



Making-up (un)deservingness:

Analysing the role of the notion of 'irregular migrant' in legitimating the European Commission's Common European Asylum System

Adriana PAREJO PAGADOR (585334)

MSc Governance of Migration & Diversity (International Public Administration)

Erasmus University Rotterdam

Supervisor: Dr Mark van Ostaijen

Second reader: Dr Fiona Seiger

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ABSTRACT

The term ‘*irregular migration*’ is a highly politicised and contested one, employed by policymaking institutions to problematise the entry of migrants in a particular way and to advance certain policies (Jørgensen, 2012). This thesis argues that constructing refugees and asylum-seekers under the umbrella of ‘irregular migration’ allows the European Commission (EC) to put forward policies that are today widely contested by human rights organisations. Following the theoretical frameworks of Schneider and Ingram (1993), Bacchi (2014) and Van Leeuwen (2007), it is argued that our way of talking and problematising certain population groups (the *policy discourse*) does not neutrally reflect society, but plays a performative role in shaping policymaking used to address the group (the *policy design*). This thesis aims to answer the following question: *how is the policy discourse on irregular migrants used by the European Commission to legitimate its policy design on irregular migration in the period of the refugee crisis 2015-2021?* Based on a post-structuralist epistemology, interpreting policies as a continuous discourse, this thesis is based on a discourse analysis of 18 documents (policy briefs, speeches, press releases, etc.) on migration and asylum from the EC published in the period of the refugee crisis 2015-2021. The thesis contributes to academic literature by complementing Schneider and Ingram’s (1993) seminal theory on the social construction of target groups with a discursive methodology inspired by Van Leeuwen (2007). Doing so enables to empirically analyse how the EC’s problematisation of migrants through the notion of irregularity shapes and legitimates the EC’s policy design — a connection that is not operationalised by Schneider and Ingram (1993). As a result of the research, this thesis concludes that the notion of irregularity enables the EC to speak about migrants through the notion of irregularity in two distinctive ways — through a humanitarian and a securitisation discourse — enabling the institution to legitimate different aspects of its policy design on migration and asylum that affect refugees by the same token. Overall, the societal relevance of this thesis lies in its contributions demystifying the reason why refugees and asylum-seekers can be targeted through policies of deterrence by the EC, and these findings can be used as basis for policy recommendations.

Key words: irregular migration, refugee crisis, Common European Asylum System (CEAS), European Commission, discourse analysis

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ABBREVIATIONS

CEAS	<i>Common European Asylum System</i>
EC	<i>European Commission</i>
ECRE	<i>European Council on Refugees and Exiles</i>
EU	<i>European Union</i>
IOM	<i>International Organisation for Migration</i>
TNC	<i>Third-Country National</i>

INTRODUCTION

Our way of using words, language and expressions not only reflect deep rooted assumptions about how we interpret social reality, but it also shapes the way we act and respond to social phenomena. The term '*irregular migration*' is a highly politicised and contested one, employed by policymaking institutions to problematise the entry of migrants in a particular way and to advance certain policies (Jørgensen, 2012). 'Irregular migration' refers to a form of entry, residence or work of migrants occurring outside the regular migratory norms established by laws and customs of the receiving territory (Triandafyllidou, 2016). Through the development of a Common European Asylum System (CEAS), the European Union (EU) made it virtually impossible for most refugees and asylum-seekers to enter the EU safely and regularly in order to ask for asylum protection (Costello, 2016). This means that in practice, most refugees fleeing war and persecution have to enter the EU irregularly, and become 'irregular migrants' in the eyes of the law, in order to access their rights to claim asylum (De Genova, 2018). In most cases, this results in redirecting the control of entry into Europe to smuggling networks, further nurturing a discourse of criminality associated with refugees (Pallister-Wilkins, 2015).

In the space of 9 month, the 2015 Syrian conflict led to almost 900.000 refugees entering the EU irregularly in order to ask for asylum (IOM, 2021). This led to massive media coverage and to Member States raising the alarm bells to what was problematised as 'Europe's Refugee Crisis' (Stierl, 2020). This thesis argues that constructing refugees and asylum-seekers under the umbrella of 'irregular migration' allows the European Commission (EC) to put forward policies that are today widely contested by human rights organisations: strict visa requirements are in place, border guards are militarised and camps are erected in order to control the movement of refugees (Dadusc & Mudu, 2020; van Houtum & Bueno Lacy, 2020). Illustrating the scope and effects of problematising refugees as 'irregular migrants', the Border Violence Monitoring Network recently recorded more than 12.000 human rights violations at EU's external border perpetrated against migrants crossing the Mediterranean irregularly (BVMN, 2020). According to several scholars, it is under the flag of a humanitarian crisis that the EU is able to implement policies that lead to the violation of basic human rights (Dadusc & Mudu, 2020; Pallister-Wilkins, 2015; Stierl, 2020; Ticktin, 2016). In light of such controversial policies, it is particularly important to uncover the EC's legitimisation strategies

that enables the policymaking institution to attribute rational and meaningful sense to policies that would otherwise be delegitimised under universal human rights principles.

For this reason, **I seek to critically engage with the notion of *irregularity* to understand how it guides and legitimates EC policies on ‘irregular migration’ that affect refugees and asylum-seekers by the same token.** This thesis looks into the representation of refugees and asylum-seekers through the lens of ‘irregular migration’ within the EC. More specifically, it looks not only into how migrant entering the EU are discursively constructed and problematised as a target group through the notion of irregularity, but also into the role of target group construction in shaping and legitimating the EU’s policy design on migration and asylum that concern refugees as well. The EC has the unique ability to generate supranational laws and policies on migration and asylum, and to affect the lives of refugees seeking protection in the territory of individual Member States. This thesis aims to answer the following question: *how is the policy discourse on irregular migrants used by the European Commission to legitimate its policy design on irregular migration in the period of the refugee crisis 2015-2021?*

Following the theoretical frameworks of Schneider and Ingram (1993), Bacchi (2014) and Van Leeuwen (2007), this thesis is based on a post-structuralist epistemology, interpreting policies as a continuous discourse. Drawing on discourse analysis scholarship, it is argued that our way of talking and problematising does not neutrally reflect our society, but plays a performative role in shaping society (Jørgensen & Phillips, 2002; van Ostaïjen, 2020). Put pragmatically, speaking in positive or negative terms about a certain target group, such as refugees and asylum-seekers, translates into laws, policies and institutions that benefit or burden them, which are then signposts for anyone in society on how one should address a particular group (Hajer, 1997; Schneider & Ingram, 1993). As such, I argue that the particular way in which the EC talks about and problematises refugees as ‘irregular migrants’, conceptualised in this thesis as the *policy discourse*, plays an active role in shaping and legitimising the policy tools targeting irregular migrants, interpreted as the *policy design*. To empirically analyse the EC’s meaning-making practices that create legitimacy by logically connecting the policy discourse and design, I employ the notion of discursive legitimation as operationalised by Van Leeuwen (2007).

This thesis is based on a discourse analysis of 18 documents (policy briefs, speeches, press releases, etc.) on migration and asylum from the EC published in the period of the refugee crisis 2015-2021. It contributes to academic literature by complementing Schneider and

Ingram's (1993) seminal theory on the social construction of target groups with a discursive methodology inspired by Van Leeuwen (2007). Doing so enables this thesis to empirically analyse how the EC's problematisation of migrants through the notion of irregularity shapes and legitimates the EC's policy design — a connection that is not operationalised by Schneider and Ingram (1993). As a result of the research, this thesis concludes that the notion of irregularity enables the EC to speak about migrants through the notion of irregularity in two distinctive ways, enabling the institution to legitimate different aspects of the Common European Asylum System (CEAS). Consequently, I conclude that the fact that refugees and asylum-seekers have to enter irregularly enables to speak about them as outright outlaws, and their 'irregularity' legitimates the kind of policies currently employed by the EC.

The thesis is organised as follows. The first chapter outlines the theoretical framework of this thesis, delving into the literature on the social construction of target group, discourse legitimisation and the problematisation of migration in the European context. Next, the second chapter presents the research design, including the questions guiding this research, the conceptual model, and the operationalisation, as well as the methodology which include data collection, data analysis, expectations and ethical considerations. Chapter three is a presentation of the empirical findings of the research. In chapter four, I present an analysis of the findings, providing answers to the main research question, before concluding and discussing the implications of the thesis in chapter five.

CHAPTER 1. THEORETICAL FRAMEWORK

In this section, I present the theoretical framework at the basis of this research, starting with the literature on irregular migration and its highly contestable and politicised nature. Next, the chapter provides an outline of the social construction of target groups theory by Schneider and Ingram (1993), the theory of problem representation by Bacchi (2014) and of discursive legitimation by Van Leeuwen (2007) as way to study the policymaking process as *performative* discourse.

1.1 Irregular Migration

The term ‘irregular migration’ does not come without contestations. Albeit being a buzzword across European media outlets, ‘irregular migration’ is often a confusing term used interchangeably with other concepts such as ‘illegal migrants’, ‘asylum-seekers’, or ‘undocumented migrants’. As this thesis is concerned with the study of language, discourse and assumptions, it is important not to take terminology for granted as language represents a certain conception of social reality that shapes public policymaking. In this section, I briefly breakdown the origin of the term in European politics, its alternatives and discuss how migration is being problematised in the European context.

1.1.1 Coming to terms with ‘irregular migration’: terminology and definitions

In any research on ‘irregular migration’, defining the phenomenon in itself is an intricate task as there is no clear understanding of who ‘irregular migrants’ are, and of what ‘irregular migration’ consists of (Triandafyllidou, 2016). It belongs to a large variety of expressions that broadly refer and describe a form of human mobility occurring outside the regular pathways established by migration laws and customs (Düvell, 2011; Triandafyllidou, 2016; Vollmer, 2011). At the EU level, an array of laws exist that categorise migrants across different forms of legal migration, with the aim to control migration flows “for the benefit and economic needs of Member states” (Düvell, 2011, p.279). Indeed, by creating legal categories of migration, the EU is able to control, check and authorise certain forms of migration that serve their interest. To name a few central international legislations, the 1951 Geneva Convention defines the refugee status and allows to (dis)qualify migrants in need of asylum protection, the 1957 Treaty of Rome provides a legal framework for *labour migration*, Article 8 of the Convention for the

Protection of Human Rights and Fundamental Freedoms establishes the legal customs for *family migration*, and the 1966 International Covenant on Civic and Political Rights formulates the *right of return* (return migration). According to Düvell (2011), the prime objective behind categorising migration is to provide enough legal migration opportunities to hold sway over immigration to the European continent. However, despite existing laws many migrants remain outside the scope of legal migration. These migrants — due to their form of entry stay or work, are grouped under the miscellaneous umbrella category of ‘irregular migrant’ (Triandafyllidou, 2016). As Düvell put it, “what is irregular is the result of what is considered or defined as regular” (2011, p.286).

In the EU context, ‘irregular migration’ is defined by the EC as the “movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries.” (European Commission, 2016). While the EC seems to delimit its understanding of ‘irregular migration’ to *movement of persons*, the legal definition of what ‘irregular migration’ consists in is far from being harmonised across European countries, and much more diverse in the types of activity (entry, residence, work) it includes (Düvell, 2011). Indeed, Austria and the Netherlands define ‘irregular migration’ mainly around the legal definition of *illegal residence* and employs the term *illegal migrant*, France describes ‘irregular migration’ as a form of irregular entry or work more than residence, Slovakia frames it as *unauthorised stay* and *illegal employment* in its Principles of Migration policy, and Spain has no specific legal definition for ‘irregular migration’ besides the political category of *clandestine migration* (Düvell, 2011). The fact that definitions of and ideas about ‘irregular migration’ changes per European country is key since it shows that the concept is not static, but changing with the political associations and ideological interpretations of each country (Düvell, 2011). Therefore, this thesis is interested in understanding how the EC makes use of such a contested concept to advance and legitimate its politics, policies, laws and legislations on migration and asylum that are contained within its Common European Asylum System (CEAS).

As previously mentioned, several terms have been used interchangeably with ‘irregular migrant’ — and it is important for the purpose of this thesis to come to terms with variants of the notion of ‘irregular migrant’, in order to understand what ‘irregular migration’ connotes and what social reality it represents.

The first commonly used expression used in mainstream media and EU political discourse is *illegal migration*, which describes migrants as “illegal people” (Vollmer, 2011,

p.337), or as “unlawful migrants” (Düvell, 2011. p.285). Scholars have argued against the use of the adverb *illegal* as it connotes in its broad sense an act of wrongdoing and criminality and should thus be avoided (Sciortino, 2004). Additionally, put together with the word migrant, the term illegal migrant spreads the idea that certain migrants are illegal human beings, a term that is largely discriminatory as “no human being is illegal” per se (but rather an act) (Triandafyllidou, 2016, p.2). Another term that is often used is *undocumented migrant*, which implies a *lack of* documents testifying ones status in a given country without explicitly hinting to criminality but implicitly resonating with the word clandestine (an illicit act done in secrecy) (Nyers, 2010; Triandafyllidou, 2016). Then, *unauthorised migrant* refers mainly to migrants entering a country without legal authorisation or visa, someone who is by default a denizen as citizens do not need authorisation to enter their country (Triandafyllidou, 2016). Interestingly, while refugees and asylum-seekers have their own legal definitions in both EU law and international law, in practice they often fall under the umbrella of ‘irregular migration’ due to the fact that for most refugees entering the EU with an authorised visa is not a possibility (Costello, 2016). While the term refugee in itself connotes a more deserving representation of someone’s migratory journey, most refugees and asylum-seekers become *de facto* ‘irregular migrants’ under EU law (Costello, 2016; Triandafyllidou, 2016).

Despite all the variation of the term, ‘irregular migration’ is commonly said to be the preferred and most “value-neutral” term for a phenomenon otherwise called *illegal migration/migrant*, *unlawful migration/migrant*, *unwanted migration/migrant* or *unauthorised migration/migrant* — all terms which scholars have argued criminalise or discriminate certain types of migrants (Triandafyllidou, 2016, p.2). However, the extent to which this term is value-neutral is contestable. While the terminology ‘irregular migrant’ may be more value-neutral than terms explicitly associating migrants to crime and illegality, it does not reflect that a migrant is considered irregular because of a gap in law and categorisation (Costello, 2016; Düvell, 2011). Instead, it follows the same line as other terms described above which tend to hold migrants themselves accountable for their irregular status in a given country. On that line of argumentation, Düvell explains that migrants are not irregular per se, but rather become irregular as a product of law categorisation which, on one hand, “lay the preconditions for irregular migration”, and on the other, “generate irregular migration” (2011, p.275). Indeed, to explicate Düvell’s first point, Costello points out that while the EU is preoccupied with curbing the *out of control* wave of ‘irregular migration’ coming through the Mediterranean sea, “EU law is made in such a way that makes it virtually impossible to [enter a] country safely and

legally” in order to claim asylum, laying the preconditions for irregular migration to exist (Costello, 2016, p.12). Secondly, as asylum procedures are not only extremely bureaucratic but also ensure little chances to be granted asylum, asylum seekers may opt to remain in an irregular situation in order to stay in the receiving country (Vollmer, 2011). As such, it is argued in this thesis that ‘irregular migration’ remains non-neutral as it shifts the cause for irregularity on migrants themselves rather than on migration law and policymaking.

In this thesis, the term ‘*irregular migration*’ is not to be understood as a neutral term. It is considered, as Düvell explained, to be the gaps and result of what is considered regular and legal by the EC, and thus by definition problematic. In their book titled ‘Rightlessness in an Age of Rights’, Gündogdu (2014, p.87) defines irregular migrants as “migrants who found themselves in irregular status due to [...] immigration laws”, reflecting the argument that irregularity is exogenous to migrants and caused by a set of policies. This is important as terminology and language play a central role in problem definition, and as seen above, the problem is too often discursively defined as being a migrant problem rather than a policy problem.

1.1.2 The problematisation of migration

A general feature of EU migration governance is the difficult struggle to balance between a desire to securitise and control borders with promoting the humanitarian and human right aspect of migration management (Jørgensen, 2012). Several scholars conclude that the EU’s language on migration management exposes a certain “schizophrenia” (Hathaway & Gammeltoft-Hansen, 2014, p.283) “deep contradiction” (Costello, 2016, p.12), or “an autoimmune disorder” (van Houtum & Bueno Lacy, 2020, p.706) because of this antinomy between humanitarianism and violent securitisation. One way scholars make sense of such schizophrenic attitudes is through a Foucauldian understanding of the role of policing as simultaneously being one of *caring* for and *controlling* a population (Fassin, 2011; Foucault, 2009; Huysmans, 2006; Pallister-Wilkins, 2017; Walters, 2006). The central argument is that humanitarian language is employed to implicitly advance a securitisation agenda, and to frame violent border control policies as an acceptable form of “armed love” in the media (Ticktin, 2016, p.257). According to Stierl (2020), the advancement of the EU’s securitisation agenda in the wake of the refugee crisis is a constitutive part of processes of Europeanisation. Policymakers advanced bordering policies in order to ensure that immigration on such a scale

remains a “historical anomaly”, which at the same time reinforced the idea of a European Union as a “bordered space” (Stierl, 2020, p.253). Building on such analysis of contemporary migration management, scholars argue that Europeanisation is in fact thwarted by a political interest to prioritise securitisation over humanitarian principles, marking “a self-destruction of the post-war project of a European integration with humanist ambitions” (van Houtum and Bueno Lacy, 2020, p.709).

For the purpose of this thesis, it is interesting to review the literature on how migration is problematised as a security threat. Starting from the premise that migration cannot be understood as a neutral descriptive concept, in this thesis migration is considered to be a politically and socially constructed notion. Even as one accepts that newcomers may disrupt the balance of a community, the definition of the problem and of the subsequent solutions depends on political and social processes. Does one define migrants as a possible threat to the stability of a community, or as a positive asset to society? Put shortly, migration does not pose a threat per se but does so because of the discourse problematising migration. According to social constructivists, one must look at how a phenomenon is problematised in order to understand how it is being perceived and addressed (Bacchi, 2014; Jørgensen & Phillips, 2002).

In that sense, migration conceptualised as a threat is linked to processes of *othering* (Buonfino, 2004; van Ostaijen & Scholten, 2017; Wimmer & Glick Schiller, 2003). Wimmer and Glick Schiller (2003) explain that migration is embedded in a rhetoric differentiating *the people* from *the other* — the people being those belonging to the national sovereign entity, with a shared identity and a common way of life, and the others being those challenging that seemingly solidary entity. As a result, migrants are treated as “antinomies to an orderly working of state and society” (Wimmer & Glick Schiller, 2003, p.583). Wimmer and Glick Schiller (2003) argue anti-immigration policies in fact disguise a nation-building agenda. As such, nation-states exercise their sovereign power when enforcing strict immigration policies in the name of protecting *its people*, their shared culture and values (all expressed through a common national anthem, the constitution, national language etc.) against foreign lifestyles brought in by immigrants (Wimmer & Glick Schiller, 2003). Van Leeuwen and Wodak explain political discourse “depict immigrants as a threat to the social system, deviant, unable to ‘integrate’, criminals and having a different culture” (1999, p.84). However, this thesis is looking at the social construction of refugees and asylum-seekers through the notion of ‘irregular migrants’, not at a national level where sovereignty is central in anti-immigration discourse (Buonfino, 2004), but at the supranational level. Considering how contested the notion of irregular

migration is among European Member States, it raises the question of how the EC takes up the notion at the supranational level, and on what basis it legitimises its immigration policies if not on sovereignty.

While Anderson (2006) seeks to explain nationalism, his notion of *imagined communities* is useful to understand the social construction of the EU and its *Way of Life* as a community next to which (irregular) migration can be rendered a security question. Anderson (2006) presents a nation as a socially constructed community, imagined by its people who depict themselves as part of an entity. *Imagined communities* are emotional and cultural phenomena rather than concrete ones, delimited by borders within which a community can exercise legitimate authority (Anderson, 2006). According to Anderson (2006, p.7), a community like the EU is “imagined” because most citizens are strangers to each other yet see themselves as part of a “political community” with shared origins, mutual interests and “a deep, horizontal comradeship”. The need for nationalism is intimately connected with the rise of democracies and the fall of the legitimacy of the ruling class being rooted in the idea of a divine right to rule (prevalent during times of absolute monarchy for instance). As such, Wimmer and Glick Schiller’s (2003) argument that anti-immigration policies in disguise a nation-building agenda can be applied to the case of the EU — the EU’s rebordering policies can be seen as part of the Europeanisation process (Stierl, 2020).

One may trace the beginning of a *European community* back to the emergence of the Single Market Principle which ultimately abolished internal borders between Member States (Luedtke, 2018). Lifting internal border checks raised security concerns amongst Member States who lacked a purpose beyond economic prosperity to be persuaded in creating the Schengen space. Luedtke (2018) argued lifting internal borders could only be maintained if the EU and its Member States formed a political and ideological entity within which trust becomes natural. Because migrants moving irregularly employ a *side door* to enter Europe, irregular migration is often associated with unsafe, illegal and criminal journeys, leading to the mediatisation of irregular migration as something worrisome and threatening (Bilgic et al., 2020). According to Andersson, “migrant illegality is produced, processed, ‘packaged’, and presented by a range of sectors” (2014, p.122). The media contribute to such a construction, with headline referring to “*storms of illegal immigrants*”, and one of the worst security crisis in modern Europe (Allen, 2015). As such, today the *European Way of Life* is the result of a compromise between the EU, the Members States and mass media managing public opinion to define what is *us* and worth protecting — free movement, democracy and human rights —

against a constitutive outside (Buonfino, 2004). Immigration is politicised because it constitutes the *other* and that politicisation is a medium for community self-identification, which in turn creates a political imperative to adopt securitised measures against it. In what follows, I discuss how the problematisation of migration works in policy processes by using the literature looking into policy legitimisation.

1.2 Social Construction and Policy Legitimation

1.2.1 The social construction of target groups

One of the leading theories attempting to understand policy processes is the theory put forward by Schneider and Ingram (1993) on the social construction of target groups. The theory contends that how the political power of a target group interacts with the way a target group is socially constructed (as deserving or underserving) influences policy designs devised to benefit or burden the group (Schneider & Ingram, 1993). Indeed, to explain how political power plays a role in policymaking, the authors contextualise the policy process within the electoral calculus. They explain that policymakers have pressure to create beneficial policies to target the powerful and positively constructed social groups, and vice versa, to devise policies that burden the powerless and negatively constructed groups (Schneider & Ingram, 1997). Under electoral pressure, “public officials commonly inflict punishment on negatively constructed groups who have little or no power, because they need fear no electoral retaliation from the group itself and the general public approves of punishment for groups that it has constructed negatively” (Schneider & Ingram, 1993, p.336). In the EU context, the EC is accountable to the EU Member States who have transferred part of their sovereignty to the supranational. Policymakers anticipate how a group needs to be socially constructed in order to make their public policies seem rational and legitimate to the Member States, even when policies are thwarted by personal interest. Next, social construction are stereotypes about a certain target group that are created by political discourse, the media, culture, socialisation, history, and religion amongst other things (Ingram et al., 2007). These stereotypes can present a group of people positively as deserving, helpful members to society, or negatively as delinquents, dishonest and undeserving.

The interaction between power and social construction leads to different policy tendencies devised to allocate benefits or burdens to distinctive target groups — namely the

advantaged, the contenders, the dependents, and the deviants (see Figure 1) (Schneider & Ingram, 1993). The *advantaged* are the positively constructed groups with strong power, such as veterans or scientists, and policies addressed at them aim to build their capacity as they are seen as positively contributing to society as a whole. While the *contenders* have strong power but negative social constructions, such as the elite, they are targeted with policies aiming to regulate their power (by taxing the supra-rich class for instance). *Dependents* are commonly consisting of children, mothers and disabled people, and are seen to be weak politically speaking but positively constructed nonetheless. Finally, as their name indicates, the *deviants* are considered to be those deviating from the societal norms and thus undeserving, such as criminals and immigrants. They are both weak and negatively constructed, and are thus targeted with policies aimed at punishing and burdening them. Because refugees and asylum-seekers have low political power, they can fall either under the dependent or the deviant target group constructions, and therefore this thesis focuses mainly on the social construction used to describe them in positive or negative terms rather than on power.

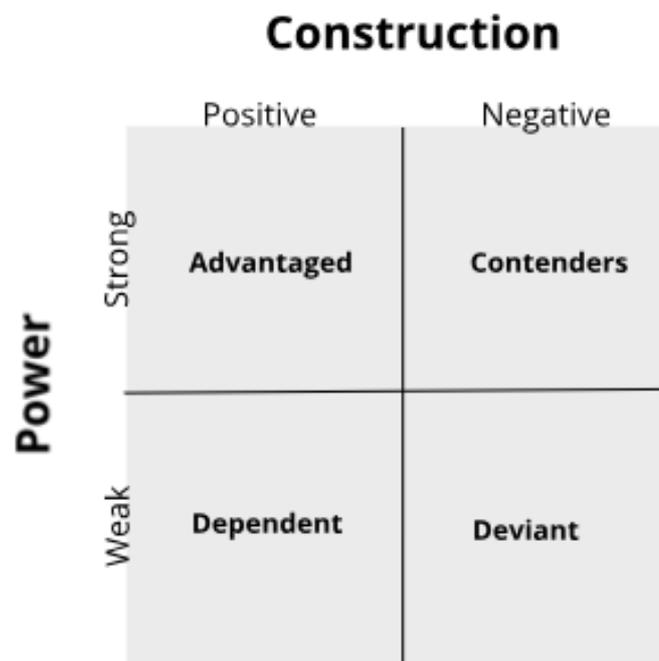


Figure 1 Social construction and power: different types of target groups (Schneider & Ingram, 1993) (own diagram)

For the deviant group, the theory advanced here contends that because the wider society expects elected leaders to devise policies burdening the negatively constructed groups, policymakers burden them irrespective of whether it is an effective solution (Ingram et al., 2007). Put differently, “it is difficult for elected leaders to provide beneficial policy to the

powerless, negatively viewed groups (such as providing rehabilitation programs for criminals), despite the fact that these policies may be more effective than those that involve punishment or may be less costly than the death penalty, given the extensive appeals that ensue” (Schneider & Ingram, 1993, p.338). Therefore, this would mean that current EC policies on ‘irregular migration’ that affect refugees by the same token may not be based on effectiveness but rather on anticipating the Member States’ expectations on how refugees should be addressed. This is related to the legitimacy that elected leaders need to maintain before their electorate, an element that is central to understand policymaking in democracies (Schneider & Ingram, 1997) which is further discussed later in this chapter. As such, Schneider and Ingram’s (1993) theory depicts the policymaking process not necessarily as a rational calculus to solve a problem, but rather as one thwarted by societal ideas about a group as well as by political and electoral interests.

Breaking away from conventional positivist thinking, the theory stems from a constructivist perspective where policy problems are not seen as pure empirical facts, but as a socially constructed interpretation of societal phenomenon. The constructivist perspective contends that “policy problems are not ‘discovered’, but socially constituted as part of a broader social and interactive process” (van Ostaijen & Scholten, 2017, p.478). The process of interaction through which interpretations social realities are established involves different discursive strategies that build a certain interpretation on the societal phenomenon, using medium such as the press, history, education, and political categorisation (Jørgensen & Phillips, 2002). In the traditional positivist understanding of public policy, governments are seen as *responding* to a societal problem that arises independently from the policy process. The problem occurs and policymakers devise a policy to *fix* the problem at hand. However, from a social constructivist perspective, policies respond to “what the problem is represented to be” (Bacchi, 2014, p.1), and to how a target group is being constructed (Schneider & Ingram, 1993). Hence, as opposed to seeing governments as responding to problems, Bacchi (20014) suggests considering governments as active in the creation of policy problems, or at least in how it is being represented. This illustrates well how important it is to study the particular way in which the EC is problematising refugees and asylum-seekers through language, terms, images and metaphors among other discursive strategies (Jørgensen & Phillips, 2002), as it helps uncovering how the policy problem is represented, and subsequently, what policies are deemed appropriate. Schneider and Ingram (1997, p.37-38) argue:

“the (positivist) approach to policy analysis should be replaced with studies of the meanings that different persons bring to the policy process, the arguments used to legitimate policies, and the hidden assumptions or implications of the policy. Policy

analysis should not assume that there is scientifically discoverable truth about the efficiency or effectiveness of public policies. Instead, there are simply arguments, legitimations, and rationales.”

In their seminal work, Schneider and Ingram (1993) theorised a *feedforward effect* (also called ‘feedback effect’) whereby the social construction of the target group feeds into and influences the policy design addressing the target group. Put differently, “policy design elements, including tools, rules, rationales, and delivery structures, differ according to the social construction and power of target groups.” (Ingram et al., 2007, p.104). In addition, the authors stipulate that social construction of target group is “part of the reelection calculus when public officials [...] anticipate the reaction of others to whether the target group should be the beneficiary (or loser) for a particular policy proposal”, meaning that policymakers actively build a discourse defining who the target group in order to fit the expectation of their electorate (Schneider & Ingram, 1993, p.335). This aligns Bacchi’s (2014) theory discussed previously that creating a problem representation through discourse is an intricate part of a governments’ policymaking process, rather than an element that is exogenous to policymaking.

Furthermore, Schneider and Ingram (1997) argue that elected leaders do not make policy choices on the basis of objective analysis and efficiency, but rather based on their needs to remain legitimate before their electorate. They argue that democratic government have a legitimacy crisis and need to legitimate why power and wealth are concentrated in the hands of the few rather than the many (Schneider & Ingram, 1997). According to this theory, policymakers must legitimise their policies by *logically* connecting ‘means to end’, meaning connecting policy tools with “how policies serve common rather than special interests (in spite of appearances)” (Schneider and Ingram, 1993, p.339). Through anticipation, policymakers can manipulate the social construction of target groups, as well as problem representation according to Bacchi (2014), in order to legitimate a certain policy design. As such, taken together, this thesis interprets the social construction of target groups along with the problem representation to form the *policy discourse*. The policy discourse is part of the policymaking process that enables policymakers to legitimate their *policy design*, constituted of *policy tools*. The policy tools refer “to the aspects of policy intended to motivate the target populations to comply with policy or to utilize policy opportunities” (Schneider & Ingram, 1993, p.338). Tools are usually aimed at capacitating the advantaged groups; hold the dependent group’s benefits conditional upon (often stigmatising) eligibility criteria; and “are expected to be more coercive and often involve sanctions, force, and even death” for groups constructed as deviant (Schneider & Ingram, 1993, p.339).

While in their several publications (Ingram et al., 2007; Schneider & Ingram, 1993; Schneider & Ingram, 1997) Schneider and Ingram delineate a process of legitimation, it is not always clear how they operationalise policy legitimation by policymaking institutions via their theory of social construction of target groups. In addition, while the theory anticipates a *feedforward effect* between the policy discourse and the policy design, it does not elaborate on how to empirically analyse and demonstrate how the policy discourse feeds into the policy design. The theory does not develop on how policy researcher should operationalise processes of legitimation in order to study how legitimation occurs and how it ties the policy discourse with the policy design. This brings us to the concept of discourse legitimation presented in the next section as a way to make the *feedforward effect* empirically observable.

1.2.2 Discursive legitimation

In discursive scholarship, Hajer defines discourse as “the ensemble of ideas, concepts and categorizations that are produced, reproduced and transformed in a particular set of practices and through which meaning is given to physical and social realities” (1997, p.44). What is important is that discursive analysis studies language, not as a linguistic task, but as producing dimensions of reality by being the substance that laws, policies, and institutions are made of (Jørgensen & Phillips, 2002; van Ostaijen, 2020). Central to this thesis is the constructivist argument that words and language are not just descriptive elements, but constitutive and performative elements of reality (Hajer, 1997; Jørgensen & Phillips, 2002; van Ostaijen, 2020). According to Hajer, “policy-discourse”, through their specific language and “storylines provide signpost for action within these institutional practices” (Hajer, 1997, p.264). This ties in well with Schneider and Ingram’s (1993) arguments on the feedforward effect of the social construction of target groups affecting the type of policy design devised to address the target group. The social construction of target groups is not simply a matter of *descriptive language*, but also of *performative discourse* signposting the appropriate and acceptable societal behaviour towards the group.

As such, discourse analysis enables us to study on one hand the policy discourse established by the ensemble of norms, concepts and categories of the EC when it comes to ‘irregular migration’, and on the other the policy design constituted of institutional actions and set of practices (van Ostaijen, 2020). Put differently, as an analytical approach, discursive analysis enables to study the feedforward effect between the policy discourse and the policy

design (Schneider & Ingram, 1993), or how ideas about them “go from thought to words to deed” (Schmidt, 2008, p.309). Considering the gravity of the human rights violations, including degrading and inhumane treatment in hotspots, or deaths due to illegal pushbacks as a result of the EC’s approach to managing irregular migrants (Tondo, 2021), attention should be paid as to how such controversial policies are being legitimised.

Legitimacy is considered essential to the viability and credibility of institutions (Vaara & Tienari, 2008), and that is especially the case in a democratic context where leaders are elected by citizens (Schneider & Ingram, 1997). According to van Ostaïjen, “legitimation is conceptualized as the creation of a sense of understandable, necessary or acceptable actions in a specific setting” (2020, p.5). Legitimation happens through discourse, and discursive legitimation is defined as “the discursive technique that justifies social activity and involves providing ‘*good reasons, grounds, or acceptable motivations for past or present action*’” (van Ostaïjen, 2020, p.5; italicised text van Dijk, 1997, cited in van Ostaïjen, 2020, p.5).

Drawing on Van Leeuwen’s unpublished manuscript “the grammar of legitimation”, Van Leeuwen and Wodak (1999) have developed a framework that allows to analyse discursive legitimation. In order to operationalise discursive legitimation, I rest on Van Leeuwen’s (2007) framework which includes four forms of discursive strategies, namely authorisation, rationalisation, moral evaluation and finally, mythopoesis. Authorisation is legitimation by reference to traditions, custom and laws in which institutional authority is vested (van Ostaïjen, 2017). Rationalisation is legitimation by reference to “utility of specific actions based on knowledge claims” (van Ostaïjen, 2017, p.41). Moral evaluation is legitimation by reference to “specific value systems that provide the moral basis for legitimation” (Vaara & Tienari, 2008, p.988). Lastly, mythopoesis is legitimation by reference to narratives that relate to an issue of the past or future (van Ostaïjen, 2017). Each category of legitimation strategies contain more specific forms of legitimation which is further described in the operationalisation table (Figure 3). In the next chapter on the methodology and research design, I present in more depth the conceptual model at the basis of this thesis.

CHAPTER 2. RESEARCH DESIGN AND METHODOLOGY

2.1 Research design

In this sub-chapter, I explain the empirical usage of the theory presented in the previous chapter in order to bring transparency regarding how data has been analysed. The sub-chapter begins by presenting the research design which includes the research questions, conceptual model and operationalisation. Next, I introduce the methodology, including the methods of data collection and analysis as well as the case selection. Finally, the chapter ends on outlining the ethical considerations as well as the theoretical expectations of the research thesis.

2.1.1 Research questions

The term ‘*irregular migration*’ is a highly politicised and contested one, employed to problematise the entry of migrants in a particular way and to advance certain policies (Jørgensen, 2012). The particular way in which the EC employs the notion of irregularity is the basis of this research thesis. In light of the controversial consequences of policies addressed at migrants entering the EU irregularly, this **thesis seeks to critically engage with the notion of irregularity and how it plays a role in the production and legitimation of the EC’s policy design on irregular migration.** To that end, I seek to answer the following questions:

How is the policy discourse on ‘irregular migrants’ used by the European Commission to legitimate their policy design on ‘irregular migration’ in the period of the refugee crisis 2015-2021?

This research question is then broken down into sub-questions that need to be answered in order to answer the main question:

- i. What is the policy discourse on irregular migration held by the European Commission?
This question looks into two elements, the policy problematisation and how migrants entering irregularly are being constructed as a target group by the EC.

ii. What is the policy design used to address irregular migration by the European Commission?

Looking specifically at the types of policy tools formulated to target irregular migrants.

iii. What discursive legitimation strategies are used by the European Commission to legitimate its policy design?

iv. How does the EC effect logic between the policy discourse and the policy design through discursive legitimation strategies?

Looking into the discursive legitimation strategies employed by the EC to establish the (non-)connection between the policy discourse and the policy design.

2.1.2 Conceptual model

Figure 2 below is a visual representation of the theoretical and conceptual scheme that constitute the backbone of this research thesis.

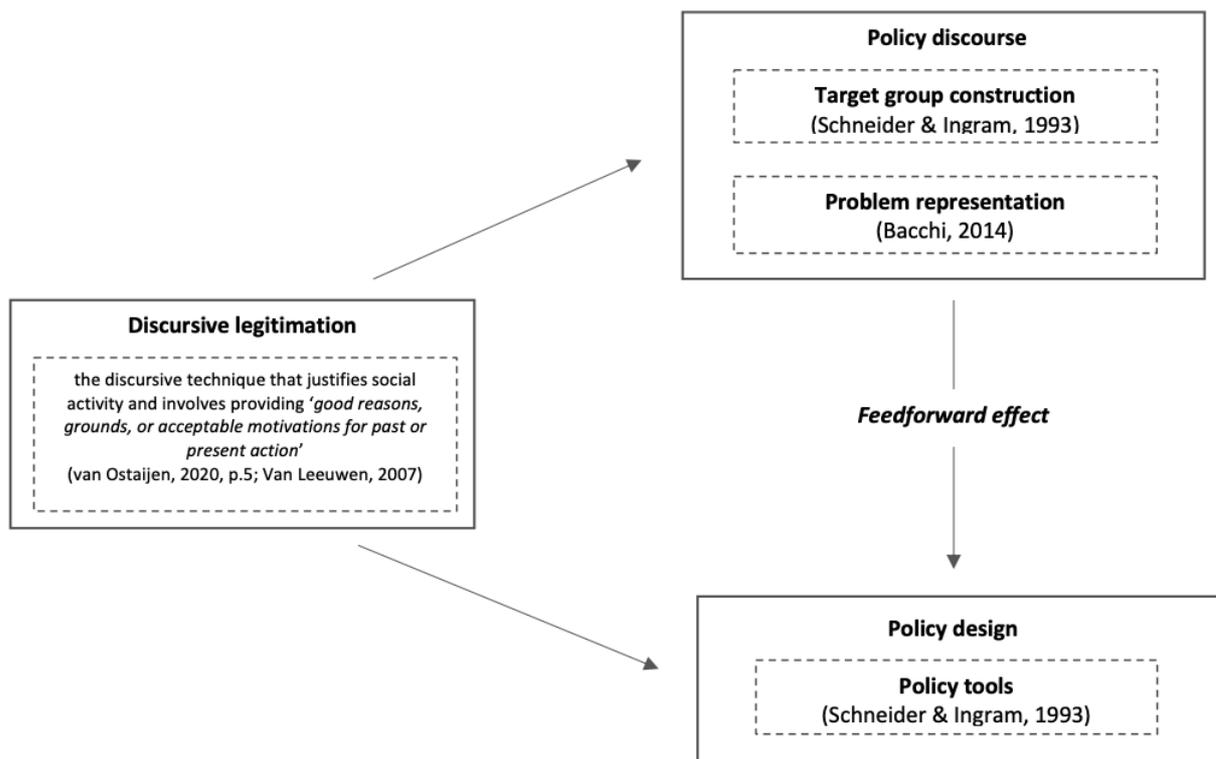


Figure 2 Conceptual visualisation (own design)

Schneider and Ingram's (1993) theory on policymaking is that social construction of target groups is a tool for policymakers to build and justify certain policy design choices (to

criminalise or to protect for instance). Put simply, the policy design depends on the policy discourse, represented on the visualisation by the arrow labelled *feedforward*. EC policymakers anticipate how to problematise migrants entering the EU irregularly as a target group through notions of irregularity (based on what they believe Member States expect ‘irregular migrants’ to be targeted as), constituting their policy discourse, and devise a policy design that is guided by and is legitimate within this socially accepted policy discourse. The two (policy discourse and policy design) are connected discursively through legitimation strategies that effect logic between the policy discourse and policy design. Looking into discursive legitimation as proposed by Van Leeuwen and Wodak (1999) enables us to empirically study how policies affecting refugees and asylum-seekers are made into rational and logical actions by the EC via the notion of irregularity. The next section details more concretely how each variable is operationalised into empirical indicators.

2.1.3 Operationalisation

According to Schneider and Ingram’s theory, “some elements of design (especially the policy tools and the policy rationales) will differ depending on the social construction and political power of the target population” (1993, p.338). As such, the independent variable is the EC’s policy discourse on ‘irregular migration’, and the dependent variable is the policy design on ‘irregular migration’. For the purpose of this study, the interaction of the social construction with power is omitted as migrant entering the EU irregularly have by definition weak political power in the EU (due to their non-status circumstances), and are thus either dependent or deviant target groups in Schneider and Ingram’s matrix (1993). Consequently, I chose to focus attention on the way migrants entering irregularly are problematised and constructed as a deserving or undeserving target group through the notion of ‘irregular migration’. Additionally, analysing the discursive legitimation makes empirically observable how policymakers relate the two variables by effecting a logical relationship.

Firstly, the policy discourse is operationalised as follows. Starting from the premise that ‘irregular migration’ is a notion that has been constructed by the EC as a specific type of problem, I conceptualise the policy discourse to be the social construction of irregular migrants as a target group (Schneider & Ingram, 1993), and the problem representation (Bacchi, 2014). To empirically analyse target group construction, I look into the general terms used to characterise migrants entering the EU irregularly as either deserving or undeserving. For

problem representation, I opted to look at the way in which the EC describes the root causes of ‘irregular migration’ based on the push and pull migration theory (Massey et al., 1999). Based on the push-pull theory, migration can either be forced upon people due to ‘push-factors’ such as war and persecution, or voluntarily pursued by people incentivised by ‘pull-factors’ such as better economic prosperity (Massey et al., 1999). Next, after studying the policy discourse on ‘irregular migration’, I look into the kind of policy tools that are implemented in the policy design. More concretely, policy tools are interpreted as being the regulation, directives and partnerships that the EC can enact as a supranational organisation, as these are the central institutional actions of the EC. Finally, in order to investigate how ‘idea go from thought to word to deed’ I look specifically at the type of discursive legitimisation strategies used by the EC in order to provide meaning to their actions, based on the policy discourse on ‘irregular migration’.

The following operationalisation of the variables are based on the theoretical framework.

Figure 3. Operationalisation Table

Themes	Sub-themes	Definition	Indicators
Policy discourse	<i>Problem representation</i>	The understanding of the problem of irregular migration implied by a policy	<ul style="list-style-type: none"> ▪ Defining problem as being linked to <i>push factors</i> forcing people into (irregular) migration ▪ Defining problem as being linked to <i>pull factors</i> incentivising people into (irregular) migration
	<i>Target group</i>	The general terms used to characterise irregular migrants as a target group.	<ul style="list-style-type: none"> ▪ Irregular migrant described positively as deserving ▪ Irregular migrants described negatively as underserving
Policy design	<i>Policy tools</i>	“Refer to the aspects of policy intended to motivate the target populations to comply with policy or to utilize policy opportunities” (Schneider and Ingram, 1993, p.338)	<ul style="list-style-type: none"> ▪ Regulations – binding legislative act that is applied across all Member States ▪ Directives – legislative act translated by Member States into national law ▪ Partnerships – collaborations with international actors
Discursive legitimisation	<i>Authorisation</i>	Legitimation by reference to authority, custom, law	<ul style="list-style-type: none"> ▪ Personal authorisation – legitimacy is vested in a person for their status in institution (‘because I say so’) ▪ Expert authorisation – legitimacy is provided by expertise

			<ul style="list-style-type: none"> ▪ Role model authorisation – legitimacy is vested in opinion leaders (endorsement) ▪ Impersonal authorisation – legitimacy is vested in laws, principles and institutions ('because the law or the court says so') ▪ Authority of conformity – legitimacy vested in trends ('because others are doing it') ▪ Authority of traditions – legitimacy is vested in traditions ('because that's the way we do things')
	<i>Rationalisation</i>	Legitimation by reference to goals and uses of institutional action, numbers and evidence	<ul style="list-style-type: none"> ▪ Instrumental rationalisation – legitimacy vested in the purpose of the action. The purpose is moralised. ▪ Theoretical rationalisation – legitimacy vested in how appropriate a tool is based on the nature of the subject
	<i>Moral legitimisation</i>	Legitimation by reference to a moral basis in relation to the rationalisation	<ul style="list-style-type: none"> ▪ Analogies – legitimacy provided by comparison to similar activity ▪ Abstraction – legitimacy provided by moralising practices in abstract terms ('migrating for better life', instead of 'migrating to reach a destination') ▪ Evaluation – legitimacy by normalising action
	<i>Mythopoesis</i>	Legitimation made through narratives and storytelling relating to the past or the future	<ul style="list-style-type: none"> ▪ Moral tale – moralising storytelling, leading to happy endings ▪ Cautionary tales - moralising storytelling, leading to unhappy endings

Figure 3 Operationalisation table

2.2 Methodology

2.2.1 Data collection and analysis

This qualitative study is interested in critically engaging with the notion of irregular migration by examining interpretations of problem definition and how this translates into policy that burdens refugees and asylum-seekers entering the EU irregularly. Having a backdrop in the theoretical framework of Schneider and Ingram (1993), Bacchi (2014) and Van Leeuwen (2007), this thesis is built as an abductive research design that allows the researcher to adapt the theoretical framework during the research process in order to be guided to some extent by the data (Bryman, 2016).

In terms of data collection, the corpus of texts was selected from the European Agenda on Migration e-Library catalogued on their website (www.ec.europa.eu/home-affairs/e-library_en) and on the EC Press Corner which allows for filter searches by periods, key words and topics (<https://ec.europa.eu/commission/presscorner/home/en>). This second data base contains speeches by EC professionals and official EC press releases. Concerning sampling, this thesis employed *a priori purposive sampling* (Bryman, 2016, p.418), based on the following criteria: documents can be text or video, from the period indicated in the question, be official documents from the EC and address irregular migration directly. I selected documents based on the following key terms: ‘irregular migration’, ‘asylum’, and ‘refugee’. In Addition, I selected documents containing a combination of the key word of ‘migration’ with ‘border security’, ‘European way of life’, and the ‘Schengen space’, in order to select texts that went beyond irregular migration to reflect on what the EU represents. This resulted in a total of 234 documents, ranging from policy documents, EC decisions, staff working papers, press releases, speeches, reports and studies. Out of these documents 18 were sampled for in-depth discourse analysis. Key documents were purposefully selected due to their centrality in defining the periods, such as the 2020 Migration Plan announcing the EC’s vision to respond to the continuing 2015 refugee crisis. Due to the size of some of these documents, the 18 documents resulted in a large data base.

In terms of analysis, data was analysed through a discourse analysis. After operationalising the variables in the main research question, I developed a codebook through which EC documents were studied. The content of each documents was analysed and coded using the qualitative analysis software Atlas.ti. Following the abductive design of the research, the codes were refined, modified or new codes were added as the I found new themes to analyse emerging from the data set. This enabled me not to be strictly limited to the theory, but to also expand the research based on empirical data.

2.2.2 Case selection

As the executive branch of the EU, the EC has the ability to propose legislation on migration and asylum, and to follow up with the implementation of policies on the matter. In 1997, the Treaty of Amsterdam made the Schengen acquis into EU law, allowing EU legislators and policymakers to harmonise migration and asylum policies across EU Member States through the Common European Asylum System (CEAS). As such, while less often scrutinised in

migration studies as a policymaking institution than national governments, the role of the EC is central in shaping the lives of migrants entering the EU irregularly, and thus an inevitable case study for this analysis. Therefore, the policy design analysed in this thesis is the CEAS. Adam Luedtke, describes the EU policymaking process on migration and asylum as “tectonic progress” as advancements mainly occurred under pressure at times of crisis (2018, p.22). I opted to delimit this thesis to the period of the refugee crisis 2015-2021 as the Syrian conflict led to a sharp rise in migrants entering Europe by irregular means (Luedtke, 2018). The refugee crisis marks a critical juncture in the development of the EC’s policy discourse and design on irregular migration, making the period an interesting case to study in order to look at the role of the policy discourse on irregular migration on policy design and legitimation.

2.2.3 Expectations of the study

Based on the theoretical framework, I hypothesise that by studying the EC’s policy discourse and policy design on migration and asylum, as well as by identifying the discursive legitimation strategies employed the EC, it is possible to analyse and empirically observe the feedforward effect theorised by Schneider and Ingram (1993). I expect that looking a discursive legitimation, certain (non-)connections can be empirically observable between the discourse and the design, thus filling a gap in the theory on the social construction of target groups.

2.2.4 Ethical considerations

Every piece of research should be designed and undertaken with respect to integrity, quality and transparency (Bryman, 2016, p.144). As this research seeks to study the performative aspect of text and language it has an ethical responsibility to be transparent on how the data has been analysed. Part of being transparent comes with underlying one's intentions, assumptions and objectives behind a research project. Particularly because this thesis adopts a social constructivist approach, my position as a researcher is central to the production of knowledge. As such, I reflected on my role and position to discuss the topic of irregular migration in order to recognise that knowledge is subjective and dependent on one’s assumptions about the subject at hand. This includes a reflection on my current position as a Student in Migration Studies, as a second-generation migrant in my country of nationality, as well as my experience working in Samos working with asylum-seekers.

CHAPTER 3. RESULTS: REFUGEES THROUGH THE NOTION OF IRREGULARITY

In chapter 3, I present the empirical results of the desk research, addressing the first three sub-questions of the thesis: (1) what is the policy discourse on ‘irregular migration’ held by the EC, (2) what policy design is used to address ‘irregular migration’, and (3) what discursive legitimisation strategies are used by the EC to legitimate the policy design of the CEAS. In the first sub-chapter, the policy context is presented in light of the two policy discourses which have been identified as a result of desk research, namely the humanitarian and securitisation discourses. In the next sub-chapter, I present empirical evidences for the existence of two discourses. Finally, last sub-chapter describes the EC’s policy design of the CEAS and the discursive legitimisation strategies for each policy tools.

3.1 Identifying the policy context

To understand the way in which the EC legitimates its policy design on the CEAS through a policy discourse, it is important to first look into how it represents the context of policymaking and unpack what the EC labels Europe’s ‘refugee crisis’. The expression ‘refugee crisis’ is employed by the EC to encapsulate the events which led in 2015 to over 900.000 people entering the EU in a way that is politically and legally labelled by the EC as being ‘irregular’. As mentioned previously, the EC defines ‘irregular migration’ as being the “movement of persons to a new place of residence or transit that takes place outside the regulatory norms of the sending, transit and receiving countries.” (European Commission, 2016). The definition shows that the EC defines ‘irregular migration’ referring mainly to the ‘movement of people to a new place’, or put differently, to the act of crossing or entering EU borders ‘outside the regulatory norms’ established by the EU. Defining ‘irregular migration’ as such shows that the EC is particularly concerned with ‘irregular entries’ in its CEAS. As such, prompting major advancements of the CEAS, the so-called ‘refugee crisis’ was mainly a preoccupation for the EU in term of ‘irregular entries’. Therefore, this research focuses on a specific target group of the CEAS: *‘migrants entering the EU irregularly’*.

The way in which the EC describes its concerns with ‘irregular entries’ is set around two central priorities for its CEAS, as described by the following statement from a working paper on ‘the management of unauthorised entry’:

“The priority afforded to reducing irregular migration stems from **two essential needs**. First, the need to **tackle human rights abuse and violence**, which those who migrate irregularly, in particular by sea, are often subject to. Migrants in an irregular situation are also more vulnerable to labour and other forms of exploitation. Secondly, there is a need **to protect the Member States’ territorial integrity**, social cohesion and welfare through well-managed migration flows.” (European Commission, 2017a, p.5, own emphasis)

Throughout EC documents on migration and asylum, it is evident that the EC makes a distinction between ‘the need to tackle human rights abuse’ and ‘to protect the Member States’ territorial integrity’. In other documents, the EC expresses its priorities in a different manner by stating the EU needs to “strike a new balance between **responsibility and solidarity**” (European Commission, 2020a, p.1, own emphasis). Acting ‘responsibly’ is described as ensuring that “the Union fulfils its humanitarian obligations” and is generally mirrored with moral duties towards asylum protection. While acting ‘in solidarity’ entails mainly that “each Member State, without any exception, must contribute in solidarity in times of stress, to help stabilize the overall system, support Member States under pressure” (European Commission, 2020a, p.1). ‘Solidarity’ reflects the needs for ‘territorial integrity’ mentioned previously, and ‘responsibility’ resonates with the need to ‘tackle human rights abuse’.

The first priority refers to the fact that, in 2015, 900.000 people resorted to the smuggling rings in order to reach EU borders, and smuggling is an act considered ‘criminal’ by the EC (European Commission, 2015a). That year, the EC recorded a total of 5.079 people who died crossing the Mediterranean Sea to reach EU borders, a record qualified as ‘tragic’ by the EC (European Commission, 2017, p.4). On the outset of the ‘refugee crisis’, former EC president Jean-Claude Juncker reminded Member States that the EU has legal obligations, and thus a *responsibility*, regarding refugee and asylum rights, having incorporated the Geneva Convention Relating to the Status of Refugees (‘the Geneva Convention’) into the CEAS and EU law. He reminded that “the 1951 Geneva Convention on the status of refugees – was established to grant refuge to those who jumped the walls in Europe to escape from war and totalitarian oppression” (European Commission, 2015d, p.2). As such, the advancement of the CEAS is largely based on the EU’s historical implications with the humanitarian protection of refugees and asylum-seekers.

The second priority refers the EC's goal to 'protect the EU's external borders' and 'safeguard Schengen'. One cannot ignore the importance that internal EU free movement plays in steering the direction of EC policymaking on migration and asylum. At the end of 2015, former president Juncker stated "progress has been made [...] on the management of the refugee crisis, in particular in the protection of the EU's external borders [...] and commitments to safeguard Schengen", showing how the management of the 'refugee crisis' is linked to the territorial integrity of the Schengen space in practice (European Commission, 2015b). The CEAS itself was set up as a result of the removal of internal borders within the EU as it establishes common policy tools that consolidated the 'migration management system' of the EU as a single territorial entity. The policy design included tools on reception and admission of third-country nationals entering 'outside the regulatory norms of the EU', tools on returns and relocation, tools on border management as well as tools on the EU's external strategy to 'manage migration'. As such, the CEAS not only embodies humanitarian duties, but also duties towards the securitisation of the Schengen space.

In this thesis, these EC 'priorities' are interpreted as being two distinctive policy discourses shaping the EC's language and policymaking on migration and asylum. These discourses are termed as *humanitarian* and *securitisation* discourses — the first one being constructed around 'the need to tackle human rights abuse', and the second around 'the need to protect the Member States' territorial integrity'. Elaborating on the nature of the two discourses requires to look into problem representation and the target group construction which constitute the EC's policy discourses. In the next sub-chapter, I present further empirical evidence for the existence of the two discourses by describing the EC's policy discourses on the 'refugee crisis'.

3.2 The policy discourses

3.2.1 *Humanitarian discourse*

In this section, I present how through the notion of irregularity migrants entering the EU irregularly are targeted by the EC through a humanitarian discourse representing the target group as *subjected to irregularity*. Regarding problem representation, the EC presents a humanitarian discourse by humanising the problem situation employing several discursive techniques. Firstly, this is done by referring to human beings when describing the situation at the EU's external border:

“Over 70 million **people, men, women and children** are estimated to have been **forcibly displaced** worldwide, with almost 30 million **refugees** and **asylum seekers**” (European Commission, 2020, p.19, own emphasis)

In this problem representation, the EC refers to the target group explicitly as human beings, detailing that the problem involves ‘people, men, women and children’, as well as by depicting migrants in numbers. Secondly, the EC refers to the migrant’s countries of origins at several occasions, further illustrating that the EC humanises the problem by providing background information:

“Since the beginning of the year, nearly **500,000 people** have made their way to Europe. The vast majority of them are **fleeing** from **war** in **Syria**, the **terror** of the Islamic State in **Libya** or **dictatorship** in **Eritrea**.” (European Commission, 2015d, own emphasis)

Thirdly, the EC employs several terms that are derivations of the word *human*, such as “a matter of humanity” (European Commission, 2015d), “a humane approach” (European Commission, 2020d), “a humanitarian challenge” (European Commission, 2015a, p.7). Fourthly, in combination to humanising the problem by referencing human beings, the EC employs a vocabulary and lexical field that suggest a sense of urgency and suffering, such as “refugee **crisis**”(European Commission, 2015b, own emphasis), “human **tragedy** in the whole of the Mediterranean” (European Commission, 2015a, p.3, own emphasis), “halt the human **misery**”(European Commission, 2015a, p.2, own emphasis) and “the **plight** of thousands of migrants putting their lives in **peril** to cross the Mediterranean” (European Commission, 2015a, p.2).

Furthermore, the EC places emphasis on push-factors, referring to ‘forcibly displaced’ people as shown by the first quote of the section. Migration theories often differentiate between voluntary and forced migration, and in the latter case, migration is generally explained through push-factors that relate to drivers in sending countries which forces people into migration – such as war and conflict (Massey et al., 1999). The following quotes are examples of the way in which the EC describes push-factors:

“Civil war, persecution, poverty, and climate change all **feed directly** and immediately into migration.” (European Commission, 2015a, p.7, own emphasis)

“The reasons behind this increase in the flows of **asylum seekers** and **irregular migrants** include wars and geo-political instability in either EU neighbouring countries such as Syria and Libya or farther away, in Afghanistan and Iraq, as well as poverty, lack of socio-economic development and global inequalities.” (European Commission, 2017, p.4, own emphasis)

“Over 70 million **people, men, women and children** are estimated to have been **forcibly displaced** worldwide, with almost 30 million **refugees** and **asylum seekers**” (European Commission, 2020, p.19, own emphasis)

The target group, labelled in this discourse as ‘refugees’, are not directly blamed for entering the EU by irregular means, unlike “those who do not need protection” who the EC holds responsible for their irregular migratory choices (European Commission, 2015a, p.6). ‘Refugees’ are discursively set apart, depicted as the *deserving migrants* against those the EC constructs as *undeserving*. This distinction becomes more empirically evident in the next section which discusses the EC’s policy discourse along a securitisation discourse. As mentioned previously, the EC employs nouns such as ‘plight’, ‘tragedy’, ‘misery’ that *affect* migrants. The focus is placed on push-factors that *push* them into migration, indicating a degree of passivity and victimhood, rather than migration being a decision made *by* them. This construction of ‘refugees’ as passive further collates with the way in which the EC depicts them as ‘preys’ to people smugglers. In that context, the EC employs nouns in the passive voice that connote passivity, such as “exploited”, “manipulated”, “coerced” or “convinced by false promises” (European Commission, 2017b). As such, it is argued that ‘refugees’ are depicted as *subjected to irregularity* in the humanitarian discourse, as shown by this quote from High Commissioner for Migration and Asylum Ylva Johansson when addressing the situation on the Greek Aegean Islands:

“We have a very worrying situation. **False promises** and **manipulation have brought** people to the Greek borders and a lot of these people that were in a difficult situation already and now they are being a bit **trapped** by the situation. I think the most important thing now is that we should focus on that.” (European Commission, 2020c)

This statement is an example of how the target group is constructed as *subjected to irregularity* in the humanitarian discourse. Along this humanitarian discourse, migrants entering irregularly are labelled ‘refugees’, ‘asylum-seekers’ more than ‘irregular migrants’, as well as ‘displaced persons in need of protection’, and ‘people seeking international protection’. Using more abstract depictions, the EC also employs more connotative terms rather than using political and legal categorisations: “hungry and weary souls”, “poor and helpless people” (European Commission, 2015d) or “the most vulnerable people” (European Commission, 2015a, p.4).

The theory developed by Schneider and Ingram (1993) pays much more attention on who is being targeted by policies than on who is *targeting* through policymaking. When analysing documents by the EC, it became apparent that while referring to a humanitarian discourse and constructing refugees as passive victims, the EC conjointly uses the policy

discourse to construct itself as a *targeter*. This indicates that the social construction of target group is relational and linked to how the targeter seeks to construct itself. The following statement is an example of the way in which the EC constructs themselves as a targeter through the target group construction:

“It is Europe today that represents a **beacon of hope**, a **haven of stability** in the eyes of women and men in the Middle East and in Africa. That is something to be **proud** of and not something to fear” (European Commission, 2015c, own emphasis)

Within the humanitarian narrative, the EC presents itself as a targeter with *moral aspirations*. Not only does the EC use a positive construction of the target group to support its policymaking, but it also uses its own construction as a targeter. This is done by reference to the EC’s duty and imperative to assist those that they have constructed as being in need:

“The EU has a duty to contribute its share in helping displaced persons in clear need of international protection.” (European Commission, 2015a, p.4)

“The immediate imperative is the duty to protect those in need.” (European Commission, 2015a, p.2)

“We have the means to help those fleeing from war, terror and oppression.” (European Commission, 2015c)

3.2.2 *Securitisation discourse*

In this section, I present how through the notion of irregularity migrants entering the EU irregularly are targeted by the EC through a securitisation policy discourse that represents the target group as *performing irregularity*. Regarding problem representation, the securitisation discourse uses terms that largely connote a logistical and technical problem, where the problem is not about a “human tragedy” (European Commission, 2015a, p.3) as it was the case in the humanitarian discourse. This is shown in the following quote:

“Since the refugee crisis of 2015-2016, the challenges have changed. [...] Ad hoc responses cannot provide a sustainable answer and **major structural weaknesses** remain, both in **design and implementation**. **Inconsistencies** between national asylum and return **systems**, as well as **shortcomings in implementation**, have exposed **inefficiencies** and raised concerns about fairness. And at the same time, the proper **functioning** of migration and asylum policy inside the EU also needs reinforced cooperation on migration with partners outside the EU.” (European Commission, 2020, p.3, own emphasis)

Paying particular attention to the types of words employed to qualify the situation with migrants at the EU’s external border, such as a ‘major structural weaknesses’ within the

‘system’, or ‘shortcomings in the implementation’, the EC shifts away from representing a problem involving human beings or human rights. Instead, problem representation is stripped of any human references and largely becomes a logistical and technical problem, a problem that has to do with the functioning of the migration and asylum policy. In a more explicit manner, the EC also directly integrates migration as being a problem of securitisation: “migration will become a specific component of ongoing Common Security and Defence Policy (CSDP) missions” (European Commission, 2015a, p.5).

Furthermore, the EC no longer insists on push-factors as drivers of the problem as it does along its humanitarian discourse, and refers to pull-factors more at length along its securitisation discourse. An example of how the EC refers to pull-factors in order to problematise migration by irregular means can be found in the 2020 New Pact for migration and asylum:

“Finding employment in the EU without the required legal status is **one of the drivers** for smuggling to the EU.” (European Commission, 2020, p.16)

Other examples can be found in a study conducted by the EC investigating the decision-making process of West-African migrants before engaging in migration by irregular means:

“Respondents [West-African migrants] know **migration is illegal** but did not mention any EU regulations and rules on immigration. This speaks to a trend running throughout the data that respondents base a large part of **their migration decision-making** on where they think they will find work. Respondents [...] are **motivated by the same broad pull factor** – jobs.” (European Commission, 2017b, p.18)

The use of pull-factors enables the EC to depict migrants as active agents in their (irregular) migratory decisions. Indeed, migration through irregular means, labelled as ‘illegal’ in the quote above, is seen as being an active decision motivated by an incentivising pull-factor, namely the search for employment. More precisely, it is the use of the active voice that indicates that the EC suggests an active decisions: “respondents know”, “they think”, “their migration decision-making” (European Commission, 2017b, p.18). While in the humanitarian discourse ‘irregular migration’ is seen as being ‘forced’ upon migrants, in the securitisation discourse, ‘irregularity’ is seen as a an active or even as a voluntary decision taken by migrants. Furthermore, depicting active decision-making by employing active verbs and the active voice suggests that migrants are *performing* irregularity, as shown in the sentence “if a **person eludes border controls**” (European Commission, 2020, p.4, own emphasis) or “unsuccessful asylum claimants **who try to avoid return**” (European Commission, 2015a, p.7, own emphasis).

Regarding terms used to refer to the target group within the securitisation discourse, the EC employs less terms that refer to migrants as human being, such as references to ‘men, women and children’ employed along the humanitarian discourse. Instead, migrants are termed through existing political and legal terms, such as “third-country nationals who cross the external border without authorisation”, “those whose claims have been rejected in the asylum border procedure” and “asylum applicants from countries with a low recognition rate” (European Commission, 2020, p.4). These terms above all define migrants entering the EU irregularly as people having breached the law and being in a position of ‘illegality’. By constructing them as performing irregularity, the EC depicts them as *underserving*, and their (un)deservingness is often juxtaposed with those the EC labels as deserving:

“The EU must continue to offer protection to those in need. [...] But by the same token, the EU needs to draw the consequences when migrants do not meet the criteria to stay.” (European Commission, 2015a, p.17)

Finally, congruent with problem representation, the EC constructs itself as a targeter as an institution with *territorial aspirations*. The function of the EC and its main role is defined less in terms of humanist principles, but rather defined in relation to the security of the Schengen space. The EC presents its function as protector of internal free movement, an element that is considered a “a unique symbol of European integration” (European Commission, 2015d). The protection of the Schengen space is described as “a major achievement” of the EC (European Commission, 2015b), meaning that the role of the EC as a targeter is along the lines of securitising the Schengen area against migration as a security threat:

“Policy imperatives such as free movement in the Schengen area, **safeguarding** fundamental rights, **ensuring security**, and filling skills gaps, all call for an **effective migration policy**.” (European Commission, 2020a, p.1)

“A united refugee and asylum policy also **requires stronger joint efforts to secure** our external borders. Fortunately, we have given up border controls between the Member States of the **Schengen area**, to guarantee free movement of people, a **unique symbol of European integration**.” (European Commission, 2015d)

“**Integrated border management** is an **indispensable** policy instrument for the EU **to protect** the EU external borders and **safeguard** the integrity and functioning of a **Schengen area** without internal border controls.” (European Commission, 2020a, p.11)

3.3 The discursive legitimation of the policy design

In this sub-chapter, I present the policy tools (regulations, directives, policies, legislations, and partnerships) that make up the CEAS as a policy design, as well as the discursive legitimation strategies employed to legitimate each tool. The EC has made several policy tools in its CEAS that can be categorised across four main areas, namely reception and admission, return, border management, and development.

3.3.1 *Reception and admission*

The rules on reception and admission are governed by four central directives and regulations, namely the Qualification Directive, the Asylum Procedures Directive, the Reception Conditions Directive, and the Asylum and Migration Management Regulation (meant to replace the Dublin Regulation). Respectively, these policy tools are devised to define the eligibility requirements for international protection; to harmonise the processing of asylum applications; to determine reception standards in which asylum applicants live in whilst their application is being processed; and finally, to establish a ‘solidarity mechanism’ between EU Member States.

The Qualification Directive along with the Asylum Procedures Directive are designed to “**separate better those who are in clear need of international protection** and are therefore very likely to apply for asylum successfully; and **those who are leaving their country for other reasons which do not fall under the right of asylum**” (European Commission, 2015d, own emphasis). To that end, the EC devised policy tools that enable a ‘swift’ *fast-tracking* procedure, such as by developing the Safe Country of Origin Provision within the Asylum Procedures Directive. The Provision allows for the filtering out of “asylum claims with low chances of being accepted” which can “be examined rapidly without requiring legal entry to the Member State’s territory” (European Commission, 2020a, p.4). The EC discursively legitimates this fast-tracking procedure by *theoretical rationalisation* where legitimation is grounded not in whether the action is effective or has moral virtues, but because “**doing things in this way is the appropriate to the nature of these actors**” (Van Leeuwen, 2007, p.104). In this tool, the EC depicts the target group as ‘misleading the authorities’ with false claims of protection:

“This [fast-tracking] would apply to claims presented by **applicants misleading the authorities, originating from countries with low recognition rates** likely not to be in need of protection, or posing a **threat** to national security” (European Commission, 2020b, p.4).

Another tool introduced in 2015 by the EC to ‘separate’ migrants is the ‘Hotspot approach’ where the EC emphasises on the ‘collaboration’ between Member State institutions and several EC Agencies:

“The Commission will set up a new ‘Hotspot’ approach, where the European Asylum Support Office, Frontex and Europol **will work** on the ground **with** frontline Member States to **swiftly identify, register and fingerprint** incoming **migrants**. The work of the agencies will be **complementary** to one another. Those claiming asylum will be **immediately** channelled into an asylum procedure where EASO support teams **will help** to process asylum cases **as quickly as possible**. For those not in need of protection, Frontex **will help** Member States by **coordinating** the **return of irregular migrants**. (European Commission, 2015a, p.6, own emphasis)

The quote above illustrates the EC’s emphasis on ‘working with’ and ‘helping’ frontline Member States with *operational assistance*, in a manner that is ‘swift’ ‘immediate’, ‘complementary’, ‘coordinated’ and ‘as quick as possible’. These ‘hotspots’ are situated mainly on Greek and Italian islands. Because of the Dublin Regulation, the ‘refugee crisis’ is mainly ‘managed’ by Member States that have a common EU external border (such as Greece, Italy and Spain). Building on the limitations of the Dublin Regulation, the EC is proposing to replace the Regulation with a new common framework for asylum and migration management, focusing on a relocation system. The EC focuses on a relocation system “ensuring that all contribute through solidarity so that the real needs created by the irregular arrivals of migrants and asylum seekers are not handled by individual Member States alone, but by the EU as a whole” (European Commission, 2020b, p.5). The relocation mechanism is legitimated by *impersonal authorisation* as it makes reference to laws and precedence established by the European Court of Justice: “Solidarity implies that all Member States should contribute, as clarified by the European Court of Justice” (European Commission, 2015a, p.5). Similarly, the EC discursively legitimates its relocation policy tools by *impersonal authorisation* by referring to “the **principles of solidarity and shared responsibility**.” (European Commission, 2015a, p.2, own emphasis). It signals that legitimacy of the policy tools invoking solidarity is vested in the authority of the laws and principles that the EU considers ‘fundamental’ or ‘unquestionable’.

3.3.2 Returns

Based on the 2015 Agenda and the 2020 New Pact on Migration, the tools on returns are mainly established by the Return Directive and by the Resettlement and Humanitarian Admission Framework Regulation. The general goal behind these tools according to the EC's Strategy on returns is "to provide **effective** and **humane** processes to return people **who are not entitled to stay**" (European Commission, 2021, p.1, own emphasis). The return procedure is the follow-up of the asylum procedure for migrants who were not granted asylum protection by a Member State. In the policy tools on returns, migrants are defined in contrast to migrants who are granted asylum using negative sentences: people 'who do *not* have the right to stay', 'who do *not* need protection', or 'who are *not* entitled to stay'. Similar to the tools on reception and admission, the EC employs *theoretical rationalisation* in order to discursively legitimate its policy tools on returns, by referencing to the nature of the target group.

Moreover, the EC's strategy on returns is considered to be a central element in 'reducing irregular migration' altogether as explained in the following quote from the 2015 Agenda:

"One of the **incentives for irregular migrants** is the knowledge that the EU's return system – meant to return irregular migrants or those whose asylum applications are refused – **works imperfectly**. Smuggling networks often play on the fact that relatively **few return decisions are enforced** – only 39.2% of return decisions issued in 2013 were effectively enforced". (European Commission, 2015a, p.9, own emphasis)

It shows policy tools on returns are part of a deterrence agenda focusing on removing pull-factors. The 'refugee crisis' led to several amendments of the Return Directive to establish a common EU approach, based on the EC's argument that "work on return is often hampered by scarce financial and human resources in Member States" (European Commission, 2020b, p.8). To that end, the EC appointed a Return Director supported by 'a new High Level Network for Return' to oversee returns from the supranational level. Additionally, the EC appointed Frontex as the "operational arm of EU return policy" (European Commission, 2020b, p.8). Another tool developed by the EC is the strategy on *assisted voluntary return* and *readmission* adopted recently in April 2021. This tool promotes the scheme of voluntary returns not as deterrence but rather as part of development aid, through a policy on reintegration to "help overcome the socio-economic and psychosocial difficulties migrants face when returning to their community and make their return more sustainable" (European Commission, 2021, p.2). The EC

discursively legitimates its policy tools on returns through *instrumental rationalisation* as it makes reference to a moralised purposes:

“The EU needs to draw the consequences when migrants do not meet the criteria to stay. Unsuccessful asylum claimants who try to avoid return, visa overstayers, and migrants living in a permanent state of irregularity constitute a serious problem. This **corrodes confidence in the system. It offers strong arguments for those looking to criticise or stigmatise migration. It makes it harder to integrate those migrants staying in the EU as of right.**” (European Commission, 2015a)

The moral concept is embedded in the *result* of the action of non-return, which is that non-returns hinder the integration and rights of migrants who have been granted asylum and therefore ‘have the right to stay’.

3.3.3 *Border management*

Regarding border management, a central policy tool is Regulation 2019/1896 which governs the EC Agency Frontex, recently upgraded to the role of *European Border and Coast Guard Agency*. The Agency deals directly with the entry of migrants by irregular means. Frontex is a multi-mandate agency charged simultaneously with ‘search and rescues’ and ‘securitising’ the external borders of the EU. The two roles of Frontex are regularly juxtaposed in EC documents. In the 2015 Agenda on Migration, the first two tools for immediate action involve Frontex under the objectives of “saving lives at sea” and “targeting criminal smuggling networks” (European Commission, 2015a, p.3). Under the first objective, the EC begins by stating “Europe cannot stand whilst lives are being lost” (European Commission, 2015a, p.3). It subsequently proposes to increase the budget planned for the Agency that year by €401.3 million, which includes budget for an additional 60 staff as well as an expansion of Frontex’s abilities (European Commission, 2015e). The objective of this budget increase is to “expand both the capability and the geographical scope of these operations, so that Frontex can fulfil its **dual role** of coordinating operational border support to Member States under pressure, and helping to save the lives of migrants at sea” (European Commission, 2015a, p.3).

The EC discursively legitimates the search and rescue operations of Frontex via *impersonal authorisation*, grounding legitimacy into the law, rules and regulations. The EC cites the law directly, or indirectly by referring to the cognate adjective or adverb (such as ‘mandatory’, compulsory’ etc.):

“Assisting those in distress at sea is a **moral duty** and an **obligation** under **international law**. While national authorities remain ultimately **responsible** for

implementing the relevant **rules** under **international law**, search and rescue is also a key element of the European integrated border management, implemented as a **shared responsibility** by Frontex and national authorities, making the boosting of Frontex's access to naval and aerial capacity essential." (European Commission, 2020, p.13, own emphasis)

Tracing back the origin of why the EC legitimates 'saving lives at sea' through notions of moral duty and law, former President Juncker (president at the start of the refugee crisis), used *mythopoesis* to legitimise policy tools aiming at 'saving refugees':

"We Europeans should remember well that Europe is a continent where nearly everyone has at one time been a refugee. Our common history is marked by millions of Europeans fleeing from religious or political persecution, from war, dictatorship, or oppression." (European Commission, 2015d)

The very idea of protecting migrants entering irregularly is legitimated by using 'history', presenting the support to the target group as "a matter of historical fairness" (European Commission, 2015d). References to the history of Europeans as *former refugees* legitimates that the EU has a 'duty to protect those in need'.

Nevertheless, the policy tool governing Frontex are not solely aiming at search and rescue. Indeed, the Regulation also mandates Frontex to securitise external borders, including though 'targeting criminal smuggling networks'. The 2015 Agenda presents the tool as followed:

"The **criminal** networks which **exploit vulnerable** migrants **must** be targeted. The High Representative/Vice President (HR/VP) has already presented options for possible **Common Security and Defence Policy (CSDP)** operations to systematically **identify, capture** and **destroy vessels** used by smugglers. Such action under international law will be a **powerful demonstration of the EU's determination to act.**" (European Commission, 2015a, p.3)

Frontex is thus incorporating the Common Security and Defence Policy, indicating that the policy tool has indeed a central securitisation element in addition to the protection component. The goals of the policy tool is 'to systematically identify, capture and destroy vessels used by smugglers'. The verbs employed by the EC connote a certain degree of force ('capture' and 'destroy') reflecting the military duties of Frontex. Additionally, there is the EC Directive 2002/90/EC – the Facilitation Directive – which obliges Members States to penalise anyone who facilitates the 'unauthorised entry of migrants', "while avoiding risks of criminalisation of those who provide humanitarian assistance to migrants in distress" (European Commission, 2017a, p.2).

When it comes to Frontex's securitisation mandate and the Facilitation Directive, it is not clear whether they are tools for the protection of migrants against smugglers or for deterring

migration in the first place. On one hand, the EC recalls that “the Facilitators Package does not focus on the migrants but on those who facilitate their irregular entry, transit or residence” (European Commission, 2017a, p.30) and that “action to fight criminal networks of smugglers and traffickers is first and foremost a way to prevent the exploitation of migrants by criminal networks.” (European Commission, 2015a, p.8). On the other hand, the EC explains “the general objective of the Facilitators Package is to reduce irregular migration by countering the facilitation thereof to the EU”, showing that the second objective is indeed one of deterrence by curbing the supply side of ‘irregular migration’ (European Commission, 2017a, p.27).

The EC discursively legitimates Frontex’s securitisation mandate and the Facilitation Directive using *impersonal authorisation* in the EC’s working document on the framework on ‘unauthorised entries’:

“As set out in Art. 6 of the Framework Decision, the Facilitators Package applies **without prejudice to the protection of the rights of refugees and asylum seekers in accordance with international law**, in particular in relation to Art. 31 (on the non-penalisation of their unlawful entry or presence) and 33 (on non-refoulement) of the Geneva Convention relating to the status of refugees. Apart from Art. 6, it does not contain other specific provisions about human rights protection of smuggled migrants.” (European Commission, 2017a, p.10, own emphasis)

Here, legitimation is based on specific articles of the Geneva Convention.

3.3.4 Development

The last area explored in this thesis relates to the EC’s development area, or the policy tools that the EC is implementing externally. The EC developed several partnerships including with the African Union, “to develop a common approach with the region addressing the causes of irregular migration and the protection of people in need, as well as smuggling and trafficking of people” (European Commission, 2015a, p.5). When discussing its role on ‘addressing the root causes of irregular migration’, the EC first recalls that “the EU is the world’s largest provider of **development assistance**”, **and in the next generation of its external policy tools**, “assistance will be targeted as needed to those countries **with a significant migration dimension**” (European Commission, 2020b, p.19-20, own emphasis). Back in 2015, the EC created the EU Regional Trust Fund as a policy tool in collaboration with different partners from the Horn of Africa, North Africa and the Middle East. Former President Juncker stated that “We [the EC] want to help create lasting stability, for instance by creating employment

opportunities in local communities, and **thereby address the root causes of destabilisation, forced displacement and illegal migration.**” (European Commission, 2015d, own emphasis).

The EC discursively legitimates policy tools partnering with regional actors in order to address ‘the root causes of migration’ by *impersonal authorisation*, vesting legitimacy in the authority of principles, legal and moral duties: “The EU’s work to address emergency and humanitarian needs is based on principles of humanity, impartiality, neutrality and independence.” (European Commission, 2020b, p.19). Furthermore, the EC uses *instrumental rationalisation* to discursively legitimate its development tools by vesting legitimation in the moralised purpose of the action:

“Trade and investment policies already contribute to addressing root causes by **creating jobs and perspectives for millions of workers and farmers worldwide.** Boosting investment through vehicles such as the External Investment Plan can make a significant **contribution to economic development, growth and employment.** Better exploiting the potential of remittances can also **help economic development**” (European Commission, 2017b)

Next, in their development partnerships the EC also seeks to address “the causes of [...] smuggling and trafficking of people” (European Commission, 2015a, p.5). One of the tools developed under these partnerships are ‘strategic communication’ campaigns. These strategic communications are implemented in several countries from which many migrants travelling irregularly to the EU originate from, and are regarded as “means of developing a “counter-narrative” against smugglers’ often deceitful marketing”(European Commission, 2017b, p.6). Strategic communication as a policy tool is described as a “demand-based approach to reducing irregular migration” by “influencing the decision-making processes of (potential) migrants” (European Commission, 2017b, p.8). For instance, one of these campaigns taking place in Afghanistan employs radio broadcasts to reach potential migrants. Figure 4 below is a snapshot of an advert for the radio broadcasts, showing on the top part what is labelled ‘safe and legal migration’ and at the bottom ‘life threatening illegal migration’. Another campaign works with migrants who returned to their country of origin in Senegal as messengers to “raise awareness on the risks of irregular migration” (European Commission, 2021b, p.7).



Figure 5 Example of a strategic communication in Afghanistan financed by the EC using flyers to invite people to listen to a radio broadcast on migration to Europe (source: www.swn.af)

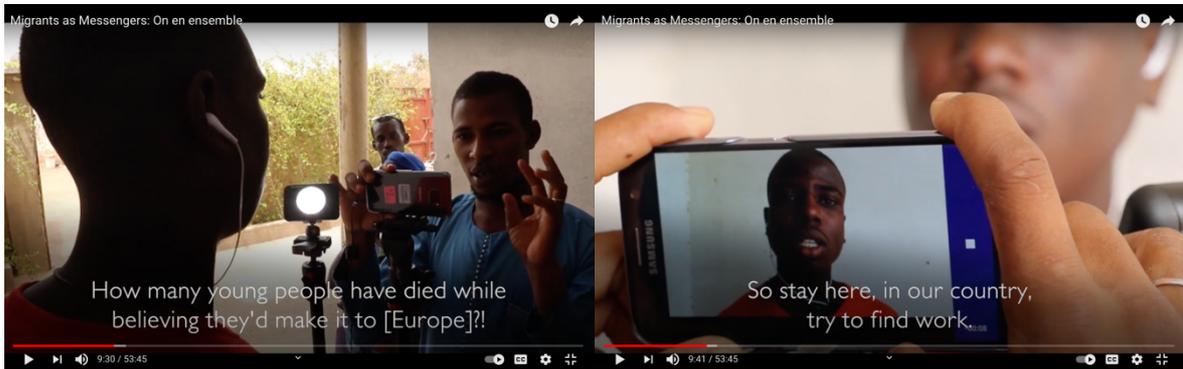


Figure 4 Example of a strategic communication in Senegal financed by the EC working with returnees on social media to communicate the 'risks' of migration (source: IOM, 2019)

In a study conducted by the EC to uncover the reason why people migrate by irregular means, the EC identifies the main reason to be “poor calculations of opportunity cost. In other words, potential migrants either over-estimate the likelihood of a successful outcome or do not make a conscious assessment.” (European Commission, 2017b, p.45-6). By representing the problem as originating from migrant’s ‘lack of conscious assessment’ the EC discursively legitimates these strategic communications through *instrumental rationalisation*, as the EC emphasises on the moral purpose of the action:

“Objectives are to raise awareness of the risks of irregular migration, and “uncover [the] lies” of smugglers.” (European Commission, 2017b, p.7)

“Appropriately-designed campaigns serve a social function of increasing potential migrants’ capacity to make choices in their own best interests.” (European Commission, 2017b, p.8)

This shows that the EC aims to ground the legitimacy of its policy tool on strategic communications in the purpose of the tool, which is presented here in terms of protecting the ‘best interest of migrants’.

Conclusion

In conclusion, the EC employs a humanitarian discourse and a securitisation discourse to problematise and construct the target group. On one hand, the target group is labelled as ‘refugees’ who are *subjected to irregularity* because several push-factors force them into (irregular) migration. On the other hand, the target group is labelled as ‘those with no need of protection’ who are *performing irregularity* because several pull-factors motivate them into (irregular) migration. This chapter also presents the policy tools that constitute the policy design of the CEAS, as well as the strategies used to discursively legitimate each policy tool. Figure 6 below is an overview of the policy tools and their respective discursive legitimisation strategies.

<i>Overview of the policy tools constituting the CEAS and the discursive legitimisation strategies</i>		
Area	Policy tools	Discursive legitimisation
<i>Reception and admission</i>	<ul style="list-style-type: none"> ▪ Qualification Directive ▪ Asylum Procedures Directive 	<ul style="list-style-type: none"> ▪ Theoretical rationalisation ▪ Impersonal authority
	<ul style="list-style-type: none"> ▪ Reception Conditions Directive ▪ Dublin Regulation or Asylum and Migration Management Regulation 	
<i>Return</i>	<ul style="list-style-type: none"> ▪ Return Directive ▪ Resettlement and Humanitarian Admission Framework Regulation 	<ul style="list-style-type: none"> ▪ Instrumental rationalisation ▪ Theoretical rationalisation

<i>Border management</i>	<ul style="list-style-type: none"> ▪ Facilitation Directive ▪ Regulation 2019/1896 on the European Border and Coast Guard 	<ul style="list-style-type: none"> ▪ Impersonal authorisation ▪ Mythopoesis
<i>Development</i>	<ul style="list-style-type: none"> ▪ Partnerships with regional actors 	<ul style="list-style-type: none"> ▪ Instrumental rationalisation ▪ Impersonal authorisation

Figure 6 Overview of the policy tools constituting the CEAS

CHAPTER 4. ANALYSIS: CONNECTING POLICY DISCOURSES AND DESIGN

This chapter presents an analysis of the (non-)connection between the two discourses identified and specific tools of the policy design by discussing the discursive legitimisation strategies employed by the EC. I argue that migrants who entered irregularly since 2015 are constructed and targeted via the notion of ‘irregularity’ in two different discourses, the humanitarian and the securitisation discourses. The first sub-chapter analyses the humanitarian discourse in which migrants entering irregularly are depicted as *subjected to irregularity*, legitimating policy tools related to the *protection* of the target group through *mythopoesis* and *impersonal authorisation*. The second sub-chapter analyses the securitisation discourse where migrants entering irregularly are depicted as *performing irregularity*, legitimating policy tools related to the *deterrence* of the target group through *instrumental* and *theoretical rationalisation* as well as *impersonal authorisation*.

4.1 Humanitarian discourse and policies of protection

In this sub-chapter, it is argued that the EC logically connects the humanitarian policy discourse with certain aspects of the policy design, namely the tools on search and rescue as well as the tools on development aid, using *mythopoesis* and *impersonal authorisation* as discursive legitimisation strategies. The identification of two discourses in the previous chapter shows that the notion of irregularity is employed in different ways by the EC to define the problem and the target group in question. In the humanitarian discourse, irregularity is employed to describe an ‘irregular’ situation which is *exogenous* to the migrants entering the EU. Put differently, ‘irregular migration’ in the humanitarian discourse is presented by the EC as the context in which people migrate rather than an act performed by them. In the last chapter, I describe how this is done by using a discourse insisting on push-factors (‘war’, ‘dictatorship’, ‘violence’) enabling the EC to present ‘irregular migration’ as forced migration.

Additionally, when using irregularity in a contextual manner, the EC labels migrants entering irregularly as ‘refugees’, and seeing as the term ‘refugee’ is theoretically associated with forced migration (Massey et al., 1999; Triandafyllidou, 2016), the EC employs the term

to evoke a particular discourse on migration. Based on the empirical findings presented in the previous chapter, it is argued that the EC's humanitarian discourse employs the term 'refugee' to socially construct migrants as *subjected to irregularity*. Subsequently, if (irregular) migration is presented as forced upon 'refugees', it suggests that 'refugees' are passive in their irregular migratory process, and powerless ('exploited', 'manipulated', 'coerced' or 'convinced by false promises' to migrate by irregular means). Drawing on the theory by Schneider and Ingram (1993), the analysis shows that in the humanitarian discourse migrants labelled as 'refugees' are constructed as a *dependent target group*, seeing as they are positively constructed with, however, low levels of power. Being depicted as powerless and in positive terms shows that the EC aims to portray 'refugees' entering irregularly as *deserving of support*, with deservingness expressed through a language of need and of right ('to help those in need of protection', or 'support those with a right to stay').

While the EC identifies 'refugees' as 'in need of protection', the EC also establishes to be responsible to provide such protection. As previously explained, the empirical findings identified an additional part of the policy discourse where the EC constructs itself as a targeter. As a targeter, the EC presents itself as 'a beacon of hope' or 'a haven of stability for people in the Middle East and Africa', an element which former President Juncker considers to be 'something to be proud of'. From this self-construction, the EC establishes that it has 'the means' as well as 'the moral duty to help those in need of protection', elements of the policy discourse that are central in the legitimation of the EC's policy design. Indeed, the EC expresses in multiple occasions that it has 'a duty to help those in need' because "Europe cannot stand by whilst lives are being lost" (European Commission, 2015a, p.3). This shows that promoting policy tools that protect 'refugees' is an essential component of the EC's identity as a targeter, and thus for its legitimacy as a policymaking institution.

Employing a discourse where 'refugees' are subjected to irregularity makes 'irregular migration' a phenomenon that becomes the EC and the Member States' responsibility, leading to policy tools that actively seek to support 'refugees' entering the EU irregularly. This is the case, for instance, with the policy tools on search and rescue which are legitimated by *mythopoesis* as previously mentioned. When legitimating its policy tools on search and rescue, the EC compares the experience of 'refugees' with the history of European citizen ('We Europeans should remember well that Europe is a continent where nearly everyone has at one time been a refugee'). *Mythopoesis* draws on '*common history*' in order to humanise 'refugees' and legitimate a form of moral and historical duty towards 'refugees'. As stated by former

President Juncker, “for Europe it is also a matter of historical fairness” (European Commission, 2015d). Legitimation through *mythopoesis* by reference to a ‘common history’ legitimates that “Europe cannot stand whilst lives are being lost” (European Commission, 2015a, p.3).

In addition to *mythopoesis*, the EC also discursively legitimates the policy tool on search and rescue by *impersonal authorisation* by referencing to the authority of the law (‘Assisting those in distress at sea is a moral duty and **an obligation under international law**’). According to van Leeuwen and Wodak (1999), *impersonal authorisation* refers to a level of authority that stands higher than the authority of the institution itself. The use of *impersonal authorisation* elevates the ‘moral duty’ to protect ‘refugees’ to an *unquestionable* legal obligation. As the EC constructs itself as a targeter as having ‘a duty to protect those in need’, it makes a logical connection with legal obligation to search and rescue ‘refugees’ at sea using *impersonal authorisation*. In a similar manner, the EC legitimates its policy tool on development aid, such as the Regional Trust Fund, via *impersonal authorisation*. The reference to “principles of humanity, impartiality, neutrality and independence.” (European Commission, 2020b, p.19) is an example of how the EC discursively legitimates its development aid policy using the foundational values identified in this thesis as central to the institution’s legitimacy as a targeter with moral aspirations. Put simply, to legitimate a policy tool that supports the target group, the EC conceives a humanitarian discourse in which ‘refugees’ are depicted as subjected to irregularity and where the EC is an institution with moral aspirations. Discursively legitimating the policy tool using *impersonal authorisation* enables the EC to connect the policy design with the humanitarian discourse that evokes ‘a moral duty to support those in need’.

The relationship anticipated by the theory on the social construction of target groups is congruent with the empirical analysis of this research, and it is thus argued that the humanitarian discourse legitimates the tools on search and rescue, as well as on development aid, of the EC’s policy design. The EC uses the humanitarian policy discourse to construct ‘refugees’ via the notion of irregularity as being deserving of protection, in order to legitimate certain policy tools of the design that are for the *protection* of the target group. Employing the discursive legitimation strategies of *mythopoesis* and *impersonal authorisation*, the EC creates a logical connection between its humanitarian policy discourse and the search and rescue and development aid policy tools of its policy design.

4.2 Securitisation discourse and policies of deterrence

In the securitisation discourse, the notion of irregularity is used in a different manner to define and construct migrants entering irregularly. Namely, it is used to depict migrants as *performing irregularity*, and thus as actively engaging in an act constructed as ‘illegal’ by the EC, defining the problem as a security concern. This discourse serves to legitimate the majority of the tools in the policy design of the CEAS which are qualified in this research as policies of *deterrence*. The EC discursively legitimates the policy tools of deterrence via *instrumental* and *theoretical rationalisation* as well as with *impersonal authority*.

Contrary to the humanitarian discourse, the notion of irregularity is described by the EC as an element that is *intrinsic* to migrants entering the EU. This means that ‘irregularity’ is no longer a contextual element of migration, but an act effected by the target group. In the securitisation discourse, the EC portrays the target group as *actively performing irregularity* (‘applicants misleading the authorities’ or ‘migrants eluding border control’). The previous chapter described how, by insisting on push-factors, the EC depicts the target group as active agents in the process of ‘irregular migration’ (‘respondents know’, ‘they think’, ‘their migration decision-making’). In that sense, along the securitisation discourse, migrants actively perform irregularity, which is considered an ‘illegal’ act by the EC, and can be criminalised and seen as a threat to the integrity of the ‘system’ as shown in the quote below:

“Unsuccessful asylum claimants **who try to avoid return**, visa overstayers, and migrants living in a permanent state of irregularity **constitute a serious problem**. This corrodes confidence in the system.” (European Commission, 2015a, p.7, own emphasis)

This statement shows that in the securitisation discourse, migrants performing irregularity are linked to ‘corroding confidence in the system’. This relates back to the EC’s priority to “protect the Member States’ territorial integrity” (European Commission, 2017a, p.5). This is important as Schneider and Ingram (1993) theorise that the way the policymaker relates the target group to the wider society affects the policy design as policymakers anticipate the expectations of the electorate. Indeed, in their policy tools on reception and admission, the EC formulates a goal by stating “we need to restore confidence in our ability to bring together European and national efforts to address migration” (European Commission, 2015a, p.2). In the securitisation discourse, ‘irregular migration’ is thus presented as challenging the Schengen space:

“The Schengen area is one of the major achievements of European integration. But it has been put under strain by difficulties in responding to changing situations at

the Union's border, by gaps and loopholes, and by diverging national asylum, reception and return systems" (European Commission, 2020b, p.14)

The EC uses the securitisation discourse to construct migrants as a potential threat through the notion of irregularity. The effect of depicting migrants as *performing irregularity* is that the issue is no longer presented as being about an 'irregular' situation in which migrants find themselves in, and which could be regularised through legal pathways. Rather, the issue is represented by the EC as being the migrants themselves who 'opt' to migrate irregularly. As discussed in the previous chapter, this distinction is achieved by describing migrants in the securitisation discourse as the opposite of the *deserving group*, using negative sentences (people 'who do *not* have the right to stay', 'who do *not* need protection', or 'who are *not* entitled to stay'). As such, while 'irregular migrant' is by some considered to be a more 'value neutral' term than 'illegal migrant', or 'unauthorised migrant', this analysis shows that the term can be used to portray migrants as responsible for their irregular migratory decisions (Düvell, 2011; Triandafyllidou, 2016). This has the effect of presenting migrants entering the EU as underserving of support, leading to a policy design of *deterrence*. Interestingly, it shows that the EC builds upon the humanitarian discourse to depict migrants as a deviant target group in the securitisation discourse.

Congruent with the theory put forward by Schneider and Ingram, migrants constructed as a *deviant groups* through the securitisation discourse are addressed with policy tools that are "expected to be more coercive and often involve sanctions, force, and even death" (1993, p.339). The securitisation discourse enables the EC to discursively legitimate its reception and admission tools, as well as its tools on return, by *theoretical rationalisation*. As a reminder, van Leeuwen explains that legitimacy through *theoretical rationalisation* is vested in the argument that "**doing things in this way is the appropriate to the nature of these actors**" (Van Leeuwen, 2007, p.104). The hotspot approach is presented by the EC as being a tool 'to **swiftly identify, register and fingerprint incoming migrants**', and separate those the EC discursively constructs as deserving and underserving. Similarly, the follow-up procedure is also designed in a way that distinguishes between underserving and deserving migrants, with a return or relocation procedure attributed respectively to each discourse. By employing the notion of irregularity to present migrants as performing irregularity in the securitisation discourse, the EC can discursively legitimate by *theoretical rationalisation* coercive measures that separate 'undeserving' from the 'deserving' — such as camps and hotspots as border control and de facto detention, as well as return procedures — because migrants according to the securitisation discourse are 'misleading authorities' or even 'posing a threat to security'.

Additionally, the EC is able to present the tool on return as a protection one by arguing the protection of ‘deserving’ migrants is achieved through the deterrence of other ‘undeserving’ migrants. This is discursively legitimated by *instrumental rationalisation* where the EC identifies the moralised purpose in returning migrants ‘with no right to stay’ to be the protection of migrants ‘in need of protection’ (‘It makes it harder to integrate those migrants staying in the EU as of right.’).

Finally, the EC discursively legitimates the Facilitation Directive as well as the strategic communication campaigns by *impersonal authorisation* and *instrumental rationalisation*. Put together, the two tools show that the EC addresses the ‘demand’ and the ‘supply-side’ of migration by irregular means — the supply side being the smuggling networks and the demand side being the potential migrants. In this analysis, it is argued that both tools are addressing migration from the securitisation discourse despite the fact that the EC presents these tools as means to protect migrants (‘increasing potential migrants’ capacity to make choices in their own best interests’ and ‘to prevent the exploitation of migrants by criminal networks’). Indeed, the EC employs *instrumental rationalisation* in an attempt to connect the strategic communication tools to the humanitarian discourse, depicting the purpose of the tool to be for the ‘best interest of migrants’.

However, the argument that these tools are in fact legitimated on the basis of the securitisation discourse is made on the premise that the EC represents the problem largely in terms of pull-factors in both tools (‘motivated by the success stories of returnees’ or ‘motivated by smugglers’ deceitful marketing’), as opposed to push-factors. As empirically analysed in this thesis, reference to pull-factors indicates the EC depicts migrants as *performing irregularity* and as largely underserving of support because migrants bear the responsibility for their irregular migratory decision. It is thus argued that these tools aim to remove motivations for and deter migration by irregular means, and are thus based on the securitisation discourse. Because the EC attempts to present the Facilitation Directive as a protection and humanitarian tool, the EC uses *impersonal authorisation* to discursively legitimate deterrence by reference to the authority of the law (‘the Facilitators Package applies without prejudice to the protection of the rights of refugees and asylum seekers in accordance with international law’). Using *impersonal authorisation* allows the EC to not be at odds with the humanitarian discourse, preventing the tool from being delegitimated with the humanitarian discourse.

Conclusion

In conclusion, the notion of irregularity leads to two policy discourses, a humanitarian and a securitisation discourse, enabling the EC to legitimise different aspects of its policy design. As such, the notion of irregularity allows the EC to address the target group in distinct manners. This chapter illustrates the connection between the policy discourse and design by analysing the use of several discursive legitimisation strategies that create logical links between the discourse and the design. This thesis identifies a humanitarian discourse discursively legitimated by *mythopoesis* and *impersonal authorisation*. These discursive legitimisation strategies enable the EC to link a policy discourse representing the target group as ‘refugees’ subjected to irregularity, with a policy design that includes tools for development aid support in origin countries, as well as tools designed to rescue them from the perils of migrating by irregular means. *Mythopoesis* is used for constructing ‘refugees’ as deserving by reference to a common and shared history with European citizens, thus legitimating the idea that the EC has a historical duty towards supporting ‘refugees’. And *impersonal authorisation* is employed to further legitimise policies protecting migrants entering irregularly on the premise of *unquestionable legal obligations* that are at the same time central in the EC’s self-construction as a targeter with moral aspirations.

This thesis also identifies a securitisation discourse that is discursively legitimated by impersonal authority, *theoretical* and *instrumental rationalisation*. These discursive legitimisation strategies enable the EC to link a policy discourse representing migrants entering the EU as performing irregularity with a policy design that includes tools for sorting them from deserving migrants, to remove the means to migrate irregularly by tackling both the supply and demand-side of migration by irregular means. Figure 7 below provides an overview of the connection analysed between the policy discourse and the design.

Overview of the connection between policy discourses and design					
Discourses	Refugees termed as	Problematism	Target group	Policy Tools	Discursive legitimisation
<i>Humanitarian</i>	Refugees, humans, families etc.	Push-factors	Deserving	<ul style="list-style-type: none"> ▪ Search & rescue ▪ Development aid 	<ul style="list-style-type: none"> ▪ Mythopoesis ▪ Impersonal authority
<i>Securitisation</i>	Illegal entries,	Pull-factors	Underserving	<ul style="list-style-type: none"> ▪ Reception and admission 	<ul style="list-style-type: none"> ▪ Impersonal authority

irregular migrant	<ul style="list-style-type: none">▪ Return▪ Smuggling▪ Strategic communication	<ul style="list-style-type: none">▪ Instrumental rationalisation▪ Theoretical rationalisation
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Figure 7 Overview of the connection between policy discourses and design

CHAPTER 5. DISCUSSION AND CONCLUSION

5.1 Conclusion

This research thesis set out to critically engage with the notion of irregularity in order to understand how it guides and legitimates EC policies on ‘irregular migration’ that affect refugees and asylum-seekers by the same token. Put differently, it sought to uncover the legitimisation strategies through which the EC builds rational and meaningful sense to policies that would otherwise be delegitimised under universal human rights principles that the EU abides by. This begs the question *how is the policy discourse on irregular migrants used by the European Commission to legitimate its policy design on irregular migration in the period of the refugee crisis 2015-2021?* To answer the question, I analysed the way the EC constructs and problematises the target group of the Common European Asylum System (CEAS), and legitimates its policy design by logically connecting the policy discourses to the policy design.

Explicating *how* the EC uses the policy discourses for legitimacy purposes, I identified two ways in which the EC employs the notion of irregularity to form policy discourses used to legitimate the policy design. In chapter four, I explain how the humanitarian discourse, in which the EC depicts migrants entering irregularly as *subjected to irregularity*, discursively legitimates policy tools in the CEAS related to the *protection* of the target group through *mythopoesis* and *impersonal authorisation*. While the securitisation discourse, where the EC constructs migrants entering irregularly as *performing irregularity*, discursively legitimates policy tools in the CEAS related to the *deterrence* of the target group through *instrumental* and *theoretical rationalisation* as well as *impersonal authorisation*.

Therefore, I argue that the notion of irregularity is used by the EC to advance a design that is simultaneously protecting and deterring migrants entering the EU by irregular means. This finding explicates how the EC legitimates a policy design of deterrence that affect refugees by the same token, despite being constructed in positive terms as ‘deserving’. While the EC discursively constructs two target groups by creating a distinction between migrants *subjected to* (‘deserving’) and *performing irregularity* (‘underserving’), in practice the policy design does not discriminate deterrence based on target group until migrants have reached the asylum procedure. As the EC proposes no other options than unsafe and irregular entries to most refugees, they can also be targeted through the notion of irregularity. For instance, when

the EC talks about addressing the supply-side of ‘irregular migration’ by tackling smuggling networks, it seeks to ‘destroy’ the same vessels that refugees employ to seek safety in the EU. Therefore, the EC employs two simultaneous policy discourses, enabling the EC to legitimate different tools in its policy design, and explicating how the notion of *irregularity* guides and legitimises EC policies on ‘irregular migration’ that affect refugees and asylum-seekers by the same token.

As Schneider and Ingram (1993) argue, the policymaking process is not a rational calculus based on the actual and practical effectiveness of the policy, but rather one that is thwarted by legitimacy interests irrespective of whether the policy is effective in addressing a societal phenomenon. It is argued here that Schneider and Ingram’s theory explicates why the current make-up of the CEAS does not allow to truly safeguard the rights of refugees — as shown by the recent reports on rights violations at the EU’s borders (BVMN, 2020) — even though the EC portrays refugees as deserving because they can be targeted through the notion of irregularity. The notion of irregularity is both one that legitimate protection and deterrence tools of the CEAS policy design. By making-up (un)deservingness and discourses that distinguishing the ‘good’ from the ‘bad’ migrants, the notion of irregularity in fact enables the EC to target all migrants entering irregularly as potentially ‘undeserving’, thus legitimating policies of deterrence. The asylum procedure is an illustration of how the EC treats migrants entering irregularly as potentially ‘undeserving’ as it establishes the need to ‘separate’ or discern a target group (migrants entering irregularly), in order to identify migrants ‘misleading the authorities’ with false claims of protection. To recall the Geneva Convention “every refugee is, initially, also an asylum applicant; therefore, to protect refugees, asylum applicants must be treated on the assumption that they may be refugees until their status has been determined” (United Nation, 1977, p.7). This means that every migrant entering irregularly should be treated equally, irrespective of the assumptions made related to (un)deservingness.

5.2 Discussion

This sub-chapter discusses the findings of this thesis in the context of the larger academic and theoretical debate. Tying in with the conclusion, I present policy recommendations that are based on the findings of this thesis. Next, I present a review on integrating the discursive legitimisation operationalisation with the theory on the social construction of target groups, and

discuss the lessons that can be learnt from this research. Finally, I stipulate the limitations of this study as well as avenues to explore for future research.

5.2.1 *Policy recommendations*

The societal relevance of this thesis lies in its contributions demystifying the reason why refugees and asylum-seekers can be targeted through policies of deterrence by the EC. The notion of irregularity enables the EC to legitimate a policy design both of deterrence and of protection that affect refugees and asylum-seekers at its external borders. The findings of this thesis concluded that because refugees can be targeted through the notion of irregularity, the CEAS cannot truly safeguard the fundamental right to ask for asylum even though it constructs a discourse portraying refugees as ‘deserving’ of protection. As mentioned previously, the Geneva Convention stipulates that to protect refugees, one should treat all entering migrants as being potentially in need of protection. Therefore, to truly safeguard the rights of refugees, I argue that the CEAS could benefit from decriminalising irregular entries and removing refugees’ dependency on the smuggling networks to be able to access their right to seek asylum. Several policy changes could be implemented for that purpose. Firstly, the EC should follow its intention to create legal pathways for refugees by advancing policies on humanitarian visas that would be made accessible from embassies abroad. This would reduce dependency on smuggling networks and decrease irregular entries all together, creating a safe and legal pathway for refugees and asylum-seekers to ask for asylum on EU territory. Secondly, other safe and regular pathways should be made to avoid criminalisation through the notion of irregularity. Several EU Member States have created seasonal workers permit between key countries in order to fill gaps in the labour market. The EC should support Member State in the creation of labour migration agreements with Third Countries in order to prevent the need to rely on irregular migration.

5.2.2 *Reviewing the integration of discursive legitimation with the social construction of target groups*

This research sought to contribute to the literature on the social construction of target groups by overcoming the limitation of empirically analysing the *feedforward effect* theorised by Schneider and Ingram (1993). Rather than attempting to demonstrate a causal relationship

between policy discourse and design, this thesis sought to develop a research design that would allow to make the *feedforward effect* empirically observable. To that end, I integrated the theory on discursive legitimation operationalised by Van Leeuwen (2007) with the theory on social construction of target groups. Integrating the discursive legitimation operationalisation with the theory on the social construction of target groups shows how policy discourses can serve as “signposts for action” (Hajer, 1997, p.264). It shows how the EC makes sense of diverging discourses (humanitarian and securitisation) in order to legitimate certain aspects of its policy design. This thesis adds empirical tools and substance in order to study and observe the feedforward effect as theorised by Schneider and Ingram (1993). Using Van Leeuwen’s (2007) operationalisation of discursive legitimation enabled to empirically analyse the EC’s meaning-making practices, connecting policy discourses to tools of the policy design.

Relating the findings to the literature on European migration policymaking, in which there was little empirical analysis of the EC’s legitimation regarding controversial policymaking, this thesis contains a first step towards empirically explaining the marriage between a humanitarian and a securitisation discourse. This thesis explains that what has been labelled a “schizophrenia” (Hathaway & Gammeltoft-Hansen, 2014, p.283) “deep contradiction” (Costello, 2016, p.12), or “an autoimmune disorder” (van Ho04/08/2021 14:32:00utum & Bueno Lacy, 2020, p.706) is in fact a central element in the EC’s legitimation strategies. As argued by Stierl (2020), this antinomy between humanitarian and securitisation discourses is in fact a constitutive part of advancing the Europeanisation project since both discourses are employed to legitimate and advance certain policy tools of the CEAS.

5.2.3 *Limitations and comments for future research*

Regarding limitations, the sample size selected for this thesis is a limitation of this thesis. Out of a database of 234 documents, 18 were purposefully selected for analysis. Similarly, this thesis is based on a discourse analysis of documents and thus limited to desk research. Due to the diverse nature of each document (working documents, reports, studies, speeches, press releases), the content and type of language in the documents varied. As this thesis is concerned with discourse as performative ‘signpost for actions’, it is important to consider the nature of each documents. Due to the sample size, this thesis analysed more policy briefs and working papers than speeches and press releases. This affected the content of the analysis, as speeches and press releases are generally less technical and more stylistic than policy briefs. As such, a

larger sample size with a more equitable balance between document types may be more representative. Next, this thesis could be complemented with an additional method of data collection, with interviews conducted with EC policymakers in order to gain more perspective on how the EC legitimates the policy design through policy discourses. Therefore, it is recommended that further studies on the EC's strategies to legitimate its policy design of the CEAS should include interviews with EC policymakers in order to analyse how policymakers make sense of the notion of irregularity and why they might use different discourses to legitimate tools of the policy design.

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