



Harmonising asylum systems in Europe – a means or an end per se?

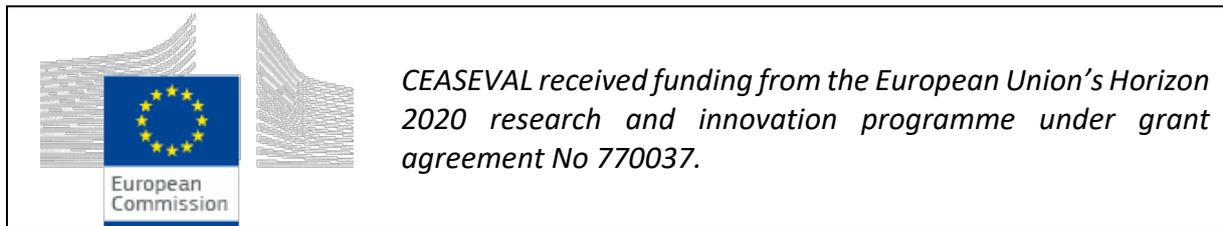
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Abstract

The Common European Asylum System was kick started with the 1999 Tampere Conclusions, which aimed at establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention. In the longer term, so the vision, the system should lead to a common asylum procedure and a uniform asylum status valid throughout the Union. To achieve this aim, a set of minimum - and later, common - standards were adopted in form of EU Regulations and Directives, together referred to as the Common European Asylum System. The pure emphasis on legal harmonisation soon revealed its gaps. Practical cooperation through the establishment of the European Asylum Support Office (EASO) became the answer to achieve practical harmonisation. The EU institutions, regional courts and an increasing number of political, policy, academic and non-governmental networks have engaged as important actors and drivers of harmonisation at the European level. While each driver contributes in one or the other way to the harmonisation of the European and national asylum systems, it becomes apparent that the overall sight of the ultimate goal and purpose of harmonisation got lost along the way. Based on a number of stakeholder interviews and desk research, the paper assesses the various drivers of harmonisation and consequently explores whether harmonisation ultimately became an end per se instead of a means to reach a common vision backed by all – now 28 – EU Member States. The paper thus concludes that investing during the coming legislative periods in re-identifying the vision behind a Common European Asylum System would be preferable to harmonising systems for the sole sake of harmonisation.

Keywords: Harmonisation; Networks; Common European Asylum System; EASO

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List of Acronyms and Abbreviations

AEAJ	Association of European Administrative Judges
APD	Asylum Procedures Directive
APR	Asylum Procedures Regulation
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
COI	Country of Origin Information
DG HOME	Directorate-General Migration and Home Affairs
EASO	European Asylum Support Office
EBCGA	European Border and Coast Guard Agency (Frontex)
EC	European Commission
ECRE	European Council for Refugees and Exiles
ECtHR	European Court of Human Rights
EMN	European Migration Network
EP	European Parliament
EPRA	European Platform of Reception Agencies
EU	European Union
MS	Member State
EURODAC	European Asylum Dactyloscopy Database
GDISC	General Directors' Immigration Services Conference
IARMJ	International Association of Refugee and Migration Judges
ICMC	International Catholic Migration Commission
ICMPD	International Centre for Migration Policy Development
IGC	Intergovernmental Consultations on Migration, Asylum and Refugees
IMISCOE	International Migration, Integration and Social Cohesion
IO	International Organisation
JHA	Justice and Home Affairs Council
MedCOI	Medical country of origin information
NGO	Non-governmental organisation
QD	Qualification Directive
QR	Qualification Regulation
UNHCR	UN Refugee Agency

"We all think harmonisation as something good ... but for whom: for states, for refugees?"¹

"The main problem with harmonisation is [...] that it is not motivated by the objective of improving protection standards, but by the assumption that the number of asylum seekers represents a problem, even though in theory this should have nothing to do with the quality of a protection system."²

"However, a question one need to consider is who benefits from harmonisation? What is the goal of harmonisation? Is the goal to prevent asylum shopping and that the regulation of the procedure should be similar? Or is the goal that there should be equality for applicants?"³

"I think one of the main challenges the CEAS has faced since the beginning is the assumption that the divergence of certain standards that can be regulated by asylum law is the reason why people move from one country to another. This is something I think runs like a golden thread throughout the Commission proposals on the current reform. [...] I'm not discrediting the potential value of such disparities in influencing some of those decisions, but I'm not convinced that they're the main driver."⁴

¹ Interview: Spain\WP26_cidob_E007_P

² Interview: Italy\WP26_FIERI_E001_P

³ Interview: Finland\WP26_uh_E008_P

⁴ Interview: Non-EU\WP2_6_icmpd_E012_P

1. Introduction

While the legal harmonisation of the EU Asylum Acquis (i.e. the transposition of EU law into national legislation) can readily be monitored, the practical implementation is often difficult to assess. One frequently used indicator for effective harmonisation in the Common European Asylum System (CEAS) is recognition rates by nationality, which differ widely across EU Member States (MS). If all Member States apply the same procedure, so the applied theory, there should no longer be any differences in recognition rates between EU Member States.

Harmonisation is thus a terminus which inherently accompanies the development of the CEAS since its early days. However, the limits of legal harmonisation have been soon identified and further drivers of harmonisation have been introduced to foster practical harmonisation – e.g. by establishing the European Asylum Support Office (EASO). In parallel, however, MS also turn to other networks or to bilateral or multilateral cooperation to adapt their national asylum systems. Following a first mapping of the main drivers of harmonisation,⁵ in this report the CEASEVAL project analyses the various identified drivers of harmonisation. The analysis is based on desk research and a series of qualitative interviews⁶ with stakeholders and asylum experts with different areas of expertise in the field of asylum – within the CEAS. The interviews were conducted to gain a better understanding of the perceptions of the various stakeholders on harmonisation and their respective experiences with different drivers of harmonisation.

The paper first defines harmonisation by pointing at the perceptions on harmonisation of stakeholders interviewed in the course of the project. Following this introduction, harmonisation is looked at along different levels and drivers: starting with the idea of creating a Common European Asylum System at more strategical/policy level, to the limits and challenges of legal harmonisation. Thereafter the paper looks at harmonisation through practical cooperation, analysing EASO's role, the role of Courts and bilateral cooperation between states. Finally, the paper looks at the various networks that have been established, each with their own purpose and their very distinct role in facilitating harmonisation of the CEAS across the MS.

2. Defining harmonisation

2.1. Perceptions

In the CEASEVAL project a number of expert interviews have been conducted with the aim to retrieve the perceptions of different stakeholders on the very meaning of harmonisation. Altogether 131 interviews have been conducted with national stakeholders in 10 countries as well as other key stakeholders such as the EC, EU Agencies, IOs and NGOs. The interviewees have been invited to share

⁵ See: http://ceaseval.eu/publications/Infogr_Harmonisation_png.png

⁶ Overall 131 interviews mixing quantitative and qualitative methods were conducted by the following 10 CEASEVAL project consortium partners: Technische Universität Chemnitz – TUC (Germany), Université du Luxembourg - UL (Luxembourg); International and European Forum on Migration Research – FIERI (Italy), International Centre for Migration Policy Development – ICMPD (Austria), Centre for International Information and Documentation in Barcelona - CIDOB (Spain), Tarsadalomkutatasi Intezet Zrt / Tarki Social Research Institute – TARKI (Hungary), University of Helsinki (Finland), New Bulgarian University (Bulgaria) and Foundation for European And Foreign Policy – ELIAMEP (Greece).

their perception of the meaning of harmonisation in asylum across the EU. The answers have been clustered into different sub-themes, all addressing the CEAS and the harmonisation efforts.

2.1.1. Goal/Purpose of harmonisation

Before answering the question what harmonisation means, a preliminary question that has been repeatedly brought up during interviews extended to the very goal and purpose of harmonisation.

Generally, as it was stated by an interviewee, there is less the question whether or not to harmonise the asylum systems in Europe, but rather to determine “the extent [...], the terms and in which areas to have harmonisation.”⁷ In this respect it was also warned that a too big of an emphasis on harmonisation may well be counterproductive as it may provoke resistance by states, thereby losing sight of the overall objective of harmonisation.

“(…), the search for harmonisation at all costs involves the risk of generating harsh resistance [coming from states]; apart from not ensuring the achievement of a better outcome.”⁸

Another opinion described harmonisation as a meaningful tool to reach an agreement over very contested principles of the CEAS, referring to responsibility sharing and solidarity. Accordingly, harmonisation could be a good tool “to make those principles understood and would put these principles on the table again.”⁹

The lack of a common defined goal of “harmonisation” was further described as a problem and a reason behind the inefficient implementation of the CEAS. Accordingly, the opinion was expressed that there is too much weight and importance put on harmonisation.

“One question that relates to the weight that's been given in the CEAS is whether harmonisation is an end in itself or a means towards achieving that end. Very often, there seems to be confusion on the part of policy makers on what exactly they should see harmonisation as. We sometimes see efforts to harmonise for the sake of harmonising, which we do not necessarily agree with.”¹⁰

In the same vein, harmonisation was regarded as “a fiction to which too much value is being attached.”¹¹ Ultimately, as illustrated by an example by another interviewee the practical harmonisation is very difficult to assess:

“Imagine two applicants for asylum which in all possible ways are similar - nationality, origin, personal situation, etc. - they apply in two different countries, are they treated the same, is the outcome the same. That would be harmonisation in practice. But it's very difficult to assess, because you rarely have two applicants who are the same. Everyone is individual, everyone has their own grounds and reasons.”¹²

⁷ Interview: Spain\WP26_cidob_E007_P

⁸ Interview: Spain\WP26_cidob_E007_P

⁹ Interview: Luxembourg\WP26_ul_E002_P

¹⁰ Interview: Non EU\WP2_6_icmpd_E012_P

¹¹ Interview: Netherlands\WP26_uva_E009_P

¹² Interview: EU\WP26_icmpd_E007_P

2.1.2. What is harmonisation?

The interviewees offered various meanings or perceptions of harmonisation. Evidently harmonisation is primarily understood to be well connected with an **approximation of national laws**, based on common principles and legal standards. In the CEAS, those standards are determined by EU norms.

"(...) harmonisation includes substantively primarily the legal parameters of the European Asylum System"¹³

However, even legal harmonisation was described as offering a range of harmonisation levels, whether solely determining the principles of protection or regulating detailed procedural and administrative matters.

"full harmonisation, or just minimum harmonisation on principles, or you can go as detailed as what are the procedural aspects in terms of things that would be at national level, like an administrative decree or ministerial decree, so you can have something that is very basic or you can go deeper into the last detail of the practices."¹⁴

A number of interviewees connected harmonisation with **procedural** and **institutional** elements. Harmonisation, in this respect, was described as *"a systematic approach towards the management of asylum and reception"¹⁵* or a system consisting of *"[o]ne procedure, one institution [with] the need to increase the prerogatives of EASO"¹⁶*. Harmonisation would result in a situation where *"all member states have the same examination criteria, the same criteria to define status and also the same procedure and the same social rights. This would be harmonisation"¹⁷*.

Finally, besides legal, procedural and institutional elements, a number of respondents stressed the **outcomes** as the main means of harmonisation. The understanding that harmonisation shall mean that cases result in similar/same decisions in all CEAS countries has been contemplated by many stakeholders. Same results are also considered a prerogative of fairness that applications and applicants are treated the same in different countries.

"[there is] a need for harmonisation, since we need to be able to trust that the legal systems and the decisions made in other countries are the correct one."¹⁸

"(...) within the European Union it cannot make a difference in which member state the asylum procedure takes place. (...) Harmonisation has something to do with fairness and equal treatment"¹⁹

2.1.3. Limits of harmonisation

Despite the different understandings of what harmonisation is in the first place, there certainly are limits to harmonisation. Interviewees referred to a number of limits, such as "different administrative

¹³ Interview: Germany\WP26_tuc_E001_P

¹⁴ Interview: EU\WP26_icmpd_E008_P

¹⁵ Interview: Italy\WP26_FIERI_E004_P

¹⁶ Interview: Bulgaria\WP26_nbu_E010_P

¹⁷ Interview: Luxembourg\WP26_ul_E003_P

¹⁸ Interview: Finland\WP26_uh_E009_P

¹⁹ Interview: Germany\WP26_tuc_E001_P

systems”, “differences in capacities”, “different national interests” but also “the lack of national harmonisation”:

- *Harmonising apples and pears?*

As one of the biggest challenges of harmonisation interviewees mentioned the institutional differences between the 28 EU MS. The situation, administrative systems and traditions in the various EU MS were described as so fundamentally different that they hardly can be compared and even less harmonised with each other.

A number of comments questioned how the very different capacities of national asylum authorities could possibly allow harmonisation in practice. One interviewee for example questioned whether “[It is] *possible to harmonise systems where in one country the asylum authority consists of 5,000 people while in another there are 20 people tasked with asylum agenda?*”²⁰ Similarly another interviewee emphasized that “*(...) it makes a difference if you take care of 100 or 100,000 arrivals.*”²¹

Harmonisation challenges in these instances derive from the very basic available resources of countries, their size and the flows they have to manage. It is certainly challenging to provide the same (e.g.) reception standards for less than 100 applicants for international protection as for a couple of thousand applicants. At the same time small migration services will simply not have the resources to specialise in particular profiles of applicants as do immigration services with high numbers of applicants. Evidently with a lack of specialisation and practice (because the number of cases is simply lower) also the experience (e.g.) about certain countries of origin or specific interpretations of the (e.g.) Qualification Directive may lead to diverse results.

On the other side, the different experiences and available resources (or the lack thereof) may also limit countries that have already developed effective systems to further advance them. As an example interviewees referred to accelerated procedures²²:

*“Accelerated procedure is different for countries with a lot of staff than for countries that have little staff, and you cannot compare this.”*²³

*“I am for a general harmonisation, but without it interfering with Member States because we have the possibility to do an accelerated [procedure] in six days, in a different country it might be 48 hours... It all depends on the options countries have. We can do it in a few days whilst respecting people’s rights, but if we impose the same thing on other Member States which, logistically, cannot do it, and need 1-2 months to respect their rights, they should have 1-2 months.”*²⁴

Certainly it makes a huge difference whether a small unit needs to apply and adhere to a wide and complex range of legal and procedural standards or whether this task is shared within bigger administrations. As already mentioned, the number of applicants may equally influence procedural and reception conditions that a host country can afford or make available. One interviewee therefore

²⁰ Interview: Austria\WP2_6_icmpd_E003_P

²¹ Interview: Finland\WP26_uh_E007_P

²² Art. 31(8) APD

²³ Interview: Non EU\WP2_6_icmpd_E012_P

²⁴ Interview: Luxembourg\WP26_ul_E006_P

questioned “whether harmonisation would be necessary because the migration pressure is different in every country.” According to the interviewee this would in fact justify asylum systems not to be the same everywhere.²⁵

Similar to the capacities, the various different administrative and institutional practises challenge harmonisation.

“there are differences “how issues in general are taken care of in each country, there are different administrative practices.”²⁶

“(…) procedures are not harmonised among the MS, which can be explained by different legal cultures and administrative cultures.”²⁷

“(…) in Finland the 2nd instance is the Administrative Courts, other countries have Asylum Courts, and some have other institutions that act as the 2nd instance.”²⁸

Furthermore harmonisation is being regarded as an “absurd” idea considering the huge differences between the countries, without even speaking of the asylum systems. Interviewees referring to these challenges identify reasons such as the reputation, the social system or the economic situation of a country far more important “pull factors” than the national asylum systems – thus harmonisation of asylum system would be rather irrelevant.

“The issue at stake, which is worth noticing when speaking of harmonisation, is that states’ welfare systems are very different from one another. Ergo it is very difficult and even “absurd to expect complete homogenization, because it will not happen”.²⁹

“(…) very different conditions of living and economic positions among the member states.”³⁰

“it does not make much sense, because even if a person is ensured the same in terms of services provided across countries, she will still want to go to the country where the general situation is better off.”³¹

“The harmonisation of asylum systems presumes a cultural and economic convergence among member states, that doesn’t even exist. I believe it is easier to harmonise asylum systems among Scandinavian or Benelux states; however, harmonisation between the Netherlands and Bulgaria, for example, might be a tough one to crack.”³²

- *Interest of states*

The interest of states remains another limitation of harmonisation. This may adhere to preferring one area of the CEAS over the other up to an overall change of asylum policy and a more broad disagreement with a joint European asylum policy.

²⁵ Interview: Hungary\WP26_tarki_E008_P

²⁶ Interview: Finland\WP26_uh_E007_P

²⁷ Interview: Finland\WP26_uh_E008_P

²⁸ Interview: Finland\WP26_uh_E008_P

²⁹ Interview: Spain\WP26_cidob_E009_P

³⁰ Interview: Germany\WP26_tuc_E001_P

³¹ Interview: Spain\WP26_cidob_E009_P

³² Interview: Hungary\WP26_tarki_E006_P

“The degree [of harmonisation] also depends on the interest of the state. States have a strong interest to follow Dublin, while they do not have it concerning Reception. States are afraid that it will constitute a pull factor if they provide too good reception services. Thus, many states do not want to have a good reception system.”³³

“We also look at our national interest; we cannot deny it. Summing up, we are still far away from a real harmonisation”³⁴

“There were times when a regulation was only a draft in the EU but Hungary [already] moved all the way forward and already legislated it. Now the situation has changed, Hungary is on a completely separate road.”³⁵

- *Lack of national harmonisation*

According to some interviewees, before talking about harmonisation at the EU level, more focus should be drawn towards harmonisation at national level. Particularly the appeals instance has been mentioned in this respect.

“(…) with regard to the judicial/appeal phase there is no harmonisation at the national level. (...) There are also Italian courts that tend to grant subsidiary protection much more than others, interpreting the concept of subsidiary protection in a larger way. Conversely, there are other courts that pay more attention to the individual story of the applicant (...) we should focus first on harmonisation at the national level, and secondly on harmonisation at the EU level”³⁶

“Also courts are confronted with an ever emerging importance of the CJEU. However, while this would be a logical source of harmonisation, courts are “still completely focused on [national] high courts, which also has to do with the fact that even the high courts themselves [...] still have a hard time accepting that Brussels or Strasbourg are superior to them.”³⁷

More fundamentally an interviewee identifies the limits of harmonisation with reference to the fact that the CEAS is built on an outdated concept of the 1951 Refugee Convention.

“Standardising all this is a very intellectually interesting project, but practically everybody knows that it cannot work. And we can standardise the procedures, but we are still in the context of Geneva, which is not up to date anymore.”³⁸

2.1.4. Side effects of harmonisation

Harmonisation in many ways lead to positive and negative side effects. On the one side it has forced some MS whose asylum system were not yet at high standards to adapt to the minimum standards as

³³ Interview: Finland\WP26_uh_E008_P

³⁴ Interview: Germany\WP26_tuc_E003_P

³⁵ Interview: Hungary\WP26_tarki_E001_P

³⁶ Interview: Italy\WP26_FIERI_E006_P

³⁷ Interview: Austria\WP2_6_icmpd_E006_P

³⁸ Interview: Luxembourg\WP26_ul_E005_P

set in the various instruments of the CEAS. On the other hand, in many cases restrictive EU policies have also led also to restrictive national policies and amendments.

“Harmonisation was the only reason the changes took place”.³⁹

“Relocation showed that harmonisation is both, needed and useful” – “common deadlines for all, common processes are needed”⁴⁰

“EU Directives had a huge positive impact on national reforms in the field of asylum, because the Italian asylum system was still underdeveloped.”⁴¹

In some instances, EU law has also put forward to justify restrictive national policies.

“Many of the recent new restrictive policies, both concerning decision making processes, reception and deportations and so on, have been made with reference to the EU. “I am not sure if the EU really has demanded these restrictive policy changes, or if the government only use the EU as a scapegoat, but this reference to other countries has been obvious in recent years.”⁴²

2.1.5. Summing up the perception of harmonisation

The perceptions of harmonisation shared by national and international stakeholders showed a variety of differences and existing challenges in the creation of a Common European Asylum System.

Neither as an instrument nor as a goal per se is harmonisation sufficiently defined within the Common European Asylum System. Certainly harmonisation cannot be fulfilled purely at the legal level. It also requires and extends to practice. But it seems more than doubtful how harmonisation of the CEAS may lead to similar outcomes (e.g. recognition rates or social guarantees for applicants for and beneficiaries of international protection).

The fact that national stakeholders tend to seek for obstacles for harmonisation of the CEAS at national level, already illustrates *per se* the lack of a common European vision. However, if national visions are not in line with European ones, also harmonisation of national asylum systems will stumble and remain contradictory.

In such an environment, harmonisation may well indeed become an end in itself instead of a means to achieve a truly common and European asylum system.

³⁹ Interview: Greece\WP26_eliamep_E001_P

⁴⁰ Interview: Greece\WP26_eliamep_E013_P

⁴¹ Interview: Italy\WP26_FIERI_E002_P

⁴² Interview: Finland\WP26_uh_E010_P

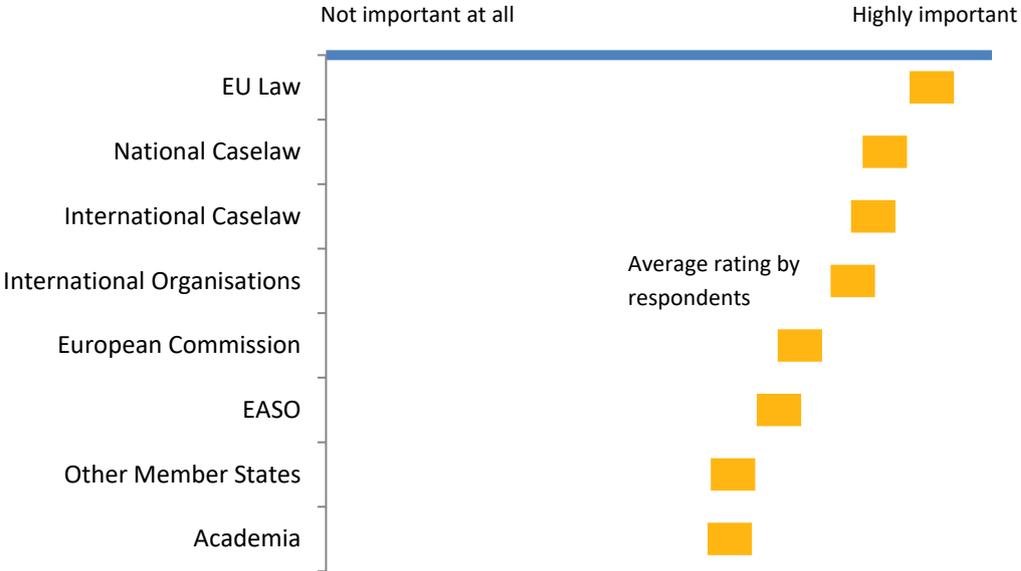
3. Harmonisation of asylum in Europe

3.1. Introduction

Harmonisation of asylum in the EU is driven by various tools (see 13Figure 2 below). While some are more dominantly influencing the road towards a common European asylum system, others have less impact. Most importantly, multiannual EU programmes provide overall **policy directions**, which are translated into a binding set of **legal** EU acts, (in essence) two regulations and four directives. Since 2010 a special Agency, the European Asylum Support Office was put in place to foster **practical harmonisation** among the EU Member States. Practical harmonisation however is also driven by the jurisprudence of international and national courts, which in essence happened at three dimensions: between national judges and European judges, (CJEU, ECtHR); between European judges themselves, and between national judges of the different EU MS.⁴³ Increasingly over time, also an ever growing number of stakeholders formed or became part of various **networks** (such as thematic, ad-hoc or political governmental networks, academic and non-governmental networks and a broad number of networks established in the framework of the various EU institutions and EU agencies).

That each of these drivers play an important role establishing the CEAS is also illustrated by responses of stakeholders who named all those drivers as relevant in case national asylum policies are to be changed (see below Figure 1). Evidently EU law was rated as most important driver followed by national and international case law and the advice of International Organisations. The EC and EASO are also considered important, the practice of other MS and academic opinions in turn as the least important.

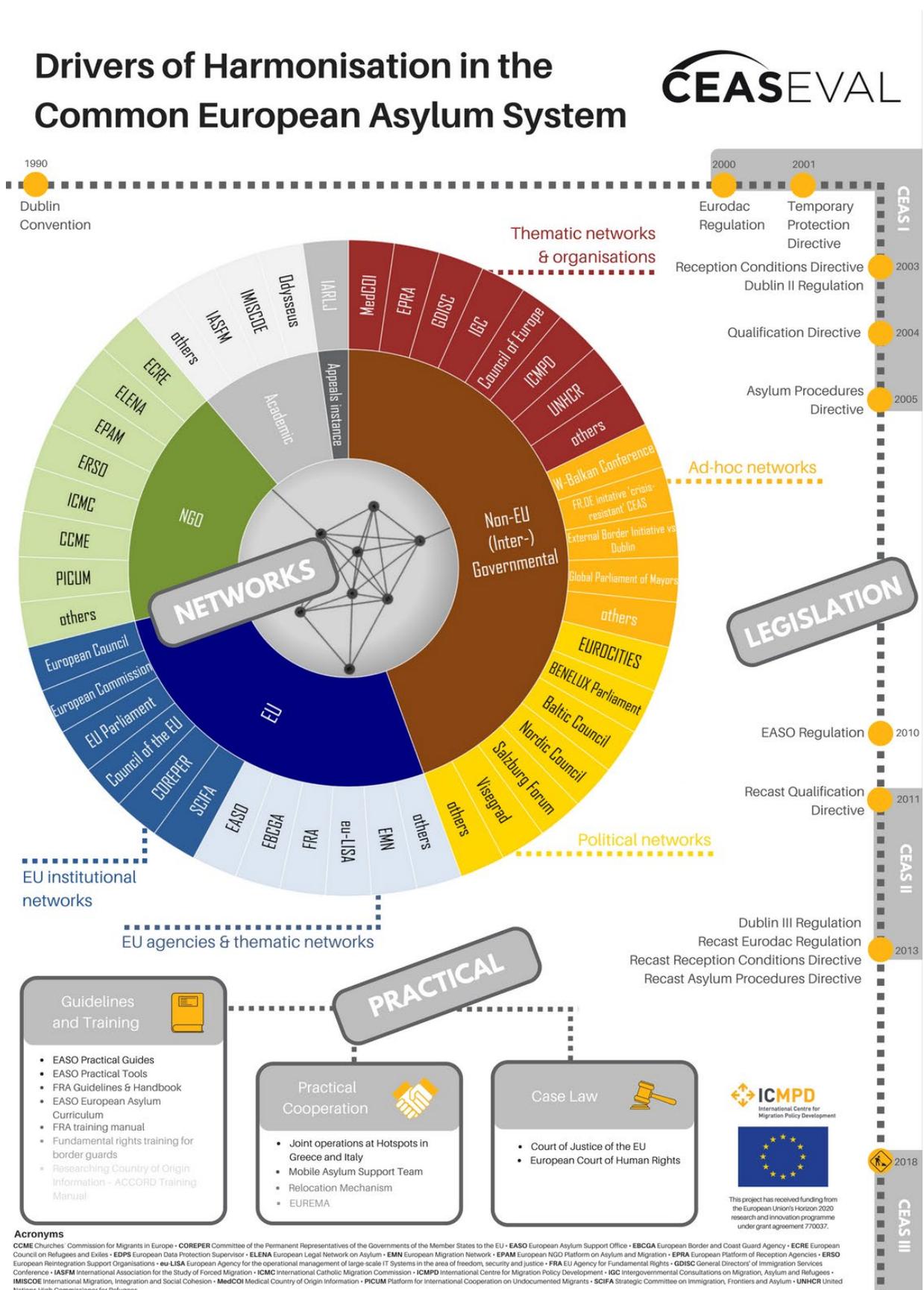
Figure 1: “In case you need to change your asylum policy, what are the most important sources you will consult?”



Source: CEASEVAL interviews with 131 CEAS stakeholders

⁴³ Lambert, H (2009): Transnational Judicial Dialogue, Harmonisation and the Common European Asylum System p 547.

Figure 2: Drivers of Harmonisation in the Common European Asylum System



Source: CEASEVAL infographic, downloadable at <http://ceaseval.eu/publications>

Figure 2 visualizes the different drivers of harmonisation. Each of the drivers plays a crucial role in the creation of the CEAS. Whereas legislation is broadly understood as the key instrument to achieve harmonisation, the below section shows the increasing importance of other instruments, tools and stakeholders addressing the practical side of implementing the EU acquis. Equally the ever growing number of international organisations, platforms and initiatives show the urgency of exchange and discussion among stakeholders in the field of asylum in Europe.

In the following we start to describe the emerging asylum architecture in Europe addressing mainly the asylum policy development, followed by an overview of considerations on gaps and limits of legal harmonisation. Finally, the soft harmonisation tools, practical cooperation and networks are described with a view to their value for achieving a more harmonised asylum system in Europe across the MS.

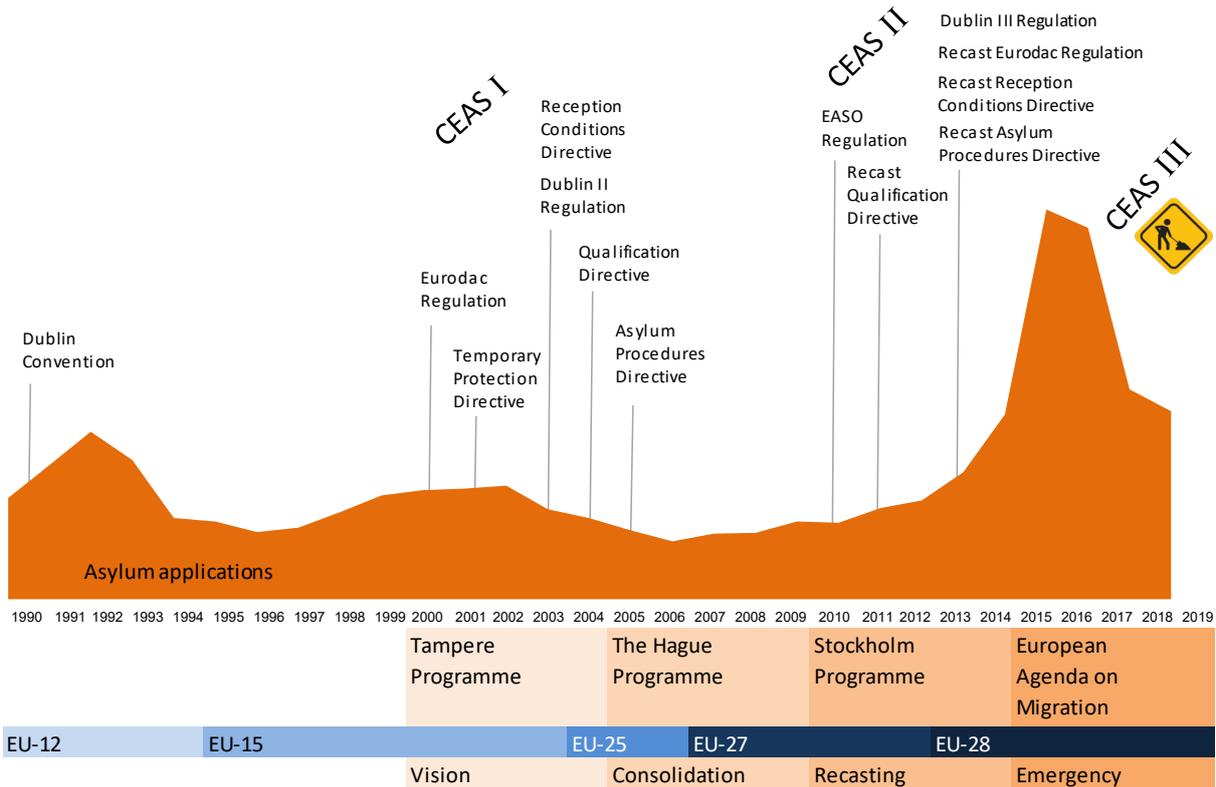
3.2. Harmonisation of asylum architecture in Europe

The 1951 Geneva Refugee Convention is the basis of nowadays international refugee law. While at its core the Refugee Convention determines who is a refugee (refugee definition or inclusion clause, Art 1 A), it does not entail any guidance or standards on the specific procedure under which the signatory states should determine whether a person is to be granted a refugee status or not. As a consequence, the signatories of the Convention developed their own procedures based on their respective national legal traditions and their understanding and interpretation of the 1951 Refugee Convention. Some national asylum systems developed more favourably for asylum applicants and refugees than others. Already before the EU formally became competent in matters of asylum, some harmonisation of national policy frameworks and practices has taken place in various intergovernmental contexts, including the UNHCR, jurisprudence of the ECtHR, and intergovernmental initiatives under the EC (EU) umbrella or associated to the EC (EU), such as the Dublin Convention. The Common European Asylum System, however, has only developed only since 1999 basically along four multi-year programmes.

3.2.1. The Vision

The European Council at its special meeting in Tampere on 15 and 16 October 1999, agreed among the then 15 EU Member States to work towards establishing a Common European Asylum System, to be implemented in two phases (Tampere Programme 1999-2004). The vision of establishing a Common European Asylum System was based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement. (Tampere Conclusions, para 13). In the framework of this programme the first generation of CEAS instruments has been negotiated and adopted, consisting of (in chronological order) the EURODAC Regulation, the Temporary Protection Directive, the Reception Conditions Directive, the Dublin Regulation, the Qualification Directive and the Asylum Procedures Directive. While the directives established minimum standards for Member States, the Dublin System developed – in the absence of a comparable system in Member States – as a directly applicable regulation.

Figure 3: The genesis of the CEAS



Source: own elaboration, asylum applications data from Eurostat (migr_asyctz and migr_asyappctzm)

3.2.2. Consolidation

The following 5-year-programme, the Hague Programme (2005-2009), set the next goals for the next phase of the CEAS, which was the establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection, however, following a complete evaluation of the legal instruments that have been adopted in the first phase. During the running of the Hague Programme the implementation of the various CEAS instruments took place but no amendments have been initiated. Towards the end of the programmes tenure however, an important complementing directive established EASO. The foundation for this agency was laid by the Pact on Immigration and Asylum which stated clearly that “[t]hat office will not have the power to examine applications or to take decisions but will use the shared knowledge of countries of origin to help to bring national practices, procedures, and consequently decisions, into line with one another.” The underlying idea was thus, that commonly used evidence (Country of Origin Information) would lead to same findings, same decisions and thus same recognition rates across the EU MS. Earlier, the EC launched a consultation process on the future architecture of the CEAS by publishing the Green Paper on the future of the CEAS.⁴⁴ Among others, joint processing was understood as an additional possibility for further harmonisation.⁴⁵ While looking into ways how the second phase of the CEAS could improve the

⁴⁴ EC (2007)
⁴⁵ EC (2007), 4

legal harmonisation, the Hague Programme already clearly set the route towards more effective practical cooperation and achieving harmonisation through cooperation.⁴⁶

3.2.3. Recasting

The Stockholm Programme (2010-2014) reiterated the goal of creating a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection. The implementation of amendments of the CEAS instruments shall provide a better and more coherent application of them and should prevent or reduce secondary movements within the Union, and increase mutual trust between Member States. In this period the negotiations for all CEAS instruments ended and the Recast Qualification Directive, followed by the Dublin III Regulation, the Recast Eurodac Regulation, the Recast Reception Conditions Directive and the Recast Asylum Procedures Directive were adopted. A proper evaluation of these recast instruments was never finalised because of the emerging ‘refugee-crisis’ in 2015.

3.2.4. Emergency

The (so far) last multi-year programme on migration was presented on 13 May 2015, when the European Commission presented its European Agenda on Migration⁴⁷. While the Agenda has been planned before, it got strongly influenced by incidents in the Mediterranean, where 800 people drowned as their vessel sank on their way from Libya to Italy, elevating the death toll at sea to 1,700 persons in 2015. The agenda set, among other initiatives, interventions in the area of resettlement and relocation. The programme thus operated rather in an emergency environment and lead also to a new impetus with respect to the CEAS by the EC tabling a communication outlining its approach for the reform of the CEAS on 6 April 2016. According to the Commission, “there are significant structural weaknesses and shortcomings in the design and implementation of the European asylum and migration policy”. Consequently the EC envisaged another comprehensive reform of the asylum acquis only shortly after the conclusion of the second phase of legislative harmonisation and while many Member States have still not fully transposed the asylum instruments (Wagner et al (2016, p35). The set of proposal of new CEAS instruments were published on 04.05.2016 (Dublin IV Regulation⁴⁸, Eurodac Regulation⁴⁹ and the EASO Regulation⁵⁰) and on 13.07.2016 (Asylum Procedures Regulation⁵¹, Qualification Regulation⁵², recast Reception Conditions Directive⁵³ and the EU Resettlement Framework⁵⁴), remarkably proposing the transformation of the Qualification and Procedures Directive into respective Regulations expecting higher convergence of the respective instruments. The proposals are to date not adopted. Broad agreement has been found between co-legislators on the Qualification Regulation, the Reception Conditions Directive, the Eurodac Regulation and the (new) Union

⁴⁶ EC (2007), 9

⁴⁷ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

⁴⁸ [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1502376639592&uri=CELEX:52016PC0270\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1502376639592&uri=CELEX:52016PC0270(01))

⁴⁹ [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1485250294958&uri=CELEX:52016PC0270\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1485250294958&uri=CELEX:52016PC0270(01))

⁵⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1485250747141&uri=CELEX:52016PC0271>

⁵¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1485247618119&uri=CELEX:52016PC0467>

⁵² <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1485247782892&uri=CELEX:52016PC0466>

⁵³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1485248020869&uri=CELEX:52016PC0465>

⁵⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1485248133885&uri=CELEX:52016PC0468>

Resettlement Framework. However no agreement has been yet found on the European Union Agency on Asylum, the Procedures Regulation and the Dublin Regulation.⁵⁵

3.2.5. Summing up the genesis of CEAS harmonisation

Summarised, a view on the different multiannual programmes shows that the vision of the CEAS developed broadly under the Tampere Programme with another attempt to further the vision by a broad consultation round for the Green Paper on the future of the CEAS in 2007 under the Hague Programme. Since then however, no new attempts were made to renew and the vision and to put it on more broad footing by including all EU MS in the process. As Collett put it, “nostalgia for the early JHA, particularly the Tampere Programme, has coloured analysis of successive programmes, lamenting the lost ambition of the early architects.”⁵⁶ Instead, the following multiannual programs broadly repeated the initial ideas of building up the CEAS, i.e. to create a common area of protection, with one asylum procedure and the vision that an asylum claim is decided similarly irrespective in which MS the application is submitted.

However, the initial vision has been developed by then 15 EU Member States, nearly half of today’s composition of the EU. The remaining 13 countries, which acceded to the EU only at a later stage, had to swallow the asylum *acquis* including the preambles and the visions developed broadly around 1999. The lack of a commonly adopted joint vision became apparent when a group of those newly acceding countries, the Visegrad countries, opposed the idea of a quota system. As Zaun stated, “this highlights that the accession of 13 Member States since 2004 has clearly diversified the EU, both in terms of values and cleavages”.⁵⁷ However, no attempt has been made to develop jointly a common new vision of the future of the CEAS which would have included also those MS that were not part of the vision created in Tampere.

3.3. Legal harmonisation

3.3.1. Introduction

The legal instruments to achieve the “Common European Asylum System” already showed considerable conservatism as harmonisation of national systems has been chosen over unification: the majority of legal acts forming the CEAS are EU Directives aiming at “harmonising” different existing state practices in the field of asylum. Craig & de Búrca describe EU directives as “one of the main ‘instruments of harmonisation’ used by the Community institutions to bring together or coordinate the disparate laws of the Member States in various fields”⁵⁸. EU directives, however, set minimum or common standards, which in turn are to be transposed by national legislators and thus, allow for leeway for a MS. Different transposition, practices and laws in different countries in the EU are consequences of applying this tool for harmonisation. Unification however, had to be used as a tool to develop those procedural areas which by then were not needed in any EU MS, namely the

⁵⁵ See EC: European Agenda on Migration - Fact Sheets on managing migration in all its aspects at: https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration/background-information_en

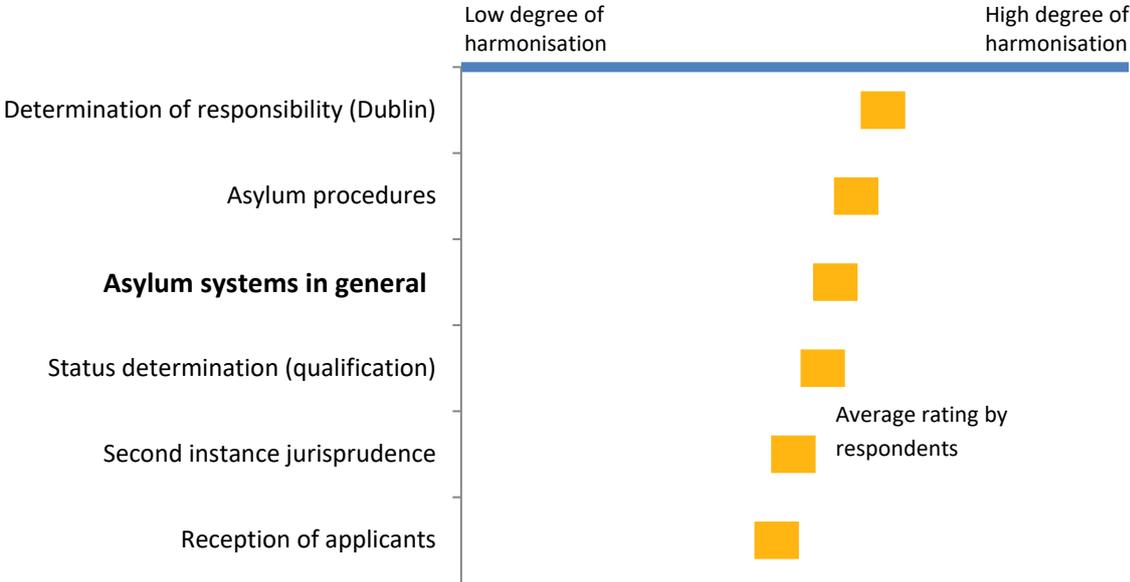
⁵⁶ Collett, L (2014)

⁵⁷ Zaun (2017)

⁵⁸ Craig and de Búrca (2008), p 279

determination of responsibilities among and between EU MS (the Dublin System) and the exchange of fingerprints that would operationally support the implementation of the Dublin system through the Eurodac database.⁵⁹

Figure 4: “To what extent are the following areas of the CEAS harmonised at EU level?”



Source: CEASEVAL interviews with 131 CEAS stakeholders

3.3.2. Gaps in harmonisation

The legislative standards elaborated by the CEAS are not implemented by Member States as an indivisible body of law. A comparison of national asylum systems often shows that convergence in the transposition and implementation of EU legislation is area- and objective-specific. The case of asylum procedures merits particular consideration. With the transposition of the recast Asylum Procedures Directive,⁶⁰ many countries adapted their procedures to the framework set out by the Directive, where different cases are to be channeled into a regular, prioritised, accelerated, or border procedure.⁶¹ Concepts such as “safe country of origin” have proliferated in national asylum systems. At the beginning of 2015, eleven Member States (Austria, Belgium, Czechia, Germany, Denmark, France, Ireland, Luxembourg, Malta, Slovakia, United Kingdom) had lists of safe countries of origin.⁶² By 2019, such lists have also been established in the Netherlands. Hungary, Croatia, Slovenia, while Italy has recently introduced the concept in its domestic legislation.⁶³ Conversely, crucial guarantees provided by the Directive to vulnerable asylum seekers navigating accelerated and border procedures have not

⁵⁹ See Wagner (2018)
⁶⁰ The deadline for transposition of the Directive was 20 July 2015, subject to a later deadline of 20 July 2018 for its Articles 31(3)-(5): Article 51 Asylum Procedures Directive. To date, Spain has not adopted measures to transpose the Directive: AIDA (2019) *Country Report Spain, 2018 Update*, 89.
⁶¹ Articles 31(7), 31(8) and 43 Asylum Procedures Directive.
⁶² European Commission (2015) An EU ‘safe countries of origin’ list; AIDA (2015) *Common asylum system at a turning point: Refugees caught in Europe’s solidarity crisis*, 78.
⁶³ AIDA (2019) *Country Reports, 2018 Update*.

been transposed with equal rigour. For example, Article 25(6)(a) of the Directive requires Member States to exempt unaccompanied children from accelerated procedures, unless certain grounds apply. Several Member States (Austria, Belgium, Germany, Netherlands, Italy, Poland, Portugal, Romania) have failed to incorporate this rule, although some apply it as a matter of administrative practice.⁶⁴

Furthermore, transposition does not necessarily result in practical implementation. Several Member States have incorporated aspects of EU law in their domestic legal order without applying them in practice. For example, accelerated procedures set out in Article 31(8) exist in law but are not applied in Germany, Cyprus, Greece.⁶⁵

3.3.3. Limits of legal harmonisation

Divergences between asylum systems are too often attributed to disparities in domestic legislation, and solutions are accordingly looked for in legislation. Yet, common laws are usually a product, not a driver of harmonisation. The effectiveness of EU legislation in driving harmonisation efforts is constrained by several limitations.

Disparities in national legal frameworks have often come as a result of the process of transposition of Asylum Directives. Some Member States tend to opt for literal transposition of EU law, others at times exceed the scope of discretion afforded to them by Directives (“incorrect transposition”), and others omit provisions altogether (“non-transposition”). In the context of admissibility procedures, for example, recent legislative reforms have laid down grounds for declaring asylum applications inadmissible well beyond the boundaries of the Asylum Procedures Directive.⁶⁶ Examples of such provisions include the “arrival through a country where the applicant is not exposed to persecution or serious harm, or where protection is available” (Hungary)⁶⁷, and the making of a subsequent application “during the execution phase of a removal procedure” (Italy)⁶⁸. Other countries have been reluctant to revisit established certain domestic policies when transposing Directives and have thus equally failed to bring their systems in line with EU law. The transposition of the detention provisions of the Reception Conditions Directive is an illustrative example: whereas the Directive permits the detention of asylum seekers only as a last resort measure based on necessity, proportionality and inapplicability of less coercive alternatives,⁶⁹ including in the context of border procedures,⁷⁰ countries such as Belgium, the Netherlands, Portugal and Hungary maintain detention as an automatic, unqualified consequence of applying for asylum at airports.⁷¹ Others have failed to transpose provisions of the *acquis* altogether. The obligation to establish a mechanism to identify asylum seekers

⁶⁴ Ibid. See also AIDA (2017) The concept of vulnerability in European asylum procedures, 43 et seq.

⁶⁵ For a discussion, see ECRE (2017a) Accelerated, prioritised and fast-track procedures: Legal frameworks and practice in Europe.

⁶⁶ Article 33(2) Asylum Procedures Directive.

⁶⁷ Section 51(2)(f) Hungarian Asylum Act LXXX of 2007. See also AIDA (2019) *Country Report Hungary, 2018 Update*, 41 and 59-60.

⁶⁸ Article 29-bis Italian Procedure Decree 25/2008. See also AIDA (2019) *Country Report Italy, 2018 Update*, 58-59 and 73-74.

⁶⁹ Article 8(2) Reception Conditions Directive.

⁷⁰ Article 8(3)(c) Reception Conditions Directive.

⁷¹ ECRE (2018) *Boundaries of Liberty: Asylum and de facto detention in Europe*, 20.

with special needs,⁷² for instance, has still not been incorporated in domestic legislation in Germany and Sweden.⁷³

Confining the limits of legal harmonisation to the inherent risks of divergence carried by Directives is tempting. The choice of instrument by the EU legislature is often seen as a catalyst for more or less effective harmonisation, with Regulations benefitting from direct applicability in domestic legal orders without the need for national transposition measures, required in the case of Directives. Hence, efforts to promote convergent standards in the CEAS have often been conceptualised as a (gradual) transition from a legal framework elaborated through national implementation of Directives to one governed by direct implementation of Regulations. This is echoed in the European Commission's explanatory memoranda on the July 2016 proposals to transform the Asylum Procedures Directive (APD) and Qualification Directive (QD) into an Asylum Procedures Regulation (APR) and Qualification Regulation (QR) respectively:

*"It is only a Regulation establishing a common asylum procedure in the Union, and whose provisions shall be directly applicable, that can provide the necessary degree of uniformity and effectiveness needed in the application of procedural rules in Union law on asylum."*⁷⁴

However, directly applicable EU legislation is not a panacea. As the Member States' legislation on international protection demonstrate, disparities in national frameworks tend to affect Directives and Regulations alike. First, discretion and ambiguity in the CEAS seems to stem rather from the process of legislative negotiations between Council and European Parliament (EP), where ambiguity is often the price for agreement, than from the type of instrument chosen by the Commission. Several examples from current practice illustrate the limits of harmonisation across Member States, including in the context of Regulation provisions. For instance, the Dublin Regulation provision on appeals instructs Member States to provide for "reasonable" time limits for appealing a transfer decision.⁷⁵ The notion of "reasonable" time limit has been interpreted widely differently from one asylum system to another: deadlines for Dublin appeals can range 3 days (Hungary), 5 days (Portugal) or one week (Germany, Netherlands, Bulgaria, Romania, Switzerland), to one month (Belgium, Italy) or two months (Spain).⁷⁶

Second, the use of Regulations does not *per se* eliminate the need for implementing measures at the national level. It is common for Regulations to defer to domestic legal frameworks for the definition of certain rules and criteria, and thereby unavoidably to leave discretion to Member States as to their actual application. For example, the Dublin Regulation leaves discretion to Member States to decide whether appeals shall: (a) automatically suspend the execution of the transfer decision; (b) suspend the execution of the transfer decision until a court decides on further suspensive effect; or (c) have to include a separate request for suspension of the execution of the transfer decision.⁷⁷ As a result, the implementation of remedies in the Dublin procedure varies across Europe, with some countries (e.g. Greece, Poland, Croatia, Malta, Ireland, France, Portugal, Romania, Slovenia) automatically granting

⁷² Article 22 Reception Conditions Directive; Article 24 Asylum Procedures Directive.

⁷³ AIDA (2019) Country Report Germany, 2018 Update, 49.

⁷⁴ European Commission (2016) *Proposal for an Asylum Procedures Regulation*, COM(2016) 467, 13 July 2016, 7. See also European Commission (2016) *Proposal for a Qualification Regulation*, COM(2016) 466, 13 July 2016, 8-9.

⁷⁵ Article 27(2) Dublin III Regulation.

⁷⁶ AIDA (2019) Country Reports, 2018 Update.

⁷⁷ Article 27(3) Dublin III Regulation.

suspensive effect to appeals, while others (e.g. Germany, Netherlands, Austria, Switzerland, Bulgaria, Hungary) require a request to be filed before the court to that end.⁷⁸ Furthermore, the Dublin Regulation In addition, the use of Regulations does not *per se* eliminate the need for implementing measures at the national level.

Another example taken from the Dublin Regulation relates to the objective criteria for the determination of a “significant risk of absconding” as a ground for detention of asylum seekers with a view to securing a Dublin transfer procedure.⁷⁹ In its judgment in *Al Chodor*, the Court of Justice of the European Union (CJEU) found that Dublin detention is unlawful if the objective criteria for determining a “significant risk of absconding” have not been laid down in a national legal provision of general application.⁸⁰ Following the judgment, more countries have codified a definition of “risk of absconding” in their domestic law for the purposes of imposing detention in the Dublin procedure, through lists of criteria for ascertaining such a risk. The length of the lists varies from one country to another and can range from 3 criteria (Hungary, Poland) to 12 (Netherlands, France) or even 13 (Cyprus). The content of those criteria also varies considerably across countries.⁸¹

“One would think that a regulation resolves everything, but this is definitely not the case as becomes apparent when exchanging information with other Member States. The main underlying features of the regulation, such as for example Article 5 - the personal interview, are the same. The Dublin regulation provides that in every Member State a personal interview must be conducted with the applicant. However, criteria such as when, how, and to what extent differ between Member States.”⁸²

A final limitation of harmonisation through law stems from the ineffectiveness of EU-level enforcement mechanisms. The effectiveness of the European Commission’s role as “guardian of EU legality”⁸³ in the CEAS is limited in at least three respects. First, political constraints on the Commission are liable to affect the Member States it is willing to target with infringement proceedings. The Commission has launched infringement procedures against Hungary and (more recently) Bulgaria for non-compliance with various aspects of the Asylum Procedures Directive,⁸⁴ but not against France, Poland for systematic push backs of refugees and refusals to register asylum claims at the border.⁸⁵

Second, the Commission’s own policy objectives exert strong influence on the way it carries out monitoring and enforcement activities. On the one hand, this can lead to reluctance to denounce violations of the *acquis* that would be seen as contradictory to its agenda. On the legality of Dublin transfers, for example:

⁷⁸ AIDA (2019) Country Reports, 2018 Update.

⁷⁹ Articles 2(n) and 28 Dublin III Regulation.

⁸⁰ CJEU, Case C-528/15 *Al Chodor*, 15 March 2017, EDAL. Available at: <https://bit.ly/2JEIUZU>.

⁸¹ For a more detailed analysis, see ECRE (2019) *The implementation of the Dublin III Regulation in 2018*, 14-17.

⁸² Interview: Austria\WP2_6_icmpd_E004_P

⁸³ Costello, C. and Guild, E. (2018) ‘Fixing the Refugee Crisis: Holding the Commission Accountable’, Verfassungsblog.

⁸⁴ European Commission (2018) ‘Migration and Asylum: Commission takes further steps in infringement procedures against Hungary’, IP 18/4522, 19 July 2018; European Commission (2018) ‘November infringements package: key decisions’, MEMO/18/6247, 8 November 2018.

⁸⁵ AIDA (2018) Access to protection in Europe: Borders and entry into the territory, 12-13.

“Over the past three years the Commission has single-handedly led a policy process to reinstate Dublin transfers to Greece and remained silent on the numerous Member State policies aiming at unlawful Dublin transfers to other countries [like Hungary] which carry high risks of human rights violations and have been considered unlawful by national courts.”⁸⁶

Policy objectives may also prevent the Commission from enforcing legal provisions that it seeks to amend through its own reform proposals. It has not taken action against states which apply detention of asylum seekers who violate residence restrictions under national law (Austria, Bulgaria) or without legal basis (Greece),⁸⁷ but has itself proposed the inclusion of such a ground in the proposal to recast the Reception Conditions Directive.

On the other hand, as provisions of the asylum *acquis* are increasingly brought before domestic courts and the Court of Justice of the European Union (CJEU) for clarification, the Commission continues to influence the interpretation of EU law by Luxembourg. Costello and Guild have recently highlighted the role of the Commission as a strategic intervener before CJEU to prevent judgments that would bring about greater accountability for Member States.⁸⁸

Third, infringement proceedings take time, resources and effort. A Member State may well continue violating the asylum *acquis* without legal consequences by the time the case is referred to the CJEU and the Court takes a decision. To illustrate, the infringement procedure against Hungary for non-compliance with the Asylum Procedures Directive, was launched by the Commission in 2015 and is still pending.⁸⁹ In the meantime, Hungary has not only failed to remedy said violations, but has introduced additional violations through successive amendments to its Asylum Act in 2016, 2017 and 2018.⁹⁰

3.3.4. Summing up legal harmonisation

Legal harmonisation is often seen as the primary, if not dominant, mode of harmonisation of asylum systems in Europe. Yet, legal standards are not developed in a vacuum. National legislative reforms affecting the design and operation of asylum systems are informed by political objectives which may favour the implementation of certain aspects of the CEAS over others. Divergences in legal frameworks often stem from the inherent limitations of EU law, a product of policy objectives and negotiations itself. In this regard, the differences in the harmonisation potential of Regulations and Directives appears to be nuanced. Challenges inherent to the legislative process lead to a substantial degree of legal ambiguity and discretion in EU law, regardless of the choice of legislative instrument. Even directly applicable Regulations are therefore subject to widely different interpretation and application at the Member State level.

⁸⁶ ECRE (2018) *To Dublin or not to Dublin?*, 4. See also European Commission (2016) Commission Recommendation of 8.12.2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013, C(2016) 8525, 8 December 2016.

⁸⁷ AIDA (2019) Country Report Austria, 2018 Update, 97; AIDA (2019) Country Report Bulgaria, 2018 Update, 48; AIDA (2019) Country Report Greece, 2018 Update, 148-149.

⁸⁸ Costello, C. and Guild, E. (2018) ‘Fixing the Refugee Crisis: Holding the Commission Accountable’, *Verfassungsblog*.

⁸⁹ European Commission (2015) ‘Commission opens infringement procedure against Hungary concerning its asylum law’, IP/15/6228, 10 December 2015.

⁹⁰ AIDA (2018) Country Report Hungary, 2018 Update, 8.

Finally, legislation requires compliance. Legal standards cannot be effective drivers of rights-based convergence of systems as long as they are not enforceable. Litigation before the courts is a remedial measure for individual cases. It cannot substitute sound law-making from the outset, nor can it alleviate monitoring bodies from their obligations to enforce standards in a fair and systematic manner.⁹¹

3.4. Harmonisation through practical cooperation

3.4.1. Introduction

In the EU context EASO has become the centre for practical arrangements of cooperation between MS. The Office increased steadily its importance as one of the main drivers for harmonisation of the CEAS. Equally the regional courts, particularly the CJEU and the ECtHR are increasingly gaining significance in interpreting EU law, also in the area of asylum. Finally, Member States also turn to other MS when changing national asylum systems to get inspiration or examples of good practise.

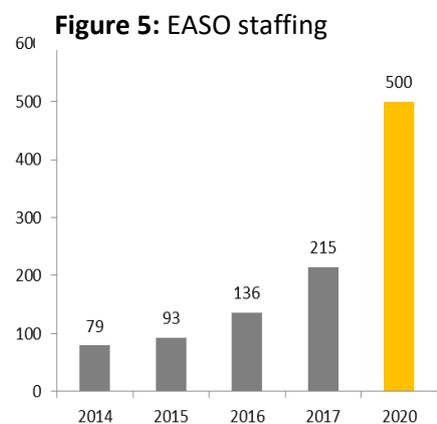
In the following, all three drivers of harmonisation are described.

3.4.1. The European Asylum Support Office (EASO)

Development of the Office

The early days of the development of the CEAS much focused on the legal part of harmonisation. The cooperation between states basically consisted of information exchange through administrative networks and ad hoc projects.⁹² However, the inadequacy of ad-hoc measures soon led to an institutionalisation push that ultimately led to the adoption of the European Asylum Support Office (EASO) Regulation in 2010.⁹³

The support office however already was envisaged by the Hague Programme which proposed the establishment of the European Asylum Support Office as a future key player in ensuring practical cooperation between Member States on matters related to asylum. The Programme expected that once a common asylum procedure has been established, these structures should be transformed, on the basis of an evaluation, into a European support office for all forms of cooperation between Member States relating to the Common European Asylum System.⁹⁴ Later, on 18 February 2009 the European Commission proposed the creation of EASO.⁹⁵



Source: EASO Annual General Reports 2014-2017

⁹¹ ECRE (2018) To Dublin or not to Dublin?, 4.

⁹² Tsourdi (2016)

⁹³ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing the European Asylum Support Office at:

⁹⁴ Hague Programme, p4.

⁹⁵ See EASO history at: <https://www.easo.europa.eu/easo-history>

Since 2011, the European Asylum Support Office (EASO)⁹⁶ supports EU MS in the implementation of the CEAS. Over the years EASO has increased its staffing and its range of activities, providing capacity building, information and analysis support as well as coordinating the relocations and hotspots approaches. In May 2016, the Commission submitted a proposal for a regulation on the European Union Agency for Asylum,⁹⁷ aimed at developing EASO into a fully-fledged asylum agency which facilitates implementation and improves its functioning. The staffing should accordingly be increased to 500 by 2020.

EASO's increased importance in facilitating the cooperation among MS has also been widely acknowledged by the stakeholders interviewed. According to some interviewees EASO has brought about a new way of cooperation.

"The networking among the MS is much more intensive and there is harmonisation [however] of course not with all MS, but with those who are our immediate partners and those who have similar case law. [There developed] much better links than before EASO."⁹⁸

"The establishment of EASO also helps as they've started to work more intensively most recently. I am realising their increased impact because they are sending more emails, they are organising more events and we're taking part in it more often."⁹⁹

EASO's contribution to harmonisation of the CEAS

EASO contributes to the consistent implementation of the EU's CEAS in various ways. It facilitates, coordinates and strengthens practical cooperation among Member States on asylum issues. Tsourdi describes EASO's approach as tasked with coordinating practical cooperation efforts so as to achieve harmonisation "bottom-up",¹⁰⁰ namely through the harmonisation of practices. Similarly, as an employee of EASO put it:

"we [EASO] are focusing on getting similar guidance for and exchange of best-practice between member states. The way that we work, we often call soft-convergence. The development of the guidance is supported by and consulted with all member states, and it's made available so they can either absorb it in their national guidance, or directly use it. Also the exchange of best practices during thematic meetings is also an invitation to grow closer to each other. But of course, it's not an obligation."¹⁰¹

According to EASO's webpage, the agency sees its main role (among others) *in permanent support* through common training, common asylum training material, common quality and common Country of Origin Information (COI); *special support* through tailor-made assistance, capacity building, relocation, and special quality control tools; *emergency support* through temporary support and assistance to repair or rebuild asylum and reception systems (under pressure or not); *information and*

⁹⁶ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office; OJ L 132/11

⁹⁷ European Commission, Proposal for a Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, COM(2016)0271, 4 May 2016

⁹⁸ Interview: Austria\WP2_6_icmpd_E003_P

⁹⁹ Interview: Germany\WP26_tuc_E003_P

¹⁰⁰ Tsourdi (2016)

¹⁰¹ Interview: EU\WP26_icmpd_E017_P

analysis support through sharing and merging information and data, analyses and assessments at EU level, including EU-wide trend analyses and assessments. All three defined roles of EASO are crucial also for harmonisation of the CEAS:

EASO's core training tool is the EASO Training Curriculum, a common vocational training system designed mainly for case officers and other asylum officials throughout the EU.¹⁰² The number of trainings conducted steadily increased since 2012 from around 100 training sessions with 1,234 participants to more than 400 session and 5,628 participants in 2017¹⁰³ for asylum officials on the basis of the **European Asylum Curriculum (EAC)**.

*"The EASO training modules are important and are utilised by us in all staff training. These have provided a substantial benefit. Without the training modules, I do not know how we would have managed the training of new staff in the rapid expansion of staff after 2015."*¹⁰⁴

*"Nonetheless, EASO's activities, and in particular training, helped MS to achieve the medium- to long-term changes needed in their national asylum system for the progressive implementation of the CEAS."*¹⁰⁵

The gathering and exchange of **country of origin information (COI)** and the adoption of a common COI methodology was one of the major reasons for the establishment of EASO. The assumption was, that basing decisions across the EU MS on the same COI would bring national practices, procedures and consequently decisions in line with each other.¹⁰⁶ Even if this aim yet was not fully reached, EASO's impact on harmonisation of products for country of origin information was well illustrated by an interviewee from a COI unit:

*"The so-called [COI] handbooks were developed [by EASO together with MS], which specify in detail what a product must contain, etc., so that there is comparability, and this EU methodology is nationally adopted by many MS in one form or another, including by Austria, and that's why there are uniform product categories, which in turn helps us to use products from other MS in the asylum procedure."*¹⁰⁷

A major test of EASO's capacity to provide tailor made **emergency support** emerged as a consequence of the establishment of the hotspots in Greece and Italy to support those two countries to manage the inflows of refugees and migrants. EASO not only supported the national authorities by coordinating experts by other MS but also facilitated the creation of rules and procedures which were applied at the hotspots by experts from various MS.

¹⁰² <https://www.easo.europa.eu/asylum-support-training/training>

¹⁰³ See: EASO (2017): Annual Training Report 2017, p 6 at: <https://publications.europa.eu/en/publication-detail/-/publication/53e817e9-cdc9-11e8-9424-01aa75ed71a1/language-en/format-PDF/source-80776790>

¹⁰⁴ Interview: Finland\WP26_uh_E004_P

¹⁰⁵ E&Y (2016)

¹⁰⁶ See European Pact on Asylum and Immigration (2008), p 8;

at: <https://www.easo.europa.eu/sites/default/files/public/European-Pact-on-Asylum-and-Immigration.pdf>

¹⁰⁷ Interview: Austria\WP2_6_icmpd_E005_P

“EASOs presence guaranteed a level of transparency and the creation of common rules and procedures acceptable to all Member States.”¹⁰⁸

EASO’s contribution to the development of a CEAS includes **information on the CEAS** and the implementation at national level, as described yearly in EASO’s annual report on the situation on asylum. Recently, EASO also started to adopt **guidelines** and **operating manuals**.¹⁰⁹

“Increasingly, EASO is producing practical guides on different aspects of the CEAS, which seems to me like a logical place to start, because it would be the sort of state of the art on the implementation of CEAS across the EU.”¹¹⁰

“A consistent procedure, consistent decision-making of the actors working in the field of asylum in Europe. EASO works on this, there are handbooks for all the decision-makers, there are very specific rules on the types of questions to ask, how decisions are taken, there are rules which already exist, but their application takes a lot of time.”¹¹¹

However, common guidelines or handbooks only will achieve their purpose if national policy makers also adopt them as it was put by an interviewee arguing that “[i]t also requires political will to follow EASO's guidelines.”¹¹²

About the challenges of practical cooperation one interviewee argued that

“If [...] everyone tries to enforce their national practices, there will never be a harmonised product. [...] it is a bit of a time-waster, but it is inevitable, and also exciting, if you actually see how the same problem is handled in other MS. And that is the big challenge for EASO, that they have to fit it all in.”¹¹³

In 2016, following an evaluation of EASO, E&Y contemplated that “[a]lthough having produced expertise for the convergence of national laws, practices and jurisprudence, there is no substantial evidence yet of EASO’s impact on the implementation of the EU acquis.¹¹⁴ Still, according to the evaluation and also confirmed in the course of expert interviews for the CEASEVAL project, stakeholders acknowledged the powerful potential of EASO to facilitate the convergence of national practices in the field of asylum.

3.4.2. Courts

Domestic courts are the primary fora before which the legal instruments of the CEAS are litigated. The extent to which they assess the legality of policies and practices against EU standards and engage in dialogue with other countries’ jurisdictions varies depending on training and expertise, legal tradition and culture (on the part of both litigants and judges). Responses to legal questions affecting the design

¹⁰⁸ Interview: Greece\WP26_eliamep_E013_P

¹⁰⁹ The use of guidelines and operating manuals is also controversial given the approach of the guidance notes and their potential divergence from UNHCR eligibility guidelines. ECRE identified the risk that the guidance is shaped by political considerations and administrative convenience rather than international protection considerations. See: ECRE (2017b)

¹¹⁰ Interview: Non EU\WP2_6_icmpd_E010_P

¹¹¹ Interview: Luxembourg\WP26_ul_E007_P

¹¹² Interview: Netherlands\WP26_uva_E001_P

¹¹³ Interview: Austria\WP2_6_icmpd_E005_P

¹¹⁴ E&Y (2016),p iv.

and implementation of the CEAS as a whole usually emanate from the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), subject to their respective mandates and institutional limitations.¹¹⁵

Impact of regional Courts on the CEAS

*The [European] Court [of Justice] has started to get more involved and this has started to realise harmonisation.*¹¹⁶

Although the activity of the CJEU in asylum cases has increased considerably in recent years,¹¹⁷ the implementation of its judgments on the CEAS has been neither uniform nor straightforward. Their effectiveness in driving harmonisation depends on the questions addressed to the Court, as well as the institutional, legislative and/or administrative implications of its judgments. Some rulings such as *Al Chodor*, mentioned above, have generated legislative reforms at national level, though the content and meaning given to the “risk of absconding” varies substantially from one system to another. Similarly, *Mengesteab*, on the interpretation of the concept of “lodged” application under the Dublin Regulation,¹¹⁸ has resulted in rapid changes in the way many Member States calculate time limits for sending “take charge” requests.¹¹⁹

On the other hand, other rulings, such as *X, Y and Z* on the interpretation of the “particular social group” ground and persecution in sexual orientation-related cases,¹²⁰ have not had a clear-cut impact on the evolution of national practice and seem to be superseded by other factors such as domestic case law and the professionalisation of asylum authorities.¹²¹

Similarly, some Strasbourg judgments have more transformative effect than others. For example, while *Tarakhel v. Switzerland* triggered EU-level debate¹²² and prompted many European countries to introduce the requirement of individual guarantees prior to carrying out Dublin transfers, albeit with some interpreting the judgment more narrowly than others,¹²³ the firm position that confinement in transit zones amounts to deprivation of liberty, reminded in *Ilias and Ahmed v. Hungary*, has still not led to legislative or administrative reforms in countries such as Germany, Greece or Portugal, where *de facto* detention remains embedded in border procedures at airports.¹²⁴

¹¹⁵ For an analysis, see Costello, C. (2016) *The Human Rights of Migrants and Refugees in European Law*, Oxford University Press, Chapter 2.

¹¹⁶ Interview: Luxembourg\WP26_ul_E002_P

¹¹⁷ The number of preliminary references relating to “freedom, security and justice”, thereby not exclusively concerning asylum, rose from 50 in 2015 to 90 in 2017 and 80 in 2018: CJEU (2019) *Annual report 2018: Judicial activity*, 124.

¹¹⁸ CJEU, Case C-670/16 *Mengesteab*, 26 July 2017.

¹¹⁹ ECRE (2018) *Access to protection in Europe: The registration of asylum applications*, 22 et seq; ECRE (2019) *The implementation of the Dublin III Regulation in 2018*, 12.

¹²⁰ CJEU, Joined Cases C-199/12, C-200/12 and C-201/12 *X, Y and Z v Minister voor Immigratie en Asiel*, 7 November 2013.

¹²¹ ECRE (2017c)

¹²² Council of the European Union (2014) *ECHR's decision on case "Tarakhel v. Switzerland" (Application no 29217/12) of 4 November 2014*, 16530/14, 8 December 2014.

¹²³ For a discussion, see ECRE/ELENA (2015) *Dublin transfers post-Tarakhel: Update on European case law and practice*.

¹²⁴ For a discussion, see ECRE (2018) *Boundaries of Liberty: Asylum and de facto detention in Europe*.

At times, limits to harmonisation through case law stem from domestic courts, the primary actors tasked with implementing European Courts' judgments. The *non-refoulement* test for Dublin transfers is an instructive example. For several years Strasbourg and Luxembourg held diverging positions on the requisite threshold for halting the transfer of an asylum seeker, the former constantly maintaining that removal is unlawful when it results in a "real risk" of a serious violation of the prohibition of inhuman or degrading treatment,¹²⁵ and the latter deeming the existence of "systemic flaws" in a Member State's asylum procedure or reception system as an additional condition for considering a transfer unlawful.¹²⁶ The CJEU aligned its position to the ECtHR in *C.K.* in 2017.¹²⁷ Nevertheless, several national courts continue to require individuals to prove the existence of "systemic deficiencies" in a Member State when challenging Dublin transfers.¹²⁸

3.4.3. Member States

Beside EASO and Courts, also the examples of good practices of Member States create a certain impact on harmonisation. In reforming policies, looking at experiences of other countries is one major way policy makers explore different policy options. CEASEVAL survey respondents were asked to comment on which EU+ states they consider to be a good example to follow in asylum policies (see Figure 6). 40% of the consulted experts considered Sweden to be a good example to follow, followed by Germany and the Netherlands mentioned by 35%.

What these countries have in common is that their asylum systems have in the past received relatively large numbers of asylum seekers, and accordingly have rather well-equipped systems and facilities for reception and asylum procedure. Whereas the German asylum system was able to cope with the processing of the majority of asylum applications filed in the EU since 2015, part of the attractiveness of the Dutch system for the interviewed stakeholders stems from an asylum procedure with fast decisions and tight deadlines. The Swedish asylum system was known as one of the more liberal asylum systems in Europe but has since also engaged in what some experts call a "race to the bottom": a gradual restrictiveness regarding access and rights towards asylum applicants.¹²⁹

¹²⁵ ECtHR, *Soering v. United Kingdom*, Application No 14038/88, 7 July 1989; *M.S.S. v. Belgium and Greece*, Application No 30696/09, 21 January 2011; *Tarakhel v. Switzerland*, Application No 29217/12, 4 November 2014.

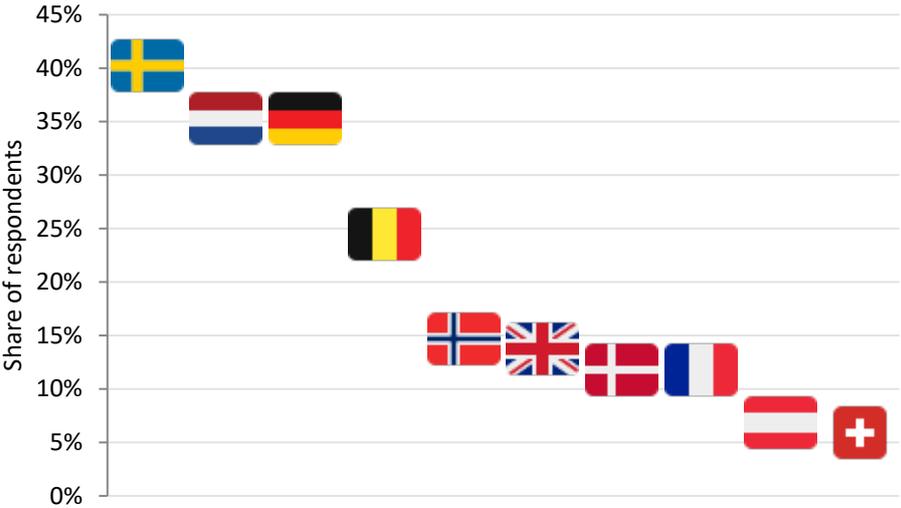
¹²⁶ CJEU, Joined Cases C-411/10 *NS* and C-493/10 *ME*, 21 December 2011. This led to the codification of the "systemic flaws" concept in Article 3(2) Dublin III Regulation.

¹²⁷ CJEU, Case C-578/16 PPU *C.K.*, 16 February 2017.

¹²⁸ ECRE (2018) *The Dublin system in 2017: Overview of developments from selected European countries*, 8. For recent examples, see *inter alia* (Germany) Administrative Court of Lüneburg, 8 B 41/19, 14 March 2019; (Germany) Administrative Court of Munich, M 26 S 18.52225, 9 August 2018; (Germany) Administrative Court of W 2 K 17.50701, 5 July 2018; (Luxembourg) Administrative Court, 41401, 10 July 2018; (Portugal) Administrative Court of Sintra, 555/17.OBESNT, 15 February 2018.

¹²⁹ See e.g. Wagner et al (2016)

Figure 6: “Which EU+ states do you consider to be a **good example to follow** in asylum policies?”



Source: CEASEVAL interviews with 131 CEAS stakeholders

The attractiveness of the asylum systems in the countries represented in Figure 6, as expressed by the survey respondents, relates to the situation in 2018: political or policy changes in those countries or external factors like increased asylum inflows might as well change these perceptions and lead to different outcomes in preferences.

When disaggregating the responses, different stakeholder groups have different perceptions on which countries lead the best practices in the CEAS (see Figure 7). Sweden still features prominently among the top-3 for each stakeholder group. Among academics, Germany is most often mentioned as being a good example, whereas non-EU stakeholders (i.e. representatives of international organisations) perceive the Netherlands most frequently in that position.

Figure 7: “Good examples to follow” in the CEAS, as perceived by stakeholder groups

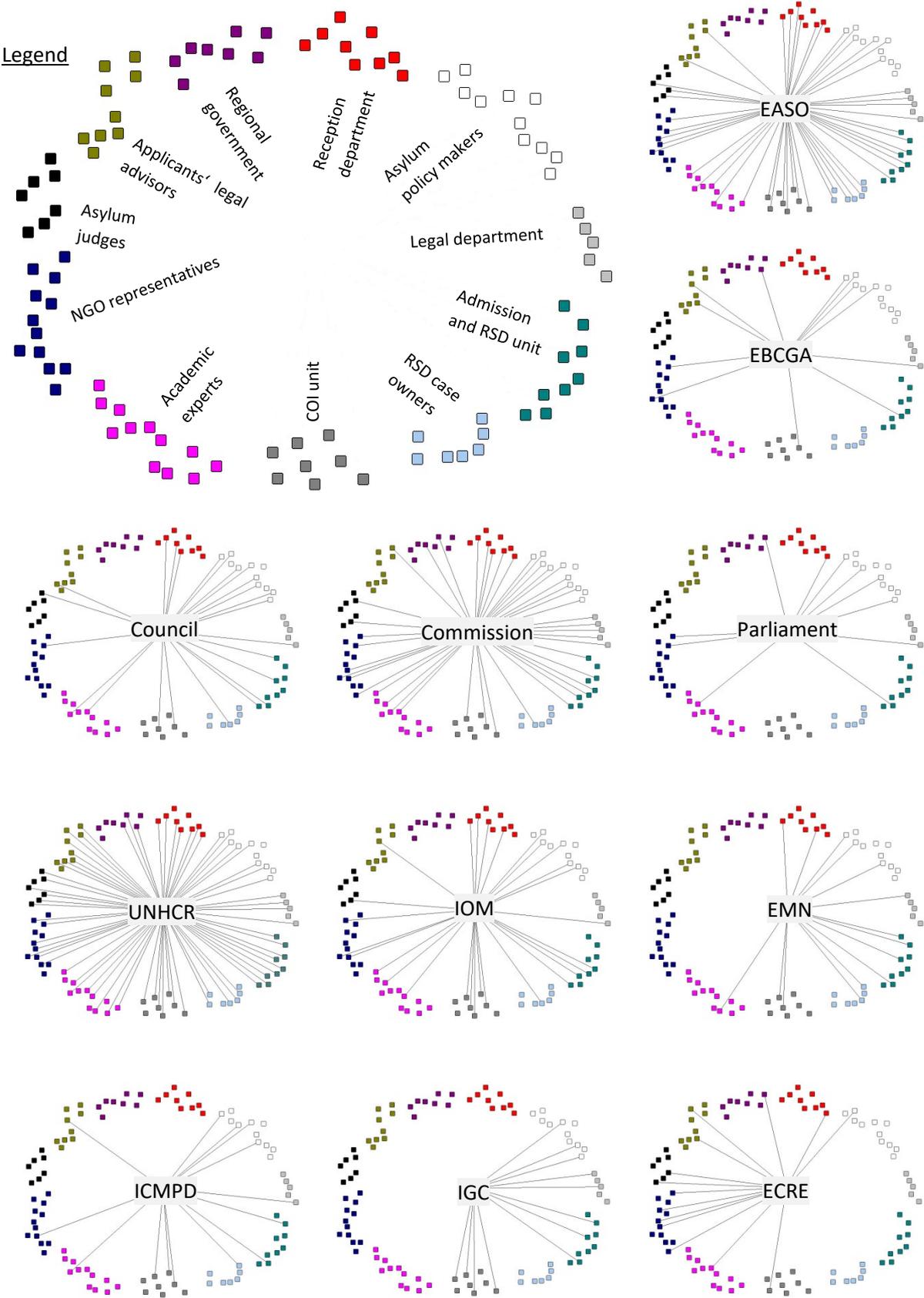
Rank	Asylum authorities	EU stakeholders	Non-EU stakeholders	National NGOs	Academic experts
1.	Sweden	Netherlands, Sweden	Netherlands	Germany, Sweden	Germany
2.	Netherlands		Sweden, Belgium		Netherlands
3.	Germany	Belgium		Netherlands, Portugal, Sweden	Sweden
4.	Belgium	Norway	Germany, Austria, Switzerland		France, Belgium, Denmark

3.4.4. Summing up practical cooperation

Practical cooperation takes place at various levels. Since the establishment of the European Asylum Support Office much of practical cooperation has been gathered within this agency. EASO has become a kind of central player for practical cooperation extending its importance through extending the

hosting of a great number of networks, being tasked by the EC with taking over a number of projects which previously ran under pure member states cooperation platforms and is more and more active in developing information that shall – at least in theory – foster similar decisions in EU MS, i.e. country of origin information or country analysis. Courts evidently remain a key driver for practical harmonisation through interpretation – be it at national or international level. But, still, governmental networks remain beside the work of EASO. In various forms – some more political, some more policy relevant and some very practical - EU MS groups among like-minded states to discuss joint positions, joint initiatives, exchange on latest information or simply try to learn from each other's experience. Some countries' practices attract more other EU MS than others.

Figure 9: Networks of CEAS stakeholders with EU and non-EU institutions



3.5.2. Networks with key EU and non-EU institutions

In Figure 9, a number of network graphs are shown, representing the ties of interviewed national stakeholders with relevant EU and non-EU institutions. The interview respondents are represented as nodes forming a circle and are grouped by stakeholder. Among the respondents are government representatives, states officials from different asylum authorities, judges and NGO representatives.

The objective of Figure 9 is to showcase which are the main networks with EU and non-EU institutions that are regularly used by stakeholders on the national level. With some of the institutions, a majority of respondents stated having regular contact; with others, the contacts are limited e.g. to a certain type of stakeholders.

Without much surprise, UNHCR comes up as a top player in the field, with the vast majority of stakeholders – disregarding the area of the CEAS - mentioning to have contact with the UN Refugee Agency. As one NGO representative puts it:

“UNHCR is the standard setter. [...] It also produces statistics and country reports, UNHCR is important in providing information.”¹³¹

On an operational level, EASO is seen as a catalyst for exchange and fostering harmonisation in the CEAS. EASO provides trainings and workshops, analysis and information and facilitates several working groups on different asylum-related topics.

“What is functioning is that the MS have a better basis for exchange, since EASO was established. The networking among the MS is much more intensive and there is harmonisation. Of course not with all MS, but with those who are our immediate partners and those who have similar case law. There you knock on their door, you talk, you exchange, and are much better linked than before EASO.”¹³²

Furthermore, not all of these networks are formally established, but function on an informal basis, promoted by and arisen from formal networks like EASO.

“We meet and eat together, so the informal aspect reinforces the professional aspect, as we become friends with these people, and we are more likely to contact the people we know. [...] Both formal and informal exchanges can be good in order to achieve harmonisation, but it depends on the ‘input’ you put in. Informal exchanges take place when someone works on a particular case and asks for input through our networks “We would like to know if you have already encountered this”. These exchanges take place with all MS, but it is more intense with the countries we have juridical or political elements in common, such as the Benelux countries.”¹³³

Compared to EASO, respondents’ ties with another EU agency, the European Border and Coast Guard Agency (EBCGA, Frontex) are less pronounced (see Figure 9). Ties to the European Commission (mostly DG HOME, but also other DGs) exist among all types of stakeholders. Regarding other EU institutions, the Council (Council of the EU and European Council, as well as its Presidency and Secretariat) is more

¹³¹ Interview: Finland/WP26_uh_E008P

¹³² Interview: Austria/WP26_icmpd_E003P

¹³³ Interview: Luxembourg/WP26_ul_E008_P

relevant than the EU Parliament, with its ties more or less limited to the group of asylum policy makers among the respondents.

The Intergovernmental Consultations on Migration, Asylum and Refugees (IGC) is an informal forum facilitating information exchange and debate among its 17 MS, of which eleven are EU MS. Ties of respondents with IGC were therefore limited to state officials working on asylum topics. The IGC hosts regular meetings in the framework of an asylum working group as well as a COI working group, and is in regular exchange and cooperation with EASO and the EMN.

The ties of respondents to the latter are very similar, mostly by state officials. The European Migration Network (EMN) is a network of experts (national contact points) in the EU MS and coordinated by the European Commission. The objective of the EMN is to provide comparable information on asylum (and migration) related topics in all EU MS. Its outputs (annual reports, informs, country factsheets and ad-hoc queries requested by MS) are publicly available.

Another network player in the CEAS is the International Centre for Migration Policy Development (ICMPD), an intergovernmental organisation with 17 European MS. ICMPD's work is based on three pillars: Migration Dialogues, Capacity building and Research. Its MS exchange on a regular basis on asylum related topics in the framework of the ICMPD Member States Programme.

Among the NGO representatives interviewed, one of the most important networks is the European Council on Refugees and Exiles (ECRE), an alliance of 102 NGOs across Europe. ECRE's secretariat in Brussels informs, supports and works with the membership through joint events, the Annual General Conference, briefings to members and management of specialist working groups.

3.5.3. Networks in different areas of the CEAS

In Figure 10, network graphs for specific thematic areas are shown to illustrate in which areas of the CEAS EU and international cooperation is stronger, and whether these networks are state-driven and/or EU-supported. The network graphs contain only the ties between survey respondents from national authorities and their respective self-declared contacts. Nodes are coloured according to the type of stakeholder (states, EU and non-EU institutions).¹³⁴

Asylum policy maker, i.e. senior officials in the ministry responsible for asylum policy, maintain one of the densest networks among the groups of stakeholders interviewed. Ties exist in particular with the major EU institutions (Commission, Council, EASO) as well as to other MS. Several regional networks (Scandinavian countries, Visegrad-4) are being used as forum for information exchange and common policy initiatives.

State officials in legal departments responsible for asylum legislation as well as those in units responsible for admission and Refugee Status Determination do as well often count with extended professional networks, consisting both of bilateral contacts with states as well as with EU institutions or through multinational networks like the General Directors' Immigration Services Conference (GDISC), a network specifically tailored for exchange among top level immigration authorities.

¹³⁴ The nodes are not labelled; however, a responsive version of the networks can be retrieved at www.ceaseval.eu/networks.

Some countries (or, in other cases, specialists in some countries) have established loosely formal multinational networks. They are used at different levels, at different degrees of regularity and on different topics. As an example, the Visegrad Process or the Salzburg Forum are used for political exchange:

“Salzburg Forum relates to all topics, but is more political. It is more on the legal and political area, and they meet once or twice a year. Usually you have exchanged before, my Director goes there and speaks with his counterparts. This platform is rather police-related but also used for migration, but only on highest, ministerial level, not on an operative level.”¹³⁵

In the field of country of origin information (COI), state officials rely heavily on information exchange with other actors. Hence, networks are intensively used. Beside the various working groups on COI, particularly at EASO and IGC, several multinational networks co-exist, among them a francophone network, a Scandinavian network and a German-speaking network. Often, the reason that these networks are exclusive of a group of countries and of limited outreach to other states is language barriers:

“We are required to produce German reports as a national authority. The problem when we create reports in English is that we have to translate them back. In these times, when the working pressure is very high, this is almost a luxury that you cannot afford”.¹³⁶

As regards state officials responsible for the reception of asylum seekers, ties with other states or European and international institutions are rather rare, beside the (during this analysis omnipresent) ties with EASO and UNHCR. The European Platform of Reception Agencies (EPRA), established by Belgium, is an exchange network with the objective to stimulate strategic information sharing and identify best practices on a senior management level.

The network graphs for asylum judges shows that their networks are somewhat limited. The interviewed asylum judges had relatively less contacts with EU institutions or with colleagues in other EU MS. An important network is the International Association of Refugee and Migration Judges (IARMJ), with more than 300 members in its “European Chapter”. The network organises conferences and workshops for its members and facilitates meetings with the ECtHR and the CJEU. Furthermore, the Association of European Administrative Judges (AEAJ) hosts a Working Group on Asylum and Immigration and facilitates quarterly meetings on asylum law.

¹³⁵ Interview: Austria/WP26_icmpd_E003P

¹³⁶ Interview: Austria/WP26_icmpd_E005_P

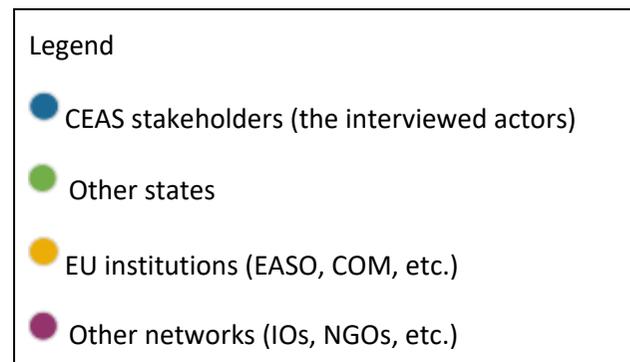
Figure 10: Networks by stakeholder group

The network graphs show the regular professional contacts and networks of CEAS stakeholders from ten EU countries. The graphs are disaggregated by type of stakeholder (a-f) and whether the ties are with (i.) EU institutions, (ii.) other countries or (iii.) any country or institution.

For countries where more than one stakeholder per CEAS area (a-f) was interviewed, their individual networks are aggregated to one country network in the graph.

Enhanced versions of these network graphs including labels of all nodes can be explored at:

www.ceaseval.eu/networks



Contacts of respondents

i.) with **EU institutions** and among them

ii.) with **other states**

iii.) with **states, EU** and **other** networks

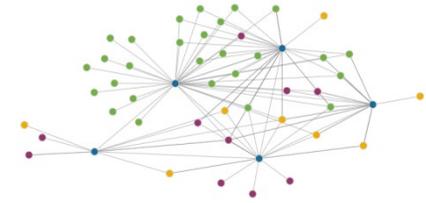
a) Asylum policy makers



b) Officials in legal department



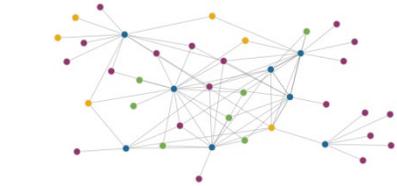
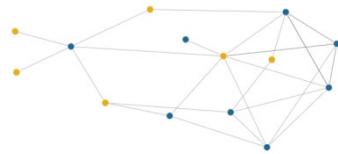
c) Officials in
asylum
procedure



d) Officials in
reception of
asylum
seekers



e) Officials in
COI unit



f) Asylum
judges



3.5.4. Summing up networks

Harmonisation of the CEAS relies on the existence and functioning of networks which encourage and help actors around the EU+ to exchange information, identify best practices, align policies and make use of economies of scale. At the political level, several multinational networks have emerged – some more, others less flexible in agenda and composition of members – which allow their members to share information and discuss common issues.

At the operational level, EASO has become an important piece in the EU asylum architecture, providing infrastructure in the form of training, working groups and other support activities, at the same time as opening a forum for informal bilateral exchange. EASO aims at comprehensively covering support to all aspects of asylum in the EU MS and is therefore now coordinating some of the thematic networks which had emerged in different areas of the CEAS, previously coordinated by MS and financed by AMIF (e.g. EPRA, MedCOI).

The extent to which international and inter-EU networks are used differs across the various fields of the CEAS. While e.g. COI researchers and asylum policy makers are heavily connected with their peers in other EU MS, EU institutions and other organisations, the networks of asylum judges or state officials responsible for reception of asylum applicants seem to be limited according to our analysis.

4. Conclusions: harmonisation as a means or an end per se?

As evidenced in the paper, harmonisation of the CEAS takes place at different levels. The most powerful tool for harmonisation is EU law, which sets a strict normative framework for an asylum system which has been subject to broad policy considerations and negotiations. The latter already illustrates the limits: despite legal harmonisation, EU law allows for enough national leeway irrespective of the chosen legislative instrument – including directly applicable regulations which still are prone to interpretation.

In recent years and strongly linked with the establishment of EASO, practical cooperation has increasingly become a significant factor in the development of the CEAS. EASO became a potter's wheel for basically all matters of the CEAS, and got strategically involved in the further development of the CEAS, not least through its constituency, the EASO Management Board, composed of directors and heads of all EU asylum agencies. Despite the young age of the agency, it has already left strong footprints in the implementation of the CEAS. Beside that, Member States still seek the advice and cooperation with other Member States as well. Particularly at regional level, harmonisation may develop based on multinational state-to-state cooperation.

Ultimately, all areas of the CEAS have also organised themselves in the form of networks in order to jointly discuss asylum policies or to exchange views on refugee related issues. While civil society organisations use networks primarily for advocacy, state networks are used mostly for information exchange – often behind closed doors. The networks vary in importance, are often only addressing one particular element of the CEAS or a number of them, and are partly more political or functioning on an ad hoc basis. Still, states make wisely use of their networks to gain necessary information for their state interests in implementing the CEAS.

Tampere reaffirmed the vision for an absolute respect of the right to seek asylum and to work towards establishing a Common European Asylum System, based on the full and inclusive application of the

1951 Geneva Refugee Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement. In order to achieve this goal, minimum standards were adopted and transposed into national asylum systems. These standards formed the benchmark of what protection in the EU had to mean, as a vision developed by an EU consisting of 15 MS. The face of the EU, however, has significantly changed since then, growing to 28 Member States, of which many were not part of this initial vision but agreed (or had to agree) to it later.

Since Tampere and the broadly discussed 2007 Green Paper on the Future Common European Asylum System, there was no further broader discussion of the goals of the CEAS. The vision of a common procedure and a uniform status prevailed over an advanced vision of what asylum shall mean in Europe. As rightly questioned by a number of interviewees, the aims of the CEAS became unclear and blurry. Is the aim of the CEAS to provide protection in the EU to as many people in need of protection as possible? Is the aim to develop a high qualitative protection for beneficiaries of international Protection? Or is the aim to reduce the numbers of applicants arriving in European asylum systems? In particular since the high number of arrivals in 2015, the latter seems the prevailing argument for a number of Member States. But also the anticipated institutional aims of the CEAS are conflicting. Some have the vision of an EU agency tasked to conduct asylum procedures across the EU, while others defend the national sovereignty by all means to control migration.

Instead of refining a common ground on what asylum shall mean in the future, EU institutions and MS experts regularly convene to negotiate detailed provisions governing the asylum procedures, the qualification of applicants for international protection and their reception. Ways on how to determine the responsibility of MS for applicants for international protection arriving at their territory are heatedly discussed without tangible results. As a result, the distribution of a handful of refugees floating in boats in the Mediterranean regularly becomes a matter for heads of states or the respective ministers.

Without a common strategy on how to address and solve refugee issues collectively, harmonisation in the context of the CEAS runs the danger to become a means per se instead of a tool to achieve a strategic objective.

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