Editorial

The Future of the Common European Asylum System: Dystopian or Utopian Expectations?

Jeroen Doomernik [1],* and Birgit Glorius [2]

[1] University of Amsterdam, The Netherlands
[2] Institute for European Studies and History, TU Chemnitz, Germany

* Corresponding author (j.m.j.doomernik@uva.nl)

Abstract

After the end of the Cold War, a decade started within which the idea of European unity gained considerable traction. The Maastricht Treaty transformed the Economic Community into the European Union and the scope of collaboration between its member states widened to include justice and home affairs. By the end of the decade, it had become clear this was not enough to address the challenges caused by refugee migration. Thus the Amsterdam Treaty aimed at proper joint policy and law-making in the sphere of migration and asylum. This ought to be done with full respect to the 1951 Refugee Convention. By 2004, when the Union was joined by ten new member states, the essence of the Common European Asylum System (CEAS) had been formulated and turned into Regulations and Directives as part of the Union's body of common law. The system was further fine-tuned during the next decade, but during the 2015 "refugee crisis" the system collapsed for lack of solidarity and solid agreements on responsibility-sharing between the member states. Since then, the single goal member states share is that asylum seekers and refugees are best kept from finding a way into Europe—for once they arrive political stress is the unavoidable consequence. Paradoxically, precisely the ideal of a CEAS has introduced practices that deviate from the EU's norms regarding international protection. This thematic issue reviews some of those issues but also finds examples of harmonization and good practices.

Keywords

asylum; Common European Asylum System; politicization; reception; refugees; solidarity

After the end of the Cold War, German unity and the prospect of welcoming Central European states into the world of the liberal West, an integrated Europe as a community of joint values and common economic interests appeared to have come within reach. Liberal democracy had prevailed and some, like Francis Fukuyama, claimed history had come to its end. A decade started within which the idea of European unity gained considerable traction. The 1992 Maastricht Treaty transformed the Economic Community into the European Union and the scope of collaboration between its member states widened to include justice and home affairs. By the end of the decade, it had become clear this was not enough to address the joint challenges—for instance, those caused by refugee migration—and the Amsterdam Treaty replaced intergovernmental collaboration and coordination with proper joint policy and law-making in the sphere of migration and asylum. Subsequently, in October 1999, the European Council convened in Tampere and decided on the creation of a Common European Asylum System (CEAS). The Tampere Summit concluded in a positive and forward-looking spirit. At this juncture, a neo-functionalist perspective would have predicted the CEAS to be a precursor of a proper uniform system under the direction of a centralized European asylum agency. The summit's Conclusion No. 13 reads:

The European Council reaffirms the importance the Union and member states attach to absolute respect of the right to seek asylum. It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e., maintaining the principle of non-refoulement. (European Parliament, 1999)

And Conclusion No. 15 states: "In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union" (European Parliament, 1999). This seems to hint at a future situation in which refugees enjoy free movement within the European Union on an equal footing with European Union nationals. Not surprisingly, Wagner et. al (2019, p. 14) refer to this as a period of vision toward a CEAS.

By 2004, when the Union was joined by ten new member states, the essence of the CEAS had been formulated and turned into Regulations and Directives as part of the Union's body of common law. Most consequential were the Dublin and EURODAC regulations, for they define which member state is responsible for any given asylum request: commonly the country of first arrival. To establish which state this is, each arriving asylum seeker should be fingerprinted. In practice, the authorities of first arrival states seemed not always to stick to this principle, thus making "secondary movements" possible. This resulted in a somewhat acceptable—to member states—distribution of asylum requests throughout the European Union.

The system was further fine-tuned during the next decade but was never truly put to the test—i.e., until the mid-2010s. During the 2015 "refugee crisis," the Dublin Regulation became more strictly enforced by the introduction of so-called "hot spots" in Greece and Italy where asylum seekers were detained, identified, and fingerprinted. This resulted in uneven burdens for these border states. The system subsequently collapsed for lack of solidarity and solid agreements on responsibility-sharing between the member states by a quota system. To restore a sense of control, the European Council struck the well-known deal (the March 2016 EU–Turkey Statement) with the Turkish government to curb further asylum migration to Greece. Since then, the only ambition member states have in common is that asylum seekers and refugees are best kept from finding a way into Europe—for once they arrive political stress is the unavoidable consequence.

Five years on, no meaningful advances have been achieved in a recasting of the CEAS and the "Tampere Conclusions" remain ambitious. Yet, on the ground, movements towards common practices have been and are being made. These are not necessarily in perfect synch with the CEAS as originally agreed but they are suggestive of further harmonization, driven by practical needs as well as realist political interests. As suggested further down, the contours of such a set of joint practices and policies are two-fold. The Union's external border becomes harder, not to say crueler, than international law allows because of "fears of invasion," whereas internally, softer, pragmatic, and factually more inclusive responses towards asylum seekers and refugees are also taken shape.

This thematic issue asks whether utopian or dystopian expectations regarding the future of the CEAS are merited. Some of the contributions are more explicit in their answer than others—e.g., by singling out an element of the CEAS or its national (or sub-national) implementation.

The first contribution, by Heaven Crawley and Esra S. Kaytaz, shows how the CEAS is unfit to take care of the protection needs of Afghani people who are suffering from protracted displacement, for instance after having taken initial refuge in Iran. Increasing numbers desire to leave and cannot return to Afghanistan and thus, together with others who directly come from Afghanistan, make their way to the European Union. The CEAS may cater to the latter but less to those who went through a much more complicated trajectory during which (fear for) persecution is less clearly identifiable.

Encarnación La Spina notes how reforms towards harmonized reception conditions create outcomes that effectively undermine the ability of asylum seekers and refugees to freely move or enjoy education, as these reforms have as their secondary aim to restrict mobility for fear of so-called "secondary movements," which are not in line with the Dublin Regulation.

Juna Toska, Renate Reiter, and Annette Elisabeth Töller have looked in detail at the implementation of the Reception Condition Directive in Germany. They find that within a federal state like Germany, when the national legislator fails to transpose such a directive, the lower levels of government end up with their own diverging interpretations of what needs to be done. Their case study looks at if and how the German states address the needs of asylum seekers with mental illnesses and disorders (an example of "special needs" addressed by the directive). They conclude this to result in an incoherent patchwork of policy outputs, at times to the detriment of affected asylum seekers.

Emek M. Uçarer also focuses on Germany but does so to draw the wider picture of how German political sentiments were pivotal in the development of the EU's response to the "refugee crisis." Where the initial German desire was to be hospitable this could only have lasted when the relocation scheme which was proposed by the European Commission in 2015 would not have met with radical rejection by the governments of Hungary, Romania, the Czech Republic, and Slovakia. This rebuff is what made the German government endorse the EU–Turkey Statement.

Lorenzo Vianelli discusses whether the development of the CEAS is teleological in nature by setting norms and ambitions of which it is highly uncertain how, and

especially when, these can be achieved, i.e., a situation in which it no longer matters in any relevant manner where within the European Union an asylum seeker asks for protection. He goes on to argue that this depoliticizes the CEAS and turns it into a system requiring technical interventions. This then opens the door for a stronger role for European Union interventions.

By interviewing Finnish civil servants about their take on asylum and migration policies, Östen Wahlbeck finds signs of horizontal synchronization in EU-wide policies and administrative practices, regardless of political disagreements at the European Union level. This harmonization results from shared desires for predictable results from the asylum adjudication process.

Finally, Anna Bredström, Karin Krifors, and Nedžad Mešić present the results of their scoping review of EURODAC, which together with the Dublin Regulation makes up the CEAS' core piece of legislation. The EURODAC database, which aims to contain the fingerprints of every asylum seeker, is a necessary tool for the implementation of the Regulation. The authors embrace the idea behind science and technology studies that technical tools tend to be and do more than their stated purpose. The authors identify a number of scientifically and policy-relevant gaps in our knowledge and understanding of the database and warn of the risks involved with the centrality of EURODAC in gaining access to social rights and not just asylum. There are also risks coming from its increasing interoperability with law enforcement.

To conclude, the contributions to this thematic issue touch on various aspects of the CEAS and reflect on its functionality for guaranteeing asylum-seeking migrants what the European Union should stand for: individual freedom and access to fundamental human rights, including safety from persecution. The contributions highlight pathways towards harmonization, which is deemed necessary in order to arrive at social cohesion regarding the situation in the reception countries, but also regarding the chances for asylum-seeking migrants to find shelter and the opportunity to start a new life within the realm of the European Union. But some contributions and recent developments also point to ongoing bordering processes of sometimes dystopian effect, such as devastating conditions at the hotspots, restrictions for NGOs performing rescue operations in the Mediterranean, or push-backs at the Belorussian border with the European Union, supported by respective national legislation. The recent decision to respond to the Ukrainian refugee crisis with the implementation of the Temporary Protection Directive may be seen as a new cornerstone toward more humane migration regimes for refugees in the European Union. If this will become reality also for non-European asylum-seeking migrants in the near or farther future can be envisaged as utopian thinking for the time being.

References

European Parliament. (1999). *Tampere European Council 15 and 16 October 1999: Presidency conclusions*. https://www.europarl.europa.eu/summits/tam_en.htm

Wagner, M., Baumgartner, P., & Mouzourakis, M. (2019). *Harmonising asylum systems in Europe—A means or an end per se?* CEASEVAL.

About the Authors

Jeroen Doomernik holds an MA in social anthropology and a PhD in human geography, both from the University of Amsterdam. As a post-doc he spent three years at the Free University Berlin before joining the Institute for Migration and Ethnic Studies (IMES) in Amsterdam (1995–present). Since 2001 he is senior lecturer in political science and researcher with the Amsterdam Institute for Social Science Research (AISSR). In between he spent time as a senior policy advisor at the Dutch Ministry of the Interior and the Ministry of Justice's Research and Documentation Centre (WODC) (2000/1) and as a senior fellow with the Transatlantic Academy in Washington DC (2008/9). His main interests are migration, asylum and immigrant integration as subjects of local, national and international policy making.

Birgit Glorius is a full professor for human geography with focus on European migration research at the EUROPA Institute of Chemnitz University of Technology. Her research interests and majority of publications are in the fields of international migration, demographic change, and geographies of education. Most of her research is carried out in Eastern Germany, Poland, Bulgaria, and the Western Balkans. Her recent research focuses on the reception and integration of asylum seekers and refugees in Europe, notably on questions of local governance and local reception cultures.