

# Asylum policy in the European Union



*A comparative research of the Dutch and Belgian asylum policy, and the role of the European Commission*

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## Executive summary

The central question of this thesis is: **‘How can the asylum policy of the European Union be improved?’** To answer this question three case studies have been conducted, namely the European Commission, The Netherlands and Belgium. The following sub-questions are answered in order to be able to answer the central question:

1. What are the asylum policies of The Netherlands and Belgium?
2. What is the role of the European Commission with regard to asylum policies in the European Union?
3. How can the asylum policies of The Netherlands and Belgium and the role of the European Commission be analyzed and evaluated according to the White Paper on European Governance?
4. What lessons can be learned for the role of the European Union on the field of asylum policy?

1.

Thus, the first question regards the content of the Dutch and Belgian asylum policy.

In the Netherlands the IND starts the 48-hours procedure once an asylum seeker has applied, where evidently unfounded requests can be rejected within the first 48 hours. Those requests that aren't immediately rejected will go into the normal procedure. Asylum seekers are entitled to a residence permit if they fulfill one of the following three criteria. The first basis for granting an asylum application is in case they are refugees according to international treaties such as the Geneva Convention. Secondly certain reasons of humanitarian nature can suffice, and finally the third criterium is in case sending someone back to their country of origin would be exceptionally harsh because of the general situation in that country. There is the possibility to appeal at court against an asylum decision, when this is rejected this will lead to the obligation to leave the Netherlands within a certain term.

In Belgium once an asylum seeker has applied, it is first up to the Service Aliens Affairs (DVZ) to decide whether the asylum procedure should be started. When this is the case, then the procedure will become the responsibility of the Commissioner-General for Refugees and Stateless Persons (CGVS). The criteria as they are laid down in the Geneva Convention are pivotal in this procedure. In case the application is denied, it is possible to appeal against this decision at the Council for Aliens Matters (RVV).

2.

The second sub-question refers to the role the European Commission plays with regard to asylum policies in the EU. Currently the European role on this field is mainly aimed at leveling the playing field, which is to say creating equal circumstances in the different EU member states. Four main legal instruments have been made to achieve this objective. These four instruments regard matters such as minimum standards for the reception of asylum seekers, and certain standards that all asylum procedures throughout the EU are subject to. Furthermore the rights that are attached to the refugee status are clearly set out, and finally the Dublin regulation contains clear rules as to which state is responsible for dealing with an asylum seekers application.

On top of these four regulations, the European Refugee Fund has been created in order to enhance solidarity between member states. This fund gives financial support to the efforts of member states to grant reception to asylum seekers and to apply fair and effective asylum procedures. The distribution of the money in this fund is done on the basis of objective criteria relating mainly to the number of asylum seekers.

3.

The third sub-question forms the core of this research, namely the analysis of the asylum policies according to the White Paper on European Governance. There are five principles set out in the White Paper that underpin how governance should work. These principles are openness, participation, accountability, effectiveness and coherence. Although the White Paper does not really specify how to measure these principles, this research does make an effort to come to an analysis of the extent to which the principles are fulfilled.

The first principle is openness, and it is clear that both member states and the European Commission make a clear effort to communicate their actions. Though it is striking that most EU citizens show little interest in European affairs.

The second principle is participation, and on the field of asylum policy there is a rather high level of participation of various actors on both the national and European level. The role of ordinary citizens in the policy process is quite limited though.

The third principle is accountability. The national democratic structures are quite clear, as they fall within the conventional system of 'trias politica', which is to say the division of powers where there are checks and balances. The structures of the EU are much more complex, the decision-making procedures are difficult to understand for the general public. The European Parliament doesn't have the same powers as its national counterparts, and it doesn't function as adequately.

The fourth principle is effectiveness. There are many policy objectives and outcomes on this field, but in general the asylum procedures have improved and simplified in both The Netherlands and Belgium in recent years. The European Commission has set out a number of directives to which the member states must comply. The objectives of these directives have had the desired result for the most part, yet a number of member states don't comply with some of these directives.

The fifth principle is coherence. It is recognized on both European and national level that asylum policy is related to other policy fields, yet the governments don't always act accordingly. For instance, on the European level the link with illegal immigration should be given more attention. In Belgium there have been the housing of asylum seekers has been problematic in recent years.

4.

The fourth sub-question asks the question which lessons there are to be learned for the role of the European Commission. A large role of the EU is required on the field of asylum policy, and therefore the demands on the manner in which the EU functions are high. The proposed improvements derive from the five principles that form the basis of this research.

With regard to openness the lack of interest from EU-citizens for European affairs seems to be the main problem. It is likely that there will be a gradual shift of attention from the general public towards European politics as the EU becomes more powerful. A better functioning European Parliament would also increase the attention that media and citizens give to the European arena.

The amount of participation of various actors in the policy process is already rather high on the European level, so little further action is required here.

When it comes to the accountability structures, there is still much to improve on the European level. An important improvement is to increase the powers of the European Parliament, such as the power to send home individual Commissioners in case a majority no longer has faith in their functioning.

With regard to effectiveness, the argument made here is that the European Union could handle asylum issues much more effectively if there was one central European asylum organization.

As for coherence, it is recognized by the European Commission that asylum policy is linked with various other policy fields. On member state level there are considerable differences with regard to access to the labor market, housing, health care and social services. In order to ensure that asylum seekers are entitled to certain basic rights in each country, it would be better if the European Union would take more legal measures on these fields.

### *Central question*

The best way to improve the European asylum policy would be to create one European asylum organization that would become responsible for handling all asylum requests. This way every asylum seeker would have to go through the same procedure, with one clear undisputed definition of a legitimate asylum seeker. The current differences between countries would disappear, for instance when it comes to possibilities to appeal, with instead one new European appeal system. The asylum seekers that would be accepted in this European system would then be distributed among the different member states. This should be done based on an allocation formula, with criteria such as population size and country size. This would be a more efficient system, which would be fairer to both asylum seekers and member states.

In order for the EU to become this powerful they will have to improve their governance practices. The principles they have laid down themselves in the White Paper must be followed, and the following recommendations will elaborate on how these improvements should be made.

### *Recommendations*

The most important recommendations that are made in this research will be briefly set out here.

When it comes to the principle of openness, the main problem seems to be the lack of interest from the general public for European affairs. A better functioning European democracy and one clear leader of the EU could increase the attention paid to European politics.

It is on the principle of accountability that the biggest changes have to be made. It is pivotal that the European Union starts becoming more democratic. One way to achieve this is to increase the powers of the European Parliament, and make the way it functions more similar to parliaments on the national level. Currently legislative proposals can only be introduced by the European Commission, it is recommended here that the chosen representatives in the Parliament also get this power. Another recommendation is that the European Parliament should be able to hold individual Commissioners directly accountable for their actions. The Parliament should thus be able to make a Commissioner come before the Parliament and defend their policies, and have the power to send the Commissioner home in case a majority no longer has faith in his functioning. Another problem is that at this point 23 different languages are spoken in the European Parliament. Apart from the considerable costs of translating all the speeches, this also makes it very difficult for outsiders to follow the debates that are going on. The debates become more tedious, and this might in part explain the low interest for this Parliament. Therefore it would be better to introduce one lingua franca in the European Parliament. The most logical choice for this would be English, as this is the most popular second language in Europe.



The Council of Ministers is an important decision making body in the European policy process. It is here that national ministers come to important policy decisions. Currently no major decisions are made without the consent of the Council of Ministers, yet they don't have to defend their policy decisions for the European Parliament. This is a flaw in the European decision making system. Therefore it is recommended that the Council of Ministers can be held accountable for their decisions by the European Parliament.

As mentioned above, important policy decisions in the EU are made by national ministers in the Council of Ministers. Yet nearly all member states don't allow their national parliaments to exact commitments from ministers before Council meetings, or hold them answerable afterwards. In order to increase the democratic level it is recommended that national ministers explicitly explain and defend the policy decisions made in the Council after each meeting of the Council.

Coherence refers to the extent to which policies from other sectors have been taken into account. An important policy field that is related to asylum is the support of third countries in dealing with asylum and refugee problems. Two pilot programmes to assist countries in the region to deal with asylum issues have already been launched by the European Union. It is obvious that it is also in the interest of the EU to enhance the possibilities of durable solutions for refugees in their region of origin, since it would to some extent decrease the burden for EU-countries. It will also be easier for these refugees to return to their country of origin once it is safe for them. Therefore it is recommended that the European Union puts more effort into assisting third countries in the region to deal with asylum and refugee issues.

## 1.0 Introduction

During the last decade I have become more and more interested in the state of affairs with regard to asylum policies in Europe and the Netherlands, which can in part be explained by the increased attention for the subject. My interest in the subject has also been increased by the elective course ‘migration’, which was given by professor Entzinger in an inspirational manner. This is why I have chosen to write a thesis about this subject, and my preference is to write this thesis in a scientific and inspirational environment. Luckily I was able to get an internship at the Telders Foundation, which is the Dutch liberal think tank connected to the liberal party VVD.

One could argue that the subject of immigration and asylum is one of the most important challenges currently facing European Union. So logically this challenge is also felt on member state level. It would be interesting to consider what role would be appropriate for the European Union in this respect, the question rises whether or not there should be a more coordinated approach. This research will focus purely on asylum policies, since the debate about migration in many parts of Europe has to a large extent been dominated by the arrival of asylum seekers. Asylum policy is made both at national and European level, and it would be interesting to see to what extent this leads to a fragmented or coordinated picture of asylum policy in Europe, also since EU-countries are committed to treaties. Special interest will be paid to the manner in which policy is made, both at the national and European level.

In this research I will compare the asylum policies of both the Netherlands and Belgium as the national case-studies, and the European Commission. The Netherlands and Belgium are both somewhat similar with regard to size, prosperity and political system. It would therefore be interesting to assess in what ways they are different and similar when it comes to asylum policies. Thus, I would like to research what the role of the European Commission is with regard to asylum policies. I would also like to analyze what the different asylum policies of both selected countries are. The strengths and weaknesses of the policies of the European Commission and the respective countries will be set out in the light of European ‘good governance’ standards, and explained.

## 2.0 Project objective

In this project the role of the European Commission with regard to asylum policies will be set out. Furthermore, the asylum policies of two countries will be analyzed. Hopefully it will be possible to make some general statements about the direction the European asylum policy should be taking based on these three case studies.

The European Union currently consists of 27 countries, namely Belgium, France, Germany, Italy, Luxembourg, The Netherlands, Denmark, The Republic of Ireland, the United Kingdom, Greece, Portugal, Spain, Austria, Finland, Sweden, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Bulgaria and Romania.

The Netherlands is a popular destination among asylum seekers, and it has recently seen paradigm shifts with regard to their attitude towards asylum policies. In this sense Belgium and the Netherlands are comparable, because since the nineties generally speaking the mainstream political view has been stricter towards allowing asylum seekers to come in, albeit this differs per country and ruling administration.

Thus, the policies of the Netherlands, Belgium and the European Commission will be analyzed according to the theory of governance, which will be set out later in this research.

This sums up to a specific objective: To analyze what can be improved in the role of the European Commission on the field of asylum policy, based on these three case studies.

### *Scientific relevance*

The scientific relevance is to analyze the theories of multi-level governance and related to that the White Paper on European Governance as published by the European Commission. The theory of multi-level governance is more descriptive, whereas the governance principles as set out in the White Paper are more prescriptive in nature. This research will regard the extent to which the reality in the European Union as well as in both selected countries is in line with these theoretical notions of governance. Is the way asylum policy is made and implemented in conformity with the way the multi-level governance describes it? Do the European Commission and the respective countries act in accordance with the principles as laid out in the White Paper? And what does this say about the relevance and applicability of these theories?

### *Societal relevance*

The relevance for the European Commission is to understand how they function with regard to their role in the asylum policy, and as a result how they might improve the way they function. The performance and actions of the European Commission can be held to their own set out standards, and it can thus be analyzed where it is necessary to change and improve their practices. The same applies for the two member states in this research, also in their case it will be analyzed how the asylum policy is made and implemented, and this will be done along the lines of certain parameters. In the end one could also conclude what role would be most appropriate for the European Commission with regard to asylum policy, should it be larger or perhaps smaller when all the set out aspects and standards are considered. Clearly it is also a very political decision whether the European Commission should play a large role in the asylum policies of respective EU-countries, or perhaps have the authority to make its own asylum policy for all EU-countries. In this research an effort is made to analyze the role it plays thus far with the help of certain objective theoretical principles and paradigms.

### **2.1 Central research question**

“How can the asylum policy of the European Union be improved?”

Sub-questions:

- What are the asylum policies of The Netherlands and Belgium?
- What is the role of the European Commission with regard to asylum policies in the European Union?
- How can the asylum policies of The Netherlands and Belgium and the role of the European Commission be analyzed and evaluated according to the White Paper on European Governance?
- What lessons can be learned for the role of the European Union on the field of asylum policy?

This research will be both descriptive and explanatory. The descriptive part of the research will focus mainly on the policies of the respective countries and the role of the European Commission. The explanatory part will focus mainly on explaining how the respective policies can be explained in terms of governance. Furthermore, there will be an exploration of the lessons that can be learned from this analysis for the European Union.

## **3.0 Theoretical framework**

### ***3.1 The governance theory***

The traditional model of government is that of sovereignty of the parliament, a strong cabinet government, accountability through elections, parliamentary control of the executive, elaborate conventions for the conduct of parliamentary business, institutionalized opposition, and the rules of debate. During the past two decades or so this centralized approach has been challenged by a new theory, namely the governance theory. This theory entails the assertion that we no longer have a mono-centric or unitary government. There is not one centre, but instead there are many centres linking many levels of government, both local, regional, national and supranational. Centralization coexists with fragmentation and interdependence. There is a so-called power-dependence, which means that organizations depend on each other for resources and therefore they enter exchange relationships. The picture of parliamentary sovereignty and ministerial responsibility is replaced or at least supplemented with a picture of interdependence, a segmented executive, policy networks and power-dependence (Rhodes, 1997). Particularly in the last decade much is written about governance, and the concept of governance has become quite influential among social scientists. 'Governing can be considered as the totality of interactions, in which public as well as private actors participate, aimed at solving societal problems or creating societal opportunities; attending to the institutions as contexts for these governing interactions; and establishing a normative foundation for all those activities' (Kooiman, 2003). Governance can be regarded as the totality of theoretical conceptions on governing.

### ***3.2 Shifts in governance***

In recent decades certain shifts in governance have taken place. As explained above the traditional model of central government that is in complete control no longer applies to reality as it can be seen nowadays. There have been changes in the way our society, and societies in Europe and indeed perhaps worldwide have been governed in particularly the last two decades. This has to do with a number of trends and shifts, the most important of which will now be set out here.

The most important shift in particular with regard to the subject of this thesis, is the shift from national states to supranational institutions. Many argue that the role of the nation state has changed as a result of the rise of internationalization and globalization. The large increase of interdependence on a global scale has had its effect on the efficacy of the nation state. This is certainly the case for the nation states that are a member of the European Union, as it is now widely accepted that the member states of the EU have lost a significant portion of their autonomous policy making capacity. So the question is; to what extent have the member states, as the classic international actors, lost power to supranational actors? What is the current policy making capacity of the national state? And to what extent are policies now made at the European level?

Clearly the policy-setting and policy-shaping powers at the European level influence the capacity for policy making at the national level. At the national, European integration can be regarded from two viewpoints. On the one hand, European integration could increase the capacity and possibilities of national institutions to deal with the effects of internationalization. On the other hand, European integration could exert pressure on the various member states to adapt to European rules and laws and it could as a result affect the national institutional framework of policy making (Van Kersbergen et al., 2001: 24-25).

Another shift in governance that has taken place is a horizontal one, namely that from executive and legislative powers to the judiciary. In a number of countries, but also in particular at the level of the European institutions, the influence of the courts is increasing. They are taking a more active role in the interpretation of rules, and also to some extent the formulation of rules. So this means that judges are increasingly taking over the role of politicians and administrators and thus take political decisions. This juridification trend is also visible from the increase in lawyer density. In the Netherlands this has doubled between 1988 and 1998; from 35 to 70 lawyers per 100.000 inhabitants. Similar trends can be observed in the rest of Europe.

The role of the courts in policy making is increasing, since the second world war an increasing amount of countries have introduced constitutional courts an constitutional review, and also administrative courts and administrative review. This body of administrative law is growing larger, therefore citizens and interest groups have more possibilities to appeal against government decisions.

This tendency has been furthered by the process of European integration. A European body of law has developed in addition to the national ones, and as a result the legal system has become a more complex multi-level system. This system give individuals and organizations more opportunities to appeal against government decisions. And next to the European Court of Justice, there are other formal or de facto international courts, such as the WTO judicial body and the European Court for Human Rights in Strasbourg. All this results in a situation where the influence of judges and lawyers increases, also at the expense of the legislative and executive powers (Van Kersbergen et al., 2001: 26-29).

Another important shift in governance is the one from public to semi-public organizations. There has been an increasing differentiation of public policy making, policy implementation and supervision as separate functions, so they don't necessarily have to be carried out by one single government institution at one level. Instead these different functions are located in different semi-public institutions or bodies, or within one public institution but with a larger degree of autonomy. The first would be external independence and the latter internal independence.

The main thought behind the shift towards semi-public governance is that the capacity of government to solve problems becomes greater by giving public agencies more autonomy or discretionary room, or by transferring public competencies to semi-public organizations that become responsible for the implementation of policies. Thus in the new situation there is one public organization (like a ministry) that defines the main policy objectives, and there is another organization that functions on a distance which is responsible for the implementation of the policy. The first organization does not interfere with the day-to-day operations of the new semi-public implementing organization.

The semi-public organization is independent, which in that case means that the way the organization goes about handling their daily operations does no longer fall under the heading of ministerial responsibility. In the case of autonomous agencies, independence refers to the fact that the political centre has a less present and direct influence.

The rise of the number of semi-public organizations poses new questions, particularly with regard to accountability. This new situation makes it more difficult to where exactly the public power lies, and who is responsible and who is accountable to whom (Van Kersbergen et al., 2001: 29-30).

### ***3.3 Network governance***

During the last three decades there has been an immense increase in the scope and density of the rules of the European Commission, and its institutions have been profoundly reformed. It is now clear that the activities of the EC have re-built the architecture of territorial rule in Europe, and that the EC is regarded as a new institution. However, it is also clear that the EC doesn't qualify as either a state or an international organization. It lacks the legal sovereignty to be regarded as a state, and it can't be seen as an ordinary international organization either since its rules take precedence over domestic laws. The manner in which the institutions of the EC have been set up and function is different from both nation states and international organizations. The European Community can therefore be regarded as a 'sui generis' political system.

Thus, it is now commonly accepted that the European Community is a 'sui generis' polity. This goes to say that it is a political system that does not fit the notion of a federal state, yet is far more than an international organization. One of the most striking features of this particular 'sui generis system' is the fact that it is to some extent governed without government. The citizens of the European Union are only sovereign citizens within the boundaries of their own respective home countries.

Representative democracy stops at the borders of the state. There is no delegation of political power to a top decision-making authority at the European level that is directly responsible for its decisions. However the policies and decisions that are decided upon on the European level do have binding force on each EU-citizen. So it is fair to say that even though there is no real government, citizens are governed. So clearly nowadays governance is not limited to decisions made and actions taken by a government. Granted, European decision making is embedded in a context of representative democracy, but the reality of European governance is not in accordance with the norms of democratic rule. Since there is no real government and true democratic representation at European level, the ways and means of governing will be different.

The European Community is thus governed in a particular way, namely in a network mode of governance. Now what is this notion of network governance. The core idea of this theory is that problem-solving is considered the essence of politics by political actors, and the setting of policy-making is defined by the existence of highly organized social sub-systems. It is in this setting that the specific rationalities of these sub-systems have to be taken into account in order to come to efficient and effective governing. The state as such is both vertically and horizontally segmented and in this model the role of the state has changed from authoritative allocation in a top-down manner to the role of an activator. In line with this, to govern the EC it is required to bring together the relevant state and societal actors and building issue-specific constituencies. This leads to patterns of interaction, whereby state actors and a number of various interest organizations are involved in multilateral negotiations about the way functionally specific values are allocated. Therefore, the level of political action within these networks ranges from the highest EC-level to decentral sub-national levels in the various member states. The involved actors are mainly focused on the upgrading of common interests in the pursuit of individual interests. The theory of network governance does not perceive interests as a given, but instead believes that they may evolve and get redefined in the process of negotiations between the participants of the network (Kohler-Koch et al., 1999).

### ***3.4 Multi-level governance***

Multi-level governance describes the dispersion of authoritative decision making across multiple territorial levels. There have been two developments that have been crucial in the creation of multi-level governance in Europe since the 1950s. The first development is European integration, which has led to the shift of authority in several key areas of policy making from national states up to European institutions. The second development is regionalization in a number of European countries, which means the shift of political authority from the national level down to subnational levels of government.



It is possible to make a distinction between two basic models of the European Union and the way it functions. Those models are the 'state-centric model' and the 'multi-level governance' model. Let's first set out the main principles of the state-centric model. This model regards states as the ultimate actors who make the decisions, or national governments to be more precise. Only limited authority is given to supranational institutions in order to achieve specific policy goals. The decision making process in the EU takes place through bargaining among different national governments. The state-centric model entails that supranational institutions will only arise to the extent where they serve the goals that are ultimately in the interest of national governments. Policy making is not necessarily determined by national governments in every detail, but the overall direction of the policies that are made is consistent with the control of the state. For example it may be in the interest of states to create a bureaucracy that implements collective agreements, or a judiciary that allows them to enforce those agreements. However those institutions would not be autonomous supranational agents, instead their powers are limited to the extent that they must achieve state-oriented collective goods. With these principles in mind, it is no surprise that EU decisions reflect the lowest common denominator among the positions of national governments. The situation is such that national governments make joint decisions. However according to the state-centric model these governments are not compelled to accept policies that they find unacceptable, since on important issues decision making takes place on the basis of unanimity. Therefore states are allowed to maintain both individual and collective control over outcomes. The result is that some governments are not able to integrate as much as they would want, but on the other hand no government is forced to collaborate deeper than it really wants.

The state-centric model assumes that national governments are located in the domestic political arena, and therefore their negotiating positions are under strong influence of domestic political interests. And notably, these domestic arenas are discrete, meaning that decision makers on the national level respond to political pressures that are nested within each state. As a result this model claims that the respective national EU-governments that are bargaining in the European arena are complemented by all the separate national arenas, and those national arenas are in fact the only channel for domestic political interests at the European level. Thus, the most important claim of the state-centric model is that policy within the EU is determined primarily by national governments that are constrained by political interests nested within autonomous national arenas (Hooghe et al., 2001).

From the seventeenth century to the mid-twentieth century, the centralization of authority in national states was regarded as the best way to achieve economic efficiency and political might. The strong ideology behind state centralization is nationalism. However since the 1950s, there has been a weakening of the state monopoly over political authority. The steady erosion of national governments as the only and most important centres of political action can be regarded as a global phenomenon, but there is no place where the progression of multi-level governance has been taken as far as in the European Union (Hooghe et al., 2001).

Multi-level governance does not directly challenge the sovereignty of states. Instead states in the European Union are being melded into a multi-level polity by their government leaders, and by the actions of a number of subnational and supranational actors. In the current situation, if national governments want to maintain national sovereignty, in many cases they are not able to do so. As a result of qualified majority voting in the Council which is the voting mechanism for most decisions now, a government can be outvoted on many issues. And even if there is possibility for one nation to veto a decision, such nations have to take the willingness of other national governments to tolerate its use into consideration as well. However, the limits on national sovereignty go further than this. Even collectively, national governments are not able to determine the European agenda because they cannot control the supranational institutions that they have created. Because of the large number of different issues on the agenda of the Council and the increased specialization of policy making the Council of Ministers have to rely upon the Commission to set the agenda, forge compromises and, supervise the compliance of rules that have been made. Another obvious limitation to the power of the Council is the gained weight that has been given to the European Parliament, since the European Act and later the Maastricht Treaty. A division of power between the Council, the Commission and Parliament has been established within a legal order, which can now be considered to be a supranational one as a result of the jurisprudence of the European Court of Justice.

The changes that have taken place in EU decision making since the 1980s have resulted in a multi-level polity. The competencies are shared, institutions are both contending and dependant on each other, and agendas are shifting. This system of multi-governance opens multiple points of access for interests. National governments are no longer the only and exclusive channel between domestic politics and international politics. The model of multi-level governance does not reject the view that national governments and national arenas are important, it doesn't even reject that these remain the most important pieces of the European puzzle. Multi-level governance comprises of three principles, that will now be set out.

First, decision making competencies are shared by actors at different levels, and thus not monopolized by national governments. This means that supranational institutions like the European Parliament, the European Commission and the European Court have independent influence in policy making that cannot be derived from their role as agents of national executives. It is not denied that national governments play an important role. However, according to the multi-level governance model, one must analyze the independent role of European-level actors to explain European policy making.

The second principle is that collective decision making among states involves a significant loss of control for individual national governments. There is only a subset of EU decisions where lowest common denominator outcomes are available, mainly on decisions concerning the scope of integration. Decisions concerning rules to be enforced across the EU have a zero-sum character and thus necessarily involve gains or losses for individual states. Examples of such decisions are harmonizing regulation of product standards, labor conditions etcetera.

The third principle is that political arenas are interconnected rather than nested. This implies that subnational actors are not nested exclusively within the national arena. Instead, subnational actors operate in both national and supranational arenas, thus creating transnational associations in the process. Therefore complex interrelationships in domestic politics do not stop at the national state but extend to the European level. National governments are a powerful part of the EU, but they no longer provide the sole interface between supranational and subnational arenas. In fact, they share control over many activities that take place in their respective territories, rather than monopolizing it (Hooghe et al., 2001).

### ***3.5 White Paper on European Governance***

The main theory that is the basis of this research is that of multi-level governance. The most important document with regard to multi-level governance in this research will be the White Paper on European Governance (European Commission, 2001).

The multi-level governance theory was first developed by Hooghe and Marks in the early 1990s. The study of the new EU-structures that were put in place by the Maastricht Treaty in 1992 have resulted in the theory of multi-level governance. Now as explained above, this theory describes a situation where regional, domestic and international levels of authority are intimately entangled. The different levels of government are involved in a system of continuous negotiations, since decision making competencies are shared by actors at different levels. There is no other international form of cooperation where far-reaching integration has taken place as extensively as in the case of the European Union. This is clear from both the number and scope of policy areas that are covered by the European Union, and by the manner in which policy within the EU is developed. The White Paper is specifically written for policy fields that are neither completely national nor completely handled at EU level, but it is in fact meant for the category of policy that falls in between those two extremes, such as asylum policy. It is fair to say that the White Paper is an exponent of the multi-level governance theory, since it builds on the notion that the different governing levels in the EU have shared powers and competencies. The theory of multi-level governance emphasizes that the influence of supranational organizations such as the European Commission and the European Court is substantial and cannot be derived from their role as agents of national executives. Therefore it is all the more important that the European Union functions in line with generally accepted guidelines and criteria, as they are set out in the White Paper.

The White Paper is widely respected among scientists and practitioners who are active in the field of the European Union, and therefore it is very suitable for this research. Europeans want the European Union to find solutions to many of the major problems facing our societies, but they also seem to increasingly distrust European institutions and politics. The White Paper sets out the five principles that underpin how governance should work, and that the European Union has to work on. These five principles are openness, participation, accountability, effectiveness and coherence, by which the practice of the European Commission and the member countries can be measured. Good policy should fulfill all of these principles.

Each of the case studies, namely the asylum policies of the countries mentioned earlier and the European Commission, will be analyzed along the lines of the White Paper on European Governance. This means that for all these cases the extent to which they operate in conformity with the five basic principles will be considered. By means of these five principles certain questions should be put.

#### *Openness*

- To what extent do the European Commission and the Member States communicate their actions with regard to asylum policy to the general public?
- Is the language they use accessible and understandable to the general public?

#### *Participation*

- How much do the public and civil society participate throughout the policy chain, both at EU and national level?
- To what extent are regional and local actors included in developing and implementing policies?

#### *Accountability*

- How clear is the role of the legislative and executive branch, both at EU and national level?
- To what extent can those who are responsible for the policy be held accountable?

#### *Effectiveness*

- Are there clear objectives?
- Is there an evaluation of future impact or past experience?
- Are the objectives met?

#### *Coherence*

- Is it clear that policies from other sectors have been taken into account with regard to asylum policy?
- Is the approach with regard to asylum policy consistent?

Thus, there are the five principles with which policies can be measured. In general it can be noted that these are clear and valuable principles, but for much part it is not specified how to measure these principles. Therefore additional literature will be used in this research in order to make an effort to make the principles operational, and more useful in practice. The additional theories for each principle are set out in the following part.

### *Openness*

The principle of openness is important because the general public should be able to know and understand what the EU does and what decisions are taken. This would improve the confidence EU citizens have in complex EU institutions. To a large extent it is possible to analyze the amount of openness and information supply that exists. It is not as easy to make an assessment of the extent to which this information reaches the general public.

The White Paper does not really elaborate on the specific ways in which it would be possible to measure openness. Therefore this research will make an effort to go into this matter a bit further, based on further literature. The principle of openness is closely related to the notion of transparency. One could describe transparency as ‘the ability to look clearly through the windows of an institution’ (Den Boer, 1998: 105). Six questions can be put with regard to transparency.

#### *1. Who creates transparency?*

In essence, there are two possibilities here. Firstly, an organization can make itself transparent. This could be done by publishing year reports, the way this is done by hospitals and universities for instance. An advantage here is that the most knowledgeable actor is the one who publishes the information. A disadvantage is that questions can be put with regard to the objectivity of the facts being presented.

The second possibility is that an external supervision holder makes the actor transparent. The advantage here is the objectivity of the outcome of their findings. A disadvantage could be that an outsider has a less clear view of what goes on inside the organization.

#### *2. What is made transparent?*

There is a large quantity of information inside organizations which they could choose to publish. The kind of information that is published can be divided by an input-output-outcome model of government policy. Input refers to the means that are available to achieve policy objectives, such as personnel, material and budget. Output refers to the performance that is delivered, this could be in terms of products or services. Measuring the outcome is more complex than the first two forms of transparency, since this refers to the extent to which society has benefitted of a certain policy.

3. *What kind of information is made public?*

Organizations can choose to either make quantitative or qualitative information public. The advantage of quantitative information is that it is easier to compare with other policy results or data. The advantage of qualitative information is that it can often present a more nuanced picture of reality.

4. *How active is transparency created?*

An organization can either actively make an effort to make information public, or it can passively wait until an interested party makes a request. This is referred to as the distinction between active and passive publication.

5. *Which medium is chosen for transparency?*

This question is rather self-explanatory. Organizations can use a range of media to create transparency. The most traditional way is the possibility to view meetings from the public tribune. It is however through the use of mass media that large audiences are reached. This can be done with the use of paper media such as newspapers. And of course television and the internet are also very useful ways to reach a large amount of people.

6. *How is the information presented?*

Organizations have to be careful not to produce a flood of unsorted information that can be confusing and difficult for the public to assess, this is referred to as information overload. One way to tackle this problem is by sorting the information, and working with an index and search terms. It is also a possibility to present a more simplified version of the data that is published, this can be done complementary to presenting all the data in a full report (Meijer et al., 2009).

### *Participation*

The principle of participation should create more confidence in the end result and in the institutions that are responsible for delivering the policies. In the policy process it is necessary that central governments follow an inclusive approach with regard to the development and implementation of EU policies. It is possible to analyze which actors are involved in the policy process, however it is not quite that easy to determine the extent to which these actors have had a real influence on the policy outcomes.

Scharpf makes a distinction between ‘input-oriented’ and ‘output-oriented’ legitimization. The input-oriented perspective can be summarized as ‘government by the people’. This means that political choices are legitimate if they are a reflection of the will of the people. Whether this is the case relies significantly on the extent to which relevant actors participate in the policy process. Those persons who are affected by a decision can be brought together so that they can search for solutions to which all can agree. Simply put, input-legitimacy refers to the probability that the people who are being ruled have some influence on the process of rule-making itself. The concept of input-legitimacy is thus closely related to that of participation, since the decision-making process should involve all persons affected by a decision. It becomes harder to achieve this as the scale of the problems become larger. In those situations it is likely that majority rule will prevail over input-oriented theories of legitimization (Scharpf, 1999).

Policy is made with deliberation and in cooperation, but there is also competition and conflict between a great number of groups and organizations in and surrounding the public sector. Each party tries to exert influence within the policy process. The model of policy cycles divides the policy process into six phases, and for each phase it is possible to assess where the power lies. The six phases are as follows (Bovens et al., 2001):

1. Agenda-forming
2. Policy preparation
3. Policy determination
4. Policy execution
5. Policy evaluation
6. Feedback and reconsideration

For each of these phases the extent to which different actors are involved and able to exert influence will be analyzed.

### *Accountability*

The principle of accountability emphasizes that there must be clarity with regard to the roles in the legislative and executive processes. The role and responsibility of institutions at both EU and member state level should be clear. Now it is not very hard to analyze which structures there are at both levels, and what the roles of the respective institutions are. There is also a large amount of information available on the way in which these institutions function in practice.

There are several definitions of accountability to be found in academic literature. Here the definition of M. Bovens shall be used, which is the following:

*Accountability implies a relationship between an actor and a forum, where the actor feels obligated to give information and explication about his performance, where the forum can ask further questions, and can file a judgment and this judgment can have consequences for the actor (Bovens et al., 2009: 20).*

This definition contains different elements, which shall now be discussed.

Firstly the actor can be a public or private organization, or a politician. The forum is the one to whom the actor is accountable. This can be a specific institution, such as an inspection, a panel or a commission, but it can also be a more virtual entity like public opinion. The obligation that the actor feels can be both formal and informal in nature. In the case of public accountability, there is often a formal obligation to answer for one's behavior in a more or less structured form, at certain given times. For instance there is the obligation for institutions to present a budget at the end of each fiscal year. In other cases the obligation is more informal in nature, like with certain press conferences and briefings.

Analytically, accountability can be divided into three phases. First there is the information phase, where the actor feels obligated to inform the forum with information about its performance. This may involve information about their acting or negligence to act, or about performances or incidents. This information can then lead to the next phase, which is that the forum will ask further questions and debates about the nature of the information and the assessment of the manner in which the actor has acted. This is the debate phase. In the final phase the forum forms a judgment. Obviously the judgment can either be positive or negative. There may also be consequences attached to this judgment. A positive judgment could lead to extra budgets, whereas a negative judgment could lead to sanctions (Bovens et al., 2009).

### *Effectiveness*

The principle of effectiveness essentially refers to the extent to which policy objectives are reached. In order to measure the effectiveness of policies, it is necessary that clear objectives are set out when a policy is put into effect. And at some point there should be some sort of evaluation with regard to the results and effect of the policies. When this is the case, then it is possible to measure the effectiveness of policies.

The most classical scientific way of measuring effectiveness is the experimental design. This type of design is highly regarded, since it is very strong with regard to internal validity, which refers to the causal relations that the researcher is trying to establish. The experimental design is not easy to execute, and a number of conditions should be fulfilled in order to be able to do it. The essence of an experimental design will now be set out.

Basically the proposition that has to be assessed is as follows: "If X, then Y". Or in other words: "If the program is given, then the outcome occurs." This automatically also means: "If the program is not given, then the outcome does not occur."



If one succeeds in providing evidence for both propositions, then the program has in effect been isolated from all of the other potential causes of the outcome. This is important with regard to the causal effectiveness of the program. Now in order to prove that a program or policy works, ideally it should be given to one group of people, and simultaneously not given to another group. This way the differences in outcome can be compared.

In order to achieve this, there have to be two groups or contexts that are as similar as possible, in order for the two situations to be comparable. It is thus necessary to create two groups that are equivalent to each other. Therefore people are assigned randomly from a common pool of people into the two groups. Then, one of the groups are subject to the program or policy and the other is not. The outcomes of both groups will then be observed and compared.

A common and relatively simple form of experimental design is the two-group posttest-only randomized experiment (see table 3.1). In the notation of the design, it has two lines, one for each group, with the R indicating that both groups were assigned randomly. One group is subject to the program or policy (the X), and the other group is the comparison group which is not subject to the program or policy. A pretest is not included in this design, because random assignment is used one can assume that the two groups are equivalent to begin with.

*Figure 3.1*

R	X	O
R		O

A variation on the experimental design is the quasi-experimental design, which is rather similar to the experimental design but lacks on key element, namely the random assignment. The quasi-experimental design is popular, in fact they are more frequently implemented than the conventional designs with randomization. The mostly used form of quasi-experimental design is the nonequivalent groups design (see table 3.2). This design constitutes of a pretest and posttest for a treated and comparison group. As it lacks random assignment, the researcher might use two similar communities, the aim is to select groups that are as similar as possible in order to be able to compare the treated group and the comparison one. But since it is unlikely for the groups to be completely equivalent, the design is appropriately named the nonequivalent groups design.

*Figure 3.2*

N	O	X	O
N	O		O

It is clear that the European Commission has not adopted this scientific approach to evaluating their policies or programmes. The (quasi) experimental design requires a comparison group, which is never used in assessing whether European policies are effective. Also the other features of experimental design that are required to conduct such research and establish whether policies are effective are not used by the European Commission. Unfortunately, it is therefore not possible in this research to measure the effectiveness of the asylum policies by these standards (Trochim, 2006).

### *Coherence*

The principle of coherence refers to the extent to which policies from other sectors have been taken into account when making a certain policy. Obviously in many cases a particular policy field is related to many other policy fields. It is possible to identify those fields, but it is not always easy to determine whether a certain related policy field has been taken account when making a policy.

Achieving policy coherence is a major challenge for governments. The OECD has conducted a research on this subject in cooperation with many practitioners from the various OECD member countries. This research has resulted in five key lessons that are relevant in order to enhance policy coherence, which will be briefly set out here.

**1. There is a gap between the need for coherence and the capacity to achieve it.**

Many efforts to translate the need for greater coherence into concrete measures have shed a sharper light on the discrepancy between that need, and the extent to which governments are able to fulfill it. Coherence basically implies an overall state of mutual consistency among different policies. However the domain of public policy is too multifaceted for that definition to be useful in practice. There exist different spheres of coherence, such as economic, social and political, and they all have their own internal logic. The very notion of coherence has to be adapted to the realities of a complex environment.

**2. Governing in a democratic political system necessarily involves a degree of incoherence.**

Social and political factors bring many forces into play that rarely converge toward coherent sets of policies. In that sense, good policy making is not so much a question of avoiding contradiction, but more one of managing contradiction.

**3. No single policy-making can guarantee improved coherence.**

Different systems may provide equivalent degrees of coherence with different instruments. It is dependent on less tangible factors, such as the political dynamic of the system, the working method of government leaders and the administrative culture of the civil service.

**4. There nevertheless exist good practices and “tools of coherence”.**

There are organizational concepts which, translated into structures, processes and methods of work, have helped bring greater policy consistency in governments. These concept should reflect three needs, namely the need for a strong strategic capacity at the centre of government; the need for organizational flexibility; and the need for effective information-gathering and processing systems.

**5. The paramount tool of coherence is informed decision making.**

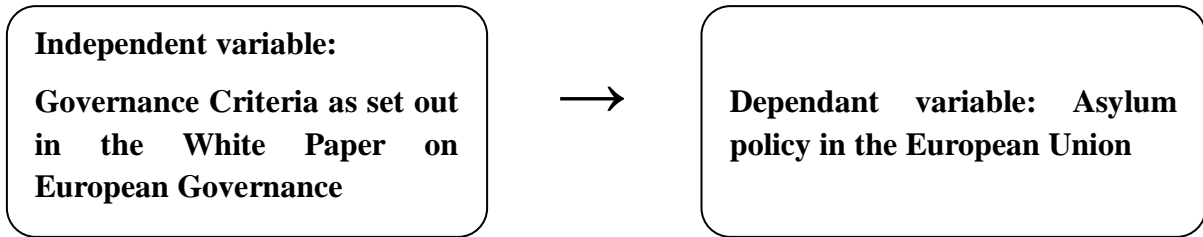
The complexity of contemporary policy making have led many professionals to the view that what matters most is not simply whether contrasted policies are being pursued, but whether they are being pursued knowingly. Contradictory decisions can be made, but it is pivotal that in these cases they are made deliberately, based on information and analysis. Therefore the availability of information and analytical capacities are of utmost importance (OECD, 1996).

The application of these five principles reinforces the principles of proportionality and subsidiarity. Proportionality is related to the question whether the measures that are chosen are proportionate to the objectives. Subsidiarity regards the question whether the European level is the most appropriate one to take action. So, from the start of the policy process to its implementation, the choice of the level at which action will be taken (EU-level to local) and the selection of instruments must proportionate with regard to the pursued objectives. This means that before an initiative is launched, it is essential to systematically check three questions. First, is public action really necessary? Secondly, is the European level the most appropriate one? And finally, are the chosen measures proportionate to the objectives?

The White Paper aims to establish better governance practices in Europe. In the future the political organization should be such that both at European and national level the powers should be clearly divided between the legislature and the executive. Furthermore, there have to be clear principles identifying how competence is shared between the Union and its Member States. These should make clear who does what in Europe. The White Paper shows a picture of a European Union that is based on multi-level governance, where each actor contributes in line with his or her capabilities or knowledge. The great challenge in such a multi-level system is establishing clear rules over how competence is shared (White Paper, 2001).

### **3.6 Variables**

*Figure 3.3: Stream model*



## 4.0 Methods of inquiry

### *Case study*

As stated in the objective this research focuses on two specific countries and the European Commission with regard to their asylum policies, thus the research will take place by using case studies. The high amount of information available on this topic led to the choice for a flexible design, generating both qualitative and quantitative data. A flexible design anticipates that the design may develop during data collection. By contrast, in the case of a fixed design there is a purely quantitative approach that calls for a tight pre-specification of the design prior to data collection. Case studies provide the opportunity to develop an in-depth analysis of multiple cases. The countries are selected based on their relevance in Europe and the urgency of the issue in their respective countries.

### *Gathering empirical data*

According to Yin (1994) different methods can be applied when conducting a case study to obtain your empirical data, namely:

1. Informants;
2. Respondents;
3. Key figures;
4. Artefacts;
5. Documents;
6. Interviews;
7. Observations.

The main strategy for this research consists of the fifth method, that is the studying of existing documents. In effect these will be written documents, and it will range from books to newspapers, magazines, policy notes, articles and plans. These documents will be obtained from public sources, internet, and relevant governmental organizations will be approached for information. The documents will be subjected to a content analysis. Content analysis can be described as a research technique for making replicable and valid inferences from data to their context. An important advantage of this method is that it stresses the relationship between context and content. The context implies both the purpose of the document as well as institutional, social and cultural aspects. It is indeed particularly important to keep in mind that in general documents are written with a certain purpose. An advantage of content analysis is that it is unobtrusive. This means that it is non-reactive, because the document is not affected by the fact that you are using it. A disadvantage is that the available documents may be limited, and it is often difficult to use documents when they might be biased or distorted (Robson, 2002: 348-358).

Another method will be the sixth method according to Yin's order, namely the interview. In this case the semi-structured interview will be used, which means that there are predetermined questions, but the order can be modified if this seems appropriate in the perception of the interviewer. The interview can be part of either understanding or interpreting the theoretical framework, or of the research for one of the case studies. There is a considerable amount of freedom to interviewers in the sequencing of questions, in their exact wording, and in the amount of time and attention given to different topics. This is a so-called respondent interview, which means that the interviewer remains in control throughout the whole process. It is the agenda of the interviewer that matters. Interviews are a flexible and adaptable way of doing research. Because of the lack of standardization there might be concerns about reliability. It is difficult to rule out biases, and this calls for a degree of professionalism in order to deal with these problems. There are certain rules that an interviewer should keep in mind. For instance, it is important to put questions in a straightforward, clear and non-threatening way. Interviewers should also eliminate cues which lead interviewees to respond in a particular way. Furthermore it is important to avoid biased questions; the interviewer has to stay neutral at all times. (Robson, 2002: 270-278). The interviews will be held both with experts and people working in the policy field.

A significant part of this research is substantiated by a placement of just over five months at the Telders Foundation. This provides the researcher with the opportunity to work in an inspirational and scientific environment, where he can benefit and learn from the knowledge and insight of the scientific staff. The researcher has a large amount of freedom to do his research at the Telders Foundation, where he will also get guidance from his supervisor. This placement can also be regarded as a form of participant observation. There might be a risk of becoming 'his masters voice', which must of course be prevented.

Besides choosing the adequate research methods particularly when conducting flexible design research the method of triangulation is very important, since the level of available information is very high. In short, triangulation is the process of making sure your research findings are accurate and credible by combining methods. The trustworthiness of the research as a whole will benefit from this method.

The validity of a case study is particularly dependant on four points. First there is the design validity, which can be safeguarded by using several different sources for information. The second point is the internal validity, which emphasizes the importance of determining causal relationships. Thirdly, the external validity emphasizes the importance of being able to generalize the outcomes of research to other cases. In this research for instance this could concern the extent to which good policy in one country would in fact also work in other countries if it were applied there in the same manner. Finally, the reliability of the research is very important. In this research this has been taken into account by using different research methods, using reliable sources, and being surrounded by knowledgeable scientists. By using different research techniques, several sources and by taking the mentioned rules into account, an attempt will be made to give an objective view of the current situation, and come to balanced research outcomes.

## **5.0 Asylum policy of the European Commission**

### ***5.1 Historical perspective and current situation***

The Commission's Communications of 1991 and 1994 on asylum and migration, and the Edinburgh European Council of 1992 have addressed the issue of migratory pressures on the Member States and the need for policy action within the EU, however it wasn't until the Treaty of Amsterdam and the Tampere Summit in 1999 that there was sufficient political will and ambition of European leaders to take collective action. Up until that point there was little progress on the field of a European asylum policy, partly due to the requirement of unanimity in the Council of Ministers on this policy area. One of the more important achievements had been the implementation of the Dublin procedure in 1997, which entails the rule that the country where an asylum seeker enters is responsible for starting the asylum procedure. It also implies that this asylum seeker does not have the right to start this procedure in another EU-country.

On the first of May 1999 the coming into force of the Treaty of Amsterdam meant the transfer of certain competencies in the field of asylum and migration to the Community pillar (Sterckx, 2004). This implied that with the Treaty of Amsterdam a new phase has begun in the communitarism of the European asylum policy. The level at which decision making with regard to asylum policy takes place has partly shifted, such as control of the external borders of the European Union and the combat of illegal immigration (De Zwaan, 2007). However to some degree the asylum policy had also remained in the intergovernmental third pillar (European Commission, 1997).

In October 1999 the European Council held a summit in the Finnish town of Tampere on the creation of an area of freedom, security and justice in the European Union. Asylum and migration in particular were high on the agenda, and it is on this Summit in Tampere that the European leaders introduced the 'comprehensive approach to migration'. One of the main outcomes of this summit was a recognition of the growing importance of asylum and migration matters, and thus the need for a common and new approach on this field. The European leaders established a four-track approach to migration and asylum issues. In the future a common EU asylum and migration policy would have four basic elements, namely partnerships with countries of origin, a Common European Asylum System (CEAS), fair treatment of third-country nationals and management of migration flows.

It is on the basis of the conclusions of Tampere that the European Commission is trying to reach concrete measures. The Commission has set up a Scoreboard that will give clarity in the legislation process of the Union on the field of Justice and Home Affairs. This Scoreboard has to provide information on the progress that is being made on the implementation of the objectives, as they are formulated in Amsterdam and Tampere (European Commission, 1999).

The European Council in Nice in 2000 has led to changes in the decision making procedure of the first pillar, the Treaty of Nice will be operative from the 1<sup>st</sup> of February 2003. Thus, on many policy areas there will be qualified majority voting, but not yet on the field of asylum (European Commission, 2000).

At the Summit in December 2001 in Laeken the European Council reaffirmed its commitment to the policy objectives defined at Tampere. The conclusions of this Summit mostly contained ambitious intentions to come to better policies, however it doesn't reach much further than stating these intentions. Asylum policy was also central to the European Council in Seville in June 2002, however the amount of progress that was achieved here was also limited. Here it was stated that the policy of the Union on the field of asylum should be based on two principles, namely:

- The legitimate desire to a better life should be compatible with the reception capacity of the Union and its member states.
- In accordance with the Geneva Refugee Convention help must be offered to refugees in a quick and effective manner. However measures must prevent abuse and ensure that rejected asylum seekers will return quickly to their country of origin (European Commission, 2001).

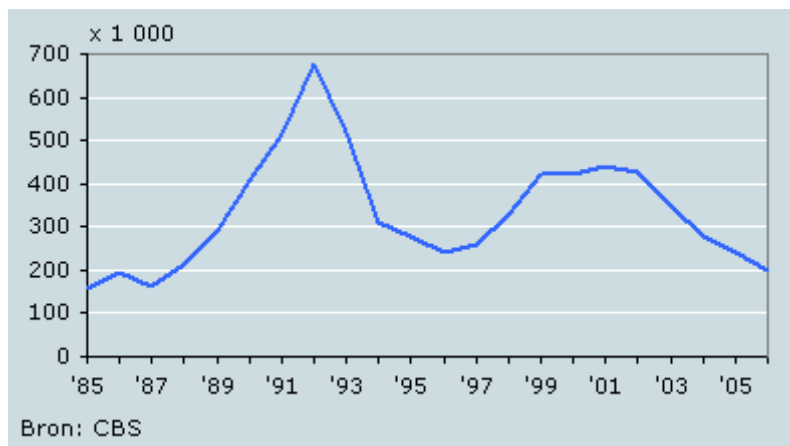
The European Council in Thessaloniki in June 2003 reiterated its determination of establishing a Common European Asylum System. They also proposed a Council Directive concerning the minimum standards for the qualification and status of stateless persons as refugees or as persons who otherwise need international protection, and they proposed a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (European Commission, 2003).

In November 2004 under the Dutch presidency of the Union, the European Council introduced the 'The Hague Program', a 5 year Action Plan for Freedom, Justice and Security, so for the period of 2005 to 2010. One of the results is that from the 1<sup>st</sup> of January 2005 a large part of legislation concerning asylum and migration can be approved with qualified majority. More specifically this concerns border controls, burden-sharing with regard to asylum, and illegal immigration. Great Britain, Ireland and Denmark have 'opt-outs' with regard to European immigration- and asylum law, which means that they don't have to submit to communitarian legislation on this field (European Commission, 2004). With the disappearance of the rule of unanimity an important new instrument has been added, namely the co-decision right of the European Parliament. Hereby a democratic feature has been added, but at the same time the Dutch parliament no longer has to approve the policies. In the former decision making procedure, the Council of Ministers was able to approve policy proposals without the approval of the European Parliament, but the national parliaments had to approve the policy proposal. Hence, the democratic control has now shifted from the national to the European level (Wiebenga, 2005).



According to the Presidency Conclusions of the European Commission of 22 June 2007, the European asylum policy has been aimed at bringing the objectives of the programme of Tampere and the Hague Programme into practice. The need for the Union's capacity to contribute to the management of the external borders of Member States is emphasized, and in this respect the capacity of FRONTEX must be strengthened. FRONTEX is an EU agency that was created in 2004 to coordinate the operational cooperation between Member States in the field of border security (Frontex, 2010). In these Presidency Conclusions the European Commission once again reaffirms its commitment to realising the Common European Asylum System by the end of 2010.

*Figure 5.1: Number of asylum requests in the European Union*



*Source: CBS*

Currently, there are four main legal instruments on asylum, which are all aimed at levelling the asylum playing field and laying the foundations for a Common European Asylum System. First is the Reception Conditions Directive, which guarantees minimum standards for the reception of asylum-seekers, including housing, education and health. Secondly, there is the Asylum Procedures Directive which must ensure that all procedures throughout the EU are subject to the same minimum standards. The third instrument is the Qualification Directive, which contains a clear set of criteria either for refugee or subsidiary protection status and sets out what rights are attached to each status. The final main legal instrument is the Dublin Regulation, this contains clear rules about which Member State is responsible for assessing an application for asylum. It is a vital instrument for the prevention of multiple demands. Furthermore, the European Refugee Fund (ERF) has been created in 2000 in order to enhance solidarity between Member States. The ERF financially supports efforts of Member States to grant reception to asylum seekers and to apply fair and effective asylum procedures. The money in this fund is distributed among the states on the basis of objective criteria relating mainly to the number of asylum seekers (European Commission, 2007). In general it is clear that on the field of asylum there are many directives, and a number of Member States don't comply with some of these directives (Kellij, N., 2007).

The CEAS was intended to be built in two phases. The first phase comprised of the four main legal instruments that are mentioned above, so this phase is now complete. In accordance with the Hague Programme, the second phase of instruments should be adopted by the end of 2010. The European Commission launched a Green Paper in order to start a wide debate on the future architecture of the Common European Asylum System, and all stakeholders are invited to express their views and make suggestions on what the CEAS should look like. After processing this input the European Commission will come forward with new proposals (Commission of the European Communities, 2009).

There are 27 European Commissioners in the European Union, each commissioner holds a different portfolio and they are led by the President of the European Commission. One could say they are the European equivalent of national ministers. Asylum policy falls under the responsibility of the Commissioner for Justice, Fundamental Rights and Citizenship. This position is currently held by Viviane Reding.

*Figure 5.2: Asylum applications submitted in the European Union, 2002-2008*

	2002	2003	2004	2005	2006	2007	2008
Austria	39.355	32.360	24.635	22.460	13.350	11.920	12.810
Belgium	18.800	13.585	12.400	12.575	8.870	11.575	12.250
Bulgaria	2.890	1.320	985	700	500	815	750
Cyprus	950	4.405	9.675	7.715	4.540	6.780	3.920
Czech Rep.	8.485	11.400	5.300	3.590	2.730	1.585	1.690
Denmark	5.945	4.390	3.235	2.280	1.960	2.225	2.360
Estonia	10	15	10	10	5	15	10
Finland	3.445	3.090	3.575	3.595	2.275	1.405	4.020
France	51.085	59.770	58.545	49.735	30.750	29.160	35.160
Germany	71.125	50.565	35.605	28.915	21.030	19.165	21.370
Greece	5.665	8.180	4.470	9.050	12.265	25.115	19.880
Hungary	6.410	2.400	1.600	1.610	2.115	3.420	3.120
Ireland	11.635	7.485	4.265	4.305	4.240	3.935	3.870
Italy	16.015	13.705	9.630	9.345	10.350	14.055	31.160
Latvia	25	5	5	20	10	35	50
Lithuania	365	395	165	100	145	125	220
Luxembourg	1.040	1.550	1.575	800	525	425	460
Malta	350	455	995	1.165	1.270	1.380	2.610
Netherlands	18.665	13.400	9.780	12.345	14.465	7.100	13.400

Norway	17.480	16.020	7.950	5.400	5.320	6.530	14.430
Poland	5.170	6.810	7.925	5.240	4.225	7.205	7.200
Portugal	245	115	115	115	130	225	160
Romania	1.000	885	545	485	380	660	1.080
Slovakia	9.745	10.300	11.395	3.550	2.850	2.640	910
Slovenia	650	1.050	1.090	1.550	500	370	240
Spain	6.310	5.765	5.365	5.050	5.295	7.195	4.480
Sweden	33.015	31.355	23.160	17.530	24.320	36.205	24.350
United Kingdom	103.080	60.045	40.625	30.840	28.320	27.905	30.550
EU Total	438.955	360.820	284.620	240.075	202.735	229.170	252.510

*Source Eurostat, 2010*

### ***5.1.1 Treaty of Lisbon***

The Treaty of Lisbon, which was initially known as the Reform Treaty, was signed by the member states of the EU on 13 December 2007, and it entered into force on 1 December 2009. The treaty is an amendment to the Treaty on European Union that was signed in Maastricht in 1992, and on the Treaty establishing the European Community, signed in Rome in 1957. In this process the latter treaty was renamed to Treaty on the Functioning of the European Union. Before the Treaty of Lisbon could be entered into law, it had to be ratified by all EU member states. Under the original timetable the Treaty was scheduled to be entered into force on 1 January 2009. Ireland was the only country to hold a referendum on the Treaty, and it was initially rejected in 2008. However this decision was reversed in the second referendum in 2009. So after also the Czech ratified the Treaty on 13 November 2009, the Treaty of Lisbon was entered into force on 1 December 2009.

The Treaty of Lisbon is an amending treaty, and as such it should not be read as an autonomous text. The Treaty consists of a number of amendments to the Treaty of Maastricht in 1992 and the Treaty of Rome in 1957. The Treaty of Lisbon does contain a number of prominent changes. For instance the President of the European Council will now be chosen for two-and-a-half years. There is a new post, namely that of High Representative, which should present a united position of the EU on foreign affairs. From 2014 the European Commission will be smaller, with fewer commissioners than there are member states. The Charter of Fundamental Rights, which is the human rights charter, has been made legally binding with this Treaty. More decisions will take place through qualified majority voting and the use of the co-decision procedure will be expanded. Also, the so-called pillar system will be abolished.

Thus, so far the EU has comprised of three legal pillars, each with their own policy fields. As mentioned above, this pillar system will disappear and everything will fall under the heading European Union, so i.e. the term European Community will no longer be used. In the Lisbon Treaty there will be a classification of various policy areas into three categories, based on the distribution of competences between member states and the European Union. The first category is that of 'exclusive competence', where in specific areas the Union has the exclusive competence to legislate and adopt legally binding acts, and member states are only able to do so themselves if empowered by the Union. The second category is that of 'shared competence', where in certain areas the Union shall share competence with the member states. In this category, the member states shall only exercise their competence to the extent that the Union has not exercised its competence. The third category is that of 'supporting competence', where in certain areas the Union has the competence to carry out actions to support, coordinate or supplement the actions of the member states, without superseding their competence.

Asylum policy falls under the second category, that of shared competences. Thus, both the European Union and the member states may legislate and adopt legally binding acts in this area. With the Treaty of Lisbon the rule of qualified majority voting has expanded to a number of areas, also those relating to asylum. It is thus fair to conclude that decision-making on this field has become more supranational with the introduction of this Treaty. Currently Denmark, the UK and the Irish Republic have an opt-out from European policies concerning asylum, visas and immigration. Under this Treaty they have the right to opt in or out of these policies.

## ***5.2 White Paper on European Governance***

The White Paper on European Governance is written by the European Commission and published in 2001, and to date it is the most important document on governance for matters regarding the European Union. Its aim is to establish better governance practices in Europe. In the following part, the extent to which the European Commission acts in conformity with the five core principles of the White Paper will be analyzed.

### ***5.2.1 Openness***

The European Commission makes a clear effort to communicate its actions and policies to the general public. There is high amount of information that can be found on the website of the European Union, and much information is also translated in all 22 languages of the European Union. Clearly attention has been paid to making this site accessible, in general the language that is used is not very complex, and the website looks flashy one might say. Much of the more detailed information is only available in either English, French or German.

This is also the case for the information that is available on asylum policy. There is plenty of information available on this subject as well, however it is not easy to get a quick overview. For an outsider who is not familiar with the European jargon and the way in which the European Union functions, it will take some time to fully understand the different treaties and laws that are relevant with regard to asylum policy.

Next to the normal homepage, the European Commission has also developed the site EUR-LEX, which is a single online point in all languages, where people can follow policy proposals through the decision-making process. The site provides direct free access to European Union law, and it includes inter alia the treaties, the treaties, legislation, case-law and legislative proposals (EUR-LEX, 2010). This is probably an excellent website for lawyers and other legal professionals, however for the average citizen the mainly legal texts that can be found on this site will probably be too detailed and complex.

With this amount of openness from the European Union, the question rises to what extent ordinary citizens and the press throughout Europe are interested in the European Institutions and its activities. The report *'An Emerging European Public Sphere? Empirical Evidence and Theoretical Clarifications'* focuses on these questions. Monitoring shows how often 'Europe', 'European Institutions' or 'European affairs' are mentioned in the media across Europe. The result has been that European questions pale in comparison with national, regional or local issues. In fact, European questions receive the lowest level of media attention in comparison to all other issue areas. However, the results from a project by Eder, Kantner and Trenz show that the salience of European affairs in quality newspaper reporting seems to be on the rise. This report also concludes that similar reference points and meaning structures are emerging, when people discuss European issues. Furthermore, there is increasing evidence for an emerging community of communication whereby European themes are discussed as issues that concern us by virtue of 'our common Europeanness'. When it comes to Europe and the EU, there is little evidence that media reporting varies dramatically from one national public sphere to the other, with regard to the frames of interpretation (Risse et al., 2003).

Now the notion of transparency as it has been set out in the theoretical framework will be analyzed for the European Commission, and therefore the six questions will be answered for this case study.

### *1. Who creates transparency?*

The question here is whether the European Union makes itself transparent, or an external supervision holder has been appointed to make the European Union transparent. This can easily be answered, it is the European Union itself that creates transparency, and the field of asylum policy is no exception.

## 2. *What is made transparent?*

There is a lot of information that the European Union, and also the asylum department, could make available to the public. Now this can be divided into input, output and outcome. The input refers to the available means to make policy work. The budget of the European Union is published every year, and it is clear how the budget is divided over the several policy fields. For the budget of 2010, roughly 1 billion euro is available for the field freedom, security and justice, and about 500 million of that amount goes to the field of asylum policy. This is only a small percentage of the total budget, as this stands at 141.5 billion euro for 2010. This information is made transparent and is easily available for those who are interested. Output refers to the transparency of the delivered performance. Important output on the field of asylum policy are the laws that are made to level the asylum playing field in the European Union, and the extent to which those laws work in all member states. It is not easy to find the draft proposals of laws, so the process before a law actually becomes official is not very transparent. Once it officially becomes law it is made transparent. New European legislation is always published in an official journal. It is also easy to find all relevant laws that exist on the field of asylum policy. It is however harder to find information on the extent to which these laws are in fact effective, and the extent to which member states comply with the legal rules that have been made. As for outcome, this refers to societal improvements as a result of policies, and in most cases this is not easy to measure. In the case of asylum policy, a more humane society could be a positive outcome of the policy. Now albeit hard to measure, one can assume over the years many people being persecuted in their own country have had the opportunity to build a better life for themselves in the European Union, and this can be considered a contribution to a more humane society.

## 3. *What kind of information is made public?*

This question refers to the distinction between quantitative and qualitative information. Now with regard to asylum policy it is clear that there is plenty of quantitative and qualitative information available. For instance, this can regard numbers of asylum seekers arriving in a particular country, or the legal instruments that are in place and have been published.

## 4. *How active is transparency created?*

This question refers to the distinction between active and passive publication. The European Union does both. Needless it actively makes an effort to communicate to the public. And it is also possible to order a wide range of specialist and non-specialist publications and books for a wide audience on a wide range of subjects, including asylum.

5. *Which medium is chosen for transparency?*

The European Union uses all conventional forms of mass media to create transparency. It is clear that they are particularly strong on using the internet to spread information. In case of a medium such as television, they are also dependant on the amount of airtime they will receive from various channels in the different member states. The report of Eder, Kantner and Trezn shows that media show relatively little interest in European affairs, and therefore it is more difficult to use such media. The advantage of internet is that the Commission can choose to put all information it wants on their website, and from then on it is up to citizens to look it up in case they are interested.

6. *How is the information presented?*

There is a high amount of information available on EU-policies. This could lead to a so-called information overload, but the EU-website is in fact quite well organized. When it comes to asylum policy the body of legislation that is in place is clearly set out, and therefore it doesn't get confusing. The website also works with search terms. And with many large documents and reports it is not hard to get an overview through the use of indexes. In many cases they have put a short version of the legal framework on the website, and it is possible to get a more extensive view of the situation by going to the full report.

All in all, the European Union does make an effort to provide information on its policies and laws. This is also the case for the field of asylum policy. The language they use is not always very accessible and understandable to ordinary citizens though. But despite these efforts, European politics and policies get much less attention than national, regional or local issues. Although there has been some improvement on this matter in recent years. Nevertheless, it is clear that there is a discrepancy between the ever growing role of the European Union on the one hand, and the amount of attention that most citizens pay to Europe on the other hand.

### ***5.2.2 Participation***

Interaction between the European Institutions and society can take various forms. Clearly, such interaction takes place primarily through the European Parliament as the elected representative of the citizens of Europe. It also takes place through the institutionalised advisory bodies of the EU, namely the Economic and Social Committee and the Committee of the Regions, on the basis of their role as it is set out in the Treaties. Finally, interaction takes place through less formalised direct contacts with interested parties. The importance of a culture of consultation and dialogue is also stressed in the White Paper on European Governance.

The Commission has laid down a number of general principles that should govern its relations with interested parties. The rationale is to ensure that all relevant parties are properly consulted. The principal aims of this approach are the following:

- Encourage more involvement of interested parties through a more transparent consultation process.

- To rationalise the consultation procedures by providing general principles and standards.
- To build a coherent framework for consultation, that is yet flexible enough to take account of the specific requirements of all the diverse interests.
- To promote mutual learning within the Commission.

The target groups of consultations may vary according to the circumstances, but in any situation all relevant interests in society should have an opportunity to express their views. Civil society organisations are vital in their role as facilitators of a broad policy dialogue. Depending on the issue, consultation should provide the possibility for input from representatives of civil society organisations, representatives of regional and local authorities, undertakings and associations of undertakings, the individual citizens concerned, and academics and technical experts (European Commission, 2002).

As mentioned above, the European Commission has launched a Green Paper in order to instigate a debate. So in that respect, they are acting in accordance with the general principles as they are set out in the White Paper on European Governance.

### *Interest groups*

There are many lobbyists in Brussels, some of which represent businesses and others represent public causes. Lobbying can best be described as trying to exert influence on political decision making. The exact number of lobbyists in Brussels is unknown, but the European Parliament alone has 4.834 accredited lobbyists. This is already impressive, but the estimates about the actual number of lobbyists range from ten- to twenty thousand (Laros, 2004).

There are a number of groups who actively lobby at the European Commission on the field of asylum policy. The High Commissioner of the UNHCR is one of the most important figures in this respect. There is regular contact and consult of the High Commissioner with the members of the Commission that are responsible for asylum policy. The most important NGO on the field of asylum is ECRE (European Council on Refugees and Exiles). ECRE is a pan-European network of refugee-assisting non-governmental organizations that are in favour of a humane and generous European asylum policy. They promote the protection and integration of asylum seekers and refugees, and the values of human dignity and human rights are the basis of their actions. Also Amnesty and the International Committee of the Red Cross try to lobby at the Commission at times, as do a number of other organizations. All of those organizations are in some way protecting the interests of asylum seekers and refugees. And although a number of those lobby organizations might be able to exert influence on the asylum policy, none of them have any official power. The Green Paper is a good opportunity for interest groups to try and exert influence on the final proposals by the Commission (Martini, 2007).



### *External advisors*

The two most important official advisory bodies are the Economic and Social Committee and the Committee of the Regions. The European Economic and Social Committee is a consultative body that gives interest groups a formal platform to express their opinions on several EU issues. These points of view are then forwarded to the larger institutions, namely the Council, the Commission and the European Parliament (European Economic and Social Committee, 2009).

The Committee of the Regions is the political assembly that gives local and regional authorities the possibility to give their view on matters. Since about three quarters of EU legislation is implemented at local or regional level it is only logical that local and regional representatives are given the possibility to exert influence on the development of new EU laws. The Commission and Council are obliged by treaties to consult the Committee of the Regions when new proposals are made in areas that have repercussions at regional or local level (Committee of the Regions, 2010).

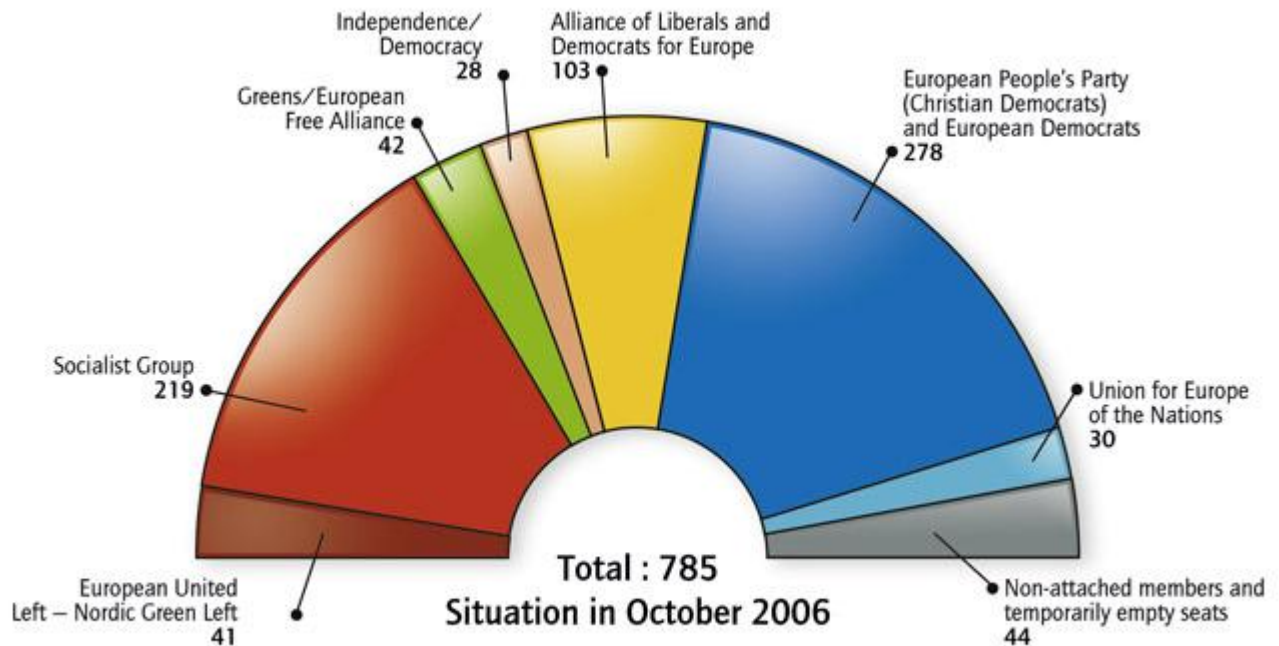
Another advisory body specifically aimed at the field of migration and asylum is the European Migration Network. This organization was set up to address the need to exchange information on all aspects of migration and asylum. As is emphasized in the Hague Programme, there is a need for common analysis of migratory phenomena, and the EMN is an important way of achieving this goal. They publish many reports in which information is collected and analyzed, and they provide an overall insight into the most significant developments. The European Migration Network's aim is to support policy making both at EU and Member State level.

### *Political parties*

The European Parliament is the only directly elected body in the EU system. It consists of a single chamber, and its 785 members are directly elected for fixed, renewable five-year terms. The seats are divided between the Member States roughly on the basis of population.

*Figure 5.3 Political alliances in the European Parliament*

## The political groups in the European Parliament



Source: <http://europa.eu>

As is apparent from figure 5.3, the main European political parties are the conservative European People's Party (EPP), the Party of European Socialists (PES) and the Liberal Democrat and Reform group (ELDR). The role of the European Parliament is not exactly the same as that of national parliaments, for instance it cannot introduce laws, enact laws or raise revenues. Under the co-decision procedure the Parliament shares power with the Council, and thus it plays a substantial and important role, as is explained in the *accountability* section. Decisions with regard to asylum policy are made under the co-decision procedure, so on this field the Parliament does have substantial power.

One could argue that the European Parliament has a credibility problem, since many citizens don't know what it does, and they don't have the same kind of psychological ties to the European Parliament as most people do have with their national parliaments. The turnout rates at European elections are also significantly lower than those of national elections.

### *Mass media*

As mentioned earlier, relatively little attention is paid to European politics in comparison to national politics. When discussing asylum policy, many articles in national newspapers make no or little mention of the role the European Commission plays with regard to this policy field. Asylum policy is a relevant topic in many European countries, but in many cases the articles pay little attention to the European dimension of this policy field. The discourse on asylum policy differs per country, which is logical when one considers the differences in the extent to which different EU-countries are confronted with asylum seekers.

### *Ordinary citizens*

The role of ordinary citizens with regard to the European decision making process on asylum policy is very limited, other than the normal democratic procedure of choosing national and European representatives. Citizens that are concerned about European asylum policy could join an interest group that shares their point of view, and thus indirectly try to exert influence on the policy process.

Now for each actor it will be assessed in which phases of the policy they were involved, according to the model of policy cycles as it has been set out in the theoretical framework.

	Interest Groups	External Advisors	Political Parties	Mass Media	Ordinary Citizens
Agenda Setting	X	-	X	X	-
Policy Preparation	X	X	-	-	-
Policy Determination	-	-	X	-	-
Policy Execution	-	-	-	-	-
Policy Evaluation	X	-	X	X	-
Feedback / Reconsideration	X	-	X	X	-

The first actor set out here are the interest groups. Some important interest groups in this field are the UNHCR, the European Council on Refugees and Exiles (ECRE) and Amnesty International. Interest groups aim to influence an aspect of government policy from outside. In order to achieve this they try have put certain problems on the agenda, sometimes successfully and sometimes less so. Interest groups have a number of tools to achieve their goals, such as supplying information, getting media attention and maintaining informal relationships with politicians and civil servants. As ms. Martini of the European Commission pointed out, the role of the High Commissioner of the UNHCR is very important. He has regular contact with civil servants in the phase of policy preparation, and they value his consult. Obviously interest groups are not involved when it comes to the actual policy determination and execution. Interest groups like Amnesty come with their own evaluation of the asylum policies in the EU, and their judgment is taken seriously. So when it comes to evaluation of the policy, certain interest groups can influence the image that exists of whether or not a policy was successful.

The second actor that is set out in this paragraph are the external advisors. The most important advisors are the Economic and Social Committee, and the Committee of the Regions. The European Migration Network was specifically set up to analyze information on the field of migration and asylum, and thus support policy making. All these advisors are in essence exclusively involved in the phase of policy preparation.

The third actor are the political parties. On the European level the political parties are active in the European Parliament. Their role there in the policy process is somewhat less prominent than their counterparts in the national parliaments. The Euro-parliamentarians are able to set certain issues on the agenda, also with regard to asylum policy. When it comes to policy determination, which refers to the question who makes the ultimate decisions, it is clear that the politicians represented in the Council of Ministers are very powerful. It is also the job of political parties in the EU to evaluate the policies and provide feedback as to whether the policy should change in the future.

The fourth actor are the mass media. Clearly the media play a role when it comes to which problems get high on the political agenda. In many cases, they are also used by others to get certain problems on the agenda. Also with regard to policy evaluation and feedback the mass media play a role, since the success of a policy is often also influenced by the way that policy is perceived in the media.

The fifth actor are ordinary citizens. Their role is rather limited in the European policy process. They may have an influence on which problems get high on the political agenda, since public opinion is taken into account with regard to agenda setting. When it comes to the other phases of the policy process, ordinary citizens play very little part.

All in all it is important to note that in the European policy process it is important to be involved in the early phases if you want to have some influence. Once a policy gets further down the line, the important decisions are made by the Council of Ministers.

### ***5.2.3 Accountability***

In the beginning, European integration was as an agreement among governments to cooperate in certain areas, which were mainly economic. In this early period this remained a process where it were the governments to whom the power of decision making was restricted. Over time, the European Union has grown, and this is also the case for the body of laws and policies. As a result, the powers and reach of the institutions that make, decide and implement those laws and policies have grown as well. Many changes have been made to the treaties, and this has created an institutional structure that is rather complex, and also confusing to many. Furthermore, the institutions of the EU are not easily comparable to those of a conventional government at the national level. The European Commission is more powerful than a normal bureaucracy, the European Parliament is not as powerful as a normal legislature, and the College of Commissioners is not quite a cabinet either. It is possible to give a brief and somewhat simplified account of how the five major institutions work. The European Commission is responsible for the development of proposals for policies and laws. Then, the final decisions are taken by the Council of Ministers in a rather complex interaction with the European Parliament. Once decisions on laws and policies are made, the European Commission must oversee the implementation of laws and policies by the Member States. The European Council is a gathering of the leaders of the Member States to guide the overall direction of the European Union. Finally, there is the Court of Justice that works to build a common body of law for the EU, and to make legal judgments on the correlation between EU law, national laws and the EU treaties (McCormick, 1999).

The exact accountability structures differ depending on the pillar under which certain policy falls. The pillar structure was created in the Treaty on the European Union in 1992, better known as the Maastricht treaty. The first pillar concerned mainly the internal market, and the decision making on this field was supranational. This basically means that the national governments have given away power and sovereignty on this field in favour of European institutions. Decision making in the other two pillars, the Common Foreign and Security Policy pillar and the Police and Judicial cooperation in Criminal Matters pillar, takes place in a more intergovernmental manner, which is to say that the Member States remain in charge over these policy areas. Although the two additional pillars have also become increasingly supranational since the treaty of Amsterdam in 1997. And as mentioned above, the Treaty of Amsterdam meant the transfer of asylum policy to the first Community pillar. Decision making in the first pillar now takes place mainly through the 'co-decision procedure'. This is a rather complicated procedure, which will be explained in the next section.

### *Co-decision procedure*

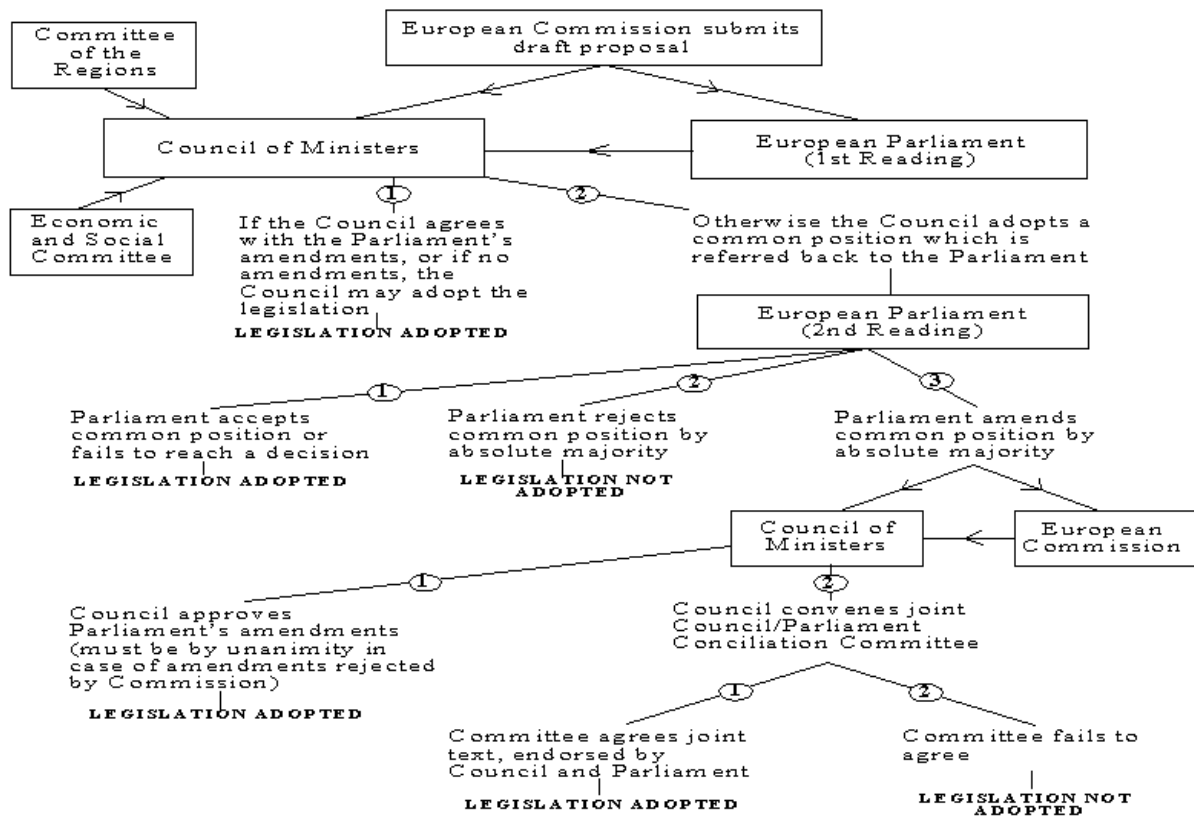
The co-decision procedure was first introduced by the Treaty of Maastricht and has now almost completely replaced the more intergovernmental 'cooperation procedure'. In short, the co-decision procedure works as follows. First, a new legislative proposal is drafted by the European Commission. The proposal then goes to both the European Parliament and the Council of Ministers. This proposal is then discussed independently in both institutions, and each may choose to amend it. The relevant working group of the Council is the first to start working on the proposal. The conclusion of this group usually forms the basis of the Council's position at the end of the first reading, which is known as the common position.

Meanwhile, the Parliament has to wait for the opinions of the Committee of the Regions and the Economic and Social Committee since the Parliament is obligated to include their standpoints into its first reading. Public hearings are also conducted at this stage. The Parliament also appoints one of its members as 'rapporteur', who is responsible for incorporating the committee's amendments into the draft proposal. The finished report is then put to vote in a plenary session, where further amendments may be introduced.

If both the Council and the Parliament have agreed on identical amendments after the first reading, the proposal will become law. When this is not the case, there will be a second reading in each institution, where each will consider the other's amendments. If there is still no agreement after the second reading, a conciliation committee is set up which attempts to negotiate a compromise text which has to be approved by both institutions. On top of this, both Parliament and the Council have the power to reject a proposal at second hearing or after conciliation. And the Commission can withdraw the proposal at any given time (Council of the European Union, 2010).

Figure 5.4: The co-decision procedure

### 8. CO-DECISION PROCEDURE (Article 251)



Source: The European Information Society Group

The definition of accountability that has been set out earlier will be repeated here, and then applied to the state of affairs with regard to the European Union.

Accountability implies a relationship between an actor and a forum, where the actor feels obligated to give information and explication about his performance, where the forum can ask further questions, and can file a judgment and this judgment can have consequences for the actor.

Now then, first the actor in this case must be identified. In the case of the European Union, this is not as straightforward as one might expect. The European Union has a type of circulatory decision-making process where power and influence are divided between the European Parliament, the Council of Ministers and the Commission. However it is clear that the main legislative and decision-making body of the EU is the Council of Ministers. Therefore the Council of Ministers must be considered as the actor in this process.

The next step is to identify the forum, in other words the one to whom the actor is accountable. As pointed out above, the actor is the Council of Ministers, which consists of national ministers. These ministers are accountable to the national parliaments. Hence, ultimately the Council of Ministers are accountable to their respective national parliaments, which are the forum in this case. This state of affairs is referred to as ‘borrowed legitimacy’, meaning the ‘indirect democratic legitimation of European politics and their already legitimated authorities’ (Svetlozar, 2004: 6). However, most member states do not allow their national parliaments to exact commitments from ministers before Council meetings, consult them during sessions, or hold them answerable afterward (Follesdal, 1998). On top of this, the qualified majority voting system implies that it is possible for decisions to be taken that are against the wishes of a minority of member states, whose democratically elected representatives cannot guarantee to defend their interest. Clearly decision making on a European level inevitably implies the necessity to compromise, but one could question the current level of democracy. The Commission has the power to draft laws and regulations that have to be approved by the European Parliament and the Council, which means that they do have a significant influence, both when it comes to the content of laws they are making and the agenda-setting power. Of course, the Commission is bound by the wishes of the Member States, but within these constraints they do have considerable freedom to make policy according to their insights (Mitchell, 2005)

The definition of accountability also entails the obligation that is felt by the actor to give information, and the question is whether this obligation is formal or informal in nature. Now naturally ministers have the formal obligation to explain their decisions before national parliaments, however as explained above, in the case of European decision-making this could be done more systematically and vigorously.

#### ***5.2.4 Effectiveness***

The objectives of the European asylum policy can be divided into two phases, as will become clear from the following paragraph.

##### *First phase*

The most important aims and principles of the common asylum policy were established in October 1999 in Tampere by the European leaders, and confirmed by the Hague Programme. Central to addressing refugee issues is the Geneva Convention. This Convention has been vital in the preparation and negotiation of the instruments on asylum. A practical concern is the fact that asylum is a European internal problem which could best be tackled on a European level. It would cause problems if there would be substantial differences between countries in a Europe without borders. This would make one country more attractive than another, which could encourage unwarranted secondary movement. According to the European Commission there should be a certainty that an asylum seeker will get a fair hearing and not be disadvantaged by a more or less generous interpretation of who is a refugee, regardless of the European country where he or she applies.



It was decided that the situation with regard to the European asylum policies would be improved in two phases. In the first stage, the goal pursued was to harmonise Member States' legal frameworks on the basis of common minimum standards, thereby ensuring fairness, efficiency and transparency. In the period of 1999-2006 there has been significant progress, particularly through the adoption of the four main legislative instruments. As mentioned before, these are the Reception Conditions Directive, the Asylum Procedures Directive, the Qualification Directive and the Dublin Regulation. In 1999 at Tampere a Scoreboard was set up, this is a detailed work programme to implement the conclusions of Tampere, complete with deadlines, and here progress could be reviewed every six months.

### *Second phase*

The aim is to adopt the second phase of instruments by 2010. The goals in the second stage are twofold, namely first to achieve both a higher common standard of protection and greater equality in protection across the EU. And secondly to ensure a higher degree of solidarity between Member States. It must be ensured that responsibility for processing asylum applications and granting protection in the EU is shared equitably. There has to come a common procedure and uniform status for persons benefiting from asylum. The overall goal is to adopt an integrated, comprehensive approach to asylum, where all aspects of the asylum process should be improved. This implies improvement from the moment individuals seek access to protection in the EU until the moment a durable solution is found for those in need of international protection (Commission of the European communities, 2010).

### *Evaluations of past experience and future impact*

In general, the European Commission subscribes to the importance of evaluating policies, and learning lessons from the conclusions and recommendations. In the case of asylum policy, it must of course be noted that it is still only for a relatively short period that the European Commission plays a significant role. This has basically started with the communitarisation of asylum policy in the Treaty of Amsterdam, and the conclusions of the European Council of Tampere in 1999. It usually takes some years for policy to be implemented and to work properly, and it is thus only useful to evaluate new policies after a certain period. For most of the first stage instruments, the process of evaluating is underway and not yet finished. There has been a report on the evaluation of the Dublin system that was published on the 6<sup>th</sup> of June 2007. The Dublin system lists sets of criteria to determine responsibility and establish mechanisms to transfer asylum seekers, and its functioning is closely linked to the EURODAC Regulation, which is a technical tool for comparison of fingerprints as support to the application of the Dublin system. After three years of operation the Commission has requested a report on the application of these obviously linked instruments. The report concludes that the objectives of the Dublin system have, to a large extent, been achieved.

In the period between September 2003 and December 2005, Eurodac has detected that approximately 12% of the asylum applications were done by people who already applied for asylum before. However there are some concerns with regard to the practical applications and the effectiveness of the system. Therefore the Commission will propose necessary measures to improve the system and further enhance its effectiveness (European Commission, 2010). It is however too early to say whether all asylum instruments will be properly evaluated, and whether lessons will be drawn from the conclusions and recommendations.

*Are the objectives met?*

The process of evaluating the first stage instruments and initiatives is underway and not yet finished. One can already conclude that the goals for the first stage, as they are set out in the Tampere Programme and confirmed by the Hague Programme, are now adopted. There are now four main legislative instruments which make up the current *acquis* and lay the foundations for the Common European Asylum System. However, as is apparent from the Hague Programme Scoreboard 2006, not all Member States comply fully with every Directive as they are laid down, but in attendance of a more comprehensive evaluation it is not yet possible to state the precise extent to which the current instruments are effective (The Hague Programme Scoreboard 2006). It is clear though there are many directives, and a number of Member States don't comply with some of these directives. One of the problems with regard to the Reception Directive is that it leaves much room and freedom for interpretation. The Reception Directive requires an 'adequate level' of reception facilities, which is clearly quite subjective and thus hard to measure (Martini, 2007).

The agency of FRONTEX doesn't function very well thus far, mainly because Member States are not obligated to contribute any material such as boats for instance. Many promises are made by Member States, but in many cases they are not kept (Kellij, N., 2007).

The second phase of instruments is yet to be adopted. The goal is for the instruments in this phase to be adopted by 2010. So the question is whether or not this deadline will be met, and whether the goals that have been set out for this second phase will be achieved. The evaluations and recommendations of most of the first phase instruments are due shortly, and one might expect these reports to provide valuable information that could and probably should be used with regard to the new second phase instruments.

According to ms. Martini of the European Commission the ultimately ideal situation would be one European asylum organization where all asylum seekers coming to Europe could make an asylum request. This would mean that one organization could use a clear and universally accepted definition of a legitimate asylum seeker. And once an asylum seeker is accepted, this organization could distribute the amount of asylum seekers to the different Member States, according to certain clearly established criteria. In many respects, this would probably be a more effective and efficient system, but politically this scenario is unthinkable.

It has to be considered a utopia for this situation to ever arrive in the coming decades, since the subject is much too sensitive politically. In terms of effectiveness, this political situation could be considered regrettable, since the advantages of such a system in terms of efficiency and effectiveness would probably be great. On the other hand, it is understandable that many Member States are reluctant to give away that much power on such an important subject.

The European Commission was in favour of creating an agency that would gather and analyze information with regard to asylum policies in the European Union, and the way the legislation is implemented in the different Member States. This organization would also support the Member States with the implementation of certain measures, if this would be necessary. However the political organs that have to decide over the creation of such an agency were against this idea, mainly because it would be too expensive. Such an agency might have contributed to a more effective implementation of certain measures and legislation, however this remains speculative. Others may perhaps feel that such an organization would mainly cause more bureaucracy (Martini, 2007).

In general one can observe that the amount of people who are working at the European Commission and are responsible for the entire European asylum policy is surprisingly low, at only seven people. Considering the scope of this issue and the number of inhabitants of the European Union, namely 480 million, this has to be regarded as a small number. The budget and staff is not likely to be increased, despite the increased role of the European Commission with regard to asylum policy. It is questionable whether this will have an effect on the effectiveness of the policy. If the workload for the responsible staff becomes too high this might result in a lower effectiveness of the policy, however this is speculation and it remains to be seen whether this will be the case.

### ***5.2.5 Coherence***

Asylum policy is related to many aspects and policies, both on Member State level and on European, international level. It is thus relevant to take further notice of the extent to which related policies are taken into account, and are adequate.

Asylum policy is related to the matters such as the access to labour market and health care. On many aspects there are still large differences between different Member States. For instance, the arrangements for access of asylum seekers to the labour market differs greatly between different Member States. Some EU-countries impose a variety of conditions that have to be fulfilled, often in order to obtain a work permit. Other Member States immediately allow access to the labour market, while other restrict it for years. There are also wide variations in access to health care. On this field there appear to be serious inadequacies with regard to the special needs of the most vulnerable asylum seekers. They should receive adequate medical and psychological assistance and counselling, since many people of this group are traumatised and sometimes victims of torture. The Green Paper suggest EU-wide training programmes for professionals in the fields of health and education, and maybe a monitoring mechanism aimed at ensuring high standards of quality in services provided to those asylum seekers who are the most vulnerable.

The Qualification Directive prescribes some standards with regard to the integration of asylum seekers, however these are quite limited. The European Commission does not play a significant role with regard to the development of the different integration programmes. Arrangements for housing and access to social services is currently a matter of Member States as well. It is recognized by the European Commission that employment is an important element in the integration process, and entitlements to work are thus crucial in this respect. The recognition of the qualifications of asylum seekers is also a special point of interest. Currently, the European Commission plays no role with regard to these issues, the Green Paper on the future Common European Asylum System does raise the question whether this should change. The Green Paper proposes to take a more comprehensive approach with regard to the integration process, and considers the legal measures that could be taken in order to achieve this.

As is outlined in the Green Paper, 6.5 million of the world's 8.7 million refugees are estimated to live in developing countries. Therefore, it seems evident that the European Union should consider ways to support third countries in dealing with asylum and refugee issues. It is also in the interest of the European Union to enhance effective protection and the availability of durable solutions for refugees in their region of origin and transit. So far, two pilot programmes have been launched to assist third countries in the area of asylum, namely in the Western Newly Independent States and in Tanzania. This is still at a very early stage of implementation, and it has not yet been possible to evaluate these projects. If concluded to be useful, such projects may be further developed in the future. In recent years, the Commission has also made efforts to systematically integrate asylum in its development cooperation strategies. The Green Paper raises the question which types of actions are most effective in supporting third countries to manage refugee situations, and how the EU's Regional Protection Programmes should develop in the future (Commission of the European Communities, 2010).

One of the ways to provide durable solutions and sharing responsibility is resettlement. Resettlement is the selection and transfer of refugees from a state in which they have sought protection to a third state which has agreed to admit them with permanent residence status. Resettlement could be useful in situations where refugees cannot return to their countries of origin, nor can they receive protection or be integrated into the country where they first came for asylum (European Community, 2003). Resettlement of refugees by the EU would show their commitment to international solidarity and share the burden of the countries in the regions of origin, since they already accommodate the vast majority of refugees. Resettlement and asylum both offer humanitarian protection, yet they are different processes. In the case of resettlement, states can decide in advance who they can help, and select those individuals they choose to offer asylum. The Commission is currently exploring how a common approach could be developed with regard to resettlement.

There is also an obvious link between asylum and illegal immigration, since the two are often hard to distinguish at the border. Migratory flows arriving at Member State's external borders may include both illegal immigrants and persons genuinely in need of protection. The challenge is to take measures to combat illegal migration and the smuggling of human beings without depriving true asylum seekers of their rights. The Commission has made proposals to establish teams of asylum experts, which could be called to assist Member States on a temporary basis when they have difficulties with performing the initial profiling of individual cases at points of arrival. Thus far, none of these proposals have been approved (Commission of the European Communities, 2010).

The report of the OECD on coherence has delved into the reality of achieving coherence in contemporary policy making. This report first points out that the environment in which policy is made is very complex and multifaceted, and that therefore it is very difficult to be completely consistent. As is clear from the paragraphs above, this also applies to the field of asylum policy. There are different spheres of coherence, such as economic, social and political. An example of an economical factor is the access that asylum seekers have to the labor market, and the extent to which they will be successful there. Another example is that the European Union also aims to assist third countries in the region to protect and accommodate asylum seekers, and this also has implications for the international political sphere since those countries have to be willing to accept assistance from the EU. With regard to asylum policy, there are still big differences between member states on many related fields, for instance when it comes to getting a work permit or housing arrangements. The matter of resettlement is also related to asylum, and thus far the Commission has not developed a common approach towards these two issues. It is thus fair to say that mutual consistency among different policy fields is not completely achieved. The OECD report states that it is almost impossible to avoid contradiction, but it is most important that decision making is well informed. It is common that contradictory decisions are made, but they must be made deliberately and based on information and analysis. The wide availability of information on related subjects indicates that in fact this information is used. For instance the Green Paper recognizes the differences on member state level on fields such as health care and education, and it proposes ways of improving the situation. There seems to be an awareness that there are contradictory policies by the European Commission, or that there could be more coherence on some fields. However in many cases the political sphere also makes it difficult to adequately deal with these inconsistencies. Asylum policy is a politically sensitive subject in most EU member states, and it is not easy for the European Commission to interfere with national matters such as work permits and access to health care.

All in all, it is clear that European asylum policy touches on many aspects and other policy areas, and it is a complex environment as the OECD report also stresses. It is clear from official documents, the Green Paper in particular, that the European Commission recognizes these links. The coordinative role of the Commission on matters that are related to asylum policy still is rather limited. There are many differences between Member States on the fields of labour, health care, housing and access to social services. The European Commission wants to take a more comprehensive approach with regard to these issues, however thus far this is yet to happen. Steps are taken to assist third countries outside of the European Union with asylum issues, which seems to make sense since this might decrease the burden on the European Union as well. Resettlement could be considered a form of asylum, and with the communitarisation of asylum policy it seems only logical for this to be a matter of the European Commission. Illegal immigration is a problem Member States face, and even though European assistance on this field might be practical this does not take place. As a matter of fact, in general it could be said that on many related fields the European Commission recognizes the problems or differences, but does not act accordingly. In that sense it is remarkable that the European Commission has knowingly pursued these contrasted policies, and as the OECD report points out it is important that decisions are at least made deliberately, even if they are not perfect. Perhaps it is too sensitive politically for the European Union to interfere with matters such as access to health care and labour on a national level, and the differences between various countries might be too big on these fields.

### ***5.2.6 Proportionality and Subsidiarity***

As is clear from the White Paper on European Governance, the five principles that are discussed above are related to the principles of proportionality and subsidiarity. The White Paper poses three questions with regard to these two principles. Firstly, is public action really necessary? In this case it is quite clear that asylum policy is a matter of government interference. The principle of subsidiarity is related to the question of whether the European level is the most appropriate one. And as mentioned earlier, the principle of proportionality puts forward the question of whether or not the chosen measures are proportionate to the objectives.

The first principle that is set out in the White Paper is that of openness. The picture of openness with regard to the European Commission is somewhat mixed. There is a lot of information available on each policy field, and many of that information is translated in different languages, at least in English, French or German. One of the main problems is however that the local press devotes relatively little attention to European politics. In terms of subsidiarity, the European Commission can be considered open and transparent enough to have asylum responsibilities transferred to the European level. It is possible that many media will start devoting more attention to European politics once they will get more power in this area too. In terms of proportionality, the objective is to inform European citizens about the decisions made in Europe. This information is made available, and it is hard to change the fact that many citizens hardly seem interested in European politics. Nevertheless generally speaking they have taken the correct measures in relation to the objective of informing citizens.

The second principle is that of participation. A high amount of participation from various actors is beneficiary to the democratic process. The amount of actors that participate in the democratic process on the European level is considerable, in general and also on the field of asylum policy. Important actors on this field are the High commissioner of the UNHCR and ECRE, a pan-European network of refugee-assisting non-governmental organizations. The European Migration Network is an advisory body also aimed at the field of asylum policy, that is mainly aiming to exchange information and provide a common analysis of migratory phenomena. Ordinary citizens are not very involved in the democratic process, not even when it comes to voting for the European Parliament. This could in part be because 'Brussels' is distant and abstract to many citizens. In terms of subsidiarity, there are many actors that are active on the European level, so therefore the decision making could be further shifted to the European level. Only the limited amount of participation from citizens might be problematic.

The third principle is accountability. The decision making structures of the European Union as they have developed through the years are rather complex. The power is divided between the Council of Ministers, the Commission and the European Parliament. Efforts have been made to increase the power of the European Parliament, and thus make the executive powers more accountable and the process more democratic. The co-decision procedure has in fact increased the power of the European Parliament, which has the power to amend and reject proposals done by the Commission. There are still points of concern though, such as the low turnout at European elections. It is also striking that the main legislative and decision-making body, the Council of Ministers cannot be held accountable by the European Parliament. So with regard to subsidiarity it can be said that the current situation vis-à-vis accountability favours decision-making at the national level, since the European arrangement is still far from ideal.

The fourth principle is effectiveness. Whether the European policy with regard to asylum would be considered effective differs on which perspective one takes. A number of objectives have been set out in the Hague Programme. Significant progress has been made on the objectives that were set out for the first phase, namely adopting instruments to harmonise Member States' legal frameworks to ensure common minimum standards. The second phase of instruments is yet to be adopted, the deadline has been set at 2010, it is thus too early to say whether this will be achieved. Many politicians and experts such as Mrs. Martini believe that ultimately the ideal situation would be to have one European asylum organization where all asylum seekers coming to Europe could make an asylum request. As of now, it seems unlikely that this will happen anywhere in the near future. So thus far the European Commission has been effective in achieving some objectives, albeit those objectives were rather modest. Whether they would be effective in achieving more ambitious goals depends to a large extent on political will. The relatively limited amount of staff working at the Commission on the field of asylum policy indicates that little priority is given to achieving more ambitious goals, such as one day creating one European asylum organization. With regard to subsidiarity, the European Commission is the appropriate level to be effective at harmonising standards. In fact, the Commission is the only level that could achieve such an objective. Of course when it comes to more ambitious goals such as creating one European agency, it is needless to say that the European level is the level at which this has to take place. The more detailed execution of many asylum policies would be more appropriate to be taken care of at the national level.

The fifth principle is coherence. This term refers to the relation of a policy with other policy fields. In the case of asylum policy, it is related to a number of other policies, as pointed out in this chapter. Some of those policies, such as health care and the labour market, are probably best handled at then decentralized, national level. The role of the Commission in that case could be to set up guidelines with regard to how to handle such matters. A related policy field that could best be handled by the European Commission is to support third countries in the region to deal with asylum and refugee issues. Thus, with regard to subsidiarity, whether a related policy field should be handled nationally or on European level depends on the nature of the policy field.

Thus, it is clear that all five principles set out above have implications for both the proportionality and subsidiarity of the policy. Particularly the matter of subsidiarity remains difficult to answer, since it often remains a matter of interpretation which level is most suitable to handle certain matters. For instance, it may seem more logical to handle asylum policy on the European level because of the international nature of migration, but one would like to see proper democratic and accountability structures on that level in order for them to be in charge of such an important matter.



### ***5.3 Conclusion***

The European Commission has been analyzed both according to the White Paper on European Governance and the theory of Multi-level governance. So it is now possible to regard the extent to which the European Commission acts in accordance with both theoretical paradigms.

With regard to the extent to which the European Commission fulfils the governance criteria as set out by the White Paper the picture is rather mixed. As far as openness is concerned, there is a high availability of information, yet for outsiders this may not always be easy to fully comprehend. Furthermore, most ordinary citizens are not very interested in European politics.

The European Commission has set out a number of clear principles with regard to participation. On the field of asylum policy there are also a number of interest groups and advisors, however it is not quite clear to what extent they are able to exert influence on the European policies. In general the picture seems to be that participation is mainly a matter of the Brussels' insiders, whereas many ordinary citizens are uninterested in or ignorant to what takes place on the European level.

The accountability structures differ per pillar and policy area. Asylum policy now falls under the first pillar, and thus decision making takes place through the co-decision procedure. This is a rather complicated procedure where most power is given to the Council of Ministers and the European Parliament. This procedure clearly has democratic features, but it is rather complex and not as clear as the way national parliamentary systems function. The low turnout for European elections might be illustrative of the lack of emotional ties between many EU-citizens and the political process that takes place on the European level.

As for effectiveness, one of the main goals of European asylum policy is to harmonise the situation in the different Member States. The measures that are taken in the first phase seem to have had an effect towards achieving that goal, but the evaluations must be awaited before it is possible to draw sound conclusions. It is already clear though that not all Member States comply with the directives, but the extent to which this is problematic is not quite clear. The overall aim of the second phase instruments is the adoption of an integrated, comprehensive approach by 2010. This is certainly an ambitious objective, and time will tell whether it will be achieved.

It is clear that a coherent asylum policy has to take many aspects and other policy fields into account, and the European Commission certainly seems to recognize this fact, particularly in the Green Paper. And even though the intention of the European Commission to increase the European role with regard to these issues is expressed, in practice not much has been realised so far. If the Green Paper reaches its goals, or some of them, then this may change in the future.

The five principles of the White Paper are related to the principles of proportionality and subsidiarity. Proportionality is related to the question of whether the measures that are chosen are proportionate to the objectives, and subsidiarity refers to which level is the most appropriate one to solve problems. Of course these are broad questions, and the five principles have different implications for these questions. With regard to proportionality, many measures are taken on different fields, and often they seem to be proportionate in relation to the objective, which doesn't necessarily mean they're effective. For instance the European Commission seems to be taking the right measures to achieve more openness, yet the average European citizen has little knowledge of what goes on in Brussels. With regard to for instance the accountability structures, they are not as good and clear as they could be, therefore they could take better measures to improve this situation.

The matter of subsidiarity is even more difficult to answer, in many cases it remains a matter of interpretation which level is most suitable to handle certain matters. In the case of asylum policy, it would seem logical to handle this on the European level due to the international nature of migration. The important implications of this policy for the various nation states would however require proper democratic accountability structures on the European level, and there seems to be room for improvement with regard to that issue.

The second theory is that of multi-level governance, now let's in short consider the extent to which the European Commission acts in accordance with this theory on the field of asylum policy. At the heart of this theory lies the notion that competencies in the policy process are shared, multiple institutions are influential and national governments don't have the monopoly on European decision making. This theory can be broken down to three core principles, which have been tested to the practice of European asylum policy.

The first principle is that decision making competencies are shared by different actors at different levels, and are therefore not being monopolized by national governments. First it is important to note that since the Treaty of Amsterdam in 1997 decision making regarding asylum policy is done through the co-decision procedure. This procedure in short comes down to a situation where both the Council of Ministers and the European Parliament have to agree on a proposal, that has first been developed by the European Commission. Therefore all these institutions have their own influence, and it is the European Court of Justice that has to rule on the interpretations of the laws once they have come into practice. It is thus fair to conclude that the first principle of shared competencies is in fact much like the reality of decision making on the field of asylum policy.

The second principle is that collective decision making on the European level will involve a significant loss of control for individual national governments. Decisions that concern rules which have to be enforced across all countries of the EU necessarily involve gains or losses for individual states. The Council of Ministers is the place of all places where national interests are defended by national ministers. However the decisions in the Council that are taken on the field of asylum policy are in fact taken through Qualified Majority Voting. This means that two-thirds of the votes are enough to pass a law in the Council. Naturally, it is therefore possible that certain decisions are made that are against the wishes of particular national minister. Furthermore there are a number of ways in which institutions such as the European Commission have much influence, for instance because of their surplus of knowledge on many issues. It is thus also fair to conclude that the second principle, loss of control for individual governments, in many cases applies to the reality of European decision making, also on the field of asylum policy.

The third principle states that political arenas are interconnected rather than nested. So this means that actors at the subnational level, such as regions and municipalities, also engage themselves in supranational affairs. They are also directly a part of the European policy process. In the case of asylum policy this principle doesn't quite match the reality. In practice the European Commission and its officials in this department are used to dealing with national governments when it comes to input for the policy process. Of course they have to deal with agencies of government organizations that are responsible for executing certain parts of the asylum policy, but this regards merely practical matters with regard to the execution of policy. However when it comes to developing the asylum policy as a whole, setting out the big picture, then this is a matter of nation states in relation with the European institutions. Therefore the third principle apply to European asylum policy, subnational actors are no major part of European policy making on this field.

All in all, with regard to the White Paper the European asylum policy only partly fulfills the criteria as they are set out. For instance, the accountability relations could be clearer, it is not very easy to for European citizens to hold the responsible people for European asylum policy to account. As for effectiveness, in the last decade much has been achieved on this field, and it is yet to see whether this progress will continue.

The practice of European asylum policy in many ways seems to be in accordance with the theory of multi-level governance. National governments don't monopolize policy making on this field, and have in fact lost some control over the policy process. Only the direct influence of subnational actors on the European policy process is not that large.

## **6.0 Asylum policy in The Netherlands**

### ***6.1 Historical perspective and general information***

Since 1992 the number of asylum requests in the Netherlands has risen. In the mid- and late nineties the Netherlands were among the countries with a relatively high amount of asylum requests. The highest number of asylum requests was in 1994, namely 52.576. In 1998 the number was 45.217, and in 2000 the number of requests was 43.895. Those numbers put a strain on the Immigration and Naturalization Service (IND). Because of the increased burden of these flows of asylum seekers, and the difficulties the IND had with coping with such pressures, a new asylum law was passed in 2000. One of the main goals of this new law was to shorten and simplify the asylum procedures. The new law seems to have had an effect on the number of asylum requests, since this number has steadily decreased since 2001. The number of requests was 32.579 in 2001, and 12.347 in 2005 (CBS, 2010). However, whereas these numbers kept declining in the rest of Europe in 2008, the number of requests has risen in the Netherlands to 15.275. This is even more remarkable because of the fact that all other EU-countries that have had a rise in the number of requests are located at or near the border of the European Union.

In 2003 Mrs. Verdonk of the liberal party became Minister of Immigration and Integration, she proposed a strict and tight asylum policy, which at times sparked controversy. In 2007 asylum policy became the responsibility of a State Secretary instead of a Minister. This position was then taken by State Secretary of Justice Mrs. Albayrak of the Labor Party. The Cabinet Balkenende IV fell on the 20<sup>th</sup> February 2010 as the result of a conflict between the Christian Democrat party and the Labor Party about a longer military stay in Afghanistan. Since the fall of the Cabinet asylum policy is now temporarily also the responsibility of the Minister of Justice, Mr. Hirsch Ballin.

Figure 6.1: Asylum requests and (positive) decisions, 1991-2008

	Number of requests	Decisions	Positive decisions
<b>1991</b>	21615	17239	2695
<b>1992</b>	20346	51478*	11814
<b>1993</b>	35399	30771	15012
<b>1994</b>	52576	58205	19345
<b>1995</b>	29258	57405	18501
<b>1996</b>	22857	84071	20431
<b>1997</b>	34443	49138	12315
<b>1998</b>	45217	47829	10426
<b>1999</b>	42729	59408	11976
<b>2000</b>	43895	75014	9726
<b>2001</b>	32579	72843	10580
<b>2002</b>	18667	72048	11976
<b>2003</b>	13402	40152	9726
<b>2004</b>	9780	25934	10051
<b>2005</b>	12347	37964	18342
<b>2006</b>	14465	9284	1207
<b>2007</b>	9731	8600	1118
<b>2008</b>	15275	14920	1492

\*The number of decisions can be higher than the number of requests since it is possible that decisions are taken over requests from previous years, and it is possible that one request leads to multiple decisions over time.

Source: Immigration and Naturalization Service

## 6.2 The current situation

The Aliens Act 2000, which was implemented on April 1<sup>st</sup> 2001, was aimed at improving the quality of the decisions, simplifying and reducing the number of procedures, and simplifying the system of residence permits. The decision on whether or not an asylum request will be granted has to be taken within six months. As was the case under the previous law, there are basically three criteria on basis of which asylum seekers can get a residence permit.

- International treaties (such as the Geneva Convention and the European Convention on Human Rights).

- Reasons of humanitarian nature.
- In case sending a person back to their country of origin would be exceptionally harsh because of the general situation in the country.

Under this law, when an asylum request has been rejected, it is no longer possible to object and ask the administrative board for a new assessment. This objection phase no longer exists. It is possible to appeal at court, the decision of which can be waited on in the Netherlands. Rejection to an asylum seekers' request will automatically lead to:

- The obligation to leave the Netherlands within a certain term.
- Ending of housing accommodation
- The possibility of placement outside the house
- The possibility of deportation

When an asylum seeker arrives in the Netherlands, this person has to apply at a registration centre in either Ter Apel or Schiphol. Once the asylum seeker has applied the so-called 48-hours procedure will go into motion, this is done by the IND. This procedure was created in 1998. The essence of this procedure is that asylum requests that are evidently unfounded can be rejected within the first 48 hours. In case it seems necessary to take more time in order to come to a decision the asylum request will follow the normal procedure, which will take much more time. In that case the asylum seeker can stay in an asylum seeker centre. In 40 percent of the cases a decision can be taken within the first 48 hours, and the other 60 percent will thus take longer.

When the result of the 48-hours procedure is that there are no grounds for starting the normal procedure, then the right to stay in a centre no longer applies. It is possible to appeal to rejection in the 48-hours procedure at the 'Raad van State', this organization will briefly be elaborated on in a later section (Wiebenga et al., 2005).

Under the previous law asylum seekers could get three different statuses, each with their own set of provisions. Under the new law there is only one possible status that asylum seekers can receive. When an asylum seeker gets a permit for a certain determined period, after three years he may qualify for a permit for an undetermined period. So in fact there are two possible permits, namely one for a certain determined period, possibly followed by one for an undetermined period. Each asylum seeker whose request is granted will get the same rights and provisions. Those provisions are largely determined by international obligations (Gemeente.nu, 2010).

The former State Secretary had decided to allow an estimated 25.000 to 30.000 people to stay in the Netherlands within the framework of an amnesty settlement. This amnesty applies to a group who sought asylum in the Netherlands before April 2001, many of whom have been in the country for years waiting on a decision or appealing against expulsion. The aliens who apply for this amnesty but don't qualify for the criteria have to leave the country. Here lies a task for the Service Return & Departure ('DT&V'), which is a part of the Ministry of Justice and is operational since January 2007. Their job is to ensure that illegal aliens leave the country, be it voluntary or forced (Dienst Terugkeer en Vertrek, 2010).

### ***6.3 White Paper on European Governance***

The White Paper on European Governance is published by the European Commission in 2001, and sets out how governance should take place within the context of the European Union and the various Member States. In the following part, the extent to which the Netherlands acts in conformity with the five core principles of the White Paper will be analyzed.

#### ***6.3.1 Openness***

Openness refers to communication, it should be made clear to the public what the Dutch asylum policy constitutes and what decisions are taken. The most obvious ways to achieve this is through communication in the press and by making information available on websites and in brochures. It is quite easy to find information on the Dutch asylum policy on the internet, in fact there is so much information that it takes some time to get an overview of the full picture. Probably the best source for information on asylum policy is the website of the Immigration and Naturalization Service (IND). All the information that is available on the website of the IND is also available in English, which might be very helpful for foreigners and asylum seekers, provided they speak English. There are also many brochures that can be ordered from the website for free, many of which are also available in English (IND, 2010).

Asylum policy is and has been a hot topic in the Netherlands, and it is thus hardly surprising that there is much information in the press surrounding this issue. Both in newspapers and on television this topic is often discussed and there are many debates, and as can be expected in a democracy the responsible State Secretary does occasionally explain and defend the policies. Despite the level of openness in the media, if you want to find out what the asylum policy is really like, it is necessary to research that yourself. The details of how the law works are not actively communicated to the general public, at least not in a sufficient manner. In conclusion, there is much information and communication with regard to asylum policies, and it is also not difficult for citizens to get more information on the subject in case they are interested.

According to a report by the Advisory Council on International Affairs, generally speaking, the policy of Dutch politicians with regard to European integration was formulated with little involvement of ordinary citizens. The Euroscepticism that was apparent from the Referendum on the European Constitution in 2005 was in part the result of a mixture of suspicion, protest and ignorance (AIV, 2010). A survey held by the European Commission in 2005 after the Dutch 'No' vote also investigates the motivation behind this outcome. The most important reason why people voted no was a lack of information, in fact 32 percent named this as the reason why they voted against the Constitution (Eurobarometer, 2005).

The apparent ignorance that appears to exist based on this report and this survey might also be considered to be a result of a lack of openness of information, or a lack of interest from the public. However, the openness with regard to asylum policy is probably greater than the openness with regard to European integration as a whole, since asylum policy is a more appealing subject to many people.

The language that is used on the most important website with regard to information about asylum policy, namely that of the IND, is in general not very difficult and will probably be easy to understand for most people. This is the case for most sources that provide information on asylum policy. There are however some policy documents that contain jargon and do use language that probably requires a certain level of education to fully understand. Of course the law itself is quite hard to understand since it is very detailed and filled with legal jargon, which evidently is inherent to laws.

In the theoretical framework the principle of openness had been connected to that of transparency. Six relevant questions have been put with regard to transparency, which will be answered here for the case of the Netherlands.

#### *1. Who creates transparency?*

This question refers to whether it is the responsible organization for asylum policy that makes itself transparent, or this is done by an external supervision holder. It is clear in the case of the Netherlands that the responsible department and the involved agencies in this field make themselves transparent. There is thus no outside organization that is also involved in this process.



2. *What is made transparent?*

There is fairly high amount of information on asylum policy that the Dutch government makes public. With regard to input the budget of the several government agencies active on the field of asylum, particularly the IND, is easily available. The total budget for 2010 for asylum policy and closely related affairs is 939 million euro. The budget is published each year, and is clearly set out on the website. The output refers to the extent to which the results on this field are made transparent. In the case of asylum policy, the results of policy are the laws in place with regard to asylum. Another result is the amount of asylum seekers arriving in the Netherlands, the percentage that gets a permit and the amount of time it takes before the asylum procedure ends. All this information is extensively available on various government websites, and the transparency here is thus on a satisfying level. Finally the outcome of the Dutch asylum policy is less easy to make transparent, but in certain cases an effort has been made. One could view the extent to which asylum seekers that have been granted a residence permit integrate into Dutch society as one outcome of the asylum policy. There have been reports on how well this group does in society, for instance with regard to the labor market.

3. *What kind of information is made public?*

The question here is whether quantitative or qualitative information is made public. It is clear and obvious that on the field of asylum policy both these forms of information are made transparent. It mainly depends on the subject, clearly a budget consists mostly of quantitative information, whereas the humanitarian objective of the asylum policy contains mostly qualitative information.

4. *How active is transparency created?*

It is possible to both actively and passively make information public. The Dutch government does both. They actively make an effort to communicate their policy and actions on the field of asylum to the public. It is also possible to order a wide range of brochures on asylum, the procedure and several related topics. The website of the IND in particular offers many brochures on this field.

5. *Which medium is chosen for transparency?*

All forms of mass media are used by the Dutch government to create transparency, also on the field of asylum policy. Thus, this means that both newspapers, the internet and television. On the field of asylum policy, it is an advantage that the subject attracts quite a bit of media attention, which makes it easier to communicate their policies. It is also necessary to explain the viewpoint of the government, since many parties have an interest to spread information about asylum policy that mainly suits their own agenda.

## 6. *How is the information presented?*

The information on asylum policy is well sorted and presented on the Dutch government websites. The information is easy to find, and it is also not hard to get more detailed information by going to full reports on a subject. Most Dutch websites also work with search terms, and most documents and reports have an index or table of content through which it is easy to get an overview. The information that reaches the public through the media is often less coordinated and can be confusing at times. Of course this is harder for the government to control, since all media are free to publish anything on asylum policy they want.

### **6.3.2 Participation**

The quality, relevance and effectiveness of policies are also dependant on the amount of participation throughout the policy cycle. Good participation can create more confidence in the final result (White Paper, 2001). Civil society and the public can participate during different phases of the policy cycle. The most basic and common theory of the policy cycle is that of Easton. This theory states that the policy cycle is a continuous process, where input from the environment leads to a certain policy, this is the policy output. The results of this policy are considered the policy outcomes. These outcomes will produce feedback, which once again can lead to a new policy. Important actors in the environment are interest groups, external advisors, political parties, mass media and ordinary citizens. These actors can play a role in both the phase of conception and implementation of policy (Rosenthal et al., 2001). Participation in this research also refers to the participation of regional and local actors in developing and implementing policies.

#### *Interest groups*

There is a number of interest groups that play a role with regard to asylum policy. Interest groups are organizations that try to influence an aspect of government policy from outside. Such organizations often represent certain interests, or they are trying to stand up for certain values, such as the environment or human rights. As opposed to political parties, interest groups only focus one aspect of government policy, and they don't aim to carry responsibility. Interest groups have a number of methods of exerting influence. They can supply information, get the attention of the media through demonstrations, or maintain informal relationships with politicians and civil servants. Some consider interest groups as a way of strengthening the democratic process, since they can serve as intermediates between the government and citizens. On the other hand, some criticize interest groups because they often place the partial interest of their members or sympathizers above the general interest (Rosenthal et al., 2001)

There is a large number of organizations that are trying to exert influence on the asylum policy in the Netherlands. An important organization in this respect is Refugee Work (*VluchtelingenWerk Nederland*), their aim is to defend the rights of refugees and asylum seekers. An important part of their work is to lobby for good asylum procedures, and to promote their access to housing, education, health care and work. They do this by addressing the problems on this field, and making policy proposals themselves. Refugee Work also tries to gain public support for asylum seekers, and they do this by providing information, having public campaigns and seeking media attention to promote their standpoints (VluchtelingenWerk Nederland, 2009).

Another important organization is Refugee Organizations Netherlands (VON), over 400 organizations of refugees have joined their powers in VON. This organization wants refugees to be treated in a just and humane manner, and to have the opportunity to participate fully in society. They try to achieve their goals by advising the government, mainly in the National Consultation Minorities (LOM). The VON also organizes conferences and debates, and they take part in the public debate (Vluchtelingenorganisaties, 2010).

The Council of Churches (*Raad van Kerken*) has the project group Refugees, which analyses the developments of asylum policy. They come up with their own report with recommendations on this field, and then approach politicians from all political parties to try to exert influence on their position with regard to asylum policy (Raad van Kerken, 2009).

There is a number of international human rights organizations, often with Dutch divisions, that also try to influence Dutch asylum policy or hold the Dutch government accountable for the results of its policy. An example is the International Commission of Jurists, with the NJCM as their Dutch section. They focus on the primacy of international law and principles that advance human rights. Four other prominent organizations in this respect are Amnesty International, Human Rights Watch, Unicef Netherlands and Defense for Children International.

### *External Advisors*

Policy makers are often supported by advisors from outside of their department. Such advisors can be both formal advisory organs and private bureaus. Formal advisory organs often constitute of experienced former politicians, scientists and representatives of intermediary organizations. External advisors can play a role in every part of the policy cycle. They can supply policy makers with information on which problems they should tackle, they can provide ideas for policy development, and arguments to sell the policy to their environment. Advisors can also provide instruments to execute policy and evaluate the results. Such advisors can operate both in addition to and as a replacement for civil servants. Some of these advisory organs have established a public visibility and reputation over the years. This reputation can be used to gain public support for a policy proposal. The increased visibility of external advisors raises questions about the extent of their influence. The functioning of such advisors falls outside of the regular accountability structures within the government (Rosenthal et al., 2001).

In the Netherlands there is a number of formal advisory organs. The most important ones are the Council of State (*'Raad van State'*), the Scientific Council of Government Policy (*'WRR'*) and the Court of Audit. The Council of State advises the Dutch government and parliament on legislation and governance. The Head of State is the President of the Council of State, and it consists of a maximum of 28 members, known as state councilors. They are drawn from the ranks of top officials, politicians, judges and academics. The Council of State mainly provides independent advice on bills introduced in parliament by the government, where they pay attention to both policy, legal and technical aspects (Raad van State, 2009). The WRR also advises the government about future developments of great public interest using a scientific approach. The WRR typically has a multi-sectoral and multi-disciplinary approach. Their advice can be used to readjust existing policy, to develop new policy or as support for decision making (WRR, 2009). The Court of Audit is by law obliged to research whether the financial management of the government fulfils the demands of lawfulness, verifiability, efficiency and effectiveness (Rekenkamer, 2010). These are three general advisory organs, which is to say that they can advise on all policy fields.

There are also advisory organs that are specific for the policy field of asylum, often combined with the related subject of migration. An important independent advisory organ in this respect is the Advisory Commission on Aliens Affairs (ACVZ), which was founded by the then State Secretary of Justice in 2001. The ACVZ advises the Minister of Justice and the Parliament with regard to migration policy. The ACVZ provides analyses of implemented policies to see whether recommendations are in place to improve the policy. They also advise on future developments and expected problems in the future, and they provide a direction for new policies which take these developments into account (ACVZ, 2010).

Another advisory organ is the Advisory Council on International Affairs (AIV), which is an independent body which advises the government and parliament on foreign policy, particularly on issues relating to development cooperation and European integration (AIV, 2010).

Furthermore, there is the European Migration Network (EMN). This is an initiative of the European Commission, and its task is to gather and analyze available information concerning migration and asylum at European and Member State level in order to support policymaking in the EU. The Information- and Analysis centre (INDIAC) of the IND is the national contact point for the EMN (EMN, 2010).

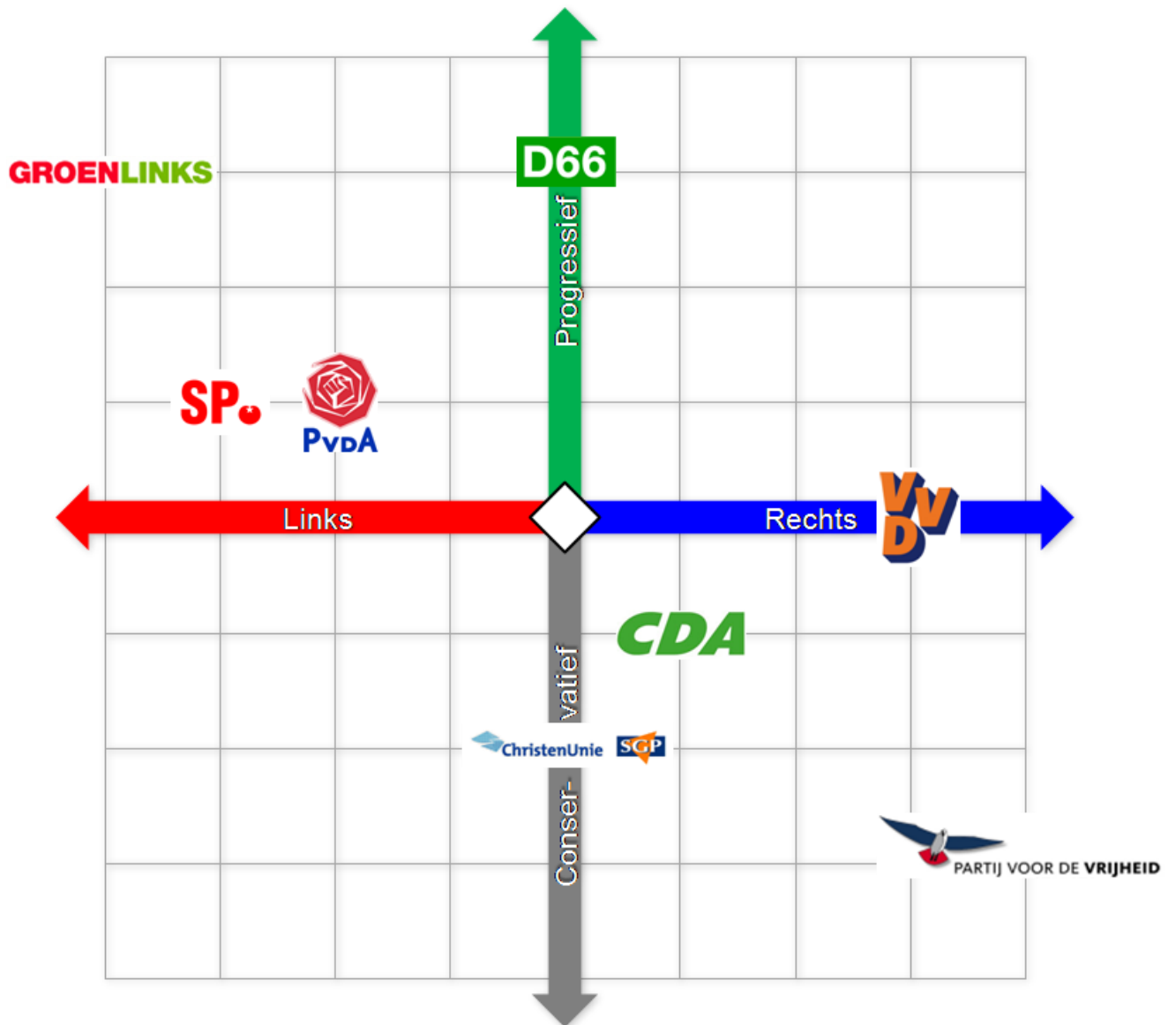
### *Political Parties*

Asylum policy has been a relevant topic on the political agenda, particularly in the last fifteen years. It is an issue that concerns a large portion of the public, and therefore most political parties seem eager to make their standpoint with regard to this subject clear. Political parties are the ones who ultimately decide on which policy will be chosen, in particular those political parties that are member of the coalition government. However politicians from all parties can try to put certain topics on the political agenda, mobilize supporters and gain support for their own standpoint.

The most important political parties in the Netherlands currently are CDA (Christian Democrats), PvdA (Social Democrats), VVD (Liberals), D'66 (Social Liberals), SP (Socialists), ChristenUnie (Christians) and the PVV (populist right-wing). The coalition government is currently formed by CDA, PvdA and the ChristenUnie. The viewpoint of CDA is that asylum policy should be strict and just, and that asylum seekers who have been through the procedure and have not received a permit should leave the country. Both PvdA, D'66 and SP stress that true political refugees should be able to count on the Netherlands. The basis of the policy should be the Geneva Refugee Convention and international human rights treaties. The VVD favors a strict asylum policy, with quick procedures. They also stress that rejected asylum seekers must indeed leave the country. The ChristenUnie considers it a Christian duty to take on political refugees, and thus finds it unacceptable to send back refugees whose fundamental human rights might be violated. The PVV wants to have a quota of a maximum of 5000 refugees per year, only for those refugees who clearly can't get asylum in their own region. The PvdA, D'66, CDA and ChristenUnie are all proponents of a bigger role for Europe with regard to asylum policy, they are in favor of more coordination in Europe and a common European policy.

Table 6.2 gives a general picture of the way the political parties in the Netherlands can be divided into left and right on the horizontal axis, and progressive and conservative on the vertical axis.

Table 6.2 Political spectrum in the Netherlands



Source <http://www.weetmeer.nl>

### Mass Media

There is debate about the extent to which media play a role in the policy process, but it is clear that they do have a substantial influence on public opinion, the political agenda and thus on the input for the policy process. As mentioned before, particularly since the early nineties asylum policy has had a fair amount of media attention.

Both television and the written press have been interested in the subject, and a wide range of standpoints and perspectives have been put forward through these different channels. One can assume that this amount of media attention has also led to more participation throughout the policy process. In fact, the media attention itself could in part also be a result of the fact that the public, civil society and political parties have been involved in the subject, or the debate surrounding the subject.

### *Ordinary citizens*

In general the participation of citizens with regard to policy making is rather limited. In some cases there are possibilities for citizens to exert influence, but only very few people actually use such possibilities, unless it concerns policy proposals that have a very direct influence on their lives. Usually there is a relatively small amount of people that are actively involved, and a very large group that do very little to participate (Rosenthal, 2001). In the case of asylum policy, the picture is not very different. Many people have an outspoken opinion on the subject, but very few will take the step to get involved in the policy process. They could get involved, for instance by going to a congress of their political party to express their opinion. In some cases, people will protest against the placement of an asylum seeker centre in their neighborhood. This underlines the theory that most citizens only take action when it directly touches on their interests.

### *The extent to which regional and local actors are included in developing and implementing policies.*

As mentioned above, there are many parties that are somehow involved in the process of policy development, be it directly or by trying to exert influence on the process. The organizations that are directly involved in the implementation of the policy were also explicitly involved in the development of the Asylum Act 2000. There was the creation of the 'Project team New Alien Act', which was mainly concerned with the inventarisation of how far the organizations in the field were with their preparations for the implementation of the new policy. This project team consisted of the implementation organizations, legal aid, lawyers, judges and some advisory organs. All organizations that were responsible for the implementation of the policy organized courses to inform its staff about the new rules. The most important organizations in this respect are the Central Agency for the Reception of Asylum Seekers ('COA'), the Immigration and Naturalization Service, the Service Return and Departure and the Alien Service, which is a part of the police (WODC, 2006).

According to the White Paper one of the goals of participation throughout the policy chain is to create more confidence and acceptance of the policies. However the Evaluation Commission Aliens Act 2000 has concluded that at the time of the implementation of the Alien Act the new policy was not accepted by the entire asylum field. In fact, only the Immigration and Naturalization Service and the Country Lawyer were positive at the start. Some stakeholders were actually rather negative about the policies. This has at times led to a lack of motivation, particularly at municipalities and legal aid organizations (WODC, 2006).

The extent to which the actors that are mentioned above are active in the different phases of the policy process will now be analyzed.

	Interest Groups	External Advisors	Political Parties	Mass Media	Ordinary Citizens
Agenda Setting	X	-	X	X	X
Policy Preparation	X	X	X	-	-
Policy Determination	-	-	X	-	-
Policy Execution	-	-	-	-	-
Policy Evaluation	X	X	X	X	-
Feedback / Reconsideration	X	X	X	X	-

Firstly, there is a significant number of interest groups active on the field of asylum policy in the Netherlands. Important examples are Refugee Work, Human Rights Watch, and the umbrella organization Refugee Organizations Netherland (VON), which combines the forces of over 400 organizations that aim for a humane treatment of refugees. Like most interest groups, these groups also try to influence the agenda setting of political parties and policy makers. The organizations that are connected to the VON are also involved in policy preparation. The VON is by law the official consultation partner of the national government on behalf of refugees in the Netherlands. They are hereby allowed to voice their opinions and give their input vis-à-vis policy proposals. The interest groups on this field also give their own evaluation of asylum policies, and give feedback as to whether or not the policy should change in the future.

Secondly, the role of external advisors in this field has been analyzed. On the field of asylum policy, the Advisory Commission on Aliens Affairs (ACVZ) is the appointed advisory organ. They give advice on policy matters regarding aliens affairs such as asylum policy. The Advisory Council on Aliens Affairs (AIV) also consults the Dutch government on issues such as human rights, and they sometimes also touch on asylum policy. Next to their role in policy preparation, these external advisors also give evaluations of current policies and feedback to build on for future policies.

Thirdly, political parties in the Netherlands play a significant role in the policy process, in particular those parties that are part of the ruling majority that forms the coalition. All political parties, both coalition and opposition are involved in the phase of agenda setting. When it comes to policy preparation and determination, the coalition parties play the most important role, both their members in parliament and in the cabinet. Naturally, political parties also evaluate existing policies and give feedback as to what should be done differently according to their viewpoints.



Fourth, the mass media are important, particularly when it comes to getting certain problems on the political agenda. In the case of asylum policy it is evident that this has been a subject that has received a rather high amount of attention in the media, and it is a subject that many political parties like to use to clearly show the profile of their party. Also with regard to evaluating policies and giving feedback, the mass media are used by many parties and groups, and thus play a substantial role.

Fifth, the role of ordinary citizens is limited on this field. When citizens elect to play a role in the policy process, this will predominantly concern the phase of agenda setting. For some citizens this will mean they will demonstrate in order for asylum seekers to be treated more humanely. In other cases this will concern citizens who oppose the placement of an asylum seeker centre in their neighborhood.

### ***6.3.3 Accountability***

Since the Amsterdam treaty in 1999 asylum policy partly falls under the first pillar of the European Union, also known as the ‘community pillar’. More specifically it falls under the Directorate-General for Justice, Freedom and Security. Legislation with regard to a large part of European asylum policy can be made in the Council of Ministers with a qualified majority and co-decision right of the European Parliament. Thus, with the disappearance of the rule of unanimity an important new instrument has been added, namely the co-decision right of the European Parliament. Hereby a democratic feature has been added. In the former decision making procedure, the Council of Ministers was able to approve policy proposals without the approval of the European Parliament, which is no longer possible. Hence, the democratic control has now shifted partly from the national to the European level (Wiebenga, 2005).

Thus, the responsibilities are divided between the national and the European level. Even though many powers have shifted towards the European level, there still is a role for national democracies. On some aspects, asylum policy is still primarily a case of national parliaments.

On top of this, the ministers who go to the Council of Ministers can be held to account in the national parliament. And in case a majority in the national parliament were to say that certain policies should be handled on a more national level, then they could make a case for this in future negotiations. One of the possible outcomes could be that they choose for a so-called ‘opt-out’ with regard to asylum, like Great Britain, Ireland and Denmark have done. This is considered a big step though in the Dutch political spectrum, which traditionally has had a favorable stance with regard to European integration, although this has changed somewhat in recent years. The public support for further European integration has faded, as is apparent from the outcome of the referendum on the European Constitution in 2005.

In terms of accountability, the current situation leads to a somewhat complicated situation. The European arrangement with regard to accountability is further elaborated on in the chapter on the European Commission. The national arrangement with regard to accountability is rather clear, as it falls within the conventional democratic system. As in most western democratic systems the Netherlands has a division of powers, the so-called trias politica. Under this model the state is divided into three branches, these branches are the executive, the legislative and the judicial branch. The executive consists of the ministers and the Head of State, the legislative consists of the First and Second Chamber and the judicial branch consists of the judges. Each of these branches have separate powers and responsibilities towards each other and the citizen through built-in checks and balances. The executive branch is accountable to the legislative branch, and the legislative branch in turn is accountable to the citizen. Citizens can choose the legislative through elections. The judicial branch controls the execution of laws and rules.

The definition of accountability that will be used will be repeated here, and then applied to the state of affairs with regard to the Netherlands.

*Accountability implies a relationship between an actor and a forum, where the actor feels obligated to give information and explication about his performance, where the forum can ask further questions, and can file a judgment and this judgment can have consequences for the actor.*

Firstly the actor in the case of the Netherlands must be identified. It is quite clear that the person who is ultimately responsible for the asylum policy is the State Secretary of Justice. Therefore he or she must be considered as the actor on this policy field. The actor is accountable to the forum. It is also clear that this is the Parliament. The State Secretary will have to defend the policy in parliament, and there must be support from a majority in parliament for the policy. The obligation felt by the actor is a formal obligation. In case the judgment of a majority of the Parliament is negative then this can have serious consequences, the ultimate consequence is that they can send the State Secretary away. In practice it is quite rare for the parliament to send a Minister or State Secretary away. The coalition majority in the Second Chamber won't easily jeopardize the stability of the entire coalition government by sending away a member of the government. In this respect it is remarkable that the last Minister of Immigration and Integration, Mrs. Verdonk was in fact sent away by a majority of the Parliament.

Of course another important accountability relationship is that between the voter and the representatives in the Second Chamber. In this relationship the representative is the actor. The forum consists of the voters, to whom the representative is accountable. Obviously citizens vote for a political party with a broad spectrum of opinions and standpoints on all relevant issues in a society, and at a time of elections the parties in power can be judged based on the results that they have achieved overall. It is hard to say to what extent the issue of asylum affairs plays a role in the overall assessment that voters make, but it will probably be rather limited. Although it is likely that for many voters on an anti-immigration party such as the PVV, the issue of asylum policy will play a substantial role. Furthermore, because of the increased role of the European Commission with regard to asylum policy, it is quite hard for many voters to understand where responsibilities lie. They will probably tend to hold Dutch politicians accountable for every aspect of the policy, even if some of the decision-making for these aspects lies more at the European level. Nevertheless, the judgment of the voters can have serious consequences, which are rather self-explanatory, namely that the voters will no longer vote on a particular candidate.

All in all, the role of the legislative and executive branch is clear in the Netherlands, and it is clear where responsibilities lie and it is possible to hold the responsible members of government to account. It is also a subject that gets a fair amount of attention in the media making it easier for voters to judge the policy.

#### ***6.3.4 Effectiveness***

Effectiveness refers to the extent to which the goals of a certain policy are actually achieved. So first there have to be certain objectives or criteria by which success can be measured. In order for such objectives to be achieved it would be smart to make an evaluation of both past experiences and future impact, and take the results of these evaluations into account. Effectiveness also depends on the extent to which the skills and practical experience of regional and local actors are being used.

##### *Objectives of the Dutch asylum policy*

The coalition of Balkenende IV had declared in its coalition agreement (*'regeerakkoord'*) that a just and humanitarian asylum policy and an effective implementation of the Aliens Act 2000 is the main goal. The coalition agreement is the agreement between the political parties that form the coalition government, in which they set out the goals for the coming governing period. The admission procedure has to be improved. This agreement further states that there will be a study on how to limit the number of repeated asylum requests. The Service Return and Departure will start their activities in the first half of 2007. Furthermore, the quota for so-called invited refugees will be set on 500 persons a year on average. The Netherlands is one of eighteen countries that is connected to the 'resettlement program' of the UNHCR. According to this program the UNHCR selects refugees who have been living in a refugee camp in their own region, but cannot return to their own country due to a variety of reasons. Those people may qualify for the position of an invited refugee.

According to the coalition agreement, there will be a settlement for certain people in order to take care of the legacy of the former Aliens Act, this amnesty will be given to people who meet a number of criteria, the most important being:

- An asylum request was made before April 1<sup>st</sup> 2001.
- No criminal record.
- Have not left the Netherlands and can prove that have stayed in temporary accommodation since the beginning of 2006.
- Have received a residence permit under the former Aliens Act based on a medical condition or a categorical protection which was still in force on December 13<sup>th</sup> 2006.

This amnesty settlement is connected to the following objectives:

- Reach agreement with the Club of Dutch Municipalities about housing and integration of admitted persons, as well as helping in the return policy for those who are not admitted.
- Reach agreement with the Club of Dutch Municipalities about not providing accommodation for asylum seekers who have been rejected and don't qualify for the amnesty settlement.
- Improve the admittance procedure according to the evaluation Aliens Act 2000 (Regeerakkoord Balkenende IV, 2009).

#### *Evaluations of past experience and future impact*

The Ministry of Justice has its own Scientific Research and Documentation Centre, which has published a number of evaluation reports with regard to the asylum policy. Those reports are mainly focused on the way in which existing policy has worked out, and they often include recommendations for the future with an expectation of what effect these new measures or instruments will have. An important report is the 'Process evaluation asylum procedure Aliens Act 2000'. This is a rather detailed analysis of how the asylum policy works, and what factors play a part in this respect. The first observation in the report is that the number of asylum requests has fallen sharply since 2001. This was the case for the whole of Europe, but the trend was relatively stronger for the Netherlands. It is hard to say whether this was the result of the new Aliens Act. There has been both appreciation and criticism from people working in the field. Generally speaking, the employees of the Immigration and Naturalization Service and the Country Lawyer are more positive than employees of Refugee Work and the pro-deo lawyers of the asylum seekers. Most people working in the field are positive about the possibility for the judge to use new facts and circumstances in his judgment. There is widespread criticism about the amount of time legal aid has to come up with a well motivated file to support the asylum seekers' request to get a permit (WODC, 2006).

As for future impact, there have been a number of recommendations in the final advice of Commission Evaluation Alien Act 2000. One of the most important conclusions is that the quality of the decisions that are taken under the 48-hours procedure is at times questionable. However it is also important that not all decisions will take as much time as is often the case with normal procedures, so it is recommended to let the 48-hours procedure take place in a number of phases in order to ensure the quality of the decisions that are taken, without it taking as much time as would be the case under the normal procedure.

#### *Are the objectives met?*

The Aliens Act 2000 implied the creation of some new instruments that have brought important changes in the day-to-day practice. In spite of efforts to make preparations there have been some problems when the new policy was implemented on April 1<sup>st</sup> 2001. However soon after the implementation of the new law most of these problems disappeared, partly due to the fall of the number of asylum requests.

At the time, the overall goal of the Aliens Act 2000 was to shorten the asylum procedure and improve the quality of the decisions regarding the asylum requests. According to the earlier mentioned evaluation report they have in part succeeded in achieving these goals, however particularly the quality of the decisions is somewhat controversial. Many decisions on asylum requests have indeed taken less time, so in that respect they have succeeded (WODC, 2006)

As for the objectives that are set out in the recent *regeerakkoord*, it is a bit too early to say whether or not they will be met. Some objectives are so subjective that it is hardly possible to objectively state whether or not they have been achieved, for instance it is mostly in the eye of the beholder whether or not an asylum policy is just and humanitarian. For other objectives it will be easier to evaluate whether they have been met, such as the improvement of the admission procedure. It is already clear that the number of asylum seekers who are allowed to stay remains at a relatively low level, compared to the late nineties. However in 2008 the number of asylum request has nearly doubled in comparison to 2007, from 7.400 in 2007 to 13.400 in 2008. This increase is much larger than was the case for the European Union as a whole, where there was only a six percent increase in the number of requests (CBS, 2009).

With regard to the amnesty settlement, one of the difficult tasks has been to single out who exactly has been eligible for this settlement. The State Secretary expected this group to be between 25- to 30 thousand people, and it turned out to be around 28.000, so this number doesn't differ very much from the original estimates. There was a large group who had left with unknown destination, and when they applied for this settlement it may not have been easy to tell whether or not they have been in the country for the period of 2006. In fact, it was up to the mayors to judge whether or not this had been the case, which put them in a crucial position (Sommer, 2007). The amnesty settlement has been an important issue in Dutch politics, and the way it was and still will be handled is therefore followed closely by the media and public.

### 6.3.5 Coherence

Coherence refers to the extent to which other sectors have been taken into account with regard to the asylum policy. The implications of asylum policy on other policy fields, and on society as a whole is something that should be considered in making the policy.

Clearly asylum policy must be seen in relation to the wider migration policy. Migration policy can roughly be broken down into family migration, labor migration and asylum migration. Family migration or unification refers to the possibility for migrants in the Netherlands to let their families come over from their country of origin. Migrants can also let their future partner come over from their country of origin, or their parents' country of origin, as is often the case. In case their partners meet certain demands they can also get the Dutch nationality. Labor migration refers to migrants that come to the Netherlands to do certain work, be it highly skilled work or low wage jobs. Asylum policy can be seen as a policy in itself, that is to a large extent separated from policies regarding family- and labor migration. It is clear however that they are interconnected, particularly family and asylum policy. There are many policy fields that are to some extent related to the field of asylum, namely for instance integration, economy, social welfare and housing policies.

There have been reports by Dutch governmental organizations that aim to incorporate multiple aspects of policies regarding immigration in order to give a thorough analysis, which in turn should lead to a good policy. An important report in this respect is '*Destination Europe. Immigration and Integration in the European Union*', which is a collaborative effort of the Netherlands Bureau for Economic Policy Analysis (CPB), the Netherlands Institute for Social Research (SCP) and the Central Bureau for Statistics (CBS). The effect of (asylum) migration on both the economy and their social integration has been analyzed in this report.

First, it is important to recognize the relationship between asylum migration and family migration. Around the turn of the century per three asylum migrants on average one 'follow migrant' came to the Netherlands as well. Such follow migrants can be partners or children. One third of the follow migrants joins the asylum migrant within one year. After two years over half of the follow migration is completed. These statistics are kept in the Netherlands, and they are processed in reports, so one can assume that they are also taken into account whilst making the asylum policy. It is nevertheless hard to say how much value is attached to these figures.

Asylum policy is also clearly related to integration policy. In fact, this was previously the responsibility of the same minister, now these two fields are separate responsibilities. The integration policy is to a large extent directed at immigrants who arrived here in the 1970s, and their children. Of course the existing integration policy can also apply to the new asylum immigrants, but it is not necessarily created for them. One of the most important instruments to ensure that asylum immigrants will integrate is the rule that asylum seekers will only get a definitive residence permit once they have passed their 'integration exam'. This exam will consist of a test of a basic understanding of the Dutch language and a basic understanding of Dutch society (Handreiking Inburgering Gemeenten, 2009).

There is also an obvious link between asylum policy and the economy. Immigration increases the supply of labor, and one might assume that this has a positive effect on the economy, particularly in a time of shortage on the labor market. There are however many factors that determine whether or not the overall outcome of asylum migration will be positive for the economy. The above mentioned report states that the effects of migration in general on the labor market might be positive or negative on the short term, but on the long term the impact will be rather small. Different studies also don't provide a definite answer to the question whether or not diversity has an influence on productivity and the overall economy.

It is also suggested that young migrants would be necessary or at least helpful in an ageing society. However, this depends to a large extent on the career of the immigrant. Clearly, a working immigrant will pay taxes and thus be of value to the economy and government finances. Needless to say, when an immigrant will be unemployed he will cost the state money in terms of social security. In the Netherlands, the employment rate of non-western citizens is on average over 25 percent lower than that of native Dutch citizens (CPB et al., 2005). In fact, the unemployment figures of Afghans, Iraqis and Somalians are respectively 37, 39 and 36 percent. For a large part these will be groups that fall under the amnesty settlement (VluchtelingenWerk Nederland, 2006). In fact, on average non-western immigrants are four more times on welfare than native Dutch inhabitants. Of all immigrants, asylum immigrants perform particularly poor on the labor market and are relatively often dependant on welfare.

The question whether or not the Dutch economy benefits from asylum migrants is clearly related to such statistics, and since these statistics can be found in many government documents and reports they seem to be taken into account. Of course the interpretation of these reports and figures may differ and the consequences that are drawn will depend on the politicians in charge.

There is also research about the effects of wider migration on matters such as housing, traffic congestion and pollution (Roodenburg et al., 2003). However the numbers of asylum seekers are too small to have a large national impact on these matters, so the effect of asylum migration in this respect is probably not taken into the equation. Once asylum seekers get a residence permit they qualify for receiving an independent housing accommodation. The COA or municipality will offer the asylum seeker who has received a permit either a room, apartment or house, dependant on the family composition (COA, 2010). Asylum seekers between the age of five and eighteen are also obligated to go to school, the COA always arranges for this to be possible.

The report of the OECD on coherence has shown that it's not easy to have coherent policies in today's complex society. The paragraphs above prove that asylum policy in the Netherlands is made in a multi-faceted environment, and many aspects have to be taken into account. For instance in the economical sphere the supply of labor is relevant, or the dependency on welfare in case they don't find work. In that sense it must be noted that asylum migrants perform particularly poor on the labor market. In the social sphere asylum migrants are often entitled to have family members come over, and this family migration is also an aspect that mustn't be overlooked. The OECD report acknowledges that a certain degree of incoherence is unavoidable. It is important though that decisions are made based on available information, and based on good analysis. There is a large amount of information available on related policy fields. Important statistics are kept, and reports on these matters are made by organizations such as the CPB and the SCP. This information seems to be taken into account when policies are made. Asylum policy is related to other fields, but in the end the most important objective is that asylum seekers will function in their new society. The emphasis that is now placed on the integration exam shows that this is taken seriously by the Dutch government, and that they do aim for a coherent policy. It is questionable whether asylum seekers are a contribution in the economical sphere, but ultimately humanitarian considerations are the cornerstone of asylum policy.

All in all, asylum policy is related to many aspects in society, which is logical since asylum seekers who stay will become a part of society. Asylum policy is also related to other forms of migration. There are numbers concerning follow migration, but it is not clear to what extent this is taken into account. Of course, decisions concerning asylum policy will to a large extent depend on humanitarian considerations. There are documents that look at the consequences for the economy as well, so one might expect this aspect is taken into account. It is apparent that the integration of asylum seekers who get a residence permit is taken into account, this is clear from the integration exam, and the housing and schooling policies for asylum seekers.

### ***6.3.6 Proportionality and Subsidiarity***

The five principles that are mentioned above are related to the principles of proportionality and subsidiarity. The first question with regard to these principles is whether or not public action is really necessary. In this case this question can be answered briefly. It is obvious that asylum policy is a matter where government interference is inevitable. Only the state can give permits or passports to people and decide whether they are entitled to such privileges. The second question derives from the principle of subsidiarity. It goes as follows; is the European level the most appropriate one? The third and final question derives from the principle of proportionality, namely whether or not the chosen measures are proportionate to the objectives.



Well then, since the first question can simply be answered, we shall continue with asking the second question in relation to the various principles. The first principle is that of openness. Dutch citizens have little knowledge with regard to what goes on in the European Commission, or how decisions are taken at the European level. This is clear from researches and surveys, for instance by the Eurobarometer. Also the media have more attention for national decision making than for the day-to-day practice at the European level. Thus, this situation with regard to ‘openness’ might imply that the European level is less appropriate since most citizens don’t seem to know much about what goes on at that level, whereas most Dutch citizens have at least a basic understanding of national politics.

The second principle is participation. In general it can be said that participation of various actors is favorable for the democratic process. There is a high amount of actors who are active on this field on the national level, whether it concerns interest groups or advisors. The mass media also have more attention for national politics than for European politics. Based on these facts, one might say that the national level is more appropriate. However the current ruling majority in the Netherlands is in favor of a strong European role on this field. These leaders are chosen by the people, and it may thus be assumed that also with regard to this subject they represent a majority of the Dutch people. The participation of ordinary citizens isn’t very high on the national level. So these arguments indicate that in fact the European level would be appropriate on the field of asylum policy.

The third principle is that of accountability. As has been explained earlier, the accountability structures on the national level are clearer than those at the European level. Though it may not be perfect, which system is one might even ask, there is a clear division between the three branches as originally set out by Montesquieu. The European arrangement with regard to decision-making and accountability is quite complex and therefore less transparent to most ordinary citizens. Based on this situation with regard to accountability, the answer to the question which level would be the most appropriate would lean towards favoring the national level.

The fourth principle is that of effectiveness. The Aliens Act 2000 had been successful in achieving certain goals that were set out. One of the objectives of asylum policy is that it should be humanitarian, which is of course difficult to measure because in part it will remain a matter of interpretation. In managing numbers of asylum seekers coming into the country it might be useful to handle this on the European level, since they mostly enter in the countries on the border of the EU. The numbers and the possible division of groups of asylum seekers might be a task suitable for the European Union. So in that sense the principle of subsidiarity would imply that handling the problem on a higher level would be better. As for more local matters such as housing it seems obvious that the national level would be the most appropriate one.

The fifth principle is that of coherence. It is clear that asylum policy is related to many other policy fields, and most of those fields regard national policy. Examples of this are integration policy, housing and economic policy. Because of this situation it might be favorable to handle asylum policy on a national level as well, since the outcome of asylum policy has many implications on the national level.

All in all, the principles of proportionality and subsidiarity lead to a somewhat mixed assessment of the asylum policy. Whether or not asylum policy, or certain aspects of this policy should be handled on a European level differs depending on which principle one is looking at. Subsidiarity is of course related to proportionality, for certain objectives the measures taken at the national level would be more proportionate, such as housing. There are also many aspects for which the European level would seem more appropriate, like protecting the external border of the EU. It doesn't seem fair that only those concerning nations at the borders would have to take the burden of dealing with those issues.

## ***6.4 Conclusion***

The situation in The Netherlands with regard to the asylum policy has been analyzed according to the White Paper on European Governance. This theory consists of five principles, and we can now regard the extent to which they are fulfilled in the case of Dutch asylum policy.

The first principle is that of openness. There is much information available on the subject of asylum policy, and easily accessible to the general public. In recent years it has also been a topic of interest to the Dutch press, in many cases asylum policy has been a subject in Dutch newspapers and news programmes. Therefore one can say that there is a rather high amount of openness on this subject. When it comes to the way politics function on the European level, the knowledge of Dutch citizens is rather limited. This might also be a result of the fact that the media pay relatively little attention to European politics.

The second principle is participation. Participation refers to the input in the policy process of various actors. An important actor could be an interest group, and there is a number of interest groups active on the field of asylum policy, such as Refugee Work Netherlands, Unicef and Human Rights Watch. There are also external advisors active on this field, namely the Advisory Commission on Aliens Affairs and the Advisory Council on International Affairs. The role of ordinary citizens with regard to policy making is rather limited. This might be because it is quite an abstract problem, and concerned citizens may join an interest group who defends the interests of asylum seekers. In some cases people will protest against the placement of an asylum seeker centre in their neighbourhood. All in all, there are many parties that are in some way involved in the process of policy development, be it directly or by trying to exert influence on the process, the role of ordinary citizens is however rather limited in this respect.

The third principle is accountability. The responsibilities on asylum policy are divided between the national and European level. The European arrangement with regard to accountability has been explained earlier. In The Netherlands there is a conventional parliamentary democracy, with a division of power between the legislative, executive and judicial branch. Asylum policy is the responsibility of the State Secretary of Justice, this is currently Mrs. Albayrak. She will be held accountable by the Dutch parliament for the asylum policy. The way this parliamentary system works is clear, and most citizens have a good understanding of the way this system functions.

The fourth principle is effectiveness. This refers to the extent to which the goals of a policy are reached. One of the main objectives set out in the current coalition agreement of the asylum policy is that it should be humanitarian, which is difficult to measure objectively, since that will always remain a matter of interpretation. The coalition agreement also aims for an effective implementation of the Aliens Act 2000. An important goal of the 'Aliens Act 2000' law was to shorten and simplify the asylum procedure, and it can be noted that indeed many decision have taken less time, and therefore they have succeeded in reaching this objective. Recently there has been an increase in the number of asylum requests, so that might put a strain on the execution of the asylum policy.

The fifth principle is coherence. This refers to the extent to which other sectors have been taken into account with regard to the asylum policy. Clearly asylum policy is related to a number of other policy fields. The most obvious related policy fields are integration policy, housing policy, and labour market possibilities for the newcomers. And asylum policy must of course also be seen in relation to the wider migration policy as a whole. There are many reports on the relation between (asylum) migration and its relation to other policy fields, so this relation seems to be acknowledged and taken seriously among Dutch politician and policy makers. For instance the mandatory 'integration exam' is a clear sign that the effects of newcomers in society is taken seriously. Asylum policy is related to many aspects of society, since these newcomers will become a part of society, and this generic approach seems to be understood in the Dutch political spectrum.

All these five principles are related to the principles of proportionality and subsidiarity. Whether or not proportionate measures are taken, or whether the asylum policy or aspects of it should be handled on the European level are not questions that have one straightforward answer. Each of the five core principles has its own implications for in particular the subsidiarity question. The national level seems more suitable to handle matters such as integration into the society, such as housing and the labour market. It would also be easier for a national government to take proportionate matters with regard to such issues, which require a more 'local' approach. The clear accountability structure on the national level in The Netherlands would also favour keeping asylum policy responsibilities on that level. However the international nature of asylum issues would favour an international, and thus European approach to handle these issues. The European Union is one community with external borders, and free transport of people within the European Union. Therefore it seems more logical to handle asylum issues on this level as well. It is a strange situation that those countries who happen to be at the external borders, such as Greece and Spain, have to deal with incoming asylum seekers without meaningful help from the European Union.

## **7.0 Asylum policy in Belgium**

### ***7.1 Historical perspective and general information***

Belgium basically consists of two large populations, namely the Flemish and the Walloons. Belgium is a federal state that consists of three districts, those are the Flemish District, the Wallonian District and the Brussels Capital District. The power to make decisions is divided between the federal government and different regional authorities who exercise their power independently from one another. Yet some powers are primarily a matter of the federal state, such as justice, defence, social security and indeed also asylum policy.

Since the late eighties the number of asylum requests has steadily risen, up until the mid-nineties when the numbers remained at a lower level for some years. In the late nineties the number has risen again quite dramatically up until 2000 where it reached a record high of 42.691. Since then the number has again steadily decreased. The high number of requests in 2000 led to problems, many asylum seeker centres were full and couldn't cope with the high numbers, and the authorities were lacking behind in dealing with all the files of the asylum applicants. In January 2001 the measure was taken not to give asylum seekers any financial support, but only material support in the asylum seeker centres. This has also led to a decrease in the number of asylum seekers going to Belgium.

Previously asylum policy fell under the Ministry of Internal affairs, where Patrick DeWael was the responsible Minister since 2003, he is a member of the liberal party and was also the former Vice Prime Minister. However, the accommodation of asylum seekers used to be the responsibility of the former Minister of Societal Integration, Christian Dupont. So the responsibilities with regard to asylum policies were diversified, which probably was not an ideal situation. This changed with the first term of the Leterme-administration which was installed 20<sup>th</sup> of March 2008, this is when asylum policy became the responsibility of the new Ministry of Migration- and Asylum Policies. The first Minister on this field became Annemie Turtelboom, member of the liberal party.

The political climate in Belgium has been rather turbulent in recent times due to a number of factors. Important factors are the increased tension between the Flemish and Walloons, and the way the economic crisis and subsequently the problems with regard to the main Belgian bank Fortis were handled. The new administration of Leterme hasn't lasted long, in fact the Cabinet fell on the 19<sup>th</sup> of December 2008. A new Cabinet was installed on the 30<sup>th</sup> of December 2008, and the Christian-Democrat Van Rompuy became the new Prime-Minister of this Cabinet. As was the case with the previous cabinet, this is a coalition administration consisting of the Christian-Democrats, the liberals and the socialists. On the 19<sup>th</sup> of November 2009 Van Rompuy became the first president of the European Union. This meant that he would have to be replaced, and so Leterme once again became Prime Minister of Belgium. Other than the replacement of Van Rompuy, there have hardly been any changes in the composition of the Cabinet. The Cabinet Leterme II has also fallen on the 26<sup>th</sup> of April 2010 as a result of the conflict Brussels – Halle – Vilvoorde, and is now in demissionary state.

The Minister of Migration- and Asylum Policies Annemie Turtelboom remained in place until the 17<sup>th</sup> of July 2009, this is when she became Minister of Internal Affairs. Since that date migration and asylum have become the responsibility of a State Secretary instead of a Minister, and the new State Secretary is Melchior Wathelet, who is a member of the political party cdH, a party of Christian-Democratic signature.

Figure 7.1: Asylum requests, 1997-2009

	Number of requests	Positive decisions
1997	11788	1849
1998	21965	1696
1999	35778	1518
2000	42691	1406
2001	24549	1157
2002	18805	1328
2003	16940	1384
2004	15357	2374
2005	15957	3748
2006	11587	2391
2007	11115	1841
2008	12252	2143
2009	17186	1887

Source: Directorate-general Statistics Belgium

**7.2 The current situation**

The Coalition Agreement states that the principles of the Geneva Convention have to be the basis of the Belgian asylum policy. Belgium should have a humane yet realistic asylum policy. The asylum policy of Belgium has undergone a major change which has gone into effect on the 1<sup>st</sup> of June 2007.

Asylum seekers can apply for asylum either at the border or at the Service Aliens Affairs (DVZ) in Brussels. The first thing they do is investigate which country is responsible for dealing with the application. The rules followed here are set out in the Dublin Regulation. In case another country is responsible for the application then the asylum seeker will be transferred to that country. The DVZ can also decide to refuse to start the application procedure in case the asylum seeker has already applied earlier, and there are no new elements to the case.

When the DVZ has decided to start the procedure they hand the case over to the Commissioner-General for Refugees and Stateless Persons (CGVS). This organization will first investigate whether the asylum seeker is a refugee according to the criteria as they are laid down in the Geneva Convention. The definition the CGVS uses is “each person who finds himself outside his country of origin, and who can’t or won’t count on the protection of his own country because he fears for prosecution based on his race, religion, nationality, membership of a certain social group, or his political beliefs”. It is thus possible that a reasonably justified fear of prosecution suffices to be considered a refugee, even if they have not yet been effectively prosecuted.

In case the CGVS decides that an asylum seeker does not qualify for the status of refugee, there still is the possibility that he or she will receive subsidiary protection. This protection will be granted when there are well-founded grounds on basis of which it can be assumed that when the asylum seeker returns to his country of origin, there is a real risk that he will be hurt in some way. Each application will be investigated on an individual basis, and it has to be proven in a concrete manner that an asylum seeker personally is at risk of being hurt. Hence, it does not suffice to refer to the general condition of a country.

There are five possible decisions that the CGVS can take with regard to asylum applicants. The first option is that the application will not be taken into consideration, because the applicant is either a citizen of an EU Member State, or a citizen of a candidate Member State. There is a quick 5-day procedure for these citizens, in which they must prove that are prosecuted in their country. It is not possible to appeal against this decision.

The second option is that the asylum application is considered misleading and clearly unfounded without any substantive research. However in practice these decisions are quite rare. It is possible to appeal against this decision at the Council for Aliens Matters (RVV).

The third possibility is that the CGVS recognizes the asylum seeker as a legitimate refugee. When the CGVS or the RVV has decided that the asylum seeker answers to the definition of a refugee then he can stay in Belgium for an indefinite period. He is now a ‘recognized refugee’, and this status can only be withdrawn under exceptional circumstances. The first circumstance is in case there are false statements or documents that are used in the case. The second possible circumstance is when the personal behaviour of the person indicates that he doesn’t fear prosecution. The last possibility is when he would obtain a new nationality.

When someone is recognized as a refugee, he will receive a Certificate of Registration in the Aliens register, known as a White Card, this is valid for one year and can be extended each year at request. After a stay of five years, counting from the date of the asylum application, a recognized refugee can apply to be subscribed in the regular population register. If this request is granted he will receive an Identity Card for Aliens, known as a Yellow Card.

The fourth possible decision by the CGVS is that an asylum seeker does not qualify as a refugee, but will get subsidiary protection. This means he will receive a temporary residence permit, and if the situation in his country of origin hasn’t changed within five years this will be converted into a definite residence permit. An asylum seeker can appeal against this decision at the RVV if he believes that he is entitled to the refugee status.

The fifth and final possibility is that both the refugee status and the subsidiary status are denied. It is possible to appeal against this decision at the RVV. When the asylum seeker decides not to appeal, his municipality of residence will ask the Service Aliens Affairs whether they can order the asylum seeker to leave their territory.

Apart from this normal procedure, in recent years Belgium has given quite a few asylum seekers residence permits as a result of the regularisation operations. Regularisation means that people without valid documents of residence permits can apply for a regularisation request, which can be granted in three cases. The first possible reason is when the asylum procedure of an asylum seeker has taken unreasonably long, this means at least four years in the case of a single person and three in the case of a family with children. The second possible reason is the medical condition of the asylum seeker, and thirdly in case of urgent humanitarian reasons. There was a large-scale regularisation campaign in 2000 by the federal government. In a period of three weeks 55.000 people applied for regularisation, and approximately 80 percent of them were regularized and subsequently received a permanent residence permit (VMC, 2010).

In the summer of 2009, after much political debate the coalition parties have decided to come up with another large-scale regularisation campaign. The exact details as to how this will work out are not known yet, however it is estimated that the group of illegals and asylum seekers whom it concerns is between 50.000 and 100.000 people. In many cases this concerns people who have been in asylum procedures for many years, and are already living, working and studying in Belgium. Therefore the Belgian coalition government has decided this is the best solution. Apart from these two large-scale regularisation campaigns, each year there are a number of people who are regularised, usually about 2000 per year.

The accommodation of asylum seekers is the responsibility of Fedasil, a federal agency which was created in 2001. Since the new ‘Law concerning the accommodation of asylum seekers and certain other categories of Aliens’ was effectuated on the 7<sup>th</sup> of May 2007, asylum seekers will be entitled to material support during the entire asylum process, as opposed to financial support.

### ***7.3 White Paper on European Governance***

The White Paper on European Governance is an important document that is published by the European Commission on governance, and it sets out how it should be handled within the context of the European Union and its Member States. In the following part, the extent to which Belgium acts in conformity with the five core principles of the White Paper will be analyzed.

#### ***7.3.1 Openness***

The concept of openness refers to the extent to which the Belgian asylum policy is communicated to the Belgian public. It refers to whether it is transparent what decisions are taken on this field, and how they work out in practice. Thus, the question rises to what extent the Belgian government actively communicates its policies to the Belgian citizens.

Firstly, it can be noted that for interested citizens it is not particularly hard to find relevant information on the internet. Most information with regard to procedures and laws can be found on the websites of the CGVS (Commissioner-General for Refugees and Stateless Persons), the Service Aliens Affairs and Fedasil. The CGVS does also bring out brochures, however those are meant for people and instances in the field, such as asylum seekers' centers and NGO's, thus not for ordinary citizens. The Belgian government does not make much effort to actively communicate and explain its asylum policies towards the public. However, in case journalists and the media in general are interested in certain matters on this field, then the asylum instances are willing to assist them and provide the sought-for information. In fact, organizations such as the Service Aliens Affairs have their own communications department. Generally speaking the initiative will be taken by the media, after which civil servants will provide them with the requested information (Geysen, F. & Jansen, C., 2007). A good example of the media taking a real interest in the Belgian asylum policy is a series of articles in the Belgian quality newspaper 'De Standaard'. For these in-depth articles the journalists have interviewed many employees of the Commissioner-General for Refugees and Stateless Persons, and also a number of asylum seekers. According to Christophe Jansen of the CGVZ these articles are an example of a more objective and balanced report of asylum matters in Belgium, whereas a number of more sensation-seeking media sometimes tend to have more tendentious reporting.

In general Belgians consider their country's membership of the European Union as a good thing, this is in fact the case for 70 % of the population (The Europe Channel, 2009). Three quarters of the population perceive the EU as being 'democratic' and feels that Belgium's voice counts in the European Union. Even though the Belgians demonstrate a knowledge of the European Union that is higher than the European average, a majority of them feel they are 'not well informed' about political affairs on the European level. In spite of their relatively favorable position with regard to the European Union, Belgium is one of the countries that is most strongly opposed to further enlargement (Eurobarometer Belgium, 2010).

With regard to openness, the paradox in Belgium is that most citizens are in fact relatively well informed about matters regarding the European Union, yet they feel they are rather ill-informed. Their relatively high level of knowledge and their favorable position towards the European Union might in part be considered a result of a sufficient level of openness of information. The positive Belgian attitude towards the EU could of course also be a result of the fact that the European institutions are based in the Belgian capital. The position of Belgians towards the EU as a whole doesn't necessarily indicate a positive approach towards European influence on the Belgian asylum policy, as is evident from the relatively strong position of the xenophobe party Flemish Interest.

The language that is used on websites and other sources with regard to asylum policy is often rather easy to understand, although this does substantially differ depending on which source you use. It is evident that most sources have made an effort to make information accessible, yet some policy documents will require a certain level of education to fully comprehend the content.



In the theoretical framework the notion of transparency has been discussed in the context of the principle of openness. The six questions that have been put with regard to transparency will be answered here for the case of Belgian asylum policy.

1. *Who creates transparency?*

An organization can make itself transparent, or this can be done by an external supervision holder. On the field of asylum policy, the Belgian government makes itself transparent. There is no outsider who does research and publishes the results.

2. *What is made transparent?*

The Belgian government makes a high amount of information transparent on the field of asylum policy. The input refers to the means that are available on this field. The Belgian government has published its yearly budget on their website. It is quite an extensive piece of work and thus not very easy to understand at first sight. The yearly budget for 2010 on asylum policy and related affairs is 593 million euro. The output refers to the transparency of the performance. The policies and figures on the field of asylum are widely available on government websites. The outcome refers to the positive results of the policy for society as a whole. This is not easy to determine in the case of asylum policy, but there are Belgian reports on how asylum seekers manage in Belgian society after they have been granted a residence permit.

3. *What kind of information is made public?*

The Belgian government also makes both quantitative and qualitative information public. There is much information on this field, and it clearly involves both numbers and textual content.

4. *How active is transparency created?*

The Belgian government actively communicates the policy on the field of asylum to the general public. On top of this, interested citizens can also order a number of brochures on various government websites, such as the site of Fedasil. The latter form of transparency is referred to as passive publication.

5. *Which medium is chosen for transparency?*

As can be expected, the Belgian government uses all forms of mass media to create transparency. Thus, this may regard interviews by responsible ministers to newspapers, quality magazines or on television. In Belgium this is also a subject that has attracted quite some attention, both positive and negative attention. This makes it more urgent for the Belgian government to create transparency and explain their policies, as is done by both the civil servants and the responsible ministers.

## 6. *How is the information presented?*

There is much information on Belgian asylum policy, and it can be found on various government websites. Like most professional government websites, these sites also work with search terms. It is not hard to get an overview of the reports that are available, and they usually have an index or at least a table of content that can be useful in this respect. With the amount of information published in the media that can sometimes lead to confusion, the government sources should offer more clarity and transparency, and they do.

### **7.3.2 Participation**

There are a number of actors that can participate throughout the policy cycle. According to the White Paper on European Governance a high amount of participation will have a positive result on the quality, relevance and effectiveness of the policies. Important actors in the environment of the policy process are interest groups, external advisors, political parties, mass media and ordinary citizens.

#### *Interest groups*

There are some interest groups that play a role with regard to asylum policy in Belgium. As mentioned before, interest groups are organizations that represent certain interests, and try to exert influence on an aspect of government policy from outside.

The most important interest group in Belgium with regard to asylum policy is Refugee Work Belgium. They are an independent, non-governmental organization that defends the interest of refugees and asylum seekers. They work in cooperation with over forty member-organizations, and many volunteers are active for Refugee Work. An important part of their activities is aimed at lobbying and campaigning in order to protect the interests of asylum seekers, and influencing public opinion. Refugee Work lobbies with cabinets, parliamentarians and political parties on a daily basis, and they always try to be as close as possible to the responsible officials when law changes are being made. In recent years Refugee Work has been one of the driving forces behind the regularisation operations of 2000 and 2009 (Vluchtelingenwerk, 2009).

Another important organization is the Forum Asylum and Migration. This organization was founded in 2002 by twenty organizations who were formerly active in the 'National Movement for Regularisation of People without Papers and for Refugees'. These organizations noticed that the Belgian asylum policy was only getting more restrictive and tougher on asylum seekers, and they felt it was necessary to break this trend. In order to achieve this they put developed an alternative plan with concrete policy proposals that could and in their eyes should replace the current policy. The Forum Asylum and Migration currently consists of over 120 organizations. Their overall goal is to mobilise people, start debates and convince policy makers that it is possible to have a more humane asylum- and migration policy. Currently the main focus of this Forum is for the government to establish clear legal criteria on the basis of which it is decided whether people without documents can receive a residence permit. Each year a few thousand people are regularized by the Minister of Interior Affairs, and according to the Forum there are no clear criteria, which makes the decisions unpredictable and random (Forum Asiel Migratie, 2010).

There are many more organizations that are somehow involved in or concerned about the Belgian asylum policy. An example is the Movement of Children Without Papers, which was founded in 2005. They took notice that many children of refugees whose requests were rejected simply disappeared from their classes in school, without notifying their classmates or teachers. These children were being detained with their parents, to be evicted from the country later on. The Movement of Children Without Papers stresses that detaining children without papers is in conflict with the Treaty on the Rights of Children by the UN, which was ratified by Belgium in 1992. Therefore the Movement of Children Without Papers demands that detainment of children without papers should stop immediately. Furthermore children should never be separated from their parents. And they demand that there should be a general regularisation of families that are residing in Belgium for over three years and are thus integrated into society.

Another example is Church Work Multicultural Living, which is a religious solidarity movement that wants to promote equality and respect for human rights. In doing so they are in part inspired by the '95 declaration 'Migrants and refugees in our midst' by the Belgian Bishops. One of their aims is to mobilise people and groups to support and welcome asylum seekers and immigrants in different ways (Kerkwerk Multicultureel Samenleven, 2010).

The organisation Vaka/ Hand in Hand mainly tries to influence the public opinion, also with regard to the asylum policy. They call themselves an anti-racist movement. They have organized 'mentality' campaigns in which they have asked for understanding as to why people have to leave their country, and the difficult circumstances under which they must often do so (Vaka/Hand in Hand, 2010).

Finally there are a number of international organisations, often with Belgian divisions, that are aiming to influence asylum policies. The most important organisations in this respect are Amnesty International, Human Rights Watch, Defence for Children International, Unicef Belgium and the International Commission of Jurists. For instance, Unicef Belgium makes a case for the rights of children, both towards policy makers and to the greater public (Unicef Belgium, 2010).

### *External advisors*

Departments and ministers are often advised by organizations from outside their own department. These advisors can be both formal advisory organs and private bureaus. Such external advisors can play a role in different stages of the policy cycle, yet most often they will be involved in policy development.

The most important formal advisory organ in Belgium is the Council of State (*'Raad van State'*). This Council has two main functions. The first function is as an administrative judiciary council. The second function is that they advise on designs of laws, decrees, and ministerial decisions to the executive power. Hereby they both look further into the quality of the texts and they check whether those texts are in conflict with the Belgian constitution or other higher norms. The Council of State consists of 44 members. Those are the first chairman, the chairman, and the twelve chairmen of the different chambers, half of which are Flemish-speaking and the other half are French-speaking. Furthermore there are 30 members of the Council of State who are appointed for life by the King. They must be at least 37 years old and have at least ten years of useful legal experience (Raad van State, 2010).

Belgium also has a Court of Audit, which is a collateral institution of the Parliament. They are responsible for the external control of the way the government handles the budget, the accounting and the finances in general. They must do so both on federal, state, and provincial level, thus not on municipal level. The Court of Audit also looks into the effectiveness and efficiency of policies, that is to say whether the policy has achieved its objectives, and whether maximum output has been achieved with the used means, respectively. This control takes place a posteriori, so after the events have taken place (Rekenhof, 2010).

There is one advisory organ specifically for the field of alien's affairs, namely the Council of Advice for Aliens. This Council has to give an well founded advice to the responsible minister concerning all subjects and law proposals on the field of the territory, the stay, and the removal of aliens, in case this is demanded by either the chairman of one of the two Legislatives, one of the Community Councils or the United Community Commission. They can also give advice on their own initiative. The Council of Advice for Aliens for one half consists of representatives of the Ministers of Internal Affairs, Labour, Foreign Affairs, and Development Cooperation. The other half consists of Belgian and foreign representatives of institutions that are concerned with defending the interests of labour workers, and some student councils.

On a more concrete level, the Belgian Committee for Help to Refugees (BCHV) selects asylum files which may qualify for support by the High Commissioner of the United Nations. The High Commissioner can give advice during the asylum procedure to the responsible agencies. The Commissioner-General for Refugees and Stateless Persons is only allowed to ignore this advice with sound argumentation. In this regard particularly the relation between the story of the candidate refugee and the Geneva Convention is emphasized (Vlaams Minderheden Centrum, 2010).

### *Political Parties*

In the last decades asylum policy has also been an important issue in Belgian politics, particularly since the rise of the far-right political party Vlaams Belang (Flemish Interest), formerly Vlaams Blok. This party has been boycotted by the other political parties in Belgium, the so-called cordon sanitaire. They have thus never had any power to make policies. Nevertheless, because of their success at elections one may suspect that the other political parties have pursued more right-wing policies in order to please the electorate.

The Belgian parliamentary system is somewhat unusual because Belgium has two large language communities, the Flemish and the Walloons. The Federal Parliament also has Flemish and Wallonian parties and parliamentarians. In total there are 150 seats in the Belgian Parliament, 88 of which are taken by Flemish parliamentarians and 62 are taken by Wallonian parliamentarians. Hence, there are Flemish and Wallonian parties in the Belgian parliament, some of which form an alliance. Another typical feature of the Belgian political system is that all citizens are obligated to vote.

After the 2007 elections the most important political parties in the Flemish part of Belgium are CD&V/ V-VA (Christian democrats), Open VLD (liberals), Vlaams Belang (far-right), and SP.A-Spirit (social democrats). The most important parties in the Wallonian part of Belgium are MR (liberal), PS (social democrats), and cdH (Christian democrats).

Even though the Vlaams Belang has never been in government, it is likely that their tough anti-immigration stance have influenced the tightened Belgian asylum policies in recent years. The Vlaams Belang states that over 90 percent of asylum seekers are not true political refugees but fortune seekers. According to them asylum seekers should be taken care of in their own region as much as possible. Currently the demissionary coalition government is Leterme II, which is formed by CD&V/cdH, VLD/MR and PS.

The Christian Democratic CD&V states that people who have to flee deserve protection. It is also important that those people get clarity about their position as soon as possible. Those asylum seekers who haven't received a definitive decision on their application after three years, should get an automatic notice that they can apply for individual regularisation. The CD&V party program also stresses the importance of an effective and humane return policy for those asylum seekers who have gotten a negative decision.

The liberal VLD/MR stresses the need for a 'realistic' asylum policy, and for them the realistic element lies in the acknowledgement that Belgium is not able to cure all wrongs in the world. An important part of a good asylum policy is also an effective return policy, where forced return has to be a possibility. The liberals also regard European coordination on this field as necessary. The socialist sp.a/PS emphasizes that a good asylum policy should always be humane, just and careful. Providing residence permits to asylum seekers is often the only way to effectively protect them from grave breaches of human rights. The socialists also believe that the European Union should play a role in creating a common and humane asylum policy.

### *Mass Media*

The media can play an important role in the policy process, and this is certainly the case for a sensitive issue like asylum policy. As is the case in other EU-countries, asylum policy has become a particularly important issue since the early nineties. Thus, also the mass media have paid more attention to this subject since then. The picture that has been painted by various media is often confusing, for instance the policies of asylum on the one hand and wider migration on the other hand are not clearly distinguished. It is also striking that on a macro-level most media seem to favor a stringent asylum policy, whereas in individual cases media seem to be much more often on the side of the asylum seeker (Geysen, F. & Jansen, C., 2007). It is hard to determine the extent to which mass media influence public opinion, but it is undisputed that they have a significant influence.

### *Ordinary Citizens*

The involvement of most ordinary citizens with regard to asylum policy usually does not go much further than voting for a certain political party that has a viewpoint on asylum policy. Of course political parties have a whole range of issues on which they can profile themselves, and since asylum policy is only one of those issues voters have to decide which issues matter most to them. The far-right party Vlaams Belang has a xenophobic, anti-immigration stance as their most important and striking feature, and it may thus be expected that the voters on this party do give priority to the asylum policy of the party they vote for.

Sometimes small committees are set up that are in favour of allowing certain groups of asylum seekers to stay, or petitions are started to this end. Some petitions or action groups are started in order to prevent an asylum seekers' centre to be located in a certain neighbourhood (Geysen, F. & Jansen, C., 2007).

Involved citizens who sympathize with asylum seekers could make donations to certain interest groups such as Refugee Work. However only a relatively small number of people do so. Most people do have an opinion on asylum policy, but won't take the step to get involved in the policy process somehow.

In general it can also be noted that most people tend to be in favour of a stringent asylum policy, however on an individual level they're more often in favour of allowing people to stay. One could note that once they get to know people on a personal level, the chances increase of Belgian citizens to get more sympathetic with the people in question (Geysen, F. & Jansen, C., 2007).

*The extent to which regional and local actors are included in developing and implementing policies.*

Many regional and local actors are involved in particularly the implementation of asylum policies. One of the greatest tasks in this respect is for Fedasil, which is the federal agency for the accommodation of asylum seekers. Fedasil supplies material help to asylum seekers in Belgium, and it often does so in cooperation with other partners. Fedasil contributes both to developing, preparing, and implementing the policy with regard to the accommodation of asylum seekers (Fedasil, 2010). Once an asylum seeker has applied at the Service Aliens Affairs, it is the task of Fedasil to determine the place of accommodation for this person. Basically there are two options, either they go to a collective accommodation structure or an individual structure. A collective structure means a large-scale centre, where a roof, food, medical care, social guidance and a limited allowance is provided. These centres are managed by either Fedasil, the Red Cross or the collective Medical Care Organisation. Individual accommodation, i.e. a house or apartment, is provided by the OCMW, which stands for Public Centre for Social Well-being. The most common practice is that asylum seekers will first move to a collective centre, and after a period of at least four months they may be offered an individual accommodation.

For the actors that are set out in this paragraph, it will be analyzed in which phases of the policy process they play a part.

	Interest Groups	External Advisors	Political Parties	Mass Media	Ordinary Citizens
Agenda Setting	X	-	X	X	X
Policy Preparation	X	X	X	-	-
Policy Determination	-	-	X	-	-
Policy Execution	-	X	-	-	-
Policy Evaluation	X	X	X	X	-
Feedback / Reconsideration	X	X	X	X	-

Firstly, there are also many interest groups in Belgium that are active on the field of asylum policy. Of particular importance are Refugee Work Belgium, Forum Asylum and Migration and international organizations with Belgian divisions such as Amnesty and Human Rights Watch. Evidently these interest groups also aim to influence the agenda setting, for instance by asking for more attention to the humane treatment of asylum seekers. Refugee Work in particular has many connections, and lobbies with politicians and public officials in order to have influence when law changes are being made. In that sense they are also involved in the phase of policy preparation. Many interest groups also come with their own evaluations of existing policies, and provide feedback with suggestions on how the policy should improve according to them.

Secondly, external advisors play a role in the phase of policy preparation. As is the case in the Netherlands, also Belgium has one advisory organ specifically on the field of alien's affairs, namely the Council of Advice for Aliens. It is the duty of this Council to give advice on law proposals on this field. This can happen both on demand or on their own initiative. There is another external advisor which is also involved in the phase of policy execution, namely the Belgian Committee for Help to Refugees. It is their task to select asylum files that may qualify for support by the High Commissioner of the United Nations. In turn, the High Commissioner can give advice on an asylum file to the responsible agencies, which they're not allowed to easily ignore. As for the phase of evaluation and feedback, the Council of Advice for Aliens also evaluates current policies and provides feedback on what might be improved for future policies.

Thirdly, political parties play an important role throughout the policy process. This is the case for all phases of the process except policy execution. Although the ruling parties that form the coalition government have much more influence on the phases of policy preparation and execution. Currently the coalition government is formed by both the Christian-democrats, the liberals and the social-democrats.

Fourthly, the mass media play a role in the phases of agenda setting, evaluation and feedback. Also in Belgium asylum policy is a subject that has received quite some attention in recent years. Mass media are often used by other actors for their own agenda. And also when it comes to evaluating policies and providing feedback, the media play an important role since they make the outcome public.

Fifth, ordinary citizens don't play a large role in the policy process on this field. The few citizens that do choose to play a role do so in the phase of agenda setting. Like in the Netherlands, this can take the form of joining demonstrations to stand up for the rights of asylum seekers. Or on the other hand, sometimes citizens will stand up to oppose the placement of an asylum seeker centre in their neighbourhood. This of course is a classic example of NIMBY-behaviour.

### ***7.3.3 Accountability***

To a certain extent, asylum policy is now a European affair. As is further explained in other chapters, the European institutions have some influence on the asylum policies that the Member States have to carry out. The European accountability structures will not be discussed in this paragraph, which will focus entirely on the Belgian construction with regard to accountability.

Belgium is a federal parliamentary democracy. In some respects Belgium is a rather unusual example of federalism. It has some strong unitary features, most notably the fact that public financing is for over 90 percent a federal matter. The political parties are focused on either the Flemish or Walloon community, although in most cases likeminded parties do form an alliance.



Belgian federalism has three governing levels, namely the federal state, three districts and three communities, each with their own representatives. The districts are the Flemish, the Walloon and the Brussels Capital district. The communities are the Flemish speaking, French speaking and German speaking community. The competencies of the districts are mainly territorial, such as spatial planning, public works and the environment. The competencies of the communities mainly focus on cultural matters, such as sports, education and scientific research. Other policy fields like foreign policy, defence, justice, and monetary policy fall under the competency of the federal state, as does immigration and asylum policy.

As is the case in most other democracies, the state power is divided over three powers; the executive, legislative and judicial branch. The legislature makes laws and controls the executive power. This is done by the King and the parliament, which consists of two chambers, namely the Senate and the Chamber of Deputies. The 150 members of the Chamber of Deputies are elected directly by proportional representation. In the Senate there are 71 seats, of which 40 are elected directly and 31 seats are elected indirectly. The members serve four-year terms in both parties. The Prime Minister is the leader of the largest party of the leading coalition, and is appointed by the monarch. The executive power rules the country, and ensures that laws are carried out and followed. The executive power is exercised by the King and the administration consisting of Ministers and State Secretaries. The judicial power controls and interprets the execution of laws, and checks the lawfulness of the deeds of the executive power. The division of powers also applies to the level of communities and districts. They each have their own legislative and executive power, however the federal judicial power applies to all levels (Belgium.be, 2010).

The definition of accountability that will be used will be repeated here again, and then applied to the state of affairs with regard to Belgium.

*Accountability implies a relationship between an actor and a forum, where the actor feels obligated to give information and explication about his performance, where the forum can ask further questions, and can file a judgment and this judgment can have consequences for the actor.*

The actor in the case of asylum policy must now first be identified. In Belgium this is the responsibility of the State Secretary of Migration and Asylum. The actor is held accountable by the forum, and in this casus that is the federal Parliament. It is here that the forum can ask further questions about the policy and give an assessment of this policy. There is a formal obligation of the actor to explain his policy. There can also be serious consequences for the actor. In case a majority of the federal Parliament loses their trust in the State Secretary, they are able to send him away. This would be the ultimate step though, and it is step which is not that easily taken in Belgian politics. When the parliament is worried about a certain policy, it would be more common to address this issue with the minister, after which he might change the policy to a certain extent, or convince the parliament of the righteousness of the followed policy.

In Belgium there is also the important accountability relationship between the voters and the representatives in the federal Parliament. Thus, the representative is the actor, and the voters form the forum. It are the voters to whom the representatives are ultimately accountable. Now people vote for political parties that have a party program covering all policy fields. The role that asylum policy plays for voters in their overall assessment of the performance of political parties is hard to tell. The success of Flemish Interest in recent years seems to indicate that at least for a portion of the public the immigration and asylum issue is important for their voting behaviour, since this party makes it an important issue in their program. It is typical that in Belgium as a result of the cordon sanitaire this party does not have any formal power. Furthermore, in 2004 the Belgian courts banned its predecessor Flemish Block for violating the antiracism laws. After this decision the party changed its name and removed some of the most overt racist elements of its programme, such as its call for the mandatory expulsion of all Muslim immigrants. It is likely though that the shift in public opinion and the resulting success of Flemish Interest does also have some effect on the asylum policies of other parties, this theory seems to be supported by the recent trend towards a stricter asylum policy. The party system in Belgium is rather fragmented, there are many political parties that are represented in the parliament. More than 91 percent of all registered voters turned out at the polls during the elections in 2007, even though voting is in fact compulsory for those eligible (Freedomhouse, 2009). Although the system in Belgium is rather complex and diffuse, it is clear that asylum policy is a responsibility of the Federal government and the responsible Ministers and State Secretaries can be held to account.

In spite of the rather complex arrangements with regard to the federal structure of the state, and the division of French and Flemish language political parties, the general democratic accountability relations are quite clear in Belgium as they do fall within the common 'trias politica' structure. Most Belgians will probably understand that asylum policy is a responsibility of the federal state, and they will know which Minister or in this case State Secretary to hold to account. Especially with a prominent anti-immigration party that often focuses on this policy field, there is a lot of media coverage for the subject, and this could make it easier for voters to form an opinion on the subject.

#### ***7.3.4 Effectiveness***

In order to be able to measure effectiveness, one must look at the objectives of the policies as they have been set out, that is if such objectives indeed exist. Effectiveness might also benefit from evaluations, and the extent to which such evaluations lead to conclusions that are used for future policies.

### *Objectives of the Belgian asylum policy*

The current asylum policy has gone into effect on the 1<sup>st</sup> of June 2007. The main objectives of this new policy are to further shorten the asylum procedure, and to make Belgium less attractive to asylum seekers by almost excluding the possibility of financial support by the OCMW. In order to achieve these objectives a number of measures are taken, and a number of changes are made. The tasks of the various involved agencies are redefined. The DVZ will no longer make substantial decisions. They will now only handle the intake of the asylum application, and check whether Belgium is authorized to handle the application according to the Dublin Regulation. The CGVS will be the only agency with the competence to investigate and will thus be the only one to substantially judge the application.

It is possible to appeal against the decision by the CGVS at the RVV, the Council for Aliens Matters that is, who will replace the VBC (Regular Appeal Commission). The VBC was able to do its own research to check the facts. The RVV cannot do that, they have to decide based on the facts as they are provided by the CGVS. It is possible to go into cassation against the rejection by the RVV at the Council of State. With the new policy a filter has been put into place, so not everyone can make this appeal at the Council of State. Currently this filter is stopping four out of five requests from being judged again. This new shorter asylum procedure is accompanied by a new system of accommodating the asylum seekers, in short this implies that they will only get material support in large accommodations and thus no individual housing with financial support.

In the section above some objectives and accordingly taken measures of the current and recently effectuated policy are set out. Here some of the objectives of previously installed asylum policies will be set out. One of the most important objectives in the mid- to late nineties was the plan to spread asylum seekers over the country, which was introduced in 1995. This implied that each municipality got a certain number of asylum seekers based on their number of inhabitants. There is an OCMW in each municipality, which is an organisation that is responsible for guaranteeing citizens their social rights, such as affordable housing and health care. Providing housing and financial support for these asylum seekers was thus a responsibility of the various OCMW's throughout the country.

The system changed somewhat in 1997, during the first phase asylum seekers were no longer entitled to financial support. Instead they only got material support, which simplistically put means supplying a bed, bath and bread, which was provided by the federal government.

The problems with providing sufficient accommodation, which will be elaborated on in a later section, has led to the creation of the LOI. This stands for local accommodation initiative, and it is an accommodation for a group of asylum seekers in a municipality, which is provided by an OCMW. The federal government compensates the costs.

Near the end of the year 2000 the Verhofstadt-administration, installed in 1999, states that the asylum policy has to be controlled better than has been the case thus far. They mainly decide that the asylum procedure has to be shortened, and Belgium has to become less attractive for asylum seekers (VVSG, 2005). A new ‘accommodation law’ has been introduced in May 2007. This basically entails that during the first four months all asylum seekers will go to one of the collective accommodation centres, after which they may qualify for individual accommodation.

### *Evaluations of past experience and future impact*

There are many documents with information about the Belgian asylum policy, and figures and statistics about the way asylum flows develop both towards Belgium and the European Union as a whole. For instance, each year Fedasil publishes its annual report with a high amount of information with regard to the rules on the field of asylum policy, and in particular the way the whole system has to function in practice. Nevertheless these annual reports can’t be considered evaluations, since it is simply a description of the system in Belgium as it is arranged by law, without any judgment and critical observation of how it actually functions. And this can be said of most official government documents, they contain much factual information but little critical evaluation of how the system functions.

An exception is an article by the Association of Flemish Cities and Municipalities, which gives a critical view of ten years of asylum policy, in particular with regard to the system of accommodation of asylum seekers.

### *Are the objectives met?*

The new asylum policy has been effectuated since the 1<sup>st</sup> of June 2007. A shorter and less complicated procedure is one of the main goals that are set out. Given the measures that are taken, in particular the redefined and clearer tasks of the involved agencies, they do seem to be on the right track towards achieving this objective. The limited possibilities to appeal against decisions will probably also limit the time a procedure will take, and perhaps make Belgium as a whole less attractive for asylum seekers, which is one of their objectives as well. Nevertheless, only time will tell whether these expected results will turn out this way in practice.

It is of course possible to look into the extent to which previous policies have achieved their goals as they were set out. An important objective was to spread asylum seekers over the country, as has been explained above. However this objective has failed, mainly due to the fact that an asylum seeker only got assigned to an administrative place of residence. In practice, this meant that it was possible for an asylum seeker to get his financial support in that municipality, and find residence somewhere else. The constitutional right to freedom of choice to find residence in your place of preference also applies to asylum seekers, making it hard to spread asylum seekers. The result was that most asylum seekers were concentrated in particular areas in the large cities.

Since 1997, asylum seekers no longer received financial support during the first period. Each asylum seeker could go to a centre where he got material support. There was no obligated place of residence in this system either, however asylum seekers could only receive their material support in the assigned asylum seekers' centre. The idea was also that in such a centre new asylum seekers could get acquainted with the language, customs and structures of Belgian society.

Only those asylum seekers who would stay for a longer period would go to the OCMW's to get financial support and housing, hereby reducing the pressure on these OCMW's. This may in itself have been a good plan, however the problem was that the capacity of these centres was not nearly enough to take in all the new asylum seekers. Despite the advantages of this system it was only a legal possibility for asylum seekers to go to such a centre, and not a legal obligation. As a consequence many new asylum seekers were still being sent directly to the OCMW's. In combination with the sharp rise of asylum requests this put a major strain on the system. The longevity of the procedure, the financial support by the OCMW, and the failing expulsion policy was attracting extra asylum seekers. By the end of 1998 the situation is quite dramatic. The asylum seekers' centres can no longer deal with the large numbers, and thus many asylum seekers are sent directly towards the OCMW's upon arrival. Evidently they can't cope with all these asylum seekers, so many of them are placed in schools and sport halls. Many of those asylum seekers decide to take off, and often fall victim to slumlords, prostitution and illegal employers. By the end of 1999 the federal government recognizes that they are not able to create extra capacity, and in cooperation with the OCMW they come up with a new plan, the LOI. These are accommodation centres on a local level, provided by the OCMW and financed by the federal government. These LOI's have turned out to be a success story, in two years time they have created 6200 places, which accounts for 42 percent of the total amount of accommodation capacity.

As mentioned above, the first Verhofstadt-administration decides at the end of 2000 that the new asylum procedure has to be shortened, and in general Belgium should become less attractive for asylum seekers. The new asylum requests are in fact processed much faster in comparison with the old procedure. However the procedure at the Council of State does still take quite long, with an overload of work as a result. Hence, the objective of shorter procedures has at this point only partly been achieved. One of the ways of making Belgium less attractive is by obligating asylum seekers to go to an asylum seekers' centre in the first phase, hereby replacing the tempting financial support by material support. The objective to make Belgium less attractive seems to have succeeded, since the number of requests steadily went from 42.691 in 2000 to 11.567 in 2006, although there has been a slight increase in 2008 to 12.252.

As was the case in previous years, in the following years those asylum seekers who after a certain period get assigned to an OCMW, and get financial support, often leave the municipality of their assigned OCMW. Because of a multitude of reasons they prefer to live in a big city. The responsible minister blames the OCMW's for not trying hard enough to keep the asylum seekers in their municipality, and in 2002 pushes them to make it attractive for asylum seekers to in fact stay there. One of the ways to achieve this would be to offer housing. Thus far in practice most asylum seekers still concentrate in certain neighbourhoods in the larger cities. It is still regarded as desirable that asylum seekers are spread around the country, but so far this has not been accomplished (VVSG, 2005). The current law with regard to the accommodation of asylum seekers has been effectuated since May 2007, and of the objectives was to spread them more equally over the different regions.

### ***7.3.5 Coherence***

Asylum policy is related to certain other sectors and policies. Therefore, it is useful to take further notice of what these sectors are, and the extent to which they are taken into account. The asylum policy could have influence on other policy fields, and the other way around. Asylum policy has links with a number of policy fields, most notably with migration policy, of which it forms a part, and integration, the economy and social welfare.

Evidently asylum policy has a link with wider migration policy as a whole. Migration- and asylum policy are very much interconnected. The dynamics of international migration are the result of a mix of factors, mainly the relative and absolute poverty in certain areas, political repression, large scale violence and increasingly also the overall state of the living environment. These factors in combination with better communication instruments and cheaper transport lead to a large migration potential. A part of these global migration flows have Europe as destination, and within Europe Belgium is one of the more popular destinations. Roughly broken down there are three ways immigrants can come to Belgium. Firstly, they may come as a labour migrant. The second option is that they apply for asylum, hoping to be granted the status of refugee. The third option is family migration, which is only possible when one or more family members are already living in the destination country, or when one finds a marriage partner in the destination country. Family migration accounts for 45 percent of all migration in the period from 2001 until 2004. A research by the 'Institut de Gestion de l'Environnement et d'Amenagement du Territoire' concludes that all statistics that are kept with regard to migration are of questionable quality. The criticism concerns both the way in which the data is gathered, the type of data that is gathered, and the availability of the data. One of the problems is the different competency levels, which results in data being gathered either at federal or state level, depending on where the competency lies. And apart from the aliens that can be found in statistics, there are of course also those who cannot be found in statistics for obvious reasons, namely the illegal immigrants.

There was a large-scale regularisation campaign in Belgium in 2000, but the people who applied for that are probably only a fraction of the total number who stay on Belgian soil (Wets, 2001). The statistics with regard to immigration are kept by the Belgian government, albeit in a more or less uncoordinated and unstructured manner. One can assume that the effects of and links between asylum policy and migration as a whole are taken into account. However the extent to which this happens does not become clear from official government documents. The rather poor way in which they gather and deal with statistics does not indicate that there is a good foundation for policy making though.

Asylum policy is also related to integration policy. Belgium has an explicit 'minority policy', which is called 'Living together in diversity. Shared citizenship and equal opportunities in a colourful Belgium. Strategic Plan Minority Policy 2004-2010'. This plan aims to create a society in which 'all people, despite their background, can live together in diversity' (Strategisch Plan Minderhedenbeleid 2004-2010, 2004). This has to happen on basis of equality and an active, shared citizenship. Each Flemish citizen should actively take part in society. The two main strategic objectives are encouraging the whole of society to live together in diversity, and realizing proportional participation and facilitating emancipation of the minorities that are established in Belgium. Minority policy falls under the agency internal administration, which is a part of the Ministry of Governing Matters.

The Belgian government places emphasis on the importance of gathering sufficient information with regard to the target groups of integration policy, and therefore they have deemed it necessary to have a permanent and systematic collection and monitoring of data. This has led to the development of the 'integration card', which will show the relative position and degree of integration of ethnic-cultural minorities in society. The Belgian government also states the importance of involving the target groups of the integration policy in the development of these policies. An important role in this respect is for the 'Minority Forum', the official partner of the government involving all matters related to ethnic-cultural minorities.

There is also an obvious link between asylum policy and the labour market. The Belgian government has had an extensive research being done on new migrants and their position on the labour market in 2006. In general it is noted in this report that Belgium, like the rest of Europe has become an immigration region. Belgium also faces the demographic consequences of an ageing society. This will lead to a smaller working population and therefore more labour demand. There are a number of scenarios to try and keep the working population at a sufficient level, and almost all of those scenarios include migrant communities. However, it is questionable whether asylum seekers are the best way to solve these problems. It is more likely that specific labour migration would be more useful to increase the supply of labour.

The level of education of newcomers is not easy to determine, since about three quarters of this population does not fill this in on the registration form. Thirteen percent of newcomers are registered as highly educated, and almost ten percent as lowly educated. For those newcomers who do have a diploma it is not evident that they will be able to use that on the Belgian labour market, since it must be a recognized diploma in Belgium as well.

In order for a foreign employee to work for a Belgian employer, he must have a labour card. An asylum seeker that is in the asylum procedure can apply for such a labour card, after which he can work for an employer. Once an asylum seeker is recognized as a refugee, it is no longer necessary to have a labour card, he can work without one. With regard to their position on the labour market, it can be noted that it is far easier for lowly educated immigrants to find work on their level than it is for those who are highly educated. Many of the higher educated immigrants end up working below their level.

As is mentioned earlier, the housing policy with regard to asylum seekers is aimed at spreading them over the different regions. So far, it turns out that most asylum seekers tend to concentrate in the larger cities. It is clear though that the Belgian government does take the issue of housing for asylum seekers into account, and they try to look for solutions.

The OECD report on coherence states that the domain of public policy is multifaceted and complex, and this makes it difficult to fulfil the demand of coherence. As is obvious from the paragraphs above, the Belgian asylum policy is also made in an environment that is complex and is related to a number of relevant policy fields. The OECD points out that there are different spheres of coherence. In the social sphere there is the possibility of family migration in Belgium, and this form accounts for roughly 45 percent of all migration. Integration policy can also be considered part of the social sphere. With regard to the economical sphere the position of new immigrants on the labor market has been extensively researched, their level of education is also relevant in this respect. In the sphere of infrastructure the housing policy is also relevant, this also has to be taken into consideration when making the asylum policy. These matters are all important, and the OECD particularly stresses the importance of well informed decision making. Decisions must be made based on sufficient information and analysis. There is a lot of information available on asylum policy and the related policy fields, and there are relevant reports on this subject. Of particular importance in this respect is the Strategic Plan Minority Policy 2004-2010, in which multiple aspects of integration are put together, analyzed and have to form the basis of a more coherent policy, where the basis of the policy is to combat inequalities and offer opportunities to newcomers in society. The quality of the data that is gathered with regard to migration statistics has been questioned by a research of the 'Institut de Gestion de l'Environnement et d'Amenagement du Territoire'. The coherency of asylum policy and related policies is taken seriously, yet for instance with regard to housing there are still problems. It is pivotal that decisions are taken based on good information and analysis. It is clear that the Belgian government aims to analyze the information on the field of asylum and related fields, and they have done this extensively. This is not to say that the policies are all coherent since there are still problems, mainly on the field of housing.

When deciding on the asylum policy itself, it is likely that humanitarian considerations play a large role. However the Belgian asylum policy has become stricter in recent years, so the impact these groups of asylum seekers have on other policy fields and society as a whole may have also played a significant role.



### ***7.3.6 Proportionality and Subsidiarity***

Again the five previously set out principles are related to the principles of proportionality and subsidiarity. Three questions should be asked with regard to these principles, firstly whether or not public action is really necessary. As was the case with The Netherlands, it is obvious that regarding asylum policy government interference is inevitable. The principle of subsidiarity leads to the second question, namely whether the European level is the most appropriate one. And the principle of proportionality dictates the third question, that is whether or not the chosen measures are proportionate to the objectives.

The first principle is that of openness. Belgian citizens are relatively well informed about the European Union and the way it functions, which is understandable since the European Commission is based in the Belgian Capital. However it is also true for Belgium that citizens do have more knowledge of the way their national democracy functions, even though this is also rather complicated in the case of Belgium. Thus, since many Belgians are to some extent familiar with both the national and the European way of governing, the asylum policy might as well be handled on the European level.

The second principle is that of participation. In Belgium there are many actors who are active on the field of asylum policy, such as for instance the Forum Asylum and Migration and the Council of Advice for Aliens. The participation of ordinary citizens is rather limited though. The overall high participation of many actors on the national level in Belgium could be perceived as an argument in favour of keeping the asylum policy field mostly on the national level, although you might expect more actors to become active on the European level once more power on this field is transferred to the European level.

The third principle is that of accountability. As has been explained earlier, Belgium is a rather complex example of federalism, next to the division of Flemish and Walloon political parties. Nevertheless, Belgium is also a clear example of the common ‘trias politica’ structure, with a division of the three powers. Most Belgians will have an understanding of how their national, political system functions, and which minister must be held for account with regard to the asylum policy. The Belgian knowledge of EU decision-making is above average in Europe, yet most citizens will have a better understanding of how the national political system functions. Thus, the accountability structures in both Belgium and the EU would still favour decision making to take place on the national level.

The fourth principle is effectiveness. The most important objectives of the policies installed at the end of 2000 were to shorten the asylum procedure and reduce the number of asylum seekers coming in, and both these objectives have been achieved. As for the question of subsidiarity, it seems logical that managing numbers of asylum seekers might be a task better suited for a higher level, namely that of the European Union. The local implications of asylum seekers coming in, such as housing and social policies, are best handled at the lower, national level.

The fifth principle is coherence. Asylum policy is related to many policy fields, which is obvious since potential new members of society have an impact on many parts of their new society. Such policy fields include the labor market and housing policies. Since asylum policy affects mostly other national policies, the most appropriate level for such asylum policies might also be on the national level. Therefore in terms of subsidiarity, the principle of coherence would indicate that it would be most appropriate to handle asylum policy on the national level.

Thus, the first five principles all have different implications in relation to subsidiarity and proportionality. Which aspects of asylum policy and the decision making process should be transferred to the European level is also dependant on which principle is given the most weight. For instance one could argue that the matter of accountability structures should improve on the European level before they get the mandate to handle asylum policy. When it comes to a principle like effectiveness, in many ways one could expect certain problems to be more effectively handled on the European level.

## ***7.4 Conclusion***

The Belgian situation with regard to asylum policy has been analyzed according to the White Paper on European Governance. As is abundantly clear by now, this theory consists of five principles, and the extent to which they are fulfilled in the case of Belgium can now be regarded.

The first principle is openness. As is the case for The Netherlands and the European Commission, there is plenty of information available on the subject of asylum policy on the internet. All relevant government agencies have clear websites, with information in both Flemish and French. It is also a subject that the Belgian media takes an interest in, and on demand the Belgian civil servants are willing to provide information to journalists. So it is fair to say that there is a fair degree of openness on this field. Belgians also tend to be rather well informed about the European Union, and the way it functions. This is perhaps little surprising, since almost all the major European institutions are based in the Belgian capital.

The second principle is participation. There is a number of interest groups that are active on the field of asylum policy, who try to influence policy makers among other activities. Important actors in this respect are Refugee Work Belgium, the Forum Asylum and Migration and international organizations with Belgian divisions such as Amnesty, Human Rights Watch and Defense for Children International. As for external advisors, there is one advisory organ that is set up specifically for this field, namely the Council of Advice for Aliens. In most cases the role of ordinary citizen doesn't go further than voting and perhaps joining an interest group. Sometimes committees are set up that are in favor of allowing certain groups of asylum seekers to stay, or petitions are held to this end. Sometimes such petitions are also started when a group of people is against the arrival of an asylum seekers centre.

The third principle is accountability. Belgium is a federal parliamentary democracy. Belgian federalism has three governing levels, namely the federal state, three districts and three communities. Not surprisingly, asylum policy falls under the responsibility of the federal state. The political system is conventional as far as the division of powers is concerned, also in Belgium there is the division between the executive, legislative and judicial branch. Asylum policy falls under the responsibility of the State Secretary Mr. Wathelet. Like in any democracy, he will have to defend his policies in the Belgian parliament. It is a striking feature that the political party of Mr. Wathelet is focused on the French speaking part of Belgium, the Walloons. One might wonder whether the Flemish people would feel very represented by a Walloon State Secretary, or whether this makes no difference to the average voter. This situation is of course a feature of Belgian politics that both Flemish and Walloons are used to, and is somewhat inevitable in a country like Belgium. All in all, despite its perhaps complex federal structure, the accountability relations in the Belgian political system are quite clear. There is a conventional parliamentary system, and most citizens will have a good understanding of how this system works and who is responsible for the asylum policy.

The fourth principle is effectiveness. This refers to the extent to which the objectives of the Belgian asylum policy are reached. One of the most important objectives of recent years has been to shorten the procedures after an asylum seeker applies, this goal was first stated in 2000 by the Verhofstadt administration. They also want to make Belgium less attractive for asylum seekers, and thus reduce the number of new applicants. There are new asylum procedures in place now, and in comparison with the old procedure they are considerably faster, so this objective has been achieved. Measures have also been taken to make Belgium less attractive, for instance not allowing financial support for asylum seekers in the first phase. The decrease of new asylum applicants since 2000 has been quite dramatic, so it's fair to say they have succeeded in reaching this objective as well, although there has been a slight increase last year. Another important objective since the mid nineties has been to spread asylum seekers over the countries. In order to achieve this, each municipality got assigned a certain number of asylum seekers. However, many asylum seekers simply got their financial support in their assigned municipality, and then took residence somewhere else. The constitutional right to freedom of movement made it impossible to stop this practice. Thus, the situation that many asylum seekers were concentrated in particular areas in the large cities hasn't changed. Therefore the spreading policy has not been effective.

The fifth principle is coherence. Asylum policy is related to other policy fields, and these should be taken into account. Important policy fields that are related are integration policy, housing policy and the position of these newcomers on the labor market. Furthermore there is the position of asylum policy within the wider migration policy as a whole. With regard to integration policy, Belgium has an explicit ‘minority policy’ which deals with the position of newcomers as citizens within their new society, so this is definitely a policy field that is taken seriously. The related aspects and policy fields generally seem to be taken into account, of course there are many considerations that play a role when developing the asylum policy, such as the humanitarian aspect. Belgian asylum policy has become stricter in recent years, and this is probably also a result of the implications that a high number of asylum seekers would have for other fields in society.

The five principles of the White Paper have implications for the proportionality and subsidiarity of the Belgian asylum policy. These two principles are related to the question of whether chosen measures are proportionate in relation to the objective, and which level is the most suitable to deal with certain issues. Clearly these are quite broad questions. Many measures are taken on the field of asylum policy. Belgium has taken proportionate measures in order to shorten the asylum procedure and reduce the number of new applicants, it is clear that the measures that were taken have to a large extent had the desired effect. With regard to the spreading of asylum seekers over the country, the measures have not been proportionate, since it is difficult to force people to choose a particular place of residence.

With regard to subsidiarity, there are certain aspects that the national government seems to be best suited to handle. Examples of this are integration and housing policy. As is the case in other countries, Belgian media also tend to focus more on national politics as opposed to European politics. Nevertheless there is more attention for European politics in Belgium than in most other places, and research has shown that the Belgian population is relatively knowledgeable about European affairs. So this situation would still favor handling asylum policy on the national level, but it wouldn’t make that much difference. And one might expect Europe to get more attention once they also get more power on fields like asylum policy, thereby gaining legitimacy. Even though the political structure and accountability relations in Belgium are relatively complex, it is still a better and better understood system than the EU system, so this would favor keeping the national level in control. With regard to asylum policy, the best argument in favor of transferring power to the European level would be the international nature of the issue. Europe is one community and it would make more sense to deal with asylum seekers in a coordinated way.

## 8.0 Comparative analysis

Before the analysis of the respective theories let's shortly reassess the role and influence of the European Commission on the asylum policies of EU member states. First it should be noted that the Geneva Convention is still central to addressing refugee issues within the European Union, it is the essential foundation upon which the asylum policy is built. The European Commission has stated that asylum can best be handled at the European level. According to the Commission, in the current Europe without real internal borders it seems only logical to aim for more or less equal conditions for asylum seekers in each country, so that one particular country would not seem to be a more attractive destination than another country. Also, asylum seekers should be certain that no matter where the application is made, he or she would have a fair hearing and not be (dis)advantaged by a more or less generous interpretation on whether you are considered a refugee.

The major goals of the common asylum policy were set out by the Government leaders at the European Council in Tampere in October 1999, and the four main legal instruments that have been proposed there have now been adopted.

As of yet there are four main legal instruments in place on the field of asylum. All of those rules have the goal of leveling the asylum playing field and laying the foundations for a Common European Asylum System. All member states have to comply with the minimum standards that are set out in the Reception Conditions Directive, which among other regards housing, education and health. Secondly, the Asylum Procedures Directive obliges all member states to fulfill certain minimum standards with regard to their procedures. The third legal instrument is the Qualification Directive, which sets out a clear set of criteria for the refugee status and the subsidiary protection status, and it defines the rights that are attached to each status. The final main instrument is the Dublin Regulation, which clearly defines the rules with regard to which member state is responsible for assessing an asylum application. This rule was made to prevent multiple demands in a number of countries by the same asylum seeker.

On top of these rules there has been the creation of the European Refugee Fund in 2000 as a tool to enhance solidarity between member states. The ERF gives financial support to member states' efforts to grant reception to asylum seekers and to apply fair and effective asylum procedures. The distribution of the money in this fund among the states is done on the basis of objective criteria relating to the number of asylum seekers.

In 2004 The Hague Program was adopted by the government leaders. An important outcome of this program was that the vast majority of decisions on the field of asylum can now be approved with qualified majority. The Hague program also places more emphasis on practical cooperation between member states, and on the external dimension of asylum. That is to say, the Commission also wants to develop Regional Protection Programmes in cooperation with the UNHCR, such programmes would enhance protection capacity in countries in regions of origin. Thus far, this program has not been realized.

## ***8.1 White Paper on European Governance***

The European Commission has published an important document with regard to governance in 2001, called the White Paper on European Governance. The White Paper is suitable in particular for the category of policy fields that are neither completely national nor completely handled on the European level, but falls in between those two extremes as is the case for asylum policy.

This White Paper provides a set of guidelines and criteria that the policy making process within the European Union should adhere to. There are five basic principles which form the foundation of how the European Union and its member states should function. Those principles are openness, participation, accountability, effectiveness and coherence. So let's assess the extent to which these principles are met by the Commission and the two selected member states.

In order to make this analysis more insightful the extent to which the three case studies measure up to the five criteria of the White Paper has been put in a matrix. Of course it is a simplification to give qualifications like plus and minus to a certain aspect of a policy, but it can still be useful to get an overall idea of the situation. A very brief explanation of these qualifications is given in the matrix, a more extensive analysis is given in the following text.

Figure 8.1: Matrix White Paper principles

	European Commission	The Netherlands	Belgium
<b>Openness</b>	<b>+ -</b>	<b>+</b>	<b>++</b>
	The communication efforts and availability of information are of good standard. However most EU citizens seem to take little notice of European affairs.	The communication efforts and availability of information are of good standard. In general Dutch citizens and media are relatively interested in asylum policy.	The communication efforts and availability of information are of good standard. Belgians also have a better understanding of the role of the EU than all other European citizens.
<b>Participation</b>	<b>+</b>	<b>+ -</b>	<b>+</b>
	Many actors are involved in the policy process. The High Commissioner of the UNHCR in particular has an important role.	Many actors are involved in the policy process. However research has shown that in some cases administrative services were not satisfied with the policy and thus not motivated to play their role in the process	Many actors are involved in the policy process. Also in Belgium the role of the UNHCR is important, since they are entitled to see all the dossiers, and their advice cannot easily be ignored.
<b>Accountability</b>	<b>-</b>	<b>+ +</b>	<b>+</b>
	The decision-making procedures are complex and not democratic enough. The Commission has a large role in the policy process, and the Parliament lacks power and credibility.	The democratic arrangements fall within the conventional 'trias politica' system. The division of responsibilities is quite clear, and parliament will hold the executive powers to account.	The democratic structure also falls within the conventional system of 'trias politica'. However Belgium has a rather complex federal structure, and a division of French and Flemish language political parties
<b>Effectiveness</b>	<b>+ -</b>	<b>+</b>	<b>+ -</b>
	Currently the European Commission has set out a number of directives to which the member states have to comply, yet a number of them don't comply with some of those directives.	The objective to shorten and simplify the asylum procedures has been reached. According to critics, the quality of the asylum decisions is sometimes questionable.	Belgium also aimed to shorten their asylum procedure, and they have succeeded. A major objective was to spread asylum seekers over the country, and this has failed due to misguided policies.
<b>Coherence</b>	<b>+ -</b>	<b>+</b>	<b>+ -</b>
	It is clear from documents, and particularly the Green Paper, that the EC recognizes the links between asylum policy and other areas. However in many cases the EC does not act accordingly. For instance with regard to illegal immigration and resettlement the European role should be larger.	There are many reports that look into related policy fields, such as follow migration, family migration, economic consequences and integration policy. It is not always clear to what extent these reports are taken into account. But many policies suggest that are considering these related issues, the integration exam being a good example.	There are government reports about related policy fields such as family migration and integration policy. There are also policies that are aimed at incorporating these related issues. However the important field of housing asylum seekers has been rather problematic in recent years.

The first principle is that of openness. This refers to the way the European Commission and the member states communicate their actions to the general public. It can be said of both the European Commission and The Netherlands and Belgium that they do make an effort to communicate their policies. There is a high amount of information available on various government websites on this issue. In case of the European Commission all relevant information is available in English, French and German. Some information is in fact available in most European languages, for instance the European Council conclusions are available in 11 languages. It can be said of all three cases that it is easier to find information on the input and output, than on the outcome. This is hardly surprising since the outcome refers to the benefit of a policy for society as a whole, which is inherently difficult to measure. It is also a subject that gets a fair amount of attention in the press. The European Union seems to rely more on internet to make information available, whereas the Netherlands and Belgium make more use of television. This is not to say that the nation states don't use internet as well, but on top of their own websites they have more airtime on television. Now with regard to openness it not only interesting to know what information is available, but also to what extent citizens and the media are interested in that information. It is proven by a report that the attention that European politics receive in media across Europe is surprisingly low, in fact it pales in comparison with the attention that is given to national or regional issues, or any other issue area for that matter. So in spite of efforts made by the European Commission, citizens are rather ill-informed about what goes on in Brussels. This is also confirmed by Dutch research, that shows that Dutch citizens indicate a lack of knowledge about European affairs. Most Belgians also indicate that they feel rather ill-informed about European politics, however research shows they are in fact relatively well informed. This might very well be related to the fact that most European institutions are based in the Belgian capital.

All in all there is enough openness on the field of asylum policy, on both the national and European level. However it is also clear that there is a discrepancy between the ever growing role of the European Union on the one hand, and the amount of attention that the media and citizens pay to European politics on the other hand.

The second principle is participation, according to the White Paper the quality, relevance and effectiveness of policies are also dependant on the amount of participation of various actors throughout the policy cycle. In Brussels, there is are many lobbyists that are actively trying to influence policies, estimates run up to about 20.000. There are also lobbyists on the field of asylum, most important in this respect are the High Commissioner of the UNHCR and the European Council on Refugees and Exiles (ECRE), both of which are trying to ensure the human rights of refugees. There are also a number of interest groups in the Netherlands and Belgium that try to influence the policy process, important players in this respect are Refugee Work, Amnesty International and Human Rights Watch. Both countries also have formal advisory organs set up specifically for this field, the Advisory Commission on Aliens Affairs (ACVZ) in the Netherlands and the Council of Advice for Aliens in Belgium.



When it comes to the involvement of the various actors in the different stages of the policy process, there are more differences between the European Commission on the one hand and the two member states on the other hand, than between those member states. A striking difference is the smaller role of political parties in the European policy process, where policies are mostly prepared by the civil servants of the European Commission. The role of ordinary citizens in the European policy process is also virtually nonexistent, albeit it isn't very big in the member states either. On the national or local level there are some cases when citizens get involved. For instance by joining a committee in favor of allowing certain groups to stay, or by protesting against placement of an asylum seekers centre in their neighborhood. A difference between the Netherlands and Belgium is that there is an important external advisor that is involved in the process of policy execution in Belgium, which is not the case in the Netherlands. In Belgium, the High Commissioner of the United Nations gives advice on certain selected asylum files, and this advice must be taken seriously by the responsible agencies.

Thus, concluding it can be noted that there is a rather high amount of interest groups and advisors on this policy field, both on national and European level. This is perhaps little surprising because there are many interest groups and organizations that are concerned about human rights, and naturally they aim to influence government policy on this subject. The participation of ordinary citizens is rather small on the national level and non-existent on the European level.

The third principle is accountability. There is a substantial difference between the accountability structures as they exist on the European level on the one hand, and the national level on the other hand. Those parts of asylum policy that fall under the European jurisdiction are decided on through the co-decision procedure. This is a rather complex procedure. In short, legislative proposals are drafted by the Commission, which then goes to the European Parliament and the Council of Ministers, who will ultimately both have to agree on this (often amended) proposal in order for it to become law. The most important legislative and decision-making body of the EU is the Council of Ministers. Ultimately, the individual national ministers that form this Council are primarily accountable to their respective national parliaments. This form of indirect democratic legitimation is often referred to as borrowed legitimacy. The arrangements in the Netherlands and Belgium are more clear and well-known, since it complies with the usual democratic system of 'trias politica'. So the state is divided into the executive, legislative and judicial branch. Both in the Netherlands and Belgium the State Secretary is ultimately responsible for the asylum policy, in the Netherlands this used to be Mrs. Albayrak and since the fall of the cabinet it is now temporarily the responsibility of the Minister of Justice Mr. Hirsch Ballin. In Belgium the position is taken by Mr. Wathelet, although currently Belgium also has a demissionary cabinet. The respective parliaments are able to send them away in case they no longer have faith in their policies. This is a system that most people understand and functions relatively well.

However there are some flaws in the European system. The power and influence are divided between the European Commission, the Council of Ministers and the European Parliament. The only way a citizen may have some impact on policy decisions is through their representative in parliament, and the European Parliament is far less powerful than the national parliament. European citizens don't have strong ties with the European parliament, which also becomes evident from the low turnout at European elections. The Council of Ministers is the main legislative and decision-making body of the EU. And even though this Council consists of representatives of national elected governments, it doesn't function very democratic. In fact, except for Denmark and Austria, the national parliaments are not allowed to ask commitments from ministers before Council meetings, or hold them answerable afterward. The power of the European bureaucracy, in other words the European Commission, is larger than is the case on national level, since they have the power to draft laws and regulations.

Another general point of concern could be that most citizens don't quite realize what decisions are made at which level, and will probably tend to hold national politicians accountable for every aspect of the policy, even if a portion of the decision-making has shifted towards the European level.

The fourth principle is effectiveness. This refers to the extent to which the objectives of a policy are achieved. In order to measure this it is necessary to set out the objectives first. Effective policy is also benefitted by evaluations, both of past experiences and future impact.

A more scientifically responsible way for the European Union or the member states to measure effectiveness would be through the use of the (quasi) experimental design with control groups, however this is not used anywhere on the field of asylum policy. Granted, it would not be easy to use this method in practice. Therefore the policies have been analyzed in large part by comparing the objectives with the eventual results of the policy.

In some cases it is hard to objectively state whether a policy is objective, for instance it is hard to state whether certain policies are human since this is such an abstract and subjective term. Therefore it is more useful in this research to limit ourselves to whether or not more practical and concrete objectives have been achieved, here will a short insight in how the Commission and the two selected countries are doing.

The most important objectives of the common asylum policy were set out in 1999 in Tampere by the European leaders, and the four main legislative instruments that were proposed there are now in fact in place. So that has been achieved, although not all member states completely comply with all the rules. There are evaluations underway on the field of asylum policy that are not yet finished, the Commission recognizes the importance of evaluating policies. An evaluation of the Dublin system has been finished and published in 2007.

In 2000, both the Netherlands and Belgium have set out the objective to shorten the asylum procedures, and in both countries the procedures are now simplified and shorter than was the case in previous years. Still in recent years procedures in both countries have in some cases taken years, and the quality of the decisions is sometimes disputed by human rights groups. Both countries do also pay attention to the evaluation of policies. In the Netherlands the Ministry of Justice has its own research centre, which has also published reports on asylum policy. In Belgium it is Fedasil that publishes reports on this field.

In general it can be noted that on asylum policy and its implementation the European Commission is dependent on the cooperation of the various member states. Currently the role of the Commission on this field is mainly to make directives to which the member states must adhere, and thus the member states have to cooperate and implement these directives adequately. The Netherlands and Belgium have made some progression in recent years, particularly when it comes to simplifying the asylum procedures. Evaluation takes place at both national and European level, and its importance seems to be recognized at both levels.

The fifth principle is coherence. This refers to the extent to which related sectors have been taken into account, both on European and member state level.

There are certain related policies that are clearly best handled on the European level. An example of this is the support of third countries in the region to help them deal with refugee issues. Two pilot programmes have been launched to assist third countries, so this policy is still in a very early phase, but it may very well be expanded in the coming years. Also the battling of illegal immigration could very well be a task where Europe steps in, right now member states have to solve these problems by themselves. The Commission has made proposals to establish teams of asylum experts to assist in profiling whether someone is illegal or in fact an asylum seeker, but these proposal have not been approved thus far.

On the national level asylum policy is related to matters such as housing, education, health care and integration. On these fields there are many differences between the various member states. In the Green Paper propositions are done for EU wide training programmes for professionals in the fields of health care and education, but thus far they haven't been realized. Both the Netherlands and Belgium have done somewhat similar research to matters such as the housing, education, integration and the labor market position of asylum seekers.

The OECD report on coherence points out that the public policy domain is multifaceted, and that there exist different spheres of coherence. Indeed, this has proven true for all three case studies. The economical sphere entails matters such as the cost of accommodating the asylum seekers, and the opportunities they will have on the labor market. In the social sphere the relation of asylum policy with integration policy is important. These matters are now mostly a matter of the member states. The importance of well informed decision making is stressed in the OECD report. It can be noted that with regard to asylum policy both on European and national level there is a large amount of information available on related policies, and it can thus be assumed that this is in fact used when deciding on policies.

There are many differences between the various member states of the EU, for instance when it comes to the labor market and simply the way the society functions. So therefore it seems reasonable to decentralize such related policies to a certain extent, so that they can be adapted to the local situation. The European Commission could make some general rules for all member states with regard to access to health care, education and the labor market, so that regardless of where an asylum seekers winds up there are some certainties with regard to these issues.

All in all the extent to which the European Commission and the Netherlands and Belgium function in line with the five principles of the White Paper differs per case and per principle, as is obvious from the section above. Some aspects are particularly notable, such as the lack of accountability on the European level and the lack of coherent policy EU-wide when it comes to matters such as education and the labor market.

## 9.0 Conclusion

Asylum policy is an area that has relatively recently shifted largely to the European decision making level. This process has really started at the summit in Tampere in 1999, and has expanded with the Hague Program in 2004. It is an interesting policy area for a variety of reasons. The competencies are shared between the national and European level. With the open borders within the European Union it seems only logical however that this policy would shift further towards the European level. At the same time this lies very sensitive politically, since it would touch the heart of the member states' sovereignty. Nevertheless the last decade the role of Europe has increased dramatically in this area, and it is therefore interesting to see how this has developed.

In this research asylum policy has been analyzed through the theory of multi-level governance and more specifically the White Paper on European Governance. The White Paper is in particular suitable and meant for the category of policy that is neither completely national, nor completely European. Therefore asylum policy is an excellent field of policy to analyze along the lines of the White Paper. Now the sub-questions, as they are set out in the project objective, will be answered.

*What are the asylum policies of The Netherlands and Belgium?*

In essence, the asylum policies of The Netherlands and Belgium are rather similar. In both countries the Geneva Convention is pivotal in the decisions taken in the asylum procedure.

In the Netherlands asylum seekers first have to apply at a registration centre in either Ter Apel or Schiphol. When this is done the IND will set the 48-hours procedure into motion. The idea behind this procedure is that evidently unfounded requests can be rejected within the first 48 work hours, which comes down to 3 to 5 work days. There are three criteria on the basis of which an asylum seeker can get a residence permit. Firstly there are the international treaties, such as the Geneva Convention and the European Convention on Human Rights. Secondly reasons of humanitarian nature can be sufficient, such as traumatic experiences in the country of origin. The third criterium is in case sending the asylum applicant back to their country of origin would be exceptionally harsh because of the general situation in that country.

It is possible to appeal at court against the asylum decision. When this appeal is rejected this will automatically lead to the obligation to leave the Netherlands within a certain term.

In Belgium asylum seekers first must apply at the border or at the Service Aliens Affairs (DVZ) in Brussels. When the DVZ has decided that the procedure can be started they hand the case over to the Commissioner-General for Refugees and Stateless Persons (CGVS). Then this organization will do research as to whether the asylum seeker is a refugee according to the criteria as they are laid down in the Geneva Convention. In case the CGVS decides that an asylum seeker does not qualify for the status of refugee, it is still possible that this person will receive subsidiary protection. This protection will be granted in a situation where there are well-founded grounds on basis of which it can be assumed that when the asylum seeker returns to his country of origin, there is a real risk that he will be hurt in some way. Each application will be investigated on an individual basis. On top of this it must be proven in a concrete manner that an asylum seeker is personally at risk of being hurt. If an asylum seeker is denied both the refugee status and the subsidiary status, it is possible that they appeal against this decision at the Council for Aliens Matters (RVV).

*What is the role of the European Commission with regard to asylum policies in the European Union?*

At this point the European role with regard to asylum policies is mainly aimed at leveling the asylum playing field. In order to achieve this objective, four main legal instruments have been put in place. The first instrument is the Reception Conditions Directive, which guarantees minimum standards for the reception of asylum seekers, such as housing, education and health. The second instrument is the Asylum Procedures Directive which must ensure that all procedures throughout the EU are subject to the same minimum standards. The third instrument is the Qualification Directive, which contains a clear set of criteria either for refugee or subsidiary protection status and sets out what rights are attached to each status. The final main legal instrument is the Dublin Regulation, this contains clear rules about which member state is responsible for assessing an application for asylum. This instrument is crucial for the prevention of multiple demands.

On top of this, in 2000 the European Refugee Fund has been created in order to enhance solidarity between Member States. The ERF gives financial support to the efforts of member states to grant reception to asylum seekers and to apply fair and effective asylum procedures. The money in this fund is distributed among the states on the basis of objective criteria relating mainly to the number of asylum seekers.

*How can the asylum policies of The Netherlands and Belgium and the role of the European Commission be analyzed and evaluated according to the White Paper on European Governance?*

The White Paper on European Governance sets out five principles that underpin how governance in Europe should work. These five principles are openness, participation, accountability, effectiveness and coherence. The practice of the European Commission and the member states can be measured by these principles, and this has been done in this research.

It has also become clear that the extent to which the principles of the White Paper on European Governance are fulfilled differs per principle and per case study. It is worth noting that the overall picture of the Netherlands and Belgium is not very different in this regard.

With regard to the principle of openness, both member states and the European Commission make a clear effort to communicate their actions. However the lack of interest of EU citizens for European affairs is striking.

The level of participation of various actors is rather high on both levels, although it is somewhat higher on the national level than is the case on the European level, particularly with regard to political parties. The role of ordinary citizens in the policy process with regard to asylum policy is quite limited.

The accountability structures are rather clear on the national level, as they fall within the conventional 'trias politica' system. However the situation with regard to accountability may be a little more complex in Belgium due to its bilingualism and remarkable federal structure, but for most Belgian citizens this arrangement will be familiar and comprehensible. The accountability structures of the EU are quite complex and not very adequate, in comparison to the national democratic arrangements. It must be noted that the European situation has improved with the Treaty of Lisbon, in particular because the European Parliament has become more powerful.

When it comes to effectiveness, the picture is somewhat diffuse since there is a multitude of policy objectives and outcomes. It can be noted that the asylum procedures have improved and simplified both in The Netherlands and Belgium. The four directives that are set out by the European Commission have reached their objectives to a large extent, yet a number of member states do not comply with some of these directives.

Asylum policy is related to other policy fields. This fact is recognized on both European and national level, but the authorities don't always act accordingly. On the European level for instance the link with illegal immigration should be given more attention. In Belgium the housing situation with regard to asylum seekers has been problematic.

*What lessons can be learned for the role of the European Union on the field of asylum policy?*

There are lessons to be learned for the role that the European Union should play on this field, and since a large role on this field is required, much is expected and demanded from the manner in which the EU functions. These improvements encompass many aspects of the asylum policy, and derive from the five principles that are at the core of this research.

When it comes to openness, the main problem seems to be that most EU-citizens show little interest in European politics. It is likely that there will be a gradual shift of attention from the public towards European politics, as the EU becomes more and more powerful. A better functioning European Parliament would also be helpful in this respect.

The participation of interest groups in the policy process is relatively high, both in general and in the case of asylum policy. Therefore little further action from the European Commission is required here, since these processes seem to take place autonomously.

There is much to improve with regard to the accountability of the European Union. The bureaucrats of the European Commission are relatively powerful, and the European Parliament lacks power and credibility. A number of improvements are proposed here, and more extensively in the next chapter. An important step would be that the European Parliament can introduce laws on its own, and that they are able to send individual Commissioners home in case a majority no longer has faith in their functioning.

The current policy of the European Union is effective to some extent, there is a clear set of directives and in most part the member states comply with those directives. However it is argued here that the issues with regard to asylum could be handled much more effectively if the European Union had one central asylum organization. The next paragraph will go further in that statement.

Finally with regard to coherence, the European Commission recognizes the links with various other policy fields. Currently there are considerable differences in the various member states when it comes to access to the labor market, housing, health care and social services. It would be better if more legal measures are taken on these fields, to ensure that each asylum seeker is entitled to certain basic rights.

The chapter recommendations will elaborate on all of the principles, and on the statements that are made in this paragraph.

### *Central question*

The main question of this thesis is '*How can the asylum policy of the European Union be improved?*'. The answer to this question encompasses many elements. In general it should be remarked that it is a positive development to coordinate the respective asylum policies of the EU member states, hereby creating a level-playing field where asylum seekers have the same legal security in each country. It is thus pivotal that the European Union plays an important role in this respect. This level-playing field should reduce or eliminate the phenomena of 'asylum-shopping' and secondary migration within the European Union. Ideally this would also lead to a more balanced spreading of asylum seekers between the different EU member states. This level-playing field would also prevent undesirable forms of policy competition whereby member states follow each other in a downward spiral of tightening policies.

Currently the European Commission has set out a number of directives that the member states must follow. This is somewhat problematic since a number of member states don't comply with some of these directives. In some cases this is also due to the fact that these directives leave too much room for interpretation. And it is likely that it will always stay difficult to get all member states to comply completely with all directives, and to get a similar situation for asylum seekers no matter where they apply. There is simply too much difference between the various member states to achieve this, in terms of prosperity, political climate and culture for instance.



Therefore it would be better to create one European asylum organization that would become responsible for handling all asylum requests. This would mean that each asylum seeker coming into the European Union would have to apply here. This way it would be ensured that every asylum seeker goes through exactly the same asylum procedure, with a clear and universally accepted definition of a legitimate asylum seeker. In the current situation the possibilities to appeal against a decision differ per country, this is even differently arranged in the Netherlands and Belgium. With the new centralized European procedure also these differences would disappear, and instead the possibility to appeal would be the same for every asylum seeker. And the asylum seekers that are accepted in this procedure would then be distributed across the different member states. The division of the asylum seekers should be done based on a clear set of criteria, such as population size and size of the country. This system would be more efficient, and more fair to both asylum seekers and the various member states. Clearly this would be a big step in the political spectrum across Europe, since it would involve giving up sovereignty for individual member states. However the advantages that would come from approaching this issue on the European scale weigh up to giving up sovereignty on the national level.

In order for the European Union to become this powerful on the field of asylum policy, it would be better if some of their governance practices first improved. They have laid down a clear set of principles in the White Paper, and it is thus logical and necessary that they do well themselves on these principles. In particular with regard to accountability the current situation in the European Union leaves a lot to be desired. As mentioned before, the recommendations in the next chapter will go further into the improvements that should be made with regard to the principles of the White Paper.

## 10.0 Recommendations

The recommendations will be set out along the lines of the corresponding principles of the White Paper on European Governance.

It has been made clear that both the European Commission and the two selected member states are making a clear effort to communicate their actions on the field of asylum policy, and they do so in various ways. At the same time the EU-citizens are still much more focused on national political developments, as opposed to what's going on in Brussels. It is not easy to change this, since the people of Europe have strong historical ties with their own nation state and the political system of their country. The shift of attention from those EU-citizens towards European politics will probably be gradual, and the awareness of the importance of EU politics will have to grow. It is reasonable to expect that European citizens and voters will turn their attention more towards Europe as the European Union becomes more powerful, and if improvements will be made with regard to the accountability structures. These improvements will be elaborated on further in this chapter. One clear leader of the European Union could also add to the image of the EU with its citizens, and increase the attention given to European politics. In this respect it might be helpful to have a somewhat charismatic leader, who is a true icon for the European Union and who is recognized and known by the citizens of the EU and in the rest of the world.

Interest groups seem to have understood the significance of European policy making better than most citizens, since the participation of such groups is high both on the national and European level. One can expect the focus of these groups to shift more towards the European level as they become more powerful. These developments take place on their own and require no further impetus from the European Union.

The decision making processes on the European level are not as democratic and clear as would be appropriate in relation to its increased powers. As explained in the chapter on the European Commission, the European Union has a type of circulatory decision making process where the different institutions are designed to check and balance one another.

First it should be noted that since the co-decision procedure has become the main law-making procedure the power of the European Parliament has in fact increased significantly. It is however questionable whether EU citizens are aware of this, therefore it is very important that the power and importance of the European Parliament is better communicated.

Furthermore, in order to increase the democratic features of European decision making the European Parliament should get more power. Currently legislative proposals can only be introduced by the European Commission, and as opposed to national parliaments the European Parliament does not possess this power. It would be an improvement if the chosen representatives in the European Parliament are also allowed to introduce legislative proposals.

Another recommendation to make the decision making process more democratic is to give the European Parliament the power to hold the Commissioners directly accountable for their decisions. The Parliament should thus be able to have a Commissioner come before the parliament and defend their policy decision, as is the case with ministers and parliaments on the national level. And the European Parliament should also have the power to ultimately send a Commissioner home in case a majority of the Parliament no longer has faith in this Commissioner.

In the current situation the Council of Ministers doesn't have to defend their policy decisions for the European Parliament. This is strange since no big decision in the EU can be taken without the permission of the Council of Ministers. Therefore it is recommended that the Council of Ministers can be held accountable for their decisions by the European Parliament.

Currently nearly all member states don't allow their national parliaments to exact commitments from ministers before Council meetings, or hold them answerable afterwards. It would be more democratic to let national ministers explicitly explain and defend the policy decisions made in the Council after each Council meeting. This would enhance the power of national parliaments, and hopefully also increase the national attention for European policy making.

It is now possible to speak 23 different languages in the European Parliament. As one can imagine, it is not easy translating every speech into all languages. In fact, currently there are 403 full time interpreters employed at the European Parliament. This makes it very hard for outsiders to follow the debates going on in the European Parliament, and that might in part explain the low interest for this Parliament. Although it is a sensitive subject among some, it would be in the interest of the European Parliament and in fact the European democracy to install one lingua franca in the European Parliament. The most logical choice in this regard would be English, since this is the most popular second language in Europe.

These improvements of mainly the European Parliament and its powers would likely lead to more attention of the public and media for this institution, and also to more faith of EU-citizens in this Parliament. And one can expect these development to lead to a higher turnout at the European elections as well, which is necessary since the last elections had disappointing turnout of only 45,5 percent.

When it comes to effectiveness, many asylum issues could be handled more effectively with a European approach instead of different national policy approaches. As mentioned before, with the absence of internal borders it is only logical that asylum becomes a matter of the European Union.

Currently the pressure of asylum seekers is relatively high for the nations in southern Europe, because many asylum seekers first arrive there in boats. A striking example is Malta, which received 2610 asylum applications, which is a very high number considering the fact that their entire population is only 400.000. As a result of the Dublin regulation Malta is also obliged to take care of all those applications. Thus far other member states have not been willing to help out and ease the burden on the southern countries.

It is not fair to expect southern countries to deal with such a disproportionate part of the incoming asylum seekers. Therefore it is recommended in this research to make some sort of allocation formula for dividing asylum seekers over the various member states, based on indicators such as the size of the population and the size of the land area. Furthermore, it would also be better if the European Union assisted those southern countries in combating illegal immigrants who try to come in through boats from Africa. Currently the EU-organization Frontex could assist these countries in dealing with these problems, but so far they have done little to this effect. The Netherlands has offered to send a boat from the Marine in support of the southern countries, but clearly such assistance should be offered on a regular basis by a EU-agency.

In 2005 Spain legalized 700.000 illegal immigrants, an operation that has received a fair amount of criticism throughout Europe. There have been many similar legalization operations in other EU countries, among which The Netherlands and Belgium. Because of the open borders within the EU, such operations have consequences for the other member states as well. Therefore it would be better to transfer the competency of member states to start such legalization operations to the European decision-making level, since these operations have major consequences for the whole of Europe, and not just for the nation that makes this decision.

Asylum policy is related to a number of different fields. Obviously many of these fields are related to the integration of an asylum seeker once he or she is admitted. There are differences in the different member states with regard to the access to the labor market, housing, health care and social services. These matters are currently the responsibility of each member state, and they have considerable freedom in the way they arrange this. A more comprehensive European approach to such matters is proposed in the Green Paper, yet not realized thus far. Given the sometimes major differences between the various member states, it is not realistic to expect all these matters to be arranged at exactly the same level in each member state. However it is possible and necessary for the European Union to put forward a number of legal measures on these fields. This should ensure that regardless of where an asylum seeker ends up, he or she will have the same access to the labor market, housing, health care and social services.

Another important policy field that is related to asylum is the support of third countries in dealing with asylum and refugee problems. The European Union has already launched two pilot programmes to assist countries in the region to deal with asylum issues. Of course it is also in the interest of the European Union to enhance the possibilities of durable solutions for refugees in their region of origin, since this might to some extent decrease the possible burden for EU-countries. Furthermore, it will be easier for such refugees to return to their home country once it is safe there, if they'll stay in the region of their home country. Therefore it is recommended that the European Union places more emphasis on assisting third countries in the region to deal with asylum and refugee issues.

One should bear in mind that many of these recommendations are indicating a global direction that the asylum policy should be taking. Clearly some issues and policies would require further research in order to fully develop new better policies. Nevertheless, this research provides a useful starting point, and the results suggest that there is much to gain in developing a smarter and more comprehensive European asylum approach in the future.

## 11.0 Reflection

The theoretical framework that has been used for this research focuses on general governance theories. These theories have proved useful in making an assessment of the respective asylum policies. However it might have been better to complement the theoretical framework with a theory that was specifically aimed at immigration or asylum. More knowledge about the dynamics that motivate people to seek asylum, and to seek out certain specific countries might be useful in assessing asylum policies. The main theoretical basis for this research was the White Paper on European Governance. This has proved to be a very useful basis for analyzing policies, and the way in which they are produced. Nevertheless the somewhat abstract principles of the White Paper were not always easy to measure, and the White Paper does not specify how in fact these principles should be measured. For instance, it is hard to give an objective mark with regard to the 'openness' of an organization, or to say what amount of participation from societal actors in the policy process would be sufficient. A complicating yet also interesting factor was that recently there have been many developments on the field of asylum policy, particularly on the European level. For instance the recently effectuated Treaty of Lisbon has also had implications for the decision making on the field of asylum policy.

The results of this research could be useful for the European Union. Ideally the EU would get more power and means to tackle issues regarding asylum, since the European level would be the most appropriate and effective level on this policy field. However first it would be better if the EU improves their own governance practices, particularly on the field of accountability.

Across the EU this is a sensitive political subject. Hopefully these political obstacles can be overcome to come to a better European asylum policy in the future.

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## **Appendix: Alphabetical list of interviewed persons**

- Geysen, F. Asylum director at Service Aliens Affairs Belgium
- Jansen, C. Head of the International Relations Unit at the Office of the Commissioner General for Refugees and Stateless Persons in Brussels.
- Kelly, N. Former policy advisor of VVD Euro-parliamentarian J. Hennis-Plasschaert
- Martini, A. Deputy Head of Unit Asylum Policy at the European Commission
- Van Vugt, J. Former senior policy officer at the Association of Netherlands Municipalities