the number of cases will also range from a minimum of 15 times 27, which is 405, to a maximum of 27 times 27, which is 729.

During the time-period under study, the EU has undertaken enlargements. As a result of this, the sample is not made up of 27 Member States throughout the whole study, but the respective accession countries are included in the sample after the respective year of their accession to the EU. Accordingly, Cyprus, Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia are going to be included in the sample as of 2004, while Romania and Bulgaria are going to be included as of 2007. For the period 1982 to 2001, which has been studied by Vink and Meijerink already, it will become clear in the following, that their data is partly taken over. And it has to be taken into account, that they neglected the effects of the enlargements of 1986 with Portugal and Spain, and of 1995 with Sweden, Austria and Finland. Consequently, these countries are included in the entire time period.

### ***Data Collection***

In line with the operationalisation of the two variables, national asylum policy and national asylum burden, data needs to be collected on the number of applications, the number of positive decisions, and the population size in each Member State during each year under study. This *quantitative* data is being collected from two *existing datasets*: the number of applications and the number of positive decisions are collected from the *UNHCR annual statistical yearbooks*; the data on the population size is retrieved from the *online database on Population Division, Population estimates, and Projections Section of the United Nations Department of Economic and Social Affairs* (UNDESA). As this research emanates from the research conducted by Vink and Meijerink (2003), it would have been logical to adopt their dataset concerning the time period from 1982 to 2001, and merely update it by collecting data for the following years, 2002 to 2009. This was, however, only possible for the data on applications and positive decisions, but not for the data on population size, as will be explained in the following.

Concerning the data on applications and positive decisions in the Member States, Vink and Meijerink have included their dataset within the appendix to their study, which is why it

was possible to use this collection of data, thus secondary data, for the time period in which the two studies overlap – 1982 to 2001. For subsequent years, 2002 to 2009, the dataset has been completed with primary data from the same data source, the UN statistical yearbooks. The data on asylum applications and positive decision within the countries are published by the UNHCR on a yearly basis. Governments of the receiving countries provide the UNHCR with those data. According to Vink and Meijerink (2003) the UNHCR data "are generally the best available source for asylum statistics". The yearbooks can be downloaded on the organisations' homepage, and the data needed for this research is included in their respective statistical annexes.

With respect to the data on population size, Vink and Meijerink have collected it from Eurostat. However, while it was planned to use the same data source, the online archive of Eurostat only provides data on the population size as of 1999. Due to the fact that Vink and Meijerink have not included a collection of this data within their appendix, it was necessary to find another existing dataset from which to retrieve figures on the population size for the entire period from 1982 to 2009. The UNDESA is considered to be a good source for this data, as it is up to date, and as the United Nations organization is a reliable international actor.

### ***Data Analysis***

While the operationalisation of the variables, as well as the data collection method, have been taken over from the study by Vink and Meijerink (2003), the data analysis method slightly differs from theirs. As noted by Dietz and Kalof (2009), "the replication of studies by different researchers and using different methods builds our confidence about conclusions". The data analysis is going to be put forward by looking separately at the three sub-questions of the research, and respectively describing the analytical methods that are needed to answer them.

The first sub-question is descriptive and is used to provide background information on the general trend and development of the overall EU asylum burden. Consequently, a graph is going to be created, which displays the sum of all applications lodged within the Member States in each year under study. While the time period *1982 to 2009* will be on the x-axis, the *total applications* will be on the y-axis.

When answering the second sub-question, the development of burden-sharing within the EU will be of interest. In this respect it is most important to find out whether a convergence of national asylum burdens can be observed within the EU, which means that the dependent variable needs to be studied. More specifically, the disparity between the national asylum burdens of the Member States in each year under study will have to be observed. However, if one would look at the average numbers of asylum burdens within each year, this number would be highly influenced by the changes in the EU total number of applications, and therefore it would be impossible to draw conclusions on as to change in average asylum burden. In order to account for this factor, each year's national asylum burdens need to be divided by the EU total number of applications in the same year, which

will provide the *proportional distribution of the asylum burden* across the Member States.

$$\text{Proportional national asylum burden} = (\text{national asylum burden in year } x) / (\text{EU total nr of applications in year } x)$$

This distribution can be measured by calculating its Mean and the Standard Deviation to the Mean for each year under study. The standard deviation is considered to serve as an adequate indicator for the disparity between the national burdens. To illustrate the outcome of the calculations, a graph will display the standard deviation, which will be on the y-axis, over the time period 1982 to 2009, which will be on the x-axis. A diminishing standard deviation would be a sign for a convergence of asylum burdens and consequently an increase in EU burden-sharing. A dividing line between the two time periods, 1982-2001 and 2002-2009, will make it easier to observe a possible effect of the switch to hard law after 2002. Additionally, a comparison of the mean standard deviation in both time periods will provide more information on the significance of the difference between the two periods.

For the third sub-question, it has to be calculated, whether a relationship between the two variables of this research exists. In order to provide a first impression on the positions of each Member State with regard to policy and burden, two scatterplots will show how for each country the mean policy and mean burden relate to each other. The time periods will be looked at separately, and the focus will lie on the movement of states between the two periods. Subsequently, the focus will be shifted to the period 2002 to 2009, for which seven additional scatterplots will be created. They will display the correlation between one year's national asylum policies on the following year's proportional national asylum burdens, and they will include all Member States. The scatterplots are going to display, whether changes in burden indeed are associated with changes in policy, which is one of the criteria that needs to be fulfilled before testing for causation. The second criterion of causation, that x needs to precede y in time, has been accounted for in the scatterplots, and it is also logical that the policy in 2002 can only affect the burden in 2003, and not that of the same year. A third criterion is that the relationship must not be spurious, meaning that the correlation between two variables is only existent because of a third influential variable. While this research is interested in the influence of EU law onto the relationship between national policy and burden, this does not qualify as a spurious relationship, because if a correlation were detected for x and y in this case, then EU law is not a causal factor for this. The scatterplots will furthermore contain the regression line and regression coefficient, from which it will be possible to know the strength of the causation if there were a correlation.

## Chapter 4 – Analysis

The following quantitative analysis consists of three parts, in which accordingly the three sub-questions of this research are going to be answered. Subsequently, the outcome of this analysis is going to be interpreted in the conclusion of this thesis, in which the main goal will be to answer the overall research question. Therewith the paper aims at contributing to the ongoing debate and research on the effectiveness of EU measures with regard to burden-sharing.

Starting from the assumptions, firstly, that asylum seekers go to those countries where they see a higher chance of being recognised as refugees, and secondly, that the Member States have implemented the EU's binding hard law concerning equal standards in all national asylum procedures, two hypotheses will be tested within this analysis:

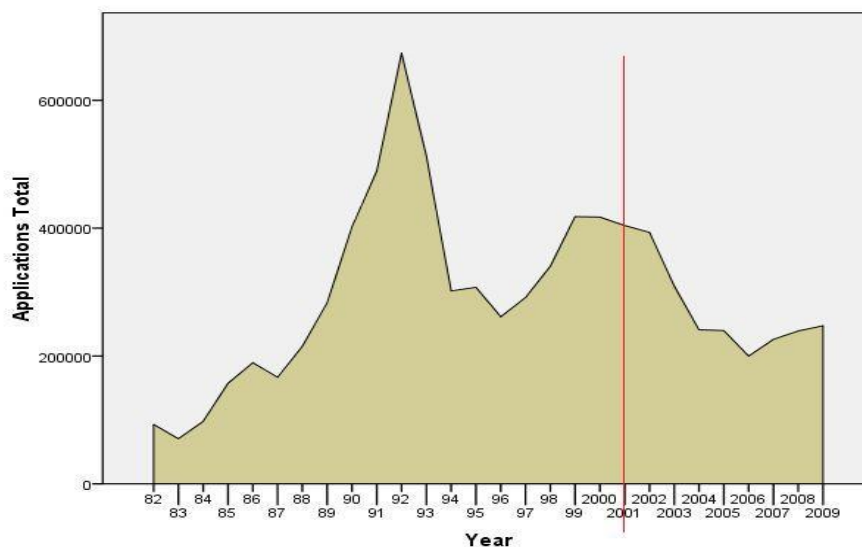
*H1: After the introduction of EU hard law in the field of asylum in 2001, the convergence of the asylum burden among the Member States has increased*

*H2: A Member States' national asylum burden is not influenced by its national asylum policy*

### ***Asylum Applications within the EU***

Before turning to hypotheses testing, this paragraph will concentrate on the first sub-question: *How did the overall EU asylum burden develop during the period from 1982 to 2009?* Figure 1 reveals much of the answer by displaying the development of the total number of asylum applications lodged within the entire EU over the period from 1982 to 2009. The red line denotes the year, in which the first EU directive was implemented, and therefore divides the graph into the soft law period from 1982 to 2001 (*period 1 hereafter*), and the hard law period thereafter (*period 2 hereafter*).

Figure 1: Total number of applications in the EU Member States: 1982 – 2009



For period 1, the graph shows that various changes in the overall number of asylum applications have taken place. After 1982, the number of applications has been increasing while the increase after 1988 was especially steep. It reached its peak in 1992 with a total of approximately 670.000 applications within the EU. However, after 1992, the number of applications decreased just as abruptly as it had been rising, leading to a total number of applications of about 300.000 in 1994. Consequently, within two years, the number of applications lodged within the EU Member States halved. When looking at the political and institutional developments in the EU at that time, the fluctuations described above can be explained. Firstly, the sudden increase of applications especially after 1987 might partly be due to the Schengen Agreement. The elimination of borders between the Member States had an effect on the attractiveness of the EU to asylum seekers and refugees and they saw their chance in being able to directly apply for asylum in economically strong and politically stable countries, such as France, the UK, Germany or Sweden. As a reaction to the elimination of the inner borders, Member States were very much concerned with the question, how to strengthen the EU's outside borders in return. The idea to engage into intergovernmental cooperation took shape already in 1990, when they decided upon the Dublin Convention. The Convention did, however, only enter into force in 1997, which is why EU policies cannot be held accountable for the sudden decrease of asylum applications between 1992 and 1994. In contrast, as put forward by Vink and Meijerink (2003), the developments mirror the influence of national restrictive policies on the asylum burden within the Member States, and consequently in the EU overall. In some Member States, especially those mentioned above, which were especially attractive for asylum seekers to lodge their applications in, the restrictive policies were implemented to discourage asylum seekers from entering their territory. Compared to the developments described above, the EU burden in period 1 does not show as much variation after 1994 anymore. It can be noted, that the highest number of applications thereafter was slightly over 400.000 in year 1999.

Turning to the developments observed for period 2, while the number of asylum applications has been decreasing after 2000 at first, the fact that the graph ends with an increase over three years relativises this former decrease. It appears that the introduction of hard law did not have any remarkable influence on the total number of applications within the EU; especially because in period 1 there have also been several changes in the direction of change. After having a closer look at the figures, it should, however, be pointed out that *period 2* includes the lowest numbers of total applications since 1988 which is just under 200.000 in 2006. This is worth mentioning, as period 2 is not only marked by a change in EU law, but also by two EU enlargements, during which 12 new States acceded the Union. Consequently, in spite of an increase in the total EU population, the absolute number of applications within EU territory has not increased. To the contrary, it has even shown a tendency to further decrease after 2004. In fact, this is an important aspect to keep in mind throughout the analysis.

To conclude, the previous observations have shown, firstly that while the EU has experienced a sudden increase in asylum applications in *period 1*, Member States have managed to quickly restrict asylum seekers from lodging as many applications, and have furthermore kept the number of applications from rising abruptly again. Secondly, despite the European enlargements in 2004 and 2007 and the consequential increase of the EU territory and population, the number of applications has thereafter rather decreased in comparison to the situation in EU-15. This can best be seen when looking at the average number of applications in both time periods. While in period 1, the average number per year was approximately 300.000, in period 2 it was lower at approximately 260.000. The following section will shift the focus towards the distribution of the asylum burden over the Member States.

### ***Development of Burden-Sharing within the EU***

Vink and Meijerink (2003) point out that "in the time period 1982 to 2001, from an EU total of 6.2 million asylum applications, almost half (2.9 million) were made in Germany. Austria, Belgium, France, the Netherlands, Sweden and the United Kingdom accounted for another 2.7 million. The other eight Member States [Denmark, Finland, Greece, Ireland, Italy, Luxembourg, Portugal, Spain], and hence the majority, 'only' dealt with 600,000 asylum applications". Comparing their findings to period 2, in which the total number of applications within the EU was 2.1 million, again more than half of the overall burden (1.21 million) was taken on by France, Germany, Sweden and the UK, consequently by four out of 27 countries. Of the remaining approximately 890.000 applications, approximately 620.000 were accounted for by Austria, Belgium, Greece, Italy, and the Netherlands, who each dealt with slightly more than 100.000 applications. The other 15 Member States, the majority, dealt with the rest of only around 270.000 applications, with Latvia, Lithuania, and Estonia taking on the least.

These figures give an impression of how the burden of applications in the EU is divided among the Member States. While these figures may lead to precipitated conclusions concerning the inequity and inequality of distribution, one has to take into account, that obviously the disparities in the absolute numbers of applications also have to be related to the size of the population of each EU Member State. It is obvious that highly populated countries, such as Germany or France, are expected to take on a higher number of applications than countries such as Malta or Luxembourg. Consequently, with respect to the analysis of the distribution of the asylum burden, it is relative figures, rather than absolute numbers, that need to be observed and compared.

In the following, the second sub-question will be approached: *How did burden-sharing develop over the period from 1982 to 2009?* While the changes in the total number of applications within the EU has been examined before, the focus now lies on the distribution of these applications across the EU Member States, and whether the burden is distributed equally or whether certain patterns are recognizable for groups of countries and over the period under study.

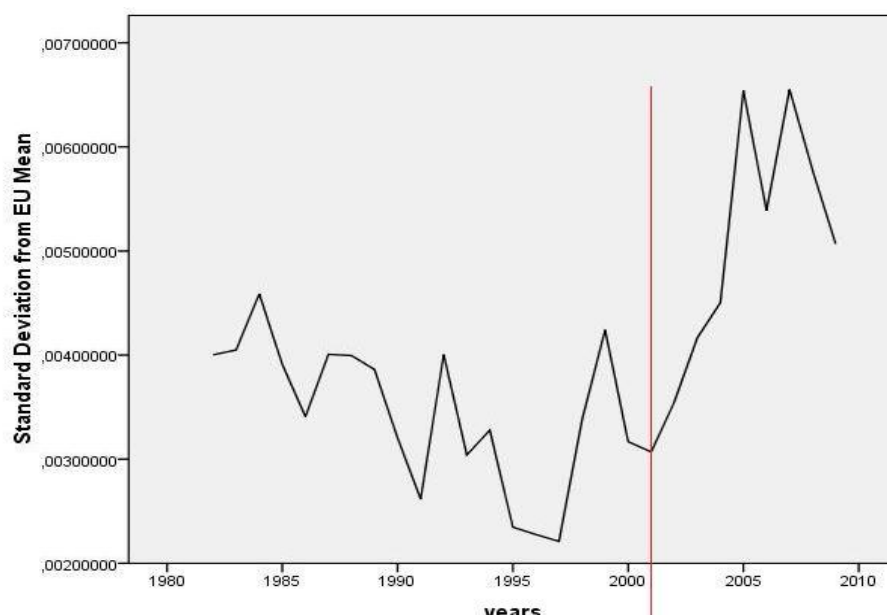
As already mentioned, the paper hypothesises, that *after the introduction of EU hard law in the field of asylum in 2001, the convergence of the asylum burden among the Member States has increased*. While in the foregoing research by Vink and Meijerink (2003) the authors have put forward their “implicit burden-sharing theory” for period 1, it remains to be seen whether burden-sharing has increased, decreased, or stayed unchanged after 2001, and therefore after the introduction of hard law measures on the EU level. The outcome for the calculation of the yearly standard deviation (*sd hereafter*) between the Member States' proportional asylum burdens is displayed in Figure 2. Once again, the red line marks the shift to EU hard law, and denotes the two time periods which are going to be compared with respect to the convergence of the asylum burden.

A first glance at the graph reveals two important aspects: Firstly, for period 1, the figures on the sd are in line with the outcomes of Vink and Meijerink, namely that in spite of certain fluctuations, the overall tendency was for the sd to decrease. Secondly, for period 2, the initial impression is contrary to the hypothesised development, as the sd increased.

Figure 2 shows, that between 1982 and 2001, the sd tends to diminish, which means that its direction of changes is downward. While it was as high as 0.0038 (1982), it decreased to 0.0031 (2001). In between, its value was even lower, as for example in 1997 with 0.0022. As already noted by Vink and Meijerink (2003), the sd peaks whenever the total number of applications within the EU peaks. Based on the observations made in the previous section, it is already known that the years 1992 and 1999 mark the highest number of applications, and, indeed, within those years the sd reached two of its highest values: 0.004 and 0.0042.

The low sd in 1997 of 0.0022 indicates the highest degree of convergence of the relative asylum burden of the EU Member States, meaning that the inequity in the distribution of the burden was at its lowest point. However, EU Member States were not able

Figure 2: Proportional Distribution of Relative asylum burden in EU Member States: Convergence 1982-2009

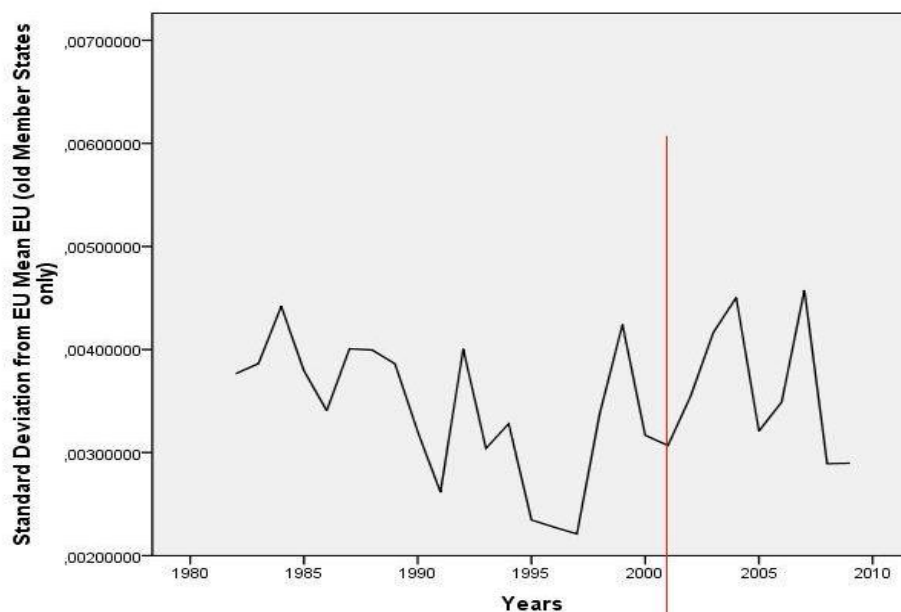


to keep the disparity between their asylum burden as low in the following years. And although the EU hard law measures were especially designed to increase burden-sharing, figure 2 shows clearly, that the sd increased after 2001. In the years 2005 and 2007, the sd was as high as 0.0065 and 0.0066, meaning that compared to period 1, the sd has temporarily more than doubled. A comparison of the mean sd in each time period makes the high difference clearer: the mean increased from 0.0034 to 0.0052 (see appendix 1).

As already pointed out, the period under study is also marked by another important development: EU enlargement. With respect to this second sub-question, the effect of enlargement can be controlled for. Figure 3 shows the results for the above calculation, after having omitted the “new” Member States.

It becomes clear, that the enlargement has had an effect on the sharp increase of the sd. More specifically, it has been an influencing factor for the divergence of the sd. After solely looking at the disparities between the burdens of the EU-15 Member states, it can be concluded that the convergence of their asylum burdens has neither decreased nor increased, but rather stayed constant. More insights are again provided by looking at the means of the two periods. While the mean sd for the first 20 years under study is 0.0034, for the last 8 years it is 0.0037 (see appendix 1). In spite of the fact that this difference between the means is not as high as in figure 2, the mean still increases.

*Figure 3: Proportional Distribution of asylum applications among the EU-15 Member States, 1892-2009*



With respect to the hypothesis set out at the beginning of this section, there is rather strong evidence to reject it. Contrary to the expectation that the introduction of hard law has led to an increased convergence of the asylum burden among the Member States, burden-sharing has apparently been more ineffective after 2001 and the sd has remained high over 5 years. As both graphs end with a downward direction of change of the sd, this might be an



indication for the fact that while the enlargements have destabilized the proportional distribution of the asylum, this destabilization might also be of temporary nature, and that in the following years, with the improvements in the implementation of the hard law measures, a repeated convergence in burden-sharing might follow. Having this in mind, follow-up studies which continuously observe the evolution of burden-sharing are important, so that policies may also be adjusted in case of ineffectiveness.

### ***Relationship between Asylum Policy and Asylum Burden***

As described in the methodological chapter, this section will relate the national asylum policies to the national asylum burden, and therewith answer the third sub-question of this thesis: *What effect did each Member States' asylum policy have on its asylum burden during the time period of 2002 to 2009?*

Our concern is to explain variation in burden in terms of policy. For example, we want to be able to say that some part of variation from state to state in the burden is a result of variation from state to state in policy. Firstly, in order to get an impression of the positions of each Member State with regard to policy and burden, a scatterplot will show for each country how the mean asylum policy and the mean asylum burden relate to each other. Two scatterplots have been created, as a separate observation of each of the two time periods is necessary. In order to compare these two scatterplots, and due to the fact that the new Member States are taking over a rather small burden, they have been excluded for this calculation.

In figures 4 and 5, each country represents one dot on the scatter. Consequently, for each country, the mean proportional asylum burden over the respective period can be set into relation to the mean recognition rate, indicating the asylum policy, in the same period. For each figure the red horizontal line denotes the overall mean proportional burden for the Member States included in this calculation. Aside to the figures, the EU-15 states are grouped as either taking over a higher or a lower proportional burden than the mean.

The figures display that in both periods Sweden and Austria have faced the highest proportional burden. Furthermore, Belgium has been in the 'upper' group of countries in both periods; while Denmark, Germany and the Netherlands have joined the above countries only in period 1, and faced a burden lower than the EU mean from 2002 onwards. In exchange, Luxembourg, Ireland and Greece have moved into the 'upper' group of countries in period 2. There are three countries, which took over a burden considerably below the EU mean in both time periods: Italy, Spain and Portugal. While they are all border countries of the EU, only Greece 'falls out of the pattern' by being positioned in the upper group after 2002.

Can the movement of Denmark, Germany, and the Netherlands be explained by a restrictive policy in period 2? And likewise, have Luxembourg, Ireland and Greece become more generous with respect to their recognitions of asylum seekers after 2001?

## Legend

- 1 Austria
- 2 Belgium
- 3 Denmark
- 4 Finland
- 5 France
- 6 Germany
- 7 Greece
- 8 Ireland
- 9 Italy
- 10 Luxembourg
- 11 Netherlands
- 12 Portugal
- 13 Spain
- 14 Sweden
- 15 UK

Figure 4: Mean proportional distribution by mean recognition rate in EU-15, 1982-2001

- Sweden  
Austria  
Denmark  
Germany  
Netherlands  
Belgium
- 
- France  
Luxembourg  
Ireland  
UK  
Greece  
Spain  
Italy  
Portugal

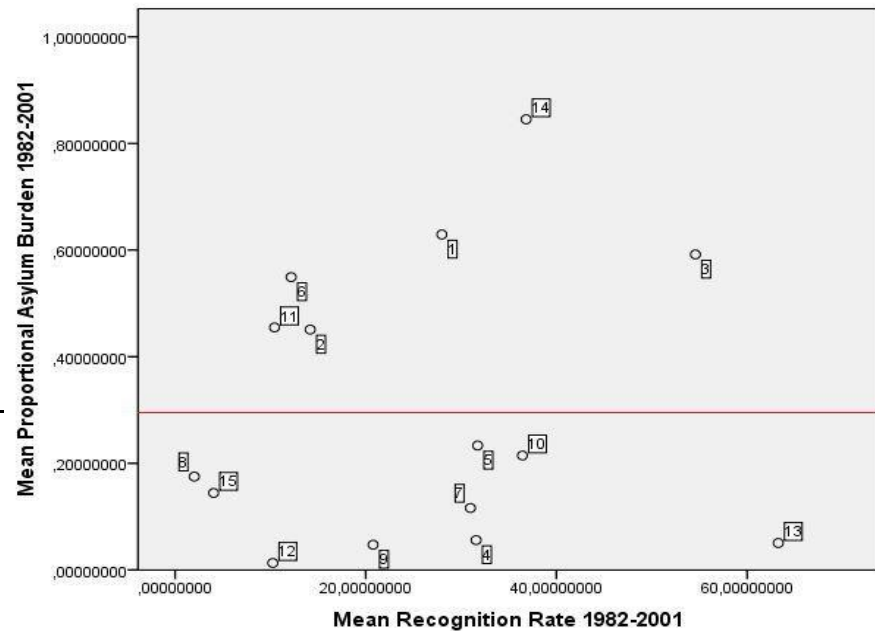
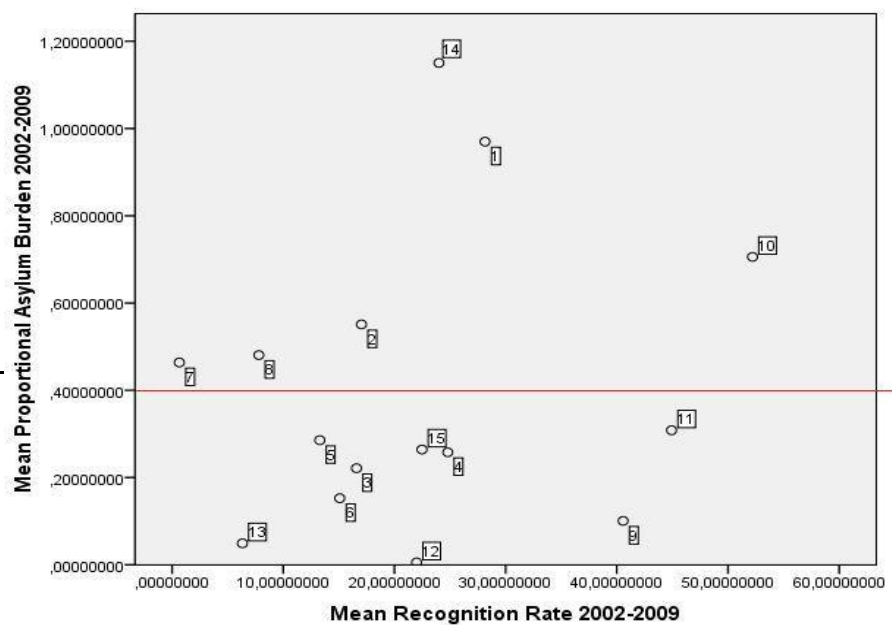


Figure 5: Mean proportional distribution by mean recognition rate in EU-15, 2002-2009

- Sweden  
Austria  
Luxembourg  
Belgium  
Ireland  
Greece
- 
- Netherlands  
France  
UK  
Finland  
Denmark  
Germany  
Italy  
Spain  
Portugal



The scatterplots reveal that in three out of the above six cases the decrease, respectively increase, in asylum burden might be explained by a variation in policy. For example, in Denmark the mean burden decreased simultaneously with the mean recognition rate. Also, for Luxembourg and Ireland the change in asylum burden is positively related to the asylum policy, as in both countries the mean values of both variables increased. However, in the remaining three cases, both burden and policy are negatively related, or, as in the case of Germany, there is nearly no change in policy, but nevertheless the burden diminishes. In fact, in the case of Greece, the graph mirrors the current situation at the Greek-Turkish border. For its figure on the mean recognition rate underlines that Greece is faced with a higher burden, but simultaneously is not able to process those increasing numbers of asylum procedures. Its high proportional burden is coupled with the lowest recognition rate of all countries after 2002.

To conclude, concerning the relationship between policy and burden, the above scatterplots provide a mixed picture, and it is not possible to derive firm conclusions from the previous observations. Therefore, in order to test the second hypothesis via a more straightforward method, linear regression analysis is conducted. The 'implicit burden-sharing theory' of Vink and Meijerink (2003) suggested a causal relationship, in which the independent variable *asylum policy* is positively correlated with the dependent variable *asylum burden*. It will be seen in the following, whether this causal relationship exists between 2002 and 2009. Referring back to the beginning of this chapter, the hypothesis is that asylum burden and policy do not correlate for the period after 2001.

The scatterplots on which this part of the analysis is based can be found in the appendix 2. As explained in the methodological chapter, the scatterplots correlate a year's policy with the following year's burden within each Member State, as correlation presupposes precedence in time of the independent variable to the dependent variable. The regression coefficient has been added within each scatterplot.

The scatterplots show, that this method of data analysis does not hint in the direction of a causal relationship between national asylum policy and national burden either. Firstly, the correlation for each of the seven observations is weak, and secondly, in three out of four times, it even became negative, meaning that a high recognition rate, hence a generous policy, led to lower numbers of applications, hence a lower burden.

For clarification, if the correlation coefficient  $r^2$  is 0, this means that there is no correlation at all. If it is 1, then there is a high positive correlation, and if it is -1, then the high correlation is negative. In the seven observations at hand,  $r^2$  is -0.076, -0.036, 0.044, 0.005, -0.022, 0.017, and 0.068. Taking the first figure as an example,  $r^2=0.076$  means that approximately 7.6 % of the variance in asylum burden in 2003 can be 'explained' by the asylum policy in 2002. As this percentage is very low already, and the remaining correlation coefficients are even smaller, it can be concluded that national asylum policy has no causal influence on national asylum burden in the time period of 2002 to 2009.

With regard to the third sub-question, the answer must be formulated as follows: During period 2, the Member States' asylum policy has no effect on their asylum burden. Considering the hypothesis attached to this part of the analysis, it has become clear, that it can be confirmed, as it was hypothesised, that the introduction of hard law has erased any causal relationship between the two variables.

## ***Chapter 5 – Conclusion***

After having conducted a longitudinal study to unravel the effects on burden-sharing of the EU's switch from soft to hard law measures in the field of asylum, several interesting conclusions can be drawn from the foregoing analysis. First of all, it has provided enough findings on the basis of which the overall research question can be answered. Having asked: *to what extent has the application of EU hard law for the harmonisation of national asylum policies been effective in terms of burden-sharing by diminishing national asylum policies' influence on their national asylum burden?*, the answer to this question is two-fold.

Firstly, the analysis has shown that the introduction of hard law for the harmonisation of asylum policies coincides with a significant decrease in burden-sharing. After 2001, the distribution of asylum applications has become unequable in comparison to the previous years, in which the national asylum burdens had gradually converged. It is striking that divergence peaked in the years of 2004 and 2007, respectively when EU enlargements took place. In order to control for the possibility that EU enlargement, rather than the introduction of hard law, is the main influencing factor causing the decrease of burden-sharing, the disparities between the “old” Member States’ asylum burdens have been looked at separately as well. Once again, the analysis displayed an increasing divergence between the “old” Member States’ burdens. Consequently, the above findings lead to the refutation of the first hypothesis, and it must be concluded that the convergence of the asylum burden among the Member States has *decreased* after 2001.

Secondly, with regard to the effect of hard law on the relationship between national asylum policy and national asylum burden, no correlation could be found in each of the seven observations that were analysed. Even stronger evidence for the non-existence of a causal relationship was provided after the correlation coefficients have additionally been taken into account. Consequently, it must be concluded that since the introduction of hard law, Member States are not able to influence their national asylum burden by changing their national asylum policies. Thus, the second hypothesis that has been formulated at the beginning of the analysis can be confirmed.

While it is inviting to conclude from the above that the introduction of hard law by the EU has failed to deliver its redistributive effect, and that consequently its appropriateness should be reconsidered, such reasoning would be overhasty. Indeed, in the short-term hard law harmonisation has obviously not contributed to an increased burden-sharing within the

EU. However, it has been successful in establishing one of its hypothesised prerequisites: the erosion of the causal relationship between national asylum policy and burden. This means, that the long-term consequences of hard law harmonisation with respect to burden-sharing remain to be observed, and that there is a possibility for them to turn out differently than the short-term effects. Possible reasons for the short-term ineffectiveness of hard law for burden-sharing are multiple. Firstly, the Member States' patterns of compliance to EU hard law in any policy field differ significantly. Hence, while there are countries which are known to be the 'good students' who are able to transpose EU law immediately and within the prescribed deadlines, other Member States tend to rather hazard the consequences of non-compliance than to transpose EU law within the given time frames. Secondly, the successful transposition of the directives and regulations in this policy field has been costly. The requested standards of national asylum procedures called for a total renewal of some Member States' instrumentation and asylum systems, and it is obvious that those countries take more time to comply with EU hard law. And thirdly, table 2 has shown that the deadline for transposing the fourth directive, Directive 2005/85/EC, was only in December 2007, thus three and a half years ago. Coupled with the former two reasons, the directive's effects might not have translated to the national levels yet.

Put differently, while it can be concluded from the analysis that the EU's introduction of hard law has been effective in erasing the relationship between national policies and burden, conclusions on the Member States' performance regarding transposition of EU hard law cannot be drawn.

With respect to the expectations for this research that resulted from the literature review in chapter 2, they can now be reconsidered. Referring back to Vink and Meijerink (2003), their reasoning behind the decrease of the EU total number of applications between 1992 and 2001 cannot be applied to this study. The authors argued that it was due to the application of restrictive measures by the Member States, which led to the harmonisation of asylum policies at the lowest common denominator. This 'lowest common denominator-logic' yielded an expectation for this analysis, namely that with the introduction of hard law and the consequential higher standards of asylum procedures the overall number of applications would rise again. However, the results do not underpin this line of thought as the total number of applications after 2001 has remained low. Even after 2004, when the enlargement led to an increase in the EU's territory and population, thereby simultaneously increasing its potential to integrate more asylum seekers and refugees, the total number of applications barely changed.

Additionally, the results of the analysis seem to be rather in line with the argumentation of Thielemann (2004) than with Böcker and Havinga's (1998) results. While the latter have underlined the importance of national policies and their influence on burden-sharing, this analysis has not been able to detect the application of the converse argument in the hard law period. While national policies do not make a difference anymore after 2001,

burden-sharing has still not increased. However, in accordance with Thielemann (2004), the analysis cannot exclude the possibility that the disparities between the Member States' burdens may be under the influence of structural factors, among which the geographical location of the Member States seems to be of special importance.

The foregoing conclusions lay open certain shortcomings of this study, which will be elaborated upon in more detail. The main shortcoming of the analysis in this paper is the shortness of the time period under study, in which hard law was in place. While the research wants to draw conclusions on a development over time, only eight years could be considered and more specifically only seven observations could be made. The results that have been discussed above provide clear conclusions, but it has also been discussed, that those can only be referred to as "short-term" consequences. Even Vink and Meijerink (2003), who have studied a period of 19 years, have only cautiously concluded on an 'implicit burden-sharing theory' based on their results. In comparison, the shortcoming of this study becomes obvious, and it calls for replication studies in which the long-term consequences of hard law harmonisation are analysed.

Furthermore, this study should be supplemented with qualitative research on the effects of hard law on burden-sharing. In line with the multiple studies that have been conducted concerning the effects of soft law harmonisation, further studies are needed in which attention is drawn to the period after 2001, and in which 'those other factors' are analysed, that might influence asylum seekers in their choice for asylum countries, and Member States in their compliance patterns to EU law, as well as their interest in investing much energy on building effective burden-sharing mechanisms in the first place. One of the developments whose effects should be studied in this respect is, for example, EU enlargement. For sub-question two, there has already been one control for the effect of enlargement on burden-sharing, and it has become clear that its effect is not negligible. Follow up studies are necessary, in order to test whether the enlargement of the Union has deterred the effects of hard law on burden-sharing significantly. More importantly, qualitative research on the implementation of hard law in the Member States would be of great value.

The introduction of hard law harmonisation of asylum legislation, to exist alongside soft law harmonising measures, was and still is expected to lead to increased burden-sharing within the EU. It has become clear from this analysis, that a key towards the successful hard law harmonisation is the rightful transposition of the directives and regulations on the side of the Member States. Consequently, the European Commission's monitoring role is of great importance in the field of EU asylum legislation, and one of the possibilities for the EU to increase burden-sharing could be the strengthening of the Commission's role in this regard.

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## Appendix

### Appendix 1

Comparison of means (SPSS output)

#### Report

Standard Deviation EU27

ha...	Mean	N	Std. Deviation
0	,0034324310	20	...
1	,0051932950	8	...
Total	,0039355350	28	...

#### Report

Standard Deviation EU15

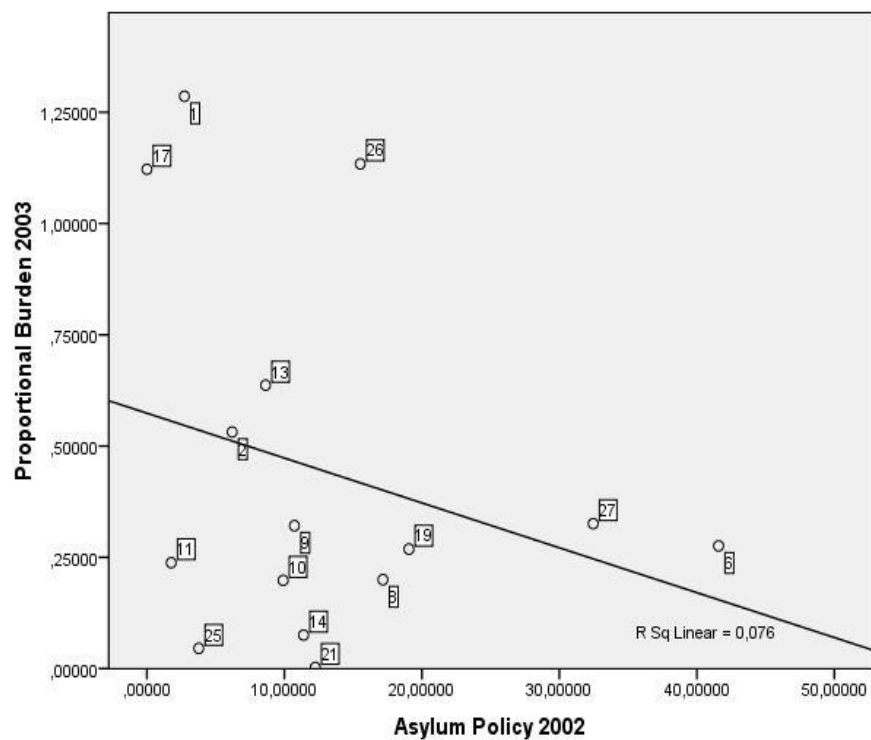
ha...	Mean	N	Std. Deviation
0	,0034324310	20	...
1	,0036602825	8	...
Total	,0034975314	28	...

### Appendix 2

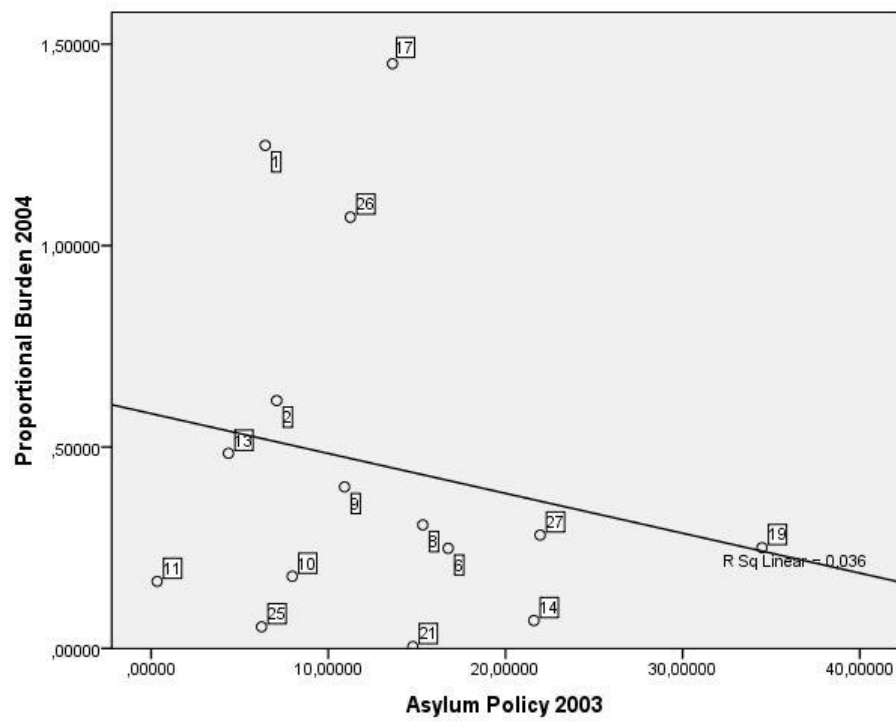
Seven observations on national proportional burden by national asylum policy, 2002-2009

#### Legend

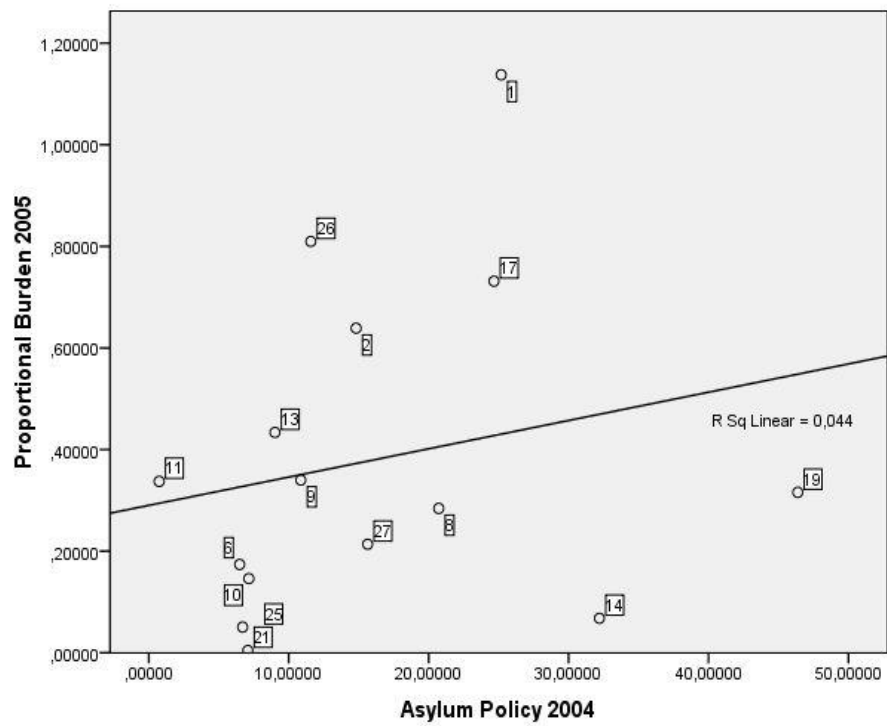
- 1 Austria
- 2 Belgium
- 3 Bulgaria
- 4 Cyprus
- 5 CzeRep.
- 6 Denmark
- 7 Estonia
- 8 Finland
- 9 France
- 10 Germany
- 11 Greece
- 12 Hungary
- 13 Ireland
- 14 Italy
- 15 Latvia
- 16 Lithuania
- 17 Luxemburg
- 18 Malta
- 19 Netherlands
- 20 Poland
- 21 Portugal
- 22 Romania
- 23 Slovakia
- 24 Slovenia
- 25 Spain
- 26 Sweden
- 27 UK



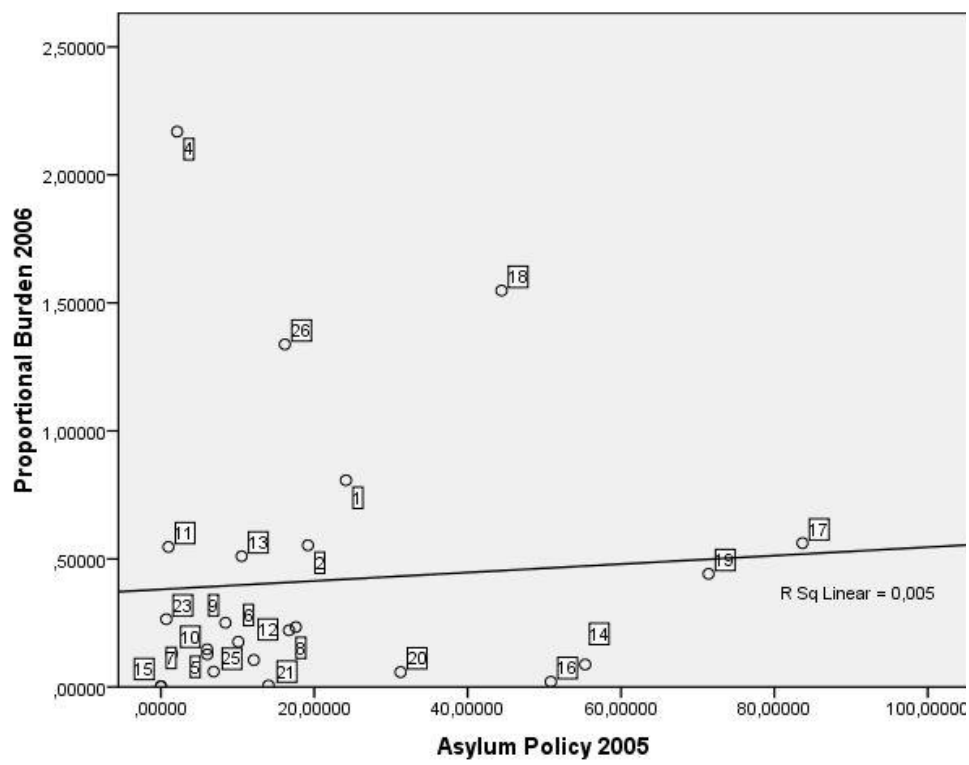
scatterplot 1



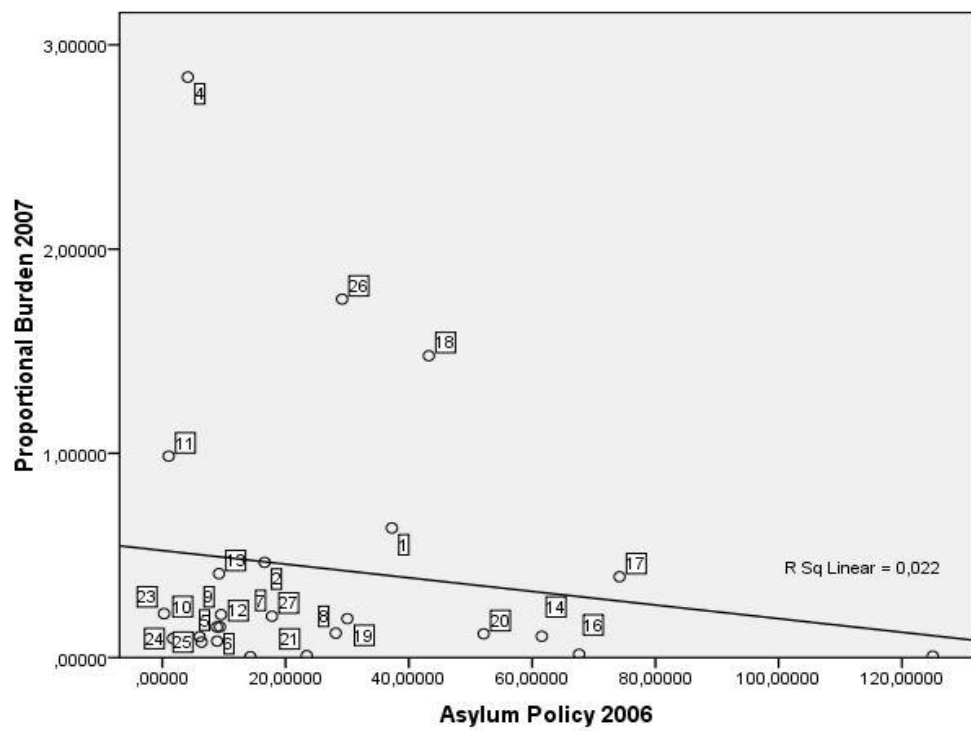
scatterplot 2



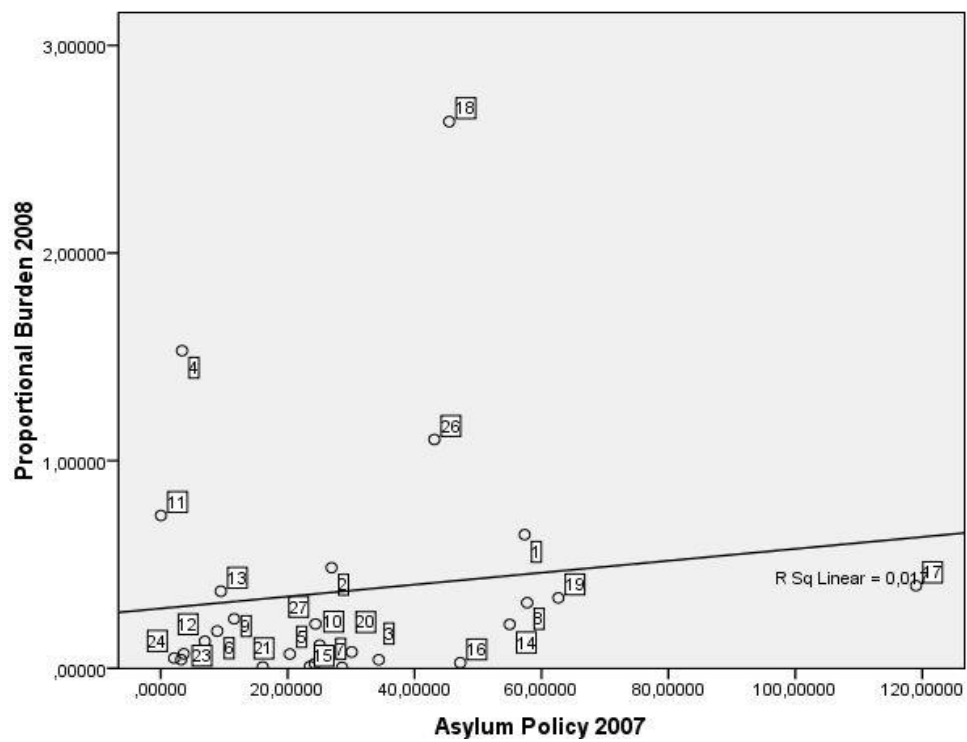
scatterplot 3



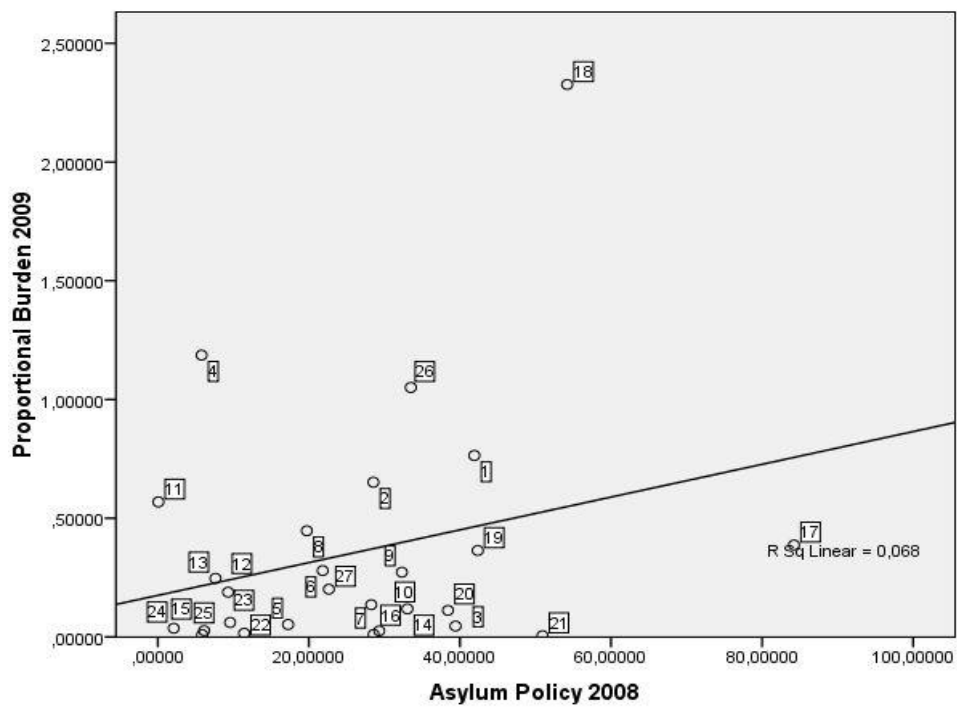
scatterplot 4



scatterplot 5



scatterplot 6



scatterplot 7