

iscte

INSTITUTO
UNIVERSITÁRIO
DE LISBOA

Queer Asylum Seekers in the European Union

Hanna Randgaard Mikalsen

Master in International Studies

Supervisor:

Thais França, PhD., Invited Assistant Professor,
Iscte-University Institute of Lisbon

November, 2021

Department of History

Queer Asylum Seekers in the European Union

Hanna Randgaard Mikalsen

Master in International Studies

Supervisor:

Thais França, PhD., Invited Assistant Professor,
Iscte-University Institute of Lisbon

November, 2021

Acknowledgements

First and foremost, I want to extend my gratitude and appreciation to my supervisor, Thais França for devoting your time, support and expertise during the whole project. Even during stressful pandemic times, zoom calls and being miles apart, your guidance has been vital in enabling me to finalize the dissertation. A big thank you also to all my Lisbon-friends for all the laughs, caipirinhas, support and great discussions about everything that matters. I feel lucky to have learned to know each and everyone one of you – you know who you are! I also want to extend my appreciation to my family. Thank you for teaching me the value of education and always having my back. Lastly, I must thank my partner in life, Maiken, for being the inspiring, smart and kind person that you are. I could not have done this without your support.

Abstract

Queer asylum seekers experience discrimination and rejection at European borders. Research has established that the European Union is contradictory in how it promotes itself as a queer-friendly, but simultaneously maintains an asylum system unsuited to recognize the asylum needs of queer asylum applicants. This study aims at tackling these contradictions. Specifically, it investigates how queer asylum seekers are portrayed in the Common European Asylum System's (CEAS) discourse. In addition, it discusses how these discourses contribute to producing homonationalism and ideas of European ideological borders.

In order to answer these questions, a Critical Discourse Analysis of central CEAS policy documents has been conducted. Five thematic categories were identified in the discourse: 1) invisibility, with the subcategory 2) invisibility ? risk of overlooking, 3) stigmatization, 4) ambivalence and 5) limited representation. The analysis demonstrates several tendencies of heteronormativity and homonormativity, because the CEAS is not able to reflect the myriad of sexual orientations and gender identities that exists and their unique experiences. In addition, it indicates that the CEAS is not able to harmonize the different conceptions of sexual citizenship across the EU, resulting in an unharmonized asylum system for queer persons. The findings demonstrate tendencies of homonationalism and ideological border-making in the CEAS due to the utilization of queer identities in order to construct ideas of European citizenship vis a vis homophobic 'others'. This is also found due to how the EU is asserting its image as a queer rights advocate, and the general saliency of queer rights in the policy documents

Keywords: Asylum, Common European Asylum System, European Union, Homonationalism, LGBTIQ+, Queer.

Resumo

Os requerentes de asilo que procuram asilo queer sofrem discriminação e rejeição nas fronteiras europeias. A investigação estabeleceu que a União Europeia é contraditória na forma como se promove a si própria como uma organização queer-friendly, mas simultaneamente mantém um sistema de asilo inadequado para reconhecer as necessidades de asilo dos requerentes de asilo queer. Este estudo tem como objectivo enfrentar estas contradições. Especificamente, investiga como os requerentes de asilo queer são retratados no discurso do CEAS. Além disso, discute a forma como estes discursos contribuem para produzir homonacionalismo e ideias sobre as fronteiras ideológicas europeias.

Para responder a estas questões, foi realizada uma Análise Discursivo Crítica dos documentos políticos centrais do CEAS. Foram identificadas cinco categorias temáticas no discurso: invisibilidade, invisibilidade - risco de ignorar, estigmatização, ambivalência e representação limitada. A análise demonstra várias tendências de heteronormatividade e homonormatividade, porque o CEAS não é capaz de reflectir a miríade de orientações sexuais e identidades de género que existe e as suas experiências únicas. Além disso, indica que o CEAS não é capaz de harmonizar as diferentes concepções de cidadania sexual em toda a UE, resultando num sistema de asilo não harmonizado para pessoas queer. Os resultados demonstram tendências de homonacionalismo e de criação de fronteiras ideológicas no CEAS devido à utilização de identidades queer para construir ideias de cidadania europeia face a um "outro" homofóbico. Isto também se encontra devido à forma como a UE está a afirmar a sua imagem como defensora dos direitos queer.

Table of contents

1.0	Introduction	1
2.0	The European Union and queer asylum claimants	3
2.1	Why might queer people be in need of international protection?	4
2.2	Western states' moral responsibilities to prioritize queer refugees	6
2.3	The UN Asylum Agency	7
2.4	The Common European Asylum System (CEAS)	8
3.0	SOGI-based claims to asylum in the European Union	12
3.1	The UNHCR and interpretation of the Refugee Convention (1951)	13
3.2	The Charter of Fundamental Rights of the European Union	13
3.3	The Court of Justice of the European Union	14
3.4	The Council of Europe and the Strasbourg Court	14
3.5	European Asylum Support Office / European Union Asylum Agency and queer asylum seekers	16
4.0	The state of the art of the EU asylum system	16
4.1	The control-protection nexus in the CEAS and the vulnerable/abusive-discourse	16
4.2	The Asylum Procedures Regulation	19
	4.2.1 <i>The Accelerated Procedure and the Border Procedure</i>	19
	4.2.2 <i>The "safe-countries"-concepts</i>	21
	4.2.3 <i>Queer asylum applicants and "safe-countries"-concepts</i>	22
4.3	The Qualification Regulation	23
	4.3.1 <i>Stereotypes and credibility assessments in SMACs</i>	23
	4.3.2 <i>Late disclosure and sur place claims</i>	25
4.4	Invisible queer asylum seekers	26
4.5	Identifying a research gap	27
5.0	Theoretical Framework	27
5.1	Queer Migration Studies	28
	5.1.1 <i>Homonormativity and queer complicities</i>	29
	5.1.2 <i>Homonationalism and EU asylum policies</i>	30
5.2	Sexual citizenship studies	32
	5.2.1 <i>Sexual democracy and queer asylum seekers</i>	33
5.3	Pinkwashing	34
6.0	Methodology	35
6.1	Data	35
6.2	Qualitative research	36
6.3	Critical Discourse Analysis	36
6.4	Analytics tools and concepts in CDA	37
6.5	Thematic Analysis	38
7.0	Analysis	38
7.1	Invisibility	39
	7.1.1 <i>Invisibility – risk of overlooking</i>	41
7.2	Stigmatization	45
7.3	Ambivalence	46
7.4	Limited representation	48
8.0	Discussion	51
8.1	General tendencies in the discourse	51
8.2	Discourse on queer asylum and border-making	52
8.3	Discourse on queer asylum and legitimizing restrictive asylum policies	54
8.4	Discourse on queer asylum and homonationalism	55
9.0	Conclusion	56
9.1	Limitations and future research	58
	Literature	

List of tables and figures

Table 1	The CEAS instruments introduced in the New Pact on Migration and Asylum (2020), which instruments it replaced and short description.....	9
Table 2	Anticipated reforms of CEAS instruments that were not introduced with the New Pact on Migration and Asylum (2020), short description and official proposals for amendments.....	10
Figure 1	The asylum-seeking process in the European Union.....	12
Table 3	Countries that had less than a 20% recognition rate in asylum decision in the EU in 2020, and that criminalizes same-sex sexual acts, and does not provide adequate protection to its queer citizens.....	43

Glossary of acronyms

APR	The Asylum Procedures Regulation
aPQR	The amended Proposed Qualification Regulation
CDA	Critical Discourse Analysis
CEAS	Common European Asylum System
CFR	The Charter of Fundamental Rights of the European Union
CJEU	The Court of Justice of the European Union
CoE	The Council of Europe
COI	Country of Origin Information
COREPER	Committee of Permanent Representatives
CSO	Civil Society Organizations
EASO	European Asylum Support Office
ECHR	European Convention of Human Rights
ECJ	Court of Justice
ECRE	European Council on Refugees and Exiles
EU	European Union
EUAA	European Union Agency of Asylum
FRA	European Union Agency for Fundamental Rights
ILGA	The International Lesbian, Gay, Bisexual, Trans and Intersex Association
IOM	International Organization for Migration
LGBT	Lesbian, Gay, Bisexual, Trans/transgender
LGBTQIA+	Lesbian, Gay, Bisexual, Trans/transgender, Queer, Intersex, Asexual, + more
MPSG	Membership of a particular social group
OAS	Organization of American States
OHCHR	United Nations High Commissioner of Human Rights
ORAM	The Organization for Refugee, Asylum and Migration
PQR	The Proposed Qualification Regulation
RSD	Refugee Status Determination
RAPD	The Recast Asylum Procedures Directive
SCO	Safe Country of Origin
SMACs	Sexual Minority Asylum Claims
SOGIESC	Sexual Orientation, Gender Identity and Expression and Sex Characteristics

SOGI	Sexual orientation and Gender Identity
STC	Safe Third Country
TEFU	Treaty of the Functioning of the European Union
TEU	Treaty of the European Union
UN	United Nations
UNHCR	United Nations High Commissioner of Refugees

1.0 Introduction

In 2017, Rodney got his asylum application in the United Kingdom rejected. Rodney is a gay, Ugandan, 23-year old man. Some years prior to this, he had been beaten up by his family and imprisoned and tortured by leaders from his community. When he eventually made it to the U.K and filed his asylum application, it was rejected on the basis that he was not in a same-sex relationship, and because his mannerism was quiet and not flamboyant (Magil & Bell, 2021). Rodney is not the only case. A recent study indicates that over one third of sexual minority asylum claims (SMACs) are rejected in the EU because they are not believed by asylum authorities. In addition, over 40 % experienced that asylum authorities did not believe that they were at risk of persecution in the countries they were fleeing from (Andrade, Danisi, Dustin, Ferreira & Held, 2020).

Providing international protection to sexual minorities on the basis of their sexual orientation was first enforced in the EU in 2002 (UNHCR, 2002, p. 4). However, the EU and its Member States' ability to meet queer asylum seeker protectional needs is widely criticized. For instance, the Common European Asylum System (CEAS) and local asylum authorities are criticized for subjecting queer asylum applicants to stereotyped, discriminating or sexualized interview techniques and for lacking precise information on the state of persecution on queer persons in their countries of origin (Jansen & Spijkerboer, 2011; Gartner, 2015; Ferreira, 2018; Le Bellec, 2021). Scholars argue that the European asylum system simply is not designed for queer applicants (Prearo, 2020; Giametta, 2018).

At the same time, queer rights issues are gaining more visibility in the EU. In March 2021, an exceptionally large majority vote in the European Parliament declared the EU an "LGBTIQ-Freedom Zone". The Members of the European Parliament urged the Commission to use all its available tools to "...address violations of fundamental rights of LGBTIQ people" (European Parliament, 2021). This resolution came as a response to the over 100 Polish municipalities that declared themselves "LGBTIQ-free zones" which denounced non-discrimination and equality work. Furthermore, the EU launched its first ever LGBTIQ Equality Strategy in 2020. The strategy aims at promoting queer rights in the EU, but also taking a leading role on queer rights issues globally (EU, 2020a). President of the Commission, Ursula von der Leyen, has stated the following:

I will not rest when it comes to building a Union of Equality. A Union where you can be who you are and love who you want – without fear of recrimination or discrimination.

Because being yourself is not your ideology. It's your identity. And no-one can ever take it away. (State of the Union Address, 2020)

Due to developments such as these, researchers are arguing that being queer friendly is becoming increasingly interlinked with how the EU wants to portray itself, and what it means to be European. Good European citizenship is becoming connected to being queer-friendly (Slootmaeckers, Touquet & Vermeersch, 2016; Ammaturo, 2015). Scholars have pointed to how even nationalistic and conservative movements are using queer issues in order to promote immigration-hostile policies. In other words, engaging in *homonationalism*, by deploying protection of queer rights as a pretext to enforce nationalistic politics (Puar, 2007). The homonationalism-concept aims to critically examine what the consequences of the LGBT liberal rights movement's success might be (Puar, 2013a).

Queer migration and sexual citizenship scholars have pointed to how queer rights gains for *some* might lead to further marginalization of *others*, such as queer asylum seekers (Duggan, 2002; Puar, 2013b; Ammaturo, 2015; Luibhéid, 2008; Richardson, 2015). The contradictions in the EU's queer rights promotion on the one side, and its discriminating policies towards asylum seekers on the other side have received some attention in recent literature (Ammaturo, 2015; Giametta, 2018; Le Bellec, 2021; Danisi et al., 2021). In a time where queer rights are so high on the EU's agenda, one might question why queer asylum seekers still seems to be on the losing side. These aspects will be discussed later in this paper.

With the goal of tackling these matters of contradiction, this thesis will approach queer asylum in the EU through a Critical Discourse Analysis (CDA) of the CEAS. The Commission released its New Pact on Migration and Asylum in 2020 (EU, 2020b), which included several reforms to the CEAS. Therefore, the research questions this thesis aims to answer are the following:

- How are queer asylum seekers portrayed in the CEAS discourse?
- To what extent is homonationalism produced and maintained in the CEAS discourses on queer asylum seekers?
- To what extent might these discourses contribute to the bolstering of European ideological borders?

After the introductory chapter, a run through of the CEAS and queer asylum policies in the EU will be provided. Following this, an extensive literature review on discourses on asylum and

queer asylum, as well as the state of queer asylum issues in the EU, will situate the state of the art of this topic. Deploying queer migration theory and sexual citizenship studies as a theoretical framework will support and inform the discussion and conclusion of the analysis. The CDA performed on the CEAS policy papers will present result on how queer asylum seekers are portrayed in the CEAS discourse. After presenting the analysis, the findings will be analyzed and discussed applying the theoretical perspectives and concepts, as well as answering the research questions posed above.

1.0 The European Union and queer asylum claimants

As queer asylum is the primary topic of this thesis, it is necessary to briefly define a few terms associated with this thematic. Queer people are characterized by several different acronyms. It can variate from the more common Lesbian, Gay, Bisexual and Trans/transgender (LGBT), or the Lesbian, Gay, Bisexual, Trans, Queer, Intersex, Asexual + (LGBTQIA+) where the plus sign symbolizes all other genders and sexualities which are not covered by the acronym. That being said, this thesis will use the term “queer” as an umbrella meant to cover all non-heterosexual or non-cisgender persons¹ (Mole, 2021), including gender non-binary² and genderqueer persons³. Thus, “Queer” is used in this thesis to acknowledge the myriad of identities which does not necessarily fit the “LGBT” acronym, and each identity’s unique legacy (Luibhéid, 2008, p. 171). Another benefit of using “queer” is that by being more general, it acknowledges the western-centric connotations of some acronyms which do not necessarily reflect all sexual and gender minorities across the globe (Mole, 2021, p. 2). This is not to say that non-western people do not identify with being LGBT, but to acknowledge that there exists many terms and expressions for queer people that have specific cultural connotations and legacies⁴.

¹ Cisgender or cis refers to people whose gender identity corresponds with the sex they were assigned at birth (Merriam-Webster, 2021)

² How gender non-binary individuals identify can variate, but in general they do not characterize themselves as either ‘man’ or ‘woman’. They might identify as both, in between, being fluid or something completely outside of the gender-binary classification system. They may or may not identify with being trans as well (LGBT Foundation, 2021).

³ Genderqueer individuals are persons who do not identify with or characterize themselves as neither male nor female, and also not somewhere in between. They may or may not identify with being trans as well (Beemyn, 2016).

⁴ To provide two examples, “Māhū” is an expression from indigenous Hawaiian and Tahitian culture used to signify people who embodied both female and male spirits. Māhūs had an honorable role in society. Similarly, in Indonesia, “Bissu” is the term for priests who embodies both a male and female spirit (Solomon, 2021).

Some definitions on asylum-related terms are also necessary to introduce. First off, an **asylum-seeker** is a person who is seeking asylum, but whose asylum process is not finalized yet. A **refugee** is a person who meets the refugee criteria, as they are defined by the United Nations High Commissioner for Refugees (UNHCR) or in national legislation (UNHCR, 2016, p.283). According to the 1951 Convention Relating to the Status Refugees and its 1967 Protocol (UN, 1951), referred to hereafter as **the Refugee Convention (1951)**, a refugee can be defined as "...a person outside their country who has a well-founded fear of persecution owing to their race, nationality, religion, political opinion, or membership of a particular social group" (Article 1, UN, 1951). **International protection** is what is granted by states to individuals or groups on the basis of international law, such as the Refugee Convention (1951). A need of international protection can arise for example when people face persecution due to armed conflict or natural disasters (UNHCR, 2016, p. 281). **Temporary protection** is the grant of a temporary protection to a person or a group by a given state when it is anticipated that the need of protection is provisional (UNHCR, 2016, p. 284). **Asylum** is the grant of protection to a person from a state and is a form of international protection (UNHCR, 2016, p. 279). Hence, gaining asylum will in most cases be the same as gaining refugee status.

2.1 Why might queer people be in need of international protection?

The need for international protection due to a person's sexual orientation and gender identity (SOGI) stems in part from the fact that several countries still criminalize people based on their sexuality, e.g. Ghana, Afghanistan and Sri Lanka. It has been estimated that over 175 million queer people live under persecutory environments (ORAM, 2012). Although queer people are gaining rights across the globe, rights are also being taken away – making the circumstances for queer people worse. For instance, Turkmenistan increased the maximum penalty of same-sex sexual acts to 5 years in 2019 (ILGA, 2020, p. 24). In addition, several countries in Latin America, Asia, Africa and Europe have recently introduced or increased legal barriers to freedom of expression on sexual and gender diversity (ILGA, 2020, p. 25). Among EU Member States, such trends have been visible in Poland, Czech Republic and Hungary due to the raise of conservative power (Gartner, 2015; ILGA, 2020).

The International Lesbian, Gay, Bisexual, Trans and Intersex Association's (ILGA) is a global organization and publishes an annual report on "State-Sponsored Homophobia". It serves as an example to illuminate the need of international protection for queer people, even though it is limited to persecution carried out by state authorities. 67 United Nations (UN) member

states⁵ have penal codes which criminalize private sex between consenting same-sex adults. There are known instances of enforcement of these jurisdictions in at least 48 of these countries in recent years (ILGA, 2020, p. 113-141). Additionally, death penalty may be imposed in Afghanistan, Pakistan, Qatar, Somalia and the United Arab Emirates in cases of same-sex conduct (ILGA, 2020, p. 25). The report emphasizes that these numbers are merely illustrative, as a large number of cases are believed to be undocumented (ILGA, 2020, p. 113)

Freedom of expression on matters concerning SOGI also faces legal barriers in several of the UN member states. 42 UN member states impose legislative instruments which prohibits or censor discussions on sexual orientation-, gender identity-, gender expression- and sex characteristics (SOGIESC)-related issues in for instance media, websites or education; which is in direct conflict with International Human Rights Law (ILGA, 2020, p. 145). Lithuania is the only EU Member State on this specific list. The country prohibits the spread of information *promoting* homosexuality, bisexuality and polygamy. Civil Society Organizations (CSOs) that deals with SOGIESC-related issues also experience legal barriers imposed by governmental authorities across the globe. The CSOs are for instance made unable to register, and thus unable to receive funding and carry out their operations (ILGA; 2020, p. 165). This is widespread in several African and Asian countries (ILGA, 2020, p. 165-179), but there are also examples of this in European countries. While Belarus and Russia are the only European countries with confirmed cases of legal barriers for SOGIESC CSOs, there has also been negative developments in this field in EU Member States; Hungary, Poland and Bulgaria (ILGA, 2020, p. 181).

In an UN 2019-report on protection against violence and discrimination based on sexual orientation and gender identity detailed how a wide range of non-state actors in several sectors of society are also accountable for discrimination and persecution of queer people. Be it health authorities, educational institutions, landlords, in the workplace, religious communities or families and peers (Madrigal-Borloz, 2019; ILGA, 2020). In the same vein the Organization of American States (OAS) 2015-report on physical violence towards queer people in the Americas

⁵ These countries are Algeria, Burundi, Cameroon, Chad, Comoros, Eritrea, Eswatini, Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Malawi, Mauritania, Mauritius, Morocco, Namibia, Nigeria, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe, Antigua and Barbuda, Barbados, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Afghanistan, Bangladesh, Bhutan, Brunei, Iraq, Iran, Indonesia (in certain provinces), Kuwait, Lebanon, Malaysia, Maldives, Myanmar, Oman, Pakistan, Palestine (Gaza), Qatar, Saudi Arabia, Singapore, Sri Lanka, Syria, Turkmenistan, United Arab Emirates, Uzbekistan, Yemen, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Cook Islands. De facto; Egypt and Iraq. (ILGA, 2020)

highlights that queer people are subject to killings, rape and serious acts of violence by both state and non-state actors. Lesbian, bisexual, trans women or women who are perceived to defy traditional gender norms are found to be particularly subject to so-called "corrective rape"; a form of sexual violence used to "... punish persons who defy traditional gender norms because of their sexual orientation, gender identity or expression" (OAS, 2015, p. 13). Further, the report also underscores the lack of data and reporting on violence against queer people (OAS, 2015, p. 71-74). Despite this, they have documented how 770 acts of violence were committed during a 15-month period in 2013 to 2014 in 25 OAS member countries⁶. 594 of these were murders, and 176 were considered serious non-lethal attacks (OAS, 2014). It is worth noting that both the OAS and the UN High Commissioner of Human Rights (OHCHR) have underscored the particularly vicious and violent nature of attacks toward queer people compared to other biased-motivated crimes (OAS, 2014, p. 3; OHCHR, 2011).

2.2 Western states' moral responsibilities to prioritize queer refugees

Vitikainen (2020) has argued that Western states have moral obligations to prioritize queer refugees. By that she does not mean that queer status should indicate that one has a larger right to protection when compared to other groups, but rather that when states have to prioritize between refugees, being queer should be seen as a legitimate ground to prioritizing some asylum seekers over other asylum seekers (Vitikainen, 2020, p. 65). To put it simply, queer-friendly states should prioritize queer refugees, because they know that they have less chances of being accepted by other countries and those countries which might accept these refugees will not necessarily treat them properly; hence the queer asylum applicant might risk further discrimination in their future asylum country. Thus, when states and international organizations are distributing duties of international protection, states unwillingness to protect queer people should be taken into account to ensure that these people will not be exposed to further discrimination. She argues that this moral responsibility applies to two groups: 1) people applying for asylum based on their queer status and a fear of persecution, and 2) people who are applying for asylum for other reasons, such as religious persecution or natural disasters, but just so happens to be queer in addition to this (Vitikainen, 2020, p. 67).

⁶ These countries are namely, Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela.

2.3 The UN Asylum Agency

The UN's Refugee Convention (1951) is the cornerstone of international refugee law. It builds on Art. 14 of the Universal Declaration of Human Rights (1948), which recognizes persons right to seek asylum from persecution. In addition, there exists regional treaties and declarations that also addresses refugee law, such as the Organization of African Unity 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, as well as the Cartagena Declaration of 1984 signed by several Latin-American states (UNHCR, 2017, p. 18). However, as EU Member States are not signatories of these declarations, this thesis will focus on the framework established in the Refugee Convention (1951).

International refugee law is often seen in conjunction with other international treaties, declarations and instruments such as the 1948 Universal Declaration of Human Rights and international humanitarian law (UNHCR, 2017, p. 15, 26). An important aspect of the Refugee Convention (1951) is the non-refoulement principle, which states that refugees should not be returned with force to a territory where their life or freedom is threatened. In addition, it provides a definition for who a refugee is and signatory states responsibilities towards refugees. In general, a signatory state is not allowed to adopt more restrictive criteria in their Refugee Status Determination (RSD) policies than what is defined in the 1951 Convention (UNHCR, 2017, p. 142).

The responsibility to uphold the Refugee Convention (1951) and its mandate to protect refugees is a shared responsibility between the UN refugee agency, UNHCR and signatory states. The UNHCR's role is to supervise that international conventions for protection of refugees are applied by the States. European Union law, for instance, repeats that the UNHCR has a supervisory role and ought to be consulted on asylum policy issues (UNHCR; 2021, p. 44). Additionally, the UNHCR creates guidelines for RSD and can also under some circumstances intervene in the decision-making, or undertake RSD on behalf of signatories (UNHCR, 2021, p. 127). RSD demands individual assessment of each application, however group-based RSD are often made on prima facie-basis, in instances of large influx of applicants fleeing from mass violations of human rights. Signatories of the Refugee Convention (1951), however, have different approaches to determining refugee status, despite the UNHCR's push to harmonize this.

The UNHCR's mandate - to provide international protection and seek solutions to refugee problems - is carried out in cooperation with States (UNHCR, 2017, p. 33). States are entailed to have national legislation and policies that are in line with international refugee law. Signatories of the Refugee Convention (1951) have agreed to protect refugees on their territory,

but also to provide durable solutions and address the root causes of forced displacement. Additionally, the UNHCR partner with over 900 different actors, such as governments, IGO's, NGO's and UN organizations to monitor and reach its fulfillment.

The UNHCR also has mandate to resettle or relocate refugees from their asylum country to a new state. This is often done in cooperation with the International Organization for Migration (IOM). Since many countries receive disproportionate low numbers of refugees due to their geographical location, this is a tool to share the responsibilities between receiving states. In 2020, 22 800 refugees were relocated by UNHCR assistance (UNHCR, 2021). Over the years, the UNHCR's mandate has been expanded to include refugees who have returned to their countries of origins voluntarily (returnees), stateless people and internally displaced people in addition to refugees. The UNHCR estimated that 82,4 million people were forcibly displaced in June 2021. 20,7 million were refugees under the UNHCR's mandate, 48 million were internally displaced people, 4,1 million were asylum-seekers, and the rest belongs to other categories. 86 % of refugees are hosted by developing countries, such as Turkey and Uganda (UNHCR; 2021b).

2.4 The Common European Asylum System (CEAS)

The Common European Asylum System (CEAS) is a set of legislative instruments created by the EU, which set out to ensure common standards for processing asylum applicants on EU territory (EU, 2020b). Although cooperation on asylum has existed on the European continent for decades, the real trigger for harmonizing asylum and immigration legislation in Europe came in 1985, following the creation of the Schengen Area and the abolishment of the EU internal borders (Chetail, 2016, p.5). Hence, the design of the European Asylum system has developed hand-in-hand with the EU's construction of its external borders (Chetail, 2016, p. 4-5).

The CEAS has been criticized for being too centered on EU security issues rather than protecting refugee rights (Chetail, 2016, p. 11). Further, it has been criticized for not being compatible with international law and in particular the non-refoulement principle. This is for instance because the CEAS introduces policies such as Accelerated Procedures and "safe country"-concepts which might limit applicants' access to a fair asylum trial, and thus risk returning applicants with a legitimate need for protection. The CEAS is also generally criticized for being a bric-à-brac system which leaves too much discretion at the hands of the Member States and not ensuring a harmonized system (Chetail, 2016).

In 2020, The European Commission reformed parts of the CEAS by introducing the New Pact on Migration and Asylum (EU, 2020b). On the 23d of September 2020, the Commission launched nine asylum instruments which were either newly introduced or reformed version of previous ones, illustrated in Table 1 and 2 below. Several directives were replaced with regulations, hence making them legally binding for all Member States.

Table 1

The CEAS instruments introduced in the New Pact on Migration and Asylum (2020), which instruments it replaced and short description.

Current CEAS instrument	Replaced instrument	Information	Status
The Asylum Procedures Regulation (APR, 2020)	The Asylum Procedures Directive (APD, 2013)	A regulation establishing a common procedure for international protection in the Union.	Approved
The Asylum and Migration Management Regulation (AMR, 2020)	The Dublin Regulation (2013)	A regulation establishing the framework for asylum- and migration management between Member States.	Approved
The Screening Regulation (SR, 2020)	NEW	A regulation establishing a new screening of third country nationals at external borders.	Approved
<i>Commission Recommendation 2020/1364 (2020)</i>	NEW	Commission Recommendation on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways.	-
<i>Commission Recommendation 2020/1365 (2020)</i>	NEW	Commission Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities.	-
<i>Commission Recommendation 2020/1366 (2020)</i>	NEW	Commission Recommendation on an EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint).	-
<i>Commission Guidance 2020/C 323/01</i>	NEW	Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorized entry, transit and residence	-

Note. The regulation documents are enhanced in bold and the recommendation documents in italics.

This table summarizes the three binding regulations, in addition to three recommendations and a guidance document. The Asylum Procedures Regulation (APR) replaces the Asylum

Procedures Directive (2013), and the Asylum and Migration Management Regulation (AMR, 2020) replaces the Dublin Regulation (2013). Table 2 below shows two other instruments that also constitutes the CEAS, but where the amended and revised versions were not accepted in time for the New Pact on Migration and Asylum (EU, 2020b).

Table 2
Anticipated reforms of CEAS instruments that were not introduced with the New Pact on Migration and Asylum (2020), short description and official proposals for amendments.

Current CEAS instrument	Information	Proposals	Status
The Qualification Directive (QD, 2011)	A directive establishing the criteria for qualifying to refugee status or subsidiary protection status, as well as the rights afforded to persons who have been granted one of those statuses.	The Proposed Qualification Regulation (PQR, 2016) and the amended Proposed Qualification Regulation (aPQR, 2018).	Appending
The Reception Conditions Directive (2013)	A Directive establishing common standards of reception conditions for migrants and asylum seekers in the EU.	The Proposed Reception Conditions Directive (2016) and the revised Proposed Reception Conditions Directive (2018).	Appending

Note. Source EU (2020b)

The Qualification Directive (QD, 2011) was first revised by the Proposed Qualification Regulations in 2016, followed by the amended Proposed Qualification Regulation (aPQR) in 2018. The Reception Conditions Directive (2013) was first revised by the Proposed Receptions Conditions Directive in 2016, and the revised Proposed Reception Conditions Directive in 2018. However, the Commission's Roadmap on the Implementation of the New Pact on Migration and Asylum (EU, 2020b) states that these are to be adopted by the second quarter of 2021. However, at the time of writing there are no signs of this happening yet.

In addition, the CEAS also consists of an asylum agency, namely the European Agency of Asylum (EUAA), which replaced the European Asylum Support Office (EASO). The plan for creating the Agency was first introduced in 2016, aiming at strengthening the mandate and abilities of the former office so it could better assist the Member States in asylum issues, as well as in crisis situations (EU, 2016). However, the European Parliament and the European Council only finally came to an agreement on the EUAA on the 29th of June 2021. Even though it is presented a year later, it is a key element of the New Pact on Migration and Asylum (EU,

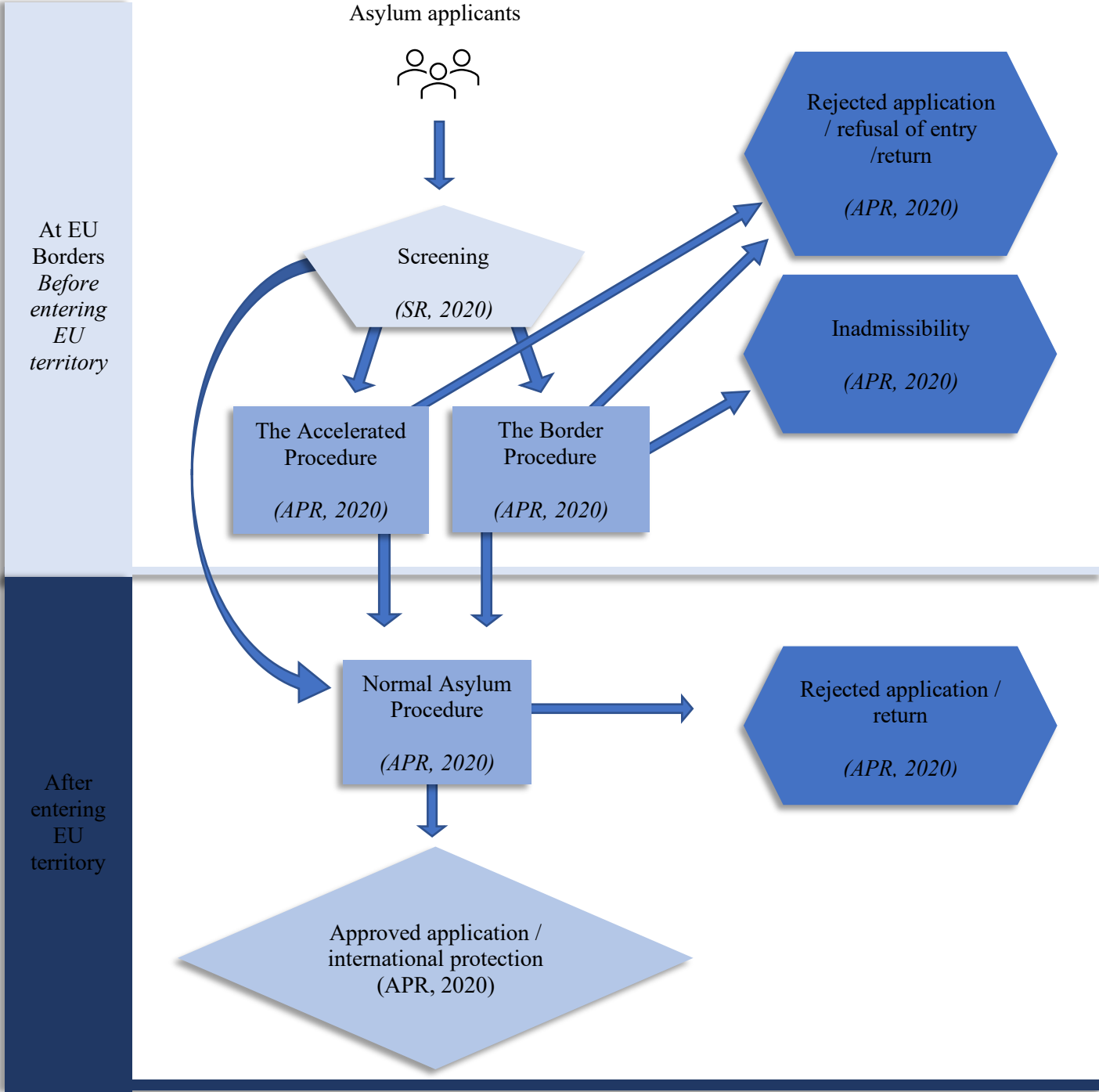
2020). Its aim is to improve efficiency, quality and cohesiveness to asylum procedures across the EU, and will consist of a team of 500 experts which can be deployed to Member States (EU, 2021). Among other things, the EUAA will provide training and technical support to national asylum authorities, as well as ensuring exchange of information across Member States. It also envisages to ensure operational standards and guidelines of *best practice*. In addition, the new EUAA will monitor and report on asylum procedures across the EU. The agreement will enter into effect 20 days after Member States and the Parliament has officially signed the agreement, hence it will happen before the end of 2021.

Lastly, the most recent development on the EUAA regulation is the amended proposal published in 2018 (EU, 2018), while the amended proposal for a regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (which established EASO) is not published publicly yet.

To illustrate how an asylum seeker might be funneled through the CEAS, Figure 1 below illustrates a simplified version of this. The exact process might vary from member state to member state (Danisi et al., 2021). However, the figure demonstrates the main procedures that MS are obliged to follow under the CEAS (APR, 2020). Before entering the EU, applicants are subjected to a Screening. If the applicant expresses a wish to apply for international protection, they will get referred to either the Accelerated Procedure, the Border Procedure or a normal asylum procedure (SR, 2020; APR, 2020). The figure demonstrates how applicants can get their applications rejected or deemed inadmissible⁷ even before entering EU territory. A normal asylum procedure happens after entering EU territory. On this stage the applicant can either be granted international protection or get their application rejected, and thus returned to their country of origin (APR, 2020).

⁷ Deeming an application as inadmissible means that the asylum authorities will not examine the application. This might happen e.g. if the applicant comes from a Safe Third Country or if the applicant has gained asylum in another EU Member State (APR, 2020).

Figure 1
The asylum-seeking process in the European Union



3.0 SOGI-based claims to asylum in the European Union

Mole (2021) argues that queer people gaining asylum is not a new phenomenon, but queer people gaining asylum based on their SOGI is a quite recent development. Within the European Union, SOGI asylum rights are governed by a myriad of institutions, legislatures, human rights-

and policy documents. Although the scope of this thesis is to analyze the CEAS, it is relevant to explore this complex framework. Hence, in the following sections queer asylum in the CEAS as well as other relevant institutions will be briefly introduced.

3.1 The UNHCR and interpretation of the Refugee Convention (1951)

‘Homosexual’ people gained legitimate access to asylum in 2002, when the UNHCR confirmed that the ‘membership of a particular social group’-principle applies to ‘homosexual’ people as well – if there is proof of a well-founded fear of persecution (UNHCR, 2002, p. 4). Since 2002, the UNHCR has published several guidelines (UNHCR, 2002; 2008; 2012) for local asylum authorities that addresses SOGI asylum claims. Now, the UNHCR guidance documents also have specific reference to the LGBTI-acronym, queers, gender identity, sexual and gender expression, and non-compliance with cultural gender expectations (UNHCR, 2012).

Furthermore, the UNHCR has specified that discrimination based on sexual orientation can warrant international protection, if the discrimination amounts to persecution and the state fails to extend protection to these individuals. Additionally, the Agency also stresses persecution can find place even though the state does not criminalize homosexual practices (UNHCR, 2002, p. 4). Furthermore, the UNHCR has determined that a state cannot require a person to conceal their sexual or gender identity in order to avoid persecution (UNHCR, 2008, p. 12). As it is a challenge to provide proof of one's sexuality the UNHCR has concluded that an applicant should be given the benefit of the doubt (UNHCR, 2008, p. 18). It is relevant to repeat here that although the EU develops its asylum policies independently, all Member States are signatories of the Refugee Convention (1951) and EU law confirms the supervisory and consulting role of the UNHCR in EU asylum policy issues (UNHCR; 2021, p. 44). Because of this, the UNHCR’s guidance documents have relevancy for EU asylum policy.

3.2 The Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union (CFR) became legally binding for the EU with the implementation of the Treaty of Lisbon (2007). The CFR addresses EU institutions, as well as national authorities when they apply EU law – as opposed to national law (EU, 2012). Art. 18 of the CFR on the Right to Asylum (EU, 2012) states that asylum should be guaranteed in accordance with the UNHCR Refugee Convention (1957) and the Treaties of the European Union, namely the Treaty of the European Union (TEU) (2007) and the Treaty of the Functioning of the European Union (TEFU) (2007). In addition, Art. 21 (1) of

the CFR on non-discrimination also states that discrimination based on sex or sexual orientation is prohibited (EU, 2012).

3.3 The Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) is also relevant to mention in the setting of SOGI asylum rights. It is the judicial branch of the EU and consists of two courts: the General Court and the Court of Justice (ECJ). The CJEU is responsible for ensuring that the EU treaties are interpreted and applied in accordance with EU law. Similarly, to the UNHCR, the CJEU recognized SOGI claims of asylum as legitimate in 2013 (X, Y, Z v. Minister voor Immigratie en Asiel, 2013).

In the X, Y and Z ruling (2013), the CJEU ruled that criminalization of homosexual acts cannot be seen as persecution in itself. However, it also ruled that the very fact that there exist laws which criminalize homosexual acts is proof that homosexual people constitute a membership of a particular social group (MPSG) under the purposes of the refugee convention (X, Y, Z v. Minister voor Immigratie en Asiel, 2013). Hence, according to the CJEU, criminalization of homosexuality does not constitute a legitimate ground for fear of persecution in itself, but it does configure a proof that homosexual people constitute a MPSG, which in turn can be a legitimate ground for asylum.

In addition, the CJEU has ruled that SOGI asylum claimants cannot be dismissed in the EU under "discretion argumentation" (X, Y, Z v. Minister voor Immigratie en Asiel, 2013). In other words, asylum seekers cannot be returned to their country of origin and required to act discretely, hide or conceal their SOGI. Further, the Court has ruled that asylum authorities are not allowed to use any type of sexual evidence or stereotyped assessments in order to prove SOGI asylum claims. This includes for instance medical tests, or explaining sexual practices (A, B, C v. Staatssecretaris van Veiligheid en Justitie, 2014; Ferreira, 2018, p. 31). The CJEU has also ruled that asylum authorities may not let the credibility of the asylum applicant be harmed in cases where they have not disclosed their sexuality immediately (ibid).

3.4 The Council of Europe and the Strasbourg Court

The Council of Europe and the Strasbourg Court, also known as The Strasbourg Court or the European Court of Human Rights, is not an EU institution. It is a court of the Council of Europe (CoE) which deals with the European Convention of Human Rights (ECHR). All EU member countries are members of the CoE. Yet, the CoE is not bound by the Refugee Convention even though all its Member States are signatories. It is still relevant to explore the CoE's influence

on SOGI asylum claims. Ferreira (2021, p. 78) has argued that CoE policy and Strasbourg jurisprudence has a large impact on how domestic authorities deals with SMACs. Moreover, the author states that the CoE in addition to the EU is the two key actors in shaping European Asylum law (ibid).

Neither the Strasbourg Court nor the CoE in general have developed a full policy on asylum. The Court does not have decision power in the outcome of asylum cases. Similarly, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment produces some guidelines on the treatment of asylum seekers, but it also has no full asylum policy. That being said, the CoE, however, *does* rule on violations of the ECHR, and hence make decision that might protect asylum claimants (Ferreira, 2021, p. 80). Despite of that, the ECHR does not have any article directly addressing rights to asylum (CoE, 1966). Hence, this mostly happens under two articles: Art. 3, which states that no one should be subjected to torture or inhuman or degrading treatment or punishment, and Art. 2 which protects one's rights to life. What is more, the Strasbourg Court can also consider violations of Art. 4 on Prohibition of Slavery and Forced Labor, Art. 5 on Right to Liberty and Security, Art. 8 on Right to Respect for private and family life, and Art. 13 on right to an effective remedy – if an asylum seeker risks violation or denials of these rights in the CoE host country (Ferreira, 2021, p. 81). However, evidence of *systematic violation* of these articles is required for the acceptance of a case to their court.

In addition, the Strasbourg Court has generated some non-discriminatory jurisprudence that can also have specific relevance for SOGI asylum claimants, namely Art. 14 on Protection from discrimination of the ECHR. This means that an asylum claimant must demonstrate that discrimination has affected their enjoyment of at least one other right of the ECHR. In the case of sexual minorities, this often has included Art. 8 on the right to family and private life (Ferreira, 2021, p. 81). It has for instance been used to safeguard a queer couple's right to family reunification in the EU (Schalk and Kopf v. Austria, 2010). Yet, Ferreira's analysis demonstrates that from 1990-2019, only one out of 23 SMACs have been ruled as violation of the ECHR in the Strasbourg Court. According to the author (2021, p. 85), this illustrates the Strasbourg's reluctance to protect SOGI asylum claimants. In sum, Ferreira conclude that while the Strasbourg Court has become increasingly "pro-LGBT", it is also increasingly "anti-migrant" (2021, p.83).

3.5 European Asylum Support Office / European Union Asylum Agency and queer asylum seekers

Similar to the UNHCR, the European Asylum Support Office (EASO) has also issued several guidelines for asylum authorities in all Member States (EASO,2021). For instance, a guidance tool on membership of a particular social group (EASO, 2020) repeats that queer people can constitute a MPSG but does not repeat the inclusive list of various SOGI-categories expressed in the UNHCR guidance tool (2012). However, the amended proposal for the EUAA Regulation (2018) indicates that it will have a more impactful mandate and power to influence the treatment of queer asylum seekers to a larger degree than what the EASO had.

Amongst other things, the EUAA will be responsible for providing training for all asylum authorities in all member states. The training shall identify principles of best practice in asylum policies. Furthermore, the EUAA will be responsible for gathering country of origin information on behalf of all member states and for assisting the Commission in reviewing the EU-wide list of safe third country and safe countries of origin.

In sum, the EU asylum system is governed by several different institutions and actors. Arguably, Chetail's (2016) bric-à-brac metaphor is fitting also in the specific case of the EU's queer asylum policy. The current system is characterized by its disorganized development, despites the CEAS harmonization-efforts. The result is an asylum system that is difficult to navigate and challenging to extract exactly what rights a queer asylum seeker has at European borders.

4.0 State of the art of the EU asylum system

In order to evaluate the existing body of academic knowledge on queer migration and sexual citizenship in the context of the EU and SOGI-related asylum, this chapter aims to review the existing literature in these fields. By doing so, it aims at assessing the current state of the art, introduce main debates and finally identify the research gap which this thesis aims to address.

4.1 The control-protection nexus in the CEAS and the vulnerable/abusive-discourse

Looking at the 2015 refugee crisis, Walter-Franke (2018) asks whether the dysfunctionality of the CEAS is circumstantial, or actually a built-in part of EU asylum policies. In order to answer this, she analyzes what representations of refugees that have prevailed over time in the CEAS legislative process. The author shows that two stereotypical and contradicting narratives have

influenced the asymmetric representations of refugees in the CEAS: control and protection. She calls this the control-protection nexus.

The paradigm of control can be traced back to the 1980's and early stages of EU asylum policy. It is associated with the creation of the Schengen area and the abolishment of internal borders (Walter-Franke, 2018, p. 40). As Member States had to redefine gaps of territoriality and control, the early stages of EU asylum policy and CEAS were heavily influenced by Member States' efforts of securitization. This included domestic security concerns, as well as concerns that refugees would become financial liabilities to the state, which essentially scapegoated refugees. According to her:

...the CEAS started as a policy enterprise where voices monopolized by Member State representatives were driven by securitized narrative in which refugees and asylum-seekers are framed as a security, economic and cultural threat (diagnosis) which must be brought under control (prognosis). (Walter-Franke, 2018, p.43).

Hence, the policies were centered around member state's concerns, and not the protection of refugees (ibid).

The paradigm of protection, on the other hand, can be traced back to deep normative legacies, human rights obligations, and the 1951 Refugee Convention (Walter-Franke, 2018, p.43). It is interlinked with international refugee law and is focused on individuals; their universal human rights, dignity and need of protection. Although the control paradigm was most influential in the early stages of EU asylum policies, Walter-Franke argues that the protection paradigm has become increasingly influential with every reform of CEAS. This is due to the EU's efforts to become a normative power in human rights. But it has also developed along the lines of more openness, transparency and inclusiveness in EU policy and judicial processes. In short, the EU has developed more political and legal avenues which makes it possible to pursue more modern interpretations of international treaties (Walter-Franke, 2018, p. 44).

The CEAS reforms are framed as a balancing exercise between the paradigm of control, and the paradigm of protection (Walter-Franke, 2018). The paradigms are in tension but are not necessarily mutually exclusive. Even though granting asylum is a universalist, act of protection, it can also be a way of asserting the state's legitimacy and authority (Walter-Franke, 2018, p. 45). In other words, granting asylum benefits the state's legitimacy, because it can decide who is 'citizen' and who is merely 'refugee'. Her analysis argues that these two paradigms have led

to the framing of asylum seekers after two ideal types: the abuser or the vulnerable victim. The tension between these two have in turn influenced the policy output of CEAS – and bears explanatory power for its dysfunctionalities, such as illegal detentions, unfounded sanctions, bureaucratic over-burdening and inefficiency (Walter-Franke, 2018, p.64).

When analyzing the Asylum Procedures Directive (APD, 2013) – which was the predecessor of the APR (2020) - Costello and Hancox (2016, p. 41) finds similar conclusions as Walter-Franke (2018). The APD (2013) was designed to cater to two ideal types of asylum seekers, namely the “abusive applicant” or the “vulnerable applicant”. If an asylum seeker were characterized as ‘vulnerable’, adequate support and special guarantees should be granted. For instance, such applicants would not be funneled through accelerated procedures (Hancox & Castello, 2016). The APD (2013) stated that special attention and special guarantees should be granted to certain vulnerable asylum seekers. To figure out who is vulnerable, Recital 29 (APD, 2013) encouraged asylum authorities to consider characteristics such as SOGI. However, this Recital were not binding for the Member States. Hancox and Costello (2016, p. 43) argues that all asylum seekers are vulnerable, and that a state has legal duties towards all of them – regardless of their identity and background.

Furthermore, the authors argue that asylum applicants with special procedural needs – such as victims of torture, rape, psychological, physical or sexual violence - are portrayed as a passive victim. These victims need to be *guided* thorough the system (Hancox & Costello, 2016, p. 43). The discourse of the ‘abusive’ applicant, however, is explained as someone who might lodge multiple asylum applications, issue false identity documents, destroy them or try to evade the Dublin system. The authors argue that this is problematic because many refugees either do not have identity documents or might be encouraged to destroy them by smugglers. They also note how there are legitimate reasons why asylum seekers sometimes evade the Dublin system as well, for instance due to illegal detention and bad receptions conditions. Therefore, it is not groundless that people with legitimate protection needs often engage in behavior that is deemed ‘abusive’ to the asylum system. The authors duly note how the APD (2013) seems to ignore the fact that such ‘abusive’ applicants simultaneously can be victims of rape or torture, and hence be ‘vulnerable’ as well (Hancox & Costello, 2016, p. 43).

Further, Hancox and Castello (2016) argues that the concept of “abuse” in the APD (2013) is not well defined and is used to block access to certain procedural processes for asylum applicants. In comparison, they note that the EU law has sophisticated notions on abuse of rights in other fields, but not in asylum (Hancox & Castello, 2016, p. 43). However, a main criticism

is the continued and enhanced use of special procedures, which will be further addressed in the following chapter.

4.2 The Asylum Procedures Regulation

There are two main procedural processes in the APR (2020) and its predecessors that have been subject of criticism in both academic literature and policy reports. These are namely the special procedures and the “safe countries”-concepts. The special procedures refer to two different procedure mechanisms: the Accelerated Procedure and the Border Procedure (APR, 2020). As Figure 1 on page 12 shows, the special procedures are often carried out before the applicant enters EU territory. At large, the special procedures are criticized for not being able to recognize legitimate asylum claims, and not providing the procedural guarantees that asylum applicants are entitled to (Hancox & Castello, 2016; Ferreira, 2018; ECRE, 2019; FRA, 2019). This will be further addressed in the next sections.

The “safe countries”-concepts refers to “Safe Country of Origin” (SCO) and “Safe Third Country” (STC). The STC-concept refers to the first country where someone is considered safe, such as an asylum applicant’s first country of asylum, or a country they have passed on their way to the EU. In the context of the APR (2020), this generally means that Member States will reject asylum applicants and return them to the STC, under the impression that they will have access to apply for international protection there. The SCO-concept refers to an applicant’s country of origin, if it is considered safe to such an extent that asylum applications will largely be considered unfounded (APR, 2020). This will also be further addressed in the next sections.

4.2.1 The Accelerated Procedure and the Border Procedure

The CEAS is moving towards harmonizing the special procedures mechanisms across the EU (APR, 2020), but at the time of writing there is still large differences in if and how Member States practice them (EASO, 2020, p. 5). An asylum applicant might be referred to one of these special procedures for instance if they come from a SCO or STC, or show undesired behavior (APR, 2020). Furthermore, the Border Procedure and the Accelerated Procedure are two different yet similar procedures, as they can apply on the same grounds. The Border Procedure can also be carried out *as* the Accelerated Procedure (APR, 2020). At large, the very practice of differentiating between what procedure asylum seekers get referred to is criticized, as such pre-assessment of asylum claims risk undermining the applicants’ access to a fair and reliable asylum determination. Given that all RSDs are individual, it is counterproductive to categorize

them prior to even assessing their asylum claim (Hancox & Costello, 2016, p. 41; Walter-Franke, 2018; Ferreira, 2018).

The main difference between the Special Procedures and the normal asylum procedures is that the former comes with a limited time-frame. The time-frames varies but can be as short as 2 or 5 days (Danisi et al., 2021, p. 249). While asylum applicants on paper have a right to be informed of and get access to an interpreter, lawyer or counsel during these procedures, several reports points to that these rights are not met in the special procedures. The short time-limits does not provide applicant with enough time to prepare for interviews and gather relevant evidence for their asylum claim (ECRE, 2019, p. 3; Andrade et al., 2020; Danisi et al., 2021, p. 247-252). At large, the special procedures are criticized for limiting the rights of asylum applicants, such access to information, interpreters, legal help, thorough vulnerability assessments. This might limit the quality of the RSDs (ECRE, 2019, p. 3; FRA, 2019, p. 26; Danisi et al., 2021, p. 247-252).

The UNHCR has also argued that the Border Procedure is not fit to provide adequate safeguards. They also criticize the proposal for the Asylum Procedures Regulation (2016), for allowing Member States to confine asylum seekers for four weeks at the borders, arguing that this practice amounts to detention (UNHCR, 2019). Furthermore, the Un Agency condemned the fact that Accelerated Procedures are made mandatory in the APR (2020), and that it is used as a punitive measure in instances where the asylum applicants do not comply with their obligations (UNHCR, 2019, p. 34). More specifically, the UNHCR has criticized Art. 40 (1) (b), (c), (d) (f), and (g) ⁸ of the proposed Asylum Procedures Regulation (2016) – which is repeated in the APR (2020) - by arguing that they are too vague and risk applying to circumstances when accelerated procedures are not appropriate (2019, p. 34).

Ferreira (2018, p. 13) has noted how the merits in Art. 40 these merits risk particularly affecting queer asylum seekers. One merit deal with accelerating procedures if an applicant does not lodge their asylum application as soon as possible, however, This is criticized in general by the UNHCR (2019, p. 34), and Ferreira (2018) points to how SOGI-claimants might take longer time to gather courage and confidence to disclose their SOGI-status to asylum authorities. Moreover, accelerating the procedure due to SCO and STC might affect queer asylum seekers because several countries that persecute queer people are currently on SCO-and

⁸ Art. 40 (1) of the proposal for the Asylum Procedures Regulation (2016), which is repeated in the APR (2020) lists under which circumstances Member States shall accelerate the asylum procedures. Art. 40 (1) (b), (c), (d) (f), and (g) lists circumstances such as providing contradictory or unconvincing information, withholding information in regard to identity or if they come from a STC.

STC-lists in several Member States. In addition, he argues that there should be no such lists at all because it risks breaching the principle of non-refoulement (Ferreira, 2018, p. 15).

4.2.2 *The “safe countries”-concepts*

The APR (2020) aims to harmonize the SCO- and STC-concepts and establish mandatory, EU-wide lists. However, at the time of writing Member States still have power to establish their own, national SCO and STC lists. The Member States can continue using their own lists in a 5-year period following the enforcement of the APR (2020). Hence, it is still unknown exactly how these EU-wide common SCO and STC lists will look like. Even so, the APR (2020) has established the policy framework for these lists, which will be further discussed in later sections.

For the EU, the main function of the SCO- and STC-concepts is to reduce pressure on asylum authorities in the Member States. The aim is to ensure a swifter asylum process through discouraging unfounded, fake or abusive asylum claims. Yet, both concepts have been widely controversial since their inception (ECRE, 2017; Cortinovis, 2018; Gerwens et al., 2019; Le Bellec, 2021). In short, one of the main criticisms of the SCO and STC-concepts from scholars, IGO's and NGO's is that making these concepts mandatory for all Member States risks compromising the EU's protection responsibilities. This is because these concepts arguably do not have legal basis in international and human rights law. For instance, the concepts risk contradicting Art. 3 of the 1951 Refugee Convention which states that applicants shall be considered without discrimination of their country of origin, and Art. 33 on non-refoulement which states that an applicant cannot be returned to a country where they might be in danger. (Moreno Lax, 2015; ECRE, 2017; Cortinovis, 2018; Gerwens et al., 2019).

According to Le Bellec (2021), the SCO-concept has been vital in the securitization of EU migration policies; namely making asylum a matter of security for the member states, instead of a matter of human rights. At the same time, it fosters hierarchies between asylum seekers according to their countries of origin. Asylum seekers from “safe countries” are marked as undeserving of asylum, fake and abusive of the asylum system (Le Bellec, 2021, p. 5). In addition, the “safe country of origin” practice legitimizes suspicion based on the applicant's nationality, instead of giving concern to the applicant's personal story (ibid). In addition, some have argued that the introduction of an EU-wide SCO-list will become highly politicised and not reflect the actual situation in the respective countries (Gerwens et al., 2019, p. 18).

4.2.3 *Queer asylum applicants and “safe countries”-concept*

For queer asylum seekers, the connection between Accelerated Procedures and the SCO-concept has been highlighted as a particular risk (Ferreira, 2018; Le Bellec, 2021). This is because asylum applicants coming from SCOs often get referred to the Accelerated Procedure or the Border Procedure. However, several of the countries considered as SCOs in Member States today still criminalizes homosexuality (Ferreira, 2018; Le Bellec, 2021). This issue is connected to asylum authorities use of country of origin information (COI), which is widely criticized for being inaccurate and unable to reflect the situation of queer people in their countries of origin (Jansen & Spijkerboer, 2011; Le Bellec, 2021). When assessing asylum claims, or whether a country is a SCO, Member States relies on COI to assist their asylum decision. In SOGI-related asylum cases, COI can be relevant when the asylum seeker claims to be persecuted by state parties. In these cases, asylum authorities need to know for instance whether same-sex conduct is criminalized in the country of origin. If queer asylum seeker claims to be persecuted by non-state actors, asylum authorities might need to know the prevalence of persecution and the state’s ability to protect SOGI minorities (Jansen & Spijkerboer, 2011, p. 71). According to Jansen and Spijkerboer (2011), Member States tend to interpret their own lack of relevant COI as a sign that there is no persecution of queer people in that country. This is problematic because the practice results in that queer people who should have received refugee status are denied it and returned to persecutory environments. Furthermore, according to Le Bellec (2021, p. 6), country of origin is the main factor that legitimizes different treatment of queer asylum claims, because if the applicant comes from a SCO or STC, they often get referred to the special procedures.

It is relevant to note that some development has happened in the “safe countries”-concepts over the past years. Although rare, some Member States mark certain countries as not safe for women, or not safe for queer people. For instance, the Netherlands has marked Algeria and Senegal as safe, “except for LGBTI” (Le Bellec, 2021, p. 6). However, Le Bellec (2021) argues that including this exception for queer people risks having a negative effect on queer asylum applicants. This is because it might lead to further suspicion that the applicant is only pretending to be queer, in order to avoid accelerated procedures. Whether the EU-wide common SCO lists will have such gender- or queer-sensitivities is yet to see, but as the analysis will demonstrate there are no indications of this in the APR (2020).

Regardless, Le Bellec argues that combining restrictive asylum policies with gender-sensitivity measures are a dynamic that permeates the CEAS. However, in the asylum policy documents gender-sensitivity measures are often provided in recitals, which do not have any

binding power. Hence, “...where operative provisions set restrictive policies, recitals uphold the EU narrative of gender equality and LGBTI-friendliness by inciting Member States to interpret these policies carefully” (Le Bellec, 2021, p. 9). In other words, including queer- or gender-sensitive measures in the recitals leaves some leeway for Member States to interpret the binding articles in this manner, but they can also choose not to – after all the recitals are not binding.

4.3 The Qualification Regulation

The Qualification Directive (2011) and the Proposed Qualification Regulation (2016) have also been subject to discussion and criticisms. To start off with, Art. 10 (1) (d) of the Qualification Directive (2004) already established that SOGI was a legitimate ground for asylum under the MPSG-category. However, in order to be recognized as a member of a particular social group (PSG) there are two criteria or “tests” that the asylum applicant has to pass during their asylum process. The first criterium is that the social group – the sexual orientation or gender identity - must be socially recognizable in the asylum seekers' country of origin. The second criterium is that the applicants SOGI must be considered a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it, according to Art. 10 (QD, 2011). This practice has been criticized for being unduly restrictive, and that passing one of these tests should be enough (Ferreira, 2018, p.7). In addition, Ferreira (2018, p. 19) has argued that the Proposed Qualification Regulation (2016) ought to have specific references to particularly trans- and intersex individuals, and state that these can also constitute a MPSG

4.3.1 *Stereotypes and credibility assessments in SMACs*

In general, the CEAS has been argued to be a ‘game’ that is not designed for queer refugees due to its heteronormative dimensions as the asylum system probes heterosexuality as a default norm for all asylum seekers (Gartner, 2015; Prearo, 2020). In fact, the European asylum authorities' methods for *proving* queerness have been argued to be discriminatory and directly in conflict with human rights (Jansen & Spijkerboer, 2011, p. 49-52; Gartner, 2015). This practice and criticism vary across member states, but the Qualification Directive (2011) in general is denounced for giving too much leeway for using stereotyped and discriminative methods when assessing SMACs (Ferreira, 2018, p. 8). According to Ferreira (2018, p. 8), this emboldens national asylum authorities to continue relying on stereotyped and inappropriate conceptions of queer identities when assessing the credibility of SMACs.

Art. 4 of the Qualification Directive (2011) spells out the requirements for the credibility assessment asylum authorities have to conduct on all regular asylum seekers. Proving sexuality and gender identity can be challenging, but persons applying for asylum based on SOGI, is dependent on being perceived as credible by the asylum authorities (Ferreira, 2018, p. 17). However, asylum seekers are often disbelieved by national asylum authorities – regardless of the emphasis placed on giving the benefit of the doubt to SOGI applicants the UNHCR (2008, p. 18; UNHCR; 2012). According to Ferreira (2018, p. 17), given the fact that queer asylum seekers rely so heavily on credibility, this practice leaves them in a particularly precarious situation. When one is fleeing from persecution, it is challenging to provide any evidence of ones SOGI.

The fact that queer asylum seekers have a hard time with proving their SOGI-status is connected to asylum authorities heteronormative and limited understandings of queer identities (Gartner, 2015). According to Jansen & Spijkerboer (2011) these understandings are informed by stereotypical and Eurocentric notions of *what* queer identities are. In other words, asylum authority's conception of a queer person might rely on a characterized, emancipated, European representation of a gay man or lesbian woman – which might not be applicable for all queers in Europe, let alone asylum seekers coming from persecutory environments. For instance, in Ireland, France and Romania there are known incidents where the reasoning for rejecting gay, male asylum applicants have been that they have not attended gay bars in their host countries (Jansen & Spijkerboer, 2011, p. 58). It is a challenge for queer applicants do tell a credible story about their realization of their sexual orientation, when their experience does not match the expectations of the asylum authorities. In sum, wrongful decisions are made based on who is and is not queer enough in the eyes of Eurocentric and heteronormative authorities – and the CEAS creates leeway to do exactly this.

Some progress, however, has developed in this field over the past years. As noted previously, since 2014 it has been illegal for asylum authorities in the EU to require intrusive, sexualized tests or any evidence of sexual practice by the asylum applicant in the asylum assessment (A, B, C v. Staatssecretaris van Veiligheid en Justitie, 2014). Prior to this, several European countries⁹ would conduct different medical examinations such as psychiatric examinations or measuring the physical response to pornography in order to assess asylum claimant's credibility (Jansen & Spijkerboer, 2011, p. 49).

⁹ There are known incidents in Austria, Bulgaria, Czech Republic, Germany, Hungary, Poland, Romania and Slovakia (Jansen & Spijkerboer, 2011, p. 49).

Despite of that and CJEU ruling that the credibility of the asylum seeker cannot *solely* be based on stereotyped notions stereotyped questioning is still allowed (Ferreira, 2018, p. 31). Queer asylum applicants are frequently asked sexually explicit questions, such as sexual preferences or frequency of sexual relationships. Such questions can be problematic because it is invasive of people's privacy. Some questions can also be of such character that they are offensive to the applicant. For instance, asylum authorities can ask questions that connects homosexuality with prostitution or being promiscuous (Jansen & Spijkerboer, 2011, p. 56). Sexually explicit questions can also be problematic because they can seriously hurt the credibility of the asylum applicant. To exemplify, a gay asylum-seeking man was rejected by Dutch asylum authorities in 2009 because he responded *evasively* on a question. The question was in which position exactly he was caught having a sexual encounter with another man, even though he had already provided intimate details from the encounter to the authorities (Jansen & Spijkerboer, 2011, p. 55). Such stereotyped questions have been argued to reveal prejudice or direct homophobia among the asylum authorities, which risks damaging the trust required in asylum interviews (Jansen & Spijkerboer, 2011).

4.3.2 *Late disclosure and sur place claims*

In his analysis of the Proposed Qualification Regulation (2016), Ferreira (2018) has addressed three elements that might affect queer asylum seekers in a negative way: namely Art. 5 on late disclosure and sur place claims and Art. 8 on the internal relocation alternative.

Art. 5 of the Qualification Directive (2011) deals with *sur place* asylum claims. This refers to situations where the fear of persecution first arises *after* the asylum seekers has left their country of origin and is situated in a host country. This article might be particularly relevant for queer people, as actors of persecution (such as the state, family or peers) might first discover the asylum seekers SOGI *after* their departure from their country of origin (Ferreira, 2018, p. 21). However, Ferreira (2018, p. 21) criticizes some of the paragraphs in Art. 5 for creating certain exceptions to *sur place* claims. If the asylum authorities believe that the asylum applicant has participated in activities simply to generate necessary conditions to *create* a fear of persecution, they can get their asylum claim rejected (QD, 2011, Art. 5). For the specific case of queer asylum seekers, this can mean that participating in queer activities in their host country¹⁰ can harm their credibility. However, as Ferreira (2018, p. 21) notes:

¹⁰ Such as attending a Pride parade, queer protests, queer bars, participating in queer NGO's, having queer friends, being vocal and public about ones SOGI, etc.

[i]ronically, not engaging in such ‘queer activities’ is also what may damage the applicant’s credibility in the eyes of the decision-maker, so applicants may fail to obtain international protection independently of whether they engage in such activities or not. (Ferreira, 2018, p. 21)

Furthermore, the issue of late disclosure - not sharing ones SOGI-status at the first given opportunity - is a concept Ferreira (2018) has criticized both in the Asylum Procedures Directive (2013) and the Proposed Qualification Regulation (2016). In several instances, asylum applicants are required to submit all relevant information or evidence for their asylum claim as soon as possible. This is particularly challenging for many queer asylum applicants, because they are often unaware that SOGI is a legitimate ground for international protection (Ferreira, 2018, p. 17-18; SOGICA, 2019). In addition, “...many do not know how to structure their narratives and include all elements that may possess relevance to a European decision maker” (Ferreira, 2018, p. 17). Notwithstanding that many feel uncomfortable or afraid to discuss their SOGI status due to religious, cultural or personal reasons. As the CJEU has ruled that late disclosure of one’s sexuality should not hurt asylum claimant’s credibility, Ferreira argues that this should be included in the CEAS files (Ferreira, 2018, p. 18).

4.4 Invisible queer asylum seekers

Another debated issue regarding queer asylum seekers in the CEAS is the lack of recording and reporting on the *number* of queer asylum seekers. The lack of reporting is argued to reflect a lack of transparency, which renders it virtually impossible to hold the EU accountable of their own human rights standards on the matter (Jansen & Spijkerboer, 2011; Danisi et al., 2021, p. 6). That being said, judiciaries in for instance the United Kingdom and Germany have argued that it would be problematic to record SOGI-status due to its sensitive nature. The German government has also argued that questions on SOGI-status cannot be asked routinely because it would interfere with the applicants right to freedom of choice of what information is stored about them (Danisi et al., 2021, p. 6).

However, the few reports that do exist shows that there is a huge difference in the number of queer asylum applicants per country. According to Gartner (2015), 4.43 % of the total asylum decision in Belgium from 2008 - 2012 were based on SOGI. While in Norway, it was estimated that 0.22 % percent of asylum decisions were based on SOGI between 2008-2013. Although these numbers are not precise, they still indicate that it is impossible to estimate

a total of queer asylum applicants in the whole of the EU. The little data that do exists might be an indication that the number of queer asylum seekers in the EU is rising. In Belgium, the number of queer asylum decisions rose from 226 out of 8964 total asylum decisions in 2008, to 1059 out of 19731 in 2012. In the UK it is estimated that the number increased from 18 to 55 over the same time period (Gartner, 2015). One might argue that this increase of SOGI-based asylum claims, in addition to the EU's inclusion of SOGI as a legitimate ground for asylum, further underscores the need for accurate statistics on this particular groups of asylum seekers. As Gartner (2015) has argued "invisibility is easily conflatable with non-existence, which can in turn implicitly work to legitimize omissions by state authorities and civil society actors in taking up this issue on their agenda".

4.5 Identifying a research gap

The field of queer migration studies is a rather recent but growing one (Mole, 2017; Mayo-Adams, 2020). Despite several recent contributions (Ferreira, 2018; Danisi et al., 2021; Le Bellec, 2021), American experiences are still dominating the field (Mole, 2017). The literature review demonstrates that although there are academic literature dealing with queer asylum seekers in Europe, the literature that deals with queer asylum seekers in the CEAS specifically is rather limited. This is an important field to investigate, as the CEAS is gaining more influence on national asylum legislation (EU, 2020b). As more of the CEAS-policy documents are becoming regulations instead of directives, how the regulations deal with queer asylum applicants will become binding for all Member States. Mayo-Adams (2020) has argued that political scientists in particular ought to engage more in the queer migration field in order to better address the experiences of queer migrants. Further, scholars have called for more research on the contradictions of the EU's queer policies on the one hand, and refugee policies on the other (Thiel, 2020, p. 13). Walter-Franke (2018) has called for greater scrutiny of EU asylum policy, also including ongoing processes.

Hence, this thesis has ambitions to contribute to closing this gap in the broader literature, by exploring recent and ongoing developments in queer asylum policies in the EU through the lenses of queer migration theory and homonationalism specifically. This will be approached by mapping and analyzing CEAS-documents' discourses on queer asylum seekers. In addition, it aims to answer to what extent homonationalism is produced and maintained by these discourses, as well as to what extent these might contribute to the bolstering of European borders.

5.0 Theoretical Framework

This thesis aims at approaching EU policy discourses on queer asylum seekers from the theoretical lenses of queer migration theory and sexual citizenship. It sets out to answer to what extent homonationalism is maintained and reproduced in the EU policy discourses on queer asylum seekers, as well as how these discourses might contribute to bolstering EU borders. The term homonationalism intersects with both queer migration theory and sexual citizenship studies. These two theoretical approaches overlap in several ways offering unique insight and perspective to the analysis and discussion. Hence, this section will assess these theories as well as relevant concepts, which might further inform the analysis.

5.1 Queer Migration Studies

Queer Migration studies is a diverse and interdisciplinary field which stems from the migration field and queer theory (Mayo-Adam, 2020, p. 2; Luibhéid, 2008, p. 169; Mole, 2021). It is linked to several concepts that will be further addressed in this chapter, such as heteronormativity, homonormativity, homonationalism and pinkwashing. According to Eithne Luibhéid (2008, p.169), at wide queer migration studies is

(...) a set of grounded processes involving heterogeneous social groups, and a series of theoretical and social justice questions that implicate but extend beyond migration and sexuality strictly defined, and that refuse to attach to bodies in any strictly identarian manner.

In other words, it is a conceptual and theoretical framework that allows for a critical examination of the intersections of migration, gender and sexuality. Queer migration theory has a constructivist approach to sexuality, arguing that it is shaped by power, race, ethnicity, gender, class, citizenship and geopolitical location (Manalansan, 2006; Luibhéid, 2008). The concept “**heteronormativity**” – the idea that heterosexuality is the normal or default form of sexuality - is central in queer migration theory. It enables to challenge the dominant assumption that all migrants are heterosexual and that all queers are citizens (Luibhéid, 2004, p. 233). In sum, queer migration theory provides analytical lens to examine processes of heterogeneity in migration field that works at the expense of some subjects, and critically investigate how hierarchies of race, gender, class and nationality in relation to sexuality influence experiences of migration (Luibhéid, 2008; Mole, 2021).

5.1.1 *Homonormativity and queer complicities*

The terms “homonormativity” and “queer complicities” are relevant in the context of queer migration studies, as well as ideas of nationalities and borders. Homonormativity is an influential concept coined by Lisa Duggan (2002). It refers to how some levels of queerness are accepted into society if it fits with the heteronormative model of cisgender, monogamy and procreation. It is the assimilation of ‘gayness’¹¹ into a heteronormative frame. For example, fighting for equal marriage rights for queer people but simultaneously resisting that the rights that are associated with marriage can be granted to couples that are not married can be an example for homonormativity. This leads to nominal acceptance of monogamous queer couples and reinforce the institutional dominance of monogamous marriage in society (Duggan, 2002). Thus, homonormativity *sustains* heteronormativity to some extent.

Homonormativity also relates to homosexuality’s acceptance in society, but with the circumscription that it is confined to the private and domestic sphere (Duggan, 2002). To put it simply, gays are okay, as long as we do not see them. Homonormativity can also be understood as a form of gay moralism. It works to dis-associate gay activism with movements that it has traditionally been associated with, such as anti-racism and feminism. It is a de-radicalizing and re-branding of the gay rights movement to associate it with neoliberal values such as monogamy, a binary gender system, reproduction and ‘normal’ family life. Those who mimic heteronormative standards best are deemed more *deserving* of rights and acceptance, while those who do not, risk being further marginalized.

The term “queer complicities” builds on the same ideas. It refers to when queers and allies - such as the ‘queer-friendly EU’ - fight for mainly gender- and sexual policies to become mainstream in a way that also reinforces nationalism or neoliberalism. When queer rights are promoted in a manner that merely advances the rights of a few acceptable queer identities it can lead to further marginalization of *other* queer identities who do not fit these expectations (Mayo-Adam, 2020, p. 10-12). In the bottom of this hierarchy, one might find groups such as queer asylum seekers, queers of color, bisexuals, trans people and non-binary people (Duggan, 2002; 2003, Ferguson, 2005). What queer identities are deemed acceptable will variate from society to society¹². To bring the “queer complicity” concept into the asylum context, one might

¹¹ A sexual attraction to (or sexual relations with) persons of the same sex (Cambridge, 2021)

¹² The Eurobarometer on Discrimination (2019) shows large discrepancies between European countries. For instance, while in Sweden 98% agree that lesbian, gay and bisexual people should have the same rights as heterosexuals, only 31 % in Slovakia would agree to the same. Further, the EU total shows that 69 % of its citizens agree to same-sex marriage, but only 49 % is comfortable seeing public

argue that queer complicity happens when a state – who fronts itself as being queer-friendly – simultaneously has a crystalized idea of what queer identities are, which results in limiting non-conforming queers’ access to asylum in this state.

5.1.2 *Homonationalism and EU asylum policies*

The term “homonationalism” by queer-theorist Jasbir Puar (2007) has also been prominent in queer migration studies, adding to homonormativity and queer complicity. Puar (2007) expands Duggan’s (2002) conception of homonormativity, arguing that homonormativity also works in favor of hegemonic forms of nationalism, capitalist profiteering and neo-imperialism. In the book “Terrorist assemblages: homonationalism in queer times” Puar (2007) illustrates how homonationalism is at work when nationalist parties in the US utilize queer rights claims in their discourses against immigrants, based on the prejudice that immigrants are homophobic. These parties then create a narrative which claims that immigrants are a threat to queer people – which means they are opposed to western values such as progress and tolerance (ibid).

More recently, Puar (2013a; 2013b) has argued for a broader understanding and re-formulation of homonationalism, and defined it as:

(...) a facet of modernity and a historical shift marked by the entrance of (some) homosexual bodies as worthy of protection by nation-states, a constitutive and fundamental reorientation of the relationship between the state, capitalism, and sexuality (Puar, 2013b, p. 337).

With the homonationalism concept, Puar (2013b, p. 25) aims to critically examine the consequences of the queer liberal rights movement’s success. Similar to Duggan’s (2002) homonormativity, Puar argues that such rights gains have happened at the expense of some, predominantly persons of color and Muslims. She states that homonationalism happens at the intersection between racism and the instrumentalization of *some* queer identities to the benefit of the nation, and asks rhetorically:

Of course we oppose the war on terror, but what about the homophobia of Muslims?

Of course we oppose the U.S. occupation of the Middle East, but the Iranians keep

display of affection between two men. Further, only 49 % of EU citizens believe that there should be added a third gender category to legal documents (Commission, 2019).

hanging innocent gay men. (Puar, 2013a, p. 26)

In other words, an alleged will to protect *some* queer bodies are used as a pretext to bolster the State; be it war, occupation or restrictive asylum policies.

Furthermore, as queer rights are increasingly becoming a part of the general human rights frame, governments are striving after fronting inclusive and queer friendly policies. Although they might be symbolic and limited, queer rights movements, constituencies and the international community are pushing for queer rights (Puar, 2007; Puar 2013b; Sloopmaeckers et al., 2016). This development has also led to an increased measurement of state's ability for national sovereignty based on their tolerance towards their queer citizens (Puar, 2013b, p. 336). For the specific case of the EU, queer-friendliness is deemed salient to the degree that is seen as an indicator of being "European". Human rights and queer rights are core parts of the EU's "fundamental values" which it promotes as the key aspect of its very foundation and identity (Sloopmaeckers et al., 2016, p. 19-20). Thus, queer-friendliness and queer rights are increasingly being linked to the establishing of a European identity in the EU. These are drivers of a homonationalist discourse that contribute to producing ideas of western, queer-tolerant nations at the expense of non-western queer-intolerant nations (Puar, 2007).

Building on homonationalism to analyze queer asylum policies in the EU, Francesca Ammaturo (2015) argues that the EU's inclusion of queer refugees as worthy of international protection works in reinforcing the EU's promotion of itself as an exceptional human rights actor. This process reinforces the idea of the tolerant, liberal, European citizenship. This in turn bolsters national borders and the idea of a queer-friendly Europe, while increasing the distance to homophobic "other" regions and states (Ammaturo, 2015; Sloopmaeckers, 2019; Winer & Bolzendahl, 2020). In sum, the EU mobilizes the identities of queer refugees as a tool which serves a specific political purpose; the constructions of "European citizenship", "European exceptionalism", 'European identity' and a reinforcement of the queer-friendly "us" vs. the homophobic "others" (Ammaturo, 2015).

Ammaturo (2015) terms this instrumentalization of queer identities the '**Pink Agenda**', a combination of "complex political and legislative measures aimed at promoting a queer-friendly image of Europe" (Ammaturo, 2015, p. 1161). The construction of this image - the unique, European queer rights-protector - *necessitates* the homophobic 'other'. Therefore, the Pink Agenda reinforces an ideological border to other countries. Ammaturo (2015) argues that the Pink Agenda works as a tool which reinforces ideas of an inclusive, European citizenship

which is intrinsically linked to the EU's role as a human rights guarantor, and its "unique" tolerance towards queer people.

However, tying ideas of "European citizenship" so tightly to being morally superior to other states and regions when it comes to queer rights might be problematic. This is mainly because the EU fails to live up to its own standards of queer rights protection, especially queer asylum seekers. On one side, the EU accepts asylum to persecuted queers and promotes itself as being a queer-friendly Union. While on the other side, queer asylum seekers are systemically questioned and scrutinized, disbelieved and put through discriminating and stereotypical assessments at European borders to *prove* their queerness. According to Ammaturo (2015) this contradictory treatment proves the lack of genuine commitment to protecting queer individuals in the EU, which further substantiate her claim that queer identities are utilized to serve a political agenda.

5.2 Sexual citizenship studies

Ammaturo's theory is interlinked with both queer migration and homonationalism on the one side, and sexual citizenship theory and ideas of construction of a 'European citizenship' on the other side. Hence, a closer explanation of sexual citizenship studies is needed. The study emerged in the 1990's and is an interdisciplinary scholarship which joins the discussion on sexuality to those of citizenship (Richardson, 2015, p. 1-2). Similar to queer migration theory, it challenges normative and heterosexual assumptions about sexuality – and by doing so aiming to transform ideas of citizenship (Richardson, 2015, p. 4).

"Citizenship" has traditionally been defined as a set of civil, legal, political and social rights (Marshall, 1950). Such rights are institutionalized through law, the political system and the welfare system. For instance, freedom of speech, right to vote and provision of education (ibid) are elements that constitutes a citizenship status. However, access to these rights – and thus access to citizenship - is also affected by aspects such as race, gender and sexuality (Richardson, 2000). Hence, other scholars have defined citizenship as the practices that makes a person competent for membership of a society – or a nation (Turner, 1993; Richardson, 2000). Those who do not adhere or correspond to a certain set of cultural, political, economic and juridical practices, are not fit to be member of a nation.

In this context, Benedict Anderson's (1991) explanation of 'nation' or 'nationhood' might be useful. It is defined as systematized, cultural representations of an imagined, shared experience of what it means to belong to a certain community. Such 'imagined communities might transcend nations. Hence, citizenship can be connected to other forms of social

membership – such as the EU (Richardson, 2000). So, although the EU consists of many nations, it too can represent an ‘imagined community’ which inform ideas of a “European citizenship”.

Furthermore, ideas of *sexual* citizenship can be expressed through Marshall’s (1950) traditional citizenship-model. Using this model might give an indication of whether queer people have full or partly access to citizenship in a society. To exemplify, one might look at whether they have access to equal marriage rights, protection from discrimination, if queers are proportionally represented in politics, or if persons in same-sex relationships get the same inheritance and tax benefits as married, heterosexual couples (Richardson, 2000). Similar to Duggan (2002), Richardson (2000) argues that although queers in European countries have many equal rights as heterosexuals, the terms under which they are granted are so limited that their citizenship status is inferior. In many cases, queers can be tolerated, as long as they are not ‘too’ visible (Richardson, 2002).

A central question in sexual citizenship studies is whether these new modes of sexual citizenship actually hold transformative power (Barker, 2013; Richardson, 2015), or whether they simply replicate a heteronormative system (Duggan, 2002). In 2000, Richardson (p. 6) argued that although queers were gaining access to citizenship, they were not part of the construction of ‘nation’ and ‘nationality’. This is different from Puar (2007; 2013a) and Ammaturo’s (2015) claim, who argues that queers are increasingly becoming an integral part of ideas of ‘nation’. Ideas of sexual citizenship are increasingly being used to shape ideas about the ‘imagined community’ of the EU as well, albeit homonormative and heteronormative (ibid). In fact, an important aspect of Ammaturo’s (2015) argument is that the model of ‘queer refugee’ promoted by the EU, also might contribute to constructing an EU model of ‘queer citizen’ (Ammaturo, 2015, p. 1156). Hence, what type of queer refugees are not represented in the CEAS might reflect what type of queer identities are not part of the ‘imagined community’ of the EU. This thesis shares the standpoint put forward by Puar (2013a) and Ammaturo (2015) that queer identities and different sexual citizenships also shapes ideas about the ‘imagined community’ of the EU.

5.2.1 *Sexual democracy and queer asylum seekers*

The concept “sexual democracy” is another term linked to sexual citizenship studies coined by Eric Fassin (2010). It is a democratic *rationality* which upholds equal rights for queer people as a democratic value (ibid). In other words, how a state deals with *sex*, can say something about its commitment to democracy. Fassin uses the French’ as an example, arguing that ideas

of sexual liberty has become intrinsically tied to their understanding of who “they” are as a nation. Like Ammaturo (2015), he claims that this idea about *our* sexually liberated identity is depicted against *other* identities. This in turn reinforces differences toward *other* regions or cultures - particularly Islamic countries (Fassin, 2010, p. 513). Such claims of sexual, democratic superiority can be used to legitimize or reinforce restrictive immigration policies, for instance by arguing that Islamic immigration poses a threat to the rights of European queers and women. According to Fassin, the EU is increasingly becoming a protector of national identities and sexual politics have been instrumentalized *against* immigrants (Fassin, 2010, p. 515).

Giametta (2018) ties this notion of and potential consequence of ‘sexual democracy’ in Europe to queer asylum seekers. He argues that there is an issue with the European sexual democracy, namely the discrepancies between how the EU on one side includes SOGI as a legitimate ground for asylum claims alongside other queer sensitivity measures. While on the other side, they enforce increasingly restrictive and punitive measures for asylum seekers in general. Giametta (2018) asks:

(...) whether this new attention towards queer vulnerabilities has in fact served as a cosmetic operation that politicians and immigration authorities readily adopt to ‘pinkwash’ what is more and more seen to be the failing institution of asylum in the West. (Giametta, 2018, p. 13).

Put in other words, Giametta (2018) inquires whether the fact that the EU has queer sensitivity-measures in their asylum policies is just an effort to make their restrictive asylum policies seem more edible to the public. Adding these queer sensitivity measures in their asylum policies allows the EU to keep their image as queer-friendly vis a vis other states, although they do not guarantee adequate support for queer asylum seekers (Giametta, 2018).

5.3 Pinkwashing

Lastly, ‘pinkwashing’ is also a useful concept when analyzing queer asylum policies. It refers to the “...attempts by states, institutions, and corporations to use LGBTQ identities and support for LGBTQ rights to promote neoliberal logics and mask the targeting and criminalization of communities of color and other intersectionally marginalized populations” (Mayo-Adams, 2020, p. 10). Despite of their similarities, the terms “homonationalism” and “pinkwashing” are not interchangeable. Pinkwashing is often used to describe a company or politicians who aims

at branding themselves as queer-friendly, for instance by utilizing a rainbow flag in their logos during Pride events. These politics are criticized for *only* doing this to gain more votes or sell more products, and simultaneously supporting anti-gay bills or investing their companies in anti-gay states such as Saudi Arabia (Puar, 2013b; May-Adams, 2020). Puar differentiates pinkwashing and homonationalism by stating that pinkwashing is a cynical promotion of queer bodies. And homonationalism is simply a historical moment including all the circumstances that now allow for the interest in “gay-friendly” versus “homophobic” (Puar, 2013b, p.337). For instance, Puar has also argued that the state of Israel pinkwashes their settler-colonial policies in Palestine when they pitch the right of queer Israelis against the rights of Palestinians in general. In sum, one might say that pinkwashing is a facet of homonationalism.

To briefly summarize, the theoretical framework of this thesis is constituted by queer migration studies and sexual citizenship studies. Homonormativity, queer complicity, homonationalism and pinkwashing are central concepts which allow for a broad and nuanced framework when analyzing how queer asylum seekers are portrayed in CEAS discourse, how it relates to homonationalism as well as ideas of ideological European borders.

6.0 Methodology

In this section, the methodological framework will be presented. The methodological framework deployed in this thesis is Critical Discourse Analysis (CDA) in correspondence with thematic analysis. The data that constitutes the analysis are selected CEAS policy documents, which will be further described in the following paragraph.

6.1 Data

How a state deals with asylum can say something about its commitment to human rights issues at large (Fassin, 2010; Ammaturo, 2015). As the ever-evolving EU asylum system is becoming increasingly binding and increasingly harmonized (EU, 2020), analyzing the CEAS seems essential in gaining further insight in who and what the EU is, as well as how it wants to be perceived. Not only is the CEAS affecting all EU member states, but also every single person in need of international protection at European borders.

As explained in Table 1, the CEAS is constituted by a myriad of policy papers. The aPQR (2018) and the APR (2020) have been chosen for the textual scope of this analysis because they arguably contain more relevant content regarding queer asylum than the other CEAS-documents. First off, the aPQR (2018) and the APR (2020) have more direct references to SOGI-related policy than other documents. And second, conducting a thematic scope of the

APR (2020) and the aPQR (2018) is interesting since they deal with the process of applying and gaining access to asylum procedures, and the very qualification requirements for getting recognized as a refugee. Hence, the content of these two documents might be more useful in answering the research questions of this thesis, than for instance reception conditions or crisis management policy. In this context, the APR (2020) and the aPQR (2018) will be referred to as the CEAS-files.

6.2 Qualitative research

Qualitative research of documents through close and critical analysis can be a fruitful approach to understanding social practice (Coffey, 2014, p. 368). In a sense, one might view documents as a physical trace or evidence for how an institutions or organization wants to portray themselves. In this setting, one might view an EU policy document as *evidence* for how the EU tries to represent itself. Such policy documents can be seen as a deposit of a social practice (Coffey, 2014, p. 368). Furthermore, documents can be seen as "...textual or visual devices that enable information to be shared and 'stories' to be presented" (Coffey, 2014, p. 368), they are created for a specific purpose and serves a specific function. Hence, studying EU policy documents on queer asylum is important, because it might give insight into how queer asylum in the EU works, but also to how the EU wants to portray its queer asylum policies.

6.3 Critical Discourse Analysis

The CDA deployed in this study follows Van Dijk's approach. It is one of several methodological approaches to analyzing discourses. Its focal interest is the reproduction, resistance or enactment of inequality, dominance or power abuse in written text or other forms of communication and its social and political context. According to van Dijk (2001, p. 352), the overall aim of CDA is to reveal or resist social inequality, it goes beyond discourse as it aims at explaining them in light of their social interaction and structure. Thus,

...most kinds of CDA will ask questions about the way specific discourse structures are deployed in the reproduction of social dominance, whether they are part of a conversation or a news report or other genres and contexts. (van Dijk, 2001, p. 353-354)

Therefore, certain terms such as "power", "ideology", "race", "social structure" and "discrimination" are reoccurring in CDA analysis (van Dijk, 2001). CDA analysts acknowledges their role within the science by rejecting "neutral" or "value-free" research. For

them, research cannot and ought not to be un-biased, but instead work towards resisting social inequality, power abuse and so forth. The way in which scholars conduct research is influenced by their sociopolitical situation, and thus ought to be accounted for in the research. In addition, “[t]his may mean, among other things, that discourse analysts conduct research in solidarity and cooperation with dominated groups” (van Dijk, 2001, p. 353). Queer asylum seekers experience persecution across the globe (ILGA, 2020). In other words, they are a group fleeing from domination, violence and power abuse. As the literature review has demonstrated, queer asylum seekers continue to face discrimination also when arriving at European borders. Arguably, CDA is a suitable methodological approach when analyzing queer asylum policies, as it allows for a critical scrutiny of the discourse structures that creates space for such inequality.

6.4 Analytical tools and concepts in CDA

In order to conduct CDA of a specific text, one need to describe and theoretically assess it to discover patterns of dominance or manipulation. Further, one need to explain how forms of inequality might be reproduced, enacted or legitimized through the text (van Dijk, 1999, p. 19). CDA as a method provides a toolbox to link the identified discourses in the text to a larger trend. This is because CDA looks at discourses as “a social practice that is in a dialectical relationship with other social dimensions” (Jørgens & Phillips, 2002, p. 55).

CDA analysts need to bridge the gap between micro- and macro-level (van Dijk, 2001). Written text, language and discourse are examples of micro-level elements, while concepts such as inequality and power belong in the macro-level category. This gap can be assessed by, for instance, analyzing what van Dijk (2001) terms “action-process”. One ought to connect how the actions of individual actors are part of a larger groups’ actions or a social process. Another way of assessing this gap is through “context-social structure”, which means to connect how certain discursive situations are a part of larger social structure (van Dijk, 2001). Hence, in the context of the up-coming analysis, it will be necessary to bridge the gap between the EU policy discourses on queer asylum seekers on the micro level, to the discriminating processes of heteronormativity and homonationalism at the macrolevel.

The term “**hegemony**” (Gramsci, 1971) is also relevant in the context of power, as it refers to when power by dominant groups is integrated in laws or norms. Arguably, heteronormativity can also be understood as a form of hegemony, as heteronormativity is constructed by social, legal and cultural laws and norms in our societies. It reinforces the idea that heterosexuality is the dominant or natural form of sexuality, while other sexualities are

peripheral. Heteronormative hegemony can function through repressing, silencing or making invisible non-conforming sexualities and gender identities (Lasio, Serri, Ibba & de Oliveira, 2019, p. 5).

Powerful groups access and control over discourse is central in CDA, because according to Dijk (2001, p. 356), someone or a group who has control over the context might control aspects such as time and place, participants, as well as the discourse genres, main goals or ideologies presented in the text (van Dijk, 2001, p. 356). Thus, access and control over discourse ought to be analyzed along the lines of context, as well as the very structure and elements of the text itself. Van Dijk argues that "...virtually all levels and structures of context, text, and talk can in principle be more or less controlled by powerful speakers, and such power may be abused at the expense of other participants" (van Dijk, 2001, p. 357). For example, the EU has absolute authority, or hegemony, in defining European asylum policy.

Finally, when conducting CDA paying attention to the intertextuality – references or connections to other documents – is relevant when analyzing a text. Which documents are referenced in a text, can give an indicator of its "documentary reality" and how an institution actively uses these to construct itself (Coffey, 2014, p. 374).

6.5 Thematic analysis

In order to analyze and structure the data, a thematic analysis has been conducted to identify the key themes in the set of articles. This allows for an identification of patterns in the themes, and a definition of theoretical categories (Coffey, 2014, p. 370). Nowell, Norris, White and Moules (2017) have sketched out a step-by-step approach on how to conduct a thematic analysis. The aim of these steps is to first get to know the data and identify the initial general codes. After screening the codes deductively, the aim is to identify main themes and subthemes. Further, a review of the themes is necessary to identify which themes are lacking data or overlapping. Finally, the final themes are consolidated against the literature. However, the authors highlight also the reflexivity encompassed in the process (Nowell et al., 2017, p. 4). After arriving to the final thematic codes, our analysis followed the principles of CDA in the light of theories on queer migration and sexual citizenship.

7.0 Analysis

The current APR (2020) was introduced as a part of the New Pact on Migration and Asylum package launched by the Commission in September 2020. It replaces the Asylum Procedures Directive (2013). The APR (2020) is a regulation, which means that it is binding

with legal force for all Member States. The APR (2020) consists of 33 pages. However, several of the articles and recitals in the APR (2020) were first introduced in the proposed APR (2016), which consists of 78 pages. Hence, unless articles were excluded, added, or changed in the APR (2020), they are only referred to in the proposed APR (2016). These articles will still be referenced to as belonging to the APR (2020) because they are still legally binding.

Currently, the Qualification Directive (2011) is enforced, because the aPQR (2018) is not approved yet. However, the aPQR (2018) will be analyzed in this context, as it is the most recent negotiated proposal for a qualification regulation. The Roadmap for Implementing the New Pact on Migration and Asylum (Commission, 2020) also states that the Qualification Regulation should be adopted by the second quarter of 2021, however at the time of writing this has not happened yet.

Furthermore, there are several indications that there would not be any major changes to the aPQR (2018) when it eventually gets approved. This is because the aPQR (2018) is a provisional agreement reached by the European Parliament and the Presidency in June 2018. The document was only stopped in the Committee of Permanent Representatives (COREPER), where some delegates did not support the agreement. Although the Presidency made attempts to continue negotiations following the COREPER-blockage, the Parliament has made it clear that it stands by the provisional agreement reached in June 2018, and do not intend to continue negotiations. The Presidency has concluded that negotiations will only continue on technical levels with those delegations from the COREPER who did not agree to the aPQR (2018) (Council, 2019, p. 5). In addition, reports indicate that the key contested areas in the aPQR are not related to the articles analyzed in our study (Gerwens, Millet & Enria, 2019). The aPQR (2018) consists of 76 pages. The CEAS might be a result of compromise between the Member States and different EU institutions, as the Member States have different politics and approaches to asylum politics in general. However, as the CEAS is presented as one, unified policy document, it will also be analyzed as such. In other words, as it is the finalized CEAS policy papers that are of interest, it is irrelevant in this context that the different actors constituting the CEAS might have different opinions on how the CEAS ought to look like.

When analyzing the documents, the following thematic categories have been identified; invisibility, invisibility – risk of overlooking, stigmatization, ambivalence and limited representation.

7.1 Invisibility

One of the main thematic categories that emerged from the analysis of the CEAS-files is the *invisibility* of queer asylum seekers in its discourse. An example of this invisibility is evident in the fact that the CEAS-files only uses a gender-binary classification system. This is recurrent throughout both the APR (2020) and the aPQR (2018). Art. 52 (1) (b) illustrates how the gender-binary is used throughout the documents:

(...) he or she shall be given the opportunity to submit, within reasonable time, by means of a written statement and in a personal interview, reasons as to why his or her international protection should not be withdrawn.

The recurrent use of gender-binary categories renders intersex and non-binary people completely invisible in the articles and recitals that does not deal specifically with SOGI-related policy. It fails to acknowledge that intersex and non-binary people can apply for asylum based on *other* reasons than their SOGI status, such as political or religious asylum for instance. Hence, it neglects intersectional claims of asylum. Arguably, this is an example of how the EU enacts heteronormativity (Duggan, 2002; Luibhéid, 2008) which represses non-conforming gender identities.

Another indicator of the invisibility of queer asylum seekers is also evident in the fact that Member States are not encouraged to record or keep statistics over the number of queer people applying for asylum in the EU. For instance, Art. 27 (1) of the APR (2020) deals with registering applications for international protection, and details what information the Member States are obliged to record:

- (a) the name, date of birth, gender, nationality and other personal details of the applicant;
- (b) the type and number of any identity or travel document of the applicant;
- (c) the date of the application, place where the application is made and the authority with which the application is made.

Scholars have argued about the importance of the EU including a clause for recording asylum seekers' SOGI under Art. 27 of the APR (2020) (Ferreira, 2018; Danisi et al., 2021), because knowing how many queer asylum seekers there are, where they are fleeing from and what their protectional needs are important when designing an asylum system that is fit to meet these needs. However, at the time of writing this thesis, late summer 2021, there are no indications in the CEAS-files that neither EU-central institutions nor Member States will start monitoring

the amount of queer asylum seekers, which countries they are fleeing from, who gains asylum or who is rejected. This lack of recording reinforces and will continue to reinforce the statistic invisibility towards queer asylum seekers within the EU. This in turn might make it challenging to develop policies that are able to ensure a fair asylum process for persecuted queers, as the little knowledge on their numbers and how they are processed thorough the European asylum system will persist.

In sum, the invisibility-theme permeates the CEAS in a manner that is discriminating towards queer asylum seekers and risks being self-reinforcing. There are clear tendencies of homonormativity (Duggan, 2002) in the discourse as some queer identities are particularly excluded; namely trans, non-binary and genderqueer people. This demonstrates that the EU portrays a crystalized and limited idea of who and what queer identities are, which does not reflect the complexities of sexual or gender identities that asylum seekers around the globe have. The lack of statistic also indicates that the EU is not aiming at gaining more knowledge or insight on this particular group of asylum seekers. In other words, the claim that heterosexuality is considered the *default* sexuality for asylum seekers (Luibhéid, 2008), is supported by these findings. The invisibility-theme does not indicate that no queers receive protection by the EU, nor does it question the saliency of queer politics in the EU, but it points to weaknesses and contradictions in how queer asylum seekers are portrayed in the CEAS discourse.

7.1.1 *Invisibility – risk of overlooking*

Invisibility-risk of overlooking emerges as a sub-category to the previous one. It illustrates how the invisibility of queer asylum seekers creates leeway for overlooking or ignoring applicants who in theory is protected by the CEAS. This can be further illustrated through how the EU defines SCO and STC. For instance, Art. 45 (1) states that a country *must* be considered a STC if:

- (a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
- (b) there is no risk of serious harm [...]; the principle of non-refoulement in accordance with the Geneva Convention is respected;
- (d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected;
- (e) the possibility exists to receive [...] sufficient protection [...]

At first glance, this article provides some hope that the definition of SCO and STC might be fit to ensure that countries which persecute queer people will not be considered a SCO or STC on the EU common lists. This is mainly due to the inclusion of MPSG under Art. 45 (1) (a). Despite of MPSG technically *allowing* for a consideration of persecution of queer people, it is noteworthy that SOGI is not specifically mentioned. When SOGI is not given specific attention, it arguably leaves some leeway for the EU to include countries that persecute queer people on the “safe countries”-lists. If a country that persecutes queer asylum seekers gets included on these lists, those coming from these countries will either be fast-tracked through special procedures or rejected without getting their asylum case tried on the inadmissibility ground, according to Art. 36 (1) (b) (APR, 2020). This is how the invisibility-discourse creates a risk for overlooking queer asylum seekers who are otherwise protected by the CEAS.

With the APR (2020) the EU is moving towards establishing a common EU-wide lists of SCO's and STC's. Art. 50 (1) of the APR (2020) dealing with the designation of STC's and SCO's at national level illustrates how the invisibilization practice and the risk of overlooking the hazard queer asylum seekers might continue to be reproduced:

For a period of five years from entry into force of this Regulation, member states may retain or introduce legislation that allows for the national designation of safe third countries or safe countries of origin [...]

To put it simply, this article creates an exception-timeframe for the Member States, where they are allowed to continue using their own national lists for 5 years following the enforcement of the APR (2020). During this timeframe, Member States might rely on their national SCO and STC lists, and do not have to consider the requirements spelled out in the APR, for instance Art. 45 (APR, 2020). Hence, for the next 5 years, queer asylum seekers might continue being invisible when Member States enforces the SCO and STC concepts¹³. Also, under Art. 50, the lack of specific mention of SOGI in the 5-year exception provides leeway to ignore queer

¹³ As of 2021, Austria, Cyprus, Croatia, Czechia, France Greece, Italy, Malta, Netherlands, Slovenia, Slovakia, Luxembourg and Switzerland have between one to thirteen of these countries (in addition to others) on their national SCO or STC lists: Algeria, Ghana, Morocco, Namibia, Senegal, Tunisia, Bangladesh, Egypt, Gambia, Kenya, Nigeria, Pakistan, Sri Lanka and Togo (EASO, 2021, p.11-21). All these countries criminalize same-sex activity with imprisonment or even death penalty (ILGA, 2020, p. 325-330).

asylum seekers and the persecution they face, which in turn leaves them invisible at least until the 5-year timeframe is over.

Furthermore, the risk of overlooking queers is also evident in the merits designed to funnel asylum seekers to the Accelerated Procedure or the Border Procedure instead of the normal asylum procedure. For example, a new merit introduced in Art. 40 (1) (i) of the APR (2020) states that Member States can adopt one of the special procedures if:

(...) the applicant is of a nationality or, in the case of stateless persons, a former habitual resident of a third country for which the proportion of decisions by the determining authority granting international protection is, according to the latest available yearly Union-wide average Eurostat data, 20% or lower [...].

This new merit means that if the recognition rate of asylum applicants from a certain country is 20 % or less, every single asylum applicant from this country shall be referred to the Accelerated Procedure or Border Procedure. In other words, if only 15 out of 100 applicants from Gambia gained asylum during the previous year, all applicants from Gambia the next year will be referred to the special procedures. The article does not call for considering whether the country persecutes queer people. Table 3 below illustrates how this 20% recognition rate would affect asylum seekers coming from countries that criminalize same-sex sexual activity. It is yet another example of how the invisibility discourse risk overlooking persecution of queer people, which in turn risks funneling queer asylum seekers to the Accelerated or Border Procedure.

Table 3

Countries that had less than a 20% recognition rate in asylum decision in the EU in 2020, and that criminalizes same-sex sexual acts and that does not provide adequate protection to its queer citizens.

Countries /citizenships	Total asylum decisions 2020	Percentage total positive asylum decisions	Percentage total rejected asylum cases	Same-sex sexual acts	Maximum penalty	Protection
Algeria	5 200	4,9	95,1	Illegal	2	No
Bangladesh	10 610	14,5	85,5	Illegal	10	No
Barbados	0	0,0	0,0	Illegal	Life sentence	No
Brunei Darussalam	0	0,0	0,0	Illegal	10	No
Dominica	5	0,0	100,0	Illegal	10	No
Gambia	2 750	15,4	84,6	Illegal	14	No
Grenada	0	0,0	0,0	Illegal	10	No

Kenya	420	7,1	92,9	Illegal	14	No
Kiribati	0	0,0	0,0	Illegal	14	No
Lebanon	1 335	10,9	89,1	Illegal	1	No
Liberia	285	18,7	81,3	Illegal	1	No
Maldives	0	0,0	0,0	Illegal	8	No
Nigeria	17 265	19,1	80,9	Illegal	Unknown	No
Oman	5	0,0	100,0	Illegal	3	No
Pakistan	18 805	11,6	88,4	Illegal	Death penalty	No
Qatar	5	0,0	100,0	Illegal	Death penalty	No
Singapore	0	0,0	0,0	Illegal	2	No
Tanzania	205	9,7	90,3	Illegal	Life sentence	No
Tonga	0	0,0	0,0	Illegal	10	No
Tuvalu	0	0,0	0,0	Illegal	14	No
Uzbekistan	1 375	4,4	95,6	Illegal	3	No

Note. Authors own table.

Note II. The table presents an aggregated score of the number of first-time asylum applicant decisions and the number of subsequent applicant decisions in the EU in 2020 (Eurostat, 2020a; Eurostat, 2020b), as well as ILGA's (2020) criminalization index.

Note II. This is only an approximate indication of how the EU might calculate the 20 % threshold.

Note III. Some countries are not included due to inconsistencies in the Eurostat dataset.

It is worth noting that there are two exceptions to Art. 40 (1) (i). Namely, if a significant change has happened in a country under the 20 % threshold or the “...applicant belongs to a category of persons for whom the proportion of 20% or lower cannot be considered as representative for their protection needs”, the article will not apply to them, and they would be referred to a normal asylum procedure. While the first exception could be applied in cases of quickly escalating emergencies such as war, natural disaster or a pandemic like the one we are currently facing, the latter is vaguer. It could be said that the latter exception creates an opportunity for asylum authorities to interpret it in a manner where queer asylum seekers might be considered as having a different protection need than the group which has been rejected. However, in practice this possibility gets lost as Member States are not obliged or even encouraged to record the SOGI of asylum applicants, one might question how asylum authorities will know if a queer asylum seeker has different protectional needs from those who had their application rejected. Again, the invisibility of queer asylum seekers risk leading to overlooking the specificities of protection needs.

To summarize, the invisibility category as well as its subcategory demonstrate how the discourse on queer asylum seekers works in three main ways: by ignoring the mere existence of certain gender-identities, their presence at European borders, and their experiences of persecution. Hence, their need and right of international protection is made invisible in the CEAS-documents. This category also reveals tendencies of heteronormativity in the discourse

because the unique experiences of queer asylum seekers are not addressed, and safeguards that ensures a proper asylum procedure for this cohort is not provided for.

Some homonormative tendencies are also at play in this theme, since it demonstrates a nationality hierarchy in how the EU deals with asylum cases, which overrides the protectional need of individual applicants and queer sensitivity measures. For instance, Table 3 above demonstrated that all refugees coming from Pakistan and Qatar – where death penalty is imposed on queers – will be funneled through the Accelerated or Border Procedure. In other words, it is the *nationality* of a refugee that will determine what sort of asylum procedure the applicant is funneled through and neither their asylum claims nor alleged fear of persecution. This reinforces a hierarchization of refugees regarding their nationality (Duggan, 2022; Ferguson, 2005) which does not take safeguards for queers into account.

7.2 Stigmatization

Stigmatization is another theme identified in the discourse on queer asylum seekers in the CEAS-documents. It demonstrates how queer asylum seekers risks being particularly negatively affected by stigmatizing language towards asylum seekers in general. In this context, *stigmatization* is understood as characterizing specific groups with particularly negative traits. The category neatly relates to the vulnerable/abusive-discourse on asylum seekers in general, which was identified in the literature review (Walter-Franke, 2018; Hancox & Costello, 2016). In sum, the category demonstrates how queer asylum seekers gets affected by the stereotypical division between the ideal “vulnerable” and ideal “abusive” asylum applicant. For instance, the explanatory memorandum of the APR (2020) states the following:

(...) the use of the border procedure would be beneficial to the system of asylum generally, as a better management of abusive and inadmissible asylum requests at the border, would benefit the efficient treatment of genuine cases inland (APR, 2020, p. 5).

This formulation indicates that the Border Procedure is designed for *abusive* claimants, while the normal asylum procedure on the inland is designed for *genuine* asylum claimants. As queer asylum seekers are often funneled through these special procedures, this might be particularly challenging for them, notwithstanding the general challenges queers face in credibility assessments (Ferreira, 2018).

Further, this stigmatization-discourse becomes particularly evident in Art. 5 of the aPQR (2018), which deals with international protection needs that arises *sur place*. While Art. 5 (1) recognizes the right to apply for asylum in *sur place* cases, it simultaneously states that:

(...) if the risk of persecution or serious harm is based on circumstances which the applicant has created since leaving the country of origin for the sole or main purpose of creating the necessary conditions for applying for international protection, the granting of international protection may be refused. (aPQR, 2018)

This formulation indicates that actions the asylum seeker engages in after leaving their country of origin might only be to *attract* the correct circumstances for persecution, and hence *abusing* the asylum system. This is a vague formulation which leaves a lot of discretion at the hands of the Member States. For instance, this article does not state how asylum authorities ought to interpret it when an asylum applicant declares their SOGI status first after arriving a host country. This provides some leeway for Member States to discriminate against queer asylum seekers. Potentially, this could damage queer applicant's credibility assessment if authorities choose to interpret participating in queer activities¹⁴ as a way to *attract* persecution. Simultaneously, *not* participating in queer activities could potentially damage the applicant's credibility. Asylum authorities might view it as suspicious or unlikely that a queer person does *not* engage in queer activities when they are in a country where it is "safe" and legal to do such things (Ferreira, 2018, p. 21).

In sum, the stigmatization category demonstrates that the discourse on queer asylum seekers in the CEAS-documents leans into to the general abusive/vulnerable discourse identified in the literature review (Walter-Franke, 2018; Hancox & Castello, 2016). It reveals a discourse that pre-defines certain behaviors as *abusive* or suspicious, which may result in an unfounded stigmatization of queer asylum seekers. Also, in this category a heteronormative discourse that sees heterosexuality as the default (Luibhéid, 2004) is revealed. The category discloses aspects of the CEAS that has a complete disregard for queer asylum seekers and is formulated in a manner that even risks increasing stigmatization towards them.

7.3 Ambivalence

¹⁴ For instance, participating in a pride parade, posting about SOGI status on social media, engaging in political parties, NGOs or protests for queer rights, attending queer bars or having queer friends.

Another theme recurrent in the CEAS documents is the ambivalence of the discourse on queer asylum seekers. This is best illustrated by highlighting how queer asylum seekers are addressed in the non-binding recitals, as opposed to the binding articles:

(...) When assessing applications for international protection, the competent authorities of the member states should use methods for the assessment of the applicant's credibility in a manner that respects the individual's rights as guaranteed by the Charter and the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular the right to human dignity and the respect for private and family life. Specifically, as regards sexual orientation and gender identity, [...] the applicant should not be submitted to detailed questioning or tests as to his or her sexual practices. (Recital 29, aPQR, 2018).

Recital 29 could be interpreted as a positive development for the protection of queer asylum seekers, as it encourages Member States to *not* submit queer asylum seekers to detailed questions or tests regarding their sexual practices. However, a recital has no binding power, and neither grants rights nor obligations for any of the parties involved in the CEAS files. It has a very limited role when it comes to interpretation of actual laws, and is mainly used to offer the nature or background of a document (Klimas & Vaiciukaite, 2009). Thus, the issue is that the sentiment expressed in this recital is not repeated in any binding articles.

As discussed earlier, stereotyped and sexual questioning was ruled illegal in the CJEU (A, B, C v. Staatssecretaris van Veiligheid en Justitie, 2014), so it is noteworthy that the EU does not bother to include an *article* repeating their own jurisdiction. This reveals a discrepancy between CJEU legislation and the CEAS policy. Hence, even though the asylum seekers are protected by CJEU law in instances of sexual questioning, the lack of access to legal help in the special procedures might be so weak that the applicant is not able to pursue it (ECRE, 2017; Andrade et al., 2020). Thus, if the CEAS would repeat the CJEU decision, it could lead to a more harmonized treatment and greater security for queer asylum applicants in the EU.

A second example of such ambivalence is the introduction of new recital 21b in the aPQR (2018), stating the following:

(...) The determining authority should not conclude that the applicant lacks credibility merely because he or she did not rely on his or her declared sexual orientation on the first occasion he or she was given to set out the ground for persecution, unless it is evident that

the applicant merely intends to delay or frustrate the enforcement of a decision resulting in his or her return. (Recital 21b).

This recital repeats the court decision made by the CJEU on late disclosures, which states that late disclosure of one's sexuality should not be held against the applicant (*A, B, C v. Staatssecretaris van Veiligheid en Justitie*, 2014). However, while this recital does express an acknowledgement of late disclosures and the obstacles queer asylum seekers can face in such scenarios, no binding article in the aPQR (2018) does the same. In addition, one might question how asylum authorities can detect whether a late disclosure of one's SOGI is truthful, or merely intended to "delay" or "frustrate" a process. Arguably, this recital also leans into the vulnerable/abuser-discourse (Walter-Franke, 2018; Hancox & Costello, 2016). While the recital encourages to take certain vulnerability-measures for queer asylum seekers, it simultaneously recommends Member States to be suspicious about how queer asylum claims can be abusive. In sum, some of the queer-sensitivity measures in the CEAS-documents seems hollow and without much substance. This discourse might help the EU in keeping their queer-friendly image, while not placing too much strain on Member States to actually practice queer-friendly asylum policies. The consequence of such an ambivalent posture is that queer asylum seekers will continue to face discrimination at European borders.

The ambivalence-category demonstrates tendencies of pinkwashing in the EU discourse on queer asylum seekers. It illustrates how the EU finds it important to *portray* their asylum policies as queer-friendly. Moreover, it also discloses the homonationalism within the CEAS files, as it demonstrates the saliency of queer issues: the EU shows their insight in some particular experiences of queer asylum seekers, and that they are aware of issues such as late disclosure and credibility assessment, or that queers have been subjected to sexually explicit questioning by asylum authorities in the EU. Yet, the fact that these queer sensitivities are only spelled out in recitals is a major indication that they are pinkwashing-measure. Hence, if one interprets pinkwashing acts as facet of a homonationalism, it can be seen as an evidence of homonationalism.

7.4 Limited representation

Another theme evident in the CEAS-files analyzed in this context is the limited representation of the specificity of queer people's experiences. While the APR (2020) and the aPQR (2018) present improvements in the level of recognition of queer experiences and identities, it is still limited. In other words, this category presents examples of progress in queer-sensitivity

measures, but certain queer identities or experiences are not represented or reflected in the CEAS. For instance, Art. 2 (9) (a) of the aPQR (2018) deals with defining “family member” of a person who has gained international protection status:

(...) the spouse of the beneficiary of international protection or his or her unmarried partner in a stable relationship, where the law or practice of the Member State concerned treats unmarried couples [...] as equivalent to married couples.

When the aPQR (2018) eventually is approved, it would only be binding for Member States to acknowledge asylum-seeking unmarried couples as equal to married couples if their own national laws do the same. Hence, if a Member States allows for discrimination against unmarried couples, an unmarried refugee might not be eligible for family reunification with their partner. As Ferreira (2018) has argued, this leaves queer asylum seekers in a particularly challenging situation, as they often are unable to marry in their country of origin, or have difficulties documenting intimate, long-standing relationships due to the “...secretive nature of those relationships in persecutory environments” (Ferreira, 2018, p. 22). The example illustrates how the CEAS is not able to grasp the nuances of the experiences of queer people. Indirectly, it depicts married couples as more deserving of asylum and a right to family life. As family reunification is one of the largest reasons for asylum acceptance in the EU, this specific article holds potential to affect many queer people.

Limited representation is also exemplified by Art. 40 of the APR (2020) that lists under which merits the asylum authorities should accelerate asylum procedures. These merits include elements such as providing false information, providing contradictory information, and making an unconvincing asylum claim. Queer asylum applicants often do these things because they are unaware that SOGI-status is a legitimate ground for asylum (SOGICA, 2019), they do not feel safe, or do not know how to tell a convincing story about their SOGI ‘discovery’ that fits with the expectations of asylum authorities according to their western-centric frames (Ferreira, 2018; UNHCR, 2019; Hancox & Castello, 2016). Hence, the CEAS fails to acknowledge the specificities of the experiences of queer asylum seekers.

Another example of limited representations of queer asylum seekers is evident in Art. 10 (d) of the aPQR (2018) dealing with reasons for persecution. As discussed earlier, the inclusion of SOGI as a legitimate ground for asylum in the MPSG-concept under this article is queer asylum seekers’ main channel to access asylum in the EU. However, the aPQR (2018) proposes to add an extra formulation to this article:

Depending on the circumstances in the country of origin, [...] that concept [...] includes membership of a group based on a common characteristic of sexual orientation [...]. Gender related aspects, including gender identity and gender expression, shall be given due consideration for the purposes of determining membership of a particular social group or identifying a characteristic of such a group.

This formulation brings a specific reference to “gender expression” which was not included in the PQR (2016). This can be interpreted as a positive development because it creates some leeway for Member States to include all forms of gender expressions, and to investigate whether they are experiencing persecution based on their gender expression. The formulation, however, comes off as vague since it has no direction on how “gender expression” ought to be interpreted. This means that asylum authorities that do not have knowledge on the experiences of trans, intersex or gender non-binary people might struggle to understand their fear of persecution. This could also apply to people who are straight and cis, but just happens to express themselves in a manner that does not correlate with the expectations of their gender in the society they are fleeing from. Scholars have argued that to better recognize the diversity of queer asylum claims, there ought to be a specific reference to intersex and trans persons (Ferreira, 2018, p. 19). Knowing that queer asylum seekers often are not given the benefit of the doubt by asylum authorities (Jansen & Spijkerboer, 2011; Ferreira, 2018), it seems essential that asylum authorities have clear directions and guidelines on how to interpret the very ground of fear of persecution, which is definitely not accomplished in the referred article.

In sum, this category indicates that in instances in which queer asylum seekers are not completely invisible, the level of representation is limited. While queer asylum seekers are acknowledged as a group that has protectional rights and needs, their limited representation in the CEAS-files risks affecting their access to international protection. The category also reveals indications of homonormativity (Duggan, 2002) in the discourse, as it shows the CEAS’ reluctance in portraying the myriads of queer identities; specifically gender-related categories such as intersex, trans and non-binary people.

Furthermore, this category might indicate that there are different conceptions of sexual citizenship within the EU, and that the CEAS is unable to *harmonize* these. In some states, unmarried couples have the same rights as married couples – and in others they do not. The CEAS allows for different interpretations of what rights refugees and asylum seekers in Europe have *based* on the differential rights of European citizens. Hence, one might argue that the lack

of harmonization of sexual citizenship status across the EU also manifests in its inability to provide harmonized treatment of asylum seekers. Since the EU does not allow asylum seekers to apply for asylum in more than one European country legitimized on the grounds that the CEAS is harmonized across the EU, this differential treatment can have large consequences for applicants.

8.0 Discussion

8.1 General tendencies in the discourse

Our investigation showed that the CEAS-files on the one hand acknowledge the protectional need of *some* queer bodies, but on the other hand yet invisibilizes, stigmatizes and discriminates queer identities and experiences. The gravest consequence of this discourse is that queers who have legitimate fears of persecution are denied access to international protection.

According to Ammaturo (2015), the fractures and weaknesses in how the EU deals with queer asylum seekers *reveals* that it is not genuinely committed to protecting queer rights. In fact, the findings in this analysis does not portray a particularly queer-friendly Union, and thus substantiates Ammaturo's (2015) argument. Furthermore, heteronormativity (Duggan, 2002) permeates the discourse, and is a clear tendency in all of our thematic categories as presented above. Hence, the findings align with previous literature in the field (Duggan, 2002; Luibhéid, 2008; Ferreira, 2018; Giametta, 2018). In addition, heteronormative tendencies might be reinforced since the CEAS is not intending to start EU-wide monitoring of the numbers and experiences of queer asylum seekers. One might question how the EU will make policies that accommodates queer asylum trends, when they do not hold statistics over who is trying to enter in EU, why and where they are fleeing from. Although the recently established EUAA (2021) might start monitoring some trends related to queer asylum, the amended proposed EUAA Regulations (2018) does not indicate that such monitoring will be binding for the member states. In other words, it does not hold potential to reflect queer asylum trends in the whole of the EU.

The analysis has revealed several tendencies of homonormativity as well. For example, this is evident in how the CEAS-documents fails to reflect an accurate representation of the myriads of queer identities and experiences. The analysis demonstrates how intersex, trans and gender non-binary people are often invisibilized. That being said, there might be positive and negative consequences of using open categories such as sexual orientation, gender identity and gender expressions. On one hand, when the CEAS uses such open categories, they *can* be read

as being open for more inclusive interpretations than for instance using the LGBT-acronym. While asylum authorities in Member States might have crystalized ideas of who and what LGBT-persons are based on biases from their own cultural background, the SOGI-term might be open for more reflection. But on the other hand, studies have shown that the Member States often do not interpret these categories in an inclusive manner (Jansen & Spijkerboer, 2011; Gartner, 2015). The SOGI-term is problematic because the CEAS does not define who it refers to. In addition, the irregularity of when SOGI, sexual characteristics and gender expressions or only “sexual orientation” is used is problematic. The irregularity might indicate that there are differences as to when Member States should take specific account of sexual orientation specifically, or when gender identity, sex characteristics or gender expressions also should be given the same sensitivity.

Furthermore, as per now, the CEAS provides incredible leeway for the Member States to interpret articles as they want. Different interpretations of articles will lead to differential treatment of asylum applicants among the member states. For instance, if a queer refugee from Ghana applies for asylum in Slovakia within the 5-year exception timeframe, Slovakia can legally reject the applicant on the basis that they define Ghana as a STC (APR, 2020, Art. 50) even though same-sex activity is criminalized in Ghana. In other words, this indicates a highly unharmonized CEAS, allowing for a highly unharmonized treatment of queer asylum seekers across the EU. Hence, for a queer asylum applicant, the possibility of receiving international protection is a game of chance, depending on the first arrival country. Knowing that asylum applicants only have the opportunity to apply for asylum *once*, in their first country of asylum, this really calls into question whether the CEAS is fit to meet the protectional needs of queer asylum seeker fleeing persecution. In light of this, one might argue that increased queer rights and changing sexual citizenship status within the EU, has not had enough transformative power to substantially change the sexual politics of asylum in the EU (Barker, 2013; Richardson, 2015).

8.2 Discourses on queer asylum and border-making

The analysis has revealed that the portrayal of queer asylum seekers in the CEAS discourse is rather weak and contradictory. One might question how the EU would be able to utilize this discourse in a manner that contributes to enhancing its position as an exceptional queer-rights protector vis a vis other state (Ammaturo, 2015). The analysis presented here does not reveal a convincing story that queer rights are a fundamental ‘value’ for the EU, let alone embedded in the ideas of a European citizenship. But at the same time, some references to queer identities

and are undeniably present throughout the documents. The ambivalence-category particularly underscores efforts to be *perceived* as a queer-friendly Union. As Ammaturo (2015) has argued, weaknesses in queer rights protection only substantiates her claim that queer policies are a product of political utilization – and not a product of genuine commitment to queer rights. In other words, the level of protection of queer asylum seeker might *be enough* for the EU to be perceived as queer friendly also in its asylum policies. Hence, weak queer asylum protections do not necessarily damage the EU’s ability to construct idea of a European citizenship at the expense of other, ‘homophobic’ states and regions. After all, it does grant asylum to *some* queers.

Furthermore, the homonormative-tendencies throughout the documents might substantiate the crystallization of *some* queer identities as worthy of protection. This substantiates the claim that ideas of sexual citizenship might play a role in shaping ideas of the ‘imagined community’ of the EU. As found in the analysis, particularly trans, non-binary, genderqueer and intersex persons are invisibilized. In addition, asylum seekers with certain nationalities are at greater risk of having their protectional needs overlooked, because they come from a “safe country” or the asylum acceptance rate in the EU is low from that country. This lack of reflection of certain queer identities might not be an indication that queer rights are irrelevant for the EU, but rather serve as an indicator that these queer identities are not an integral part of the idea of a European citizenship. To put it simply, the protectional needs of the most marginalized queer asylum seekers are ignored because they are also marginalized within the EU. This does not circumscribe the fact that *all* queer asylum seekers are at risk of being marginalized by the CEAS but *some*, e.g., a genderqueer person from Bangladesh, might be to a greater extent than others.

To summarize, the EU is not necessarily dependent on having a cohesive, inclusive, queer-friendly asylum policy in order to be perceived as queer-friendly. Despite all the weaknesses and contradictions in the policy, the EU still has leeway to portray itself as an exceptional queer-rights promoter and defender. After all, if the larger international community were to criticize the EU for their poor asylum policies, it might necessitate that other states are indeed better at the EU at it, which is not necessarily the case (Luibhéid, 2008; Mayo-Adams, 2020). The ambivalence and pinkwashing of how queer asylum seekers are portrayed in the CEAS discourse might be exactly enough in order to foster ideas of a tolerant, liberal European citizenship, and enforce its ideological borders to the rest of the world.

8.3 Discourses on queer asylum and legitimizing restrictive asylum policies

Several of the theories presented here propose that queer sensitivity measures in the EU can be utilized to legitimize restrictive asylum policies in general (Puar, 2007; Fassin, 2010; Giametta, 2018). When describing the traits of “homonationalism”, Puar (2008) argued that immigration-hostile parties in the West might utilize a supposed aim of protecting its queer citizens to keep ‘sexually backward’ immigrants out. The same claim has been repeated by Fassin (2010), who argued that European countries increasingly are aiming to protect national, European identities through instrumentalizing sexual politics against immigrants. While such sentiments might very well be conveyed by political rhetoric across Europe, it is not evident in how queer asylum seekers are portrayed in the CEAS discourse. However, the fact that the EU has sensitivity measures towards *vulnerable* asylum seekers in general might contribute to a hierarchization of asylum seekers, which in turn leads to differential treatment of vulnerable applicants versus applicants in general. Such hierarchization might overshadow the fact that all asylum applicants are vulnerable. That being said, the literature review and analysis both indicate that queer asylum applicants are generally not benefitting from any such hierarchization of vulnerability. Hence, this specific part of respectively Puar’s (2007) and Fassin’s (2010) theory does not align very well with the findings in the analysis.

It is important to repeat that the documents analyzed in this setting predominantly deals with defining the asylum procedures, who has access to the different asylum procedures, and the qualification for being recognized as a refugee. While one might argue that it is important that asylum authorities are capable of being sensitive to the particular experiences of queer asylum applicants, queer sensitivity measure should not dominate one’s asylum process and access to asylum. As Costello and Hancox (2016) have pointed to, such practice risks undermining the fact that all asylum applicants are vulnerable. Furthermore, although our analysis has not been able to demonstrate that queer sensitivity measures in the CEAS are being used to legitimize restrictive asylum policies in general, we acknowledge that using different categories of vulnerability might specify that some are more deserving of international protection than others. In addition, the analysis shows clear examples of pinkwashing. As Giametta (2018) has argued, this might serve as an indicator that the EU is aiming at pinkwashing the whole asylum system – by having special vulnerability categories, and special queer sensitivities. Such differential treatment of ‘vulnerable’ asylum applicants in combination with pinkwashing, indicates that there are tendencies of homonationalism in how queer asylum seekers are portrayed in the CEAS.

8.4 Discourses on queer asylum and homonationalism

Whether the EU produces and maintains a homonationalistic discourse in its queer asylum policies is predominantly dependent on what utility it serves in benefitting the EU. This can be done either by legitimizing restrictive asylum policies (Puar, 2007), or by the construction of a European identity – or citizenship – at the expense of homophobic ‘others’ (Puar, 2013b; Ammaturo, 2015). The utility the latter serves is to bolster the ideological borders or distance to others and re-assert the EU as an exceptional human rights agent (Ammaturo, 2015). As discussed above, the analysis does not indicate that the discourse on queer asylum seekers in the CEAS-files produces a form of homonationalism that directly legitimizes restrictive asylum policies in general, in which queer identities are used as a tool probed against migration (Puar, 2007). However, several other tendencies indicate that homonationalism is maintained and produces throughout the discourse. First off, although weak and contradictory, the discourse on queer asylum seekers might not damage the EU’s alibit to promote itself as an exceptional human rights actor and enforce its ideological borders towards homophobic ‘others’. This indicates that the discourse on queer asylum seekers can be used to uphold homonationalism, as queer policies hold potential to benefit the Union politically.

Second, the importance of queer rights in the CEAS is also evident. The fact that the EU *does* deem some queer bodies as worthy of protection, cannot be disputed. Hence, the EU is also subject to this homonationalistic facet of modernity, that Puar (2013a) refers to. Some categories demonstrate tendencies of pinkwashing, which according to Giametta (2018) can be interpreted as efforts to pinkwash the whole asylum system. The pinkwashing measures arguably indicates that the EU wants to be *perceived* as queer friendly, despite its many flaws of being queer-friendly in its asylum system. This allows for a continued ideological border-making to other ‘homophobic’ states and regions. This also demonstrate clear tendencies of homonationalism in the CEAS. Hence, homonationalism is produced and maintained by utilizing queer identities in order to construct ideas of European citizenship vis a vis homophobic ‘others’, and through asserting the EU’s image as a queer-rights advocate by the general prominence of pinkwashing and queer-sensitivity measures.

Another question of importance is to what *degree* the EU produces homonationalism through its discourses on queer asylum seekers in the CEAS. Homonationalism’s degree of influence in the discourse is challenged by of the findings in the analysis. For instance, the invisibility and risk of overlooking categories demonstrates that queer asylum seekers are completely ignored in policies that has great potential to affect them. Additionally, it

demonstrates that other factors, such as nationality still might have larger influence in determining how the EU treats an asylum applicant. This indicates that other characteristics than SOGI-status - for instance, religion or race – can be just as, or more influential in determining SMACs. While this does not challenge the fact that homonationalist tendencies are evident in the discourse, it shows that queer rights are not at the forefront in the CEAS.

Our analysis also reveals tendencies in the discourse on queer asylum seekers that does not reinforce homonationalism to a noticeable degree. For instance, the stigmatization category demonstrates a discourse that even risks increasing the negative characterization of queer asylum applicants. This aligns with Ammaturo's (2015) arguments, that the EU's queer asylum policies are so contradictory that they challenge the EU's self-portrayal as queer-friendly.

9.0 Conclusion

The context of this dissertation has been the consistent academic literature expressing deficiencies of queer asylum policy in the EU (Jansen & Spijkerboer, 2011; Ammaturo, 2015; Ferreira, 2018; Giametta; 2018Le Bellec, 2021; Danisi et al., 2021), as well as the recent and ongoing reformation of the CEAS (2020b). The contradictions of how the EU promotes itself as a queer rights advocate on the one hand, but discriminates, stigmatizes and ignores queer asylum applicants on the other hand, has been a central topic throughout this dissertation. In order to deliberate on these contradictions, this thesis aimed to answer: How are queer asylum seekers portrayed in the CEAS discourse? To what extent is homonationalism produced and maintained in the CEAS' discourses on queer asylum seekers? And to what extent might these discourses contribute to the bolstering of European borders? In combination with other concepts and approaches from queer migration theory and sexual citizenship studies, Puar's (2007, 2013a; 2013b) homonationalism has provided an insightful theoretical framework because it allows for a critical examination of the relationship between 'nation' - or the EU in this context- and sexuality.

The analysis has attempted to bridge the gap between how the EU policy discourse on queer asylum seekers on the micro level, has tangible, discriminating consequences for the asylum process for queer applicants. Using a qualitative approach, five thematic categories were identified in the CEAS-files that constitutes the main trends of the discourse of queer asylum seekers. Following the principles of CDA (van Dijk, 2007), the analysis predominant interest was to disclose on reproduction, resistance and enactment of inequality, dominance and power abuse in the CEAS files. The fact that certain queer identities are rendered completely invisible in the CEAS highlights the heteronormativity that permeates the CEAS, as it simply does not

acknowledge the existence of particularly intersex, non-binary and genderqueer persons. The fact that persons with non-conforming gender identities could also be in a situation that they need to apply for asylum based on other reasons that their SOGI-status is also invisibilized because the CEAS uses a gender-binary classification system. This invisibility is self-reinforcing, because the CEAS does not encourage Member States to keep any statistics on the matter. Thus, as has been argued in the general literature in the field (Luibhéid, 2008; Prearo, 2020), our analysis supports that heterosexuality is considered the default for asylum seekers.

Moreover, CEAS also creates leeway for Member States to overlook applicants who in theory are protected by the CEAS itself. Thus, in accordance with the scholarship on the matter (Le Bellec, 2021; Ferreira, 2018), our findings show how concepts such as SCO and STC might have particular negative consequences for queer applicants. In addition, even though the EU eventually will adopt common safe country lists, queer asylum seekers will still be at risk of being funneled through accelerated procedures, due to the newly established 20 % threshold. To exemplify, this means that at the time of writing this thesis, any queer applicant coming from e.g. Pakistan - which practices death penalty for queer persons – will be funneled through accelerated procedures. This is highly problematic, because as we showed, accelerated procedures limits the applicants' procedural times, access to a fair trial, and access to legal help, NGO's, etc. These findings indicates that in some instances, the nationality of an applicant is more relevant in determining their asylum process, than their actual protectional needs.

Another important finding of this study is that queer asylum applicants are particularly at risk of being negatively affected by the general stigmatizing language towards asylum seekers in the CEAS. Likewise, CEAS also shows clear tendencies of pinkwashing in how queer asylum seekers are portrayed, given the EU's reluctance to repeat its own jurisprudence on queer asylum matters. Lastly, we state that even CEAS progressive and queer-sensitive measures such as family reunification and references to "gender expression" and "sex characteristics" have homonormative and heteronormative tendencies. Thus, the CEAS' ability to represent the identities and experiences of queer asylum applicants are still limited as it is not capable of harmonizing the different conceptions of sexual citizenships across the EU resulting in an unharmonized system for queer applicants.

On the whole, the analysis and following discussion does indicate that there are tendencies of homonationalism (Puar, 2013a; 2013b) in the CEAS discourse on queer asylum as CEAS uses an alleged effort to protect queer rights as a pretext to enforce politics that benefit the EU. The EU might benefit from re-asserting its image as a queer-friendly Union, which will strengthen its image as an exceptional human rights protector at home and abroad (Ammaturo,

2015). Having a queer asylum policy might assist the EU in advancing its ideological borders to other states and regions, which in turn reinforces ideas of a liberal, tolerant European citizenship (Puar, 2013b; Ammaturo, 2015). Thus, it is not groundless to say that some queer-sensitivities are added to cover up the general weaknesses of the CEAS.

The analysis also aligns with the broader literature, in that it finds that the discourse in queer asylum seekers in the CEAS are contradicting with the EU's self-promotion as exceptional in queer rights protection and promotion, because it is arguably not fit to extend protection to all queer asylum seekers in need of it. However, as the contradictions are so evident, one might question whether the ambivalence and pinkwashing efforts identified in the analysis are exactly enough for the EU to continue being perceived as a queer-friendly Union. Furthermore, the analysis indicates that the CEAS has crystalized certain queer identities as worthy of protection, at the expense of the most marginalized queer identities, and queers of certain nationalities. If one follows Ammaturo's (2015) argument that the 'model' queer refugee also plays a vital part in the construction of the 'model' queer citizen, one might argue that the EU is not willing to extend its protection to these groups – because they are not an integral part of the EU's 'imagined community'.

9.1 Limitations and future research

Finally, it is relevant to address the limitations of how this dissertation has been conducted. The sample size of the data chosen for the textual scope of the analysis is limited to only two of the CEAS policy documents. Analyzing the whole of the CEAS in unity would probably give the most insight into the state of queer asylum seekers in the EU. In addition, political rhetoric and official EU communications published in context of the CEAS could also serve as interesting documents to analyze. However, having such a large data sample could also compromise the qualitative benefits of doing a closer reading of fewer documents.

The scope of the discussion is also limited by the data sample, as it is not able to discuss all issues that are relevant for queer asylum seekers to a full extent. To mention a few examples, this thesis is not fully addressing reception conditions in asylum reception hostels, violence and discrimination experienced in host countries, or the role of local, queer NGOs in assisting queer asylum seekers. That being said, some delimitations had to be made in order to tackle the issues that have been discussed in detail. As addressed throughout this dissertation, queer asylum seekers and refugees are – and will – continue to experience discrimination at European borders. Hence, future research should study the consequences of the recent CEAS policy developments

on the ground. Moreover, the recent inclusion of the 20 % threshold in the APR (2020) and the EU wide “safe countries”-lists might be particularly interesting avenues for future research.

Literature

- A, B, C v. Staatssecretaris van Veiligheid en Justitie. (2014). C-148/13 to C-150/13, European Union: Court of Justice of the European Union, 2 December 2014, available at: <https://www.refworld.org/cases,ECJ,547d943da.html>
- Amended Proposed Qualification Regulation 2016/0223 (aPQR). (2018). *Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 and repealing Council Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted. Conditional confirmation of the final compromise text with a view to agreement.* 10010/18. European Union, Council of the European Union.
- Ammaturo, F. R. (2015). The 'Pink Agenda': Questioning and Challenging European Homonationalist Sexual Citizenship. *Sociology*, 49(6), 1151–1166. <https://doi.org/10.1177/0038038514559324>
- Anderson, B. (1991). *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. London, Verso.
- Andrade, V. L., Danisi, C., Dustin, M., Ferreira, N., & Held, N. (2020). *Queering Asylum in Europe: A Survey Report*. Sussex. Available at: https://www.sogica.org/wp-content/uploads/2020/07/The-SOGICA-surveys-report_1-July-2020-1.pdf
- Asylum and Migration Management Regulation 2020/0279 (AMR). *Proposal for a Regulation of the European Parliament and of the Council on Asylum and Migration Management and Amending Council Directive (EC) 2003/109 and the Proposed Regulation (EU) xxx/xxx [Asylum and Migration Fund*. European Union, European Commission. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020PC0610>
- Asylum Procedures Directive 2013/32. (2013). *Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast)*. European Union, Council of the European Union. Available at: <https://eur-lex.europa.eu/eli/dir/2013/32/oj>
- Asylum Procedures Regulation 2020/611 (APR). (2020). *Amended Proposal for a Regulation of the European Parliament and of the Council Establishing a Common Procedure for International Protection in the Union and Repealing Directive 2013/32/EU*. European Union, European Commission Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020PC0611>
- Barker, N. (2013). *Not the Marrying Kind: A Feminist Critique of Same-Sex Marriage*. Basingstoke, Palgrave Macmillan.
- Beemyn, G. (2016, April 27). *Genderqueer*. *Encyclopedia Britannica*. Available at: <https://www.britannica.com/topic/genderqueer>
- Chetail, V. (2016). The Common European Asylum System: Bric-à-Brac or System? In V. Chetail, P. D Bruycker & F. Maiani (eds.), *Reforming the Common European Asylum System: The New European Refugee Law* (39, pp. 3-38).
- Coffey, A. (2014). Analysing documents. In U. Flick (ed.), *The Sage Handbook of Qualitative Data Analysis*. (367-379). Sage.
- Commission Guidance 2020/C 323/01. (2020). *Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorized entry, transit and residence 2020/C 323/01. C/2020/6470*. European Union, European Commission. Available

- at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020XC1001%2801%29>
- Commission Recommendation 2020/1364. (2020). *Commission Recommendation 2020/1364 of 23 September 2020 on legal pathways to protection in the EU: promoting resettlement, humanitarian admission and other complementary pathways*. C/2020/6467. European Union, European Commission Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32020H1364>
- Commission Recommendation 2020/1365. (2020). *Commission recommendation (EU) 2020/1365 of 23 September 2020 on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities*. C/2020/6468. European Union, European Commission. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32020H1365>
- Commission Recommendation 2020/1366. (2020). *Commission Recommendation (EU) 2020/1366 of 23 September 2020 on an EU mechanism for preparedness and management of crises related to migration*. C/2020/6469. European Union, European Commission. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32020H1366>
- Cortinovis, R. (2018). *Asylum: The Role and Limits of the Safe Third Country Concept in Eu Asylum*. Available at: http://www.resoma.eu/sites/resoma/resoma/files/policy_brief/pdf/Policy%20Briefs_topic3_Safe%20third%20country_0.pdf
- Costello, C. & Hancox, E. (2016). The Recast Asylum Procedures Directive 2013/32/EU: Caught between the Stereotypes of the Abusive Asylum Seeker and the Vulnerable Refugee. In V. Chetail, P. D Bruycker & F. Maiani (eds.), *Reforming the Common European Asylum System: The New European Refugee Law*. (375–445) Brill. <https://doi.org/10.1163/9789004308664>
- Danisi, C., Dustin, M., Ferreira, N., Held, N. (2021). *Queering Asylum in Europe: Legal and Social Experiences of Seeking International Protection on grounds of Sexual Orientation and Gender Identity*. Springer.
- Dublin Regulation 604/2013. (2013). *Regulation No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*. European Union, Council of the European Union. Available at: <https://www.refworld.org/docid/51d298f04.html>
- Duggan, L. (2002). The new homonormativity: The sexual politics of neoliberalism. *Materializing democracy*, 175-194. Duke University Press.
- European Asylum Support Office (EASO). (2020). *EASO Asylum Report 2020: Annual Report on the Situation of Asylum in the European Union*. DOI 10.2847/531878. Available at: <https://www.easo.europa.eu/sites/default/files/EASO-Asylum-Report-2020.pdf>
- European Council of Refugees and Exiles (ECRE). (2017). *Debunking the “safe third country” myth*. Available at: <https://www.ecre.org/wp-content/uploads/2017/11/Policy-Note-08.pdf>
- European Council of Refugees and Exiles (ECRE). (2019). *Border procedures: not a panacea*. Available at: <https://www.ecre.org/wp-content/uploads/2019/07/Policy-Note-21.pdf>
- European Parliament. (2021). *Parliament declares the European Union an “LGBTIQ Freedom Zone”*. Available at: <https://www.europarl.europa.eu/news/en/press-room/20210304IPR99219/parliament-declares-the-european-union-an-lgbtiq-freedom-zone>
- European Union Agency for Fundamental Rights (FRA). (2019). *Update of the 2016 Opinion of the European Union Agency for Fundamental Rights on fundamental rights in the ‘hotspots’ set up in Greece and Italy*. Doi:10.2811/340270. Available at:

- <https://fra.europa.eu/en/publication/2019/update-2016-fra-opinion-fundamental-rights-hotspots-set-greece-and-italy>
- European Union, Council of the European Union (EU). (1997). *Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts* (97/C 340/01). Available at: <https://www.refworld.org/docid/51c009ec4.html>
- European Union, Council of the European Union (EU). (2007). *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community* (2007/C 306/01). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12007L%2FTXT>
- European Union, Council of the European Union (EU). (2012). *Charter of Fundamental Rights of the European Union*. 2012/C 326/02. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT>
- European Union, European Commission (EU). (2020a). *Union of Equality : LGBTIQ Equality Strategy 2020-2025: Building a Union where you are free to be yourself*. COM (2020) 698. Available at: https://ec.europa.eu/info/sites/default/files/lgbtiq_strategy_2020-2025_en.pdf
- European Union, European Commission (EU). (2020b). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum*. COM (2020) 609. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1601287338054&uri=COM:2020:609:FIN>
- European Union, European Commission (EU). (2021). *New Pact on Migration and Asylum: Agreement reached on the new European Union Agency for Asylum*. Brussels: European Commission. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3241
- Eurostat. (2021a). First instance decisions on applications by citizenship, age and sex - annual aggregated data (rounded) (migr_asydcfsta). Available at: <https://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>
- Eurostat. (2021b). Final decisions in appeal or review on applications by citizenship, age and sex - annual data (rounded) (migr_asydcfina). Available at: https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asydcfina&lang=en
- Fassin, É. (2010). National identities and transnational intimacies: Sexual democracy and the politics of immigration in Europe. *Public Culture*, 22(3), 507–529. <https://doi.org/10.1215/08992363-2010-007>
- Ferreira, N. (2018). Reforming the Common European Asylum System: enough rainbow for queer asylum seekers? *GenIUS - Rivista Di Studi Giuridici Sull'orientamento Sessuale e Sull'identita' Di Genere*, 2018(2), 25–42. <https://doi.org/10.31235/osf.io/xag5u>
- Ferreira, N. (2021). An Exercise in detachment: the Council of Europe and sexual minority asylum claims. In R.C.M. Mole (ed.), *Queer Migration and Asylum in Europe*. UCL Press. Available at: <https://www.jstor.org/stable/j.ctv17ppc7d.12>
- Gartner, J. L. (2015). (In)credibly queer: sexuality-based Asylum in the European Union. *Transatlantic perspectives on diplomacy and diversity*, Humanity in Action Press. Available at: https://www.humanityinaction.org/knowledge_detail/incredibly-queer-sexuality-based-asylum-in-the-european-union/
- Gerwens, S., Millet, N. & Enria N. (2019). *Falling Short: Review of The Common European Asylum System Reform Proposals*. Available at: <https://89initiative.com/wp-content/uploads/2019/04/Immigration-report.pdf>
- Giametta, C. (2018). New asylum protection categories and elusive filtering devices: the case of 'Queer asylum' in France and the UK. *Journal of Ethnic and Migration Studies*, 46(1), 142–157. <https://doi.org/10.1080/1369183X.2018.1500172>
- Gramsci, A. (1971). *Prison Notebooks*. New York: International Publishers.

- ILGA. (2020). *State-Sponsored Homophobia 2020: Global Legislation Overview Update*. Geneva: ILGA. Available at:
https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2020.pdf
- Jansen, S. & Spijkerboer, T. P. (2011). *Fleeing Homophobia. Asylum Claims Related to Sexual Orientation and Gender Identity in Europe*. COC Nederland/Vrije Universiteit Amsterdam. Available at: <http://www.rechten.vu.nl/fleeinghomophobiareport>
- Jørgensen, M., & Phillips, L. (2002). *Discourse Analysis as Theory and Method*. London, SAGE.
- Klimas, T., & Vaiciukaite, J. (2008). The law of recitals in European Community legislation. *ILSA J. Int'l & Comp. L.*, 15, 61.
- Lasio, D., Serri, F., Ibba, I., & Manuel De Oliveira, J. (2019). Hegemony and Heteronormativity: Homonormative Discourses of LGBTQ Activists About Lesbian and Gay Parenting. *Journal of Homosexuality*, 66(8), 1058–1081. <https://doi.org/10.1080/00918369.2018.1493252>
- Le Bellec, A. (2021). Toward a Gender-Sensitive Securitization of the Common European Asylum System. *Front. Hum. Dyn.* 3:635809. <https://doi.org/10.3389/fhumd.2021.635809>
- LGBT Foundation. (2021, October 2nd). *Non-binary inclusion*. https://lgbt.foundation/who-we-help/trans-people/non-binary?_cf_chl_managed_tk__=pmd_GgTFfOB9UcvkdQNgSNQYqkshTeE7XjyUt3z1Jsk8iww-1633187877-0-gqNtZGzNAAtCjcnBszRSR
- Luibhéid, E. (2008). Queer/Migration: an unruly Body of Scholarship. *GLQ*, 14:-2-3,169-190. <https://doi.org/10.1215/10642684-2007-029>
- Madrigal-Borloz, V. (2019). Protection Against Violence and Discrimination Based on Sexual Orientation and Gender Identity. *United Nations*. Available at:
https://undocs.org/A/74/181?fbclid=IwAR3xrYojctnW46K2HAFgf4ju4C_Wd-4xEzezeVG_cyD3_foUOILbhjuO3538
- Magill, T. & Bell, B. (2021, February 27th). Gay Ugandan asylum seekers in danger if sent home. *BBC, News UK*. Available at: <https://www.bbc.com/news/uk-england-london-56182769>
- Manalansan IV, M. F. (2006). Queer intersections: Sexuality and gender in migration studies. *International migration review*, 40(1), 224-249.
- Marshall, T. H. (1950). *Citizenship and social class* (Vol. 11, pp. 28-29). New York, NY: Cambridge.
- Mayo-Adams, E. (2020). LGBTQ Migration Politics. <https://doi.org/10.1093/acrefore/9780190228637.013.1308>
- Merriam-Webster. (n.d.). Cisgender. In *Merriam-Webster.com dictionary*. Available at:
<https://www.merriam-webster.com/dictionary/cisgender>
- Mole, R.C.M. (2021). Introduction: queering migration and asylum. In R. C. M. Mole (Ed.), *Queer Migration and Asylum in Europe* (pp. 0–12). UCL Press.
- Moreno-Lax, V. (2015). The Legality of the “Safe Third Country” Notion Contested: Insights from the Law of Treaties. In G.S. Goodwin-Gill and P. Weckel (eds.), *Migration and Refugee Protection in the 21st Century: International Legal Aspects*. Leiden/Boston: Martinus Nijhoff Publishers. Available at: <http://www.unhcr.org/59632a847.pdf>
- Nowell, L. S., Norris, J. M., White, D. E., & Moules, N. J. (2017). Thematic Analysis: Striving to Meet the Trustworthiness Criteria. *International Journal of Qualitative Methods*, 16(1). <https://doi.org/10.1177/1609406917733847>
- Organization for Refuge, Asylum & Migration (ORAM). (2012). *Opening Doors: A Global Survey of NGO Attitudes Towards LGBTI Refugees & Asylum Seekers*. Available at:
<https://www.refworld.org/docid/524d418f4.html> [accessed 3 October 2021]

- Organization of American States (OAS). (2015). *Violence against LGBTI persons*. OAS/Ser.L/V/II.rev.1 Doc. 36. Available at: <http://www.oas.org/en/iachr/reports/pdfs/ViolenceLGBTIPersons.pdf>
- Prearo, M. (2020). The Moral Politics of LGBTI Asylum: How the State Deals with the SOGI Framework. *Journal of Refugee Studies*, 1-23. DOI:10.1093/jrs/feaa047
- Proposed EUAA Regulation 2018/633. (2018). *Amended proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010*. COM/2018/633. European Union, European Commission Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018PC0633>
- Proposed Qualification Regulation 2016/0223 (PQR). (2016). *Proposal for a Regulation of the European Parliament and of The Council of Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection and for the Content of the Protection Granted and Amending Council Directive 2003/109/EC of 25 November Concerning the Status of Third-Country Nationals Who are Long-Term Residents*. European Union, European Commission. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0466>
- Proposed Receptions Conditions Directive 2016/0222. (2016). *Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)*. European Union, European Commission Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0465>
- Puar, J. K. (2007). *Terrorist Assemblages: Homonationalism in Queer Times*. Duke University Press.
- Puar, J. K. (2013a). Homonationalism As Assemblage: Viral Travels, Affective Sexualities. *Jindal Global Law Review*, 4(2), 23–43.
- Puar, J. K. (2013b). Rethinking homonationalism. *International Journal of Middle East Studies*, 45(2), 336–339. <https://doi.org/10.1017/S002074381300007X>
- Qualification Directive 2011/95 (QD). (2011). *Directive 2011/95/EU of the European Parliaments and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries or international protection, for a uniform status for refugees or for persons eligible for subsidiarity protection, and for the content of the protection granted (recast)*. European Union, Council of the European Union. Available at: <https://www.refworld.org/docid/4f197df02.html>
- Receptions Conditions Directive 2013/33. (2013). *Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*. European Union, Council of the European Union. Available at: <https://www.refworld.org/docid/51d29db54.html>
- Richardson, D. (2000). Citizenship and Sexuality. In *Rethinking Sexuality*. (71-85), London, SAGE Publications Ltd City. <http://dx.doi.org/10.4135/9781446219966.n5>
- Richardson, D. (2015). Rethinking Sexual Citizenship. *Sociology*, 51(2), 208–224. <https://doi.org/10.1177/0038038515609024>
- Schalk and Kopf v. Austria. (2010). Application no. 30141/04, Council of Europe: European Court of Human Rights, 24 June 2010, available at: <https://www.refworld.org/cases,ECHR,4c29fa712.html>
- Screening Regulation 2020/612 (SR). (2020) *Proposal for a Regulation of the European Parliament and of the Council Introducing a Screening of Third Country Nationals at the External Borders and Amending Regulation (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and 2019/817*. European Union, European Commission. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:612:FIN>

- Slootmaeckers, K., Touquet, H. & Vermeersch, P. (2016). *The EU enlargement and gay politics: the impact of eastern enlargement on rights, activism and prejudice*. Palgrave Macmillan.
- Solomon, M. (2021, August 25th). *Terminology Surrounding Gender Identity and Expression*. Outright Action International. Available at:
https://outrightinternational.org/content/terminology-surrounding-gender-identity-and-expression?gclid=CjwKCAjwqeWKBhBFEiwABo_XBk0fwHjmWCQak1lcyQfGQ6ry3mIrvFxOQ0xo0eKWZcI7PBvY8hoC6nwQAvD_BwE
- State of the Union Address. (2020). Available at:
https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655
- Turner, B. S. (Ed.). (1993). *Citizenship and social theory* (Vol. 24). Sage.
- UN General Assembly (UN). (1948). Universal Declaration of human rights. 217 A (III). Available at:
<https://www.refworld.org/docid/3ae6b3712c.html>
- UN General Assembly (UN). (1951). *Convention Relating to the Status of Refugees*. United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html>
- UN High Commissioner of Human Rights (OHCHR). (2011). *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*. A/HRC/19/41. Available at:
https://www.ohchr.org/documents/issues/discrimination/a.hrc.19.41_english.pdf
- UN High Commissioner for Refugees (UNHCR). (2002). *Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*. HCR/GIP/02/01. Available at:
<https://www.refworld.org/docid/3d36f1c64.html> [accessed 14 October 2021]
- UN High Commissioner for Refugees (UNHCR). (2008). *UNHCR Guidance Note on Refugee Claims relating to Sexual Orientation and Gender Identity*. Available at:
<https://www.refworld.org/docid/48abd5660.html>
- UN High Commissioner for Refugees (UNHCR). (2012). *Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity with the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relation to the Status of Refugees*. HCR/GIP/12/01. Available at: <https://www.refworld.org/docid/50348afc2.html>
- UN High Commissioner for Refugees (UNHCR). (2016). *The 10-Point Plan in Action, 2016 - Glossary*, available at: <https://www.refworld.org/docid/59e99eb94.html>
- UN High Commissioner of Refugees (UNHCR). (2017). *A guide to international refugee protection and building state asylum*. Available at: <https://www.unhcr.org/3d4aba564.pdf>
- UN High Commissioner for Refugees (UNHCR). (2019). *UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation*. COM (2016) 467. Available at:
<https://www.refworld.org/docid/5cb597a27.html>
- UN High Commissioner of Refugees (UNHCR). (2021). *Resettlement*. Available at:
<https://www.unhcr.org/resettlement.html>
- UN High Commissioner of Refugees (UNHCR). (2021b). *Figures at a Glance*. Available at:
<https://www.unhcr.org/figures-at-a-glance.html>
- Van Dijk, T.A. (1995). Aims of Critical Discourse Analysis. *Japanese Discourse*, 1(1), 17-28.
- Van Dijk, T. A. (2001). Critical Discourse Analysis. In D. Schiffrin, D. Tannen & H. E. Hamilton (eds.), *The Handbook of Discourse Analysis*. (352-371). Blackwell Publishing.
- Vitikainen, A. (2020). LGBT rights and refugees: a case for prioritizing LGBT status in refugee admissions. *Ethics & Global Politics*, 13(1), 64-78.
- Walter-Franke, M. (2018). Building a European asylum regime in discordance. *Politique europeenne*, (2), 34-70. <https://doi.org/10.3917/poeu.060.0034>

- Winer, C., & Bolzendahl, C. (2021). Conceptualizing homonationalism: (Re-)Formulation, application, and debates of expansion. *Sociology Compass*. <https://doi.org/10.1111/soc4.12853>
- Wodak, R. (1999). Critical Discourse Analysis at the End of the 20th Century. *Research on Language & Social Interaction*, 32(1–2), 185–193. <https://doi.org/10.1080/08351813.1999.9683622>
- X, Y, Z v Minister voor Immigratie en Asiel. (2013). C-199/12 - C-201/12, European Union: Court of Justice of the European Union, 7 November 2013. Available at: <https://www.refworld.org/cases,ECJ,527b94b14.html>