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Title: Greek pushbacks and the de-Europeanisation of the EU

by

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## **Abstract**

*Pushback operations performed in Greece have started being discussed and occupy public and political debate even at the EU level, even though not in a constant manner. Although they are a straightforward violation of the EU law and they are against the EU values, the EU response to the calls to put an end to these operations is not straightforward. An important concept of understanding EU actions to reform member states in policy issues in the concept of Europeanisation. According to it, the EU puts pressures on the member states in order to pass its political priorities and defend its values. This thesis intends to see whether in the case of pushbacks the EU responses are strong and can be understood with the concept of Europeanisation or rather weak and thus a new concept, that of de-Europeanisation is needed. Another focus of the research will be the collection of data. Researchers who have focused on pushbacks have mainly analysed data collected from secondary sources instead of primary. This thesis is based on data collected with field research and in particular with the interviewing of actors who have been active in pursuing EU responses. It finds that the EU responses have been rare and weak because the EU and in particular the Commission have not intended to put a decisive end to pushbacks. Therefore, the EU has been de-Europeanised by stepping back from putting pressure on the member states to accept its founding principles and values.*

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Many people that I would love to interview were restricted by a (falsely interpreted) condition of privacy by the organisation they work for. With their case I realised that in the framework of migration management if someone wants to work for the EU then they must allow serious violations to happen. This is why I am grateful to the people I interviewed, for their decision to put human rights on top of their priorities, for the invaluable information they shared with me and for their quick and positive responses to my last minute requests for interviewing.

While I was doing the MSc in Media and Refugee/ Migration flows, Olga and I brought our daughter to life, in October 2022. How my wife and my daughter made it possible for me to write and submit a thesis on time is something that I do not understand. Yet again, I love them so much that I do not need to understand everything. I hope they do not need to always understand me either.

Also before and while I was writing this thesis, pushbacks caused great fear and pain -apart from deprivation from human rights. This thesis is those migrants' effort to keep the issue of pushbacks in the spotlight. It is also my apology for all the suffering men, women and children have gone through on an island that I have been living even before this disgrace started.

I kept the last sentence for my parents. To them this thesis is dedicated (again).

*To Lfteris and Olga...*

# Introduction

On July 13, 2022 the news agency *Der Spiegel*, the journalistic investigative organisation *Lighthouse Reports* and the organisation for the transparency in public institutions *FragDenStaat* made public the up till that day quasi-secret *European Anti-Fraud Office (OLAF)* report. The report was about the *European Border and Coast Guard Agency* (hereafter, *FRONTEX*). It was referring to the investigation by OLAF of the allegations about *FRONTEX* internal misconduct and violations of human rights during the Agency's operations of surveillance at the EU external borders for migration flows.

The report has been devastating for both Greece and the EU's Agency *FRONTEX*. It has not only proven serious violations of human rights particularly with *pushback* operations on behalf of Greece but also **systematic** cover up of such violations by *FRONTEX* (OLAF, 2021). According to the document, the investigation had to be split in two after the allegations for pushbacks took wide publicity in 2020 'through online media outlets' (*ibid.* 1). Substantial progress had already been made in the investigation on *FRONTEX*'s internal misconduct (staff harassment, intimidation and humiliation added to deterioration of reporting mechanisms and possible conflicts of interest in recruitment of staff and procurement). Thus, for reasons of effectiveness, the investigation on violations of human rights with pushbacks and coverups had to be a separate procedure.

After extensive research on official documents, open sources, digital forensic operations, inspections to *FRONTEX* official's offices and interviews and questionnaires with witnesses, the European Anti-Fraud Office reported:

*'OLAF concludes, based on the evidence collected during the investigation, that the allegations are proven. [part covered in black in the original] within their differing roles and responsibilities, committed serious misconduct and other irregularities. In doing so they hindered the capacity of FRONTEX to fully comply with its responsibilities, namely*

*monitoring compliance with fundamental rights in its activities at the external borders, and ensuring respect for, protection and promotion of, fundamental rights, as enshrined in particular in the Charter of Fundamental Rights of the EU' (ibid. 3).*

The findings of the report are shocking primarily because they prove the extent and cruelty of the Greek pushback operations, issues that the Greek government had repeatedly denied. However, the report targets FRONTEX whose mandate is not just to report human rights violations by the member states, but to protect and promote EU fundamental human rights principles and take necessary 'reasonable' steps to guarantee this protection (OLAF, 2021: 16). Instead, FRONTEX was found guilty by OLAF of not only witnessing inactively Greek pushback operations but also of deliberately self-damaging its reporting mechanisms (most notably, the Serious Incident Reports – SIRs)<sup>1</sup> to prevent the reporting of violations of human rights. The deterioration of the FRONTEX human rights violations reporting culture and mechanism was so profound that OLAF's investigation revealed the fear of the FRONTEX deployed staff to report such violations -a finding that has been largely neglected. This fear was coming from the staff's assumption that the organisation which was not only aware of such brutal operations but was also covering them up, would not support the reportees leaving them unprotected against repercussions by the staff of the officers of the member state authorities (*ibid.* 4). In one case it is referred that the Greek authorities could make the stay of a FRONTEX staff member 'unbearable' if he or she had filed an SIR (*ibid.*: 77).

Although the report has been finalised and presented to the OLAF management board already in March 2021, the report's key points were leaked to *Der Spiegel*, *Le Monde* and *Lighthouse Reports* more than a year later. This delay has been defended by the Commission with the argument that the 'OLAF reports are never published' (EU Commission Midday briefing 28.07.2022). Even then, it took three more months to become fully available to the public. At around that belated time, Mr. Margaritis Schinas being amongst the top EU officials and the vice-president of the EU Commission, in charge of the portfolio of migration and asylum, had

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<sup>1</sup> According to FRONTEX's document on Standard Operation Procedures on SIRs "Serious Incident is an event or occurrence, natural or caused by human action, which may negatively affect, or be relevant to a particular FRONTEX activity, the safety and security of participants in FRONTEX activities, the Agency's mission and reputation, or any combination thereof. Serious Incident also includes situations of possible violations of Fundamental Rights and of the European Union acquis or international law, particularly related to international protection international protections obligations and of the FRONTEX Code of Conduct (...)" (cited in OLAF, 2021: 14)



still nothing to comment nor had any measures been taken on his behalf that became known (*Der Spiegel*, 29.07.2022). And although a major -in terms of budget and role- EU agency and an EU member state were found guilty of performing (Greece) and covering up (FRONTEX) major violations of human rights, the EU actions that followed have raised questions about the will, competency and effectiveness of the EU response. The head of the EU Commission who two years earlier in the light of the evidence of shooting by the Greek authorities against the migrants in Evros, was arguing that no human rights violations took place because FRONTEX had not received any SIRs (Karamanidou and Kasperek, 2020), has still nowadays nothing to comment on the evidence that came forward by OLAF about the systematic destruction of the Agency's mechanism of SIRs.

Subsequently, the executive director of the FRONTEX was forced to resign on 06.05.2022 under the weight of those revelations. Still, no EU institution or agency imposed any sanctions on him for being the person who was responsible for such wide and cruel violations of EU law and values. What is more, Greek pushbacks have not stopped even until today. In one out of hundreds of incidents, even after the publication of the OLAF report, *EfSyn* reported that in the first week of November, a boat with 110 migrants was stopped by the HCG at the sea around Zakynthos in the Ionian Sea, was dragged all across the Aegean Sea its passengers were split in five life rafts left adrift with no engines inside the Turkish territorial waters (*EfSyn*, 07.11.2022).

Of course, the OLAF report is not the only report on pushbacks operations carried out by the Greek authorities. Many international organisations, major news outlets, individuals and politicians have condemned this type of violence at the borders. In one of the most notable examples, the UNHCR stated that it has recorded 'hundreds of incidents, involving some 17,000 people reportedly returned by force to Turkey between 2020 and 2021 alone' while the UN Special Rapporteur on the human rights of migrants has stated that '[i]n Greece, pushbacks at land and sea borders have become de facto general policy' (*EU Observer*, 2022). Only a year earlier, the Amnesty International (2021) had reached the same conclusion about Greece's de facto policy of pushbacks. What is more, the report by the Amnesty International made a special reference to 'the EU's Complacency', in which it too criticised the EU's in general and the FRONTEX's position towards the Greek pushbacks (*ibid.*: 41). It is not only the above mentioned media and organisations such as the Amnesty International which have

criticised the EU responses to such serious allegations. Researchers also have pointed out that the 'immediate response of EU institutions to Greece's hardline approach was that of avoiding any explicit condemnation of episodes of ill-treatment and abuses of migrants and asylum seekers' (Cortinovic, 2021: 8).

How come an institution that provides in every Treaty, regulation and mandate for the protection of human rights among which is the right to asylum and the principle of non-refoulement tolerates such violations and allows its agencies to cover them up? How is it possible that even after proofs of human rights violations come forward the EU does not seem to take decisive actions?

### *Studying pushbacks and the EU*

The reasons why this thesis is focusing on pushbacks and the EU responses are multiple: First, these operations are a direct infringement of the EU law and the fundamental principles of the EU Asylum acquis, in particular the principles of unhindered access to asylum and the non-refoulement. Second, despite the cruelty of pushbacks and the violations of EU law, the operations do not only continue but they are normalised and they are the primary tool of the Greek government control of migration flows (Koros, 2021). Third, amid the migration crisis, the EU's intervention has triggered large public and academic debates and have impacted domestic and international politics. All at the same time pacts, declarations and directives have at an unprecedented level impacted the domestic policies. Fourth, as it will be shown in this thesis, actors have up till some point shifted their expectations from the national to the European level. Although this is not something new in the studies of EU integration or Europeanisation, a study of if the EU has met those expectations is missing.

### *The purpose of this thesis and the research question*

The purpose of this thesis is to study the EU responses to the well-documented evidence about pushback operations performed in Greece. Therefore, this study will intend to answer

the following research question: *What is the degree of the EU response to the pushback operations in Greece?*

In order to answer this question, I make two hypotheses: first, that there is some degree of EU response to the Greek pushbacks and second, that strong EU responses are those which tend to stop the pushbacks while weak EU responses are those that allow pushback operations to continue.

Although Greek pushbacks are an at least three decade-long practice, they have only started in 2020 to attract more and more media, political, public and academic attention. Yet, particularly academics seem to draw conclusions after assessing data collected by third sector and investigation organisations instead of collecting their own empirical data. Having as main concern to add to this gap in the research on pushbacks, I intend to assess these operations in terms of cruelty, in term of their relation to the EU fundamental principles and values and in terms of actions by EU institutions and official actors towards the promotion of such principles and values.

### *Structure*

The first chapter will provide the theoretical background which consists of a presentation of the EU legal provisions on asylum and the relevant fundamental EU values and of the presentation of the concept of (de)Europeanisation as a theoretical framework with which I will assess the EU responses. The second chapter is the methodology. There I explain the reasons why I chose qualitative research and interviews and I will set the analytical framework with the use of the critical frame analysis. The third chapter presents the findings of my field research offering an important amount of primary data to the studies on pushbacks. In the fourth chapter I draw the conclusions of the study.

# Chapter 1. Theoretical background

## *1.1 Fundamental EU values and principles and the asylum acquis*

Just a simple google search for the values of the EU, guides the reader primarily to the official EU website. There, at a page dedicated to the aims and values of the EU, the reader can see that democracy, freedom, human dignity, the Rule of Law and the respect to human rights are unnegotiable values of the Union. Such values define the EU and its actions which are ‘founded on treaties, voluntarily and democratically agreed by its EU countries’<sup>2</sup>. As a 2021 European Commission report has put it with more emphasis,

‘[w]hile Member States have different legal systems and traditions, the core meaning of the rule of law is the same across the EU. The key principles of the rule of law are common to all Member States – legality, legal certainty, prohibition of the arbitrary exercise of executive power, effective judicial protection by independent and impartial courts respecting fundamental rights in full, the separation of powers, permanent subjection of all public authorities to established laws and procedures, and equality before the law – are enshrined in national constitutions and translated in legislation’  
(European Commission 2021: 1)

Particularly the respect for human rights is based upon the EU Charter of Fundamental Rights. With regards to the provisions of the Charter on Asylum, they have been incorporated in the Treaty for the Functioning of the EU and in particular the Art. 78 which binds the Union and the member states to the Geneva Convention on Refugees (and the so-called 1967 Protocol). In turn, the Geneva Convention is based on *fundamental principles*. Apart from the *non-discrimination* and *non-penalization* the Convention is also underpinned by the principle of *non-refoulement*. In other words,

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<sup>2</sup> European Union official website: [https://european-union.europa.eu/principles-countries-history/principles-and-values/aims-and-values\\_en](https://european-union.europa.eu/principles-countries-history/principles-and-values/aims-and-values_en). Accessed on 29.11.2022

‘The [Geneva] Convention contains various safeguards against the expulsion of refugees. The principle of non-refoulement **is so fundamental that no reservation or derogations may be made to it.** It provides that no one shall expel or return (“*refouler*”) a refugee against his or her will, in any matter whatsoever, to a territory where he or she fears threats to life or freedom’ (my emphasis)

On its own or even together with the non-criminalisation which provides that the asylum-seekers must not be penalised for their illegal entry and thus that they can breach immigration rules, it removes any legal ground or any favourable to the pushbacks interpretation of the Geneva Convention and the EU Treaties, Directives and Regulations who are based upon it.

Regardless the challenges that the member states’ asylum systems have faced, the founding principles of the Geneva Convention are still among the fundamental values in the documents and declarations of the EU. On the one hand, particularly after 2015, member states have intensified their efforts to upload to the EU level unprecedented ideas and policies (Geddes and Ruhs, 2019). These efforts by the governments had started already in the 90s and it will be shown below. Yet, the rise of anti-immigration parties in the 2019 EU elections is an indicator that voters across Europe have now started seeing the EU as a transnational context within which common challenges are sought to be addressed (*ibid.*). Although the creation of such a context has always been the desire of the pro-Europeans, no one had been expecting neither wishing migration to be the issue to trigger it (*ibid.*). And this shows that the issue of asylum and migration has posed fundamental and ‘existential’ questions to the EU (*ibid.*: 7)

Yet, developments such as the Common European Asylum System (CEAS) are cases of two ways processes where policies are pushed forward by the member states and the EU. Within this framework the EU intended until recently to respond to the challenges to the European asylum systems and the pressures of governments and electorate alike without downgrading its values for absolute respect to human rights. In other words, the CEAS which has its own ‘inherent tensions’ (Velluti, 2014: 5) is an effort for the EU to respond to those tensions. The CEAS’s scope has been to ‘establish a common asylum area by means of an effective harmonised procedure consistent with the values and humanitarian tradition of the

European Union' (Regulation (EU) No 439/2010, L 132/11 (1)). The reference to the harmonisation of the procedure will be extensively discussed at the next part. For now, it needs to be said that the CEAS main concern has been to correct disparities between member states' asylum systems so as to, 'limit the secondary movement of applicants for international protection between Member States, where such movement is purely caused by differences in legal frameworks' (Directive 2011/95/EU L 337/10 (13)).

The cornerstone for the development of the CEAS has been the Treaty of Amsterdam and its provisions for binding EU wide minimum rules on Asylum and Immigration. At the time of the Treaty's enforcement in 1999, an EU Summit was held in Tampere, Finland. At that summit, the heads of the then fifteen Member States intended, to joint their actions in order to harmonise their asylum systems and tackle illegal immigration flows in the EU in general and among the countries in particular.

During that period, the issue of asylum and migration had started being highly politicised, as it had attracted voters' concerns across the EU. In fact, a letter-proposal sent by the British to the Greek prime minister just a few years after the Tampere summit shows that the main concern of the governments at that period was security and tackling of illegal immigration and that a Common European Asylum System would facilitate those goals in two ways, according to the proposal: first it would let the EU respect its international legal obligations by giving temporary protection to those (few) who would need it and second it would distribute the refugees on 'a burden-sharing basis'.<sup>3</sup> Similar concerns had been expressed in an article by *The Guardian* in 2001 titled 'Closing Europe's back door', which was explaining the outline of that time initiative between the British and the Italian (another first line country) prime minister (*The Guardian*, 04.02.2001).

Despite the political background being much more in favour of security than on protection, through the Tampere Conclusions the EU has managed to maintain its fundamental principles. Besides, the UNHCR stated that it 'had every reason to be pleased with the

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<sup>3</sup> The letter is available online at the website of Statewatch.org: <https://www.statewatch.org/media/documents/news/2003/apr/blair-simitis-asile.pdf>. Accessed on 01.12.2022

summit's conclusions...' among other reasons because ...' protection considerations preceded considerations of border control, which is again a welcome and unusual development' (UNCHR, 1999). Similarly, academics have argued that the CEAS proves that the tension between security and liberty did not lead the EU 'as far as towards security', in fact the EU kept the core of the Geneva Convention provisions and strengthened it (Kaunert, 2009: 149).

Thus, the CEAS is heavily based on three EU directives, along with the prementioned article 78 of the TFEU and the Dublin and EURODAC regulations. Those three directives are:

- The 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 of refugees or for persons eligible for subsidiary protection, and for the content of the protection granted
- The Directive 2013/32/EU on common procedures for granting and withdrawing international protection
- The Directive 2013/33/EU [which is] laying down standards for the reception of applicants for international protection

All together the above directives and the relevant regulations, oblige the member states to abide by a common asylum system, taking this area of public policy from the national to the EU level (Kaunert, 2009). An extracted added value is that by the setting of binding minimum standards, the CEAS has indeed harmonised the reception and asylum systems across the EU in a manner that at least on such issues the member states 'are not competing with each other anymore for more restrictiveness, and thus do not need to lower their standards below their neighbours in order to reduce the numbers' (*ibid.*: 151).

Last but not least, it is perhaps needless to say that the above directives are interconnected and they refer to the value of non-refoulement and the principle of the guarantee to access the asylum system and lodge an asylum application (i.e. Art. 6 Directive 2013/32/EU).

In the framework of another case, that of the EU-Turkey deal in March 2016, the European External Action Service (EEAS)/ European Commission Services which is an official EU service supervised by the vice president of the European Commission and High Representative for Foreign Affairs and Security Policy added the EU Commission contribution to the Regional Review of the Global Compact for Safe, Orderly and Regular Migration (November 2020), later adopted by the UN General Assembly. Among its remarks was one on the EU-Turkey statement which 'has produced tangible results leading to a significant decrease of loss of human lives and a reduction of life-threatening irregular crossings from Turkey to the EU. It further encompasses the agreement on voluntary returns of irregular migrants from the Greek islands to Turkey in full compliance with EU and international laws, including the principle of non-refoulement'.

*...and field responses*

There are thus many statements, many declarations and provisions of the international, EU and national law which have been in place. Yet, NGOs and media evidence supported by academic research has been brought forward and it implies that Greece does not only violate the fundamental principle of non-refoulement but it has set up an operational mechanism. This mechanism -as it will be shown in Chapter 3- is responsible for human rights violations which are performed in a repeated, large and progressively stronger violence. This type of violence has been named as state crime (Mann, 2021). Neil and Peterie (2018) developed a theory in their effort to overcome some limitations in Milward and Raab's (2006; 2003) theory of 'bright' and 'dark networks'. According to Milward and Raab, while legal and transparent public management networks have been named as 'bright', the opposite holds for illegal and secret networks which have been described as 'dark'. In fact, the original theory of bright and dark networks was presupposing that the state exercises its policies with the use of bright networks, while at the same time it seeks to control and destroy the dark ones which operate outside its purposes. Yet, although this theory acknowledged that some networks are not perfectly fit for the one or the other category, it failed to provide a concept for such cases. It also presupposed that the illegal and opaque networks and methods are deployed by organisations outside the state (e.g. drug cartels or Al Qaeda), or in other words that the state policy networks are legal and visible. In answering to all these limitations, the theory of grey networks comes to explain



cases where the nodes, functions, roles and operations in and between the actors of the public policy network are legal and transparent in some aspects and illegal and opaque in other (Neil and Peterie, 2018). In the authors' own words, a grey network is 'overt, in that it is an instrument of government policy whose nodes and connections are visible. Nonetheless, aspects of the operation and function of this network are, by design, opaque' (*ibid.*: 133). Such concepts are essential for the understanding of the gravity of the violations of human rights at the EU borders in general and Greek-Turkish borders in particular. For, those violations are not conducted by paramilitary groups or groups of citizens but from state actors.

In order to assess all the remarks made in this part and to compare them with the data that will be collected from field research, a theoretical framework must be chosen. For this thesis, I have taken on board theories of Europeanisation for reasons that will be explained below.

### *1.2 Theories of Europeanisation or EU pressures on member states to accept values, principles and policies.*

The establishment and the ongoing procedure of harmonisation of the CEAS itself is implying a transformation of the member states' asylum systems, an increasingly deeper and wider involvement of EU policies, provisions, priorities, norms and values in the domestic policy areas. In such a framework, the The European Union Agency for Asylum has been established and its developing its operation across more and more member states. Thus, the so-called EUAA has been given the mandate to promote the CEAS and harmonise the member states' asylum systems.<sup>4</sup> Such remarks fit with Börzel's (1999: 574) definition of Europeanisation as a 'process by which domestic policy areas become increasingly subject to European policymaking'. In varying degrees and according to the similarities and differences between the member states' reception and asylum systems, the member states have been required to

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<sup>4</sup> EUAA has not been beyond criticism for its [lack of] actions after evidence for pushbacks brought into the Agency's attention (see <https://wearesolomon.com/mag/logodosia/fovous-gia-frontex-fernei-i-erevna-eis-varos-tis-evropaikis-ypiresias-asylou/?lang=el&fbclid=IwAR1h37Q41ZdcfPXZaPpXOc443zQ5KM2OmRF8Xm2D1Bf7K1SyllQZ03k9yp0>. Accessed 01.02.2023

adapt not only to the provisions of the CEAS but also to its principles and values. Among these principles, the unhindered access of a person to lodge an application for asylum and the *non-refoulement* have been two of the most notable, as shown above.

### *Harmonisation or Europeanisation*

In order to pick the best available theoretical framework in which I will examine the development of the CEAS, I need to clarify that the latter is a process. Although the CEAS incentive is the harmonisation of the asylum systems across the EU, the harmonisation itself is the outcome of the process and it is usually analysed through theories of European Integration (intergovernmentalism/ supranationalism). In general, the term harmonisation refers to a potential later stage which does not allow for the understanding of the processes that lead to it. In other words, the term harmonisation is empty of any analytical value in the understanding of processes which either have not been completed or they will not -for various reasons- produce the expected outcome of harmonisation.

In fact, despite being clearly set as target, harmonisation or even homogenisation are in general maximalist expectations. As already pointed out in 1994, due to 'the variety of structural determinants in all EC Member States, homogenization or harmonization across boundaries is not a realistic expectation when considering national adaptation to EC-generated inputs' (Ladrech, 1994: 70). Regardless however the desired -as set for example by the CEAS- goal, the process towards it creates its own dynamics, changes and a vast account of by-products (mutual learning, exchange of practices, reports, evaluations, actor's socialisation or pursuits of interests etc). This whole process is thus better understood with the concept of *Europeanisation*.

In one of the first attempts to define the concept, Ladrech (1994) wrote that Europeanisation is an 'incremental process reorienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making' (1994: 69). Although this is a first broad definition which is being constantly enriched, this approach to Europeanisation did not only refer to policy making techniques to

reach expected goals. It also assumed that the change also refers to the interests, values and ideas of the involved actors when they come into contact with the EU norms, values, processes and ideas. Besides, Flockhart (2010: 788) defined Europeanisation as 'different forms of diffusion processes of European ideas and practices across time and space'. Moreover, according to one of the leading scholars in theorising and analysing Europeanisation, the latter is 'most often associated with domestic adaptation to the pressures emanating directly or indirectly from EU membership' (Featherstone, 2003: 7). And to make it even more clear, those pressures imply a change or 'a process of structural change, variously affecting actors and institutions, ideas and interests' (*ibid.*: 4).

Studying the process towards a European Monetary Union (EMU), Dyson (2002: 2) has argued that domestic actors involved in EU led processes change the way they 'define their interests and form their identities'. Thus, the pressures to accept values are not only directly imposed through hard law but also indirectly, through participating in EU processes. Shore (2000: 147) has argued that people who work in EU institutions start sharing common EU values and norms and has gone even further to show that such processes lead to the construction of a European identity. Similarly, Ragkousis (2012) tested this theory in cases of soft law processes (i.e. the Open Method of Coordination) and found that the more a Europeanisation process advances and the more the actors participate in the process the more they acquire a sense of an common European identity (Ragkousis, 2012).

*Norms, policies, principles and priorities: Europeanisation as both an ascending and a descending stage*

Thus, much of the literature on Europeanisation has focused on 'the domestic impact of the EU public policy (Radaelli 2003), which is a top down process. What needs to be added is that Europeanisation is also about how norms, principles, policies and priorities are set at an EU level (bottom up) before they become pressures for member states policies and institutions and domestic actors interests and values to change (top down). Dyson (2000) says that the EMU as a process of Europeanisation is a bottom up and a top down process. Domestic elites added to the construction of the EMU with norms and techniques that were familiar to them in the domestic level before the EMU started 'radically reshaping European states' (*ibid.*: 646).

Similarly, Börzel (2002: 195) sees Europeanisation as a process with two stages: an 'ascending' and a 'descenting'. She thus focuses on 'the ways in which Member State governments both shape European policy outcomes and adapt to them' (*ibid.*: 194). She then goes on to argue that MSs compete to 'upload' to the EU level their own norms, rules and policies so as to have less pressures when the set EU norms, rules and policies need to be downloaded back to the domestic level (*ibid.*: 194).

To sum up, a definition that includes both the ascending and descending stage of the Europeanisation process and the reference not only to policies and policy goals but also to norms, interests, principles and values can be the one proposed by Radaelli (2003: 30) who has polished up even further the concept of Europeanisation as one which refers to:

Processes of (a) construction, (b) diffusion, and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things', and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures, and public policies.

Radaelli clarifies that reference to the EU public policy is targeting at including all EU tools of governance, which means laws, regulations, directives, soft modes of governance (i.e. the Open Method of Coordination) etc.

#### *Levels of Europeanisation with reference to domestic adaptation*

As discussed above, a change that will lead to harmonisation despite the EU (and CEAS in our case) expectations is a non-realistic scenario. Nor even the above mentioned domestic incorporation of *discourse, identities, political structures, and public policies* (*ibid.*: 30) is always the case. Radaelli (2003) himself, clarified further the concept by referring to different levels of Europeanisation in terms of member states responses to EU pressures for common policies, principles, values and priorities. These levels are the lower ('absorption') or higher ('transformation') degrees of change, the lack of change ('inertia') or even the revert of

changes ('retrenchment'). The latter is also called 'negative Europeanisation'. Importantly, when Radaelli refers to retrenchment, he brings on the example of Italy to show that EU pressures to liberalise the road haulage have created domestic coalitions and this made them stronger to demand and succeed more state intervention than before. This matched with the words of Featherstone (2003: 4) who has also noted that Europeanisation 'has a dynamic quality: its structural effects are not necessarily permanent or irreversible'.

### *1.3 Theories of de-Europeanisation*

Another case of retrenchment has been noted in Germany. Hellmann (2006) took example of two different German public policies (i.e. Asylum/ Refugee and Defense) and argued that there have been turning points around which Germany stopped looking for solutions at the EU level because they could not serve the national interest and sought for solutions at the domestic level.

But Hellmann takes a (conceptual) step further from retrenchment or reversibility when he terms his observation *de-Europeanisation*. In a similar approach is a policy paper by Rodoplu (2019) who maintains that after a long period of Europeanisation of the Turkish foreign policy, a new era of de-Europeanisation has started, one that moves from being diplomacy oriented to more hostile actions. Again, de-Europeanisation terms a process which takes place within the domestic level. This of course does not mean that the EU pressures do not play their role or even trigger such a process. However, it does not refer to a process where the EU itself is stepping back from fundamental principles due to the change of priorities and the pressures by member states.

Very recently, the Europeanisation and de-Europeanisation theories have been matched with the term 'backsliding' (e.g. Winzen 2022; Pozgan and Bojinović 2022; Slipphak and Treib 2016) a term primarily connected with the domestic restriction of democratic principles and provisions of the EU law. Pozgan and Bojinović (2022) studied how due to the different crises (economic, migrant, Covid-19 etc) Slovenia started backsliding from the positive changes it had succeeded through the Europeanisation process, in terms of economic performance and

democratic pluralism and stability. In their approach, the de-Europeanisation is a process in which the EU influence in the domestic arena weakens or reverts but also a bottom up process where actors seek to upload their own reverse to Europeanisation positions to the EU level.

Winzen (2022) has argued that since the member states governments' primary concern is to consolidate their power, EU pressures which challenge this effort create backsliding dynamics. As the EU has more and more competences than the development and proliferation of the single market, the member states will seek to oppose the intervention of the EU were this challenges their power and electability. Winzen also notes that in some areas which are at the core of conservative and nationalist discourse (minority rights, migration, border control) the EU faces a greater possibility to trigger the backsliding of the member states. However, this sounds more like another concept that has been used in the theory of Europeanisation, namely the 'veto points'. With the latter are described the obstacles set by actors who do not wish to adapt to Europeanisation pressures (Radaelli 2003).

Slipphak and Trieb (2016) do some suggestions on how the EU should respond to greater degrees of member states' democratic backsliding. By examining the case of Poland and Hungary they argue that EU pressures (in this case sanctions) to the member states which backslide from democratic provisions and the EU rule of law should be carefully designed in order to avoid the 'rally-round-the flag effect' which means the triggering of nationalistic responses and blaming the EU for illegitimate intervention (*ibid.*:10). Thus they argue that the EU pressures should not sanction the whole country but the responsible persons/ actors, should not be seen as coming from outside but they should involve domestic actors and should be planned cautiously as to respect the member states particularity so as not to appear unjust.

Another stand of research sees de-Europeanisation as the breaking of collective EU action against challenges into separate national actions (Smith, 2021; Müller *et al.*, 2021). By bringing forward the case of the EU foreign policy, Smith (2021) argues that member states such as Greece which see that a common EU foreign policy against Turkey may oppose their values and interests roll back partially or in a greater extent either to individual or engage in different framework collective responses to foreign policy challenges.

In all above cases, de-Europeanisation refers to a domestic process and its impact towards an EU common response to a variety of challenges i.e. democracy, COVID-19, foreign policy, minority rights, migration and border control etc. What is not approached through the Europeanisation and therefore de-Europeanisation concepts is the abandonment at EU level of values and principles that are cornerstones of EU declarations, Treaties, regulations and the Rule of Law in general. In this thesis, I coin the concept of de-Europeanisation with a non domestic level but rather with the EU level. *The De-Europeanisation of the EU* is proposed for those cases where the EU has stopped putting pressures on the member states to respect the EU fundamental principles and values and therefore it has allowed member states to put those values and principles at serious risk. An answer to the main research question which was brought forward in the introduction and refers to the degree of EU responses to the Greek pushback operations will test the previous remark and will add to the literature a new aspect: this of the de-Europeanisation of the EU itself.

## Chapter 2. Methodology

This thesis intends to add new theoretical aspects to the theory of Europeanisation/ de-Europeanisation and see whether these are contrasted to the existing theories. All at the same time, the contribution of new empirical primary data collected from field research is another purpose of this thesis. In the academic discussion on pushbacks, scholars usually assess data which have already been collected by investigative organisations and media and they draw conclusions on them. Thus, one of the main strengths of this work is the collection and analysis of primary data.

For this purpose qualitative research will be used. Although data will be used to show the extent and gravity of the pushback operations, a quantitative analysis is not appropriate as the focus is on how set values of the EU have been (dis)respected by examining different viewpoints. This matches with the statement that '[q]ualitative research properly seeks answers by examining various social settings and the groups or individuals who inhabit these settings' (Berg and Lune, 2017: 15). In fact, there have been many actors in the field and beyond who have a long time experience in various aspects of pushbacks according to their specialisation i.e. journalists, politicians, activists and EU officials whose opinions have not been taken in consideration. It must be noted that the focus of the present research is not if and how often pushbacks are taking place; besides the answers to this is beyond doubt after all those evidence brought forward by the media and lately by the OLAF report. Nor is the focus on how many people have been pushed back, how many are aware of those operations and how many people have witnessed pushbacks. To answer such question we would indeed deploy quantitative research methods. The focus of this thesis is on if and how the EU has responded (not by counting actions which again would imply a measurement of quantity) in terms of impact and more particular the *evaluation of EU's position and its impact by the people who have been involved in criticising and fighting against pushbacks*. For this reason what this research expects to extract is not a fact that could be measured in absolute numbers (EU's response -> x% less pushbacks/ more arrivals) but what is the view of the actors and the explanations they may have on such potential impact. The strengths and weaknesses of these statements will be examined now, through the presentation of the methods of qualitative analysis which will be deployed for reasons of answering the research question.



### *Interviews/ table of interviewees*

Thus, qualitative research is indeed a wide umbrella that often includes methods which are diverse or supplementary to each other as for example interviews, focus groups, ethnographic notes and more (Tracy, 2013). However, since the scope of this research is to examine various viewpoints, the primary method for collecting data will be interviews. The use of interviews has as every research method its own strengths and weaknesses. First, it provides with primary data and enriches the understanding of a situation through the different perspectives of the interviewees. The interviews are not only about a simple question and an answer and the interviewees are not treated simply as information providers (Marvasti, 2004). On the contrary, interviewees do not only provide information but also interact with the interviewer and discuss the meaning and the context of this information (*ibid.*). In the interviews there is a kind of exchange of knowledge and information between the interviewer and the interviewee. This is the case particularly with the semi-structured interviews where not only the interviewers are expected to maneuver around the questions and answers (Berg and Lune, 2017) but also the interviewees are expected to provide much more information than the researcher had originally planned for. And this last statement is a strength that mitigates one important weakness of this method: the data collected are based on interpretations and not necessarily on facts. A common mistake done by researchers is to consider that 'that reality is fairly constant and stable and that people can reliably observe and describe it' (*ibid.*: 14). However, interpretations may be based on facts and thus they can guide the researchers or trigger their interests to find sources of information that they had not searched for/ encountered before. Thus, throughout the presentation of research data extracted from interviews, will be intended to validate through other sources of information (e.g. statements made by EU and Greek officials, NGOs and international organisations and reports by the media etc). Yet, it is not interview data those that are validated by statements but also vice versa. For, interviews 'are also very valuable for strengthening and complicating other data' (Hersey, 2003: 133).

Last but not least, I intend to do *purposeful* sampling for the interviews. With this I go along with other researchers who 'purposefully choose data that fit the parameters of the project's research questions, goals, and purposes' (*ibid.*: 134). In this case, I will interview persons **who have done efforts at the EU level or towards the EU level** either because they have to report

human rights violations through their role or/ and because they intend to trigger an EU response for reasons that will be also examined and they are related -as occurred during the interviews- with the expectations respondents have for the EU.

Although a representation of different views of the political spectrum would be expected especially when interviewing policy-makers (i.e. Members of the European Parliament), the scope of the research is not to question people who deny that pushbacks are happening. To clarify, keeping in mind that the right-wingers in the EP deny that Greece is performing pushback operations, their views will be included on the one hand in the next chapter but on the other hand their public statements are adequate for the purpose of the thesis and no added value is expected to be extracted from an interview.

An additional type of sampling within the same context has been the *snowball* sampling (Lichtman, 2014). With this I mean that interviewees have also been found either from deliberate references by interviewees to other persons with the same profile or because the researcher asks explicitly the interviewees whether they can suggest other persons with relevant profiles.

Keeping in mind the above remarks, the following table gives some details on the interviews which have been conducted during the filed research and the specialization of the interviewees.

<b>Interview 1</b>	23.12.2022 (face to face interview)	Human Rights Lawyer
<b>Interview 2</b>	05.01.2023 (interview online)	Head of a Greek NGO which focuses on human rights (migration)
<b>Interview 3</b>	05.01.2023 (interview online)	Journalist in a Greek newspaper who covers migration policies and human rights
<b>Interview 4</b>	10.01.2023 (interview online)	EU delegate to the Greek islands
<b>Interview 5</b>	13.01.2023 (interview online)	Journalist who has focused on pushbacks
<b>Interview 6</b>	27.01.2023 (interview online)	European parliament official who works on migration and asylum policies
<b>Interview 7</b>	02.02.2023 (interview online)	Member of the European Parliament who has focused on migration

It needs to be added that pushback operations happen ‘in the dark’. Optical evidence is hunted down to be destroyed as the OLAF report has proven in the case where FRONTEX removed its own drone from the Aegean sea after it recorded cases of pushbacks. Coast guards normally wearing hoods have been multiple times reported to remove smartphones from the migrants before they start the pushback operation and the vast majority of the Greek press is ignoring the issue. The Commission mainly through Ylva Johanson has issued a few statements but it remains silent most of the time, as it will be shown in detail in the next chapter. So, evidence about pushbacks has mainly come from the following sources:

- International press agencies (most notably, *Der Spiegel*, *The New York Times*, *The Guardian*, *Le Monde* which often work with independent investigative organisations
- Domestic press such as the *EfSyn* and the *Press Project*
- Members of the European Parliament and particularly some members of the LIBE committee

- A limited number of members of the Greek Parliament
- NGOs and international organisations (MsF, UNHCR, IOM)
- Victims' testimonies as collected by media, NGOs and investigative organisations
- Political collectives in Athens and the islands.
- Academics, and lately
- The Olaf report

Yet, even if there is mounting evidence, for reasons explained above, important data has not been gathered and thus interviews can shed some valuable light on the issue which is still largely obscured. Besides, '[i]nterviews are especially valuable for providing information and background on issues that cannot be observed or efficiently accessed' (Tracy, 2013: 132).

Effectively, each interview will be separated in three parts:

A first set of questions serving as introduction (the purpose of the interview, the role of the interviewees and the reasons of their focus on pushbacks

A second set of questions aiming to give the reader understand how the pushbacks operations are carried out and how they violate the EU Law and values, as they have been set in the first chapter.

A third set of questions aiming at the viewpoints of the interviewees about the EU responses, their expectations and whether the EU responses have met them.

Along with this research focus, is the focus on the EU reactions to the evidence brought forward on pushbacks. First the allegations and then the mounting amount of evidence. For this reason, the research will take into account EU officials' statements, EU declarations and law but also focus on collecting primary material on if and how this reaction has had any impact towards the pushback operations.

### *Critical frame analysis*

Pushbacks is a policy of straightforward physical violence, a policy of violation of fundamental human rights and therefore a policy of dominance. During the field research, responses given by the interviewees are not independent from the way they frame both human rights violations and EU responses. This is in turn expressed with the use of language, written or oral. The language on pushbacks, as it will be shown, refers to different discourses contradictory to each other because they have been deployed in order either to defend the continuation of pushbacks or the cessation of such practices and often the punishment of those who have been involved. Thus, the methodological framework chosen to examine the above changes is the critical frame analysis which is borrowed from literature on gender policy (Verloo 2005). Verloo (2005: 8) holds that 'unlike other approaches, frame analysis starts from the assumption of multiple interpretations in policy making, and addresses problems of dominance and exclusion connected to policy making'. With the use of frames actors do not only understand reality but also intend to shape it (Triantafyllidou and Fotiou 1998). What is more, in policy-making, the prevalence of certain competing frames has a lot to say about the policies that are/ will be pursued (*ibid.*). In this sense, political actors make strategic use of frames in order to promote policies according to their goals. The strategic use of frames is also a tool used by policy actors to earn the 'allegiance' of other actors to the policies pursued (Verloo 2005: 17). With such strategic use of frames, the political actors intend to overcome obstacles to their goals. An example will clarify these last statements. This, a similar thinking is developed in an article which discusses the EU responses to the migration issue as an issue of security. There Kaunert (2009: 149) argues that,

'Buzan, Wæver and de Wilde (1998: 25) note that a so perceived "existential threat has to be argued and just gain enough resonance for a platform to be made from which it is possible to legitimize emergency measures or other steps that would not have been possible (...)". This means that the same EU institutions that want to give the impression of following the letter of the law want to construct a situation in which the letter of the law can be disregarded ("emergency measures"). The way in which the EU institutions would aim to achieve this would be through a discursive construction of threats, thereby lifting the issues "outside the normal realms of politics" (Buzan 1991; Buzan et al. 1998; Wæver 1993, 1995)

Although the frame of security has been used by political actors at large at EU level, official EU documents and more careful statements deploy another frame in which migration is an issue whose management requires a careful balance between security and respect to fundamental rights. It is not only the Commissioner Johansson who has used such frames but also the new temporary chief of FRONTEX who replaced Leggeri (see *Politico 28 class of 2022*) after his resignation. For Leggeri migration was a straightforward security issue and according to reports and the OLAF report, during his administration human rights were regarded as issues brought forward by NGOs and EU officials who wanted to change the character of FRONTEX. Although human rights violations put pressure on his administration, Leggeri's answer was, that he was seeing 'Frontex as a law enforcement agency and not as a pro-migration NGO (*Der Spiegel*, 10.05.2022; see also OLAF, 2021). Back to the balanced frame, the new EU Pact on Migration and Asylum promises a management that takes into account both state concerns about security and human rights and EU values (for an argument that the new EU Pact prioritises security see Salvati, 2021 and Robert Schuman Foundation, 2021).

However, despite the EU's declarations, pushbacks is a case where actors use the frames of security and human rights in competing contexts. But competing frames (and their strategic use accordingly) by competing actors pose further obstacles and may put in doubt the dominance of policies. Consequently, this methodological context will also help answer questions regarding the conflict between frames that justify the prevalence of pushbacks and humanitarian, legal or activist frames which stand against.

### *Why studying pushbacks and why the focus on the EU and Greece*

Public and political debate on migration has been more and more heated particularly after 2015. In the beginning it was the welcoming of migrants. This was soon followed by the rise of extreme rights parties and as an effect their declarations were up till a certain extent reflected in the declarations not only by right wing parties and the European People's Party but also from socialist parties, as the declarations and policies in Denmark show. Previously, the EU had been hailed by activists and international organisations for managing to keep a balance between security and respect of human rights, favourable towards human rights. An

example of the up till recently stance of the EU towards migrants is the statements of the ex-Commissioner Dimitris Avramopoulos:

‘We need to change the perception of the public opinion on migration. Our biggest concern is the rise of racism and xenophobia, fueled by populist movements across Europe. To communicate the positive contribution of migration, I intend to launch an EU-wide campaign to improve the narrative about migration in cooperation with Member States later this year’ (Avramopoulos, 2015).

Now, as a consequence of the above developments at member state and EU level, the EU Commission through its president’s statements called Greece *the shield of Europe* during events which according to a number of organisations involved the direct shooting and killing of migrants by the Greek police and military forces. Also the vice-president of the Commission has stated on the same events that ‘[a]s we proved in Evros at the beginning of March, Europe can now effectively ensure border management’ (*euobserver*, 02.05.2022). After those statements, Greece normalised a practice that was in the fringe of its migration policy for three decades and made it its primary tool for controlling migration flows. Thousands of people have been pushed back including thousands of vulnerable people, pregnant women and children of any age. The violation of the right to seek for safe land and the unprecedented violence is shocking and it happens at and in the borders of the EU. It is a duty for researchers not to allow this new border reality pass by at least without noticing and investigating.

#### *Time-frame of the research*

Although as it will be shown below pushbacks has been a reality for more than three decades at the borders of the EU and beyond, this thesis is primarily concerned with the period between March 2020 until today, i.e. February 2023. March 2020 is the month in which the Greek government decided to normalise pushbacks operations, make it a concrete and *de facto* policy and count on it as the primary tool for migration management. As the interviews confirm, not much attention had been given to the pushbacks prior to 2020, probably because they were marginal (although always extremely violent) practice which was difficult to

investigate for reasons of geography, time and access of witnesses. The EU itself had not responded at all, to the author's knowledge and after having conducted the interviews. The first press and EU reactions were noticed very soon after March 2020.

At the same time, Greece has been usually referred to in academic research as a country where the EU policies were pressing for hard transformation (case of EMU) in a process of Europeanisation (see Dyson 2000). In such cases, Greece was among the states which individually or even collectively had little impact on the elaboration of EU policies (Dyson and Featherstone, 1999; Featherstone *et al.*, 2000). Yet, in the case of pushbacks, Greece is not only unaffected by EU responses to the violation of the EU values but it seeks to be among the member states which aim to change the EU policies towards more violent and restrictive positions against migrants, among which is the *de jure* normalisation of pushbacks.

#### *Boundaries of research*

It has been clarified from the start, that the conclusions of this thesis will be drawn largely on views expressed by the interviewees. Although this weakness is aimed to be mitigated by cross-checking of statements, nevertheless the scope of this research is not to provide a large scale interviewing of all actors involved in the debate on pushbacks but to offer much needed primary data by actors who have not been interviewed for research purposes. As it has been argued by some interviewees, EU responses are not always public for reasons that have to do with both politics and effective administration. Therefore, the conclusions on the EU responses and the EU responses per se are not exhaustive. There are many background actions that would require a different type of scholar or even journalistic investigation. In terms of the method of critical frame analysis, of course EU responses and pushbacks are largely performed in specific frames, as it has been shown above. This does not mean that the deployment of certain frames is the only analytical tool through which pushbacks, EU responses and EU values can be analysed nor do interviews and qualitative analysis make different approaches and methods empty of collection and analytical value.



## Chapter 3. Pushbacks as state crime and as violation of the rule of law and the response of the EU.

### *3.1 Towards the normalisation of pushbacks*

Academics, journalists, NGOs and lately politicians have condemned both state and EU migration policies as being inhumane, humiliating for human dignity, causing suffering and being responsible for thousands of deaths (e.g, ARSIS, 2021; Eliassen, 2020; MSF, 2020; Gammeltoft-Hansen and Tan, 2017 ). Examples of such policies are the ‘hostile environment policy’ in the UK which has been named as the most draconian in British history (Consterdine, 2018), the externalisation of EU (anti)migration policy, the offshore processing centres of Australia and the US, the EU policies for hotspots and geographical restrictions, the restrictive asylum granting frameworks (safe countries statuses included). However, a new outstanding situation is now the pushbacks operations which, as said above, are a ‘de facto general policy’ in Greece (*euobserver*, 2022) as it is in many other EU member states. Koros (2021) argued that pushbacks are the primary tool used by the Greek government for the management of migration. This is a form of de-Europeanisation, which was discussed in chapter 1. According to this aspect of de-Europeanisation, member states stop seeking solutions in common EU actions and they apply their own policies, which in the case of pushbacks is a policy that opposes fundamental EU principles.

Greek pushbacks of migrants to Turkey has been a usual practice for more than a decade; Yet, to the author’s knowledge no EU responses have been made prior to 2020. This remark is essential for accessing whether the EU has hardened its line on migration after 2015 or whether there have been serious incidents of human rights violations in the past at its external borders where the EU failed to respond efficiently or to respond altogether. However, even now that the ‘Normalisation’ of pushback (Koros, 2021) is undeniable, little seems to be happening at EU level in order to make Greece abandon a policy that offends the EU values and the EU orientation to the rule of law. Contrary to other policies of deterrence (e.g.

detention and reception centres on the Greek islands) that have been openly debated, pushbacks have never been discussed by the governments in Greece. For example, although the practice of pushbacks was standardised during the SYRIZA and ANEL government, the two parties' spokespersons were constantly refusing to comment on reports even from friendly media (*ibid*). The same attitude has been adopted the last two and a half years by Nea Dimokratia. What is striking however is that the pushbacks have never been mainstreamed either by the opposition, the press and the civil society (apart from NGOs). Yet again, especially since March 2020, mounting evidence of the increasing volume of operations and brutality is coming to light. The paradox of the absence from the political debate and the gradual intensification of the pushbacks has -mainly in private discussions- made a lot of activists shout in despair 'there is an elephant in the room!'.

In March 2020, the Greek government accused Turkey of organising mass illegal migrant crossings of the Greek borders (*Efsyn*, 29.02.2020). Coping with the increased numbers of incoming migrants and the frustrated crowds at the islands which were blocking the streets, were preventing migrant boats from arriving at the shores and were threatening members of the local governments and the UNHCR (*Kathimerini*, 2020a), the prime minister called an urgent Government Council for External Affairs and Defence – GCEAD [ΚΥΣΕΑ]). At the days of the so called 'crisis in Evros' and the increasing arrivals at the islands, the GCEAD decided Greece to suspend its asylum system and to deport all new arrivals. It also decided and communicated the augmentation of the level of eastern land and sea border surveillance at the maximum level. Responsible actors were announced to be the police, the coast guard and the army (*Kathimerini*, 2020b). In practice that meant an advanced role for the HCG and the navy and the increase of patrols (*ibid.*).

Suddenly, the arrivals at the islands dropped to a minimum. Although the measures that violated the right to seek for asylum were soon abandoned due to international criticism and legal issues, the arrivals did not start over. The reason behind this did not take long to be understood: Greece, started pushing back asylum seekers who had either arrived at its sea borders or even at its shores, at the once known as safe land. As an interviewee with deep knowledge of how these operations are performed explained to me, there were only four ways for the newly arrived at the Greek islands migrants to reach the reception and identification centre as the law provides:

‘Since March 2020 you could be registered only if you were a survivor of shipwreck, if you were hiding in the woods and made your own way to the reception centre, if the smuggler was arrested and if some locals were giving you a hand to hide you and get you to the centre with their own vehicles. In all other cases the Greek coastguard would arrest you and throw you back to the Turkish waters’ (Interview 1, 23.12.2022).

Such actions have been described as straightforward racist state crimes (Koros, 2021; Missback and Palmer, 2020). The Greek policy for migration management aligned with what a Greek omnipresent mainstream journalist had asked for: ‘if we do not want refugees to drown then they will keep on coming to Greece’ (*Alfavita*, 17.01.2020). And keeping in mind the evidence for the brutality of the pushbacks that soon came to light, the Greek policy on migration moved too quickly to what Mr. Plevris -a then member of the parliament with the extreme right party LAOS, now a member of the New Democracy and Minister for Health- has called for: ‘border surveillance cannot exist without casualties, and to be understood, without having deaths’ (*News247*, 31.08.2021)

The first instance that became known through press was a pushback from Chios to Turkey on the 23 of March 2020. A boat with migrants arrived at the island but none of them was registered to the relevant identification centre. In contrast, all of the passengers were reported to be collected the very next day from a rubber boat which was drifting at the Turkish waters (*Efsyn*, 07.04.2020). Chios (three times), Simi, Lesbos (twice) and Samos were the islands on which the first 8 cases were monitored, in the last seven days of March 2020 (*ibid.*). Soon, Greece had a prominent place at the ‘black book on pushbacks’ which until December 2020 was including 892 pushback operations in Italy, Slovenia, Croatia, Hungary, Bulgaria and Greece (*TVXS*, 2020). The black book on pushbacks was a work of the European Left and the Border Violence Monitoring Network and it was presented at the European Parliament, in December 2020. Prior to this and with a noticeable delay of three months, the UNHCR in June 2020, in a carefully designed letter, called Greece ‘to investigate the multiple accusations for non-formal returns –pushbacks- to Turkey’ (UNHCR, 2020a). The UNHCR repeated its calls two months later; this time to express its ‘deep concern’ on the adding evidence on pushbacks since March 2020 (UNHCR, 2020b). As the evidence was mounting and the reports for new

methods of violence during pushback operations were reported by victims and media (i.e. abduction, theft, food and water deprivation, put in direct danger left adrift in the open sea), other organisations followed, among which the International Organisation on Migration (IOM, 2020) and the Amnesty International (2020).

At the same time, Greece appeared to depend its whole migration management and communication strategy on pushbacks. The Minister for Migration and Asylum, Mr. Mitarakis communicated repeatedly in 2020 that the government and the ministry had succeeded 'zero arrivals' at the islands and this has made possible the shutdown of migrant accommodation centres all over Greece. (Ministry for Migration and Asylum, 27.04.2020; Mitarakis portal, 09.06.2020).

To a small extend national and to a much larger extent international news agencies started investigating the issue. Apart from the *Efsyn* in Greece, sporadically the *TVXS* and recently *The Press Project*, to the author's knowledge, no other media outlet has until today investigated the issue. Most of the media in Greece seem to either republish announcements from international organisations and the EU institutions or publish Greek government officials' statements after press reports on pushbacks. Inevitably, investigations held by international news agencies and research groups have largely not been taken onboard by the Greek mainstream media.

On the contrary, the *Spiegel*, the *New York Times*, the *BBC*, the *Guardian*, to mention only a few of the leading international news agencies, have repeatedly provided evidence and condemned Greece (and FRONTEX) for its violent and dehumanising practice of pushbacks. Yet again, contrary to what would be expected, Greece has not been distracted and continues these operations in areas that are also areas of FRONTEX operations. Actually, it seems that Greece has mainstreamed those operations taking advantage of the years-long capacity building of the grey networks. Thus, it manages to push back more and more people daily, to treat them with more and more violence and to perform such operations once in the dark, now often in the daylight and in front of witnesses from the local communities. The above statements are supported not only by data in the above-mentioned Black Book on Pushbacks but also by data given out by different organisations. Thus, in its report for 2020 the Border

Violence Reporting Network collected 86 pushback testimonies that involved more than 4583 migrants (BVRN, 2020). The Aegean Boat Report has raised this number to 324 cases involving more than 9700 migrants (ABR, 2020). The New York Times had already in August 2020 collected evidence for 31 cases with more than 1000 people pushed back to Turkey (*New York Times*, 14.08.2020). In the meantime, FRONTEX has been fiercely criticised for its role in this situation and after undeniable press investigation its director Mr. Leggeri was forced to resign. At the same time, the Greek Minister Mr. Mitarakis has been rejecting the accusations by arguing that Greece is protecting its borders and therefore the EU borders with respect to the international law (Mitarakis portal, 16.09.2020).

This situation has made opposition members of the Greek and European Parliament and academics alike to refer recently –albeit sporadically- to the ‘normalisation of pushbacks’ (Arvanitis and Psychoyios, 08.10.2021; Koros, 2021). Normalisation in this sense is a concept which is used to indicate that a practice at the borders which was deployed occasionally and with careful consideration of keeping it away from publicity has now become a daily routine with fewer efforts to keep it secret. In fact, it can be argued that instead of choosing no publicity, careful publicity may be a goal for the Greek government and the FRONTEX as pushbacks seen under a national security frame can attract public support and help towards their legalisation, an effort that is discussed below. For now, it is worth noticing that the first direct accusations by the opposition (SYRIZA) to the government took place in October 2021, more than a year and a half after the first evidence of pushback operations.

### *3.2 The EU perspective and a three-decade long violation*

The Commissioner Ylva Johansson has criticised the efforts done by governments towards the legalisation and normalisation of pushbacks, as it will be shown below. In fact, a number of member states (i.e. Greece, Croatia etc) have normalised pushbacks making them a de facto plausible option; in addition however, they have intended to legalise them making them a plausible practice de jure. According to *Politico* (08.10.2021) twelve countries, among which Greece, had addressed a letter to Brussels asking it to adapt to the ‘new reality’ by legalising pushbacks, although always according to *Politico* the “p’ [for pushbacks] word was not mentioned’ in the letter. By mentioning ‘new reality’ the twelve member states were arguing

that third countries (i.e. Turkey and Belarus) were ‘instrumentalising’ the migrants; thus, the states should be legally allowed to push back people ‘in defense of their national security and the security of whole EU’ (*ibid.*). The critique by the Commissioner cannot be seen independently from her decision to cut down on funding for the HGC (*ToVima*, 29.08.2021). The cut of funding has its own meaning, particularly in relation with what I referred to in the first chapter about the gray networks. Funding of a grey network is an issue that should not be neglected. Greece’s decision to be part of a group of states that lobby for the legalisation of refoulement practices in general and therefore of pushbacks in particular, is strategic. If successful it will grant access to funding which is vital for the reproduction and intensification of such operations. For now, Johansson’s decision to cut down on border patrol funds for Greece has been based on evidence that the Greek border patrol actors (i.e., coast guard) were acting against national and international law. Thus, the Commissioner’s decision should be seen both as a pressure on Greece to investigate mounting and serious evidence and as an acknowledgement that the Greek operations across the borders are neither straightforward legal nor the least transparent.

In order however to test those statements and to compare EU responses with potential responses of the past, during the field research several interviewees have been asked about the first time they heard about pushbacks. The answers varied from the injustice of ‘the enforcement of a strong force on the weak [people]’ (Interview 1, 23.12.2022) to more analytical approaches. Thus, the head of an NGO which has been particularly active in denouncing pushbacks and call for international action against this practice argued:

‘We [have started looking at it] as an organisation since 2017-2018. What attracted our attention were mainly some incidents of pushbacks at Evros. Those were the initial cases; if you remember at that time there were no references to the islands after 2015 [when SYRIZA-ANEL took office], it all started after the 1st of March 2020. At the Evros region this issue was there always [...] At the islands the references after 2015 were minimum. Now, me personally the first references that we have for pushbacks from the islands are from the middle of the decade 2000-2010. Probably there were even earlier. [...] In the beginning of March 2020 there was this incident with the boat that arrived at Lesbos but the locals did not allow it to pass and from that time on we have the first references to pushbacks’ (Interview 2, 05.01.2023).

The above statement stands in contradiction with the literature which supports that the EU policies are now harder on migration because member states particularly after 2015 push for a harder EU response to migration flows (i.e. Geddes and Ruhs, 2019). On the one hand hard responses have been in place much before 2015 and on the other hand, according to the above interviewee, from 2015 till 2019 Greece had stopped the practice of pushbacks at the sea even though there was no EU pressure to abandon this practice. Another interview with a journalist in a popular Greek newspaper who covers issues of migration policies and human rights noted that pushbacks were performed by Greece even earlier, in the 1990s:

‘For sure Farmakonisi [January 2014] is one of the first cases which we had covered. Yet, I sense that I was accustomed to the term pushbacks and how they were performed even earlier. I cannot determine when exactly I started noticing but the fact is that there were reports of pushbacks at the Evros area even in the 1990s. Farmakonisi was a turning point that showed that at the framework of a targeting and criminalising of migration [...] there were arrivals and an effort to hinder them through pushbacks. At Evros the case was continuous [regardless the governments] but in the sea, at Aegean there was a stop at pushbacks after 2015 with the government of Syriza. But after March 2020 and even before the phenomenon increased sharply in terms of frequency and other qualitative aspects of toughness, cruelty and the fact that the political leadership does not feel the need to explain and despite the reports at the media, there is a steady refusal to respond and a steady refusal and the claim that “we act in the context of the international law” without proofs and without references to any investigation. The government is not condemning -in contrast to the previous SYRIZA government- the cases and we now have the appearance of the life-rafts which had been used by Australia in the past and we have the intensification of this phenomenon at Evros. In essence, with the temporary suspension of the right to asylum in February 2020 the government legitimises the pushbacks. In fact, it calls it [the suspension] pushback of people to their countries of origin where it is possible. Even if it was not possible, we have a de jure legalisation of pushbacks but even after the lift of the temporary suspension we have a de facto legalisation of the pushbacks as a central government policy’ (Interview 3, 05.01.2023).

Greece therefore, returned to the pushback operations around the islands mainly -but around the mainland as well- in 2020. A third interviewee, also a journalist that has focused on pushbacks, confirmed the above statements by explaining how the media outlet they work started paying attention on the Greek pushbacks:

‘The pushbacks attracted our attention in the past, as for example the case of Farmakonisi. It is not something new it is not a phenomenon that appeared now. But more intensively both in terms of journalism and in terms of the phenomenon itself it took harder dimensions in March 2020 with the incidents at Evros where it started a long series of investigation and the last three years it has taken unprecedented dimension although I say again this phenomenon existed before and for decades. But it become more organized and systematised after March 2020 when we also started being focused systematically with the issue’ (Interview 5, 13.01.2023).

This argument matched with the argument of the normalisation of pushbacks after 2020 (Koros, 2021). But we also need to see the gravity of those operations to be able to assess the EU responses. Thus, interviewees were asked why the pushbacks were covered by the media and attracted the attention of the NGOs:

‘First it is Greece. We had tens of reports, hundreds of notes from migrants, from organisations, from lawyers and nothing was being done, nothing was reported and it was as if it was not happening. And I am talking for real, I refer to hundreds of stories of violation of fundamental rights according to the EU and national law and basic human rights. Due to geographical position of Greece and the role that it has taken on behalf of the EU we thought it is critical to show how the EU protects its borders when the European citizen sleeps peacefully at night, at the same time there are people who by reaching EU soil they are treated in a way that reminds us -not exactly- as the CIA interrogates people at the detention centres, by violating openly and without any reaction fundamental rights such as to give these people the right to apply for asylum with sometimes deadly consequences. It is not just a procedure [...] the Aegean Sea is rough, it is not something like you do manoeuvres you do some waves and the overcrowded migrant boat goes smoothly back to Turkey. Somebody can do a wrong



manoeuvre, someone can slip, someone can panic. They tried to pass something like this in the UK at the channel with France and the British Navy refused to do it because it puts human lives at risk. And we are talking about a conservative government there [...] we have and we will have deaths in Evros and in the sea. Thus we considered the issue as very important and a huge need for energy and time' (Interview 5, 13.01.2023).

A few interesting points can be extracted from the above remarks. First, our interviewee confirmed that at the EU borders there are serious violations of human rights. Second, it is important to highlight that the UK, a country with years of tough policies and priorities on migration and with a reputation for its policy of the 'hostile environment', has in this case protected human lives and rights better than Greece and the EU. Third, for years and years of hundreds of violations with the pushback operations, there had been no response by the EU. And fourth, although violations of human rights is always apparent when discussing about state responses to migration, in the case of pushbacks we refer to breaches of fundamental rights (i.e. the right to asylum and the protection from non-refoulement) and about serious crimes which often result in human life loss. All those in turn imply serious breach of the EU law, of the fundamental values and of the declarations around the importance of the Rule of Law, as referred in detail in the previous chapter.

An interviewee who works for the European Parliament in the field of asylum and migration policies, has put it in an interesting context. The interviewee was asked why people who work for the European Parliament (MEPs and other officials) think that pushbacks are something they should be focused on.

'I think that if a person works on these topics, access to asylum, borders... then this is part of their business [...] Well I mean that the important thing to focus on from our perspective as legislators is how the EU asylum acquis is functioning and is implemented. And since part of the asylum acquis is the right to seek asylum and the access to it and these things are being hampered by illegal practices making it impossible for asylum seekers to actually access the asylum system and one of the most prominent ways to do it is by pushing them back... this is something that we have

to care about and make sure that it not the modus operandi of the member states' (Interview 6, 27.01.2023).

### *3.3 Networks and coordination*

Another point that shows the gravity of such violations is not only that they have become a central governmental tool for migration management (*EU Observer*, 2022; Koros, 2021) but the operational part is a structure with some kind of central coordination. As the previously mentioned journalist has put it,

'Now it is a central [governmental] policy with the sense that we have now operations far away from the borders, from the West of Greece where the ports they [migrants] try to leave Greece, we thus have for sure many cases from Igoumenitsa, we have cases from Thessaloniki, we are talking about many kilometers from the borders which means that different units of the coast guard and the police must cooperate for the transfer of people and their pushback. Also we have pushbacks from different islands, we have pushbacks from Corfu until Krete and Anti-Kithira and elsewhere. We have [pushbacks] from different areas which shows that there is coordination. They cannot be pushed backs from Mesinia to Turkey and usually they will need to be embarked onto a different [HCG] vessel, there is a whole procedure. We have also allegations for pushbacks from inside the migrants' centres in Thessaloniki, Diavata, Lesvos and other islands [...] And we also how this is covered and the political announcements which show that this is a semi-official and open policy ... there is political support, and I think there is political command' (Interview 3, 05.01.2023).

The day that I was transcribing the above interview, a report by the Greek National Commission for Human Rights (GNCHR). The GNCHR has created a so called Recording Mechanism of Incidents of Informal Forced Returns. On 24.01.2023 the spokespersons of the Mechanism published its first Interim Report. The Report included qualitative and quantitative findings from testimonies of alleged victims of 50 cases of pushbacks. One of the main findings was that the operations were carried out by a 'recurring organized operational framework'

(GNCHR, 2023: 16). The Report went on to describe in detail how this operational framework was functioning in practice:

‘Testimonies indicate cooperation among various alleged perpetrators, transfer from one location to another, detention/restriction of movement in different facilities. As it is indicated, incidents of informal forced returns are carried out by mobilizing human resources, facilities, heavy vehicles or watercrafts and other logistical means. Moreover, as the testimonies indicate they occur in specific geographical regions, the particularities of which influence the means of implementation. The mode of implementation of informal forced returns (*modus operandi*), as revealed by the testimonies, presents an image of a staged approach. Most testimonies report that victims are first detected by a group (detection stage), then taken to a facility where they are kept under guard (detention or restriction of freedom of movement stage), and finally transferred from the detention/movement restriction area to the point of physical removal where the informal forced return is completed (physical removal stage). Some testimonies, however, especially when the place of detection is in the sea or near the region of Evros River, indicate that the detention/restriction of freedom of movement stage is skipped so that the informal forced return is carried out immediately after the detection. Testimonies recorded by the Recording Mechanism indicate that both persons in uniform and persons in civilian clothes appear to have been involved in these operations, supporting therefore the assumption that in these operations may have participated citizens not legally entitled to exercise public authority. This assumption is further supported by testimonies indicating that third country nationals speaking some of the victims' languages appear to have been involved as perpetrators in the process of physical removal. Furthermore, the vast majority of the testimonies report the use of violence during the physical removal stage, either by people in uniform or by other persons’ (*ibid.*).

It is not the first that that there have been allegations about an operational network which acts in violation with the EU law. Two years earlier, an important investigation had been published by an independent organisation with reference to ‘Europe’s Shadow Armies’ who perform pushbacks in Croatia and Greece (Lighthouse Reports 06.10.2021). There, witnesses and whistleblowers exposed a network of hooded militaries, paramilitaries and police and

coast guard staff who were operating within the state authority. In the only reaction by the EU Commission to allegations of such gravity, Ylva Johansson, the EU Commissioner for Home Affairs, with a statement different from the usual ones in terms of language and mood, referred to Greece and in particular to the Minister for Migration and Asylum and accused him of refusing to set up an independent committee that will examine the evidence provided by that investigation (*eKathimerini*, 08.10.2021). A couple of weeks later the Commissioner stated that '[p]ushbacks should never be normalised. Pushbacks should never be legalised' (Commission Portal 20.10.2021). And for the first time she referred to pushbacks as 'structural and organised' violence (*ibid.*). Those remarks by Johansson and the references to Shadow Armies can be directly linked to the 'grey networks', the theory of Neil and Peterie (2018) who was referred to at the first chapter in order to show the gravity and the organised form of the state crime. The same holds if we take into consideration the remarks a member of the Greek parliament who has been elected with SYRIZA, i.e., the opposition party. Thus, those same days, Nikos Philis, asked the Prime Minister to answer 'which is the operational arm of this disgrace [pushbacks], who are those in charge and where the orders for such actions come from?' (*Efsyn* 07.10.2021). However, from that time on, reactions by the Commission have been scarce if existed. Under the pressure of such revelations by the international media, Johansson admitted that pushbacks are not alleged but operations which have been proved (*Efsyn*, 01.07.2022). However, she added that she was satisfied by the fact that the Greek government had eventually agreed to set up a framework which would guarantee that the asylum system is in line with the respect to human rights (*ibid.*). Part of this framework was a mechanism that would investigate the pushbacks operations and bring evidence to Justice. Last but not least, Commissioner Johansson stated in mid-2022 that the Commission would examine whether Greece would continue to receive funding if it was proved that it violates fundamental human rights (*ibid.*). And in a letter sent by several NGOs to the Commissioner about their growing concern on serious violations of human rights due to pushbacks operations, the Commissioner stated that the Commission could exercise its right to start such a serious procedure against Greece (*EfSyn*, 20.07.2021). However, as also the interviews confirm, neither a cut in funding nor the right of the Commission to initiate an infringement proceedings against Greece has been exercised despite the oral warnings by the Commissioner (*Der Spiegel*, 29.07.2022).

What has happened with that 'agreed' framework and the mechanism remains largely unknown until today. In fact, in an effort to show reaction to the EU pressures, the Greek

National Transparency Authority had published its (non)findings from its investigations on pushbacks. According to this report, no evidence of pushbacks was found and the Greek authorities were doing their job with respect to the law and human rights (NTA, 2022). The report was criticised in terms of methodology, in terms of conclusions that matched perfectly with the governmental statements and in terms of independency from the government control (*Politico*, 13.05.2022; GCR, 2022), neither the Commissioner nor any other relevant person has commented on the situation ever since. While the independency, the methodology and the findings of that report can be easily compared with the independency, the methodology and the findings of the OLAF and its report on pushbacks that led to the resignation of Leggeri, as said in the introduction. Despite all that however, and contrary to the expectations for EU Commission responded, Margaritis Schoinas, the vice-president of the EU Commission argued -according to *Der Spiegel* (29.07.2022) and even if he knew about the OLAF report- that ‘there was no solid evidence that the Coast Guard conducted pushbacks ... [and] claimed the accusations have been lodged exclusively by “NGOs, the press and the authoritarian regime in Ankara.”’ At the same time, the head of the Greek National Transparency Authority which found no evidence on pushbacks left the Authority for a high ranking position in FRONTEX, namely as Head of Internal Audit Capability, according to his profile in *LinkedIn*.

### 3.4 EU responses

The respondents to my interviews had -through their different points of view- interesting remarks to do about the EU responses on the pushbacks. Their critique (and expectations) have been turned to the EU Commission primarily. A member of the European Parliament who was interviewed for this thesis answered:

‘Yes, it is the Commission. It is the Commission which can stop it, no other EU body can stop it. But they do not act against Greece or Croatia which are of the most horrible countries in terms of pushbacks. Many statements but they do nothing’ (Interview 7, 02.02.2023).

A critique not only to the Commission but also to particularly certain persons came from one of the interviewees:

‘The vice president Margaritis Schinas has also taken a political position in the absence of investigations and he insists in the narrative of border security and in general the securitisation. This narrative is the framework in which the pushbacks are justified. I think the message inside the Commission is ambiguous. At the vice president level there is most likely a message not openly in favour of the pushbacks but rather indirectly and for sure an absence of straightforward denouncement of the operations and push for investigation. The role that the Commission played in the resignation of Leggeri shows that there mechanisms of pressure which are efficient and if there was will there could do it. There is the infringement proceeding against Hungary and Poland for discrimination against LGBTQI community [...] I think that I would expect a much more strict and consistent message by the Commission against those practices that Greece is following, pressure toward a really independent mechanism of investigation, and this would be a good start. In political terms even the declarations would be stricter and in terms of processes nobody knows what else should happen for the infringement proceedings to start’ (Interview 3, 05.01.2023).

Important remarks were made in the above statement about the narrative framework which justifies the pushbacks. These points raised will be discussed further below where the interviewees are asked to discuss the competing frames. For now, the role of the Commission has been confirmed by one more interviewee who said that primarily it is the Commission which has the authority to intervene. But along with the Commission, the interviewee added that the FRONTEX has also a mandate to intervene not only in straightforward human rights violation but even if there is the slightest evidence (Interview 5, 13.01.2023).

The journalist who covers the thematic of migration policies and human rights commented on the role of the Commission:

‘Indeed, the EU Commission shows a very big degree of, how to say this..., laxity and leniency. We watch a very small, almost imperceptible escalation of the statements of denunciation of the pushbacks mainly by the European Commission Ylva Johansson who is keeping a distance from the government even in common appearances with the presence of Greek ministers where she says that Greece should do more implying that Greece is not doing anything to investigate the pushbacks allegations. At some point in her response to a letter by NGOs she had mentioned that one of the tools of the Commission is the launch of infringement proceedings something that she did not do eventually. After many declarations of alleged agreements between the Greek government and the EU Commission that a mechanism of safeguarding human rights in the asylum procedure it seems that what the Greek government understood is a mechanism of fundamental rights inside the Ministry of asylum which only independent it is not as the choice of the staff is with voting through officials of the ministry. Whoever knows how this Ministry works has no illusion that it is a real mechanism of investigation and guarantee of human rights’ (Interview 3, 05.01.2023).

What is even more interesting is that the interviewee argued that the Commission has not rebutted the Greek declarations that such mechanism is what it has been asked by Greeks in the negotiations and that some of the Commission’s pressures to Greece are only being done only to show to the public that the EU is responding, without really trying to put an end to the pushbacks. An interview with an EU representative who has a first hand experience about the situation in general and pushbacks in particular on the Greek islands at the borders with Turkey, was asked in an interview for this thesis whether the Commission is really trying to do something about the such human rights violation. He made the following remarks:

‘I thought that the EU is doing bigger and harder interventions before I started [working for the EU]. But actually being in there and seeing how it works it wasn’t that much. So are my expectations still the same? Nuh, no’ (Interview 4, 10.01.2023).

The expectations issue will be discussed below. For now, it is important to note that the interviewee stated that before they were placed to his/ her position s/he was not given any training on human rights or any preparation and guidelines of how to respond to human rights

potential violations. The interviewee on her/ his own accord started reporting violations. In the interview it was stated with confidence that there was no limitation on reporting and that actions were being done in the background on behalf of the EU Commission but there was no evidence that something changed indeed in the field (*ibid.*). In the same interview it was repeated the finding of the OLAF report that it is the rule that the EU delegates at certain levels of administration are not involved with the Greek authorities in investigating violations due to fears of repercussions or in this case fears of broken communication and cooperation with the authorities at the field. At the question whether the Commission had asked its delegates to do contacts with the authorities, the interviewee replied:

‘No they did not ask me to. Because it was also difficult for me to do investigations at my level, they did their own investigations and questionnaires at their own level [...] I brought it up to the local authorities a few times yes, I did... but it wasn’t... to keep things working it was not on me to keep asking questions and investigate everything because that was to the hierarchy at the organisation to discuss. People on the ground they do not want to discuss on those issues. As I said, there is something happening on the ground but it becomes political issue and what I know is that people [on the ground] are not allowed to discuss about it. You may ask questions but it will have effect on the relations and you will get no answers [...] It is a few things, yes. It is trust, it is cooperation; of course you want good cooperation and this is a thing that can stop the cooperation, it is a difficult subject to bring up’ (Interview 4, 10.01.2023).

This discrete or even passive response of the Commission reminds the conclusion made in literature about the EU which avoids responding directly to the revelations for Greek pushbacks operations (Cortinovis, 2021). An interviewee who has been active not only in making pushback operations visible but also in preventing them, argued that ‘in the beginning we tried to prove it. It is now proved but this did not help the lives of the people who suffer pushbacks, it is still happening’ (Interview 1, 23.12.2022). An example of the Commission’s responses to serious evidence on pushbacks operations in Greece can illustrate the above remarks even better. Contrary to what has been reported in the pro-government media in Greece (e.g. *iefimerida*, 16.07.2021), a European Parliament working group that had been set up to investigate various allegations against FRONTEX (i.e. the FRONTEX Scrutiny Working Group), found that the Border Agency neglected serious allegations for pushbacks that were



brought forward by several reliable actors (*Politico*, 14.07.2021). Importantly however, the Commission's response up till that point was that of criticism through the Commissioner's Johansson statements to the Agency for its 'reluctance of compliance' with the regulation provisions on monitoring of human rights (*Politico*, 22.02.2021) and a call to the Agency itself to call an urgent board meeting to discuss its involvement in Greek pushbacks. However, that management board was called but it announced it found no evidence on FRONTEX's involvement in pushbacks adding however that the head of FRONTEX did not provide all necessary information on time (*Euroactiv*, 22.01.2021).

It took the above presented OLAF report which validated evidence and left no room for further maneuver to the head of FRONTEX for the EU Commission to force Mr. Leggeri to resign. As said in the introduction however, pushback operations are still performed in a normalised manner by the Greek authorities in the seas where FRONTEX is operating too.

In the theoretical framework, whilst discussing the de-Europeanisation, cases of EU member states who opposed transformation were mentioned. However, according to the literature it is the veto points those elements which hinder the Europeanisation (Radaelli, 2003) of member states. In our case, although there are indeed domestic veto points (mainly the government) the EU pressures for abandoning the pushback operations are rather weak, discontinued and inconsistent. Thus, instead of promoting fundamental values and principles, the EU sets other political priorities. The representative of the NGO was asked about the degree of EU reactions and answered:

'When the head of the Commission, the head of the Parliament and the head of the Council of the EU went to Evros in March 2020 and called Greece the 'shield of Europe', since then a policy has been shaped which has the approval(?), the tolerance of the EU. For sure, afterwards there were reactions also inside the EU framework, from the European Parliament and small scale reactions by the Commission, mainly from the responsible Commissioner. All of these, in 2022 were set aside due to the war in Ukraine [...] the EU Commission is now paying the minimum attention to pushbacks' (Interview 2, 05.01.2023).

### 3.5 Actors' expectations

All those weak responses by the Commission and the fact that pushbacks are still the reality and the primary tool in the policy for border management in Greece have disappointed those who have been interviewed in the context of this thesis, as it will be shown further below. However, they have created another issue which is the overemphasis of some EU responses which in terms creates false expectations and in the end it feeds back to the disappointment. One example is the decision of the European Parliament to block the so called 'clearance funds' to the FRONTEX, as it has been reported by those Greek media which have condemned the Greek pushbacks (i.e. *Efsyn*, 19.10.2022). Although some interviewees told me that indeed this was a worth mentioning response by the European Parliament, the interviewee who actually works for the European Parliament and is focused on asylum and migration policy had a different opinion:

'There is a budgetary discharge procedure. Not to be mistaken with the yearly budget. This is not allocation, this is ex-post evaluation. The European Parliament decided not to grant the yearly discharge to FRONTEX for various reasons, for not applying the regulation of 2019, for not having enough fundamental rights monitors, for being implicated in human rights violations, for having the executive director invited to the parliament, there is a list of reasons why the European Parliament did not grant discharge. But this does not impact their funds, right? You understand that the discharge position it's a political signal, it means that the parliament does not think the agency is spending their money as it should be. But that does not mean they don't have the funds in their yearly budget that does not mean they don't spend their funds. That means that they have to explain themselves and come back over and over again and show us that they did change things we asked them to change. But that doesn't mean they didn't get the money (Interview 6, 27.01.2023)

A discussion that occurred repeatedly during the interviews was about the expectations that several actors against pushbacks had from the EU. It came over and over again that the respondents had turned their expectations towards the EU level but they were in a process of disappointment, after the lack of substantial EU responses to pushbacks. An MEP who was

asked in our interview about her/ his expectations and whether the EU has come up to them, replied:

‘The EU was for me the most important progress and it is until now. I think it reminds to people in our countries that this is the only path where so many people can live together under joint values, it is possible. But now we see a worsening of all that, the values; at the borders you have no values. Human rights are universal and not territorially limited. And we have to fight for our rights and our values and then to fight for refugees [...] otherwise you go only in member states and nationalism is the biggest danger no in the European Union’ (Interview 7, 02.02.2023)

Another interviewee (journalist) who was asked why they turned their expectations towards the EU to combat the pushbacks replied:

‘Since the domestic political, justice, whatever authorities showed no disposition to see what is going on even in a level of simple investigation, we said let us go and see whether the EU can have an investigative or inspective role [...] Eventually, whatever has happened in this issue came from that level. Ok, small, big, problematic but whatever happened came from the EU, from the insistence of certain MEP, or groups, or OLAF. I don’t believe that the EU has done...the EU was always trying to keep a balance between different positions, human rights yes but “I do not have jurisdiction on domestic authorities”, “Greece is the external border of the EU” etc. With the Leggeri resignation the EU could say, “yes the bad guy is now off” and life goes on’ (Interview 5, 13.01.2023).

Another interviewee who has reached the European Parliament in an effort to put an end to pushbacks was even more disappointed and argued that there are no expectations from the EU anymore:

‘First of all, we do not expect by the EU to do anything anymore. We wanted to believe that they [the EU] did not know about it [pushbacks]. But when we reached at the

point to see that OLAF produced their report and proved everything and still nothing happened. Ok, maybe FRONTEX is not involved anymore, but boats arrive, the Greek Coast guard pushes people back, well I stopped looking at the EU level. So in the beginning we hoped there will be some intervention but in the end we saw there was no action at all. I am not interested in the EU level anymore, there is nothing to do there.’ (Interview 1, 23.12.2022).

In terms of whether the EU is keeping up with its value or there is a compromise on the values on behalf of the EU the interviewee who works for the European Parliament responded:

‘Yes, definitely there is a compromise [in EU values]. The EU compromises its values every single time and it compromises itself in say it safe countries of origin [...] it compromises itself in every way towards its own citizens who believe in this project, it compromises itself towards people who defend human rights and they get criminalised for it, so yes of course’ (Interview 6, 27.01.2023).

The representative from the NGO, has put it similarly:

‘Of course there is a compromise in the EU values. This issue is not only an issue relevant to provisions of the Geneva Convention, the international law and the EU. It is all these yes, but it is primarily an issue relevant to the rule of law inside the EU. And this has been a gradually continuously worsened situation in responding to the issue of migration even from the beginning of the century but now this issue has taken large, threatening dimensions’ (Interview 2, 05.01.2023).

The Commission official had a different view however:

‘I think they [the values] are still the most important things [for the EU]. But look, these values... they were written at a moment when people were like ok this is how we want to do it. But in real life it doesn’t work like that. Because we see every country is a

suffering country and each government have their own rules and laws and... they do not always much. Interests of countries and people, they don't match. The values of a country and a government are heavier than the EU values ... I think the EU follows its value and wants to follow them but in real life it is not that easy, it is not that simple as it is written on paper... it doesn't work like that. And it makes more difficult in understanding each other's [EU and national] values. We are talking about Greece but look on what is happening in Germany, in the UK; it is not better' (Interview 4, 10.01.2023).

The interview with the journalist offered another perspective, regarding the compromise of the EU values:

'Listen, I am not an activist, I do not say open the borders, no police, defund FRONTEX etc. But what deeply annoys me is that you cannot have all those people who you give them the responsibility and you pay them to apply the law but they violate it every day and nothing is happening and put people in danger and people lose their lives, they are tortured, they are forced to get naked in 2022 in a European country and absolutely no one is doing anything. I do not have an agenda, I do not know how to solve the migration issue, I am not a philosopher, I am just a reporter who sees that there are violations and no one is doing anything. If you leave this happening then where all this stops?' (Interview 5, 13.01.2023).

### *3.6 Competitive frames competitive policies*

Special attention has been given in the different frames which justify the pushbacks or those that have been developed by those who oppose them. The statements of the interviews had much to say about those frames and the power they have in order to promote or stop a policy. Thus, one interviewee made the following remarks:

'It is true that the border surveillance and the securitisation narrative has been passed more widely as we can see at the European People's Party and the Far Right, as I also

showed with the case of Schinas. Although there is a playing with the words issue here. It is not straightforward [the justification of pushbacks]. They call the pushbacks prevention of departure as this case of the OLAF report has shown [i.e. the interviewee refers to the report by OLAF which mentioned that an obvious case of pushback was reported through an SIR as deterrence of departure from the Turkish coast even if the migrants' boat was stopped in the Greek territorial waters (OLAF, 2022: 45)]. There is however this contra argument which says security for whom and why migrants are a threat to the national security. For those people that have had everything of their possessions destroyed do they not worth security? These practices of violations create a precedent and they inure people to violations and eventually they inure us in the violations of our human rights and to violations of rights of other social groups as for example against the Roma, the LGBTQI, students, political groups etc. We are not safe thanks to the pushbacks; on the contrary pushbacks is the legal uncertainty, it creates an insecure society. But, yes, for now this argument of security is much stronger' (Interview 3, 05.01.2023).

The above remarks are important because as we saw at the first chapter, a main component of the law called Rule of Law which in turn defines the EU is the legal certainty (see above, part 1a). Thus, pushbacks not only violate certain EU principles but they also create those conditions which compromise the very essence of the Rule of Law. Another interviewee, has put it even more precisely. In the interviewee's own words:

'There is no issue of national security. No migration crisis has ever created such an issue. Not even in the borders between Belarus and Poland, Lithuania etc and not in the case of Evros. In those cases you can perhaps say there was an issue for public order. Nobody can say that if ten million of migrants were coming to Greece if the borders were left open at Evros there would be no national security issue. There could be. But in the numbers that we have seen until today there was not threat of national security. Let us leave out the national security. But in terms of public order, issues such as the Bataclan and Cologne, yes there could be the consequences of the migration waves. National security is used so as to excuse the harsh EU policies on migration' (Interview 2, 05.01.2023)

Last but not least, the activist who has tried to add visibility and prevent the pushback operations, added in the interview:

‘A lot of people are doing nothing because it is very close to say “I prevent pushbacks” to “s/he is an enemy of the national policy on the borders and s/he is a traitor”. But in reality, the way to defend your national sovereignty and your country is to defend the rule of law’ (Interview 1, 23.12.2022).

Another interviewee did the following remarks:

‘Migration as an issue will continue regardless of who is in power, name them Mitsotakis, Tsipras etc. Thousands, tens of thousands, millions, I do not know, of people will continue coming. Is Europe willing to do the so called “border surveillance at all costs”? What does it mean “at all costs”? Is the Greek public opinion willing to see weapons that shoot and sink [migrant] boats? There must be a limit. Where do you set that limit? Who sets it? This narrative does not go far, there must be a limit where you say this I cannot take it. While the other framing through a human rights perspective is based on laws, domestic, international, European coming from decades and have a reason and have been tested [...] we have never put these questions to people: “how far are you ready to go in order to protect your borders from migrants’ (Interview 5, 13.01.2023).

Regardless of the value of the above statements for the analysis of the competitive frames, they are in contrast with the statements an EU official made in my interviews (as shown above) according to which laws were made in another environment but now the member states have other concerns and other priorities.

The next chapter will discuss the main findings of the field research and will intend to provide an answer to the research question regarding the degree (weak or strong) EU responses to

the allegations and the hard evidence about Greek pushbacks. In doing so it will also intend to provide an explanation of those EU responses and add to the theory of Europeanisation, even through the concept of de-Europeanisations as the latter was presented in the beginning of the thesis.



## Chapter 4. Conclusions/ further research

The above presentation of data aimed at giving a clear picture of the severity and cruelty of pushback operations, to expose the level of violations of the EU fundamental values and the EU Rule of Law and to test the EU reactions to such violations. In summary, data collected and presented at the above chapter show that pushback operations is a three-decade long practice which has evolved into a central and normalised policy tool and eventually into a de facto policy exercised by Greece. The EU responses to such critical situation is weak, inconsistent and inefficient.

Chapter 3, presented both secondary data and, importantly, primary data collected from field research. As it has been set in Chapter 2 with regards to the methods of analysis of this thesis, one of the major concerns of the author and one of the primary contributions of the research was the collection, presentation and analysis of the primary data. Seven interviews were conducted, the first one on 23.12.2022 and the last on 02.02.2023. In total, an activist lawyer, two journalists, a director of an NGO, one Member of the European Parliament, one official of the European Parliament and an EU Commission official were interviewed offering insights in the issue of pushbacks and the EU responses that have not been included in other . In any case, research on Greek pushbacks is at the first stages while at the author's knowledge there has not been any other research on EU responses.

The time frame of the thesis has been set from the beginning to start from March 2020 and to extend until today. The reasons for the setting of this time frame have also been explicitly explained in Chapter 2. They concern the government's decision for the normalisation of the prevention of arrivals to an unprecedented minimum as the primary tool for effective migration policy. The data collected from the field research validate the research decision to set this specific timeframe.

EU member states' migration policies tend to be diverse and in many times opposing to each other. The diversity and disorganisation of policies have created discrepancies among member states. This situation increases the mobility of migrants from member state to member state and from the one to the other asylum and reception system. In this way, one of the main priorities of the member states i.e. to prevent further migration movements within the EU area -as this has been set by the Dublin Regulation- has been put into question. In turn, the member states have started a race to the bottom in order to make their asylum systems and reception conditions less and less attractive for the migrants. This is an ineffective and illegal in many cases strategy. Thus, answers have been sought in EU level for added value and for policy through coordination of actions. This thesis took on board the case of the Common European Asylum System (the CEAS) in order to show how the EU has intended to apply common policies and to diffuse common principles and values.

As explained in the first chapter, the EU efforts for common policies and the sharing of common principles and values create pressures to the member states to adapt to these policies. Some member states find it easier to adapt and some more difficult according to the degree of fit between their policies and values and the policies and values the EU requests the members states to apply. This process has been called Europeanisation and in particular top down Europeanisation. At the same time, EU member states tend to upload their policies and values to the EU level for various reasons, one of the most important being the fact that when the EU requests them to apply policies they will have less pressure as their policies are similar to the ones requested by the EU. This has been named bottom up Europeanisation.

However, there are cases where the member states strongly oppose the EU policies bringing forward obstacles (i.e. veto points) or even withdraw altogether from common policies and shared values. This has been largely coined with the term de-Europeanisation. However, for cases where the EU itself is reverting from its own principles and values, although there has been mounting academic criticism, a similar concept has not been developed. This thesis proposed the concept of de-Europeanisation for such cases by testing the EU responses to the Greek pushback operations.

By bringing forward the values and principles of the EU in general and the EU asylum acquis in particular, the first chapter also clarified the meaning and content of the EU principles and values. The EU respect and promotion of those principles and values would define whether we can discuss about the de-Europeanisation of the EU or remain at the Europeanisation concept every time we discuss and analyse the EU responses to the migration issue. At Chapter 1 it was also clarified that the main research question of this work is 'What is the degree of the EU response to the pushback operations in Greece?' Depending on the degree I expected to see the EU actions to defend and promote its principles and values. For reasons of clarifying the research question I made two hypothesis, first that that there is some degree of EU response and second that the degree of response is weak or strong. This was set following the literature of Europeanisation which distinguishes between weak and strong pressures for domestic adaptation to EU policies and values.

The weakness of the EU responses has been intended to be explained through questions to the interviewees. The assumption by the answers is that political rather than other reasons are the ones which dictate the weak responses by the EU. Although some political reasons (primarily right wing political priorities) were referred, this thesis did not intend to offer an exhaustive analysis of the reasons behind the EU's weak responses to such a large scale, straightforward, violent and inhumane breach of fundamental rights. However, another conclusion which comes from the assumption that the EU has the competency and the power to promote and defend its values by stopping the pushbacks, is that de-Europeanisation is not just the moving away from the defending of values but also from the moving away from areas where the EU has the mandate, the competency and the power to intervene. Thus, the decision to abandon or not take up the powers given to the EU by its founding and functioning treaties should be also seen as an issue of de-Europeanisation which needs further academic analysis and discussion.

In terms of analytical framework, it must also be noted that the present thesis took on board the critical frame analysis by examining the opposing frames which have been deployed by those who either support or fight against pushbacks. The framework of national security is the one which prevails amongst the public opinion perceptions and it defines the stance and (non)actions of the EU of the issue. Through this national security frame, anti-migration policies are drafted and carried out with the acceptance of the public. The frames of human

rights, freedom of movement and human dignity are shared amongst those who stand against the pushbacks but they do not seem to be diffused in large parts of the public opinion. Yet, the national security framework seems to create even further violations of EU values and principles through as this creates conditions which put in doubt another fundamental principle of the EU and the Rule of Law, namely the legal uncertainty.

Eventually, through the collection of primary and secondary data and through qualitative analysis, the following conclusions can be drawn:

-Pushbacks is a *de facto policy* in Greece with a large number of victims. Evidence collected, presented and analysed in this thesis in the context of qualitative analysis showed the extent, cruelty and gravity of such operation primarily within the time-frame set in the beginning of the research.

-Pushbacks are severe violations of fundamental EU principles and values. In particular, EU values and principles such as the principle of the non-refoulement, the right to asylum, the right of dignity, the Rule of Law have been among the founding and functional principles of the EU, enshrined in its Treaties and its legal documents. However, they have been clearly and straightforwardly violated by decisions taken by the Greek government and executed primarily by Greek official forces.

-Pushbacks are operations which are performed under the auspices of the Greek state and by official state actors -with extra support by non-state actors. The theory of gray networks as presented in Chapter 1 can be extended to the case of pushbacks in Greece.

-The EU Commission has the competency and the tools to stop pushbacks, however:

-Pushbacks are performed regardless the EU responses due to the fact that the EU responses have been (too) weak

Eventually, and in response to the research question and the two hypotheses:

-The degree of EU responses to the Greek pushback operations is weak. Thus, the EU has not decided to move towards the protection and promotion of its own fundamental values and principles. In this sense, the concept of de-Europeanisation of the EU as set in Chapter 1 can be used as an explanatory theory for cases where the founding principles of the EU are neither protected nor promoted by the EU itself.

Further research will be needed particularly in the collection, analysis and presentation of primary data. There are many more people who have been in the field whilst pushback politics and operations are developed. Little has been revealed and further research could offer insights about the pushback operations and the mechanisms (apparent or obscure) behind the EU responses. Another branch of research should be on the European public opinion acceptance of such policies and how far the EU citizens want their governments to go in the name of national security. Hopefully, the researchers will be -as they ought to be- free from frames which justify pushback operations and they contribute to a quick and straightforward termination of this historic crime.

*Mihalis R.*

*Samos, 14.02.2023*

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## Annex: The questionnaire

*Require agreement to the recording of this interview provided that anonymity will be guaranteed and what is recorded will be used for the purposes of this thesis only and will be kept private and confidential.*

*Introduction about what this research is about*

- 1) Since when you started being interested in pushbacks and why
- 2) Can you describe what pushbacks are and how such operations are performed
- 3) Why did you decide to direct/ re-direct your actions towards the EU level? What kind of actions were they and if you can be more precise on what we mean EU level (courts, commission, parliament).
- 4) Is there an operational and a political network? What about judicial authorities and other administrative bodies such as the National Transparency Authority. Is the EU in any form part of this network?
- 5) What expectations you had at that time from the EU and have those expectations changed now (increased/ decreased?)
- 6) What could a European response be that would satisfy your goals/ expectations? (stop pushbacks or even press charges)
- 7) In general, do you think the EU has done enough to respond to the pushback operations? **If yes**, what are those responses that satisfied you. **If not** why do you believe the EU has not done as expected by you?
- 8) Are there specific persons who in your opinion hold back a decisive European response?
- 9) Do you think there is a compromise of the European values (human rights, access to asylum and non-refoulement).

10) Those in and outside Greece who defend protection of borders by any means talk about national security. Those who oppose it, talk about values and human rights. It seems that national security is a stronger framework in terms of popular support. Do you think human rights and EU values would require reconsideration as a framework that could oppose the national security framework of narration?