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The Gap between Policy and Practice: Dublin Regulation III in Post-Overburdened Italy

Master's thesis

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Declaration

1. I hereby declare that I have compiled this thesis using the listed literature and resources only.
2. I hereby declare that my thesis has not been used to gain any other academic title.
3. I fully agree to my work being used for study and scientific purposes.

In Prague on 29/05/2019 Ines Trabelsi

References

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Abstract:

Focused on procedural safeguards for asylum seekers contained within Dublin Regulation III (Articles 4 and 5), this thesis has the aim of understanding why Italian administrations are still not compliant with these rights, which are nevertheless guaranteed in directly applicable and immediately enforceable EU legislation. This study turns its attention to the enforcement obstacles, and explores the factors that might impede compliance with the law, some of which appeared less self-evident than others. Before proceeding to a technical on-the-ground analysis of the problem informed by expert interviews, the previously assumed argument of 'overburdened peripheral state' is first taken off the debate, since, as the thesis explains, due to recent policies, Italy has not been burdened during the last two years and yet has still been demonstrating lack of compliance. The results point to two clear distinct factors: a poor administration lacking staff, training and autonomy, as well as a lack of control and sanction from EU and National entities, and lack of litigation from below. Further results hinting at the potential existence of political interference in administrations' non-application of these articles have also been highlighted but not confirmed as those are in need of more thorough research.

Keywords: EU compliance; procedural safeguards; Dublin Regulation; asylum seekers; Italy.

Abstrakt:

Tato práce se zabývá pojistkami a garancemi pro žadatele o azyl, které jsou obsaženy v nařízení Dublin III (Články 4 a 5). Jejím cílem je porozumět tomu, proč italská státní správa nejedná v souladu s těmito právy, jež jsou nicméně garantována v přímo aplikovatelné legislativě EU, a které je možno okamžitě uplatnit. Tato studie se soustředí na překážky vymáhání těchto práv, zkoumá faktory, které mohou bránit jednání v souladu se zákonem, z nichž některé mohou být méně zjevné než jiné. Ještě před tím, než přistoupíme k technické analýze problému z pohledu konkrétních zkušeností, odmítneme původně předpokládaný argument "přetíženého periferního státu", jelikož Itálie, jak práce ukazuje, nebyla v posledních dvou letech touto otázkou přetížena díky nedávno přijatým opatřením. Přesto však nejedná v dostatečném souladu s platnými nařízeními.Výsledky ukazují na dva hlavní faktory: nevyhovující zdroje státní správy bez dostatku personálu, školení a autonomie, dále chybějící kontrola a sankce ze strany EU a dalších národních orgánů a také chybějící právní tlak zdola a soudní procesy. Výsledky dále poukazují na možné politické zásahy do činnosti státní správy ve smyslu nedodržování článků nařízení, což však nebylo přímo potvrzeno. Tato tvrzení budou vyžadovat podrobnější výzkum.

Klíčová slova: Jednání v souladu s EU; procedurální pojistky; Dublinské nařízení; žadatelé o azyl; Itálie

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Introduction

Dublin I, Dublin II, Dublin III, and Dublin IV are reminiscent of a never-ending song telling the story of Europe's own vocalization of a failure to find a solution to its refugee problem. The 'refugee crisis' disguises a trouble in sustaining a migration policy that simultaneously ensures an efficient human rights-based management of migration flows and fair-share of responsibility. Due to a lack of solidarity between EU Member States, the room for maneuver in terms of policymaking that would confront the issue in a fairer and more humane way seems suffocatingly minuscule. In theory, European asylum policy is in full respect of fundamental rights as it seeks to grant access to those whose legitimate circumstances lead them to seek refuge on European soils. In practice, this is far from the case.

Academia has quickly understood that the problem of the 'crisis' is not the refugees, but solidarity or the lack thereof between Member States and that the road to a pan-European policy and application that is more concerned with refugees' rights has an impasse. The Dublin Regulation seems to encapsulate this dynamic as it does, on one hand, protect the rights of refugees, but on the other hand does not impose a fair-share of responsibility between Member States. As a result, Member States on the periphery are overburdened, do not fully comply with the Regulation and rights infringements occur on a daily basis (UNHCR, 2016; European Commission, 2016). In summer 2016, a Dublin IV proposal was launched by the European Commission to "establish a sustainable and fair Dublin system for determining the Member State responsible for examining asylum applications" (2016, p.2), and in the fall of 2017, the European Parliament voted for the start of inter-institutional negotiations to adopt this new reform. Even though this idealist step is highly unlikely to take shape soon as Northern, Central and Eastern Member States

are prone to block the process**,** this establishes that the EU views that the anomaly of the problem lies in the burden on peripheries, that the only obstacle to the correct application of this law is lack of solidarity and lack of burden-sharing between countries.

Even though it acknowledges that the burden-sharing solution is of paramount importance to alleviate burden on peripheries, this thesis tries to step away from the 'overburden' argument and attempts to understand why—now that a peripheral state like Italy goes through a 'calm phase' due to its "Memorandum of Understanding" with Libya which radically decreased inflow of applicants (by at least 80 %)[1]—the country is still noncompliant with the EU Regulation.

The consequences of noncompliance with EU law are illustrated in the example of the sinking of *Prestige* in 2002[2]: symbolically, just like noncompliance with EU maritime law led to the sinking of the oil tanker, noncompliance with EU law can lead to the sinking of the EU and of its 'prestige', so to speak. The EU is solely sustained and existent with and through its hard and soft laws: the more distant Member States become from these rules, the more ephemeral the idea of a European Union appears, also baring in mind the fragility of its sustainability aggravated by populist discourse in recent years. Therefore, it seems necessary at this stage to come up with thorough research as to what impedes EU compliance in Member States. Compliance research suffers from a lack of empirical on-the-ground investigation[3] when it comes to the enforcement level. This thesis has chosen to focus on an asylum law which is the heart of the Common European Asylum System (CEAS), and to examine the case of Italy, by investigating what challenges on-the-ground a correct enforcement of the law.

[1] See Chapter II.
[2] The details of the incident are further explained in Versluis 2007a.
[3] See Chapter I.

A common reflex most scholars have when examining Dublin is that they exclusively, and almost intuitively, tackle the issue of transfers, i.e. the responsibility or non-responsibility of the Member State in processing an asylum request. However, they fail to address (or only superficially address) other, similarly important articles within the Regulation itself that are primarily concerned with the procedural rights of the asylum seeker.

As the Dublin Regulation in its nature does not suffer a transposition problem—it being a directly applicable law—it appears essential to understand why, despite a drastic decrease in the number of asylum applicants, Italy still has an enforcement problem when it comes to procedural safeguards. I first start by illustrating why and how the country no longer suffers from overburden; second, I present the still occurring violations; third, basing my investigation on two hypotheses deducted from compliance theory, I attempt to answer through data analysis and supporting data with expert interviews, why violations are still occurring; and finally I present a set of recommendations.

Research Question: Why is post-overburdened Italy still noncompliant with the Dublin Regulation?

Independent Variables:

1) *A poor administration*: A poor administration lacking personnel, training, resources, and autonomy

2) *A lack of control:* A lack of control and sanction from the EU and national authorities, 'invisible' infringements and lack of litigation from below.

The pertinence of my topic can be summarized in the following: at a time when Europe is debating whether or not to adopt Dublin IV, which will alleviate the burden on peripheral states, it is essential to examine what other on-the-ground problems could explain noncompliance with Dublin in its current form. This thesis, adopting a rights-based

approach[4], explores the gap between policy and practice. Scrutinizing individual factors preventing compliance enables to midwife more adapted solutions to the deadlocks of practical implementation. My research aims at contributing to public policy and scholarship on migration policy by shedding light on the critical role individual states play in enforcing or not enforcing an EU-wide policy.

The two gaps that I could discern within most of the literature are as follows. First, the center of focus is on the policy itself, its restrictive nature, its impacts on refugees as well as its inherent lack of efficiency and fair-share rather than on the practical application of this Regulation by Member States. The second gap is that most of the scholarship, and especially the less-dense one focusing on implementation, too hastily concludes—in default of in-depth empirical research—that the great number of asylum seekers, i.e. overburden, is what causes noncompliance in peripheries. Therefore, my thesis will complement this literature by looking at the case study of Italy, where there is surprisingly limited research when it comes to on-the-ground empirical fieldwork.

My addition to the literature is twofold. First, instead of focusing on the Dublin Regulation itself, my attention is rather drawn towards a deeper level of analysis, the concrete application of the law on-the-ground. Second, I try to understand the other reasons, other than the overburden theory which is no longer relevant for Italy (see Chapter II), that could explain the country's noncompliance with Dublin. By providing a more focalized insight, I examine the discrepancies between EU law and what local actors make of it: this tests the efficiency of an EU-wide policy at the local level, and I will be able to fill an existing gap in academia. The violations this thesis focuses on are those of procedural safeguards (right to information and personal interview stipulated under

[4] This approach should not be confused with an idealist perspective prone to romanticize illegal migration. It is solely concerned with the respect of rights of asylum seekers inscribed in community law.

Articles 4 and 5 of the Regulation), which have not been given close attention in the scholarship so far.

The research design I adopted is an exploratory qualitative case study informed by expert interviews, theoretical analysis of the existing literature, legal analysis with, as a primary source, the Regulation (EU) No 604/2013, commonly known as the Dublin Regulation, as well as content analysis of data extracted from NGO reports, European Commission reports, state reports, and the Asylum Information Database.

1. CHAPTER I: PRE-ANALYSIS

1.1 Working Definitions

Noncompliance, Violation or Breach: a violation of either Article 4 or 5 of the Regulation. It will not be understood in the sense of infringement procedure: In the past, compliance has been studied and measured through the lens of official infringement procedures. However, as not all "violations" of EU law are detected, this method has proven to be very limited[5]. Furthermore, whenever referring to the right to information and to a personal interview, the European Commission's final evaluative report has referred to the non-respect of these rights as "violations of the Regulation" or "breach" of the articles of the Regulation (European Commission, 2016b, p.11). This is the meaning adopted in this thesis. When I refer to "compliance" I follow Versluis' definition: "In the example of the European Union, compliance thus refers to the extent to which the Member States act in accordance with the provisions of the Treaties and all regulatory measures such as the regulations, directives and decisions that spring from it" (2005, p. 4).

[5] This measurement has its limits, as infringement procedures do not reveal the full picture of noncompliance. This is thoroughly explained by Börzel (2001, 2002) and Versluis (2005).

Dublin Regulation: Regulation (EU) NO. 604/2013 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. My focus on this Regulation is on the procedural rights it guarantees, not on the main aim of the Regulation concerned with transfers and the assignment of responsibility to Member States.

Procedural safeguards: rights stipulated under Articles 4 and 5 of the Dublin Regulation that are concerned with the asylum seekers' rights during the procedure, mainly to receive information in a language they understand, and to be heard in a personal confidential interview.[6]

Asylum seeker: an individual who has arrived on Italian shores and who expressed to the authorities a will to file a request of asylum. The term "illegal migrant" will not be used in this context as these individuals have claimed their potential vulnerability vs. economic migrants for example, therefore as they "seek" asylum, individuals who are kept waiting to lodge an application shall also be considered asylum seekers.

Applicant: an asylum seeker who has already lodged an application for asylum, either at the border police or at the questura.

Enforcement: the "practical implementation"[7] of the law by domestic administrations; in the case under study, enforcement is the daily application of the law by police officers. I use Matthews' definition of enforcement as "the degree to which the relevant authorities

[6] See Chapter III.
[7] Versluis (2004b) has used the expression "practical implementation" to distinguish it from other levels of implementation (such as transposition stages for example, which are characteristic of directives).

seek to ensure compliance and bring those responsible for noncompliance into line" (1993 as cited in Versluis, 2004a, p. 7).

Post-overburdened: that of no longer suffering the burden of large influxes of migrants: such is the case of present Italy.[8]

EASO: European Asylum Support Office.

Questura (plural *questure*): Immigration office in Italy in charge of lodging asylum applications. Its staff is composed of police officers who are in charge of 'fotosegnalamento' (fingerprinting and photographing) and 'verballizazionne' (formal registration of the application supposedly followed with provision of information to the applicant).

1.2 Literature Review

It has been a decade that academic scholarship is particularly allured to one of the most salient European laws, the Dublin Regulation. The scholarly debate on Dublin is a world in itself; therefore it seems crucial to present a comprehensive overview of what has been said before to highlight its limits and to situate my contribution in the discussion. To the question *what is wrong with Dublin*, the answer depends on who is asked. The scholarship revolving around the question of Dublin's pathology could be categorized as such: those who answer from the lens of asylum seekers, the human rights school; those who answer from the lens of the Member States, the efficiency school; and finally, those who are concerned with the implementation of the law, the implementation school. This categorization should be understood as based on the scholars' main focus in their cited work and it should not be confused with delimiting the authors' purposes; a scholar

[8] See Chapter II.

adopting a Member State perspective does not necessarily exclude human rights considerations in their study, and vice-versa. For the purpose of distinction between each perspective, the focus has been put on authors' most prominent standpoint.

1.2.1 Human Rights School

Within the human rights school itself, many subtly different approaches appear. First, the idealist school, which directs its criticism to the Dublin system as a whole, arguing that the problem with Dublin is the very existence of Dublin so to speak, viewing the law as a reflection of restrictive EU asylum policies prioritizing interests of the state above those of the asylum seeker (Satvinder, 2013; Mitsilegas, 2014). Nykänen argues that the law's aspect in restricting secondary movements between EU countries (i.e., when the asylum seeker tries to move towards another Member State) lacks justification, especially when considering the differences between the national standards of different Member States (2012, p. 76).

Then, there are those who argue that the problem lies within the content of Dublin, viewing first that its current form keeps families apart: the definition of 'family' in the law itself is too strict as it does not recognize other cultural and societal criteria and even when applicants fit the strict definition, inability to prove such links constitutes a clear obstacle to these asylum seekers (Angeliki, 2017; Milios, 2017); second, that it leaves too much discretion to the states[9] who rarely use humanitarian clauses in the first place and quickly proceed to transfers because states are never actually required by the law to carry out these take back requests, but do so out of a policy choice (ECRE, 2019b, p. 20); and third, that its concept of safe country dilutes the broader concept of international protection (Costello, 2005).

[9] Atak explains that in France, the Dublin procedure is an instrument for refusal of admission (2013, p. 15).

Some scholars argue that Dublin IV will be even more restrictive of rights than Dublin III, despite its alleviating effect on peripheries and guarantee of a fair share system. Atak claims that the application of Dublin, even when reformed, would still present an obstruction to the effective protection of asylum seekers' fundamental rights (2013, p. 38). Radović & Čučković similarly argue that in the next reform of the Regulation,

> Application of a number of provisions contained in Dublin IV may easily result in violations of asylum seekers' human rights, right to family life and prohibition of torture in particular. This may seriously weaken the protection of fundamental rights of asylum seekers, especially rights of vulnerable asylum seekers (2018, p. 10).

A sense of déjà vu is likely to be felt by the researcher if they compare the respective sets of criticisms preceding the respective official adoptions of Dublin III and Dublin IV. Peers argues that the European Commission's 2008 proposed Dublin III Regulation would have better guaranteed the safeguard rights of asylum seekers compared to the legislation adopted by the Council (2012, p. 4). Hruschka**,** pertinently entitling his article "Dublin is Dead! Long Live Dublin!" comments on the Commission's proposal released in May 2016, arguing it is nothing but a "continuity" instead of a true "reform" and explains that the proposal itself contains measures which would worsen rather than benefit the system, coupled with eventual violations of human rights (2016).

Others argue, still from the lens of the asylum seeker[10], that Dublin is oblivious of the gaps and non-harmonized protection standards between Member States (Ngalikpima & Hennesy, 2013; Fullerton, 2016) and their national understanding of the Dublin Regulation (Garlick & Fratzke, 2015) and that the first entry criterion significantly wrongs the asylum

[10] Other nonacademic contributions should also be taken into account, such as journalistic contributions and the Council of Europe Commissioner for Human Rights' comments that focus on the consequences of Dublin on asylum seekers (Grant & Domokos, 2011; Hammarberg, 2010).

seeker by transforming them in many cases into "illegal migrants" (Schuster, 2011) whose rights are too often violated (Langford, 2013, p. 26).

1.2.2 Efficiency School

Amongst Dublin scholars, there are those who adopt an efficiency approach, looking from the lens of Member States. These scholars have even amongst themselves various perspectives in their understanding of efficiency. First, some view lack of efficiency in the fact that the Regulation is ineffective in preventing applications outside of countries of first entry: Trauner points to the example of Germany, which exceptionally suspended Dublin rules for Syrian refugees (2016).

Second, others view the Regulation as inefficient in fulfilling its "in concreto" duty, the transfer requests between Member States (Auger, 2014). Fratzke points out that "in 2013, of the total of 76,358 requests, 56,466 were accepted by the reception countries but only 15,938 (20%) were really carried out" (2015, p. 11).

Third, the most dense set of criticism discusses the problem from a peripheral state standpoint, arguing that the Regulation is ineffective in sharing responsibility between all Member States, as discretion clauses and actual hierarchy of criteria are rarely used, resulting in a disproportionate burden on peripheral Member States (Maani, 2018; Smythies & Ramazzotti, 2013; Thielemann & Armstrong, 2013; Thielemann, 2017; Baubock, 2017; Bendel, 2015; Dragan, 2017; Moses, 2016). Trauner sums up the problem as such:

> Uncommonly high numbers of refugees, triggered by the wars in nearby regions, in combination with tight budgetary constraints of some member states have exposed the deficiencies of the EU asylum policy, such as a lack of comparability of the asylum standards of certain member states. In reaction, the EU has sought to safeguard the constitutional pillars of its asylum policy, notably the Dublin regime, by introducing and adding new policy instruments that should provide member

> states facing difficulties with additional support. However, several member states have not yet managed to fix their ill-functioning asylum system, nor have the numbers of how many asylum seekers member states receive been equalised within Europe. The pressure on the EU to reform its asylum policy at a higher order of change has reached a critical stage (2016, p. 312).

Mitchell highlights the lack of efficiency of Article 33, which does not constitute a clear prescription for non-overburdened Member States. Article 33 of Dublin mentions that when a Member State adopts a "*preventive action plan, it may call for the assistance of the Commission, and other Member States*". As Mitchell explains, the language of the Article does not explicitly bind other Member States to help the one that is in difficulty: "Article 33, and all the rest of Dublin III for that matter, makes no mention of the heightened pressure on border countries who, due to their location, take in more asylum seekers" (Mitchell, 2017, p. 319). Thildéus criticizes the lack of efficiency in Dublin III Regulation's role as an asylum crisis management system. He argues that even the added aspect of 'crisis management mechanisms' is not sustainable and efficient as long as the first entry criterion is maintained (Thildéus, 2015, p. 40). Schmidt stresses that the principles at the heart of the Dublin System are in discrepancy with the actual situation of overburdened Member States (2016, p. 65). The same is stressed by Roots, who explains that overburdened states are by coincidence the ones with deficient financial conditions. He reminds readers that this system is inherent to the international protection system, in which consideration for the economic situation of countries is always superseded by the universal ideal of protecting human rights, and any country has the duty to find the necessary resources to cover it. Roots explains those financial inequalities are never taken into account by the law (2017). Furthermore, Groen highlights Dublin's inefficiency in promoting solidarity between Member States and its fostering of solidarity gaps between them (2016).

A more recent analysis, by Van Wolleghem, stresses the lack of tangible difference Dublin IV will make on peripheries, and uses a simulation method and quantitative research to understand whether the reform would have changed the situation for peripheral states during the refugee crisis (2018). Furthermore, Garcés-Mascareñas states the following:

> A distribution system that does not take asylum seekers' preferences into account is terribly inefficient. On the one hand, many of the applicants avoid seeking asylum in the first country of arrival and, if they do, they then repeat it in another country. In other words, despite Dublin, they decide. On the other hand, the system of transfers between Member States does not work either (2015, para. 21).

Fourth, another criticism is directed by ECRE, which considers the system inefficiently costly. The authors view the system of transfers as a "'zero sum' game at a price":

> Countries such as Switzerland, Austria, Greece, Malta and Slovenia have sent and received similar volumes of outgoing and incoming requests for transfer of asylum seekers under the Dublin Regulation. From the perspective of administrative burden and efficiency, such 'exchanges' of requests demonstrates the deeply bureaucratic nature and defects of the Dublin system. Administrations invest considerable time and human and financial resources on procedures to transfer asylum seekers out of their territory, only to end up with approximately equal numbers of procedures to receive asylum seekers from other countries (2018b, para. 3).

This Sisyphean aspect of Dublin, sometimes ignored by Dublin debaters, seems nevertheless to be the less logical aspect of the system: indeed, transferring asylum seekers while receiving roughly the same number of transferred asylum seekers from another Member State is unnecessarily costly; so much so that it seems Member States are inflicting this burden on themselves.

1.2.3 Implementation School

Finally, there is a smaller group of scholars who examine the concrete implementation of the law. In an interview, Catherine Woollard, the Head of ECRE (European Council on Refugees and Exile), stated that asylum management is not in need of reforms, but of compliance with current legislations (Woollard, 2017). The terrain of compliance with asylum law has probably been the least explored, as tracking, tracing and analyzing the full implementation and enforcement of EU law is an arduous process**.** Whether they adopt single case studies or comparative studies, it is fair to say that this very limited number of scholars entered another dimension of analysis: a closer look at how different states implement and enforce the law. After I detail each of them, I will further explain why these works' findings are pertinent yet insufficient and why more qualitative and updated research is necessary.

First, Navarra and Van Ballegooij, adopting an economic approach, demonstrate the economic costs of lack of compliance with EU asylum law and suggest a set of detailed recommendations with costs and benefits for each potential solution to the gaps. They explain that the total cost of noncompliance is €49 billion per year and conclude that inefficiencies in asylum procedures, (either in asylum applications or Dublin transfers or returns of unsuccessful applicants) lead to an estimated annual cost of €2.5-4.9 billion (Navarra & Van Ballegooij, 2018, p. 8).

Second, Høglund and Tryggvadóttir both adopt a comparative approach on implementation. Høglund attempts to test various hypotheses to explain variations in implementation between three peripheral Member States: Spain, Greece and Italy. Mainly focusing on the core of the Regulation, i.e. transfers, his research indicates that a great number of asylum seekers (overburden) coupled with feeble general state capacity are the two variables that lead to difficulties in implementation of the Dublin Regulation

(Høglund, 2017). Tryggvadóttir's work is also comparative. She studies the different applications of the Regulation in Germany, Sweden, Italy and Greece. Here again the argument of pressure on peripheral states is present: "Member States appear to systematically breach multiple safeguards and disrespect procedural rights. […] This was particularly evident in the case of Greece and Italy, even though they rely on the family criteria. These two states who have experienced undeniable pressure on their asylum systems, were sometimes found to abandon personal interviews altogether for reasons not included in the Regulation" (Tryggvadóttir, 2017, p. 65).

Furthermore, adopting the methodology of a simulation single case study, and also incorporating procedural safeguards into his analysis, Bode attempts to test whether the new 'alleviating' formulations in the reform of Dublin would de facto make a peripheral Member State like Greece comply better with the Regulation. His results illustrate that the current proposal will not make the state comply better, as the new reform, not solidly dissolving the issue of allocation of responsibility through the first state of entry, fails in making any change on-the-ground (Bode, 2017).

My thesis is situated within this particular school, which focuses on noncompliance. So far, the majority of these works, at the image of the rest of the literature, have argued that one of the main reasons peripheral Member States fail to comply with Dublin is the overburden imposed on them due to their geographic position. Therefore it is sometimes too hastily concluded that peripheral Member States, including Italy, do not comply mainly because of overburden (large number of applicants) on administrations. This conclusion, even though convincing when situated in the pre-2017 timeframe, is not sufficient to explain the situation in the current context and a narrower case-by-case study. Indeed, for a peripheral state like Italy, overburden is no longer an issue, as I document in my second chapter. Within the general theme of implementation,

my thesis is more particularly concerned with enforcement, which has not really been approached in depth so far. My thesis looks at what exactly is preventing Italian administrations from complying with the law, and is more particularly interested in procedural safeguards (Articles 4 and 5 of the Regulation).

1.3 Theory and Variables

Before starting, it is important to clarify that, due to the hard enterprise of verifying factors of on-the-ground ill-enforcement behaviors, EU compliance theory severely lacks analysis concerned with enforcement. Most of the theory is concerned with first-stage implementation (i.e. the process of adoption of the law as well as domestic national, political, and legal resistance to it; this stage only concerns soft laws) but the process of concrete enforcement of the law is poorly theorized and especially when it comes to regulations, non-soft laws.

Complying with Europe, or Member States' abidance by European Union-diffused legislations, has been heavily theorized. However as previously mentioned, enforcement behaviors are rarely discussed and even theorists of Europeanization who specialize in the Italian case (Fabbrini & Della Sala, 2004; Graziano, 2012) do not study enforcement, but are rather concerned with directives and their earlier stages of implementation. Gerda Falkner's theory of "Worlds of Compliance", despite lacking a deeper on-the-ground level of analysis vis à vis law enforcement, and despite its exclusive focalization on "soft laws" (i.e. EU directives), and more particularly labor policies, is the one which proves most useful in predicting and understanding the lack of compliance with asylum policies. Falkner, through different co-written publications (Falkner et al., 2005; Falkner et al., 2008; Causse & Falkner, 2009) has elaborated and updated four distinct categories, called "worlds" to distinguish between types of compliance behaviour by Member States. The

"World of Dead Letters", meaning administrations' failure to apply already transposed EU rules is seen by Falkner as caused by two *non-intentional* motives; a poor administration and a lack of sanctions and control (2005, p. 12). These two factors[11], henceforth considered as my two deductive hypotheses, will be tested. Even though the potential answer might seem intuitive and self-evident, I try to understand if a poor administration and a lack of control and sanction are sufficient to explain noncompliance with asylum law: Falkner explains that enforcement systems should have the ability to pressure noncompliant actors to guarantee enforcement. I try to explore if there are proper national and EU control and penalty systems in place and question the efficiency of EU agencies in that task.

Even though Falkner uses the case study of labor directives, she explains that factors of noncompliance can be the same from one domain to the other: for instance, domestic reasons blocking compliance with a labor policy can be the same ones for an environmental policy (Causse & Falkner, 2009, p. 11). Despite the fact that Falkner's theory is primarily concerned with compliance with soft law, using her concept of World of Dead Letters to analyze compliance with a regulation appeared similarly helpful. It is not the typology advanced by Falkner that my thesis questions. My thesis is concerned with noncompliance with a regulation, not a directive as Falkner studies. What I am testing is rather the validity of the factors behind the non-enforcement of community law in general.

Falkner's results imply there is not one sole factor explaining compliance or lack thereof. She highlights the respective specificities of each Member State and the impact their peculiarities can have on compliance. This theory was helpful but has its limits, which is why I tended, as illustrated below, to incorporate other in-depth theoretical viewpoints to

[11] Due to limits of the scale of her research, Falkner did not conduct a fully comprehensive empirical on ground investigation on enforcement: this is further explained by Falkner (2005, p. 327).

my study. The mentioned additions allow introducing other parameters within the two hypotheses themselves to explain noncompliance, which enables bringing forth more adapted solutions.

Stopping short at simply refuting or validating Falkner's two motives is not sufficient. Falkner's earlier work has its limits as it lacks elaboration when it comes to poor enforcement, as thorough explanation of enforcement obstacles is lacking. However, more recent empirical research by Falkner explains that "lack of litigation from below", for instance, might foster non-enforcement (Falkner et al., 2008). This parameter will also be tested under the second hypothesis concerned with control and sanction.

Other deeper level theories, such as Versluis' theory on the questionable tangible impact of EU agencies on Member States' compliance, and her theory on policy salience appear more connected with the on-the-ground gap. First, Versluis puts into question the expectation that there is a palpable positive impact of EU agencies on ensuring domestic compliance, explaining that, due to lack of empirical evidence on the issue, the intuitive link between both is not evident and still not grounded. Reminding that such agencies "are not generally established with the explicit aim of improving compliance; they are rather created on an ad hoc basis without clear procedural requirements" (2007a, p. 169), she points to the fact that "for the time being it is unclear how European agencies, without a clear compliance strategy, are to form a solution to this complex problem" (p. 172). The potential of such existing agencies in controlling and guaranteeing compliance and sanctioning the lack thereof is also a parameter that will be tested under the second hypothesis. Second, Versluis explains that an essential factor for non-enforcement or ill-enforcement control is policy salience, i.e. the degree to which a law is visible and seen as important. She points out that the reason why enforcement of some aspects of the law are

less controlled than others, is because of the latter's "prominence" (Versluis, 2007b, p. 61), a parameter that will also be tested under the second hypothesis.

Finally, EU compliance theory in general seems to dismiss the idea of correlation between domestic politics and enforcement of EU law. According to Falkner's results, domestic politics have to do with earlier stages of implementation, such as the transposition stage, rather than enforcement, and that in most cases deficiency in enforcement is due to "unintentional" motives. Due to preliminary results from on-the-ground research, I later advance the idea that this may not be entirely true. Falkner's concept of "opposition through the back door" (Falkner et al., 2005, p. 277) would therefore be completely redefined, taking a whole new meaning, as in this case, opposition does not transpire at the transposition phase by domestic governments who resist transposition as they did not have their say on the text of the law at EU-level negotiations (not relevant to our case as it is a directly applicable regulation), but the "back door" becomes the street-level administration in charge of enforcing the law. This idea will be advanced as a new parameter based on preliminary empirical results, but will not be examined as a hypothesis, as it is in need of more thorough research.

1.4 Methodology

1.4.1 Objective, Justification and Generalization of the Case Study

1.4.1.1 Case Justification

The goal of this thesis is twofold. First, to reposition the debate on Dublin and reorient it by rectifying the overburden argument: The first half of the thesis attempts to demonstrate the lack of concordance between the outdated overburden argument advanced in the previous literature and up-to-date data. For that end, it explains why Italy can no longer be considered an overburdened peripheral state, thus refuting the argument that the

increase in number of asylum seekers is what causes noncompliance from all peripheral countries. Second, this thesis contributes to the debate on compliance with EU law by going further than the already established observations in compliance literature, by 'zooming in' on domestic administration performance with the aim of better identifying relevant local factors of resistance to compliance. The case study is Italy's noncompliance with the Dublin Regulation. The choice of Italy is justified by the fact that it is a pertinent example to understand which reasons besides overburden could explain noncompliance with Dublin. Indeed, now that Italy has signed a Memorandum of Understanding with Libya radically decreasing inflow of applicants, the refugee crisis hysteria in Italy has passed and the burden has been completely alleviated (see Chapter II). In this sense, it is instructive to examine the post-overburden application of Dublin and understand why infringements still occur. I chose this method because a single case study permits narrower, more in-depth, empirically rich research that has potential to fill a gap in the research. The validity of such research methodology has been explained by Bennett & Elman as an instance of more focused research (2007).

1.4.1.2 Generalization of the Case Study

As far as generalization to other Member States is concerned, I have taken the case study out of the contextual stigma of peripheral Member States. The geographical position of this country being no longer relevant due to present invalidity of the overburden argument, only comparing Italy to overburdened peripheral Member States does not make sense for future research. At a surface level, it appears that the generalization of practices of enforcement is hard, as the case of Italy and elements explaining its lack of compliance are idiosyncratic. The main reason for this is that a thorough and similarly narrowly focused comparative study of enforcement practices between peripheral state countries like

Italy would still include the common denominator between all the other peripheral Member States (overburden), which does not apply to my particular case study. As previously mentioned I have chosen the example of Italy to illustrate that even when there is no overburden, noncompliance is still recorded and there are other reasons that can explain it. However, in practice, a similar case study or a comparative study can be done on non-overburdened still noncompliant Member States. Therefore, I would argue that testing the formulated hypotheses with other cases, whether through a comparative approach or a focused single case study, is very possible, however, the results that I found might not be valid for every state in question.

The two hypotheses observed and their incorporated parameters can also be tested and generalized to other EU policy sectors, other EU regulations. Nevertheless, again, the results of my thesis might not be generalizable as they are very particular to the field of migration.

1.4.2 Methodology Adopted

1.4.2.1 Methods

The spatial and temporal framework of the case study is Italy after the Memorandum of Understanding of 2017 until today. I carried out 13 semi-structured interviews in 2019 with informed expert respondents who have firsthand experience with enforcement. Some of these experts (EASO) work within Italian police stations, but are not state-employed—they are staff members in those administrations but employed by the European Union. Other experts I interviewed are legal operators who assist asylum seekers in the asylum procedure in the questure, parallelly working in NGOs dealing with the on-the-ground application of the law. All my respondents are well privileged and placed to assess the institutional and daily problems that impede the enforcement of the law.

Approaching these respondents in the first place took different forms; some were contacted spontaneously, while others were referred to me by their peers. All interviews were made through "Skype" or "Whatsapp" calls (mostly video calls). When all my expert interviews were completed, I was able to assess the degree of validity of each variable. I chose to adopt the method of semi-structured interviews because I had to consider the unpredictability of the interviewee and the new knowledge or perspective they might have outside the realm of systematic questions. These interviews were all conducted in English and all materials have solely been used because of their direct link to the research question. I have tried whenever possible to gather data from various sources as suggested by Creswell (2013). Collecting information took two forms. First, a qualitative document analysis of tangible data like EU legislations, state reports, NGO reports, EU reports and scholarly literature; second, an analysis of information extracted from semi-structured interviews.

1.4.2.2 The Limits of My Particular Expert Interviews

First, by interviewing experts I was able to gain sufficient (yet not complete) insight into enforcement performance to judge if there were any specific problems related to the application of this particular Regulation, both inside and outside usual standard application failures to all types of legislations—which theoretically do not allow for correct application. The reason I use the word "sufficient" here is because the European Commission itself in its 2016 final report on the evaluation of the implementation of the Dublin Regulation exclusively gathered its data from local NGOs and legal representatives when it spoke of "violations" or when it considered compliance satisfactory (2016b). This trust the Commission puts in such sources further validates the trustworthy and privileged aspect of the information these actors provide.

Second, preventing unintentional bias in my data was unfortunately not possible, as I faced immense difficulty reaching state officers of the Italian Police. Reaching them would have enriched the quality of my study and better informed the results of my hypotheses. However, this task is difficult even for an Italian national, as there are numerous obstacles in accessing these officers, such as particular authorizations or their strict abidance by work-related confidentiality. Furthermore, other information such as their working conditions, their salaries, and their degree of motivation might even have expanded the first hypothesis. However, establishing a causal relationship between these elements and noncompliance is not necessarily pertinent to the particular tasks under study.

As explained above, all empirical findings are collected from document analysis as well as expert interviews. Expert interviews supplemented gaps in available data. For example, relying on a detailed report on Member States' public administrations within the EU is not enough to assess the degree of validity of the first hypothesis, concerned with a poor administration. For that purpose, asking experts who know of these logistical problems in the field appeared more useful. I carried out explorative expert interviews, which are usually aimed at poorly investigated fields. Theoretically, the ideal target expert-intervieweeship would consist of actors of noncompliance behaviour themselves, i.e., questura police officers. However, this is not entirely true, as understanding noncompliance from administrations which do not self-regulate cannot necessarily be understood exclusively by the administrations themselves. Plus, practically, this endeavor appeared impossible due to the restrictions detailed above. Therefore, expert-intervieweeship has been understood in its broader and post-modern definition, which relies more on the "relevances imposed upon the expert" than on their professional role as classical methodology on expert interviews would argue (Meuser & Nagel, 2009, p. 23). In fact, all the interviewees have been approached due to the relevance imposed upon them by

their position in the field, whether they worked within these administrations but were not employed by the state, such as EASO respondents, or were regularly visiting questure, such as legal operators and assistants. The latter, it must be noted, usually parallelly work within NGOs whose aim is to protect the rights of asylum seekers. This has to be taken into account when approaching the question of objectivity and bias which will be tackled later. Even though Meuser and Nagel have explained that an expertise issued by an NGO is "different with regard to the determinative relevances as compared to those of a head of a public authority or a minister of state" but is still "knowledge- and science-based" (p. 25), it is crucial to note before going further that whenever an interviewee was parallelly part of an NGO, the focus of my questions was not on the opinion of their NGO on the matter, but on configured information that the respondent personally, due to their primary job as a legal operator, has access to while regularly visiting those police offices as they assisted asylum seekers.

Furthermore, Meuser and Nagel have explained that recent observations of societal transformations "convincingly show that new forms of knowledge production have developed" giving birth to "a world of counter-experts, counter-expertise" where "the professional's claim of exclusiveness for the relevances of her or his discipline is fading" (p. 19). Meuser and Nagel view experts as active participants, stressing the roles they assume in connection to these particular problems "whether by virtue of a professional role, or as a volunteer. Special knowledge acquired through carrying out such functions is the subject matter of the expert interview" (p. 24). Gläser and Laudel argue that "expert roles in social settings are not limited to the professions" (Gläser & Laudel, 2009, p. 117). Indeed, reducing experts to their necessary function in an institution is sometimes erroneous. In some cases, bodies working within but still officially outside of the institution might have as good of an expertise on the problem as officials who work in it.

Therefore, the most reliable definition in my case appeared to be that experts are those who have privileged and non-accessible knowledge and access to the information in question (Meuser & Nagel, 2009, p. 18). My respondents have provided me with information they have acquired that is not available elsewhere.

The reason I used such methodology is that verifiable organizational data derived from the sources of the targeted institution under scrutiny as defined by Spickard (2016) is unfortunately non-existent. In fact, data from the Ministry of Interior on the questions I am asking are not shared with the public. Therefore, this thesis had to rely on the expertise of regional staff who work with or closely with this police force, who know the numbers and who can share them, who know if there are existing mechanisms of control and litigation.

As they were sharing sensitive information, it was extremely important for my interviewees to have their names and regions where they work not mentioned in my research. However, they all accepted to have information they shared included in my research. None of the respondents refused to answer my questions and none expressed the desire to be removed from my research, whether pre- or post- interview. They were all presented with the aim of the research and its central question. There were limits to my research as I could not contact experts in every single region in Italy to have a more complete picture. Even though I have chosen all my interviewees from distinct geographical placements, and even though many of them have recent experience in multiple regions, future large-scale research should encompass all regions.

1.4.2.3 The Limits of the Method of Expert Interviews

In an expert interview, the object of research is not the expert, but the non-personal information configured from them. This particular methodology has great advantages, such as a less time-consuming, privileged, and exclusive access to information. Much of the

information I collected is not accessible elsewhere, and cannot be thought of being accessed elsewhere. Experts are in a way some sort of a large-scale knowledge corporation which shortens the path to information. However, as explained by Bogner and Menz, this methodology has two main limits. First it is "suspected of inadequate methodological rigour and of producing little more than impressionistic results because it lacks standardization and quantification of the data"; second, it is "too narrow as a way of bringing the interviewee's relevance structures into the open in a "pure" way because the conversation is actively guided and the interviewer occasionally intervenes to redirect it" (Bogner & Menz, 2009, p. 44). However, as I explained previously, much of the information I collected has been through the respondents' frequently added comments for which I had not asked questions in the first place.

I cannot argue that the results portray a full picture of non-enforcement in Italy, far from that. Indeed, due to reachability reasons detailed previously, this thesis has only succeeded in documenting a non-state actor perspective. Nor can I argue that respondents' answers were always accurate, because biases are always existent: intention, ideology, degree of knowledge and their margin of tolerance between EU law and typical domestic problems all play a role in trimming the quality of the data at hand. Therefore, even though I have tried to be very careful handling this data, it should be used with proper caution.

1.4.3 Biases & Potential Criticisms

One of the criticisms that could be directed at this work is that, as most international relations and EU studies researchers tend to do, I immediately delve into the problem with what Dimiter Toshkov has called a "theoretical yardstick" (Toshkov, 2012, p. 36), meaning that I analyze the issue at stake with expectation of an ideal of full compliance which is not necessarily practically realized in Member States like Germany or

France for example. Toshkov, working on compliance with EU law in CEE states summarized the matter thusly:

> The messy reality of law implementation is compared to some 'ideal' interpretation of the law in the books with the inevitable conclusion that compliance doesn't live up to these artificial normative standards. Students of public administration know better since they have been continuously alerted to the long and winding road before a piece of legislation has any effect at the street-level (p. 20).

However, I do not argue that the situation in Italy has reached a point where abidance with EU law is a chaotic failure. On the contrary, my research is simply positioned in a broader endeavor to enlighten in depth on some practical obstacles to Italian compliance and recommendations to overcome them in order to both, secure better compliance with EU law, thus contributing in better harmonization of practices and securing the rights of asylum seekers.

Another criticism that could be directed at my work is that it is immediately concerned with a rights-based treatment of asylum seekers. This position is highly noticeable in the fact that my thesis does not to look at the other side of the matter, from an economic or security perspective for example, as the Italian state has been sufficiently overburdened for years, and that many illegal migrants are indeed attempting to take advantage of European laws to fake their asylum requests, and that many of them are currently building networks of criminality and unnecessarily burdening the country. What I can answer to this criticism is that my aim here is not a biased blame of the Italian state but a simple technical micro-level assessment of behaviors of compliance focusing on enforcement and on-the-ground application of European law.

2. CHAPTER II: From Overburden to Burden *Over*

2.1 The Causes

This short chapter has the aim of justifying my use of the adjective "post-overburdened" by demonstrating that Italy can no longer be considered a typical overburdened peripheral state. Due to an unprecedented encumbrance on Italy during the peak of the refugee crisis in 2015, the Memorandum of Understanding signed in February 2017 between Italy and the UN-backed government of Libya had the result of putting an end to illegal migration. Having more concrete impact than the country's refusal of safe harbor to humanitarian ships[12], the Italian by-proxy control of migrant influxes is celebrating its second anniversary this year, and is inscribed within 'en vogue' projects of externalization of frontiers[13]. This particular Memorandum gained special notoriety and attention from the international community due first, to disastrous humanitarian consequences it had on African migrants in Libya, and second, to its success in radically stopping arrivals to Italian shores.

Even though it has the official goal of protecting lives from deaths at sea, the growing tendency to replicate models of 'asylum by proxy', has been considered by many scholars as turning upside down the Geneva Convention and the full aim of refugee protection, as asylum seekers are expected to have their claims processed at home or in a country considered "safe". An official, harmonized, pan-European list of such 'safe' countries has not been agreed upon until date[14]. Despite the current blurriness of the concept, potential victims are expected to remain 'where they are', which appeared to be in several instances, and especially the one under study, an *un*safe space. The success in the

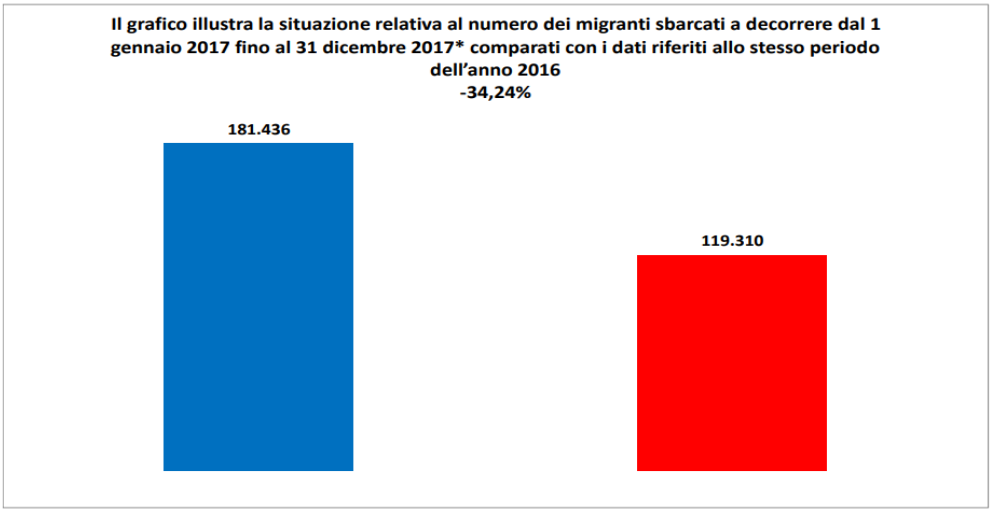
[12] The alleviation is certainly also caused by Italy's rejection of humanitarian boats. However, these rejections are not as significant as the effect of the MoU.
[13] See scholarship on the EU's externalization of borders (Ryan & Mitsilegas, 2010; Bialasiewicz, 2012; Hyndman, 2012; Andrijasevic, 2010; Brambilla, 2014).
[14] The Commission recently 'proposed' a list (European Commission, 2017; 2018a). However, this non-binding list has not been adopted by all Member States. Furthermore, Italy has not until date published such list of safe countries.

sudden drop of arrivals has been attributed to the leadership of Marco Minniti, ex-Minister of Interior of Italy. What could be said about this management is that it was founded on 'discretion', in both senses of the term: In the first sense, official cooperative agreements with the Libyan authorities were acted upon the sole discretion of the Italian government[15]. In the second sense, more discrete arrangements with Libyan militias meant to control borders were reported in multiple media platforms[16] investigating the issue. The patrol work was delegated to militias having exclusive dominance over the coast and sending to detention centers intercepted migrants for whom the region is only a bridge in their journey towards European refuge[17].

2.2 The Numbers

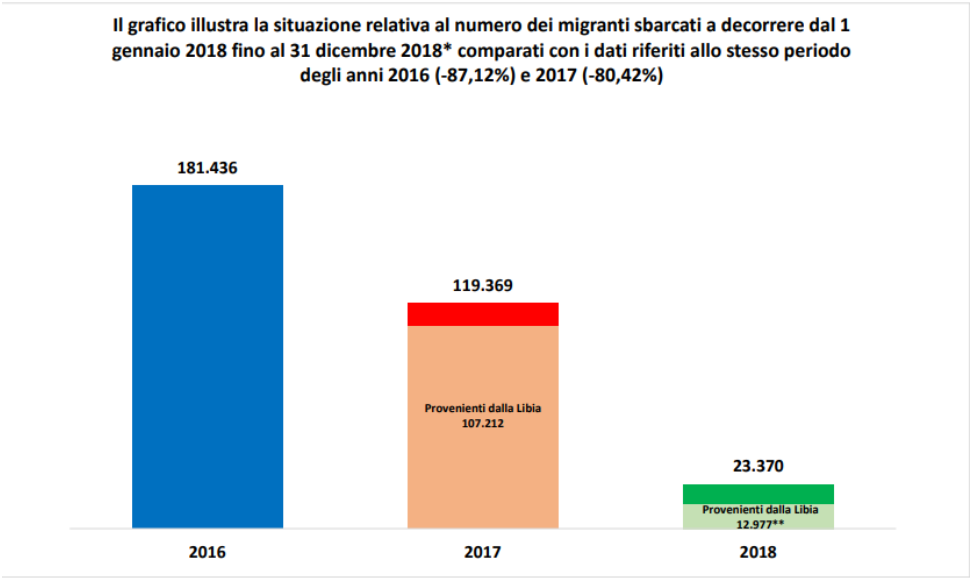
Scholars and commentators can disagree on the necessity of such Memorandum, by either adopting a pragmatic perspective or a human rights one. What is undeniable though, is the tremendous alleviating effect the deal had on the Italian System: already from the few months following the deal with Libya, the fruits of the project could be felt, as a radical change characterized the number of migrants arriving to the shores of the country. During the same year, the number of arrivals started considerably dropping as shows the graph below:

[15] Several MPs' filed an appeal due to problems of consultation with the parliament.
[16] See Walsh & Horowitz, 2017.
[17] Even though dozens of NGOs repeatedly condemned and documented these militias' engagement in human trafficking and their creation of a network where migrants became victims of starvation, rape, and violence of all forms, the pact remained, and has been considered a success. Of course, if one takes an efficiency perspective, it was a success indeed (Amnesty International, 2014, 2017; Human Rights Watch, 2014, 2017; International Organization for Migration, 2017; Refugees International, 2017; UNHR & UNSMIL, 2016).



©*Source Italian Ministry of Interior*[18]

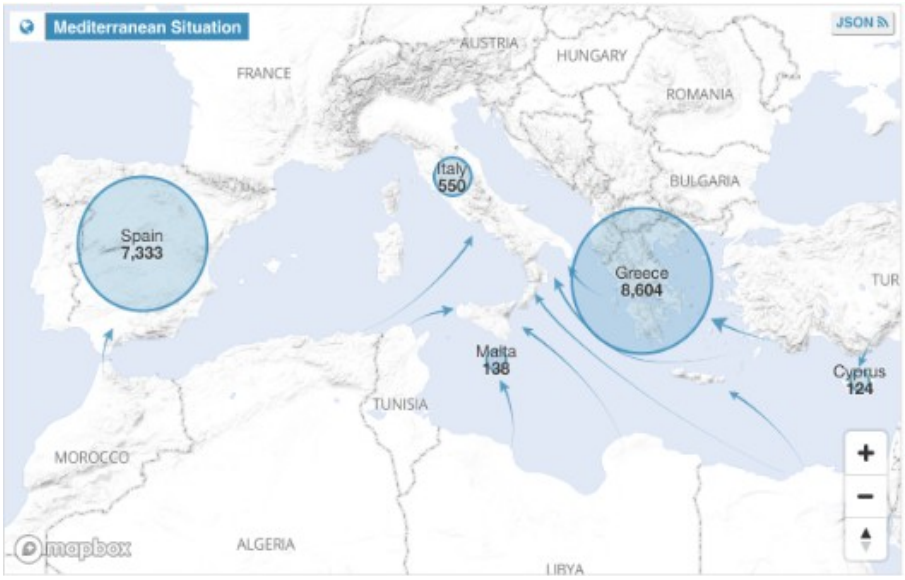
It is however mostly in the beginning of 2018 that the project showed its greatest potential with a recorded drop of arrivals from Libya almost reaching 90% compared to 2016 as shows the graph below:



©*Source Italian Ministry of Interior*[19]

In 2019, it is safe to say arrivals have been almost neutralized (numbers recorded shifted to hundreds instead of thousands) as the numbers in this graph from April 2019 clearly illustrate:

[18] Translation: The graph illustrates the number of migrants who arrived from 1st January 2017 until 31st December 2017 compared with the data of 2016 (-34,24%).
[19] Translation: The graph illustrates the number of migrants who arrived from 1st January 2018 until 31st December 2018 compared with the data of 2016 (-87,12%) and of 2017 (-80,42%).



©*Source UNHCR*

The same results were also published by the Italian Ministry of Interior (2019). Furthermore, all of my respondents confirmed that this huge drop has been clearly palpable during this couple of years in the offices. This short chapter had the aim of presenting the data needed to showcase the lack of overburden on the Italian system during the last two years, a burden which was, due to previous context, the main argument advanced by the literature to explain poor compliance performances by the state.

3. CHAPTER III: Violations

As previously explained, the small group of scholars who have worked on noncompliance with Dublin have not thoroughly focused on procedural rights of asylum seekers contained within the Regulation itself. My analysis is concerned with these safeguards meant to protect asylum seekers, guarantee that they know of their rights and duties under Dublin, and that they are heard in a personal confidential interview, as stated in Articles 4 and 5 of the Regulation. The violations of the Regulation have been previously documented in UNHCR and European Commission reports, but these were systematically put in the frame of overburden on the Italian system. It appears from current NGO reports following the overburden period (2017, 2018 and 2019) that these practices

have never ceased despite the radical drop in number of applicants. This chapter documents these still occurring violations. Before starting, it is important to briefly explain the asylum procedure in Italy.

In Italy, an application for asylum can be lodged either at the border police office, or at the Immigration Office of the province, the questura. In the questura, there are usually three steps to the procedure. First an asylum seeker has to go physically to the questura and express their will to access the procedure. There, they are given a receipt with an appointment; it is not a residence document but only a proof that they are intending to apply for asylum. Then, there is the second appointment of "fotosegnalamento" (identification with fingerprints) after which, two types of applicants are processed differently: those who fall under the regular procedure, and those who fall under the Dublin procedure: The latter are asylum seekers with a EURODAC hit[20], who fill a form (called C3) with basic questions and should be questioned by authorities on their eventual countries of transit and given proper information on Dublin at that stage. Information supposedly collected from the applicant is then sent to the Dublin Unit, which is the authority in charge of examining the transferability of asylum claims.

3.1 The Right to Information

Article 4, paragraph 1 of the Dublin Regulation states that "*as soon as an application for international protection is lodged within the meaning of Article 20(2) in a Member State, its competent authorities shall inform the applicant of the application of this Regulation*". Furthermore, paragraph 2 specifies that "*the information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common leaflet drawn up pursuant to paragraph 3 for that purpose*". It is also added in paragraph 3 of the same

[20] This hit occurs when an asylum seeker has been fingerprinted in another Member State.

article that "*the Commission shall, by means of implementing acts, draw up a common leaflet, as well as a specific leaflet for unaccompanied minors, containing at least the information referred to in paragraph 1 of this Article*". It has been reported by ECRE that in Italy, no or insufficient information is provided to asylum seekers on the procedures, on their rights, and on their duties. Furthermore, specific information to unaccompanied minors is not provided.

Under Italian law, these information brochures (and more specific ones for unaccompanied minors) have to be handed by police officers to the applicant after they have lodged their claim. Most of the time, the distribution of these brochures does not happen in practice[21], and as a result, applicants, poorly informed, do not have the chance to point to family links and vulnerabilities under Dublin:

> Generally, the interview before the Police during the formal registration of the asylum request is made in a language the asylum seekers do not always fully understand and they are not informed about the reason why some information is requested and its pertinence related to the Regulation's applicability (ECRE 2019a).

It was also stressed by ECRE that the Children's Ombudsman highlighted the significant lack of information given to minors, often times causing them anxiety and distress[22].

3.2 Personal Interview

According to Article 5 of the Dublin Regulation, "*In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant. The personal interview may be omitted if: (a) the applicant has absconded; or (b) after having received the information referred to in Article 4, the applicant has already provided the information relevant to determine the Member*

[21] As reported by ECRE (2018a, 2019a).
[22] According to ECRE these instances occurred in Mincio-Rome, Lazio, Lombardy, in San Michele di Ganzaria, Catania, Sicily, and in Fermo-Ancona, Marche.

State responsible by other means. The Member State omitting the interview shall give the applicant the opportunity to present all further information which is relevant to correctly determine the Member State responsible before a decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1)". In paragraph 3, the Regulation also stipulates that the personal interview "*shall take place before any decision is taken to transfer the applicant to the Member State responsible pursuant to Article 26(1)*".

The ECRE report has highlighted that a personal interview in the Dublin procedure does not occur in practice and that information provided by the asylum seeker if ever collected, is collected by the police very superficially, without regard for vulnerabilities and family ties. ECRE's report has explained that in some regions,[23]

> [Questure] notify the transfer decision without even proceeding with the lodging (verbalizzazione) of the asylum application, as they set the verbalizzazione appointment at a distant date to be able to obtain replies from the Dublin State concerned beforehand. Subsequently, they cancel the lodging appointments, as a result of which people have no authorization to stay in Italy. Asylum seekers are not informed about the procedure or given the possibility to highlight any family links or vulnerabilities (ECRE, 2019a).

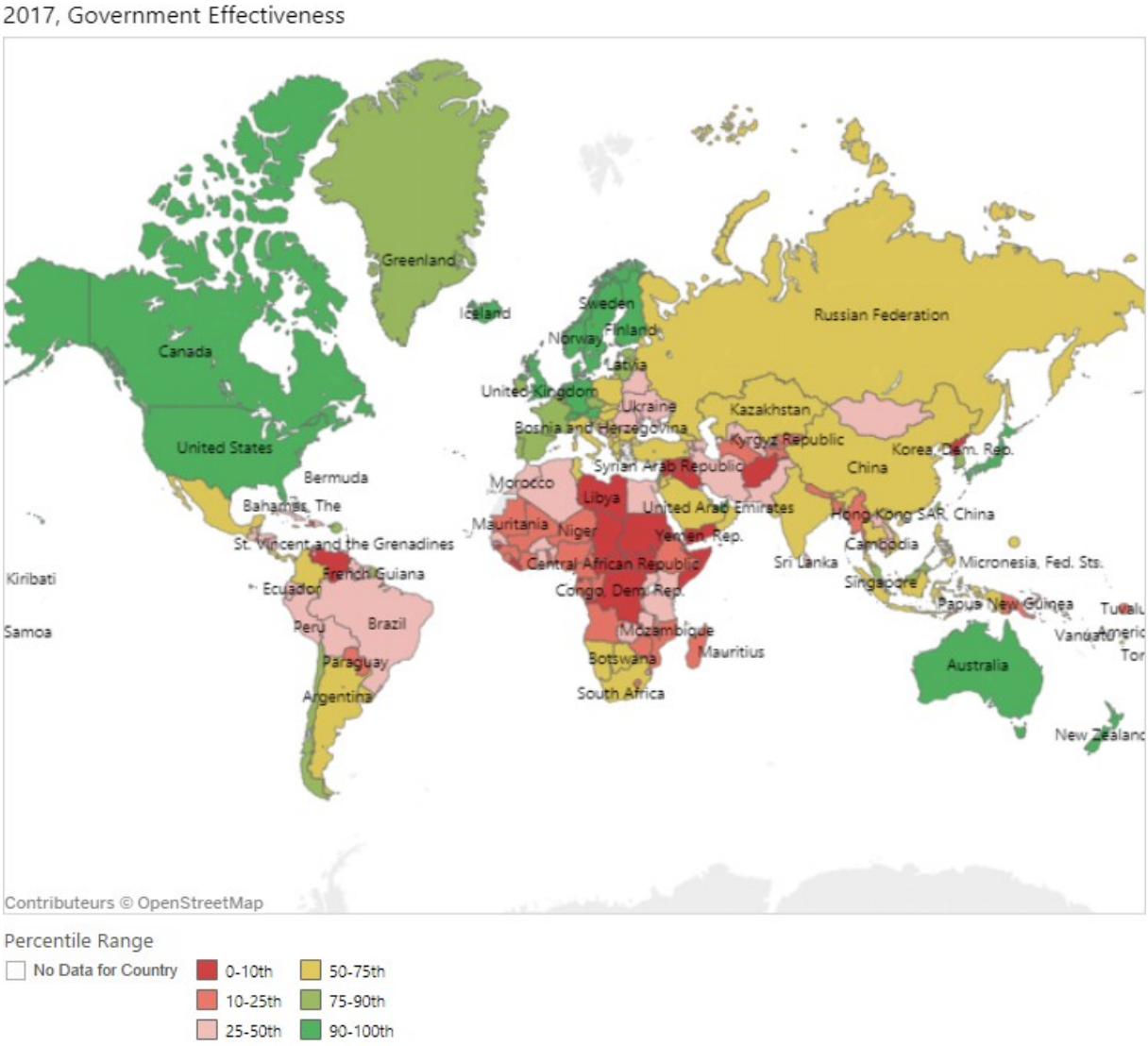
All of my 13 interviewees have unanimously affirmed being personally witness to the violations of Article 4 and 5 (from post-memorandum period until today). The following chapter analyses factors of such violations.

[23] For instance in Trieste and Gorizia.

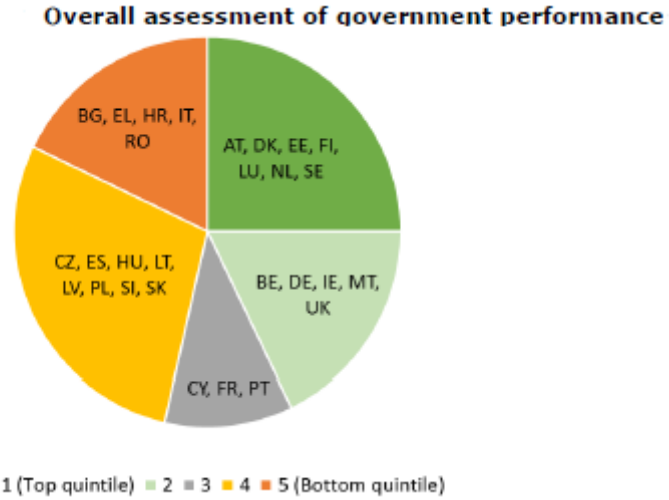
4. CHAPTER IV: Factors of Noncompliance

4.1 A Poor Administration?

As previously explained, the Regulation is directly applicable, and therefore does not suffer a problem of transposition, unlike directives. It is therefore enforcement at the discretion of domestic administrations which is the source of the problem. As shown below, from a broad lens, Italian bureaucracy and governance in general are known to be fairly defective. However, stopping short at general data concerning poor Italian bureaucracy, documented in both graphs below, is not sufficient to demonstrate a) that it is necessarily the case for police forces that have the task of carrying out the first stage of the asylum procedure, b) that noncompliance is due to poor administrations. In fact, arguing that lack of compliance from police forces is simply linked to the fact that general Italian governance and government effectiveness score very poorly in world statistics is non-factual interpolation. This needs to be supplemented with more on-the-ground empirical research. The next part will examine the police staff's capacity to perform their task. What will be tested is the number of staff, the demography of staff and its adequacy, their training, as well as their capacity to perform autonomously without external support.



©*Source World Bank: Worldwide Governance Indicators*[24]



©*Source European Commission 2018*[25]

[24] Government effectiveness here refers to "perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures" (World Bank, 2018).

4.1.1 A Problem of Personnel?

4.1.1.1 Lack of Staff? Less Recruitment and an Aging Workforce?

As explained by the European Commission, Italy's regressive evolution in size of government employment is because this Member State, like Greece and Portugal has been supported by the EU and the IMF and thus constrained to stop recruitments in the public sector (European Commission, 2018b, p. 9). Furthermore, Italy is characterized with a closed and career-based system of recruitment (p. 25). Moreover, out of all Member States, it is Italy whose share of government employees over 50 is the highest: "The ageing of the workforce affects the most Italian public administration. It faces a reverse age pyramid of high share of 'older' staff (55%) and a rather small share of a 'younger' generation (6,8%)" (p. 44). This poses several problems, including the fact that the number of self-reported work days lost due to illness per employee is very high in Italy (p. 45). Therefore, a situation in which the administration is seeing its officers retire and not replaced due to a freeze in recruitment for the reasons explained above, results in a lack of staff.

Overall, in light of the absence of verifiable data from the Ministry of Interior on the exact number of staff in each questura, one can rely at least on non-state officers[26] who work daily in or regularly visit these offices. The number of police officers reported by respondents[27] is very different from questura to questura as each office is situated in a different setting, but almost all respondents complained about the lack of staff in general: An EASO caseworker has explained: "There are a number of tasks done by the same officer that they barely have the time to do something else during the day, or to learn something else" (Respondent 4, personal communication, April 13, 2019)[28]. The changing

[25] The Commission used four indicators:"improvement of public administration over time", "government effectiveness", "public sector performance", and "trust in government" (European Commission, 2018b, p.54-57).
[26] See Appendix 3 for more details on results.
[27] See Appendix 2 for details on questions asked.
[28] See Appendix 1 for details on respondents.

demographics discussed above were also highlighted by the majority of respondents, and another EASO caseworker has stressed:

> Many policemen are retiring and not being replaced: so as a result, offices are becoming emptier and emptier and there is no one to replace this lack of personnel. Those who remain are taking increasing responsibilities, because of course someone has to deal with the work load, so they are burdened with this huge work load with which they cannot cope with. The process is one asylum seeker at a time, and with only one officer dealing with the case (Respondent 3, personal communication, April 15, 2019).

Five respondents even complained that due to the very presence of the EASO team, the shortage of staff has become more palpable. Moreover, even when two respondents expressed general satisfaction with the current number of officers, they stressed that it was temporary, due to drops in numbers of applicants and that such a situation cannot be sustained on a long-term basis as numbers of arrivals can change at any time. Indeed, first, the anti-arrival politics maintained by Salvini can easily be cancelled by his successors, and then the number of officers not changing would be very worrying. Second, unexpected crises can arise at any moment, and Italy can always be subject to more influxes than in the present, despite its very strict policies.

Lack of staff means two things. First, that one officer is overwhelmed; second, that this officer's work is not self-regulated or regulated by a coworker when/ if they make errors. This mechanism prevents the existence of a process of adaptation and self-regulation within the offices themselves. Furthermore, not enough staff means not being able to compartmentalize tasks and distribute them efficiently, which results in one overwhelmed officer who has to do the entire job by themselves.

4.1.1.2 Non-Adequacy of Staff?

As highlighted by the European Commission, the motivation of staff performing tasks is a very important element impacting administrations' effectiveness (2018b, p. 22). A lack of motivation was pinpointed by an EASO caseworker who explained that the non-adequacy of newly recruited police staff impacted the latter's lack of motivation: When retiring officers leave, if ever they are replaced, they are replaced by young policemen who have ambitions of working in the police force to "catch criminals" instead of sitting behind a desk (Respondent 2, personal communication, April 14, 2019). This situation might result in lack of motivation, which impacts compliance with the law. Another respondent stated that "it's not only a problem of shortage of staff, another problem is that some officers are there most of the time but they are not working, talking to each other, taking long coffee breaks, and as a result it is the translator who is doing their job" (Respondent 7, personal communication, April 20, 2019). However, because of this research's lack of accessibility to police officers themselves, such explanation remains heavily normative and limited. Also documenting these police officers' income, their working conditions and their own general satisfaction with their work would be very enlightening, but this was not possible due to the limits previously explained.

Non-adequacy of the staff's vocational skills with the task in question was also pointed out by some respondents, stressing the military formation of these officers who are not familiar with law, international law and European law. Again, this information has to be taken with a lot of caution, as direct knowledge from officers themselves has not been derived. An EASO caseworker pointed out the following:

> These are people who started their military career when they were 18, so they don't have the capacity to study the law, let alone, European law, so they do not see the interest in communicating Dublin information to applicants, this is why in my

> questura nobody was providing information to applicants about the procedure before EASO caseworkers arrived (Respondent 2, 2019).

Non-adequacy of staff was furthermore highlighted by another EASO caseworker who explained that "it often happens that police officers from other fields, who have nothing to do with immigration, are moved to the immigration office in order to fill the lack of people working there" (Respondent 1, personal communication, April 15, 2019).

4.1.2 Not a Problem of Resources

Surprisingly, from the answers provided by respondents, resources seem not to be an obstacle to the enforcement of the law. With the exception of one respondent, all interviewees explained that the offices they were dealing with had sufficient resources to carry out the tasks under study. The questura that stood out was described by the respondent as "only one cheap, very small room with four desks" where folders are "extremely disorganized" and where updated Dublin information brochures are "never" printed for the asylum seeker, because of the lack of means (Respondent 12, personal communication, May 12, 2019). The respondent further explained that many officers deserted the said questura due to extremely poor working conditions.

4.1.3 EASO: A Simple Analgesic?

Another important element to bear in mind is that the support work made by EASO has been described by all respondents as "filling a gap", i.e., the task does not have an officer if the EASO team leaves. Therefore the support has been more of a replacement than an actual training or exchange of know-how. A respondent stated that "someone has understood that policemen are not fit for this kind of task because they don't have the sensibility and preparation, so they replaced them with a team of experts, the EASO"

(Respondent 9, personal communication, March 25, 2019). This idea of "replacement" has further been detailed by an EASO caseworker:

> I totally replace them. So if you were to ask them to register one application and give Dublin information to applicants they wouldn't know how to do it. What happened is that there was one officer who knew, but that person has now retired, and he was the only one to know the job and the others didn't really bother to learn the job, precisely because I was there (Respondent 3, 2019).

All EASO respondents have explained that when they leave soon, which will à priori be in December, they know for a fact that the lack of respect of procedural safeguards will be brought back to point zero, meaning that the potential for these administrations' capacity to perform autonomously without external support is very low. One of the evident and most noticeable hints to this fact is that even with the support (whenever allowed) provided by EASO as described in all interviews, these administrations still perform poorly. An EASO caseworker explained:

> When I was on a short leave, if the officers ever did the C3, they didn't use the annexes and didn't provide enough Dublin information even if they knew they should and must do it and they have seen me do it. All this feedback makes us feel that when EASO leaves, in January the quality of the lodging is going to go down and violations will increase again (Respondent 1, 2019).

Furthermore, a legitimate question to be asked at this point is, if the EASO is doing the work, then why are violations still recorded? First, it is because, as I explain in the next part, EASO is not always allowed by police officers to perform those tasks and sometimes as a result, some questure are left without an EASO team. Second, because as explained by a respondent, the performance of EASO officers is not necessarily flawless:

> Now it is true that the situation regarding the right to information for example is better because there's an EASO team in the questura, but from what I could see, it is not an exhaustive and complete information: so for example if they ask people have

you already applied for asylum in another European country, and the answer is yes, they give them minimum information on what Dublin says. But still, there isn't a leaflet as the law says, there isn't complete information, and they don't explain the duration of the procedure, which steps you must go through, like the possibility to appeal the transfer decision and so on. So they are doing something more than the police, but even they must absolutely improve their performance (Respondent 9, 2019).

4.1.4 Lack of Training?

Italian law provides for the training of police authorities according to their tasks[29]. Data on the existence and quality of such training in the questura from the part of the Ministry of Interior is nonexistent. However, EASO, in concordance with its 2019 plan for Italy has carried out a training session for questure officers (EASO, 2018). Respondents' answers regarding training have been divergent and justifiably so. While eight respondents have explained that officers' lack of compliance is due to their lack of training, it has nevertheless been stressed by EASO respondents that police officers of their questura were trained only once, last year, by EASO. However, from one EASO caseworker's answers it became easier to understand why the fruitfulness of the training itself was not felt on-the-ground. First, it was not attended by all officers, as sometimes, officers who attended were not the ones who carried out the task or did not supervise officers concerned with the task. Second, the training happened only once. The respondent stressed how important it is to have a monthly training in order to reach full compliance and upgrade officers' performance. The respondent could clearly notice that after coming back from the training, officers were still violating the law, as they did not receive orders from above (Respondent 3, 2019). Third, it was stressed by another EASO caseworker that a training session from

[29] This is further explained in ECRE (2019a).

an external team, which is not ministerial, and the situation of not having orders from above, which is the military education these officers have had, is not efficient:

> If a policeman is told from the chief of the office to give information about Dublin, he'll do it, if not, he won't do it. From my experience this is how it usually goes in the questura: they only take orders from their chief, and it's at that level that EASO should work: At a high level, not in the questura (Respondent 1, 2019).

Furthermore, another respondent stressed that some NGOs provide trainings designed for police officers but that they do not always accept to attend, as they complain about the fact that NGOs have a different approach to the asylum procedure which they do not agree with. She further explained "sometimes they prefer to be trained by themselves and that's the problem, because they do not see the violations they are committing" (Respondent 8, personal communication, April 9, 2019).

4.2 Lack of Control and Sanction?

4.2.1 Lack of EU and National Inspection: 'Invisible' Infringements?

The European Commission said it itself: enforcement of regulations is harder to control than directives. In its 2016 evaluative report on the implementation of Dublin III, the Commission explained that "when it comes to the Dublin system, the fact that it is implemented through a regulation makes it directly applicable and there is no transposition needed from Member States, which potentially complicates the monitoring of its implementation by the European Commission"(2016, p. 18). Indeed, the fact that there are no recent infringement procedures in relation to these procedural rights is quite self explanatory. Even in the past, most infringement procedures were not directed towards procedural rights: I would argue that there are degrees to the visibility of noncompliance; i.e. noncompliance is penalized when it is officially recorded, or if there is great tangible damage. This reiterates Versluis' idea explained earlier, that an essential factor for non-

enforcement or ill-enforcement is the degree to which a law is seen as important by inspecting entities. In reality, and as my interviewees have expressed their frustration with, there is no such system in place, electronic or other, that actually checks whether or not asylum seekers have been given information, or have been denied access to the asylum procedure for example. What happens in reality is that NGOs report and that no changes are made, as all my respondents have denied the existence of any EU controlling or inspecting entities. It is also fair at this point, in light of a general political atmosphere of euroscepticism and anti-migration, to question the current interest of the European Union in condemning these violations in the first place. The example of the Sea Watch case, in which even the ECHR was unable to clarify if migrants had the right to disembark and ask asylum immediately, is very revealing of an EU which does not seem powerful enough in front of Member States with current antagonistic attitudes.

Furthermore, all my respondents have denied the existence of any form of national control in the process of the asylum procedure. A respondent explained that previous to the new anti-migration Minister, "there was at least legal control from the Ministry of Interior, and we were able to report all the violations to the ministry itself. Now it is no more the case" (Respondent 8, 2019). An EASO caseworker explained that the real obstacle to such control is more technical:

> The head quarters in Rome, the 'Direzionne Centrale', is the one that sends all the orders to every questura, but at the same time, it lets every questura work as it wants. This is another big problem, because it's a matter of hierarchy, not even the chief of the chief of the head quarter in Rome is able to call the head of one particular questura, and say "I learnt that you did this in a wrong way, you must do it in another way": this cannot happen at all so even if they are trained, even if they have indication from above, then every questura, and you can be sure of this, every questura acts as it wants (Respondent 1, 2019).

Sometimes, this lack of national control is due to the superiors themselves not communicating the relevance of such rights:

> In this questura, it is not a lack of time or staff or resources: the right to information for example is simply a step they don't give importance to: It's really important for a person who is not from the country, who does not speak the language, to know this information. If they've went through big numbers of asylum seekers, during the last 7-8 years, meaning they have a long experience in the field, and are still not giving information, it is maybe because they have not been well informed by their superiors about how important such a step is (Respondent 6, personal communication, March 25, 2019).

Absence of national or external (EU) substantial control in the asylum procedure gives birth to a withdrawn network lacking transparency, and more likely to commit administrative faults.

4.2.2 Current EU Agencies Have No Power of Control

The EASO staff present in almost all Italian questure does not have any power of control or correction. Even in EASO's official mandate, it is clearly explained that the agency is there to "support". However there lies a contradiction, as having as an official goal the "harmonization of asylum procedure practices" without in practice having a mechanism of control and correction is not productive. An EASO caseworker explained the matter as follows:

> We report, we write, and everything else, so EASO is perfectly aware about everything going on in the questure, so in terms of control, they see everything, but on the other hand they can't do anything because there's always this diplomatic relation between EASO and Italian authorities, it's very fragile, EASO cannot go to that questura or to the headquarters in Rome and say 'you cannot do this and that'. And this is frustrating to us sometimes because we are often witnesses of this kind of illegal procedures, we do report to EASO but then to have a feedback is always

> very hard and a long process because they have to talk, meet and find a right way to show these problems, and so on (Respondent 1, 2019).

An agency that walks on eggshells, always conscious of the delicateness of dealing with the question of national sovereignty with police officers cannot make administrations auto-correct themselves. Such an agency is doing considerable work in supporting the office, but in practice, a know-how expertise is not efficiently transmitted, as resistance and lack of receptivity is substantially blocking any true reform in these administrations. So much so, that from a perspective external to EASO, it is perceived that no actual checking is being done:

> Since there is no sanction, police officers don't do it. Because in this questura, the EASO just checks numbers and how many C3s have been done that month. That's all. They don't check if the police have provided Dublin information" (Respondent 6, 2019).

However, by EASO, control is very much existent, but it is passive. All EASO respondents informed me that they immediately, confidentially report infringements to the central Head Office of EASO instead of explicitly mentioning the violation to the officer who commits it. The situation in some cases is worse than a simple incapacity to control: police officers' resistance to correction has been highlighted by an EASO caseworker:

> I can report as much as I can about the continuous violations, that a lot of applicants didn't receive the Dublin information, that policemen are actually asking us literally "don't tell asylum seekers that they can appeal the Dublin decision", but there isn't any change. We on our part do what we can even if we are often accused of covering for illegal immigration, of providing applicants our own personal contacts of lawyers, etc… Even if the applicant asks for it, we are asked by officers not to say anything regarding their possibility to ask for free legal assistance (Respondent 2, 2019).

All EASO respondents also confirmed that whenever an EASO caseworker is too insistent on a violation or shows a firm will to change the practice, they are immediately removed from the questura in question.

As confidential reports are not concrete control, and as attempts to change the practice are aborted, violations are in reality never penalized or even at least corrected on-the-ground, and a culture of auto-control is not introduced. As a matter of fact, the situation sometimes goes further than that, and as an EASO caseworker has explained, when a flagrant violation of the law occurred, (immediate expulsion order of two nationalities without having heard the claim), "the EASO has chosen to put an end to its collaboration with this questura" (Respondent 1, 2019). Ending collaboration equals a failure in making the office comply with the law, when the actual aim of EASO is to make offices harmonize practices.

4.2.3 Lack of Litigation from Below

It appears from the results that the only self-regulatory effect on administrations comes from legal proceeding in courts. The reason why scarcity of litigation is an important factor of noncompliance is that it appeared that whenever a repeated number of appeals are made, frequency of violations decreases, and as stressed by EASO respondents, appeals had the effect of making Dublin Units and the Ministry of Interior notify questure to comply with the law and the complying effects are immediate.

Quantifying lack of litigation compared to actual violations is not an easy enterprise. According to ECRE, several examples of successful appeals were filed by lawyers to the courts of Napoli, Sassari, Trieste, Milan, and Rome. It is however obvious that the regulatory impact these litigations have is limited to local performances, i.e. the very regions where these violations occurred. A respondent illustrated the issue as such:

"we had two months ago two decisions from the Italian Council of State that delayed two transfer decisions based on the argument that the asylum seekers didn't receive information. But this problem of right to information is still going on and questure still do not provide specific information on Dublin, they don't provide the brochure about Dublin. And this is the case in most of the questure in Italy" (Respondent 10, personal communication, April 2, 2019).

No more sources are available on the actual number of litigations. However, a respondent who is a legal assistant, explained that "appeal for such cases is not easy because the courts don't always recognize the right to be defended for free, and not all lawyers accept these cases, and not all asylum seekers come in contact with immigration lawyers" (Respondent 8, 2019).

4.3 Towards a Third Hypothesis? Can Domestic Politics Impact Enforcement?

As stated by the European Commission (2018b), highly politicized patronage in recruitment is still a feature of the Italian system (p. 28), and according to the Commission's professionalism index, Italian administrations are more politicized than professional. Italian bureaucracy does not perform well either when it comes to levels of impartiality, i.e. not taking "into consideration anything about the citizen/case that is not beforehand stipulated in the policy or the law" (p. 43). Furthermore, the police force in Italy has two simultaneous tasks: controlling migration influxes and deportations, as well as processing asylum claims. This kind of management is prone to potential inevitable conflict of interest, where levels of partiality are hard to reduce.

The claim that domestic politics might potentially impact administrations' compliance with EU law has not been theorized so far. This is due to the very normative aspect of the idea, and to the hard task of testing it. Therefore, I do not advance this as a

hypothesis but as an idea for future research. Due to present limits of my investigative research tools I cannot commit to an on-the-ground investigation with non-complying police officers across Italy and assess their political tendency and later try to build a potential correlation-causation relationship between those results and officers' lack of compliance with EU law. However, asking my interviewees if they could clearly see that the far right anti-migration and anti-EU Matteo Salvini at the Head of the Ministry of Interior had an impact on officers' lack of compliance, I could discern a few hints to the matter: half of my respondents informed me of a potential link.

First, the recent lack of national control itself is revealing of the political will not to control these infringements, as indeed, as stressed by some respondents, control was at least existent under previous governments. Second, Salvini's recent decree (which is in contradiction with EU directives[30]), seems from my respondents' answers to have provided a form of legitimization to policemen's violations of Dublin. The fact that the decree blurrily gives questure the discretion to decide on the spot over a subsequent application for international protection for example, contributes in creating a situation of uncertainty and lack of compliance with community law[31]. Furthermore, as has been explained by an EASO caseworker, it is not the decree itself which fosters noncompliance but the anti-migrant idea behind it:

> Salvini's law added a legal frame that justifies their violations. For example, if a person comes to the questura in the morning and they have to fill a paper where it's written "why are you in Italy?", and if they write "I have a problem with my family" instead of "I want to ask for international protection", they're not fingerprinted as asylum seekers, they're being expelled and that's it. It's not necessarily the new law, but the idea behind the new law, which is the stand that

[30] The decree cancels the examination of a subsequent application after a removal order, whereas EU directives are very clear on that point and stipulate that a second application should be examined and not systematically dismissed.
[31] Moreover, as explained by ECRE (2019a), recent Salvini policies have also made political interference between the Ministry of Interior and Territorial Commissions (which decide on the granting of international protection) stronger.

'we have to stop all of these people asking for asylum because it's just the other way for them to get a permit to stay in Italy' (Respondent 2, 2019).

Third, several respondents have pointed out to what they could see as a recent clear wave of politicization of police offices: such examples include new giant posters of Salvini in the office[32], new oversized Italian flags in the registration offices[33], and a few informal interactions between police officers and asylum seekers in which the latter are told "Salvini is here, the party is over"[34].

Even though this third aspect of the analysis came up inductively, from my conversations with experts, objectifying political interference with administrations is probably the hardest task in compliance analysis. Establishing a ground for such an investigation, this chapter ends with a hope for more thorough research on the matter.

4.4 Results and Recommendations

A few concluding remarks with regard to the results achieved in this chapter are warranted, however it is important to remind the reader that, due to the methodology adopted and its limits, absolute generalization of the results to the whole of Italy cannot be achieved in this thesis: I use a qualitative approach with a very limited sample (13 respondents working in 13 different regions in the Italian territory), and even though many of my respondents had recent experience in many regions which in reality better expands the quality of this sample, my results cannot absolutely confirm a validity throughout the whole country, but definitely point to an existing general trend in Italian administrations, which should be, as I explain in my analysis, further researched on-the-ground and incorporating state actors perspective.

[32] (Respondent 3, 2019)
[33] (Respondent 12, 2019)
[34] (Respondent 9, 2019)

Based on the achieved results, it appears that Italy does not comply with the Dublin Regulation due to two major factors previously deducted from Falkner's theory: a poor administration, and a lack of control and sanction. First, Italian questure, have all the characteristics of a poor administration, lacking staff, lacking trained personnel, seeing its skilled and experienced officers retiring and its new recruits heavily reliant on external, temporary (EASO) support. The second factor is the complete absence of any EU or national control, including two other parameters, a lack of litigation from asylum seekers regarding these violations which would contribute in such control and a lack of power in the hands of EU-sent EASO teams present in those administrations in performing any act of control and monitoring. The Falkner-inspired idea of lack of litigation from below has been somewhat confirmed even though it must be supported with better investigation: lack of appeals indeed have had the result of maintaining the status quo in administrations, and one of the main reasons for this is the invisibility of such infringements and the hardship in proving them, echoing Versluis' idea that the lack of visibility of some aspects of the law is what makes them less prone to be controlled. Moreover, Versluis' idea on the questionable potential for EU agencies in ensuring compliance was also supported, as the limits of EASO in guaranteeing such a process have been highlighted. All these factors considerably yet not exclusively contribute in shaping administrations' lack of compliance: other aspects should be further analysed in future research, such as for example, police officers' working conditions, their motivations, and the potential of domestic politics in shaping their compliance with this law, which was hinted at by several respondents.

In general, the EU should be more attentive to the deficiencies of domestic administrations. Given the very existence of EASO, one cannot help but be under the impression that these anomalies are simply highlighted but never solved. There cannot be EU law and then little control over its application. The current state of liminality leaves

asylum seekers in limbo, with their rights violated, while they seek refuge in an EU country not necessarily because they trust that peculiar country, but probably because they trust the idea of Europe as a whole. It is therefore urgent to de facto harmonize asylum procedures. A situation where an EU supportive body of caseworkers is fired from the local administration because they attempted to correct erroneous asylum procedures is not efficient. Therefore, one solution could be completely passing power of control and sanction to EASO while simultaneously blocking any governmental interference with its work as an independent regulatory agency. This would ensure a mechanism of long term self-regulation from the part of administrations. This should not be confused with giving EASO temporary executive power of exclusively handling asylum procedures and making decisions on asylum claims: this could have the gradual effect of first, de-familiarizing national systems with the procedure, and in the case of an eventual retrieval of this agency, it would result in an even stronger lack of national competence.

Furthermore, it is necessary to install a system where infringements are made more "visible" and provable and that more appeals are lodged from below whenever violations occur in order to make administrations auto-correct. Stricter EU inspection ensuring a system where local administrations' margin of error is minimal could be boosted by modernization of administrations, such as a better digitalization of the asylum process, which is not only limited to the current simple fingerprinting and lodging. Technology could be better taken advantage of. Moreover, as the overburden of courts with cases of appeal for a simple task that the police office did not perform had a result of stopping these violations at least regionally, it is important that a dynamic of appeal is sustained and fostered in order to guarantee a narrower margin of error from the part of questure. For that aim, two matters should be ensured: first, that asylum seekers are more brought in contact

with lawyers specialized in migration law; and second, that these lawyers have the capacity to defend the cases free of charge.

More broadly, in terms of compliance with EU law, two facts should be guaranteed: individual staff accountability with regards to compliance and a leadership which not only is quick in identifying and controlling lack of compliance but that works in inculcating a culture of compliance through comprehensive and efficient training that stresses the benefits of compliant performances.

Finally, more thorough research should be carried out regarding domestic compliance with EU law at the enforcement level, and with asylum law in particular: it is necessary to achieve more updated investigations, in order to come up with more adapted personalized solutions to a veritable harmonization of asylum procedures across Europe. As a matter of fact, as long as asylum procedures remain heavily un-harmonized on-the-ground, the asylum seeker cannot be blamed for "asylum shopping" between Member States which blockage was the main aim of the Regulation in the first place.

Conclusion

Launching a debate on ill-enforcement of EU law has been described by some scholars as opening "the black box", and justifiably so. Uncovering the factors of deadlocks in Member States' administrations is an arduous task that necessitates thorough and meticulous large-scale research. This probably explains the lacuna in the realm of academia concerned with this level of compliance. However, it is arguable that preliminary investigations such as this study can provide a basis for future research with better tools and means at hand, especially since asylum law in particular suffers a lack of such scrutiny. In the case of CEAS and the Dublin Regulation, advocating for legislative reform should go hand in hand with advocating for compliance. Even though reform of the law is

an urgent necessity to substantially and systematically alleviate inherent burden on peripheries, creating a mechanism which ensures domestic on-the-ground abidance with EU law appears similarly crucial.

Informed by legal analysis, data analysis (EU, NGO, and state reports), as well as direct interviews with experts, this thesis has analysed at a micro-level Italy's noncompliance with procedural safeguards stipulated under Articles 4 and 5 of the Dublin Regulation. Adopting a deeper level of scrutiny never achieved so far, this study served the double purpose of a research paper and a policy paper with recommendations on future improvements at both national and European levels. First, by documenting current noncompliance and lack of burden, it attempted to rectify the argument claiming overburden on Italy is the main reason behind ill-enforcement. Second, it has attempted to understand why Italian administrations still perform poorly in their application of the Dublin Regulation. The study has been organized as follows: In Chapter I, first, after shortly introducing the law itself to the reader, I presented an overview of the rich scholarly debate around the Dublin Regulation and situated where I stand vis-à-vis the literature and its limits. Second, I pinpointed the main relevant theoretical explanations of noncompliance in the enforcement of European legislation, which were of concern to my study, and thereof, adopting a multi-theoretical approach demanding deductive reasoning, I outlined the challenges for successful enforcement of EU asylum law in Italy. Third, I presented the methodology I adopted and justified my particular case study and its limits.

In Chapter II, I justified my position on the outdated "overburden" argument contained in previous literature by advancing the term "post-overburden". For this end, I documented the alleviating effects the Memorandum of Understanding with Libya had on the Italian system.

In Chapter III, using data extracted from the Asylum Information Database, I attempted to scrutinize in detail Italian administrations' violations of procedural rights of Dublin that are still occurring in the post-overburden period.

In Chapter IV, I examined each of the potential challenges to noncompliance, and attempted to assess their degree of validity: I supported my findings with expert interviews with non-state actors who either work in these administrations (EASO caseworkers) or regularly visit them while accompanying asylum seekers in their asylum procedure (legal operators and assistants). In default of accessibility to Italian state actors due to limits that I thoroughly justify, much of the empirical evidence was based on these non-state actors' perspectives as they are not only the closest to that environment but also specialized in the law itself.

Deducted from theoretical contributions by Falkner and Versluis on compliance with community law, the two variables, *a poor administration* and *a lack of control and sanction* and their incorporated parameters were confirmed. The results point to several factors validating both hypotheses. First, characteristics of a poor administration have been detected: questure severely lack staff due to both an aging personnel gradually retiring from these offices, as well as a lack of replacement due to the reduction of governmental spending: furthermore, whenever retiring personnel is replaced, it is by a much younger one, lacking experience and training in the field. Second, a non-autonomous administration, heavily reliant on the support of caseworkers from the European Asylum Support Office and not consistently learning from good practices has been demonstrated. Third, a lack of national and EU inspection, as well as absence of infringement procedures with regard to such violations was highlighted: particular attention was given to the limited role of the EASO agency in these offices, lacking any power of control or correction. Fifth, the lack of litigation, due first to hardship in measuring and proving these violations, and

second to the hard access of asylum seekers to legal assistance, contributes in maintaining the status-quo: this has been shown in contrast with a few positive results where legal appeals had the immediate effect of stopping violations in offices.

Finally, another parameter, not presented as a tested hypothesis but simply advanced as an inductive result in need of in-depth future research, was the potential impact of domestic politics on administrations' compliance with articles 4 and 5 of Dublin: presenting the preliminary hints to such interference, this thesis provides ground for more investigative research. The present conclusion is preceded by adapted recommendations generally hinting at the notion that asylum law application without inspection and control can easily be transformed into an 'exercise in ethics', where room for improvisation and partiality can gradually widen.

As an end word, more focused research on the last level of compliance with European law, the enforcement level, now appears as a necessity more than an academic field of interest. Hope in an academia but also in a European Union that will not fail in preparing the ground for better practices still remains. Not only is ensuring and pressuring for compliance important for the preservation of the EU as an entity, but also for the status of the EU as a denouncer of rights abuses abroad. It is important that the Union lives up to its own standards in terms of respect of rights for it to give an example and a model to replicate elsewhere.

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List of Appendices

Appendix 1: Interview Questions

1) Have you personally been witness to the violations of Dublin procedural safeguards (right to information, and personal interview) in questure during the post memorandum of understanding period (2017-today)?

2) If so, can you explain why each of these violations is occurring in the questura where you work/ you visit?

3) Can you tell approximately how many police officers deal with asylum seekers in the questura where you work/you visit and if you see a clear lack of staff? Can you describe the demographics of questura police staff (for example retiring personnel? Are they replaced? Recent, younger recruits?). Feel free to add any remark you might have.

4) Are police officers in charge of the procedure sufficiently prepared and trained for these specific tasks?

5) (For EASO only): What is your exact task in your questura office?
a) Do you perform independently or is there a practice of 'know-how" exchange, or are you simply replacing officers in their task?
b) Apart from the large scale training that EASO offered last year to many police officers, do you also individually train police officers in your questura?
c) Do you have any controlling role whether openly or more discreetly?
d) Do you correct ill-enforcement? Or do you simply observe and send your reports directly to the heads of EASO? If so, then do you see that these reports have a certain (even if slower) correcting effect on-the-ground?

6) Do you see any EU and/or national inspecting entities controlling the application of these rights?

7) (Non-EASO): Has the presence of EASO caseworkers had the effect of reducing violations in the questura where you work/you visit? Do you see them working hand in hand with police officers or are they an independent replacement?

8) Have legal appeals had the effect of reducing these violations in the questura where you work/you visit? Would you be able to quantify approximately the percentage of appeals compared to actual number of violations?

9) Can you see the political atmosphere (eurosceptic & anti migration Matteo Salvini as Minister of Interior) having any impact on-the-ground with regard to police officers' performance of these procedural safeguards? If so, can you illustrate?

10) Is there any other obstacle to the enforcement of these procedural rights, peculiar to the questura where you work/you visit (for example lack of resources and logistics) that you would like to share?

Appendix 2: Information on Interviewees

Note: Due to the requested anonymity of respondents, their names and most of the regions where they work have been omitted. All interviewees work in a different region from one another. EASO caseworkers are full time workers within the questura offices whereas all the other respondents, legal operators, officers and assistants accompany the asylum seeker in the asylum procedure in these questure. These interviews have been conducted in spring 2019.

Respondent 1: EASO caseworker currently working in questura 1, with experience in almost a dozen questure

Respondent 2: EASO caseworker in questura 2

Respondent 3: EASO caseworker in questura 3

Respondent 4: EASO caseworker in questura 4

Respondent5: EASO staff member working with the territorial commission

Respondent 6: legal operator assisting asylum seekers in questura of Bologna

Respondent 7: legal operator assisting asylum seekers in questura of Milano

Respondent 8: legal assistant assisting asylum seekers in questura of Friuli-Venezia Giulia, with experience in several other questure

Respondent 9: legal officer managing a team of legal operators who assist asylum seekers in the questura of Rome

Respondent 10: legal assistant assisting asylum seekers in different regions of Italy

Respondent 11: legal assistant assisting asylum seekers in different regions of Italy

Respondent 12: legal operator assisting asylum seekers in questura 5

Respondent 13: legal operator assisting asylum seekers in questura 6

Appendix 3: Summary of Respondents' Answers

	Poor Administration				Lack of Control & Sanction			Impact of politics (Salvini) on enforcement
	Problem of personnel (lack of staff/non-adequacy of staff)	Lack of training	Lack of ressources	Lack of autonomy	Non-existence of National and EU inspection	No substantial control and sanction from EASO	Lack of litigation vs. violations	
Respondent 1	+	-	-	+	+	+	-	+
Respondent 2	+	+	-	+	+	+	-	+
Respondent 3	+	+	-	+	+	+	-	+
Respondent 4	-	-	-	+	+	+	-	-
Respondent 5	*	*	*	*	*	+	*	*
Respondent 6	-	+	-	+	+	+	-	-
Respondent 7	+	*	-	+	+	+	*	-
Respondent 8	+	+	-	+	+	+	+	+
Respondent 9	+	+	-	+	+	+	*	+
Respondent10	+	+	-	+	+	+	*	-
Respondent11	+	+	-	+	+	+	-	*
Respondent12	+	+	+	+	+	+	+	+
Respondent13	+	-	-	+	+	+	+	+

+ Yes
- No
* Not applicable or not categorical answer