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## INTRODUCTION

Asylum matters occupy the central stage of public debate. EU Member States are preparing to receive unprecedented numbers of people seeking international protection, and it is not surprising that opinions on the subject are polarized. However, the pressing need for an efficient and coherent regional approach seems to be universally agreed on.

The Common European Asylum System constitutes a corpus of legally binding instruments, policies and approaches. This dissertation aims at studying it in the light of the dual objective of improving protection and enhancing fair and efficient procedures able to prevent abuses.

In the light of the current situation this thesis will place a primary focus on the *acquis communautaire* pertaining to asylum seekers, referred to as applicants and defined by the Qualification Directive as “third-country nationals or stateless persons who have made an application for international protection in the respect of which a final decision has not yet been made”. The registration of the newly arrived, the assessment of their applications and guarantees of dignified standard of living during the procedure are the most pressing issues and as such will be at the heart of the study.

The undertaking is conducted with the help of research by non-governmental organizations and UNHCR. Reports published by the European Council on Refugees and Exiles proved to be notably valuable as they diligently follow changes in asylum policy. The recast instruments have not been adopted until 2013 and are not enforceable before 21 July 2015. As a result, the amount of academic publications that take into account the latest legal changes is scarce.

However, three manuals have proven to be of particular importance to my research. First and foremost, recognition should be given to “The Right to Seek Refugee Status in the European Union” by Sylvie Da Lomba, which was a valuable starting point and should be a set text for everyone who wishes to systematize their knowledge on asylum matters. In “EU Asylum Procedures and the Right to an Effective Remedy” Marcelle Reneman thoroughly presents rights and obligations of Member States and asylum seekers but also draws an accurate picture of any protection gaps. Last but not least, “EU Immigration and Asylum law” by S. Peers, E. Guild and J. Tomkin provides meticulous and the most up to date account of legal developments and policy changes.

While remaining devoted to the general subject of EU refugee law I aim to confirm the thesis that the evolution of *acquis communautaire* has so far not succeeded in creating a fair and efficient, fully uniform European asylum system. I undertake to follow main legal changes between first and second phase instruments and to analyze policies that proved to be the most difficult to implement. I will also study factors that have impeded the swift process of harmonization of national systems.

In order to build strong foundations for the assessment of current standard practices the initial chapter aims at following the legal evolution of common approaches in asylum policy. First, it identifies the incentives that contributed to the inclusion of asylum policy into the area of common interests of Member States. Then it analyses instruments adopted at the intergovernmental level, that is the Dublin Convention as a measure for the determination of a state responsible for the examination of an asylum claim and the non-binding London Resolutions that introduced the notions of ‘safe’ and host third countries.

Moreover, it considers the impact of signing the Maastricht Treaty which placed the issues concerning immigration and asylum in the newly created Third Pillar. It also draws attention to the turning point in the development of a common system, that is the transition of matters of asylum and refuge to the first pillar under the Amsterdam Treaty, which in practice meant the conferral of competences in creating common asylum standards.

The first chapter concludes with a description of minimal standards set under first phase instruments of the Tampere Programme and a move towards uniform standards under the Lisbon Treaty with subsequent second phase sources of the EU law.

The second chapter looks into the institutional networks that facilitate the management of the whole system. Primarily, it is concerned with the mandate and undertakings of the European Asylum Support Office, whose objective is to strengthen practical cooperation among Member States and provide operational support. It also analyses the divisions of available financial resources and possible fiscal burden-sharing mechanisms under the European Refugee Fund. Furthermore, it studies mechanisms under which Eurodac acts as a supporting tool for the Dublin Regulation. Finally it provides the assessment of Regional Protection Programmes as main measures for the cooperation with third countries and means of addressing the root causes of refugee flows.

The third chapter considers the legal standards for asylum procedures and possible difficulties in their application. It presents conditions governing eligibility for international protection in the light of *jus cogens* principle of non-refoulement and the legal definition of ‘refugee’. Provisions on fair and efficient guarantees for asylum seekers are divided into

three categories, namely: submission of an application, assessment of facts and circumstances, and economic and social rights for asylum seekers.

The dissertation concludes with the summery of possible outcomes, from refugee status and subsidiary protection to ‘authorization to stay for humanitarian reasons’, the form of which varies depending on a national system.

## **I. The legal evolution of common approaches in asylum policy during the period between the Dublin Convention and the Lisbon Treaty**

### **1.1 The idea behind the harmonization of asylum procedures**

#### **1.1.1 Incentive**

The approach to the issue of immigration and granting asylum to refugees among the Western European countries was relatively liberal until the end of the 1970s. However, the last years of that decade were marked by increased migration flows, which headed mainly to the Western Europe. Whereas between 1973 and 1982 year 700000 refugees reached Europe annually, in the next 6 years period the numbers amounted to 1200000 per year<sup>1</sup>. This influx was strengthened by the fact that increased immigration wave from Eastern Europe overlapped with waves from other continents<sup>2</sup>. These circumstances affected the situation of refugees who by the public opinion gradually started to be identified with economic immigrants<sup>3</sup>. In consequence authorities started to draw more attention to the subject. The situation in Europe became regarded even as “asylum crisis”<sup>4</sup>.

Because of such extended influx of foreigners the European Community Member States were steadily prompted to tackle the issue of immigration at an intra-community level. Another reason was the iron-going integration process which concerned the free movement of persons concept in the European Community and ultimately lead to the elimination of inter-state borders between member states<sup>5</sup>.

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<sup>1</sup>I. Oleksiewicz, *Uchodźcy w Unii Europejskiej. Aspekty prawne i polityczne*, Oficyna Wydawnicza Branta 2006, p.52.

<sup>2</sup>U.A Segal, D. Elliott, *Refugees Worldwide*, V1, Praeger 2012, p.159.

<sup>3</sup>I. Oleksiewicz, op.cit., p.11.

<sup>4</sup>U.A Segal, D. Elliott, op. cit., p.159.

<sup>5</sup>A.P. van der Mei, *Free Movement of Persons Within the European Community: Cross-border Access to Public Benefits*, Hart Publishing 2003, p.43; I. Oleksiewicz, *Uchodźcy w Unii...*, op.cit., p.9.



### 1.1.2 States' Attitude and reasoning

The members of the European Community regulated immigrant issues on their own as they considered it as an important part of their national interests and sovereignty<sup>6</sup>. Nevertheless, the significant immigration that took place in the last years of the 1970s pushed Western Europe not only in the direction of restrictive stand but also brought about a will to introduce wider cooperation among the members of the European Community so as to handle the migrations in a more effective way<sup>7</sup>.

In the middle of the 1970s, the countries' attention focused on the sharpest problems which, in their understanding, stemmed from migration movements, namely "terrorism, radicalism, extremism and international violence"<sup>8</sup>. As a result the so called TREVI group was created - not formally established international communication platform on the interior ministry's level. Within its framework the special group on immigration and also subgroup on asylum were set up. The main goal of the latter was to identify means necessary to implement common asylum policy and to eliminate misuse of right to asylum<sup>9</sup>.

In 1985 European cooperation in the field of immigration and thus refugees protection received a significant boost. Germany and France together with Nederland, Belgium and Luxembourg signed "the Schengen Agreement on the Gradual Abolition of Checks at the Common Borders". They thus created the so called Schengen Area<sup>10</sup>. It is thought that signatories of the agreement wanted to create rules which in future would become the base concerning all members of the European Community<sup>11</sup>. This first Schengen agreement was characterized by a large degree of generality, so the much broader so called Schengen II Agreement was concluded. One of its main subjects are asylum issues, mainly the problem of a country responsible for the examination of an asylum application. The key criterion is the "first country rule", according to which a country that an asylum seeker enters first is responsible for the examination<sup>12</sup>. Only if it is

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<sup>6</sup>K. Nowaczek, *Polityka Unii Europejskiej wobec procesów imigracyjnych*, Adam Marszałek 2004, p. 48.

<sup>7</sup>I. Oleksiewicz, *Uchodźcy w Unii...*, op.cit., p. 9-11.

<sup>8</sup>A. Florczak, *Uchodźcy w Polsce. Między humanitaryzmem a pragmatyzmem*, Adam Marszałek 2003, p.75.

<sup>9</sup>B. Mikołajczyk, *Osoby ubiegające się o status uchodźcy. Ich prawa i standardy traktowania*, Wydawnictwo Uniwersytetu Śląskiego 2004, p.48.

<sup>10</sup>S. K. Karanja, *Transparency and Proportionality in the Schengen Information System and Border Control Cooperation*, Martinus Nijhoff Publishers 2008, p.26.

<sup>11</sup>A. Florczak, op. cit., p.80.

<sup>12</sup>S.K. Karanja, op. cit., p.54.

impossible to identify such a state, the country where an asylum seeker filed the application is to be responsible<sup>13</sup>.

Although the Schengen initiative was not a part of the European Community system, and underwent – sometimes quite harsh – critique from other members of the EC, it eventually became the signpost to other European countries and was eventually incorporated into the European Union law system<sup>14</sup>.

In 1986 the specialized *Ad Hoc* Group on Immigration was established in the frames of the European Community. Its aim was to handle “migration, visa policy and asylum law” through increased international cooperation<sup>15</sup>. It was in line with the provisions of the Single European Act of 1986 which pleaded for liquidation of states’ borders among the EC countries.

In 1988 the European Council decided to create the specialized Group on the Free Movement of Persons with an assignment to coordinate works leading to the elimination of inter-state borders<sup>16</sup>. The group summarized its findings in the so called “Palma Document”. In this report necessary steps leading to that goal were indicated. They were to become the platform for any subsequent initiative in the field of free movement of persons<sup>17</sup>. Document contained special means with reference to asylum issues. The listed measures were: “1. a common visa list for the Community, to be updated every six months; 2. a common list of inadmissible persons; 3. appropriate measures to deal with the <asylum shopping> phenomenon; 4. abbreviated procedures for <manifestly unfounded> asylum claims; 5. harmonized interpretation of international commitments; 6. common measures for external border control; 7. the establishment of a common information system; 8. combating illegal immigration and common expulsion policies”<sup>18</sup>.

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<sup>13</sup>A. Florczak, op. cit., p.80.

<sup>14</sup>S. da Lomba, *The Right to Seek Refugee Status in the European Union*, Intersentia 2004, p. 23-24;  
B. Mikołajczyk, op. cit., p.49.

<sup>15</sup>B. Mikołajczyk, op. cit., p.49.

<sup>16</sup>I. Oleksiewicz, *Prawo osób do swobodnego przemieszczania się a polityka Unii wobec uchodźców*(wybrane zagadnienia), [in:] T. Gardocka, J. Sobczak (ed.), *Uchodźcy w Polsce i Europie. Stan prawny i rzeczywistość*, Adam Marszałek 2010, p.197.

<sup>17</sup>I. Boccardi, *Europe and refugees. Towards an EU Asylum Policy*, Kluwer Law International 2002, p. 32.

<sup>18</sup>*Ibidem*.

## **1.2 The inclusion of asylum policy into the area of the common interest of the Member States**

### **1.2.1 The Dublin Convention as an instrument for the determination of a state responsible for the examination of an asylum claim**

The Dublin Convention was signed on 15 June 1990<sup>19</sup>. It is a public international law agreement concluded by the members of the European Community. Because of prolonged ratification process it did not come into force until 1997<sup>20</sup>. First of all, the convention stipulates that only one member country is responsible for examination of application for asylum. This rule goes in line with provisions of Schengen Agreement<sup>21</sup>. Secondly, the convention indicates the criteria according to which the responsible country is chosen. They are enumerated in the order of importance. The main rule stated in the article 4 is family reunification, which means that a country hosting an applicant's family member with the refugee status is responsible for examination<sup>22</sup>. Such family member is defined as "a spouse, an unmarried child who is a minor under the age of eighteen, a father or mother where the asylum seeker is himself or herself an unmarried child who is a minor under the age of eighteen"<sup>23</sup>. This first criteria in the hierarchy is the only one based on asylum seekers' personal situation and not "border control considerations"<sup>24</sup>. Next principle stated in the article 5 concerns a country which granted a residence permit or a visa to a future asylum seeker. According to articles 6 and 7 if all these cases did not take place a country which border was crossed illegally is to be responsible for the examination of an asylum claim. This way the Member State which fails to guard its borders against asylum-seekers is responsible for processing its claim<sup>25</sup>.

Still, it should be noted that articles 5, 6 and 7 of the Dublin Convention include exceptions to the main rules. If it is not possible to identify a state which had its border

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<sup>19</sup>*Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities*, Official Journal of the European Communities, 19 August 1997, available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41997A0819\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41997A0819(01)&from=EN), [access: 04 June 2015].

<sup>20</sup>K. Nowaczek, op. cit., p.90-91.

<sup>21</sup>A. Florczak, op. cit., p.77.

<sup>22</sup>*Ibidem*; A. Potyrała, *Współczesne uchodźstwo. Próby rozwiązania międzynarodowego problemu*, Wyższa Szkoła Nauk Humanistycznych i Dziennikarstwa 2005, p.144; S. da Lomba, op. cit., p.119.

<sup>23</sup>*Ibidem*, p. 122.

<sup>24</sup>*Ibidem*, p. 121-122.

<sup>25</sup>E. Guild, *The Legal Elements of European Identity. EU Citizenship and Migration Law*, Kluwer Law International 2004, p. 172.

breached, than on the basis of article 8 a state in which an asylum claim was filed is responsible for its assessment.

According to articles 3(4) of the Dublin Convention a country which is not obliged to examine an asylum may do so, provided that an applicant agrees to it. Article 9 states that such situation can occur because of “humanitarian reasons, based in particular on family or cultural grounds”. The aim of these provisions is to additionally strengthen family reunification principle<sup>26</sup>.

Furthermore, the Dublin Convention also includes the procedure regarding transfer of asylum seekers between Member States, especially with regard to time limits (article 11) and exchange of information (articles 14 and 15)<sup>27</sup>. To enhance cooperation in these two areas the specialized institutions were created in 1992. Namely Centre for Information, Discussion and Exchange on Asylum and Centre for Information (CIREA) and Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI). They were regarded as “two for a of information exchange in asylum and migration matters”<sup>28</sup>.

### **1.2.2. Notions of the “safe” and host third countries under the London Resolutions**

The next crucial step in the legal development of common policy in the field of asylum issues is three London Resolutions of 1992 adopted by the ministers of the Member States of the European Community. These acts are not binding and therefore their application is not obligatory<sup>29</sup>.

One of these regulations is Conclusions on Countries in Which There Is Generally No Serious Risk of Persecution<sup>30</sup>. This resolution introduces the concept of safe country that is the state where refugees do not come from<sup>31</sup>. On the basis of point 4 of the regulation such country should be assessed by the following elements: “previous numbers

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<sup>26</sup>S. da Lomba, op. cit., p.124.

<sup>27</sup>*Ibidem*, p.125-127.

<sup>28</sup>G. Noll, *Negotiating Asylum. The EU Acquis, Extraterritorial Protection and the Common Market of Deflection*, Martinus Nijhoff Publishers 2000, p.130.

<sup>29</sup>A. Potyrała, op. cit., p.147-148.

<sup>30</sup>European Union, *Conclusions on Countries in Which There is Generally No Serious Risk of Persecution (“London Resolution”)*, 30 November 1992, available at: <http://www.refworld.org/docid/3f86c6ee4.html>, [access: 04 June 2015].

<sup>31</sup>*Migrants and Their Descendants: Guide to Policies for the Well-being of All in Pluralist Societies*, Council of Europe 2011, p.204.

of refugees and recognition rates”, “observance of human rights”, the existence of “democratic institutions” and stability of an analyzed country.

The mentioned above concept of safe country is supplemented by the notion of safe host third country which can be found as a core of Resolution on a Harmonized Approach to Questions Concerning Host Third Countries<sup>32</sup>. Such countries are state crossed by asylum seekers who indeed are in danger of persecution in their homeland. According to the resolution an asylum seeker should apply for asylum in the said host third country instead of continuing his journey to member states of the European Community. That is why a member state can easily transfer such asylum seeker back to that safe host country. In line with the point 2 of the resolution the safe host country is identified by fact that “the life or freedom of the asylum applicant must not be threatened” there, the individual “must not be exposed to torture or inhuman or degrading treatment” and must not be endangered by deportation to a country he or she escaped from. According to the point 1 of the resolution “if there is a host third country, the application for refugee status may not be examined and the asylum applicant may be sent to that country”.

The resolution introducing the concept of a safe country and a safe host third country was linked with third London Resolution, namely the Resolution on Manifestly Unfounded Applications for Asylum<sup>33</sup>. The core element of this political act is an assumption that most asylum seekers are in reality economic immigrants. So, in this line of thinking, such people come from poor, but safe countries thus they are not refugees. According to the Member States’ opinion, asylum application filed by such a person should be investigated quickly on the basis of the accelerated procedure and he or she is to be send back<sup>34</sup>. According to the point 1b and 8 of the resolution this special procedure must be used in case of asylum seekers coming from the safe countries and safe host countries<sup>35</sup>.

The resolution states in the point 1 that the accelerated procedure is to be used when there is “clearly no substance to the applicant’s claim to fear persecution in his own country”. This idea is developed in the point 6 on the basis of Geneva Convention and

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<sup>32</sup>Council of the European Union, *Council Resolution of 30 November 1992 on a Harmonized Approach to Questions Concerning Host Third Countries* (“London Resolution”), 30 November 1992, available at: <http://www.refworld.org/docid/3f86c3094.html>, [access: 04 June 2015].

<sup>33</sup>Council of the European Union, *Council Resolution of 30 November 1992 on Manifestly Unfounded Applications for Asylum* (“London Resolution”), 30 November 1992, available at: <http://www.refworld.org/docid/3f86bbcc4.html>, [access: 04 June 2015].

<sup>34</sup>K. Nowaczek, op. cit., p.88.

<sup>35</sup>J. Chlebny, *Postępowanie w sprawie o nadanie statusu uchodźcy*, C.H. Beck 2011, p.53.

confirms that “applicant does not invoke fear of persecution based on his belonging to a race, a religion, a nationality, a social group, or on his political opinions, but reasons such as the search for a job or better living conditions”. Also, when the asylum seeker could find safe shelter in other parts of his home country, he or she must be denied the asylum and the “accelerated procedure” must be in use.

Another reason to apply the procedure is deliberate deception or abuse of asylum procedures by asylum seeker in situations enumerated in the point 9 of the resolution: providing false identity, falsified documents and false information on asylum claim, destruction of identity documents like passport. Other reasons are non-disclosure of filing asylum applications in other country or failing to lodge such claim if it was earlier possible to do so. The accelerated procedure can be also used when asylum seeker violated asylum procedure or “committed a serious offence in one of the Member States”.

The London Resolutions did not have a compulsory character, but they marked a road towards binding legislation on the European Union level<sup>36</sup>. They also became the object of harsh critique expressed by organizations engaged in human rights, especially the United Nations High Commissioner for Refugees<sup>37</sup>. For instance, according to UNHCR opinion, the idea of safe countries and safe third countries limits the right of each asylum seeker to take refuge from persecution. According to this agency asylum seekers have the general right to individual assessment of their asylum claims (Geneva)<sup>38</sup>. Resolutions create the reality in which a person, which is officially considered unthreatened by a member state of European Community, can in fact be in danger of persecution in his or her homeland<sup>39</sup>.

### **1.2.3 Asylum coordination under the Maastricht Treaty**

The signing of the Maastricht Treaty on European Union in 1992 was considered to be a next important step in the development of asylum policy in the European Community

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<sup>36</sup>*Ibidem*, p.55.

<sup>37</sup>A. Potyrała, op. cit., p.148; K. Nowaczek, op. cit., p.90.

<sup>38</sup>A Potyrała, op. cit., p.150.

<sup>39</sup>K. Nowaczek, op. cit., p.90.

member countries<sup>40</sup>. According to Article K.1 of the Treaty, issues which concern immigration and asylum were placed in the newly created Third Pillar of the European Union named “Justice and Home Affairs”<sup>41</sup>. Article K.2 stated that asylum policy issues should be solved with respect to the Convention for the Protection of Human Rights and Fundamental Freedoms and also to the Convention relating to the Status of Refugees. Thus the Member Countries officially confirmed their commitment to those international agreements<sup>42</sup>. In accordance with the Maastricht Treaty asylum issues became the field of intergovernmental cooperation within the frames of the European Union<sup>43</sup>.

Under the Maastricht Treaty it was the Council of Justice and Home Affairs, which managed asylum matters. The legal instruments utilized by the Council were the joint positions, joint actions and conventions<sup>44</sup>. The Council could also issue non-binding resolutions<sup>45</sup>. However, only conventions were legally binding for the Member States. However it happened so, only if their contents were accepted unanimously<sup>46</sup>. As a result, until the end of Maastricht Treaty area in 1999 not a single convention was adopted within the third pillar<sup>47</sup>. The model of intra-governmental decision-making was still prevailing<sup>48</sup>. As for the Maastricht *acquis*, it was criticized for the lack of efficiency<sup>49</sup>.

One of few non-binding legal instruments, which were prepared by the Justice and the Home Affairs Council was the Resolution on Minimum Guarantees for Asylum Procedures adopted in 1995<sup>50</sup>.

Although it stressed the importance of the 1951 Geneva Convention it also left to the Member States the significant area of autonomy in their actions in the field of asylum matters. Paragraph 3 of the said resolution stipulates that the issues regarding asylum procedure and authorities responsible for proceeding asylum applications “are to be laid

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<sup>40</sup>*The Maastricht Treaty. Provisions Amending The Treaty Establishing the European Economic Community With a View to Establishing the European Community*, 7 February 1992, available at: <http://www.eurotreaties.com/maastrichtec.pdf>, [access: 04 June 2015].

<sup>41</sup>A. Florczak, op. cit., p.85.

<sup>42</sup>*Ibidem*.

<sup>43</sup>G. Noll, op. cit., p. 132.

<sup>44</sup>K. Henderson, *Central and Eastern Europe and the European Union*, Routledge 1998, p.162.

<sup>45</sup>A. Florczak, op. cit., p. 88.

<sup>46</sup>*Ibidem*, p.87.

<sup>47</sup>G. Noll, op. cit., p.134.

<sup>48</sup>I. Staffans, *Evidence in European Asylum Procedures*, Martinus Nijhof Publishers 2012, p.29.

<sup>49</sup>G. Noll, op. cit., p.134.

<sup>50</sup>A. Florczak, op. cit., p.88; *Council Resolution of 20 June 1995 on Minimum Guarantees for Asylum Procedures*, Official Journal of the European Communities, 19 September 1996, available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996Y0919\(05\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996Y0919(05)&from=EN), [access: 04 June 2015].

down in the individual Member State's legislation". Nevertheless, it puts pressure on Member States to strive for the development of standards in certain areas.

In line with minimum guarantees established in paragraphs 4-6 of the resolution, fully qualified and independent authorities shall examine an asylum application. They should "on their own initiative" search for "all the relevant facts" pertaining to the asylum application. Furthermore, paragraphs 13-16 provide that the procedure must be conducted in language understood by asylum seeker who is also entitled to interpreter and legal aid free of charge, contact with UNHCR. The decision must be given in writing with information about legal means of challenge<sup>51</sup>.

The resolution attaches great importance to the non-refoulement rule which is elaborated in three paragraphs. According to paragraph 2 asylum seeker must not be deported "as long as no decision has been taken on the asylum application". The document goes on to specify in the Paragraph 12 that this rule concerns "the territory of the State in which his application has been lodged or is being examined". Finally, paragraph 17 strengthens non-refoulement rule by stating that even if the Member States' law is not in line with this principle, the asylum-seeker "should be able to apply to the bodies" like "court or independent review authority".

Paragraphs 18-25 concern "manifestly unfounded applications". In such case it is allowed that "the national law of a Member State may permit an exception to the general principle of the suspensive effect of the appeal". It is also stressed that there are no foundations to grant refugee status to nationals of other Member States.

The resolution also requires in paragraphs 26-27 "specially appointed adult of institution" to assist a child who unaccompanied reached the borders of Member States. Paragraph 28 addresses the need to employ "skilled female employees and female interpreters" when it is necessary because of cultural background of female asylum seeker.

Furthermore, the Justice and Home Affairs Council also prepared other non-binding act, the Joint Position on the Harmonized Application of the Definition of the Term "Refugee"<sup>52</sup>. It was adopted in 1996<sup>53</sup>. The paragraph 4 of the act states that "a well-founded fear of persecution on grounds of race, religion, nationality, political opinion or

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<sup>51</sup>J. Chlebny, op. cit., p.56-57.

<sup>52</sup>*Joint Position of 4 March 1996 defined by the Council on the Basis of Article K.3 of the Treaty on European Union on the Harmonized Application of the Definition of the Term 'Refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees*, 13 March 1996, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996F0196&from=EN>, [access: 04 June 2015].

<sup>53</sup>H. Battjes, *European Asylum Law and International Law*, Martinus Nijhoff Publishers 2006, p.28.



membership of a particular group” is “the determining factor for granting refugee status”. The paragraph 5 specifies the term persecution as “a basic attack on human rights, for example, life, freedom or physical integrity”. “Race, religion, nationality, membership of a particular social group or political opinions” are therefore grounds of persecution. The joint position also stresses in paragraph 4 that the establishment of “the credibility of the asylum-seeker’s statement” must be key point in the examination of the factual fear of persecution. Such principle makes the subjective assessment of asylum application especially important. As a result, the unavoidable lack of objectivity became the reason of critique<sup>54</sup>.

### **1.3 The conferral of competences in creating common asylum standards**

#### **1.3.1 Transition of matters of asylum and refuge to the first pillar of the EU under the Amsterdam Treaty**

As previously described asylum policy remained within the competence of Member States. Measures adopted in the third pillar framework were considered insufficient to serve the dual objective of securing interests of both states and individuals in need of international protection, notwithstanding, Member States were not willing to transfer competences in this area<sup>55</sup>.

The Treaty of Amsterdam Amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts constituted a breakthrough. Matters concerning asylum were transferred from third to first pillar<sup>56</sup>. In practice it meant that what used to be political cooperation within intergovernmental framework would now be executed through supranational model. Due to conferral of competences enriched in the Amsterdam Treaty the Community gained broader legislative powers to issue binding acts pertaining to asylum<sup>57</sup>.

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<sup>54</sup>N. Nathwani, *Rethinking Refugee Law*, Martinus Nijhoff Publishers, Kluwer Law International 2003, p.73.

<sup>55</sup>Kay Hailbronner, *European Immigration and Asylum Law Under the Amsterdam Treaty*, [in:] 35 *Common Market Law Review*, Issue V, 1998, p.1047.

<sup>56</sup>*Consolidated Version of the Treaty Establishing the European Community*, available at: <http://www1.umn.edu/humanrts/instate/EUAmsterdam-treaty.pdf>, [access: 04 June 2015]; A. Florczak, op. cit., p.90.

A. Florczak, op. cit., p.90.

<sup>57</sup>K. Hailbronner, op. cit., p.1047.

A new Title IV headed “Visas, asylum, immigration and other policies related to free movement of persons” was introduced to the consolidated version of the Treaty establishing the European Community. It was to serve a goal of progressive establishment of an area of freedom, security and justice<sup>58</sup>.

Article 63 EC built on Article 61 (b) EC established domains within which the Council was obligated to pass secondary legislation during a period of five years after the entry into force of the Treaty of Amsterdam. These related areas concern:

- “(a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum,
- (b) minimum standards with respect to the qualification of nationals of third countries as refugees,
- (c) minimum standards on procedures in Members for granting or withdrawing refugee status,
- (d) minimum standards for giving temporary protection to displaced persons.”

Furthermore, the Treaty included, Member States pledge to act in accordance with the provisions of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 as well as to promote burden sharing in “receiving and bearing the consequences of receiving refugees and displaced persons”.

The Treaty of Amsterdam stated that the European Commission would possess exclusive legislative initiative regarding asylum policy after 1 May 2004. Before that date the European Commission shared legislative initiative with the Member States. As of 1 May 2004 Council of the European Union, after consulting the European Parliament, was to unanimously decide whether to assign asylum issues to qualified majority voting<sup>59</sup>.

Nevertheless, the Amsterdam Treaty did not give the right to the European Court of Justice in the field of “preliminary ruling” requests made by lower courts concerning asylum issues. The Treaty only stated that such competence may be granted to the ECJ after 1 May 2004 on condition that the Council would unanimously agree to it.

Among protocols annexed to the Treaty on European Union and the Treaty establishing the European Community several were of the particular significance to harmonisation of asylum policy.

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<sup>58</sup>D.U. Galetta, *The European Asylum Policy. Myth and Reality*, [in:] P. Birkinshaw, M. Varney (ed.), *The EU Legal Order after Lisbon*, Kluwer Law International 2010, p.214.

<sup>59</sup>K. Nowaczek, op. cit., p.94-95.

Protocol No 2 introduced Schengen *acquis* into the framework of the European Community. Its institutions gained competence in what used to be decided within Schengen Agreement<sup>60</sup>.

Article 69 EC affirmed that application of Title IV was to be limited by the Protocol No 4 on the position of the United Kingdom and Ireland and by the Protocol No 5 on the position of Denmark. As a result of these opt-outs three Member States were not bound by the Community law on asylum. Nevertheless they were not excluded from accepting certain measures of their choice<sup>61</sup>.

On one side the deadline of five years ensures the development of Community measures directed towards harmonisation of asylum procedures. If the Council fails to pass foreseen legislature proceeding for failure to act could be brought before the Court of Justice of the European Union<sup>62</sup>. On the other side the world minimum reappearing throughout the Article 63 indicates that Member States were not ready to confer all their competences within the area of asylum<sup>63</sup>. Theoretically, the wording of this Treaty provision means that governments can pass legislature providing further protection to third-country nationals fleeing their home countries in the fear of persecution. However, the practice shows that minimum standards remained all individuals were entitled to<sup>64</sup>. What is more, Member States decided not to raise in the Amending Treaty the issue of refugees' treatment after the initial period of protection.

### **1.3.2 Minimum standards set under first phase instruments of the Tampere Programme**

One of the first steps towards the achievement of envisaged common minimum standards in the field of asylum was the European Council meeting held in Vienna on 11 and 12 December 1998<sup>65</sup>. As regards to international protection matters, the crucial point on the agenda was the publication of "the Action plan on how to best implement the

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<sup>60</sup>A. Florczak, op. cit., p.92.

<sup>61</sup>R. Cholewiński, *The EU Acquis on Irregular Migration Ten Years On: Still Reinforcing Security at the Expense of Rights*, [in:] E. Guild, P. Minderhoud (ed.), *The First Decade of EU Migration and Asylum Law*, Martinus Nijhoff Publishers 2011, p.133.

<sup>62</sup>I. Oleksiewicz, *Uchodźcy w Unii...*, p.95.

<sup>63</sup>K. Nowaczek, op. cit., p.94.

<sup>64</sup>I. Oleksiewicz, *Uchodźcy w Unii...*, p.103.

<sup>65</sup>R. Cholewiński, op. cit., p.135.

provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice”<sup>66</sup>. It indicates weaknesses of previously adopted documents: “they are frequently based on ‘soft law’, such as resolutions and recommendations that have no legally binding effect. And they do not have adequate monitoring arrangements”<sup>67</sup>. It cannot be denied that if the harmonization of national systems is a goal then the lack of relevant European Community substantive law is the obstacle on the way to its achievement<sup>68</sup>. During the special meeting in Tampere on 15 and 16 October 1999 the Heads of State and Government reaffirmed the commitment to adopt instruments within the Community framework and urged the Council to pass such legislation<sup>69</sup>.

A Common European Asylum system was named as one of the milestones indispensable to the achievement of the AFSJ. Subsequently, the European Council pledged that all efforts undertaken should be in line with “absolute respect of the right to seek asylum” and the provisions of the 1951 Convention relating to the Status of Refugees<sup>70</sup>.

The whole system would be constructed not only on the systemized indication of the country responsible for the examination of a given application but also on standards set in directives regarding asylum procedure, reception conditions and grounds for granting protection<sup>71</sup>.

The oversight of the progress was vested upon the country which at the time holds the presidency of the Council. What is more, in pursuance of smooth data exchange Member States are obligated to pass information about the progress in transposition of directives and any difficulties encountered thereof. The function of the data recipient is enjoyed by CIREA<sup>72</sup>. The center acts as a forum for “exchange of information on national and local developments concerning immigration and asylum”<sup>73</sup>.

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<sup>66</sup> *Action Plan of the Council and the Commission on How Best to Implement the Provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice*, 23 January 1999, available at: <http://www.refworld.org/docid/3f5341ce2.html>, [access: 04 June 2015].

<sup>67</sup> K. Nowaczek, op. cit., p.96.

<sup>68</sup> D.U. Galetta, op. cit., p.224.

<sup>69</sup> Council of the European Union, *Presidency Conclusions, Tampere European Council, 15-16 October 1999*, 16 October 1999, available at: <http://www.refworld.org/docid/3ef2d2264.html> [access: 3 January 2015].

<sup>70</sup> A. Florczak, op. cit., p.93.

<sup>71</sup> *Ibidem*.

<sup>72</sup> A. Potyrała, op. cit., p.152.

<sup>73</sup> G. Arrigo, G. Casale, *Glossary on Labour Law, Industrial Relations and European Union Institutions*, International Labour Organization 2003, p.25.

The first phrase secondary sources of law were to be adopted in accordance with deadline set in the Amsterdam Treaty that is by May 2004<sup>74</sup>. They included Temporary Protection Directive, Dublin II Regulation, Reception Conditions Directive, Qualification Directive and Asylum Procedures Directive which was adopted after the five year time framework<sup>75</sup>.

The Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons has not been used in practice<sup>76</sup>. However, if case of mass influx of displaced persons arises it commits governments to burden sharing and active support for an affected Member State.

Subsequently, important steps were made as to enhance cooperation in determining a Member State responsible for processing an asylum application. Council Regulation No 343/2003 pertaining to these matters was adopted on 18 February 2003<sup>77</sup>. It has since been known as Dublin II Regulation. Placing the principle of family unity as the highest in the hierarchy it reaffirms criteria set in 1990<sup>78</sup>. The subsequent conditions were subject to critique, because they were thought to act as a punishment for a country which allowed the entrance of an asylum seeker<sup>79</sup>. What is more, UNHCR expressed concern that the provisions limit individuals' right to choose where they want to lodge an application<sup>80</sup>. The article 19 (2) of the said Regulations stipulates that with a view to accelerate the examination of an application, under standard procedure the third-country nationals cannot suspend their transfer to another Member State by appealing a decision<sup>81</sup>.

In pursuance of effective application of principles confirmed in Dublin II Regulation the earlier Council Regulation No 2725/2000 of 11 December 2000 concerning

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<sup>74</sup> G. Noll, op. cit., p.36-37.

<sup>75</sup> S. Peers, *Immigration and Asylum*, [in:] C. Barnard, S. Peers, *European Union Law*, Oxford University Press 2014, p.793.

<sup>76</sup> *Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences thereof*, Official Journal of the European Communities, 7 August 2001, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0055&from=EN>, [access: 04 June 2015], S. Peers, op. cit., 793.

<sup>77</sup> *Council Regulation (EC) No 343/2003 of 18 February 2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in one of The Member States by a third-country National*, Official Journal of the European Union, 25 February 2003, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF>, [access: 04 June 2015].

<sup>78</sup> A. Potyrała, op. cit., p.147.

<sup>79</sup> D.U. Galetta, op. cit., p.224.

<sup>80</sup> A. Potyrała, op. cit., p.147.

<sup>81</sup> K. Nowaczek, op. cit., p.99.

the establishment of Eurodac was adopted<sup>82</sup>. It serves as a database and system for processing fingerprints along with other additional data collected from each asylum seeker. It aims at deterring individuals from lodging multiple applications within several national systems<sup>83</sup>.

Asylum seekers are naturally more inclined to choose certain Member States over others as a result of divergences in conditions they are entitled to while in the procedure. The aim of Council Directive 2003/9/EC from January 2003 is therefore not only to grant minimum rights to each individual but also to enhance more even allocation of asylum seekers. If the reception conditions were similar than they would be less determined to lodge their application only in certain countries<sup>84</sup>.

The article 5 of the Directive underlines the importance of informing applicants about their duties and rights in language that they “may reasonably be supposed to understand”. The documents also establish standards to be attained while providing place of residence and access to education, labour market and health care. However, the desired harmonization effect does not seem to have been attained by the Directive. Due to series of possible exceptions and divergences evident differences remained in the quality of national reception systems<sup>85</sup>.

The subject of eligibility criteria and the content of refugee status were elaborated in the Council Directive 2004/83/EC of 29 April 2004 where many notions previously not defined in Community documents were explained<sup>86</sup>. The article 6 came as a breakthrough. It determined that acts of persecution by both state and non-state actors can constitute basis for granting international protection<sup>87</sup>. This development has been praised by many governmental and non-governmental organizations. UNHCR stated that it “gives due recognition to the persecutory nature of much contemporary conflict. The spirit and intention of the 1951 Convention are seriously undermined when those with a well-

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<sup>82</sup>Council Regulation (EC) No 2725/2000 of 11 December 2000 Concerning the Establishment of ‘Eurodac’ for the Comparison of Fingerprints for the Effective Application of the Dublin Convention, 15 December 2000, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R2725:EN:HTML>, [access: 04 June 2015].

<sup>83</sup>*Ibidem*, p.103.

<sup>84</sup>*Ibidem*, p.101.

<sup>85</sup>D.U. Galetta, op. cit., p.222.

<sup>86</sup>Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals Or Stateless Persons as Refugees or as Persons who Otherwise Need Internal Protection and the Content of the Protection Granted, Official Journal of the European Union, 30 September 2004, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:en:HTML>, [access: 04 June 2015].

<sup>87</sup>J. Chlebny, op. cit., p.60.

founded fear of persecution [...] are not afforded international protection just because that persecution is inflicted by a non-State agent.”<sup>88</sup>

The last document adopted following the framework envisaged in the Amsterdam Treaty was Council Directive 2005/85/EC of 1 December 2005 on minimum standards to be attained during asylum procedure<sup>89</sup>. It specifies obligations and guarantees pertaining to applicants, including the right to a personal interview (Art. 12), free assistance of interpreter and legal practitioner (Art. 13 and Art. 15) as well as the right to appeal (Art. 34)<sup>90</sup>. Under Art. 23 the concept of safe country of origin and safe third country are reaffirmed. However, exhaustive definition and commonly accepted list of such countries have not been created<sup>91</sup>. When compared with already existing practices provisions of Directive cannot be regarded as a breakthrough<sup>92</sup>. Furthermore, they allow wide procedural autonomy which acts counter the efforts to harmonize asylum procedures<sup>93</sup>.

Even though all the instruments foreseen within Tampere Programme were adopted, after 2004 deadline the chances of receiving refugee status were still not even in all Member States. In some countries a person in the same circumstances was more likely to receive international protection than in others. Furthermore, the content of economic and social rights varied throughout the Community. As previously described Directives allowed national authorities to retain wide discretion<sup>94</sup>. If the full development of CEAS was to be attained, further clarification and coherence in asylum matter was still needed.

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<sup>88</sup> UN High Commissioner for Refugees (UNHCR), *Tool Boxes on EU Asylum Matters. Tool Box 2: The Instruments*, 2003, available at: <http://www.refworld.org/docid/466946c72.html> [access: 3 January 2015].

<sup>89</sup> Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, Official Journal of the European Union, 13 December 2005, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>, [access: 04 June 2015].

<sup>90</sup> J. Vested-Hansen, *The asylum procedures and the assessment of asylum requests*, [in:] V. Chetail, C. Bauloz (ed.), *Research Handbook on International Law and Immigration*, Edward Elgar Publishing 2014, p. 450.

<sup>91</sup> D.U. Galetta, op. cit., p.222.

<sup>92</sup> J. Chlebny, op. cit., p. 60.

<sup>93</sup> D.U. Galetta, op. cit., p.222.

<sup>94</sup> *Ibidem*, p.222 –223.

### 1.3.3 A move towards uniform standards under the Lisbon Treaty

Since the time period encompassed by the Tampere Programme drew to a close the need for establishment of second multi-annual phase arose. With a view of the further development towards the area of freedom, security and justice, Hague Programme was adopted in November 2004 and subsequently launched in May 2005<sup>95</sup>.

The issues regarding asylum policies are included in the Strengthening Freedom section of the programme. The Council welcomed foregoing legal instruments and assessed them as introducing firm foundations for the future common asylum system and coordinating comprehensive progress<sup>96</sup>. The Action Plan implementing the Hague Programme urged the European Community to conduct “the evaluation of the first phase legal instruments [by] monitoring the transposition and implementation of first phase instruments”<sup>97</sup>. The deadline for the adoption of recast directives was set for the end of 2010. However, this political declaration proved to be overly ambitious and was not fulfilled, notwithstanding the fact that proposals have been swiftly drafted by the Commission<sup>98</sup>.

In accordance with the principle of conferral elaborated in the Article 5 TEU (ex Article 5 TEC) “the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein”. As EC institutions were confined by the Amsterdam Treaty to the establishment of minimum standards, realistically judging fully harmonized asylum procedures could not have been attained<sup>99</sup>.

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<sup>95</sup>S. Carrera, *The Impact of the Treaty of Lisbon over EU Policies on Migration, Asylum and Borders: The Struggles over the Ownership of the Stockholm Programme*, [in:] E. Guild, P. Minderhoud (ed.), *The First Decade of EU Migration and Asylum Law*, Koninklijke Brill NV 2012, p. 235.

<sup>96</sup> Council of the European Union, *The Hague Programme: Strengthening Freedom, Security and Justice in The European Union*, 13 December 2004, available at: [http://ec.europa.eu/home-affairs/doc\\_centre/docs/hague\\_programme\\_en.pdf](http://ec.europa.eu/home-affairs/doc_centre/docs/hague_programme_en.pdf) [access: 17 July 2015].

<sup>97</sup> *Council and Commission Action Plan Implementing the Hague Programme on Strengthening Freedom, Security and Justice in the European Union*, available at: <http://www.consilium.europa.eu/uedocs/cmsupload/web097781.en.pdf>, [access: 04 June 2015].

<sup>98</sup>S. Peers, N. Rogers, *EU Immigration and Asylum Law: Text and Commentary*, Koninklijke Brill NV 2006, p. 234; C. Smyth, *European Asylum Law and the Rights of the Child*, Routledge 2014, p. 14.

<sup>99</sup> S. Peers, N. Rogers, op. cit., p. 234.



The legally binding change came with the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community which was signed on 13 December 2007 and entered into force on 1 December 2009<sup>100</sup>.

The old Title IV of the European Community Treaty on “visas, asylum, immigration, and other policies related to the free movement of persons” was replaced by Title V of TFEU named “Area of freedom, security and justice”<sup>101</sup>. The article 78 of the TFEU now explicitly calls for the creation of common asylum policy comprising “a uniform status of asylum for nationals of third countries”, “common procedures for granting and withdrawing of uniform asylum status”, “criteria and mechanisms for determining which Member State is responsible for considering an application for asylum” and “standards concerning the conditions for the reception of applicants”. The said article also reaffirms the notions of “subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection” and “temporary protection for displaced persons in the event of a massive inflow” as parts of the common asylum system. Foreseen standards shall be adopted in accordance with ordinary legislative procedure as defined in the article 294 TFEU, meaning “exclusive right of initiative of the Commission and co-decision on the basis of qualified majority voting by the Council and the European Parliament”<sup>102</sup>.

In comparison with the Amsterdam Treaty areas of interest as regards to asylum remained unaltered, however, the European Union gained wider competence and has now legal capacity to thoroughly harmonize the law on asylum<sup>103</sup>. Previously established five-year period for the adoption of the secondary sources has not been repeated in the Lisbon Treaty. In fact, no deadline has been set<sup>104</sup>.

Furthermore, Article 67 of the TFEU visibly broadens the competences of the European Court of Justice. So far the ECJ had the authority to rule in “preliminary

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<sup>100</sup>*Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*, Official Journal of the European Union, 17 December 2007, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12007L/TXT&from=EN>, [access: 04 June 2015].

<sup>101</sup>D.U. Galetta, op. cit., p.217.

<sup>102</sup>C. Smyth, op.cit., p.14.

<sup>103</sup>S. Peers, *Legislative Update. EU Immigration and Asylum Competence and Decision Making in the Treaty Of Lisbon*, [in:] *European Journal of Migration and Law*, Issue 10, 2008, p.223.

<sup>104</sup>C. Kaunert, S. Leonard, *The European Union Asylum Policy after the Treaty Of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?*, [in:] *31 Refugee Survey Quarterly*, 2012, p.16; European Commission, *A Common European Asylum System*, 2014, available at: [http://ec.europa.eu/dgs/home-affairs/e-library/docs/ceas-factsheets/ceas\\_factsheet\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/docs/ceas-factsheets/ceas_factsheet_en.pdf), [access: 09 January 2015].

submissions” pertaining to asylum matters only when it was asked to do so by national courts of the final instance<sup>105</sup>. Since 2009 lower courts were also granted the right to request the Court to “give a preliminary ruling regarding questions on the legality of an act of an EU institution”<sup>106</sup>. It can be assumed that such move will contribute towards further harmonization among national systems of EU members.

Article 67 of the TFEU goes on to stipulate further that the whole system shall be build upon the principle of solidarity among Member States and fair treatment of third country nationals. The practical actions for attaining this objective have been previously elaborates in the Hague Programme where it was indicated that they should comprise of both financial and practical cooperation, namely “technical assistance, training, and exchange of information, monitoring of the adequate and timely implementation and application of instruments as well as further harmonization of legislation”<sup>107</sup>.

The treaty asserts the significance of non-refoulement rule, and in the whole, dedication to principles stemming from the 1951 Geneva Convention of 1951 and the 1967 New York Protocol. According to article 78 of the TFEU the common asylum policy “must be in accordance with” these acts. In the same provision Member States additionally pledge shift towards broader cooperation with third-countries in order to better manage inflows of applicants for international protection.

Consequently, the Treaty of Lisbon has both introduced institutional changes and extended competence of the European Union to the level beyond the previously conferred right to establish minimum standards. The necessity to create the CEAS was for the first time acknowledged in the primary source of law. The Community became obligated to develop uniform procedures which will be legally binding on Member States. With the restriction of discretion at national level comes the potential for future full harmonization of the asylum system.

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<sup>105</sup>D.U. Galetta, op. cit., p.218.

<sup>106</sup>M. Reneman. *EU Asylum Procedures and the Right to an Effective Remedy*, Bloomsbury Publishing 2014, p.48.

<sup>107</sup>Council of the European Union, *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union...*

### 1.3.4 Creation of Common European Asylum System under second phase legal instruments

Article 68 TFEU reaffirmed the commitment of the European Council to “define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.” In 2009 heads of state and government established third strategic agenda, the Stockholm Programme, in which they acknowledged that the establishment of CEAS remains essential to development of AFSJ<sup>108</sup>.

In the said programme particular importance is accorded to an effective application of the principle of solidarity, the external dimension of CEAS and the European Asylum Support Office as tool for improving cooperation among Member States. Moreover, it admonishes EU’s legislating institutions “to intensify the efforts to establish a common asylum procedure and a uniform status in accordance with Article 78 TFEU” but at the same time the deadline for adoption of asylum measures has eventually been officially postponed till 2012. This, however, does not come as a surprise because as far back as 2008 that is in the European Pact on Immigration and Asylum, the European Council has for the first time acknowledged the possibility of changing the target date<sup>109</sup>. The programme also envisages that once foreseen measures are adopted the Commission will proceed to conduct an evaluation.

The commitment to principles established by 1951 Geneva Convention relating to the Status of refugees has previously been confirmed at the Community level. However, in the Stockholm Programme it is for the first time acknowledged that the EU as a supranational organization with legal personality should become a party to the said Convention and its 1967 Protocol<sup>110</sup>.

The Stockholm Programme proved to be less effective as regards adoption of secondary sources of law concerning asylum matters than its predecessors. Only the draft of recast Qualification Directive has been duly approved within five-year framework<sup>111</sup>. The remaining instruments, namely revised Asylum Procedures Directive, Reception

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<sup>108</sup>G. Clayton, *Textbook on Immigration and Asylum Law*, Oxford University Press 2014, p.148; European Council, *Notices from European Union Institutions, Bodies, Offices and Agencies. The Stockholm Programme – an Open and Secure Europe Serving and Protecting Citizens*, Official Journal of the European Union, 4 May 2010, available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XG0504\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XG0504(01)&from=EN), [access: 04 June 2015].

<sup>109</sup>C. Kaunert, S. Leonard, *op.cit.*, p.15.

<sup>110</sup>S. Peers, *EU Justice and Home Affairs Law*, Oxford University Press 2011, p.306.

<sup>111</sup>C. Smyth, *op.cit.*, p.15.

Conditions Directive, Dublin Regulation and Eurodac Regulation, have been adopted on 26 June 2013 and will only be applicable from 20 July 2015<sup>112</sup>.

As practice has shown it was much easier to agree on a general concept of CEAS than on specific binding measures towards the achievement of thereof. Notably, as the initial phase of setting minimal standards was completed, Member States found it increasingly challenging to agree on details of CEAS<sup>113</sup>.

The slowdown in the harmonization of national systems can be attributed to a range of factors. We are witnessing political and economic challenges, both on an internal and external plane. Prolonged economic crisis contributed to a shift in policy-makers priorities. They are more inclined to come to a negotiation table with the aim to improve efficiency and combating abuse of asylum system rather than to enhance protection of vulnerable persons. As national governments are accused of losing control over migration flows some critics go as far as to question the whole Schengen system<sup>114</sup>.

Nevertheless, within the past two decades the significant progress has been achieved. Asylum matters were first treated within the international cooperation framework. Subsequently, they became a part of supranational model and the minimum standards for common system have been laid. Currently, the European Union is striving for the full harmonization of national policies. Underlying principle of the whole system as stated in the Stockholm Programme is to achieve reception conditions and procedural arrangements in which “similar cases should be treated alike and result in the same outcome”.

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<sup>112</sup>C. Kaunert, S. Leonard, op.cit., p.15.

<sup>113</sup>E. Collet, *Future EU Policy Development on Immigration and Asylum: Understanding the Challenge*, [in:] *Policy Brief Series*, Issue IV, May 2014, p.2.

<sup>114</sup>C. Smyth, op.cit., p.16.

## **II. Institutional networks**

### **2.1 Legal competences and undertakings of the EU asylum support office - EASO**

#### **2.1.1 Establishment process**

The establishment of CEAS has been one of the main priorities of the European Community. Nevertheless, as previously discussed, the adoption of minimum standards through legislative instruments did not prove to be sufficient as regards to full harmonization of national systems. Therefore, the foregoing efforts had to be complemented by other measures which would allow for more practical support to be offered to Member States struggling to attain envisaged capacity<sup>115</sup>.

It was believed that with continuous exchange of information local authorities would naturally adopt best practices. The idea of an institutionalized platform for the enhancement of cooperation among Member States has been elaborated and successfully brought into life<sup>116</sup>.

The willingness of Member States to create a regulatory agency for the implementation of CEAS was proven by swift and efficient adoption process<sup>117</sup>. The concept was first introduced in the Hague Programme where in the Strengthening Freedom section the heads of states and governments invited “the Council and the Commission to establish in 2005 appropriate structures involving the national asylum services of the Member States with a view to facilitating practical and collaborative cooperation” and also envisaged that this framework would be subsequently evaluated and transformed into the European support office<sup>118</sup>. The possible objectives and a scope of duties of the future EU agency were further clarified in 2006 when the Commission issued a communication to the Council and the European Parliament stating that “practical cooperation will enable Member States to become familiar with the systems and practices of others, and to develop

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<sup>115</sup>F.A.N.J. Goudappel, H.S. Raulus, *Introduction – The Future of Asylum in the European Union? Proposals, Problems and Interaction with International Human Rights Standards*, [in:] F.A.N.J. Goudappel, H.S. Raulus (ed.), *The Future of Asylum in the European Union: Problems, Proposals and Human Rights*, T.M.C Asser Press 2011, p. 9.

<sup>116</sup>M. Schimmanek, *The Establishment of the European Asylum Support Office and its Impact on EU Asylum Policy*, University of Twente 2012, p.16.

<sup>117</sup>*Ibidem*, p.17.

<sup>118</sup>Council of the European Union *The Hague Programme: Strengthening...*; C. Smyth, op.cit., p.14.

closer working relations among asylum services at the operational level. This will build a basis for wider areas of collaboration, with the development of trust and a sense of mutual interest”<sup>119</sup>.

The year 2009 brought both an affirmation of the commitment to establish the European support office as stipulated in the Stockholm Programme and a proposal for an establishing instrument drafted by the Commission<sup>120</sup>. On 19 May 2010 Regulation No 439/2010 of the European Parliament and of the Council establishing a European Asylum Support Office was adopted<sup>121</sup>. The agency became operational in the following year<sup>122</sup>.

### 2.1.2 Administrative and management structure

The aforementioned regulation stipulates the organization of EASO with details of administrative and organizational structure laid down in the Chapter 4. Permanent bodies include a Management Board, an Executive Director and staff of the support Office. The list may be supplemented by an Executive Committee if established by the Management Board in accordance with the provisions of Article 29 which stipulates that the aim of such is to assist other bodies “with regard to the preparation of the decisions, work programme and activities.”

As to composition and mandate of the Management Board they are specified in Articles 25-29 of the said Regulation. The body consists of one representative from each Member State, two members appointed by the Commission and a non-voting representative of the UNHCR. Article 28 stipulates that during ordinary meeting which are to be held at least twice a year, decisions are reached on an absolute majority voting basis. Its planning and monitoring functions include *inter alia* adoption of procedure rules,

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<sup>119</sup>Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament on Strengthened Practical Cooperation*, 17 February 2006, COM(2006)67, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006 DC0067&from=EN>, [access: 19 July 2015].

<sup>120</sup>C. Kaunert, S. Leonard, *op.cit.*, p.14.

<sup>121</sup>*Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing A European Asylum Support Office*, 29 May 2010, Official Journal of the European Union, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R0439&from=EN>, [access: 20 July 2015].

<sup>122</sup>House of Lords, *Strategic Guidelines for the EU's next Justice and Home Affairs Programme: Steady as She Goes*, 13 Report of Session 2013-14, p.47.

appointment of the Executive Director, publication of annual reports on the situation of asylum in the Union and drafting of work programmes for a forthcoming year<sup>123</sup>.

Appointment procedure provided in the Article 30 envisages that the Executive Directors are chosen on the basis of an open competition organized by the Commission where “personal merits, experience in the field of asylum and administrative and management skills” are taken under consideration. They are primarily responsible for managing the day-to-day running of the office and drafting of the reports<sup>124</sup>.

### **2.1.3 Mandate under Regulation No 439/2010**

The essence of EASO’s mandate is laid down in Article 1 of the Regulation No 439/2010 according to which the office “is hereby established in order to improve the implementation of the Common European Asylum System, to strengthen practical cooperation among Member States on asylum and to provide and/or coordinate the provision of operational support to Member States subject to particular pressure on their asylum and reception systems.” The document categorizes EASO’s functions under three general headlines of Chapter 2, which in total regroups a dozen particular areas of responsibility<sup>125</sup>.

Under Section 1 on supporting practical cooperation on asylum, the agency “shall organize, promote and coordinate activities enabling the exchange of information and the identification and pooling of best practices in asylum matters between Member States”. This general mandate encompasses several specific functions.

First of all, under Article 4, the EASO is responsible for “the gathering of relevant, reliable, accurate and up-to date information on countries of origin of persons applying for international protection.” Since 2012 the agency has assumed the responsibility to manage and continuously develop the COI Portal which is a platform that acts as a common source of knowledge for asylum officials. They subsequently apply the required data at their own discretion to individual cases as Article 4(e) forbids the office from instructing Member

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<sup>123</sup>S. Peers, *EU Justice...*, p.376.

<sup>124</sup>*Ibidem*, p.377.

<sup>125</sup>M. Schimmanek, *op. cit.*, p.18.

States on the outcome of application<sup>126</sup>. However, only authorized users are granted access, meaning that an ordinary EU citizen cannot profit from gathered research<sup>127</sup>. Undoubtedly, this sort of standardized information on countries of origin is essential in ensuring comparable level of treatment notwithstanding in which Member State an application has been filed.

Due to divergent geographical and demographic circumstances certain Member States have to deal with more significant waves of asylum seekers and illegal immigrants than others. As a result their national asylum systems are under particular pressure<sup>128</sup>. In accordance with Article 5 of the EASO regulation, the agency is charged with supporting relocation, meaning an intra-EU process during which beneficiaries of international protection are transferred from one Member State to another.

However, such transfer can only be effectuated when a common consent from both national authorities and an individual has been obtained<sup>129</sup>. Voluntary basis signifies that so far Member States were not legally bound to participate in this solidarity and responsibility sharing programme. In fact, relocations have only been effectuated within EUREMA initiative, under which national authorities from ten Member States (Portugal, Luxembourg, the UK, Romania, Poland, Hungary, Slovakia, Slovenia, Germany, France) have pledged to in total host 255 refugees who initially were granted protection in Malta<sup>130</sup>. Eventually, 227 individuals were transferred to six of the aforementioned states (the UK, Slovenia, Portugal, Luxembourg, Germany, France)<sup>131</sup>. The numbers under the second phase of EUREMA were even more modest, with only 91 places pledged<sup>132</sup>. As evident from the data quoted above, Member States have been avoiding the burden-sharing

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<sup>126</sup>European Asylum Support Office, *Tools and Tips for Online COI Research*, June 2014, p.10, available at: <http://www.refworld.org/pdfid/53f478884.pdf>, [access: 17 July 2015].

<sup>127</sup>*Access to COI Portal Notice*, available at: <https://easo.europa.eu/coiportalnotice/>, [access: 17 July 2015].

<sup>128</sup>A.G. Hurwitz, *The Collective Responsibility of States to Protect Refugees*, Oxford University Press 2009, p. 156.

<sup>129</sup>W. van Hövell, *The Goals of the Common European Asylum System*, [in:] F.A.N.J. Goudappel, H.S. Raulus (ed.), *The Future of Asylum in the European Union: Problems, Proposals and Human Rights*, T.M.C Asser Press 2011, p.69.

<sup>130</sup>E. Thielemann, *Burden-Sharing*, [in:] E. Jones, A. Menon, S. Weatherill (ed.), *The Oxford Handbook of The European Union*, Oxford University Press 2012, p.817.

<sup>131</sup>European Asylum Support Office, *EASO Fact Finding Report on intra-EU relocation activities from Malta*, July 2012, p. 4, available at: <https://easo.europa.eu/wp-content/uploads/EUREMA-fact-finding-report-EASO1.pdf>, [access: 17 July 2015].

<sup>132</sup>*Resettlement, Relocation or Humanitarian Admission? We Explain the Terminology*, p.1, available at: <http://www.resettlement.eu/sites/icmc.ttp.eu/files/ERN%20Factsheet%20Terminology.pdf>, [access: 17 July 2015].



responsibility. Their foregoing efforts were rather symbolic and in reality have not relieved much of the pressure placed on the Maltese asylum system.

Article 6 of the EASO Regulation determines one of the main fields of operation, namely support for training under continuously maintained and developed European Asylum Curriculum<sup>133</sup>. The support office is charged with developing and executing training activities for staff at all levels who are actively involved in asylum matters. Seminars focus on both legal and administrative issues as well as on practical aspects of handling asylum applications. In line with Point 4 of the said Article the Curriculum centers around legal aspects of human rights and asylum, good practices as regards to processing applications from minors, vulnerable persons and victims of torture, interview techniques, reception conditions as well as information on countries of origin<sup>134</sup>.

Last but not least, under Article 7, the EASO is charged with providing support for the external dimension of the CEAS. It coordinates resettlement efforts, meaning the admittance of international protection beneficiaries from third countries whose national systems are under particular strain due to large numbers of asylum seekers<sup>135</sup>. Furthermore, it assists third countries in their efforts to build asylum and reception systems as well as to fulfill their commitments under regional protection programmes.

EASO's mandate in assisting Member States subject to particular pressure is not restricted to enhancing relocation efforts. Section 2 of the Regulation defines a range of other supporting measures. Under Article 9 the Agency gathers and analyses information in order to obtain complete profile of countries that face significant demands on their asylum systems. When assessing asylum capacity it *inter alia* conducts research on structures, sufficient availability of staff members as well as on the overall management of cases. The office also profits from early warning mechanism to facilitate the exchange of information on intensified waves of asylum seekers<sup>136</sup>.

If requested by a member state the Agency can also offer hands-on expertise through the deployment of asylum support teams under conditions set in Articles 13-23.

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<sup>133</sup>M. Hennessy, *Training and Strategic Litigation: Tools for Enhanced Protection of gender-related asylum Applicants in Europe*, [in:] E. Arbel, C. Dauvergne, J. Millbank (ed.), *Gender in Refugee Law. From the Margin to the Centre*, Routledge 2014, p.183.

<sup>134</sup>S. Peers, N. Rogers, op. cit., p.225.

<sup>135</sup>W. van Hövell, op. cit., p.70.

<sup>136</sup>M. Iner-Ciger, *Has the Temporary Protection Directive Become Obsolete? An Examination of the Directive and Its Lack of Implementation in View of the Recent Asylum Crisis in the Mediterranean*, [in:] C. Bauloz, M. Iner-Ciger, S. Singer, V Stoyanova (ed.), *Seeking Asylum in the European Union: Selected Protection Issues Raised by the Second Phase of the Common European Asylum System*, Koninklijke Brill NV 2015, p.242.

They may provide technical and operational assistance in particular as regards to “interpreting services, information on countries of origin and knowledge of handling and management of asylum cases”<sup>137</sup>. As provided for in Article 15, the experts are chosen from Asylum Intervention Pool to which Member States contribute their national professionals and commit to cover the costs of their service on a foreign territory<sup>138</sup>.

The last section devoted to EASO field of operation, namely Section 3, concerns direct contributions to the implementation of the CEAS. Once again, the role of the Agency as an entity which gathers and processes information is stressed. In accordance with Article 11 it is charged with developing database, firstly on asylum *acquis* of the European Union as well as on the implementation process and secondly on adopted national and international instruments.

Under Article 12 the supporting office prepares reports on both overall asylum situation within the EU and particular challenges faced by individual countries. It also publishes manuals and guidelines for national authorities. However, their purpose is strictly informative and Member States are not bound by such instructions<sup>139</sup>.

Moreover, the EASO has been actively providing operational expertise in both ongoing and completed programmes at all fields elaborated in the founding Regulation. Emergency support has been offered to Greece and Luxembourg where asylum support teams were deployed<sup>140</sup>. Furthermore, custom-made assistance and tools were put at disposal of Cyprus, Italy, Bulgaria and Sweden.<sup>141</sup>

Simultaneously, the agency has been conducting continuous training sessions for asylum officials from all Member States. For 2015 it envisaged sixteen seminars composed of both online studies and face-to-face trainings, with the subject varying from the general understanding of CEAS *acquis* to modules on interviewing vulnerable persons and evidence assessment, to just name a few<sup>142</sup>.

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<sup>137</sup>S. Peers, *EU Justice...*, p.376.

<sup>138</sup>S. Peers, N. Rogers, op. cit., p.347.

<sup>139</sup>S. Peers, *EU Justice...*, p.376.

<sup>140</sup>M. Reneman, , op. cit., p. 389.

<sup>141</sup>European Asylum Support Office, *Operational Support*, available at: <https://easo.europa.eu/about-us/tasks-of-easo/operational-support/>, [access: 17 July 2015].

<sup>142</sup>European Asylum Support Office, *Plan of the Training Session of the EASO Training Curriculum – 2015. Revised as of April 2015*, available at: [https://easo.europa.eu/wp-content/uploads/EASO\\_Training-Plan-2015-Revised-as-of-April-2015.pdf](https://easo.europa.eu/wp-content/uploads/EASO_Training-Plan-2015-Revised-as-of-April-2015.pdf), [access: 17 July 2015].

The EASO has been charged with a crucial task of “realizing the full potential of practical co-operation and improved governance”<sup>143</sup>. Despite initial concerns as regards to insufficient resources, possible negative influence of standardized country of origin information on the right to individual review of application and potential deterioration of relations with third-countries subject to unfavorable reports drafted by the agency, EASO has been actively fulfilling its role as a “European centre of expertise on asylum”<sup>144</sup>. Along with the fulfillment of obligations explicitly provided for in the EASO Regulation, the current multiannual work programme places on the top of agenda for the years 2014 – 2016 the support for the implementation of second phase legal instruments<sup>145</sup>.

## **2.2 Fiscal burden sharing under the European Refugee Fund**

### **2.2.1 Strategic objectives and eligible actions**

Through establishment of EASO Member States have undertaken to actively cooperate in the field of operational and technical burden-sharing. However, in order to enhance capacity-building of individual asylum systems it was crucial to also ensure instruments for fiscal solidarity<sup>146</sup>.

Overall, European Funds serve as a specific kind of development aid which allows for targeted financial assistance in the form of grants for approved projects<sup>147</sup>. Their role is to ensure continuous progress in all Member States with a view to gradually narrow disparities among poorer and richer regions. In other words, the goal is to achieve social and economic cohesion throughout the European Union<sup>148</sup>.

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<sup>143</sup>E. Thielemann, C. Armstrong, *Evaluating the Prospects for Enhanced Solidarity in the Common European Asylum System*, European Policy Analysis, Issue 2012, p.6.

<sup>144</sup>House of Lords, *Strategic Guidelines...*, p. 47; S. Velluti, *Reforming the Common European Asylum System – Legislative Developments and Judicial Activism of the European Courts*, Springer 2014, p.18.

<sup>145</sup>European Asylum Support Office, *EASO Multi-Annual Work Programme 2014 – 2016*, November 2013, available at: <https://easo.europa.eu/wp-content/uploads/EASO-Multi-annual-work-programme-2014-2016.pdf>, p. 9.

<sup>146</sup>A.G. Hurwitz, op. cit., p. 147–148.

<sup>147</sup>*Ibidem*, S. Peers, V. Moreno-Lax, M. Garlick, E. Guild, *EU Immigration and Asylum Law (Text and Commentary): Second Revised Edition*, Koninklijke Brill NV 2015, p.624.

<sup>148</sup>M. Koziel, *Impact of Changes in Public Budgets on Financing of the Minorities in Europe*, [in:] E. Ruśkowski, J. Stankiewicz, M. Tyniewicz, U. Zawadzka-Pak (ed.), *Annual and Long Term Public Finances in Central and Eastern European Countries*, Temida 2 2013, p.190.

The need to adopt a specific refugee fund was acknowledged at the time of the conflict in the former Yugoslavia, when intensified waves of displaced persons reached Community borders<sup>149</sup>. In line with Article 63(2)(b) TEC which gave the Community competence to undertake “measures promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons”, a new entity has been enacted.

In the year 2000 previous instruments whose scope encompassed reception conditions and asylum procedures as well as integration and voluntary return of third-country nationals, were merged into a single framework, namely European Refugee Fund<sup>150</sup>. The Decision 573/2007/EC incorporated the second phase of ERF into a broader framework called ‘Solidarity and Management of Migration Flows’ (2007 - 2013). There is was financed along with the European Fund for the Integration of Third-country nationals, the European Return Fund, the External Borders Fund<sup>151</sup>. Subsequently, the mandate of the ERF has been inherited by the Asylum, Migration and Integration Fund (AMIF) within a multinational programming period for the years 2014 – 2020<sup>152</sup>.

European Refugee Fund served the purpose of further strengthening the area of freedom, security and justice as stated in the Article 1 of the Decision No 573/2007/EC. Article 2 of the instrument goes on to stipulate the general objective of the fund which was to “support and encourage efforts made by the Member States in receiving, and in bearing the consequences of receiving, refugees and displaced persons, taking account of Community legislation on those matters, by co-financing the actions provided for in this Decision”. To this goal resources were allocated to authorized national authorities which could thus support projects related to effective management of reception conditions, asylum procedures, integration of third-country nationals and voluntary resettlement<sup>153</sup>.

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<sup>149</sup>A.C. Helton, *The Price of Indifference. Refugees and Humanitarian Action in the New Century*, Oxford University Press 2003, p.166.

<sup>150</sup>G. Noll, op. cit., p. 312; A.G. Hurwitz, op. cit., p.147.

<sup>151</sup>T. Balzacq, S. Carrera, *Migration, Borders and Asylum, Trends and Vulnerabilities in EU Policy*, Centre for European Policy Studies 2005, p.46; House of Commons: European Scrutiny Committee, *Sixteenth Report of Session 2012-13*, p.9.

<sup>152</sup>European Commission, *Annex to the Commission Implementing Decision Concerning the Adoption of the Work Programme for 2014 and the Financing for Union Actions and Emergency assistance within the Framework of the Asylum, Migration and Integration Fund*, 8 August 2014, C(2014) 5652, available at: [http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/union-actions/docs/awp\\_2014\\_amif\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/union-actions/docs/awp_2014_amif_en.pdf), p. 2-3, [access: 20 July 2015].

<sup>153</sup>F.A.N.J. Goudappel, H.S. Raulus, op. cit., p.9; A. Staab, *The European Union Explained, Institutions, Actors, Global Impact*, Indiana University Press 2013, p.146.

Furthermore, under Article 4, 10% of the Fund's budget could be assigned for Community Actions. The term signifies transnational initiatives or initiatives which are directly beneficial for the whole Community. They include, *inter alia*, projects for the co-operation in the implementation of asylum instruments, dissemination of good practices, awareness-raising campaigns, support studies and networks for exchange of information.

In addition, ERF mandate covered emergency situations. In accordance with Article 8 of the establishing Decision, it was granted a competence to "provide assistance to Member States for the implementation of emergency measures aimed at addressing situations of particular pressure. Such situations are characterized by the sudden arrival at particular points at the borders of a large number of third-country nationals who may be in need of international protection, which place exceptionally heavy and urgent demands on the reception facilities, the asylum system or infrastructure of the Member States concerned". The provision refers to an urgent and unpredictable matters that could not have been covered by annual planning.

The aforementioned statutory objectives constituted the base for the adoption of strategic guidelines for the years 2008 – 2013. In the Decision 2007/815/EC the Commission identified the implementation of the Community *acquis* in the field of asylum, development of administrative and evaluative tools as well as responsibility sharing with third countries as top priorities for the said period<sup>154</sup>.

In turn these guidelines served as a base for multiannual programmes which were subsequently prepared by authorities in each Member State<sup>155</sup>. Under Article 18 of the Decision 573/2007/EC each such document consisted of the following components: a description of asylum situation, an evaluation of needs and policies, a presentation of foreseen approach to established priorities, an assessment of compatibility with already existing instruments and a draft of a plan for co-financing. To complement and specify the spending process, national annual programmes implementing multiannual framework were adopted in accordance with Article 20.

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<sup>154</sup> *Commission Decision of 29 November 2007 implementing Decision No 573/2007/EC of the European Parliament and of the Council as Regards the Adoption of the Strategic Guidelines 2008 to 2013*, 12 December 2007, Official Journal of the European Union, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:326:0029:0031:EN:PDF>, [access: 20 July 2015].

<sup>155</sup> *Decision 573/2007/EC of the European Parliament and of the Council of 23 May 2007 Establishing the European Refugee Fund for the Period 2008 to 2013 as part of the General Programme "Solidarity and Management of Migration Flows" and repealing Council Decision 2004/904/EC*, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l14567&from=EN> [access: 20 July 2015].

### 2.2.2 Division of available financial resources

The Fund has been jointly financed by participating Member States<sup>156</sup>. For the period 2008 – 2013 the budget of 4 billion euro was foreseen for the execution of “Solidarity and Management of Migration Flows” Programme. From that amount the Community allocated a tranche of 628 million euro to the ERF<sup>157</sup>.

Not every country received equal resources. In accordance with Article 13 of ERF Decision, each participating state was granted a fixed annual amount of EUR 300 000, which was raised to EUR 500 000 for those whose accession was effectuated since 2004. The remaining budget was divided under criteria related to the number of asylum seekers and beneficiaries of international protection<sup>158</sup>. However, the legislator destined more resources for applicants than individuals with already established status<sup>159</sup>. In the Explanatory Memorandum, the Commission justified the logic behind such disparities. It concluded that once integration measures become effective, refugees tend to gradually rely less on state aid, therefore, less resources needed to be contributed for their benefit<sup>160</sup>.

Principles governing the grant of resources for the particular project were enumerated in Article 14 of the ERF Decision. First of all, supported actions had to be non-profit. Secondly, they were only partially financed from the Fund<sup>161</sup>. In general, the contribution from the Community covered up to 50% of all costs. The remaining was provided by private or public sources. In the exceptional cases the Community support could have been extended to 75% in case of “projects addressing specific priorities identified in the strategic guidelines” or “in Member States covered by the Cohesion Fund”. Moreover, in the event of temporary emergency situation it was possible to increase the threshold to 80%<sup>162</sup>.

Finally, Article 14 goes on to stipulate that while choosing the actions for financing, Member States had to take into consideration some minimum selection criteria.

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<sup>156</sup>House of Commons: European Scrutiny Committee, *Sixteenth Report...*, p.9.

<sup>157</sup>European Court of Auditors, *Do the European Integration Fund and European Refugee Fund Contribute Effectively to the Integration of Third-Country Nationals?*, 2012, Special Report No 22, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5245589e4&skip=0&query=European%20Refugee%20Fund>, [access: 20 July 2015].

<sup>158</sup>House of Commons: European Scrutiny Committee, *Third Report of Session 2009-10*, p.112

<sup>159</sup>G. Noll, op. cit., p.313.

<sup>160</sup>Commission of the European Communities, *Proposal for a Decision Creating a European Refugee Fund*, 14 December 1999, COM(1999) 696, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51999PC0686&from=EN>, [access: 20 July 2015].

<sup>161</sup>M. Koziel, op. cit., p.191-192.

<sup>162</sup>House of Commons: European Scrutiny Committee, *Sixteenth Report...*, p.9-10.

These factors included: cost effectiveness, meaning the number of persons that can potentially profit from a project, experience of organizers and their financial input as well as potential contributions towards strengthening Community policies in the field of asylum.

### **2.2.3 Management and control mechanisms**

Depending on the nature of undertaken projects the Fund was implemented through shared management or centralized management as in case of Community Actions and emergency measures. About 80% of all financed actions fell within the first category. Under that mode, representatives of the Commission and each participating country attended bilateral talks during which needs and priorities for the next multiannual frameworks were agreed upon<sup>163</sup>.

However, in line with Article 9 of the ERF Decision, it were Member States who assumed the sole responsibility for the implementation of the said frameworks<sup>164</sup>. To this aim, under Article 25 three specific types of authorities were formed within each national system.

Firstly, the so called responsible authority was designated to handle communications with the Commission and to govern multinational and national programmes. More specifically, under competences accorded in Article 27, it submitted proposals for new frameworks, coordinated calls for tenders, managed both incoming and outgoing payments, selected projects for co-financing and monitored compliance of each project with the Community policies.

Secondly, under Article 29, certifying authority was put in charge of approving that “the declaration of expenditure is accurate, results from reliable accounting systems and is based on veritable supporting documents”.

As stated in Article 1, monitoring and evaluation competences were shared between Member States and the Commission. In accordance with Articles 30 – 31, national audit authorities oversaw legality of transactions and overall proper financial management of

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<sup>163</sup>European Council on Refugees and Exiles, *Comments and Recommendations of the European Council on Refugees and Exiles on The Commission Proposals on the Future EU Funding in the Area of Migration and Asylum*, August 2012, p.9-10.

<sup>164</sup>G. Noll, op. cit., p.313.

expenditure. Findings about any discrepancies were to be included in annual reports. Similarly, under Article 33, the Commission was entrusted with the competence to ensure the compliance of undertaken actions with general community objectives. Furthermore, its officials could conduct on-the-spot sample investigations on chosen projects.

Despite these detailed arrangements the process of Fund's implementation did not go as smoothly as planned. The criticism has been voiced mainly with regard to ineffective administration, unduly bureaucratic procedures and insufficient resources<sup>165</sup>.

In its report on the effects of European Funds on the integration of third country nationals, the European Court of Auditors concluded that the success of the whole Fund was hampered from the very beginning due to "late submission of programmes, implementing rules and guidance not being available until well into the programmes' implementation, and misunderstandings about the relative roles of authorities". As a result, a domino effect of further delays on the side of Member States followed. Both proposals on programmes and reports were submitted after deadlines<sup>166</sup>. However, the Commission maintained that flexibility in the implementation was a key, as it allowed national authorities to profit to its full potential from the funds at local level<sup>167</sup>. Moreover, concerns have been raised regarding ineffective monitoring and evaluation tools which were set up by participating states<sup>168</sup>.

As to the budget of ERF, it could not have realistically covered all costs incurred by each Member State. To best illustrate the potential gap, the amount of money a given country spent on each asylum seeker can be compared with resources it received, divided by a number of applicants. In case of estimates provided by UK Home Office, if all administrative costs were to be taken into account, Britain allocated 30 000 euro per asylum seeker whereas it received only 100 euro for each individual<sup>169</sup>. Notwithstanding the shortcomings, the Court of Auditors ruled that in general individual projects brought about desired results and positively contributed towards the establishment of the Common European Asylum System<sup>170</sup>.

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<sup>165</sup>European Court of Auditors, *Do the European Integration...*, p.6; G. Noll, op. cit., p.313.

<sup>166</sup>*Ibidem*, p.7.

<sup>167</sup>J. Crosbie, *Aid Agencies Slam EU Refugee Fund*, 1 August 2007, available at: <http://www.politico.eu/article/aid-agencies-slam-eu-refugee-fund/>, [access: 20 July 2015].

<sup>168</sup>European Court of Auditors, *Do the European Integration...*, p.39.

<sup>169</sup>E. Thielemann, op. cit., p.820.

<sup>170</sup>European Court of Auditors, *Do the European Integration...*, p.39.



### 2.3 Eurodac as a supporting tool for the Dublin Regulation

The underlying objective of the Dublin Regulation is to ensure that an asylum claim is processed in only one Member State. In case of illegal entry, the responsibility to examine an application falls onto a country whose borders were crossed first. As to facilitate the execution of transfer to an appropriate state Eurodac database has been enacted<sup>171</sup>.

Under Article 63(1) of the EC Treaty, the Council was given competence to set "criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States". To this aim, In December 2000 it adopted Regulation No 2725/2000 concerning the establishment of Eurodac<sup>172</sup>. The system has been operational since 2003 and is the first Community wide fingerprint identification database<sup>173</sup>. Pursuant bilateral agreements its territorial scope is extended to Ireland, Norway, Switzerland and Liechtenstein<sup>174</sup>.

Under Article 1 of the said Regulation, general mandate of Eurodac is "to assist in determining which Member State is to be responsible pursuant to the Dublin Convention for examining an application for asylum lodged in a Member State, and otherwise to facilitate an application of the Dublin Convention". It thus seeks to eradicate the problem of multiple applications from the same individual<sup>175</sup>.

Asylum seekers are often unable to show a valid proof of their identity as their cross EU external borders without any documents whatsoever. Therefore, the system relies on biometric data which cannot be changed as in case of name and surname<sup>176</sup>. In order to establish whether a person is not already a subject of procedure elsewhere in the EU, Member States are obligated to collect fingerprints from each asylum seeker over the age of fourteen<sup>177</sup>. Authorities shall also gather this biometric data from "aliens apprehended in connection with the irregular crossing of an external border" and "aliens found illegally

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<sup>171</sup>H. O'Nions, *Asylum – a Right Denied. A Critical Analysis of European Asylum Policy*, Henry Ling Ltd 2014, p.78.

<sup>172</sup>*Council Regulations (EC) No 2725/2000 of 11 December 2000 Concerning the Establishment of 'Eurodac' for the comparison of fingerprints...*

<sup>173</sup>E. J. Kindt, *Privacy and Data Protection Issues of Biometric Applications. A Comparative Legal Analysis*, Springer 2013, p.66.

<sup>174</sup>S. Peers, N. Rogers, op. cit., p.261.

<sup>175</sup>H. O'Nions, op. cit., p.78.

<sup>176</sup>E. Guild, op. cit., p.173.

<sup>177</sup>R. Cholewiński, op. cit., p.136.

present in a member state” as stated in Articles 8 and 11 respectively<sup>178</sup>. Additionally, Article 5 specifies that the recorded data is not be restricted solely to fingerprints. It should be supplemented by information regarding ”Member State of origin, place and date of the application for asylum, sex, reference number used by the Member State of origin, date on which the fingerprints were taken, date on which the data were transmitted to the Central Unit, date on which the data were entered in the central database”<sup>179</sup>.

Provisions on storage as included in Articles 6 and 7 of the Eurodac Regulation generally allow for keeping the information in the system during the period of ten years. Notwithstanding, when a person is granted a citizenship of any EU country, it should be erased with an immediate effect. Additionally, if an individual is found illegally crossing a border, the time frame is reduced to two years and in case of unlawful residency information can only be transferred for comparison purposes but not kept thereafter<sup>180</sup>.

The structure of Eurodac system is laid down in Article 1(2) of Regulation No 2725/2000. It consists of the Central Unit which on behalf of Member States operates Automated Fingerprint Identification System (AFIS)<sup>181</sup>. National access points transfer collected data to the aforementioned Central Unit managed by the Commission<sup>182</sup>. There, it is subsequently compared by AFIS with that already present in the database. In case of ”hit” alert, a third-country national is sent back to where his biometric data was originally collected and where he is due to go through asylum procedure<sup>183</sup>.

Rules governing the mandate of Eurodac as well as its existence *per se* have been a subject of a heated debate. A number of legal and political concerns have been raised.

It was argued that the system would even further aggravate inequalities in burden-sharing. Naturally, if all the applications were to be handled in accordance with properly applied Dublin criteria, the majority of claims would be processed in countries with EU external borders<sup>184</sup>. That often means new Member States with less resources and less developed asylum systems<sup>185</sup>. As a result, national official in such position may be

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<sup>178</sup>E. J. Kindt, op. cit., p.67.

<sup>179</sup>T. Mathiesen, *Towards a Surveillant Society. The Rise of Surveillance Systems in Europe*, Waterside Press 2013, p. 137.

<sup>180</sup>*Ibidem*.

<sup>181</sup>E. J. Kindt, op. cit., p. 67.

<sup>182</sup>T. Balzacq, S. Carrera, op. cit., p.45-46.

<sup>183</sup>L.S. Talani, *The Internal and External Dimension of the 'Fortress Europe'*, [in:] L.S. Talani(ed.), *Globalisation, Migration, and the Future of Europe. Insiders and Outsiders*, Routledge 2012, p.66.

<sup>184</sup>R. Cholewiński, op. cit., p.164.

<sup>185</sup>T. Balzacq, S. Carrera, op. cit., p.45.

reluctant to enter the data to system in order to avoid future responsibility over an asylum seeker who would otherwise treat less wealthy Member State only as a transit point<sup>186</sup>.

Nevertheless, during the first year of operation as much as 246,902 sets of fingerprints were sent to the Central Unit, 7% of which were deemed to be multiple applications. That percentage rose to 13.5% the next year. In its 2004 report, the Commission concluded that two-thirds of transfers following the Dublin criteria were effectuated based on "hit" alerts from Eurodac<sup>187</sup>.

Moreover, it has been argued that the system may lead to violations of human rights, in particular the right to privacy and data protection, as guaranteed in Article 8 of the European Convention on the Protection of Human Rights and Fundamental Freedoms<sup>188</sup>. National authorities may be inclined to adopt lower standards when the right to privacy of third-country nationals is in question<sup>189</sup>.

To ensure that the issue of data protection is thoroughly covered, Chapter VI of Eurodac Regulation is devoted to "Data use, data protection and liability". Article 13 ensures that fingerprints are lawfully collected, transmitted and processed, while only authorized personnel is granted access. Furthermore, under Article 15, the Central Unit is prohibited from releasing any information to third countries. Article 18 safeguards that data subjects are informed about the purpose of Eurodac and their right to verify collected personal information. The lawfulness of procedure and the functioning of the whole system are monitored independently by national supervisory authorities and the Eurodac Supervision Coordination Group, comprising delegates from the European Data Protection Supervisor and each Member State<sup>190</sup>.

Finally, fears have been voiced that stored data may be used for other purposes than just to designate a state responsible for processing an asylum application. Despite that sole and clearly defined objective, the idea to grant law enforcement authorities access to Eurodac database has in fact become more palatable. However, to do so would be against

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<sup>186</sup>R. Cholewiński, op. cit., p. 164-165.

<sup>187</sup>T. Mathiesen, *Lex Vigilatoria: Global Control without a State?*, [in:] M. Deflem(ed.), *Surveillance and Governance: Crime Control and Beyond*, Emerald Group Publishing Limited 2008, Sociology of Crime, Law and Deviance, V 10, p. 110.; S. Peers, N. Rogers, op. cit., p. 262.

<sup>188</sup>European Court of Human Rights, *European Convention on Human Rights as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13*, available at: [https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Convention\\_ENG.pdf](https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Convention_ENG.pdf), p. 10, [access: 20 July 2015].

<sup>189</sup>T. Balzacq, S. Carrera, op. cit., p. 46.

<sup>190</sup>Eurodac Supervision Coordination Group, available at: <http://www.edoeb.admin.ch/datenschutz/00796/00798/01160/index.html?lang=en>, [access: 21 July 2015].

provisions of Regulation No 2725/2000, therefore a recast instrument had to be adopted in order to ensure sufficient legal basis<sup>191</sup>.

The historical background behind the amendment dates back to the Commission's proposal of 2009. Yet the notion was quickly dropped due to severe criticism from Data Protection Supervisor. It was not till June 2013 that the new Regulation 603/2013 gained approval from the European Parliament and the Council<sup>192</sup>. It becomes applicable from 20 July 2015<sup>193</sup>.

Article 1(2) of the recast instrument stipulates that "Member States' designated authorities and the European Police Office (Europol) may request the comparison of fingerprint data with those stored in the Central System for law enforcement purposes". The measure can be effectuated if conditions repeated both in Articles 20 and 21 are fulfilled, namely: "a) the comparison is necessary to support and strengthen action by Member States in preventing, detecting or investigating terrorist offences or other criminal offences following under Europol's mandate, b) systematic comparison shall not be carried out, c) there are reasonable grounds to consider that the comparison will substantially contribute to prevention, detection or investigation of any of the criminal offences in question". It therefore has to be proportionate, meaning that there is an overriding public security concern. However, the transfer of data to non-participating states or third parties is explicitly proscribed in Article 35.

As observed by Melita Sunjic, spokesperson for UNHCR Brussels, this development contributes to even further stigmatization of asylum seekers as they are thus

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<sup>191</sup>S. Peers, N. Rogers, op. cit., p.271.

<sup>192</sup>*Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the Establishment of 'Eurodac' for the Comparison of Fingerprints for the Effective Application of Regulation (EU) No 604/2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in one of the Member States by a Third-Country National or a Stateless Person and on Requests for the Comparison with Eurodac Data by Member States' law Enforcement Authorities and Europol for Law Enforcement Purposes, and Amending Regulation (EU) No 1077/2011 Establishing a European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (recast)*, Official Journal of the European Union, 29 June 2013, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0001:0030:EN:PDF>, [access: 20 July 2015]; S.A. Motz, *The Persecution of Disabled Persons and the Duty of Reasonable Accommodation. An Analysis under International Refugee Law, the EU Recast Qualification Directive and the ECHR*, [in:] C. Bauloz, M. Iner-Ciger, S. Singer, V. Stoyanova (ed.), *Seeking Asylum in the European Union: Selected Protection issues raised by the second phase of the Common European Asylum System*, Koninklijke Brill NV 2015, p.151-152.

<sup>193</sup>*Identification of Applicants (EURODAC)*, available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/identification-of-applicants/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/identification-of-applicants/index_en.htm), [access: 21 July 2015].

directly linked to serious crime and terrorism<sup>194</sup>. In the communal conscious of the EU citizens the line between illegal immigrants and people in genuine need for international protection may continue to fade.

## 2.4 Asylum in the EU's external relations

Only a minority of forcibly displaced persons receives a standard of international protection in line with the provisions of the 1951 Refugee Convention. Most asylum seekers remain in a state of limbo, where it is neither safe for them to return home nor they are offered a durable solution in a third country<sup>195</sup>. As a result, they often decide to undertake a hazardous journey to the EU. In order to deter such irregular crossings and to combat gangs of human smugglers who facilitate them, Member States need to develop more comprehensive approach by firmly including asylum issues into the Union's external policy<sup>196</sup>.

Such competence was in fact granted in Article 78(2) where the European Parliament and the Council are encouraged to adopt measures comprising “partnership and cooperation with third-countries for the purpose of managing inflows of people applying for asylum or subsidiary protection”. Therefore, we can conclude that CEAS has two dimensions: internal which includes arrangements within and at the borders of the EU, and external which is based on the cooperation with third countries of origin and transit<sup>197</sup>. In order to more effectively coordinate the latter, the European Council requested that by the end of 2005 the Commission developed EU-Regional Protection Programmes<sup>198</sup>.

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<sup>194</sup>N. Nielsen, *Police Can Probe Asylum Fingerprints, Commission Says*, 30 May 2012, available at: <https://euobserver.com/justice/116427>, [access: 20 July 2015].

<sup>195</sup>E. Haddad, *Chapter Four: EU Migration Policy: Evolving Ideas of Responsibility and Protection*, [in:] S.E. Davies, L. Glanville (ed.), *Protecting the Displaced: Deepening the responsibility to Protect*, Koninklijke Brill NV 2010, p.94.

<sup>196</sup>E. Haddad, *The External Dimension of EU Refugee Policy: A New Approach to Asylum?*, [in:] *Government and Opposition*, V. 43, No. 2, 2008, p. 190-191.

<sup>197</sup>S. Velluti, *External Aspects of EU Asylum Law and Policy – ‘New’ Ways to Address ‘Old’ Woes*, [in:] A. Abass, F. Ippolino (ed.), *Regional Approaches to the Protection of Asylum Seekers. An International Legal Perspective*, Henry Ling Limited 2014, p.145.

<sup>198</sup>Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament on the Managed Entry in the EU of Persons in Need of International Protection and the Enhancement of the Protection Capacity of the Regions of Origin. “Improving Access to Durable Solutions”*, 4 June 2004, p.20, available at: <http://www.refworld.org/docid/4156e4ee4.html>, [access: 04 June 2015].

Pilot programmes were duly launched in the Eastern Europe (Belarus, Moldova and Ukraine) which was identified as a transit zone, and in the African Great Lakes Region (mainly Tanzania) from where a significant number of asylum seekers originate. In the context of the first programme the majority of funds were allocated for the border management, personnel training and access to asylum procedures, while the latter focused on registration of refugees, security and protection improvements as well as on the access to resettlement<sup>199</sup>. Encouraged by the favorable reviews, in 2010 the Commission launched new RPPs in the North Africa (Tunisia, Libya, Egypt) and in the Horn of Africa (Kenya, Yemen, Djibouti)<sup>200</sup>. In 2013 the Middle East programme in Lebanon, Jordan and Iraq came as a response to the worsening refugee crisis in Syria<sup>201</sup>.

In principle all of the RPPs are situation specific, flexible and designed to fill existing protection gaps. They build on initiatives that are already present in a given area. However, several common key characteristics can also be identified.

Financial and technical aid are the primary means of addressing root causes of refugee flows, strengthening capacity-building and improving protection in areas of refugee origin<sup>202</sup>. The aim is to provide access to quality protection and in the regions of refugees' origin where integration and future voluntary return are more feasible. Secondly all RPPs are performed in close cooperation with UNHCR and other international actors<sup>203</sup>. Finally, the underlying goal is to provide one of three so called 'durable solutions' namely repatriation, local integration and resettlement, the last being the most tangible expression of the EU's solidarity sharing efforts<sup>204</sup>.

Resettlement is a complex process that "involves the selection and transfer of refugees from a state in which they have sought protection to a third state in which agreed

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<sup>199</sup>E. Haddad, *The External Dimension of EU...*, p.195-196.

<sup>200</sup>House of Lords, *The EU's Global Approach to Migration and Mobility*, 8Report of Session 2012-13, p.42.

<sup>201</sup>European Commission, *New EU Regional Development and Protection Programme for Refugees And Host Communities in Lebanon, Jordan and Iraq*, 16 December 2013, available at: [http://europa.eu/rapid/press-release\\_IP-13-1253\\_en.htm](http://europa.eu/rapid/press-release_IP-13-1253_en.htm), [access: 04 June 2015].

<sup>202</sup>M. Den Heijer, *Europe and Extraterritorial Asylum*, Hart Publishing Ltd 2012, p.184; S. Velluti, *External Aspects of EU Asylum Law...*, p.146-147.

<sup>203</sup>E. Haddad, *Chapter Four: EU Migration Policy...*, p.94.

<sup>204</sup>A. Gerard, *The Securitization of Migration and Refugee Women*, Routledge 2014, p.72.

to admit them as refugees with permanent residence status”<sup>205</sup>. Hence, this option can only be offered to those whose legal situation has already been defined<sup>206</sup>.

Although similar in the scope, resettlement and aforementioned relocation should not be confused. The focus of the first one is to enhance the quality of protection, whereas the latter is above all the expression of intra-EU solidarity. Relocation does not lead to better standard of protection, since at least in theory conditions provided for refugees should be comparable across the EU<sup>207</sup>.

Initially, Member States had been individually developing their national resettlement priorities without much consultation or cooperation at the community level. The change came in March 2012 with the adoption of the Joint Resettlement Programme<sup>208</sup>. It was created with an aim of encouraging more EU members to engage in resettlement activities and to motivate those with already active programmes to step up their efforts<sup>209</sup>.

In order to ensure that the enterprise is better targeted and more adaptable to changing circumstances, each year key priorities are set at the EU-level. Based on recommendations from UNHCR, categories of refugees, geographic regions and nationalities are identified as areas of increased focus. Practical cooperation is another core foundation of the project. Through an exchange of expertise Member States aim at lowering the economic cost of logistical preparation that resettlement requires<sup>210</sup>.

The programme receives significant support from the European Refugee Fund, which among others allocates the fix amount of 4 000 Euro for each person resettled in accordance with specific criteria<sup>211</sup>. As enlisted in Article 13 of the Decision No 573/2007/EC they include “a) persons from a country or region designated for the implementation of a Regional Protection Programme; b) unaccompanied minor; c) children

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<sup>205</sup>S. Velluti, *Aspects of EU Asylum Law...*, p.155.

<sup>206</sup>Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council on the Establishment of a Joint EU Resettlement Programme*, 2 September 2009, p. 3, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0447:FIN:EN:PDF>, [access: 04 June 2015].

<sup>207</sup>*Ibidem*.

<sup>208</sup>M. J. Deomestici-Met, *The Challenge Posed by Migration to European Crisis Management: Some Thoughts in Light of the ‘Arab Spring’*, [in:] P. Gibbons, H. J. Heintze (ed.), *The Humanitarian Challenge: 20 Years European Network on Humanitarian Action (NOHA)*, Springer 2015, p.114.

<sup>209</sup>Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council on the Establishment of a Joint EU Resettlement Programme...*, p.5.

<sup>210</sup>*Ibidem*, p.5-6.

<sup>211</sup>R. Bank, *Forced Migration in Europe*, [in:] E. Fiddian-Qasmiyeh, G. Loescher, K. Long, N. Sigona (ed.), *The Oxford Handbook of Refugee & Forced Migration Studies*, Oxford University Press 2014, p.697.

and women at risk, particularly from psychological, psychical or sexual violence or exploitation; d) persons with serious medical needs that can only be addressed through resettlement". The efforts are thus undertaken to provide vulnerable individuals with equitable conditions and to deter states from cherry-picking the most desirable refugees<sup>212</sup>.

Nevertheless, global needs are continuously not met. According to UNHCR estimations, in 2014 roughly 700 000 refugees should have been resettled<sup>213</sup>. However, only 8% of them were admitted in the EU<sup>214</sup>. The number seems particularly modest when compared with efforts of global leaders: the United States and Canada, who among themselves took in 77% of all resettled persons<sup>215</sup>.

Coordination at the EU level is vital as to ensure that resettlement efforts of each Member State reach their full potential in terms of enhanced protection and burden-sharing with third countries. In return, by offering means of legal migration to the EU, they can deter further secondary movements. Resettlement is therefore a desirable solution for all parties.

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<sup>212</sup>H. O’Nions, op. cit., p.184.

<sup>213</sup>UNHCR *Projected Global Resettlement Needs*, 19 Annual Tripartite Consultations on Resettlement, 1-3 July 2013, p.8, available at: <http://www.unhcr.org/51e3eabf9.html>, [access: 04 June 2015].

<sup>214</sup>A. Krasniqi, B. Suter, *Refugee Resettlement to Europe 1950-2014: An Overview of Humanitarian Politics And Practices*, Malmö University 2015, p. 17, available at: <https://www.mah.se/upload/Forskningcentrum/MIM/Publications/WPS%2015.1%20Krasniqi%20and%20Suter.pdf>, [access: 04 June 2015].

<sup>215</sup>*Resettlement Fact Sheet 2014*, available at: <http://www.unhcr.org/524c31a09.html>, [access: 04 June 2015].



### III. Legal standards for asylum procedures

#### 3.1 Grounds for granting international protection

##### 3.1.1 Definition of ‘refugee’ and its link to the non-refoulement principle

It is widely asserted that uniform standards in asylum procedures are yet to be achieved as significant disparities remain. However, strong legal foundations regarding core definitions, eligibility criteria and procedures have already been agreed upon throughout the European Union. They were clearly laid down in the Qualification Directive 2004/83/EC and reaffirmed in the recast instrument 2011/95/EU which becomes operational on 21 December 2013<sup>216</sup>.

The basic understanding of the right to asylum and the notion of refugee is universally recognized to entail the duty of a third country to provide protection to an individual who flees persecution. As pointed by Staffans thus offers “a new link between state and citizen in place of the broken bond between the refugee and his or hers home country”<sup>217</sup>. On the international plane the precise definition of a refugee was first codified in the 1951 Convention relating to the Status of Refugees<sup>218</sup>. In almost unchanged form it was incorporated in 2004 Qualification Directive and then repeated in the recast instrument.

According to Article 2 of Qualification Directive “refugee means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country”<sup>219</sup>. Several core elements of this definition can

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<sup>216</sup>B. Baldinger, *Vertical judicial Dialogues in Asylum Cases. Standards on Judicial Scrutiny and Evidence in International and European Asylum Law*, Koninklijke Brill NV 2015, p.372; *Directive 2011/95/EU of the Council of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast)*, Official Journal of the European Union, 13 December 2011, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>, [access: 22August 2015].

<sup>217</sup>I. Staffans, op. cit., p.23.

<sup>218</sup>W. C. Robinson, *The Terms of Refuge. The Indochinese Exodus and the International Response*, White Lotus 2000, p.6.

<sup>219</sup>Unless stated otherwise, quoted Articles can be found both in 2004/83/EC and 2011/95/EU Qualification Directives, as in these cases the wording and the number are exactly the same.

be distinguished. It pertains to a third-country national who belongs to a specific group due to religion, nationality, political opinion or social circumstances. The person concerned is in the danger of persecution and cannot receive help from his or her national authorities. If these conditions are fulfilled an asylum seeker can file an application for international protection. All Member States without exception are bound by the obligation to process such claim.

The whole procedure and its legal basis are inseparably linked to the principle of non-refoulement. As a cornerstone of refugee law, the prohibition of refoulement has been laid down in various international and regional agreements such as 1951 Geneva Convention, the United Nations convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the European Convention on Human Rights, etc. On the EU level it has been upheld in Article 19 of the Charter which provides that “no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment”<sup>220</sup>. Additionally, Article 21 of the Qualification Directive explicitly bounds Member States to ensure protection from refoulement.

It is widely acknowledged that this principle is not only a part of general principles of the EU law but has also acquired the status of a peremptory norm<sup>221</sup>. Therefore, it is “accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted”<sup>222</sup>. The protection from refoulement applies to both asylum seekers and recognized refugees. It encompasses situations where the inhuman treatment has already occurred or may be inflicted in future<sup>223</sup>.

In contrast to the prohibition of refoulement the right to the refugee status is not absolute and as such is subject to certain limitations. A person who fulfills all the criteria included in Article 2 of Qualification Directive can still be refused the legally recognized refugee status if exclusion conditions listed in Article 12 occur, namely “there are serious reasons for considering that: he or she committed a crime against peace, a war crime or a

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<sup>220</sup>M. Reneman, , op. cit., p.2-3.

<sup>221</sup>S. da Lomba, op. cit., p.5-6.

<sup>222</sup>*Multilateral Vienna Convention on the Law of Treaties (with Annex). Concluded at Vienna on 23 May 1969*, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>, [access: 22 August 2015].

<sup>223</sup>UN High Commissioner for Refugees (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, 2007, available at: <http://www.refworld.org/pdfid/45f17a1a4.pdf>, [access: 22 August 2015].

crime against humanity (...), he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee”<sup>224</sup>.

### 3.1.2 Conditions governing eligibility for refugee status

As is evident, harsh financial, economic and environmental conditions do not constitute sufficient grounds for the qualification of individuals as beneficiaries of international protection<sup>225</sup>. What is central to effective assessment of conditions governing eligibility for refugee status is the concept of persecution. Such undesirable state can be characterized by severe and repetitive violations of basic human rights. In order to examine whether a particular situation amounts to persecution, this concise definition must be applied to a specific case where nature, degree and motivation for discriminatory acts are considered during the individual proceedings<sup>226</sup>.

Acts of persecution listed in Article 9 of Qualification Directive may among others take form of: “acts of physical or mental violence, including acts of sexual violence; legal, administrative, police, and/or judicial measure which are in themselves discriminatory or which are implemented in a discriminatory manner; persecution or punishment which is disproportionate or discriminatory; denial of judicial redress resulting in a disproportionate or discriminatory punishment; acts of gender-specific or child-specific nature”. These are caused by prejudices in terms of race, religious beliefs or the lack of thereof and “the membership of a group determined by its cultural, ethnic or linguistic identity, common geographical and political origins or its relationship with population of another state” as specified in Article 10. The provision goes on to stipulate that the sexual orientation may also be the reason for persecution and as a result constitute grounds for granting international protection. However, sexual orientation “cannot be understood to include acts considered to be criminal in accordance with national law of the Member States”. Last but not least, if holding of political opinion as regards to potential agents of persecution may cause inhuman or degrading treatment, the eligibility for refugee status shall as well be deemed sufficient.

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<sup>224</sup>M. Reneman, , op. cit., p.4.

<sup>225</sup>Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland*, available at: [http://www.proasyl.de/fileadmin/fm-dam/Long\\_Brochure\\_Poland.pdf](http://www.proasyl.de/fileadmin/fm-dam/Long_Brochure_Poland.pdf), p.2, [access: 22 August 2015].

<sup>226</sup>S. da Lomba, op. cit., p.50-52.

Interestingly, such discriminatory acts does not have to be inflicted by the State or an entity who is in control of substantial territory of a given country. Non-state actors are also legally recognized as possible agents of persecution, provided that governing authorities are unable or unwilling to offer sufficient protection against their actions<sup>227</sup>.

That brings us to an important distinction between internal and international protection. In line with Article 8 of Qualification Directive, an individual is not eligible for refugee status if he or she can internally relocate to other parts of country where there is no real risk of systematic mistreatment.

This principle was recently applied in case of Ukrainians who requested asylum in Poland<sup>228</sup>. Despite heavy fighting in their regions of origin (mainly Donetsk Oblast, Luhansk Oblast, Crimean Peninsula) the vast majority of applications was rejected. Out of 3 886 Ukrainian asylum seekers who lodged their applications between the beginning of 2014 and August 2015, the Council for Refugees issued only two decisions recognizing refugee status and eight decisions granting subsidiary protection<sup>229</sup>.

## **3.2 Access to fair and efficient procedures**

### **3.2.1 Submission of an asylum application**

Despite the fact that the definition of refugee was agreed upon throughout the European Union and generally comparable conception exist of what characterizes a person in need of international protection, the assessment of asylum claim continues to be one of the most problematic administrative procedures. It binds the necessity of efficient control mechanisms with a duty to effectively participate in the international system of human rights protection<sup>230</sup>.

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<sup>227</sup>S.M. Buczyński, N. K. Michałowska, *Zasada Non-Refoulement z perspektywy absolutnego zakazu tortur i innych form złego traktowania*, [in:] W. Pływaczewski, M. Ilnicki (ed.), *Uchodźcy – nowe wyzwania dla bezpieczeństwa europejskiego na tle standardów praw człowieka*, Zakład Poligraficzny Uniwersytetu Warmińsko-Mazurskiego w Olsztynie 2015, p. 154.

<sup>228</sup>R. Kostrzyński, *Ukraińcy czują się odrzućeni w swoim kraju, ale dla Polski nie są uchodźcami*, 28 April 2015, available at: <http://www.unhcr-centraleurope.org/pl/wiadomosci/2015/ukraincy-czuja-sie-odrzuceni-w-swoim-kraju-ale-dla-polski-nie-sa-uchodzcami.html>, [access: 22 August 2015].

<sup>229</sup>Urząd do Spraw Cudzoziemców, *Raport na Temat Obywateli Ukrainy (wg stanu na dzień 16 sierpnia 2015)*, available at: <http://udsc.gov.pl/statystyki/raporty-specjalne/biezaca-sytuacja-dotyczaca-ukrainy/>, [access: 22 August 2015].

<sup>230</sup>S.M. Buczyński, N. K. Michałowska, op. cit., p.153.

It has been pointed out that a decision-making authority may never reach complete certainty when determining when determining if applicants fear of persecution is sufficiently well-founded<sup>231</sup>. Thomas perfectly grasps the nature of the issue when stating:

There can be little doubt that asylum decision-making, involving an assessment of future risk for the claimant often on the basis of limited information, is amongst the most problematic, difficult and complex forms of decision-making in the modern state. Decision-makers may feel pulled in different directions in the light of both the considerable evidential uncertainty and a complex combination of facts pointing both ways in favor of awarding or refusing international protection<sup>232</sup>.

The problem cannot be easily solved because the assessment of ones circumstances if often hindered due to the lack of tangible evidence. It is a common occurrence that asylum seekers are unable to present any proofs of identity, let alone a well-structured and documented history of persecution<sup>233</sup>.

Notwithstanding these underlying difficulties, the legislators at the EU level have undertaken to unify procedures in order to among others help Member States to guarantee access to protection, improve the quality of decision-making process, fight potential abusive claims and increase effective implementation of related *acquis communautaire*<sup>234</sup>.

To this aim, Directive 2005/85/EC and recast Directive 2013/32/EU which becomes applicable from 21 July 2015, were adopted. The purpose of the original document was to establish minimum procedural standards. Such approach met with severe criticism from UNHCR and various non-governmental organizations. The main points that have been raised pertain to wide discretion that Member States retained. Undoubtedly, the instrument provided for some specific procedural guarantees, however, at the same time it allowed for various instances of derogation. Moreover, some provisions were deemed to be overly vague which led to divergent interpretations at national level and thus contributed to differences remaining throughout the Community<sup>235</sup>. Nevertheless, the bare establishment of minimal standards was still an important step forward as previous international instruments, such as 1951 Refugee Convention did not contain any enforceable measures

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<sup>231</sup>M. Reneman, , op. cit., p.183.

<sup>232</sup>R. Thomas, *Assessing the Credibility of Asylum Claims: EU and UK Approaches Examined*, [in:] European Journal of Migration and Law, Issue VIII, 2006, p.84.

<sup>233</sup>M. Reneman, , op. cit., p.3.

<sup>234</sup>S.M. Buczyński, N. K. Michałowska, op. cit., p.157-158.

<sup>235</sup>European Council on Refugees and Exiles, *ECRE Information Note on the Council Directive 2005/85/EC Of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, October 2006, available at: <http://www.ecre.org/topics/areas-of-work/protection-in-europe/118.html>, [access: 22 August 2015].

as regard to status determination proceedings. UNHCR have published comprehensive guidelines in form of manuals, however, there are not of binding character<sup>236</sup>.

The much awaited recast instrument further develops procedural standards and pledges that Member States will attain uniform approach in asylum matters<sup>237</sup>. Nonetheless, due to lengthy and difficult negotiations it offered some significantly lower safeguards than it was foreseen in the original proposal. The concept of accelerated procedures was developed; additionally, many possible exclusion cases were envisaged thus allowing Member States to retain discretion in various procedural matters<sup>238</sup>. Undisputedly, valid reasons for the disappointment exist though it cannot be denied that certain common guarantees have been successfully adopted. They cover all stages of asylum procedure through submission of an application, course of proceedings, reception conditions and possible outcomes.

The refugee status determination cannot begin till an application is formally lodged in person. Article 2 of Directive on Common procedures for granting and withdrawing international protection leaves it to Member States to designate the submission places but it bounds them to ensure such opportunity is presented as soon as possible, including “at the border, in the territorial waters or in the transit zones”, as specified in Article 3. The instrument also prescribes that authorities likely to receive applications, listed as “police, border guards, immigration authorities and personnel of detention facilities” are beforehand offered necessary training. Most importantly, they should be instructed on the obligation to register each asylum claim.

In accordance with Article 9, applicant has the right to remain in the Member State while his or her application is pending, which yet does not equal a residence permit. Moreover, an asylum seeker is not to be persecuted for the illegal entry to a country that receives an application<sup>239</sup>.

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<sup>236</sup>M. Reneman, , op. cit., p.5.

<sup>237</sup>*Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection (recast)*, Official Journal of the European Union, 29 June 2013, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN>, [access: 22 August 2015].

<sup>238</sup>H. O’Nions, op. cit., p.127.

<sup>239</sup>I. Staffans, op. cit., p.27.

### 3.2.2 Course of application

Before the access to substantive procedures is granted, first officials have to confirm that a Member State in which an applicant wishes to lodge his or her claim is in fact responsible for the examination. That is when Dublin criteria are applied<sup>240</sup>. Moreover, national authorities have no duty to start the in-merit procedure if an application is inadmissible in accordance with conditions spelt out in Article 33 of Directive 2013/32/EU, namely “the application is a subsequent application, where no new elements or findings relating to the examination (...) have arisen or have been presented by the applicant” as well as when the concepts of first country of asylum, safe country of origin or safe third country can be applied.

After registration, facts and circumstances of each application are assessed in the procedure that normally ought to last no longer than six months. The task is to be carried out by an independent and specialized official beforehand designated for that purpose<sup>241</sup>. In Article 2 of Directive on Common procedures for granting and withdrawing international protection, the legislator defined the determining authority as “any quasi-judicial or administrative body in a Member State responsible for examining applications for international protection competent to take decisions at first instance”.

In order to ensure that each asylum seeker understands the course of procedure and can efficiently participate in the fulfillment of his or her duties, certain minimal guarantees were foreseen in Article 12 of the Recast Asylum Procedures Directive. Each applicant should be offered access to independent, competent and impartial interpreter and legal practitioner. For those who lack sufficient resources, their services are to be provided free of charge and paid for out of public funds. However, as regard to legal counsel during the appeal stage, national authorities are not obligated to provide access to thereof if there are no reasons to suspect that the remedy may be successful (Article 20). The opportunity to contact UNHCR representative must also be arranged. Furthermore, “they shall be informed in a language they understand or are reasonably supposed to understand of the procedure to be followed and the rights and obligations during the procedure and the

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<sup>240</sup>Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland...*, p.3.

<sup>241</sup>A.R. Ascoli, *Conditions and Criteria for Determining Asylum*, [in:] F.A.N.J. Goudappel, H.S. Raulus (ed.), *The Future of Asylum in the European Union: Problems, Proposals and Human Rights*, T.M.C Asser Press 2011, p.127.

possible consequences of not complying”. It means that the duty to ensure that an applicant has access to information about the procedure lays with Member States.

Once applicants are been duly informed about the law and how it applies to them a personal interview takes place. Its key role is undeniable primarily due to frequent lack of documented evidence. The credibility assessment of an individual statement is thus the base for the final decision.

The conditions in which interviews are conducted are crucial in ensuring that as clear picture as possible is assembled about the asylum seeker’s reasons to seek protection. To this aim, Directive 2013/32/EU provides several important guarantees that should be met by each Member State.

Most importantly, in order to ensure comprehensive content of personal interview, Article 16 bounds Member States to provide asylum seekers with “the opportunity to give an explanation regarding elements which may be missing and/or any inconsistencies or contradictions in the applicant’s statements”. Interrelated with this obligation are the provisions of Article 15. They safeguard that an interview shall be conducted “in the language which he or she understands and in which he or she is able to communicate clearly”. There is an obvious difference between understanding the general idea of questions that are asked and being able to substantiate an application in clear and detailed manner. Enabling an asylum seeker to efficiently express himself is a prerequisite for fair procedures<sup>242</sup>.

Other factors may also influence the quality of interview. For instance, officials ought to safeguard appropriate confidentiality at all stages of the asylum procedure. Everything that is said during must be kept secret from authorities in the countries of origin. Even the very fact that a person has applied for asylum cannot be revealed<sup>243</sup>.

Finally, the competence and the mindset of an interviewer should not be underestimated. To the great extend it can influence the outcome of the procedure. That is why the designated official must be aware of “problems which could adversely affect an applicant’s ability to be interviewed, such as indications that the applicant may have been tortured in the past” (Article 14) as well as be instructed how to comprehensively “take account of the personal and general circumstances surrounding the application, including the applicant’s cultural origin, gender, sexual orientation, gender identity or vulnerability” (Article 15). Moreover, the interviewer should make effort to gain applicants trust and help

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<sup>242</sup>M. Reneman, op. cit.,p.161.

<sup>243</sup>A.R. Ascoli,op. cit., p.129.



them feel secure<sup>244</sup>. Article 15 goes on to offer several means of achieving such state. If resources allow and authorities are of the opinion that it may be profitable for the quality of the interview, it should be conducted by a person of the same sex as applicant. It is also crucial that an interviewer refrains from wearing law enforcement uniform.

As a burden of proof rests on asylum seekers, it is up to them to substantiate application. All the statements need to be backed by relevant documentation. Nevertheless, standard of proof must not be set too high as that would undermine the effectiveness of the whole procedure. Reneman concludes that “Member States cannot require asylum applicants to prove something which is impossible or excessively difficult to prove”. One is simply not capable of presenting documented evidence that upon return to the country of origin he or she will be beyond doubt subject to persecution or serious harm<sup>245</sup>.

Hence the postulate of granting the benefit of doubt when examining the credibility of one’s claim becomes particularly valid<sup>246</sup>. The legislator at the EU level has acknowledged these concerns as valid and stipulated in Article 4 of Qualification Directive 2011/95/EU that not all points of the testimony have to be documented provided that “all relevant elements at the applicant’s disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements; the applicant’s statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant’s case and that the general credibility of the applicant has been established”.

Once all the available facts and circumstances are examined in individual, objective and impartial way, the final decision is reached. Whether the application is approved or rejected, the outcome should be presented in writing as required in Article 11 of Recast Asylum Procedures Directive. In case of refusal, factual and legal reasons should also be specified.

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<sup>244</sup>H. O’Nions, op. cit., p.116.

<sup>245</sup>M. Reneman, , op. cit., p.184-185.

<sup>246</sup>UN High Commissioner for Refugees (UNHCR), *Beyond Proof. Credibility Assessment in EU Asylum Systems*, May 2013, available at: <http://www.unhcr.org/51a8a08a9.pdf>, p.49, [access: 22 August 2015].

### 3.2.3 Economic and social rights for asylum seekers

Because of the very fact of applying for asylum, third country nationals are entitled to certain social and economic rights as they constitute an essential part of the asylum procedure. Even though it is widely recognized that under refugee law and international human rights system, national authorities of a welcoming state are obliged to ensure at least basic, but nevertheless dignified standard of living, the exact content of these entitlements is a contented issue<sup>247</sup>.

Member States seem to lack the real commitment to achieve fully harmonized high level of standards. This state of affairs had been proven by a long and difficult negotiation process before the adoption of the recast Reception Conditions Directive which becomes applicable on 21 July 2015. Moreover, experts have voiced concerns that in fact only modest changes were introduced in comparison with the first phase instrument<sup>248</sup>.

In accordance with Article 2 of Directive No 2013/33/EU the notion of reception conditions shall be understood as “the full set of measures that Member States grant to applicants”. In brief, they may be divided into two categories.

First, there are material reception conditions such as “housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance”. Under Article 18 of the said instrument, accommodation may either be granted within collective reception centers, often in the form of hotels, flats or other premises adopted for that purpose or arranged under the special conditions by an asylum seeker and paid for out of an allowance<sup>249</sup>.

Second group, as described in the Chapter II of the recast instrument, includes miscellaneous social and economic rights such as the access to education under terms similar to nationals, emergency and essential healthcare as well as the right to employment. The latter constitutes the most significant change if compared with the provisions of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers. Initially, individuals had to wait for up to a whole year before they were legally permitted to work on the territory of a Member State where they application was being processed.

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<sup>247</sup>M. Garlick, *Asylum Legislation in the European Community and the 1951 Convention: Key Concerns Regarding Asylum Instruments Adopted in the ‘First Phase’ of Harmonization*, [in:] T. Balzacq, S. Carrera (ed.), *Security Versus Freedom? A Challenge for Europe’s Future*, Ashgate Publishing Limited 2006, p.50.

<sup>248</sup>L. Slingenbergh, *The Reception of Asylum Seekers under International Law. Between Sovereignty and Equality*, Hart Publishing 2014, p.83.

<sup>249</sup>Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland...*, p.6.

With the entry into force of the recast instrument this period is reduced to nine months, however, the number of requirements and restrictions were also foreseen<sup>250</sup>. Nevertheless, the development gives asylum seekers a better chance of attaining self-sufficiency even before the asylum decision is reached<sup>251</sup>.

In accordance with Article 20, the aforementioned benefits are for the most part not unconditional and may be reduced or withdrawn as a result of undesirable behavior of an asylum seeker, for example when he or she “abandons the place of residence determined by the competent authority without informing it or, if requested, without permission; does not comply with reporting duties or with requests to provide information or to appear for personal interviews; for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival in that Member State; or has concealed financial resources, and has therefore unduly benefited from material reception conditions”.

In order to ensure asylum seekers’ the full enjoyment of their rights and a proper understanding of their obligations, Member States must provide them with information pertaining to these facts<sup>252</sup>.

In principle, once the application has been lodged, an asylum seeker is required to remain in the Member State but is allowed to move freely within its territory. However, under certain conditions developed in Article 8 of the recast instrument, they may be forcibly detained. National authorities can proceed with such step for example in order to establish the true identity or nationality of an asylum seeker, to ascertain other elements on which application is based, particularly when there are serious grounds to suspect that he or she may try to flee to another state as well as to designate the Member State responsible for processing an application in accordance with the Dublin criteria. Besides, asylum seekers may be placed in a closed facility before deportation or for the reason of protecting national security and public order. Naturally, no one should be detained for a sole reason of filing the application.

Reception conditions as provided in Directive No 2013/33/EU need not to be considered as unduly burdensome on national systems. In the longer run they will bring positive outcomes both for asylum seekers and Member States. The harmonization of rights and obligations should discourage applicants from secondary movements within the

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<sup>250</sup>S. Peers, *Immigration and Asylum...*, p.796.

<sup>251</sup>S. Velluti, *Reforming the Common European Asylum...*, p.64.

<sup>252</sup>M. Garlick, *Asylum Legislation in the European Community and the 1951 Convention...*, p.50.

EU. In the meantime, the dignified standards of living will help to diminish the feeling of discriminations and exclusion, thus facilitating the integration process<sup>253</sup>.

### 3.3 Possible outcomes and consequences

Depending on the decision of a determining authority, an individual can be granted refugee status, subsidiary protection or have their claim rejected as a whole. In case of a negative outcome of the first-instance proceedings, applicants enjoys the right to an effective remedy, meaning that they can appeal against an unfavorable ruling.

In 2014, 56% of all positive first instance decisions resulted in the refugee status<sup>254</sup>. This type of protection is granted for the indefinite period of time, however, Article 11 of the recast Qualification Directive envisages possible cessation grounds. For instance, an individuals shall not continue to be viewed as a refugee if “the circumstances in connection with which he or she has been recognized as a refugee have ceased to exist, continue to refuse to avail himself or herself of protection of the country of nationality; or has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution”. In practice, the last criterion means that it may be enough that refugees travel back to the country of origin, for the official to consider that they re-availed themselves of its protection<sup>255</sup>.

The extent of state’s support is not limited to the simple administrative recognition of one’s legitimate need for international protection. It has been widely asserted that in order to achieve the full integration in society, refugees need to be offered similar status to citizens and initially provided with basic means of livelihood<sup>256</sup>. Hence, the grant of refugee status entails a set of social and economic rights as specified in the Chapter VII of the recast Qualification Directive.

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<sup>253</sup>L. Slingenberg, op.cit, p.82-84.

<sup>254</sup>A. Bitoulas, *Population and Social Conditions. Asylum Applicants and First Instance Decisions on Asylum Applications: 2014*, Eurostat Data in Focus, 3/2015, p.12, available at: <http://ec.europa.eu/eurostat/documents/4168041/6742650/KS-QA-15-003-EN-N.pdf/b7786ec9-1ad6-4720-8a1d-430fcfc55018> [access: 22 August 2015].

<sup>255</sup>*How to Apply for Asylum in Italy*, 4 May 2013, available at: <http://www.africa-news.eu/legal-section/legal-guide-italy/5349-how-to-apply-for-asylum-in-italy.html>, [access: 22 August 2015].

<sup>256</sup>European Council on Refugees and Exiles, *The Way Forward. Europe’s role in the Global Refugee Protection System. Towards the Integration of Refugees in Europe*, July 2005, p.3.

Articles 24-34 stipulate that in terms of employment, education, social welfare and healthcare, refugees are provided with the same entitlements as nationals of a given country. In principle, residence permits are accorded for a renewable period of three years. Moreover, access to accommodation and freedom of movement are to be ensured under equal terms to those offered to residents from third-countries. The exact content of the aforementioned rights is left to national authorities' discretion.

Article 2 of the recast Qualification Directive foresees different status for "a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm". The notion of serious harm as understood in line with Article 15 of the said instrument pertains to unlawful actions that consist of "the death penalty or execution; torture or inhuman and degrading treatment or punishment of an applicant in the country of origin; serious and individual threat to a civilian's life or a person by reason of indiscriminate violence in situations of international or internal armed conflict". Asylum seekers who fulfill these conditions are considered to be eligible for subsidiary protection.

In short, it can only be granted once the lack of sufficient grounds for refugee status has been established during the asylum procedure, which nevertheless, has shown that a person concerned is in need of international protection. Consequently, subsidiary protection is of complimentary character<sup>257</sup>. It offers additional chance of support to those who are in danger due to violence of genuinely indiscriminate character which itself does not constitute grounds for refugee status<sup>258</sup>. In 2014 subsidiary protection was granted in 34% of first instance cases<sup>259</sup>.

In principle it has been established as more of a temporary measure, in contrary to customarily permanent refugee status<sup>260</sup>. Residence permits are one of the indications of such stand. In case of refugee status they are valid for minimum of three years, while for

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<sup>257</sup>J.F. Durieux, *The Vanishing Refugee: How EU Asylum Law Blurs the Specificity of Refugee Protection*, [in:] H. Lambert, J. Mc Adam, M. Fullerton, *The Global Research of European Refugee Law*, Cambridge University Press 2013, p.248.

<sup>258</sup>H. Battjes, *Subsidiary Protection and Other Alternative Forms of Protection*, [in:] V. Chetail, C. Bauloz (ed.), *Research Handbook on International Law and Migration*, Edward Elgar Publishing Limited 2014, p.554.

<sup>259</sup>A. Bitoulas, op. cit., p.12.

<sup>260</sup>H. Lambert, *A Missed Opportunity? EU Law and Asylum in the 21<sup>st</sup> Century*, [in:] T. Tridimas, P. Nebbia (ed.), *European Union Law for the Twenty-first Century: Constitutional and Public Law External Relations*, Hart Publishing 2004, p.364.

beneficiaries of subsidiary protection this period is lowered to one year<sup>261</sup>. In line with Article 16 of the recast Qualification Directive once “the circumstances that led to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required” and the beneficiary of protection is able to safely return to the country of origin, national authorities may revoke, end or refuse to renew this status.

Furthermore, disparities exist as regard to the content of social and economic rights. The 2004 Qualification Directive on minimum standards sanctioned restrictions in access to labour market and healthcare, while refugees enjoyed similar rights as nationals<sup>262</sup>. The 2011 recast instrument eliminated most of the divergence in standards, however, at the same time Article 29 accepts that “Member States may limit social assistance granted to beneficiaries of subsidiary protection to core benefits”<sup>263</sup>.

The general equalization of rights has been welcomed by human rights experts who believe that it will contribute to reducing the sense of insecurity and marginalization among beneficiaries of subsidiary protection and thus facilitate the integration process<sup>264</sup>. They also predict that Member States will now be more inclined to offer full protection to asylum seekers and not differentiate among those subjected to persecution or threat of serious harm<sup>265</sup>.

Besides the aforementioned refugee and subsidiary protection status, other forms of protection have been foreseen as part of national asylum systems of Member States. Their content varies substantially, however, no proposals have so far been put forward to harmonize these practices<sup>266</sup>. Habitually, they are referred to under the common category of ‘authorization to stay for humanitarian reasons’ and in 2014 corresponded to 11% of all first-instance positive decisions<sup>267</sup>.

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<sup>261</sup>H. Battjes, *Subsidiary Protection and Other Alternative Forms of Protection...*, p.555-556.

<sup>262</sup>*Ibidem*, p.556.

<sup>263</sup>M. Garlick, *Inequality for Asylum-seekers and people entitled to Protection in the European Union*, [in:] S. Morano-Foadi, M. Malena (ed.), *Integration for Third-Country Nationals in the European Union. The Equality Challenge*, Edward Elgar Publishing Limited 2012, p.88.

<sup>264</sup>*Ibidem*, p.99.

<sup>265</sup>J.F. Durieux op. cit., p.248.

<sup>266</sup>M. Garlick, *Inequality for Asylum-seekers...*, p.87.

<sup>267</sup>A. Bitoulas, op. cit., p.12.

## CONCLUSIONS

It cannot be contested that national authorities have every right to control the borders of their state and decide who has entered their territory illegally, who should be expelled and who is in genuine need of international protection. However, whatever action is taken it must not violate the principle of non-refoulement explicitly guaranteed by international conventions and European law. It means that under no conditions can a third-country national be forcibly returned to their country of origin where they could suffer “the death penalty, torture or other inhuman or degrading treatment or punishment” as provided in Article 19 of the Charter. Undoubtedly, non-observance of this peremptory norm may lead to grave consequences and put the life of an asylum seeker in danger.

In order to ensure that each individual, regardless of where the application is lodged, is provided with the same high standard of protection, Member States must ensure that “similar cases should be treated alike and result in the same outcome”<sup>268</sup>. In other words, the establishment of a uniform European asylum system is crucial to ensure the fulfillment of basic principles of refugee law at all stages of the asylum procedure. However, the coherent CEAS cannot be achieved unless national authorities thoroughly adhere to guarantees stipulated in the secondary sources of EU law and thus fulfill their obligations as regards to status determination, procedural arrangements and social and economic rights.

After two decades of legislation, first within the three pillar structure and then as a shared competence in the Area of Freedom, Security and Justice, significant disparities remain in the recognition rates and the content of entitlements. For example, in 2014 the overall percentage of positive first instance decisions amounted to 45%. However, the rate in individual Member States can vary significantly, from 94% in Bulgaria, closely followed by Sweden with 77% to barely 22% in France and further dropping to 7% in Hungary. Moreover, disparities remain not only in the general rate of recognition but also with regard to the same country of origin. The quoted numbers clearly prove that the way asylum matters are handled is not uniform through the EU. As the European Community, we are yet to achieve a fair and efficient, fully harmonized Common European Asylum System.

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<sup>268</sup>*Notices from European Union Institutions, Bodies, Offices and Agencies. The Stockholm Programme – an Open and Secure Europe Serving and Protecting Citizens...*

What is not instantly clear are the factors which have influenced this state of affairs. After all, the directly enforceable provisions as laid down in the Qualification Directive, Asylum Procedures Directive and Reception Conditions Directive are already in place and Member States have undertaken to actively fulfill them. Several categories of obstacles should be identified in order to understand why the creation of CEAS proved to be such a troublesome process.

First of all, due to a long and difficult negotiation process the number of possible derogations were foreseen and Member States retained wide discretion in procedural matters. Proposals often envisaged significantly higher standards of protection than is now laid down in the binding documents.

Secondly, experts warn that there are significant protection gaps which in turn have contributed to cases of non-observance of procedural guarantees which have been documented by UNHCR. Audits of States' practice have shown violations of the confidentiality of interviews, the lack of effective access to the services of a competent interpreter as well as insufficient and template based justifications of the rejected applications. Unless all asylum seekers can fully profit from the fair and efficient procedures provided in the aforementioned directives we should not claim that their right to good administration is respected. Moreover, if we consider detailed provisions on detention with its negative influence on the integration process, accelerated procedures which can impede the right to individual and objective examinations of a claim, as well as the existence of subsidiary protection by some considered to be discriminatory and divisive practice, we cannot but question Member States' true willingness to offer adequate protection as opposed to simply deterring future arrivals.

Not since the breakup of Yugoslavia and the Soviet Union have asylum matters been subject to such levels of press coverage and public debate. The resulting public awareness led to member states engaging in the communitarisation of asylum matters and the adoption of first binding instruments. The level of public and media interest has once again risen due to the recent wave of migration from ethnic and political conflicts arising from the Arab world. This has led to the greatest recorded amount of internally displaced persons and refugees since World War II.

It was only a matter of time until intensified waves of migrants reached external EU borders. In 2014 the number of applicants for international protection rose from 431,000 to 626,000. That however, seems to be only the beginning of a much larger inflow of people



fleeing destabilization in their countries of origin. Germany alone is preparing to receive a staggering number of 800,000 asylum seekers in 2015.

The deepening refugee crisis may jeopardize the proper functioning of asylum mechanisms and the systematic improvement of protection standards. In fact, only weeks after the deadline for the transposition of the provisions of recast Directives, it became clear that Member States are not equipped to deal with emergency situations.

Another factor that negatively influences the process of harmonization is the fact that the aforementioned great numbers of asylum seekers are not evenly distributed throughout the Europe. Two issues contribute to such a state of affairs. Countries whose borders are also the external borders of the EU will inevitably experience bigger strains on their capacity to handle applicants. Additionally, these are in general poorer states that offer less attractive social and economic benefits than for instance Germany and Sweden. As a result, asylum seekers are inclined to embark on secondary movements. In order to avoid detention and processing in accordance with the Dublin criteria they often resort to the services provided by smugglers and as a consequence may become victims of human trafficking.

Despite frequently declared solidarity towards the over-burdened Member States, government officials are in reality more interested in what we may call burden-shifting than burden-sharing. 80% of all asylum applications lodged in EU-28 were registered within just five national systems, namely in Germany, Hungary, Italy, France and Sweden. The current relocation pledges of around 40,000 people seem to be a drop in the ocean and are in no way sufficient.

Whatever the stand towards the form CEAS should ultimately take, one should realize that the proper functioning of asylum procedures is in the interest of both Member States and those in need of international protection.

After following the legal developments in this area and researching their implementation in practice I am of the impression that several areas particularly deserve further research and development as they have the potential of significantly contributing toward the harmonization of national asylum systems.

Bearing in mind the current circumstances it would be unrealistic to expect that Member States will swiftly reach any consensus on new binding instruments adopted with the prospect of offering higher standards of protection. Therefore, national authorities should place particular importance on practical cooperation on the EU scale among determining authorities, border guards and other officials that are likely to receive asylum

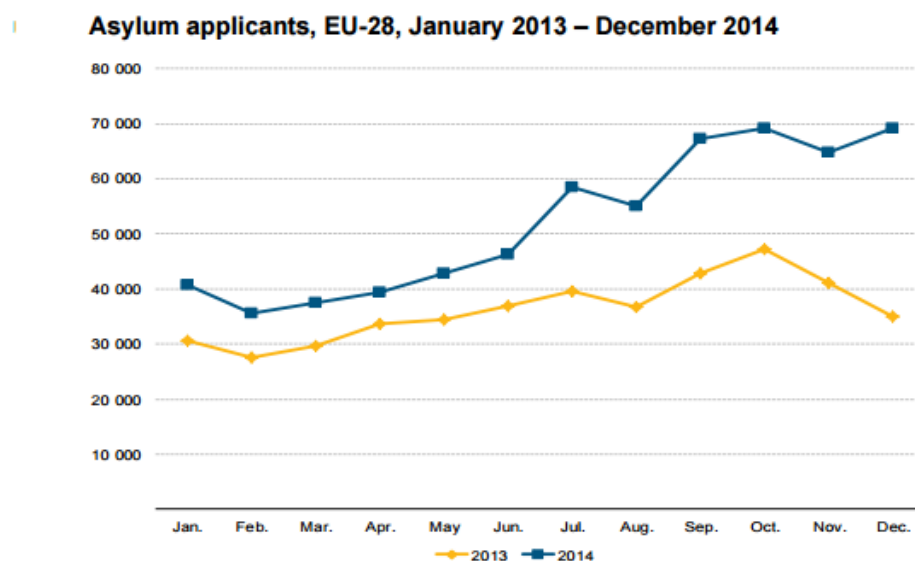
applications. Exchange of information on best practices and a uniform training curriculum will naturally lead to similar practices.

Additionally, regional protection programmes should be further developed; with the improvement of refugee protection in the regions of origin we may reasonably expect that less people will be inclined to undertake hazardous journeys to Europe. Voices have been raised that there is a need for more accessible legal channels of immigration. To this aim research should be conducted about the feasibility of offshore processing centers.

Last but not least, the role of social attitudes towards the discussed matters should not be downplayed. It is crucial that European citizens are aware of the clear distinction between economic migrants, asylum seekers and refugees. They also need to understand the dual role of CEAS, namely the provision of high standards of protection as well as the guarantee of fair and efficient procedures directed at preventing abuses of the system.

## STATISTICAL DATA

### Substantial increase of number of asylum applicants during 2014 in the EU-28



Source: Eurostat

### Nearly half of first instance decisions were positive in 2014 in the EU-28, including protection based on national legislations

#### First instance decisions by outcome and recognition rates, 2014

|                | Total decisions | Of which       |                |                       |                      |                | Rate of recognition, % |                                                      |
|----------------|-----------------|----------------|----------------|-----------------------|----------------------|----------------|------------------------|------------------------------------------------------|
|                |                 | Positive       | of which       |                       |                      | Rejected       | Total                  | of which<br>Refugee and subsidiary protection status |
|                |                 |                | Refugee status | Subsidiary protection | Humanitarian reasons |                |                        |                                                      |
| <b>EU-28</b>   | <b>359 795</b>  | <b>162 770</b> | <b>89 815</b>  | <b>55 810</b>         | <b>17 145</b>        | <b>197 025</b> | <b>45</b>              | <b>40</b>                                            |
| Belgium        | 20 335          | 8 045          | 6 460          | 1 585                 | -                    | 12 290         | 40                     | 40                                                   |
| Bulgaria       | 7 435           | 7 000          | 5 165          | 1 840                 | -                    | 430            | 94                     | 94                                                   |
| Czech Republic | 1 000           | 375            | 75             | 285                   | 15                   | 625            | 37                     | 36                                                   |
| Denmark        | 8 055           | 5 480          | 3 765          | 1 625                 | 90                   | 2 580          | 68                     | 67                                                   |
| Germany        | 97 275          | 40 560         | 33 310         | 5 175                 | 2 075                | 56 715         | 42                     | 40                                                   |
| Estonia        | 55              | 20             | 20             | 0                     | 0                    | 35             | 36                     | 36                                                   |
| Ireland        | 1 060           | 400            | 130            | 270                   | -                    | 660            | 38                     | 38                                                   |
| Greece         | 13 305          | 1 970          | 1 270          | 590                   | 115                  | 11 335         | 15                     | 14                                                   |
| Spain          | 3 620           | 1 585          | 385            | 1 200                 | 0                    | 2 035          | 44                     | 44                                                   |
| France         | 68 535          | 14 905         | 12 020         | 2 885                 | -                    | 53 630         | 22                     | 22                                                   |
| Croatia        | 235             | 25             | 15             | 10                    | -                    | 210            | 11                     | 11                                                   |
| Italy          | 35 180          | 20 580         | 3 640          | 7 625                 | 9 315                | 14 600         | 59                     | 32                                                   |
| Cyprus         | 1 305           | 995            | 55             | 940                   | 0                    | 310            | 76                     | 76                                                   |
| Latvia         | 95              | 25             | 5              | 20                    | -                    | 70             | 24                     | 24                                                   |
| Lithuania      | 185             | 70             | 15             | 55                    | 0                    | 110            | 39                     | 39                                                   |
| Luxembourg     | 885             | 120            | 105            | 15                    | -                    | 765            | 14                     | 14                                                   |
| Hungary        | 5 445           | 510            | 240            | 250                   | 20                   | 4 935          | 9                      | 9                                                    |
| Malta          | 1 735           | 1 260          | 190            | 900                   | 165                  | 475            | 73                     | 63                                                   |
| Netherlands    | 20 190          | 14 225         | 2 550          | 9 265                 | 2 410                | 5 965          | 70                     | 59                                                   |
| Austria        | -               | -              | -              | -                     | -                    | -              | -                      | -                                                    |
| Poland         | 2 700           | 720            | 260            | 165                   | 295                  | 1 980          | 27                     | 16                                                   |
| Portugal       | 155             | 40             | 20             | 20                    | -                    | 115            | 25                     | 25                                                   |
| Romania        | 1 585           | 740            | 370            | 370                   | 0                    | 845            | 47                     | 47                                                   |
| Slovenia       | 95              | 45             | 30             | 10                    | -                    | 50             | 46                     | 46                                                   |
| Slovakia       | 280             | 170            | 0              | 95                    | 75                   | 110            | 61                     | 34                                                   |
| Finland        | 3 280           | 2 210          | 490            | 1 415                 | 300                  | 1 070          | 67                     | 58                                                   |
| Sweden         | 39 905          | 30 650         | 10 245         | 19 095                | 1 310                | 9 255          | 77                     | 74                                                   |
| United Kingdom | 25 870          | 10 050         | 8 990          | 110                   | 950                  | 15 820         | 39                     | 35                                                   |
| Iceland        | 110             | 30             | 15             | 10                    | 5                    | 80             | 27                     | 24                                                   |
| Liechtenstein  | 10              | 0              | 0              | 0                     | 0                    | 10             | 11                     | 11                                                   |
| Norway         | 7 640           | 4 905          | 3 590          | 1 140                 | 175                  | 2 735          | 64                     | 62                                                   |
| Switzerland    | 21 800          | 15 410         | 6 140          | 2 640                 | 6 630                | 6 390          | 71                     | 40                                                   |

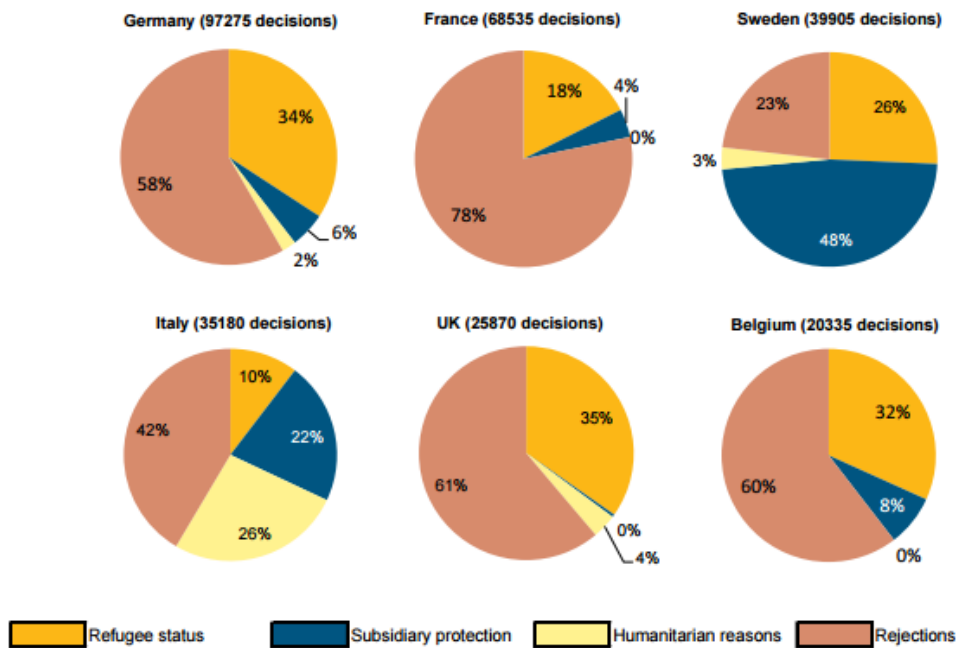
- Not applicable

Data for AT are not available; EU aggregates and other indicators are based on data available

Rate of recognition is the share of (first instance) positive decisions in the total number of decisions at first instance. In this calculation, the exact number of decisions has been used instead of the rounded numbers presented in this table. Rates of recognition for humanitarian status are not shown in this table, but are part of the total recognition rate.

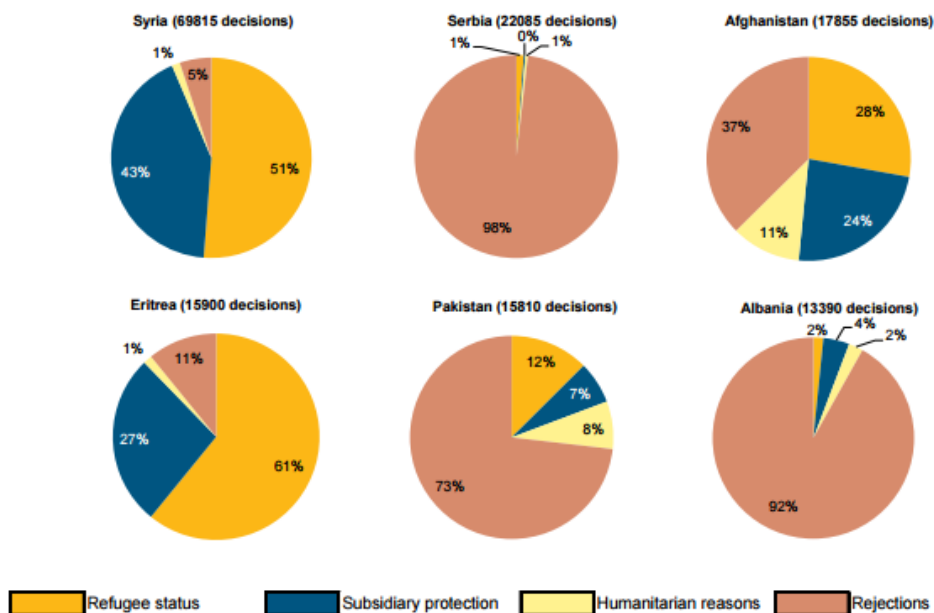
Source: Eurostat

## First instance decisions by outcome, selected Member States <sup>(1)</sup>, 2014



<sup>(1)</sup> Member States selected here are those reporting the highest number of first instance decisions issued during 2014; data for Austria are not available  
 Humanitarian reasons are not applicable in France and Belgium  
 Source: Eurostat

## 2014 First instance decisions in the EU-28 (\*) by outcome, selected citizenships <sup>(1)</sup>,



(\*) Data for Austria are not available  
<sup>(1)</sup> Citizenships selected here are those for which the highest number of first instance decisions was issued during 2014  
 Source: Eurostat

## BIBLIOGRAPHY

- Arrigo Gianni, Casale Giuseppe, *Glossary on Labour Law, Industrial Relations and European Union Institutions*, International Labour Organization 2003
- Ascoli Alessandra R., *Conditions and Criteria for Determining Asylum*, [in:] Goudappel Flora A.N.J., Raulus Helena (ed.), *The Future of Asylum in the European Union: Problems, Proposals and Human Rights*, T.M.C Asser Press 2011
- Baldinger Dana, *Vertical judicial Dialogues in Asylum Cases. Standards on Judicial Scrutiny and Evidence in International and European Asylum Law*, Koninklijke Brill NV 2015
- Balzacq Thierry, Carrera Sergio, *Migration, Borders and Asylum, Trends and Vulnerabilities in EU Policy*, Centre for European Policy Studies 2005
- Bank Roland, *Forced Migration in Europe*, [in:] Fiddian-Qasmiyeh Elena, Loescher Gil, Long Katy, Sigona Nando (ed.), *The Oxford Handbook of Refugee & Forced Migration Studies*, Oxford University Press 2014
- Battjes Hemme, *European Asylum Law and International Law*, Martinus Nijhoff Publishers 2006
- Battjes Hemme, *Subsidiary Protection and Other Alternative Forms of Protection*, [in:] Chetail Vincent, Bauloz Céline (ed.), *Research Handbook on International Law and Migration*, Edward Elgar Publishing Limited 2014
- Boccardi Ingrid, *Europe and refugees. Towards an EU Asylum Policy*, Kluwer Law International 2002
- Buczyński Szymon M., Michałowska Natalia K., *Zasada Non-Refoulement z perspektywy absolutnego zakazu tortur i innych form złego traktowania*, [in:] Pływaczewski Wiesław, Ilnicki Marek (ed.), *Uchodźcy – nowe wyzwania dla bezpieczeństwa europejskiego na tle standardów praw człowieka*, Zakład Poligraficzny Uniwersytetu Warmińsko-Mazurskiego w Olsztynie 2015
- Chlebny Jacek, *Postępowanie w sprawie o nadanie statusu uchodźcy*, C.H. Beck 2011
- Carrera Sergio, *The Impact of the Treaty of Lisbon over EU Policies on Migration, Asylum and Borders: The Struggles over the Ownership of the Stockholm Programme*, [in:] Guild Elspeth, Minderhoud Paul (ed.), *The First Decade of EU Migration and Asylum Law*, Koninklijke Brill NV 2012
- Cholewiński Ryszard, *The EU Acquis on Irregular Migration Ten Years On: Still Reinforcing Security at the Expense of Rights*, [in:] Guild Elspeth, Minderhoud Paul (ed.), *The First Decade of EU Migration and Asylum Law*, Martinus Nijhoff Publishers 2011
- Clayton Gina, *Textbook on Immigration and Asylum Law*, Oxford University Press 2014
- Collet Elizabeth, *Future EU Policy Development on Immigration and Asylum: Understanding the Challenge*, [in:] *Policy Brief Series*, Issue IV, May 2014
- Da Lomba Sylvie, *The Right to Seek Refugee Status in the European Union*, Intersentia 2004
- Den Heijer Maarten, *Europe and Extraterritorial Asylum*, Hart Publishing Ltd 2012
- Deomestici-Met Marie J., *The Challenge Posed by Migration to European Crisis Management: Some Thoughts in Light of the 'Arab Spring'*, [in:] Gibbons Pat, Heintze Hans J. (ed.), *The Humanitarian Challenge: 20 Years European Network on Humanitarian Action (NOHA)*, Springer 2015
- Durieux Jean F., *The Vanishing Refugee: How EU Asylum Law Blurs the Specificity of Refugee Protection*, [in:] Lambert Hélène, Mc Adam Jane, Fullerton Maryellen, *The Global Research of European Refugee Law*, Cambridge University Press 2013
- Galetta Diana Urania, *The European Asylum Policy. Myth and Reality*, [in:] Patrick Birkinshaw, Mike Varney(ed.), *The EU Legal Order after Lisbon*, Kluwer Law International 2010
- Garlick Madeline, *Asylum Legislation in the European Community and the 1951 Convention: Key Concerns Regarding Asylum Instruments Adopted in the 'First Phase' of Harmonization*, [in:] Balzacq Thierry, Carrera Sergio (ed.), *Security Versus Freedom? A Challenge for Europe's Future*, Ashgate Publishing Limited 2006
- Garlick Madeline, *Inequality for Asylum-seekers and people entitled to Protection in the European Union*, [in:] Morano-Foadi Sonia, Malena Micaela (ed.), *Integration for Third-Country Nationals in the European Union. The Equality Challenge*, Edward Elgar Publishing Limited 2012
- Florczak Agnieszka, *Uchodźcy w Polsce. Między humanitaryzmem a pragmatyzmem*, Adam Marszałek 2003
- Gerard Alison, *The Securitization of Migration and Refugee Women*, Routledge 2014
- Goudappel Flora A.N.J., Raulus Helena S., *Introduction – The Future of Asylum in the European Union? Proposals, Problems and Interaction with International Human Rights Standards*, [in:] Goudappel Flora A.N.J., Raulus Helena S. (ed.), *The Future of Asylum in the European Union: Problems, Proposals and Human Rights*, T.M.C Asser Press 2011
- Guild Elspeth, *The Legal Elements of European Identity. EU Citizenship and Migration Law*, Kluwer Law International 2004
- Hailbronner Kay, *European Immigration and Asylum Law Under the Amsterdam Treaty*, [in:] 35 *Common Market Law Review*, Issue V, 1998
- Haddad Emma, *Chapter Four: EU Migration Policy: Evolving Ideas of Responsibility and Protection*, [in:]

- Davies Sara E., Glanville Luke (ed.), *Protecting the Displaced: Deepening the responsibility to Protect*, Koninklijke Brill NV 2010
- Haddad Emma, *The External Dimension of EU Refugee Policy: A New Approach to Asylum?*, [in:] *Government and Opposition*, V. 43, No. 2, 2008
- Helton Arthur C., *The Price of Indifference. Refugees and Humanitarian Action in the New Century*, Oxford University Press 2003
- Henderson Karen, *Central and Eastern Europe and the European Union*, Routledge 1998
- Hennessy Maria, *Training and Strategic Litigation: Tools for Enhanced Protection of gender-related asylum Applicants in Europe*, [in:] Arbel Efrat, Dauvergne Catherine, Millbank Jenni (ed.), *Gender in Refugee Law. From the Margin to the Centre*, Routledge 2014
- Hurwitz Agnès, *The Collective Responsibility of States to Protect Refugees*, Oxford University Press 2009
- Iner-Ciger Meltem, *Has the Temporary Protection Directive Become Obsolete? An Examination of the Directive and Its Lack of Implementation in View of the Recent Asylum Crisis in the Mediterranean*, [in:] Bauloz Céline, Iner-Ciger Meltem, Singer Sarah, Stoyanova Vladislava (ed.), *Seeking Asylum in the European Union: Selected Protection Issues Raised by the Second Phase of the Common European Asylum System*, Koninklijke Brill NV 2015
- Karanja Stephen Kabera, *Transparency and Proportionality in the Schengen Information System and Border Control Cooperation*, Martinus Nijhoff Publishers 2008
- Kaunert Christian, Leonard Sarah, *The European Union Asylum Policy after the Treaty Of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?*, [in:] *31 Refugee Survey Quarterly*, 2012
- Kindt Els J., *Privacy and Data Protection Issues of Biometric Applications. A Comparative Legal Analysis*, Springer 2013
- Kozieł Michał, *Impact of Changes in Public Budgets on Financing of the Minorities in Europe*, [in:] Ruśkowski Eugeniusz, Stankiewicz Janusz, Tyniewicki Marcin, Zawadzka-Pąg Urszula (ed.), *Annual and Long Term Public Finances in Central and Eastern European Countries*, Temida 2 2013
- Krasniqi Arton, Suter Brigitte, *Refugee Resettlement to Europe 1950-2014: An Overview of Humanitarian Politics And Practices*, Malmö University 2015, p. 17, available at: <https://www.mah.se/upload/Forskningscentrum/MIM/Publications/WPS%2015.1%20Krasniqi%20and%20Suter.pdf>, [access: 04 June 2015].
- Lambert Hélène, *A Missed Opportunity? EU Law and Asylum in the 21<sup>st</sup> Century*, [in:] Tridimas Takis, Nebbia Paolisa (ed.), *European Union Law for the Twenty-first Century: Constitutional and Public Law External Relations*, Hart Publishing 2004
- Mathiesen Thomas, *Lex Vigilatoria: Global Control without a State?*, [in:] Deflem Mathieu (ed.), *Surveillance and Governance: Crime Control and Beyond*, Emerald Group Publishing Limited 2008, *Sociology of Crime, Law and Deviance*, V 10
- Mathiesen Thomas, *Towards a Surveillant Society. The Rise of Surveillance Systems in Europe*, Waterside Press 2013
- Mikołajczyk Barbara, *Osoby ubiegające się o status uchodźcy. Ich prawa i standardy traktowania*, Wydawnictwo Uniwersytetu Śląskiego 2004
- Motz Stephanie A., *The Persecution of Disabled Persons and the Duty of Reasonable Accommodation. An Analysis under International Refugee Law, the EU Recast Qualification Directive and the ECHR*, [in:] Bauloz Céline, Iner-Ciger Meltem, Singer Sarah, Stoyanova Vladislava (ed.), *Seeking Asylum in the European Union: Selected Protection issues raised by the second phase of the Common European Asylum System*, Koninklijke Brill NV 2015
- Nathwani Niraj, *Rethinking Refugee Law*, Martinus Nijhoff Publishers, Kluwer Law International 2003
- Noll Gregor, *Negotiating Asylum. The EU Acquis, Extraterritorial Protection and the Common Market of Deflection*, Martinus Nijhoff Publishers 2000
- Nowaczek Krzysztof, *Polityka Unii Europejskiej wobec procesów migracyjnych*, Adam Marszałek 2004
- Oleksiewicz Izabela, *Prawo osób do swobodnego przemieszczania się a polityka Unii wobec uchodźców (wybrane zagadnienia)*, [in:] Teresa Gardocka, Jacek Sobczak (ed.), *Uchodźcy w Polsce i Europie. Stan prawny i rzeczywistość*, Adam Marszałek 2010
- Oleksiewicz Izabela, *Uchodźcy w Unii Europejskiej. Aspekty prawne i polityczne*, Oficyna Wydawnicza Branta 2006
- O'Nions Helen, *Asylum – a Right Denied. A Critical Analysis of European Asylum Policy*, Henry Ling Ltd 2014
- Peers Steve, *Immigration and Asylum*, [in:] Barnard Catherine, Peers Steve, *European Union Law*, Oxford University Press 2014
- Peers Steve, *Legislative Update. EU Immigration and Asylum Competence and Decision Making in the Treaty of Lisbon*, [in:] *European Journal of Migration and Law*, Issue 10, 2008

- Peers Steve, *EU Justice and Home Affairs Law*, Oxford University Press 2011
- Peers Steve, Moreno-Lax Violeta, Garlick Madeline, Guild Elspeth, *EU Immigration and Asylum Law (Text and Commentary): Second Revised Edition*, Koninklijke Brill NV 2015
- Peers Steve, Rogers Nicola, *EU Immigration and Asylum Law: Text and Commentary*, Koninklijke Brill NV 2006
- Potyrała Anna, *Współczesne uchodźstwo. Próby rozwiązania międzynarodowego problemu*, Wyższa Szkoła Nauk Humanistycznych i Dziennikarstwa 2005
- Reneman Marcelle, *EU Asylum Procedures and the Right to an Effective Remedy*, Bloomsbury Publishing 2014
- Robinson Courtland, *The Terms of Refuge. The Indochinese Exodus and the International Response*, White Lotus 2000
- Segal Uma, Elliott Doreen, *Refugees Worldwide*, V1, Praeger 2012
- Schimannek Miriam, *The Establishment of the European Asylum Support Office and its Impact on EU Asylum Policy*, University of Twente 2012
- Slingenberg Lienke, *The Reception of Asylum Seekers under International Law. Between Sovereignty and Equality*, Hart Publishing 2014
- Smyth Ciara, *European Asylum Law and the Rights of the Child*, Routledge 2014
- Staab Andreas, *The European Union Explained, Institutions, Actors, Global Impact*, Indiana University Press 2013
- Staffans Ida, *Evidence in European Asylum Procedures*, Martinus Nijhof Publishers 2012
- Talani Leila S., *The Internal and External Dimension of the 'Fortress Europe'*, [in:] Talani Leila S. (ed.), *Globalisation, Migration, and the Future of Europe. Insiders and Outsiders*, Routledge 2012
- Thielemann Eiko, *Burden-Sharing*, [in:] Jones Erik, Menon Anand, Weatherill Stephen (ed.), *The Oxford Handbook of The European Union*, Oxford University Press 2012
- Thielemann Eiko, Armstrong Carolyn, *Evaluating the Prospects for Enhanced Solidarity in the Common European Asylum System*, European Policy Analysis, Issue 2012
- Thomas Robert, *Assessing the Credibility of Asylum Claims: EU and UK Approaches Examined*, [in:] European Journal of Migration and Law, Issue VIII, 2006
- Van der Mei Anne Pieter, *Free Movement of Persons Within the European Community: Cross-border Access to Public Benefits*, Hart Publishing 2003
- Van Hövell Wilbert, *The Goals of the Common European Asylum System*, [in:] Goudappel Flora A.N.J., Raulus Helena S. (ed.), *The Future of Asylum in the European Union: Problems, Proposals and Human Rights*, T.M.C Asser Press 2011
- Velluti Samantha, *External Aspects of EU Asylum Law and Policy – 'New' Ways to Address 'Old' Woes*, [in:] Abass Ademola, Ippolino Francesca (ed.), *Regional Approaches to the Protection of Asylum Seekers. An International Legal Perspective*, Henry Ling Limited 2014
- Velluti Samantha, *Reforming the Common European Asylum System – Legislative Developments and Judicial Activism of the European Courts*, Springer 2014
- Vested-Hansen Jens, *The asylum procedures and the assessment of asylum requests*, [in:] Chetail Vincent, Bauloz Celine (ed.), *Research Handbook on International Law and Immigration*, Edward Elgar Publishing 2014

#### Documents:

- Action Plan of the Council and the Commission on How Best to Implement the Provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice*, 23 January 1999, available at: <http://www.refworld.org/docid/3f5341ce2.html>, [access: 04 June 2015]
- Commission Decision of 29 November 2007 implementing Decision No 573/2007/EC of the European Parliament and of the Council as Regards the Adoption of the Strategic Guidelines 2008 to 2013*, 12 December 2007, Official Journal of the European Union, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:326:0029:0031:EN:PDF>, [access: 20 July 2015]
- Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament on Strengthened Practical Cooperation*, 17 February 2006, COM(2006)67, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52006 DC0067&from=EN>, [access: 19 July 2015]
- Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council on the Establishment of a Joint EU Resettlement Programme*, 2 September 2009, p. 3, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0447:FIN:EN:PDF>, [access: 04 June 2015]
- Commission of the European Communities, *Communication from the Commission to the Council and the*

- European Parliament on the Managed Entry in the EU of Persons in Need of International Protection and the Enhancement of the Protection Capacity of the Regions of Origin. "Improving Access to Durable Solutions", 4 June 2004, p.20, available at: <http://www.refworld.org/docid/4156e4ee4.html>, [access: 04 June 2015]*
- Commission of the European Communities, *Proposal for a Decision Creating a European Refugee Fund*, 14 December 1999, COM(1999) 696, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51999PC0686&from=EN>, [access: 20 July 2015]
- Consolidated Version of the Treaty Establishing the European Community*, available at: <http://www1.umn.edu/humanrts/instate/EUAmsterdam-treaty.pdf>, [access: 04 June 2015]
- Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities*, Official Journal of the European Communities, 19 August 1997, available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41997A0819\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:41997A0819(01)&from=EN), [access: 04 June 2015]
- Council and Commission Action Plan Implementing the Hague Programme on Strengthening Freedom, Security and Justice in the European Union*, available at: <http://www.consilium.europa.eu/uedocs/cmsupload/web097781.en.pdf>, [access: 04 June 2015]
- Council Directive 2001/55/EC of 20 July 2001 on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving such Persons and Bearing the Consequences thereof*, Official Journal of the European Communities, 7 August 2001, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0055&from=EN>, [access: 04 June 2015]
- Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals Or Stateless Persons as Refugees or as Persons who Otherwise Need Internal Protection and the Content of the Protection Granted*, Official Journal of the European Union, 30 September 2004, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:en:HTML>, [access: 04 June 2015]
- Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, Official Journal of the European Union, 13 December 2005, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>, [access: 04 June 2015]
- Council of the European Union, *Council Resolution of 30 November 1992 on a Harmonized Approach to Questions Concerning Host Third Countries ("London Resolution")*, 30 November 1992, available at: <http://www.refworld.org/docid/3f86c3094.html>, [access: 04 June 2015]
- Council of the European Union, *Council Resolution of 30 November 1992 on Manifestly Unfounded Applications for Asylum ("London Resolution")*, 30 November 1992, available at: <http://www.refworld.org/docid/3f86bbcc4.html>, [access: 04 June 2015]
- Council of the European Union, *Presidency Conclusions, Tampere European Council, 15-16 October 1999*, 16 October 1999, available at: <http://www.refworld.org/docid/3ef2d2264.html>
- Council of the European Union, *The Hague Programme: Strengthening Freedom, Security and Justice in The European Union*, 13 December 2004, available at: [http://ec.europa.eu/home-affairs/doc\\_centre/docs/hague\\_programme\\_en.pdf](http://ec.europa.eu/home-affairs/doc_centre/docs/hague_programme_en.pdf) [access: 17 July 2015]
- Council Regulation (EC) No 343/2003 of 18 February 2003 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in one of The Member States by a third-country National*, Official Journal of the European Union, 25 February 2003, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:050:0001:0010:EN:PDF>, [access: 04 June 2015]
- Council Regulation (EC) No 2725/2000 of 11 December 2000 Concerning the Establishment of 'Eurodac' for the Comparison of Fingerprints for the Effective Application of the Dublin Convention*, 15 December 2000, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000R2725:EN:HTML>, [access: 04 June 2015]
- Council Resolution of 20 June 1995 on Minimum Guarantees for Asylum Procedures*, Official Journal of the European Communities, 19 September 1996, available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996Y0919\(05\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996Y0919(05)&from=EN), [access: 04 June 2015]
- Decision 573/2007/EC of the European Parliament and of the Council of 23 May 2007 Establishing the European Refugee Fund for the Period 2008 to 2013 as part of the General Programme "Solidarity and Management of Migration Flows" and repealing Council Decision 2004/904/EC*, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l14567&from=EN> [access: 20 July 2015]
- Directive 2011/95/EU of the Council of 13 December 2011 on Standards for the Qualification of Third-*



- Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast)*, Official Journal of the European Union, 13 December 2011, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:en:PDF>, [access: 22 August 2015]
- Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection (recast)*, Official Journal of the European Union, 29 June 2013, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0032&from=EN>, [access: 22 August 2015].
- Eurodac Supervision Coordination Group*, available at: <http://www.edoeb.admin.ch/datenschutz/00796/00798/01160/index.html?lang=en>, [access: 21 July 2015]
- European Asylum Support Office, *EASO Fact Finding Report on intra-EU relocation activities from Malta*, July 2012, p. 4, available at: <https://easo.europa.eu/wp-content/uploads/EUREMA-fact-finding-report-EASO1.pdf>, [access: 17 July 2015]
- European Asylum Support Office, *EASO Multi-Annual Work Programme 2014 – 2016*, November 2013, available at: <https://easo.europa.eu/wp-content/uploads/EASO-Multi-annual-work-programme-2014-2016.pdf>
- European Asylum Support Office, *Operational Support*, available at: <https://easo.europa.eu/about-us/tasks-of-easo/operational-support/>, [access: 17 July 2015]
- European Asylum Support Office, *Plan of the Training Session of the EASO Training Curriculum – 2015. Revised as of April 2015*, available at: [https://easo.europa.eu/wp-content/uploads/EASO\\_Training-Plan-2015-Revised-as-of-April-2015.pdf](https://easo.europa.eu/wp-content/uploads/EASO_Training-Plan-2015-Revised-as-of-April-2015.pdf), [access: 17 July 2015]
- European Asylum Support Office, *Tools and Tips for Online COI Research*, June 2014, available at: <http://www.refworld.org/pdfid/53f478884.pdf>, [access: 17 July 2015]
- European Commission, *A Common European Asylum System*, 2014, available at: [http://ec.europa.eu/dgs/home-affairs/e-library/docs/ceas-fact-sheets/ceas\\_factsheet\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/docs/ceas-fact-sheets/ceas_factsheet_en.pdf), [access: 09 January 2015]
- European Commission, *Annex to the Commission Implementing Decision Concerning the Adoption of the Work Programme for 2014 and the Financing for Union Actions and Emergency assistance within the Framework of the Asylum, Migration and Integration Fund*, 8 August 2014, C(2014) 5652, available at: [http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/union-actions/docs/awp\\_2014\\_amif\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/union-actions/docs/awp_2014_amif_en.pdf), p. 2-3, [access: 20 July 2015]
- European Commission, *New EU Regional Development and Protection Programme for Refugees And Host Communities in Lebanon, Jordan and Iraq*, 16 December 2013, available at: [http://europa.eu/rapid/press-release\\_IP-13-1253\\_en.htm](http://europa.eu/rapid/press-release_IP-13-1253_en.htm), [access: 04 June 2015]
- European Council, *Notices from European Union Institutions, Bodies, Offices and Agencies. The Stockholm Programme – an Open and Secure Europe Serving and Protecting Citizens*, Official Journal of the European Union, 4 May 2010, available at: [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XG0504\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XG0504(01)&from=EN), [access: 04 June 2015]
- European Council on Refugees and Exiles, *Comments and Recommendations of the European Council on Refugees and Exiles on The Commission Proposals on the Future EU Funding in the Area of Migration and Asylum*, August 2012
- European Council on Refugees and Exiles, *ECRE Information Note on the Council Directive 2005/85/EC Of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, October 2006, available at: <http://www.ecre.org/topics/areas-of-work/protection-in-europe/118.html>, [access: 22 August 2015].
- European Council on Refugees and Exiles, *The Way Forward. Europe's role in the Global Refugee Protection System. Towards the Integration of Refugees in Europe*, July 2005
- European Court of Auditors, *Do the European Integration Fund and European Refugee Fund Contribute Effectively to the Integration of Third-Country Nationals?*, 2012, Special Report No 22, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5245589e4&skip=0&query=European%20Refugee%20Fund>, [access: 20 July 2015]
- European Court of Human Rights, *European Convention on Human Rights as amended by Protocols Nos. 11 and 14, supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13*, available at: [https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Convention\\_ENG.pdf](https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/Convention_ENG.pdf), p. 10, [access: 20 July 2015]
- European Union, *Conclusions on Countries in Which There is Generally No Serious Risk of Persecution ("London Resolution")*, 30 November 1992, available at: <http://www.refworld.org/docid/3f86c6ee4.html>, [access: 04 June 2015]

- Helsinki Foundation for Human Rights, *National Asylum Procedure in Poland*, available at: [http://www.proasyl.de/fileadmin/fm-dam/Long\\_Brochure\\_Poland.pdf](http://www.proasyl.de/fileadmin/fm-dam/Long_Brochure_Poland.pdf), p.2, [access: 22 August 2015].
- House of Commons: European Scrutiny Committee, *Third Report of Session 2009-10*
- House of Commons: European Scrutiny Committee, *Sixteenth Report of Session 2012-13*
- House of Lords, *Strategic Guidelines for the EU's next Justice and Home Affairs Programme: Steady as She Goes*, 13 Report of Session 2013-14
- House of Lords, *The EU's Global Approach to Migration and Mobility*, 8 Report of Session 2012-13
- Identification of Applicants (EURODAC), available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/identification-of-applicants/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/identification-of-applicants/index_en.htm), [access: 21 July 2015]
- Joint Position of 4 March 1996 defined by the Council on the Basis of Article K.3 of the Treaty on European Union on the Harmonised Application of the Definition of the Term 'Refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, 13 March 1996, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996F0196&from=EN>, [access: 04 June 2015]
- Migrants and Their Descendants: Guide to Policies for the Well-being of All in Pluralist Societies*, Council of Europe 2011
- Multilateral Vienna Convention on the Law of Treaties (with Annex). Concluded at Vienna on 23 May 1969, available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>, [access: 22 August 2015]
- Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing A European Asylum Support Office, 29 May 2010, Official Journal of the European Union, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R0439&from=EN>, [access: 20 July 2015]
- Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the Establishment of 'Eurodac' for the Comparison of Fingerprints for the Effective Application of Regulation (EU) No 604/2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in one of the Member States by a Third-Country National or a Stateless Person and on Requests for the Comparison with Eurodac Data by Member States' law Enforcement Authorities and Europol for Law Enforcement Purposes, and Amending Regulation (EU) No 1077/2011 Establishing a European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (recast), Official Journal of the European Union, 29 June 2013, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0001:0030:EN:PDF>, [access: 20 July 2015];
- Resettlement Fact Sheet 2014, available at: <http://www.unhcr.org/524c31a09.html>, [access: 04 June 2015]
- The Maastricht Treaty. Provisions Amending The Treaty Establishing the European Economic Community With a View to Establishing the European Community, 7 February 1992, available at: <http://www.eurotreaties.com/maastrichtec.pdf>, [access: 04 June 2015]
- Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Official Journal of the European Union, 17 December 2007, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12007L/TXT&from=EN>, [access: 04 June 2015]
- UNHCR Projected Global Resettlement Needs, 19 Annual Tripartite Consultations on Resettlement, 1-3 July 2013, p.8, available at: <http://www.unhcr.org/51e3eabf9.html>, [access: 04 June 2015]
- UN High Commissioner for Refugees (UNHCR), *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol*, 2007, available at: <http://www.refworld.org/pdfid/45f17a1a4.pdf>, [access: 22 August 2015]
- UN High Commissioner for Refugees (UNHCR), *Beyond Proof. Credibility Assessment in EU Asylum Systems*, May 2013, available at: <http://www.unhcr.org/51a8a08a9.pdf>, p.49, [access: 22 August 2015].
- UN High Commissioner for Refugees (UNHCR), *Tool Boxes on EU Asylum Matters. Tool Box 2: The Instruments*, 2003, available at: <http://www.refworld.org/docid/466946c72.html> [access: 3 January 2015]
- Urząd do Spraw Cudzoziemców, *Raport na Temat Obywateli Ukrainy (wg stanu na dzień 16 sierpnia 2015)*, available at: <http://udsc.gov.pl/statystyki/raporty-specjalne/biezaca-sytuacja-dotyczaca-ukrainy/>, [access: 22 August 2015].

Articles:

- Access to COI Portal Notice*, available at: <https://easo.europa.eu/coiportalnotice/>, [access: 17 July 2015]
- Bitoulas Alexandros, *Population and Social Conditions. Asylum Applicants and First Instance Decisions on Asylum Applications: 2014*, Eurostat Data in Focus, 3/2015, p.12, available at: <http://ec.europa.eu/eurostat/documents/4168041/6742650/KS-QA-15-003-EN-N.pdf/b7786ec9-1ad6-4720-8a1d430fcfc55018>, [access: 22 August 2015]
- Crosbie Judith, *Aid Agencies Slam EU Refugee Fund*, 1 August 2007, available at: <http://www.politico.eu/article/aid-agencies-slam-eu-refugee-fund/>, [access: 20 July 2015]
- How to Apply for Asylum in Italy*, 4 May 2013, available at: <http://www.africa-news.eu/legal-section/legal-guide-italy/5349-how-to-apply-for-asylum-in-italy.html>, [access: 22 August 2015].
- Kostrzyński Rafał, *Ukraińcy czują się odrzuceni w swoim kraju, ale dla Polski nie są uchodźcami*, 28 April 2015, available at: <http://www.unhcr-centraleurope.org/pl/wiadomosci/2015/ukraincy-czuja-sie-odrzuceni-w-swoim-kraju-ale-dla-polski-nie-sa-uchodzcam.html>, [access: 22 August 2015].
- Nielsen Nikolaj, *Police Can Probe Asylum Fingerprints, Commission Says*, 30 May 2012, available at: <https://euobserver.com/justice/116427>, [access: 20 July 2015].
- Resettlement, Relocation or Humanitarian Admission? We Explain the Terminology*, available at: <http://www.resettlement.eu/sites/icmc.ttp.eu/files/ERN%20Factsheet%20Terminology.pdf>, [access: 17 July 2015]

## STRESZCZENIE

Wspólny Europejski System Azylowy obejmuje zbiór prawnie wiążących instrumentów i polityk dotyczących kwestii uchodźstwa. Założeniem pracy jest ich przestudiowanie pod względem dwojakiego celu jakim jest poprawa jakości ochrony oraz wzmocnienie sprawiedliwych i efektywnych procedur mających powstrzymać nadużycia.

Rozdział pierwszy skupia się na prześledzeniu prawnej ewolucji wspólnego podejścia do polityki azylowej aby umożliwić ocenę obowiązujących praktyk. Wskazuje również bodźce, które przyczyniły się do jej włączenia w obszar wspólnego zainteresowania Państw Członkowskich i analizuje środki przyjęte na poziomie międzyrządowym. Co więcej, rozpatruje skutki podpisania Traktatu z Maastricht, który umieścił problem azylu w nowo utworzonym Trzecim Filarze. Zwraca także uwagę na punkt zwrotny w rozwoju wspólnego systemu, tzn. przeniesienie poprzez Traktat Amsterdamski kwestii uchodźstwa do Pierwszego Filaru. W praktyce oznaczało to powierzenie Unii Europejskiej kompetencji w sprawie tworzenia wspólnych standardów azylowych.

Rozdział pierwszy kończy się opisem minimalnych standardów ustanowionych w instrumentach I fazy i porównaniem ich ze źródłami II fazy, będącymi konsekwencją rozszerzenia kompetencji w Traktacie Lizbońskim.

Rozdział drugi skupia się na sieciach instytucjonalnych, które umożliwiają zarządzanie całym systemem. Przede wszystkim zajmuje się mandatem oraz przedsięwzięciami Europejskiego Urzędu Wsparcia w zakresie Polityki Azylowej, który ma za zadanie wzmacniać praktyczną współpracę między Państwami Członkowskimi oraz zapewnić wsparcie operacyjne. Ponadto analizuje rozdzielenie dostępnych środków finansowych poprzez mechanizm podziału obciążeń w ramach Europejskiego Funduszu na rzecz Uchodźców. Bada również procesy według których Eurodac działa jako narzędzie wspierające Rozporządzenie Dublińskie. Na koniec ocenia Regionalne Programy Ochrony, które jako główne środki współpracy z krajami trzecimi, zajmują się przyczynami napływu uchodźców.

Trzeci rozdział rozpatruje prawne standardy procedur azylowych i możliwe trudności w ich stosowaniu. Prezentuje warunki regulujące uprawnienie do korzystania z międzynarodowej ochrony w świetle bezwzględnie obowiązującej normy non-refoulement oraz prawnej definicji „uchodźcy”. Postanowienia dotyczące sprawiedliwych i efektywnych gwarancji dla szukających azylu są rozdzielone na trzy kategorie,

mianowicie: złożenie wniosku, ocena faktów i okoliczności oraz ekonomiczne i socjalne prawa dla szukających azylu.

Praca kończy się podsumowaniem możliwych form ochrony międzynarodowej oraz ich konsekwencji dla osób starających się o azyl.