

# The harmonisation of European asylum policy

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*Changes in The Netherlands, Belgium, Germany and the United Kingdom*

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## Abbreviations

AC	Application Centre (Aanmeldcentrum)
BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
CEAS	Common European Asylum System
CGRS	Office of the Commissioner General for refugees and stateless people (Commissariaat-generaal voor de Vluchtelingen en de Staatlozen)
COA	Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang Asielzoekers)
ECRE	European Council on Refugees and Exiles
ECHR	European Convention on Human Rights
EMN	European Migration Network
EU	European Union
Fedasil	Federal Agency for the Reception of Asylum seekers (Federaal agentschap voor de opvang van asielzoekers)
IND (nl)	Immigration and Naturalisation Service (Immigratie- en naturalisatiedienst)
MS	Member State(s)
NGO	Non-governmental organisation
NIBUD	Netherlands Institute for Budget Information (Nationaal Instituut voor Budgetvoorlichting)
QMV	Qualified Majority Voting
Rva	Regulation on the provisions for asylum seekers and other categories of aliens (Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen)
TNV	Temporary Emergency Reception (Tijdelijke Noodvoorziening Vreemdelingen)
UNHCR	Office of the United Nations High Commissioner for Refugees (also: UN Refugee Agency)
UK	United Kingdom
Vw 2000	Aliens Act 2000 (Vreemdelingenwet)
Vc 2000	Aliens Act implementation guidelines 2000 (vreemdelingencirculaire)
Vb 2000	Aliens Decree 2000 (Vreemdelingenbesluit)
VVD	People's Party for Freedom and Democracy (Volkspartij voor Vrijheid en Democratie)

# 1. Introduction

Asylum policy has, throughout the last decades, always been a widely discussed topic in Europe. It is therefore not surprising that many scholars have conducted research in this area. However, since it is a policy field that has witnessed substantial changes since the second world war, it will always be necessary to conduct further research, if only to keep up with recent developments. Furthermore, the European Union (EU) is a relatively new institution, that is still very much developing. This is even more so the case in the field of asylum. While asylum policy has always been within the realm of national sovereignty, lately we have seen a shift towards the EU-level concerning decision-making in the field of asylum. In the late 1990's steps were taken towards a Common European Asylum System (CEAS). This shift has caused scholars to theorize on the 'kind' of harmonisation we might discern in this field: will an EU-wide asylum system be based on the 'lowest common denominator'? In other words, will the standards of the strictest Member State (MS) be guiding, allowing other MS to lower their standards? And if so, will these MS actually do so when the opportunity presents itself? Or will harmonisation naturally lead to a higher standard in asylum procedures throughout the Union? This debate, that is still ongoing, is the starting point for this research. With this discussion in mind, the following research question has been formulated:

*'What is the result of European harmonisation in the field of asylum policy over the past ten years?'*

The four sub questions that have been formulated to guide the research are the following:

1. What is the form and content of EU legislation in the field of asylum, that was formulated during the first stage of the CEAS?

2. What national regulations in the field of asylum were present in the selected MS prior to EU harmonisation?
3. In which sense has new EU legislation led to a change in policy in the selected MS?
4. Have national asylum policies converged due to harmonised EU legislation?

Before diving into the specifics of asylum policy in the European Union, the theoretical expectations of the effect that harmonisation may have on asylum policy in the Member States of the EU will be discussed. The literature review will also provide an overview of research that has already been done in this field. How this study will attempt to answer the above sub questions and eventually the research question, will be detailed in the methodological section. Then, Chapter 2 will go on to describe the developments in the European Union with regard to asylum. Chapter 3 will discuss the Member State level, and will consider which policies were in place before the EU became active in the field of asylum through the Common European Asylum System. It will then detail what has changed in the domestic legal orders due to developments within the EU. Chapter 4 will provide an analysis of the data that was gathered in chapters 2 and 3. The final chapter will sum up the main conclusions that can be drawn from the work that has been done and will make some recommendations for future research.

## ***1.1 Literature review***

Many researchers have theorized on the possible outcome of a more harmonised EU asylum policy. Since the beginnings of the Common European Asylum System at the end of the 1990's, a start has also been made in analyzing the actual progress of harmonisation in the field of asylum. This section of the thesis will elaborate on both the theory and the empirical observations that have been put forward by scholars in this field.

### **1.1.1 Theory**

The main aim of creating a Common European Asylum System has always been to ensure that eventually all MS of the European Union would have a common asylum procedure (Tampere European Council

1999). This would take away any secondary movements of asylum seekers, who are now perceived to be applying for asylum in the country that they think will provide the highest chance of having their application reviewed successfully. If all MS apply the same procedure, in theory there should be no difference in recognition rates and the overall treatment of asylum seekers so that there is no longer an incentive to seek asylum in a certain MS over another. Harmonisation through providing minimum standards at the European level would be the first step in achieving this goal (Tampere European Council 1999). Convergence of national policies would then gradually come about, mostly during the second stage of creating the CEAS<sup>1</sup>. Some more general theories on policy convergence may therefore provide a first insight into what might be expected to happen during this process of harmonisation.

### **1.1.1.1 Policy convergence**

Holzinger and Knill (2005) outline very clearly what may happen with regard to both the *degree* and the *direction* of convergence in a situation that is described above. In this context, the degree of convergence refers to the 'extent to which the policies of different countries have become more similar to each other over time' (Holzinger & Knill 2005: 776). The direction of convergence refers to the strictness of the policy (Holzinger & Knill 2005). Of further importance with regard to this research is the perceived cause of convergence. This will need to be determined before both the degree and direction convergence may be predicted. Holzinger and Knill distinguish between five different possible causes for policy convergence: imposition, international harmonisation, regulatory competition, transnational communication and independent problem-solving. Current efforts of the EU to harmonise asylum policy fit the description of 'international harmonisation' that is provided by the authors nicely:

'The mechanism of international harmonization leads to cross-national convergence if the involved countries comply with uniform legal obligations defined in international or supranational law. Harmonization refers to a specific outcome of international co-operation, namely to constellations in which national governments are legally required to adopt similar policies and programmes as part of their obligations as members of international institutions' (Holzinger and Knill 2005: 781-782).

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<sup>1</sup> See also chapter 3, the paragraph on the Tampere Conclusions for a more elaborate discussion of the aims and timeline in the creation of the CEAS.



When international harmonisation is the cause of converging national policies, which we will assume to be the case in the field of asylum, the expected degree of convergence depends on the rigidity of the imposed rules and regulations. As will become clear in chapter 2, the directives<sup>2</sup> that have been agreed upon within the EU stipulate minimum standards to which MS must adhere. Therefore, one may expect that the degree of convergence is limited, as MS are granted considerable leeway in adjusting their domestic policies to meet at least the provided minimum standards. With regard to the direction of convergence, the expectation is that minimum harmonisation will result in higher overall standards. This can be explained by the fact that the directives are a result of a compromise between the Member States that have high standards, and the Member States that apply lower standards. Furthermore, it is assumed that not all the countries that apply a high standard will automatically lower their standards towards the minimum level that is provided by the new directives just because they can legally do so (Holzinger and Knill 2005).

Barbou des Places and Deffains (2004) claim that developments in EU asylum policy before the creation of the Common European Asylum System can be best explained by regulatory competition theory. They state that after the Second World War, states expected 'private benefits from hosting and protecting asylum seekers and refugees' (Barbou des Places & Deffains, 2004: 346). However, with asylum applications growing throughout the 1980's, states started competing with each other with the goal of hosting as little asylum seekers as possible, as costs to host them had risen when the benefits had decreased. Costs to host them had risen because of the growing bureaucracy that was needed to handle all the applications and the changing pattern of migration (traditionally asylum seekers had been skilled, but were now less so). Benefits had decreased because of the end of the Cold War, which had faded 'altruistic benefits and reputation effects' (Barbou des Places & Deffains, 2004: 351). The competition game that ensued led to a 'race to the bottom' effect, meaning that all MS tried to be the least attractive country for refugees to come to. The authors conclude that the centralized cooperation through the CEAS has shown the will of the European institutions to halt the competition between

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<sup>2</sup> For more on directives see the following section on methods.

states and to guarantee minimum standard in the field of asylum policy. In other words, they see the CEAS as a positive development in order to stop the race to the bottom with regard to asylum legislation. This is in line with the expectations of Holzinger and Knill, who argue that harmonisation will lead to overall higher standards.

It is important to note that the main aim of the research is to identify the results of EU harmonisation on national legislation in the field of asylum policy. It is therefore assumed that there is a causal link between harmonisation at the European level and subsequent change in domestic policy. The current study is not concerned with the more theoretical discussion on the origins of policy change within an EU-framework.

The following paragraphs will now go into more detail on the research that has already been done in the field of European asylum policy.

### **1.1.2 Empirical findings**

Empirical research in the field of EU asylum has mostly focused on the direction of convergence. While some scholars state that harmonisation of asylum policy will, and in fact has, led to higher common standards with regard to the treatment of asylum seekers, others claim that harmonisation has done no good and has only led to a 'levelling down' of standards with regard to the protection of refugees (Hatton 2005: 10). Relevant empirical observations on the harmonisation of asylum policy in the European Union are outlined below.

#### ***1.1.2.1 'Harmonisation is a good thing'***

Scholars in this camp put forward the finding that harmonisation leads to a better asylum policy. In 2009, Thielemann and El Enany published a study on the effects of several important harmonising directives that have been adopted over the past ten years. They conclude that indeed harmonisation has not had a negative impact on the protection of asylum seekers, and has in fact curtailed regulatory competition between MS. Even though some MS had the opportunity to lower standards due to new EU directives, they often opted not to do so. Other MS that previous to the introduction of EU legislative instruments had very restrictive policies in place, were forced to upgrade their domestic laws considerably.

### **1.1.2.2 'Harmonisation is a bad thing'**

Authors that state harmonisation has not been a good thing, are of the opinion that the process of introducing stricter legislation throughout the EU since the 1980's has not been halted by the latest developments that have been brought about by the CEAS. Several authors agree that in theory the harmonisation of asylum policy could be a promising development in dealing with asylum issues across the EU. However, unlike Thielemann and El Enany, they do not share the perception that the promise of a higher standard in asylum policies has been achieved. Many have criticised developments in the past ten years, as they note that new legislation only provides minimum standards. These minimum standards seem to be a reflection of the policy of the strictest Member State in the EU. This is in part due to the fact that until 2004, unanimity in the Council was required for the adoption of legislation (Hatton 2005; Ferguson Sidorenko 2007). This allowed MS to strongly influence the process of building new legislation. In some cases, this has in fact led to a final version of a directive that was considerably watered down before it was finally adopted by the Council (Brouwer 2007; Costello 2007). Indeed harmonisation has the potential to upgrade standards in asylum policy in the EU, but it has simply not (yet) performed due to constraints in decision-making procedures.

Further criticism has been put forward by scholars regarding whether MS with higher standards would refrain from adapting legislation when EU legislation provides lower standards. Evidence shows that individual states have indeed taken the opportunity to adapt legislation, effectively tightening procedures with the aim of deflecting asylum seekers to other countries (Hatton 2005). Meyerstein (2005) even goes as far as to state that harmonisation has led to minimum standards that are 'inadequate'. He describes the trends in asylum policy of the past decades as 'regressive and restrictive' and suggests that a radical change is needed in order to be able to secure the rights of asylum seekers in the future (Meyerstein 2005: 1510).

## **1.2 Methods**

The current research is a descriptive multiple-case study. Case studies in general are especially suitable to complex situations and social phenomena that require an in depth analysis (Tellis 1997; Yin 2003). What type of case study one undertakes depends on the research question posed, among other factors. When one wants to know *what* is going on, it logically follows that one will undertake a descriptive case study. When one wants to know *why* something is happening, one is concerned with explanatory research (de Vaus 2001). While descriptive research is often criticised for producing mere descriptions, according to de Vaus it 'is fundamental to the research enterprise and it has added immeasurably to our knowledge of the shape and nature of our society' (de Vaus 2001: 1).

As the study is concerned with finding out what has happened with asylum policy in the EU over the past years, it is clearly descriptive. The complex interaction between the European and the domestic level with regard to asylum issues requires an in depth knowledge of both EU asylum policy and the national legislation of the selected Member States. The design of the study has been selected with this in mind. If one wants to thoroughly understand and analyse the implementation of legislation in the field of asylum, it becomes impossible to study all the different Member States. Therefore, only four MS have been chosen to be subject to analysis in this current study. The four MS that have been selected are: **the Netherlands, Belgium, Germany and the United Kingdom.**

These MS have been chosen for several reasons. First, they have been within the framework of the European Union for a long time. This was important as it is impossible to measure a change in domestic asylum policy before and after the introduction of EU legislation when the studied MS has not been a member of the EU during this period of time. This automatically rules out many of the Eastern European MS that have recently joined the EU. Furthermore, these four countries have all experienced growing numbers of asylum seekers since the late 1980's to a certain degree (Boswell 2007). In 2005, all four countries could be found in the top 5 of receiving Member States with regard to asylum applications (UNHCR 2006). These countries are therefore very important objects of study. The choice to study these four MS has also been influenced by the availability of documentation in English or Dutch. As the study

will look at domestic legislation, it is important to understand the wording that is used in order to analyse it correctly. It was therefore a prerequisite that both legislation and analyses on the implementation of EU legislation into the domestic systems was available in either English or Dutch.

The main research question that is addressed in this thesis is concerned with change in domestic policies due to the recent harmonisation of EU asylum policy. In order to meaningfully comment on any kind change we may discover during the research, one must be clear on the way change is measured. In this thesis, change will be described according to the three different forms of change in domestic policies that have been put forward by Börzel & Risse (2000). They state that Europeanisation<sup>3</sup> can cause domestic changes in policy on three different levels. They describe the possible results as follows:

1. Absorption. Member States do not have to modify existing structures in order to implement EU policy. The degree of change is **low**.
2. Accommodation. Member States adapt their policies in order to implement EU policy, but do not change the core features of their policy system. The degree of change is **modest**.
3. Transformation. MS replace or alter their policies substantially, changing their essential features. The degree of change is **high**.

The classifications above will be used to describe the *degree* of change in domestic policy in the final analysis of this thesis. The *direction* of change will be commented upon based on the description of changes to domestic policies due to EU harmonisation and should follow from the obtained information. It will be labelled **upward** when changes have led to higher standards, **downward** when lower standards have been introduced and **unclear** when results with regard to the direction of change are inconclusive.

The four directives that will be used in assessing change in domestic asylum policy have been selected based on the fact that they are considered to be a part of the foundation of the CEAS (see for example McAdam 2007; Hatton 2005). The transposition of these directives into the domestic systems of the four

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<sup>3</sup> In this context Europeanisation can be understood to mean the same as harmonisation.

selected MS will outline how domestic policies have changed due to EU legislation in the field of asylum. For the purpose of this study, only Council Directives will be studied as they require transposition into domestic law. While one of the foundational pieces of legislation in the field of asylum since the CEAS has taken the form of a Regulation, it is not within the scope of this research as Regulations do not require transposition in order to have direct effect in all Member States. Member States are bound by a Regulation from the date of entry into force, and do not have to transpose it into their national law (Davies 2003).

This is different for directives. They are described by Craig & de Búrca as 'one of the main 'instruments of harmonisation' used by the Community institutions to bring together or coordinate the disparate laws of the Member States in various fields' (Craig & de Búrca: 279). This explains to a great extent why the harmonisation of asylum policy has been legislated through directives. One of the main characteristics of a directive is the fact that it needs to be transposed into domestic law, before a certain deadline. When the deadline of transposition is not mentioned in the directive itself, which is usually the case, implementation is required by the 20<sup>th</sup> day after its official publication (Prechal 2005; Craig & de Búrca 2008). Directives are binding on the Member States that it addresses, but always leave discretionary room for the MS to decide on the form and method that they wish to employ to ensure outcomes that correspond to the end of the directive (Craig & de Búrca 2008; Davies 2003; Prechal 2005). This means that there is always leeway for a MS, which in turn can result in different practices and laws in different countries in the EU. Directives have direct effect, meaning that they can be invoked by individuals against a Member State after the deadline of transposition has passed.<sup>4</sup> Moreover, domestic laws must be interpreted in the light of relevant directives, which means that directives also have 'indirect effect' (Craig & de Búrca 2008). In the light of the current research question it is important to note that MS must refer to a directive when they change domestic legislation. This will be helpful in identifying the changes that have been made to national law due to EU harmonisation.

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<sup>4</sup> For a more elaborate discussion on the direct effect of directives, see Prechal (2005) and Craig & de Búrca (2008). While it is an important debate, it is not within the scope of this research.

The first sub question, concerning the form and content of EU legislation in the field of asylum, will be answered in chapter 2. Sub questions 2 and 3, on national asylum legislation before and after the introduction of EU legislation in this field, will be discussed in chapter 3. The analysis in chapter 4 will go into more detail on both sub questions 3 and 4, dealing with the degree and direction of changes that have been made to national policy and the convergence of policies this change may have brought about among the four studied Member States.

Different sources will be used in the analysis of both national policies on asylum and EU legislation in this field. All will be obtained through desk-research. Among the sources that will be used to comprehend both EU and national policies are primary and secondary legislation, international agreements, evaluations, reports from various human rights organizations such as the United Nations Refugee Agency (UNHCR) and the European Council on Refugees and Exiles (ECRE). The existing literature on asylum in the EU will play a very important role in the research and will be used extensively.

## 2. European asylum law

This chapter will first provide a brief overview of developments in the field of asylum since the second World War. Then, four essential Council Directives that have been adopted within the framework of the CEAS will be described. This chapter will aim at answering sub question 1: 'What is the form and content of EU legislation in the field of asylum that was formulated during the first stage of the CEAS?'

### ***2.1 Historical background***

The foundation of asylum policy in the EU is based on the **Convention Relating to the Status of Refugees** of 1951. All MS of the European Union are signatory to this Convention and its 1967 Protocol. All EU legislation on asylum must be in line with the provisions of this Convention. There was no significant discussion on the interpretation of the provisions of the Convention in the decades after its adoption, but this changed due to a rising number of asylum seekers in Europe from the 1980's onwards. Granting asylum had suddenly become a major issue. In their attempt to deflect asylum seekers to other states, European countries started to adapt their legislation. What ensued was a competition that led to a 'spiral of restriction in asylum legislation' (Barbou des Places and Deffains 2004: 346). When one country changed its policy, others would follow just to make sure they would not become the most 'attractive' destination for asylum seekers. Hatton states that 'Asylum policies across the EU were severely tightened over the 1990s notwithstanding continued adherence to the letter (if not the spirit) of the Convention.' (Hatton 2005: 4)

**The European Convention on Human Rights (ECHR)** was written and adopted during the same time as the Geneva Convention: it was drafted in 1950 and finally entered into force in 1953. All EU Member States are a party to this convention and are therefore bound by it. It is an important piece of international law, and must therefore be mentioned in an overview of the development of asylum policy in Europe. While the newly adopted EU legislation lays down minimum standards, the provisions of this Convention must always be respected. Important provisions with regard to asylum issues are laid down



in Chapter 1 of the Convention, and include the prohibition of torture (art. 3) and the right to an effective remedy (art. 13).

In 1985, five European countries signed the **Schengen agreement** with the intention to abolish border checks between them. While this was done outside the framework of the European Community at the time, it is an initiative that is worth mentioning due to the fact that the Schengen agreement set in motion a development of stricter external border control in reaction to the removal of checks at the internal borders (Ferguson Sidorenko 2007). Asylum cooperation as such within the framework of the European Union was only mentioned in official EU legislation as late as 1999, through the Treaty of Amsterdam that came into force in May of that year. Before this, responsibility for asylum policy had always been with the Member States (European Economic and Social Committee 2002). The most important developments within the framework of the EU will be mentioned below.

The 1990 **Dublin Convention** has played a significant role in the development of the processing of asylum applications. The Convention, that came into force only in 1997, has laid down rules with regard to the country that is responsible for the examination of a lodged asylum application. It was determined that the first country of entry would also be the MS that is responsible for the examination of the application. Ferguson Sidorenko (2007: 18) has stated that 'although the Dublin convention did not harmonise either substantive or procedural asylum law, it gave an impetus for its harmonisation'.

The **London Resolutions** of 1992 introduced three further important concepts. The first of these was the 'safe third country' concept, regarding countries outside the EU that were deemed 'safe' and an asylum seeker could thus be returned to this country if he or she had passed through it before applying for asylum in one of the EU countries. Another important concept that was agreed upon was the fact that MS were allowed to reject 'manifestly unfounded' claims without having to grant a right to an appeal. A claim can be marked as 'manifestly unfounded' 'when it is fraudulent, when the applicant is guilty of some crime (other than illegal entry) , or where there is no prima facie evidence of persecution' (Hatton 2005: 5). The third concept that was defined during the meeting in London was the 'safe countries of origin', allowing for a list of countries to be deemed safe enough so that an asylum claim could be rejected based on the applicant coming from this country (Hatton 2005).

With the adoption of the **Maastricht Treaty** of 1992, asylum was recognized to be a 'matter of common interest to Member States' but was still dealt with intergovernmentally under the third pillar of the EU<sup>5</sup>. Through the signing of the **Treaty of Amsterdam** (that came into force on 1 May 1999), asylum issues were 'communitarised', when asylum issues were moved from the third pillar to the first (supranational) pillar (Meyerstein 2005; Ferguson Sidorenko 2007). Asylum and immigration matters were incorporated into Title IV of the EC Treaty (Baldaccini & Toner 2007). Article 67 of this title provides that initially, legislation could be initiated by both the Commission or any of the MS. After a period of five years, the Commission would be granted the sole right to initiate legislation (Ferguson Sidorenko 2007). As the asylum policy of the United Kingdom is under analysis in this thesis, it is important to note that both the UK and Ireland have negotiated a protocol that is annexed to the Treaty of Amsterdam, effectively allowing them to opt into measures that are adopted under Title IV EC. If they wish to take part in a certain measure, they are allowed to make this known 'within 3 months after a proposal or initiative has been presented to the Council' (Ferguson Sidorenko 2007: 27). They may only opt-in to a measure in its entirety; they cannot accept only parts of a measure (Ferguson Sidorenko 2007). The **Treaty of Nice**, that entered into force on 1 February 2003, did not change much in the field of asylum, but it did stipulate that the co-decision procedure would become the norm for most asylum issues except for burden sharing initiatives, allowing the European Parliament a bigger role in the decision-making procedure as the approval of the Parliament is now required before the Council may adopt a measure<sup>6</sup>. (Ferguson Sidorenko 2007).

The **Tampere Conclusions** of 1999 provided a policy programme for further cooperation in the EU with regard to asylum matters. The call for an 'area of freedom, security and justice' had already been made in the Treaty of Amsterdam, but still needed to be defined and developed in terms of a clear programme for the years ahead. This is exactly what was done at the European Council meeting in Tampere on 15 and 16 October 1999. The most important conclusions that were agreed upon specified what needed to be done in the field of immigration and asylum policy up until 2004. While the summit was called to

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<sup>5</sup> For more on the pillar-structure of the EU, see Dinan (2005).

<sup>6</sup> For more on decision-making procedures in the EU, see Craig & de Búrca (2008).

address all justice and home affairs issues, both migration and asylum matters were given a high priority (Ferguson Sidorenko 2007). The Tampere Conclusions for the first time mention the wish to work towards a Common European Asylum System, in full respect of the Geneva Convention and its 1967 Protocol. They further specify the legislative measures that would have to be adopted in order to establish such a system in paragraph 14, where it is stated that the CEAS should include

‘a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection.’ (Presidency Conclusions 1999)

The Tampere Conclusions were succeeded by a new programme that was adopted at the European Council meeting in the Hague, in 2004. **The Hague programme** is mostly a continuation of the work already set out in the Tampere Conclusions, and calls for a thorough evaluation of the measures that have been adopted so far (Baldaccini & Toner 2007; Balzacq & Carrera 2006). From 2005 onwards, due to a commitment laid down in the Hague programme, decisions in the Council regarding asylum issues are made by Qualified Majority Voting (QMV). It is important to note that most measures in the field of asylum at the EU level have already been adopted between 1999 and 2004, and have therefore been adopted while the decisions in the Council were still made based on unanimity. The years 2004 to 2009 have been more about the transposition of EU legislation into the domestic law of the MS. The current programme regarding asylum matters is the **Stockholm programme** that has been agreed upon in 2009 and covers goals that have been set out for the years 2010-2014. It again calls for further work on the CEAS and sets a deadline for the completion of the system by 2012. By then, common procedures and a uniform status for asylum must be achieved (Council 2009).

The latest developments within the European Union of a more structural nature, namely the signing of the **Treaty of Lisbon**, also effect asylum policy. The Treaty of Lisbon, that entered into force on 1

December 2009, amends the two core Treaties of the EU: the Treaty on European Union and the Treaty on the Functioning of the European Union (previously the Treaty establishing the European Community, more commonly referred to as the EC Treaty) ([www.europa.eu](http://www.europa.eu)). These amendments are important to this study and the future of European asylum policy as they have updated goals in creating a Common Asylum System to a certain extent, have changed decision-making procedures and have 'moved' asylum matters from Title IV of the EC Treaty to Title V, Chapter 2 of the new Treaty on the Functioning of the EU. Whereas previously article 63 of the EC Treaty spoke of adopting measures setting out 'minimum standards', the new article 78 of the new Treaty now refers to adopting 'common standards' and 'uniform status' for both asylum and temporary protection. The change in wording is significant, and is a step forward in creating an asylum system that will prove to be more uniform throughout the Union. Decision-making procedures, which were going through a transitional phase in accordance with the Amsterdam Treaty, have changed as well. The right to initiate legislation in the field of asylum is now with the Commission alone, and directives and regulations with regard to all asylum procedures are now to be adopted according to the ordinary decision-making procedure (formerly known as the co-decision procedure) in which both the Parliament and the Council must approve the proposed text of the Commission for new legislation. National governments still have say in the legislative process, as they have a right to contest the compliance of a certain proposal with the principle of subsidiarity, but they cannot comment on the content of the proposal itself.<sup>7</sup> The voting procedure in the Council on asylum issues is now Qualified Majority Voting (as had been the case since 2005 due to the commitments made in the Hague Programme). It has clearly become increasingly more difficult for national governments to influence asylum policy over the past ten years.

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<sup>7</sup> The principle of subsidiarity entails that the EU 'does not take action (except in the areas which fall within its exclusive competence) unless it is more effective than action taken at national, regional or local level' (<http://europa.eu>)

## **2.2 Adopted Council Directives since 1999**

The following section will introduce the most important directives that have been adopted so far within the framework of the CEAS. The changes that have been made to national policy in the four selected MS due to these directives will be discussed in the next chapter.

### **2.2.1 Directive 2001/55/EC**

The first piece of legislation with regard to asylum that was adopted in the light of the Tampere Conclusions, is the **Temporary Protection Directive**. It lays down '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' (European Council 2001: 1). It was adopted on 20 July of 2001 and was required to be transposed into national legislation before 31 December 2002. The United Kingdom has chosen to take part in this directive. Directive 2001/55/EC addresses issues with regard to temporary protection, such as the duration and implementation of the protection that is to be granted, the obligations of the MS towards those whose have been granted temporary protection, the access to the regular asylum procedure and the return after the protection has ended (art. 4 through to 27).

The directive has been welcomed by ECRE for several positive aspects, such as sufficient provisions for especially vulnerable groups. They have however criticised several other aspects, including the restriction on freedom of movement and the limited right to healthcare. The fact that there is no mention of the right to appeal to a decision that has been taken on the admissibility of the claim is also worrying (ECRE 2001).

### **2.2.2 Directive 2003/9/EC**

The second measure that has been agreed upon since 1999 is the **Reception Conditions Directive** that was adopted in January 2003. MS were required to have transposed this piece of legislation by 6 February 2005. The UK has agreed on opting into this directive (Ferguson Sidorenko 2007). The directive lays down a set of rules on the following issues (in articles 5 through to 20): the provision of information, documentation, residence and freedom of movement, families, medical screening, schooling and

education of minors, employment, vocational training, material reception conditions and health care. It also specifies the provisions that need to be in place for those with special needs, such as minors.

The directive has been criticized by ECRE for several reasons, such as the very narrow definition of 'family' that is provided in article 8 and the fact that social assistance may be provided for through vouchers as described in article 13. Furthermore, the directive is often criticised for the fact that MS are allowed a lot of discretionary room to fulfil the necessary requirements (Ferguson Sidorenko 2007; ECRE 2003; ECRE 2008).

### **2.2.3 Directive 2004/83/EC**

The next piece of legislation that must be mentioned in an overview of EU asylum measures, is Council Directive 2004/83/EC on minimum standards for the qualifications and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. This measure, commonly known as the **Qualifications Directive**, has been adopted by the Council on 29 April 2004 and will have had to be transposed into national law by 10 October 2006. The final draft was the result of a two and a half year negotiation (Mc Adam 2007). The United Kingdom has accepted the directive in its entirety (European Council 2004, art. 38). The directive addresses, among other things, the assessment of facts and circumstances, international protection needs that may arise *sur place* and it defines 'actors of persecution'. Furthermore, it provides for reasons that will cause an asylum seeker to qualify for refugee status, such as the being subject to acts of persecution (that are subsequently identified in article 9) and it also specifies when someone must be excluded from being a refugee.

UNHCR has welcomed the directive, stating that it has 'achieved greater conformity of legal practice on some points of law, such as non-State actors of persecution or serious harm' (UNCHR 2007: 14).

However, it does not do this for several other issues, such as the qualification for subsidiary protection. In this respect it still leaves the MS too much leeway to interpret the provisions to their own benefit.

## 2.2.4 Directive 2005/85/EC

The fourth measure that was introduced in line with the programme of the Tampere Conclusions could only be agreed upon in 2005, beyond the deadline in 2004 that was set in the Tampere Conclusions. The **Procedures Directive** (Council Directive 2005/85/EC) describes the minimum standards to which MS must adhere with regard to the procedures when granting or withdrawing refugee status and needs to have been transposed into national law by 1 December 2007. The UK has agreed to take part in this directive (European Council, art. 32). The Procedures Directive addresses a wide range of issues, including access to procedures, the right to remain in the Member State while the application is being examined, the guarantees and obligations of an applicant, the right to a personal interview, the right to legal assistance and representation, guarantees for minors, detention, the collection of information, border procedures and many more (articles 6 through to 39). The fact that the directive touches upon issues like detention, which is traditionally an issue over which MS do not wish to give up sovereignty, may both explain why the agreement of the directive exceeded the set deadline of 2004 and why there is so much leeway granted to the MS in the final document. A lot is left to the discretion of the MS. A good example of this is the fact that MS are allowed to determine the circumstances in which minors may be given the right to a personal interview (European Council, art. 12).

Severe criticism has been put forward by several authors and human rights organisations with regard to this directive. Strik (2008) argues that the attitude of Member States, wanting to be able to hold on to their own policies, have created a directive that is basically 'a menu à la carte'. Costello takes it even further, stating that the final version of the Directive is a testimony of 'lowest-common denominator lawmaking at its worst' (2008: 111). Vedsted-Hansen (2005) states that the directive has effectively failed in its main aim, namely to harmonise procedures, and it may potentially even harm the protection of refugees. He especially mentions the wide scope of inadmissible applications and the usage of the 'safe third country' concept. The definition of this concept that is provided in the directive is very vague on whether an individual examination is needed to determine the safety of the third country in question for the specific asylum seeker, or if such an assessment may be made in general without reference to the individual (Vedsted-Hansen 2005). ECRE has issued concerns with regard to these same issues, and

mention a very extensive list of other concerns, including the limited right to an interpreter and legal assistance and 'the inadequate safeguards for the use of detention' (ECRE 2006).

Because the final version of the directive is considered to be watered-down to a great degree, we may expect to see that the Netherlands, Belgium, Germany and the UK did not have to change much in their domestic policies. Divergence in practice may therefore still exist.

This chapter has provided an answer to sub question 1 by giving an overview of EU asylum policy, including the latest developments of the CEAS.



### **3. Domestic asylum law**

This chapter will briefly outline the legal frameworks that were in place in The Netherlands, Belgium, Germany and the United Kingdom before harmonisation within the EU was initialized through the Common European Asylum System. This outline will provide an answer to sub question 2: 'What national regulations in the field of asylum were present in the selected MS prior to EU harmonisation?' A short overview of the responsible authorities will also be provided.

Changes that have been made due to new EU legislation will be discussed on a country by country basis. In doing so, sub question 3 'In which sense has new EU legislation led to a change in policy in the selected MS?' will be discussed in detail. Extensive use has been made of annual policy reports on the status of migration and asylum issues while answering this question. These reports were compiled by the National Contact Points of the European Migration Network (EMN) in each country. Usually, those who write the annual report are employed by the responsible federal agency that deals with migration and asylum issues in the designated country. Reports may look different from country to country, and one has to be aware of the fact that they have been written from a certain perspective. Therefore, other sources have been used as well to gain a thorough view of the changes that have been introduced following the EU legislation that was discussed in the previous chapter. These other sources are, depending on availability, reports by NGO's in the field of asylum, national evaluations, parliamentary papers and documents, the actual laws and regulations that have been implemented and evaluations that have been done by scholars.

#### ***3.1 The Netherlands***

Asylum policy in the Netherlands is made by the government and parliament, with both the Minister and State Secretary of Justice responsible for the policy and its implementation. The IND (Immigratie- en Naturalisatiedienst) is the responsible agency for the implementation of immigration policy in the Netherlands ([www.ind.nl](http://www.ind.nl)). An important partner of the IND with regard to asylum procedures is the

Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang Asielzoekers, COA), that manages the reception centres in the Netherlands and also helps asylum seekers in preparing for a life in the Netherlands or in case of a rejection of an asylum claim will help the asylum seeker with his/her return to their country of origin ([www.coa.nl](http://www.coa.nl)). Furthermore, the Royal Netherlands Marechaussee is responsible for the first reception of asylum seekers, primarily at airport Schiphol ([www.ind.nl](http://www.ind.nl)).

### 3.1.1 Asylum policy before CEAS

Even before changes at the EU level with regard to asylum law came about, reforms in the Dutch national law and policy were well underway. In 2000 a reformed **Aliens Act** ('Vreemdeligenwet 2000') was agreed upon, that came into force on 1 April 2001 (UNHCR 2003). A second piece of legislation that must be mentioned when considering Dutch asylum law is the **Regulation on the provisions for asylum seekers and other categories of aliens (Rva 1997)**. This Regulation was reformed in 2005 to comply with Council Directive 2003/9/EC on reception conditions that will be discussed in further detail below. This regulation deals with provisions such as housing, food, financial aid, medical care and recreational and educational activities (Rva 1997). It is closely linked to the **Act on the Central Agency for the Reception of Asylum Seekers (Wet COA)**, that allows the minister for Alien Affairs and Integration to take further measures. The Rva is the result of this freedom given to the minister under this Act (Odysseus Network 2007a). Further legislation in the field of asylum are the **Aliens Decree 2000** (Vreemdelingenbesluit 2000, Vb2000) and the **Aliens Act Implementations Guidelines 2000** (Vreemdelingencirculaire 2000, Vc2000). The Aliens Decree is a lower regulation, that 'further defines the substantive rules and procedural rules of the Aliens Act' (EMN 2008: 20), while the Vc2000 contains policy rules in the field of asylum and migration (EMN 2008A).

### 3.1.2 Asylum policy after CEAS

The introduction of the four EU directives that have been described in the previous chapter have led to some changes in Dutch asylum law. These changes will now be discussed.

### **3.1.2.1 Directive 2001/55/EC**

In order to implement the provisions of Directive 2001/55/EC some small changes were made to both the Aliens Act 2000 and the Rva 1997. The Aliens Act was brought in line with the provisions of the directive through several additions to articles that were not clear enough, and could therefore be interpreted too narrowly. The changed Aliens Act entered into force on 15 Februari 2005, some four years after transposition of the measure had been required (Kromhout, Kok, Munk & Beenackers 2006). Negotiations on the proposed amendment to the Aliens Act 2000 were relatively long, as the first proposal had already been put forward in September 2003 (<https://zoek.officielebekendmakingen.nl>). The main changes that were made regarded provisions that allowed for the declaration of a decision- and departure moratorium for people that were entitled to protection based on a decision of the Council (Kromhout et al 2006). Effectively, the amendments allow for a period of up to three years in which the alien that has been granted temporary protection can remain in the Netherlands. During this period, the alien is granted the same rights as an asylum seeker. They do not receive a residence permit. This has been criticized by some of the left wing parties, as it basically means that the very minimum level of rights is granted to those who are entitled to temporary protection under the provisions that have been introduced due to the directive (Parliamentary Papers 2004a). Dutch asylum law also allows for categorical protection for displaced persons based on art. 29 of the Aliens Act. This kind of protection is granted based on a decision by the competent Minister and grants the displaced person a residence permit. With a residence permit, more rights are transferred to the person in question (Spijkerboer & Vermeulen 2005).

In this case, it seems as though the Minister of Justice (at the time of the amendments this was Rita Verdonk of the VVD, a centre-right political party) has taken the opportunity to lower standards based on the directive. However, in a letter addressing the concerns of the left oppositional parties, the Minister adds that several elements of the new Aliens Act actually go beyond the requirements of the directive. The examples she gives include: free health examinations, free insurance and cultural activities that are offered (Parliamentary Papers 2004b). She also defends the minimal interpretation with regard to the status of the displaced person by saying that other EU Member States also use the same method (Parliamentary Papers 2004b: 1). She states, in this same letter, that now that agreement has been

reached on a European level, it does not seem fit to set a higher norm for the treatment of temporary protected persons in the Netherlands. This statement seems to be in line with the observation of Hatton (2005) that given the opportunity, MS will try to lower their standards based on new EU regulations that only reflect minimum standards. However, some measures have also remained as they were even though the opportunity existed to lower standards, as pointed out by the minister.

Some changes were made to the Rva 1997 in order to comply with Directive 2001/55/EC as well, leading to a new and revised Rva 2005. However, it is very difficult to pinpoint the exact changes that can be attributed to this directive, as the reform of the Rva was also done in order to comply with Directive 2003/9/EC (the Reception Conditions Directive) and an overall evaluation of the Rva 1997 (Odysseus Network 2007a). There is no evaluation available with regard to the transposition of Directive 2001/55/EC. Therefore, it is difficult to attribute any change to this directive.

The degree of change due to Directive 2001/55/EC can only be described as low, as none of the changes that were made have led to a modification of existing structures in Dutch asylum policy. The direction of change is slightly downward, as some changes have introduced stricter measures, while some more favourable features in Dutch asylum law have been retained.

### **3.1.2.2 Directive 2003/9/EC**

In order to comply with Directive 2003/9/EC on reception conditions the Rva 1997 was extensively revised, leading to a new version in 2005. Implementation had not been secured by the deadline of 5 February 2005. The overall conclusion that was reached by the Odysseus Network<sup>8</sup> in its evaluation of the implementation of the directive in the Netherlands, was that the new Rva 2005 had made reception conditions more generous in comparison to the standards that had been set by the Rva 1997. The directive was not used to lower standards either (Odysseus Network 2007a). Among the changes that were commented upon to be steps forward, is the fact that asylum seekers are now granted the right to

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<sup>8</sup> The Odysseus Network is a network of academics for legal studies on immigration and asylum in Europe (<http://ulb.ac.be>). The analysis of transposition of the directive into Dutch law was done on request of the European Commission, and was executed by Odysseus Network in the case of the Netherlands.

'communicate with relatives, legal advisers and representatives of the UNHCR' (Odysseus Network 2007a: 4). One could therefore conclude that the adoption of the directive has led to higher standards of reception in the Netherlands. However, there are some important observations that must be mentioned when judging the transposition of the directive.

First, the Rva does not apply to those who are being housed in one of the two Application Centres (AC) or in a Temporary Emergency Reception (TNV) facility, or asylum seekers who have been detained. Asylum applications can only be lodged at an AC. However, these tend to have waiting lists of approximately two to three weeks. While awaiting their opportunity to apply for asylum, the applicants are housed in a TNV. Housing there is provided in mobile homes. Only when an asylum seeker is admitted to the full asylum procedure, will he or she be housed in a regular facility that is to be in compliance with provisions of the Rva 2005. Those that will have their claim decided upon within the accelerated procedure will remain in the AC, and will therefore not once during their application procedure benefit from the standards that have been agreed upon on the Rva 2005, and subsequently will never benefit from the directive on reception conditions. Secondly, the Rva did not copy the exact wording of art. 17(1) of the directive that specifies the different categories of persons that are entitled to special support or counseling (Odysseus Network 2007a). The Rva 2005 only states in its art. 9(4) that especially vulnerable persons are entitled to specific guidance ('Voor bijzonder kwetsbare personen omvat de opvang naast de in het eerste lid bedoelde verstrekkingen tevens specifieke begeleiding', art. 9(4) Rva 2005). This leaves considerable leeway in the interpretation who these 'especially vulnerable' persons are. A third comment that must be made with regard to the implementation of the Rva is that the Council of State has shown in recent case law to interpret the Rva in a very narrow sense (Odysseus Network 2007a).

Furthermore, there was an extensive debate on the amount of money that was granted to asylum seekers in regular reception centres. The amount had only been adjusted upwards since 1997 with 1 euro, and the Netherlands Institute for Budget Information (NIBUD) calculated that the amount that was granted would not allow for a sufficiently nutritious diet. The food allowance has now gradually been raised to meet the requirements set by the NIBUD, only to meet this standard in 2009. The minister

announced that there was not enough money to do so immediately (Odysseus Network 2007a). One could therefore make the case that the Rva did not meet the standards between 2005 and 2009 set by the directive as it clearly states in art. 13(2) that allowances must be sufficient to 'ensure a standard of living adequate for the health of applications and capable of ensuring their subsistence' (Odysseus Network 2007a: 14). Lastly, there is no system of control on the quality of reception conditions as required by art. 23 of the directive. However, many of the above mentioned changes in measures have not been the consequence of the directive. In fact, they are alterations that do not meet the requirements of the directive. In this sense one cannot say that these changes are due to European legislation.

The degree of change caused to Dutch asylum law in order to be in compliance with this directive can be described as modest, as policy was changed significantly to incorporate the provisions of Directive 2003/9/EC, but no core features of Dutch asylum policy were modified. The direction of change is upward, despite several issues that have been pointed out above.

### ***3.1.2.3 Directive 2004/83/EC***

Directive 2004/83/EC is implemented through several instruments. The Aliens Act 2000 is only changed marginally, while other changes have been introduced to the Aliens Decree 2000, the Regulations on Aliens, the Aliens Act Implementation Guidelines and the Implementing order to the Youth Care Act (Parliamentary Papers 2007a). According to the explanatory note that was issued with the first proposal for changes by the minister, not much would change in practice, because most of the provisions of the directive were already secured in current legislation (Parliament Papers 2007a). Again, the final date of transposition into national legislation was not complied with, as the revised legislation only entered into force in 2008. As the directive was only transposed this late, analyses by ECRE and UNHCR have not been able to comment on the changes in the Netherlands in their reports that were published shortly after the transposition deadline had expired. Due to the recent nature of the adaptations and the fact that changes were introduced in several different measures on a different level, it is very difficult to say whether Dutch law has become 'friendlier' or stricter due to EU legislation. However, again in going through the official documents describing the process of negotiation and the following debates on the

introduction of changes to asylum law in the Netherlands do show that left-wing parties have serious doubts about the implementation of the directive. An example of this is the fact that GroenLinks, a left-wing party, has put forward the criticism that the directive, that describes minimum standards, allows for higher standards while still respecting the provisions of the directive (Parliamentary Papers 2007b). The minister has, similar to the discussion described above on the implementation of Directive 2001/55/EC, stated that he does not want to deviate from the directive too much even if it is to the advantage of the asylum seeker, because it would undermine the exercise of harmonising asylum policies throughout the European Union (Parliament Papers 2007c).

The degree of change following the introduction of this directive can be described as low. No fundamental changes were made to the Dutch asylum system. The direction of change is not clear due to a lack of available documentation on the implementation in the Netherlands of this directive.

#### ***3.1.2.4 Directive 2005/85/EC***

Directive 2005/85/EC has been implemented into Dutch law through changes in the Aliens Act 2000, the Aliens Decree 2000, the Regulations on Aliens 2000 and the Aliens Act implementation guidelines 2000 (EMN 2008a). Full implementation was secured on 19 December 2007, and was thus 18 days late as transposition had been required by the directive by 1 December 2007. This time, no extensive debate was held and adoption was relatively smooth (EMN 2008a). The changes that were made however were marginal (Reneman 2008). As required by the directive, the concepts of a safe country of origin and safe third country were introduced into Dutch asylum law but did not change practice a great deal. Furthermore, the implementation of these concepts did not lower standards of refugee protection in the Netherlands. In fact, the Netherlands have opted to not use the possibility of introducing some provisions that would have restricted the current Aliens Act and Aliens Decree (Reneman 2008). The implementation of this directive is therefore a good example of an MS not lowering standards even though the possibility to do so was presented by the directive.

An improvement to the Aliens Act 2000 was secured by guaranteeing that asylum seekers that were not taken back by a third country, would not be considered to have submitted a subsequent application.

Dutch law before the amendment provided that a second application could be rejected without having considered the merits of the claim if no new facts or circumstances were brought to the table. The amendment has made sure that in a case where an asylum seeker was not accepted by the third country in question, he or she would be guaranteed access to the asylum procedure, as stipulated by article 27 (4) of the directive (Reneman 2008). However, one can question several other practices in the Netherlands that might be considered to be in violation of the directive, such as the limited scope of judicial review and the limited use of suspensive effect when awaiting an appeal. However, these measures were already in place before the directive was transposed. These features can therefore not be attributed to a change in EU legislation.

The degree of change due to the implementation of Directive 2005/85/EC is low, as only marginal changes were introduced. The direction of change is upward.

### **3.2 Belgium**

in the past decennia some very structural changes have been made with regard to the organisation and responsibilities in Belgium in the field of asylum. For example, only in 2008 the position of Minister for Migration and Asylum Policy was created, for the first time making only one Minister responsible for most migration and asylum issues (EMN 2009a). However, this and other structural changes cannot be attributed to developments at the EU level but rather stem from domestic developments. They will therefore not be discussed in depth. Important agencies in Belgium within in the field of asylum are: the Immigration Department (also referred to as the Aliens Office) within the Federal Public Service Home Affairs with regard to adapting domestic law to EU law and the determination of the validity of applications; the Office of the Commissioner General for refugees and stateless people (CGRS) that examines asylum cases and the Federal Agency for the Reception of Asylum seekers (Fedasil), responsible for the reception of asylum seekers and the management of reception centres (EMN 2009a). Unlike the Netherlands, where there are only a handful of reception centres, Belgium has approximately 13,000 reception places and the reception of asylum seekers is therefore much more decentralised (EMN 2009a).



### **3.2.1 Asylum policy before CEAS**

Asylum law in Belgium is based on the 1980 **Aliens Act**. Since 1980 it has been altered several times, mainly due to international agreements, such as the Schengen Agreement and the Dublin Convention of 1990 (European Community 2001). Rules on the provision of material assistance to asylum seekers have been laid down in the **Public Social Welfare Act** of 1976. This Act has become redundant since 2007 with the introduction of a new law on reception conditions for asylum seekers, that will be discussed more extensively below as it is clearly influenced by the introduction of EU legislation (EMN 2007a).

### **3.2.2 Asylum Policy after CEAS**

In the implementation of EU legislation in the field of asylum, Belgium has opted to revise its Aliens Act which has been in place since 1980, in a phased manner (EMN 2008b). Changes have been introduced in packages, thus some directives have been transposed at the same time. Below, these changes will be categorised as far as possible according to the different EU measures that have been discussed in the previous chapter.

#### ***3.2.2.1 Directive 2001/55/EC***

The required adaptations in order to comply with Directive 2001/55/EC were transposed into Belgian law on 18 Februari 2003 ([www.vluchtelingenwerk.be](http://www.vluchtelingenwerk.be)). In this revision, a new chapter was added to govern the new status for those refugees who fall under the directive: displaced persons who have arrived in a mass influx and are in need of temporary protection. The new chapter 'determines the duration of the status (6 months extendible to 2 years), the residence status (residence authorisation), the reasons for denying the status or excluding people from it, regulations regarding family members, and also the termination regulations.' (EMN 2004: 15). The documents that are to be provided to the applicant, describing the rights and obligations with regard to the status of temporary protection, are provided in a language that the applicant understands (Art. 57/30 of the Aliens Act). This is a friendlier interpretation of article 9 of the directive, specifying this document must be provided in a 'language likely to be understood' by the applicant.

While there has been no evaluation of the implementation of this directive in Belgium, one may conclude that changes to the Belgian asylum system were extensive, as a new status was created for those who are entitled to temporary protection. The degree of the changes made to Belgian asylum law due to this directive may thus be labelled as high. The direction of change is upward, as a new chapter now defines the rights of those who are in need of temporary protection.

### **3.2.2.2 Directive 2003/9/EC**

Belgium was not able to transpose the necessary provisions of the Reception Conditions Directive in time. On 12 January 2007 a new Act was agreed upon, that eventually entered into force on 7 May 2007. It replaced the Public Social Welfare Act of 1976 with regard to the provision of material support for asylum seekers (EMN 2008b). The implementation of Directive 2003/9/EC was thus more than two years late. The changes that were introduced in the new 'Asylum Seekers and Certain other Categories of Aliens Act' were, among others, the provision of material support and the provision of housing. The latter was no longer to be provided solely in a reception centre *or* on an individual basis through for example private housing (as was the case before the introduction of the Act). Asylum seekers would now first be sent to a reception centre for four months, after which private solutions would be offered to the asylum seeker (EMN 2008b). After a certain period of time during the assessment of the asylum claim, a switch is made from provision of material reception conditions 'in kind' to 'in money'. This is considered to be a step forward and has even been mentioned as an example of 'best practice' in Europe (Odysseus Network 2006).

The provision of information to asylum seekers has also been secured in law. All rights and obligations are now provided to the asylum seeker in a leaflet, that has been translated into ten languages ([www.fedasil.be](http://www.fedasil.be)). There had never been clear rules on the reception of asylum seekers in Belgian Law, so the drafting of a new law may be called a step forward. However, in the evaluation of the European Migration Network, it is stated that the new law does not do much more than put into words what was already common practice (EMN 2008b). One could also criticize the fact that the information leaflet that is distributed to asylum seekers in ten languages, as some may not be able to understand any of those. Article 5 (2) of the directive states that the information that is to be provided to the asylum seeker

should be 'in a language that the applicants may reasonably be supposed to understand'. Providing leaflets in only ten languages seems a narrow interpretation of this article. However, it can be considered to be a step forward that this right to information is now secured in law. The systematic provision of a leaflet was introduced based on the directive, and therefore one can say that the introduction of EU legislation in this field has caused a positive change in Belgian law.

Another law that entered into force on the same day as the one discussed above, changed the judicial code with regard to disputes concerning the assignment, revision or the refusal of material support. The amendment of the code is meant to guarantee a right of appeal in all cases where the rights described in the above new law on reception conditions are not met (Fedasil 2007).

The report of the Odysseus Network states that overall reception conditions will benefit from the changes to Belgian law that have been inspired by the need to implement this specific directive (Odysseus Network 2006). Combined with the fact that the directive does not seem to have lowered standards, we can say that overall, the reception conditions for asylum seekers seem to have improved due to EU legislation. The direction of change is therefore upward. The degree of change is high as a new act was agreed upon, and for the first time clear rules for the reception of asylum seekers have been laid down.

### **3.2.2.3 Directive 2004/83/EC**

Directive 2004/83/EC was transposed into Belgian law on 10 October 2006, and the reforms to the Aliens Act were therefore in time. The reform was ordered by a Royal Decree (ECRE 2008). Dirk Vanheule, a Professor of Law at the University of Antwerp, has called the implementation of the Qualification Directive a 'milestone in Belgian Asylum Law', because it has introduced for the first time new grounds for obtaining asylum status (Vanheule 2007). Previous to the transposition of the directive, asylum seekers could only be granted refugee status based on the Convention. Most other countries provide a form of subsidiary status for those who do not qualify on the grounds mentioned in the Convention, but this was not the case in Belgium. Even though in practice those asylum seekers that could not be sent back to their country of origin would either be tolerated, or sometimes received

individual solutions from the responsible minister or the court, it is a step forward that a subsidiary status is now secured in Belgian Law (Vanheule 2007).

Vanheule mentions that Belgium has opted to leave some more restrictive provisions of the directive out of the revised Aliens Act. This statement is also confirmed by a report that was published by ECRE on the implementation of the directive in Belgium. Both Vanheule and ECRE mention the fact that article 8(3) of the directive, stating that a MS may choose to consider that an asylum seeker is not eligible for protection due to the fact that there is a part of the home country that is safe for the person in question, even if there are 'technical obstacles to return to the country of origin', has not been transposed into Belgian law (Vanheule 2007; ECRE 2008). Also, article 10(1) that arguably contains limitations to gender related fears on prosecution as a sole ground to qualify for protection, has not been transposed into Belgian Law (Vanheule 2007). On the other hand, the new law has significantly increased the possibility of an asylum seeker to be rejected for procedural reasons. Again, as is the case in the Netherlands, new elements may not be brought before the appellate court (ECRE 2008). Vanheule goes on to say that:

'... it is quite startling to see that some of the most basic and in Belgian asylum practice undisputed rules on the assessment of facts and circumstances in Article 4 QD have not been entered into the Aliens Act: the assessment at the time of taking a decision, the effect of past persecution, the benefit of the doubt. The same goes for the possibility of the need for international protection arising *sur place* in Article 5 QD, even though the notion of *réfugié sur place* has been used in Belgian asylum practice along the lines of Article 5.' (Vanheule 2007: 73)

Even though these rules have not been transposed, little has changed in the way Belgium assesses asylum claims (Vanheule 2007; ECRE 2008). Apparently, practice was already considered to be up to par according to the government before the directive came along. It would therefore seem fair to say that one can consider the implementation of the Qualification Directive in Belgium a step forward with regard to all the rules and regulations being put into law. This is despite the fact that practice was already mostly in line with the provisions of the directive and there still several issues of concern.

From the above information on the implementation of Directive 2004/83/EC it has become clear that the degree of change in Belgian asylum law has been significant and the degree of change has therefore been high. The direction of change, even though there have been reservations on some points, is upward.

#### **3.2.2.4 Directive 2005/85/EC**

Even though substantial changes were made to the Aliens Act in 2006 to implement several European Directives, the implementation of Directive 2005/85/EC was not secured in this round of reform. This was mainly the case because the Belgian legislator was of the opinion that Belgian Law was by and large in conformity with the directive (Pollet 2008). Therefore no changes have been introduced to this date. Belgium applies higher standards with regard to some provisions in the directive. For example, Belgium does not use the safe country of origin concept, and in practice does not work with a list of safe (third) countries (Pollet 2008). However, there are several issues that seem problematic as they might be perceived as contradictory to the directive. Pollet, executive officer of the Amnesty International EU Office, states that several amendments are in fact needed to bring Belgian law in line with the directive. For example, asylum applications that have been made too late might be considered manifestly unfounded. The same holds for asylum applicants that do not respond to a request for information in time. These procedural admissibility criteria do not conform to articles 22 and 23 of the directive, that specify the exceptions to the obligation to judge an applications based on its substance (Pollet 2008). Another concern is the access to an effective remedy as mentioned in article 39 of the directive. As is the case Dutch law, when a case is appealed to by the asylum seeker, the competent Court<sup>9</sup> has limited rights with regard to taking into account new elements. This could especially be damaging to applications that have previously been rejected based on procedural issues as mentioned above.

As no changes have been made to Belgian law following the introduction of Directive 2005/85/EC, one must conclude that EU legislation has not changed domestic law with regard to this specific directive.

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<sup>9</sup> In Belgium this is the Aliens Litigation Council. It is an Administrative Court that deals exclusively with appeals that have been lodged in individual cases. See Pollet 2008.

National policy has remained in place. As already discussed in chapter 2, this may be contributed to the fact that this directive leaves considerable leeway for the MS to comply with the provisions.

### **3.3 Germany**

In Germany, the responsible Minister with regard to asylum issues is the Federal Minister of the Interior. Most German laws in the field of asylum are formulated on the national level. On the operational level, the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF) deals with the implementation of asylum proceedings and the examination of asylum applications ([www.bamf.de](http://www.bamf.de)), but many of the responsibilities with regard to the implementation of asylum law lie with the Länder in Germany. Providing accommodation for asylum seekers in reception centres is one of these responsibilities that is carried out by the Länder (EMN 2008d).

#### **3.3.1 Asylum policy before CEAS**

Prior to the adaptation of German law to new EU legislation, some very important changes were made to asylum law in Germany in general. Germany is one of the few European countries that has guaranteed the right to asylum in its Constitutional law, article 16a. However, asylum law is further elaborated in several Acts that have gradually been introduced since then. In 1993 the constitution was also altered due to growing pressures on asylum systems in the EU, effectively narrowing down the group of persons that could be granted asylum (Lambert, Massineo & Tiedemann 2008). The biggest change that was adopted in 1993 was the introduction of the 'safe country of origin' principle (Liedtke 2002). The **Aliens Act**, originally of 1965, was substituted in January 2005 by the **Immigration Act**, that consists of two parts: the **Residence Act** and the **Freedom of Movement Act/EU** ([www.en.bmi.bund.de](http://www.en.bmi.bund.de)). The latter however only considers EU citizens and will therefore not be discussed in any further detail in this study. The 1993 **Asylum Procedure Act** provides for all the rules and regulations with regard to the assessment of an asylum application (EMN 2010). The **Act on Benefits for Asylum Seekers**<sup>10</sup> of 1993 was amended in 1998, and has consequently become more restrictive in its nature. It has led to the situation

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<sup>10</sup> Sometimes referred to as 'Asylum Seekers Benefit Act', see for example Liedtke 2002.

where asylum seekers have to live from benefits that are in general some 20 % lower than the amount a regular (German) person that depends on social assistance will receive. Assistance to asylum seekers is only provided in kind, with vouchers that can only be used in designated stores (Liedtke 2002). As in Belgium, much responsibility for the execution of national law is left to the regions (Länder), which can sometimes lead to very different situations in for example the housing of asylum seekers. While some Länder may provide 9m<sup>2</sup>, others will find it sufficient to house an asylum seeker in a room that measures 6m<sup>2</sup> (Liedtke 2002).

### **3.3.2 Asylum policy after CEAS**

A quick and smooth process for the implementation of EU legislation in the field of asylum was unfortunately disturbed by general elections in 2005. Preparations for the implementation of EU legislation had already begun in 2004, but were only finalized in 2007 once the new government had been formed (EMN 2008C). Finally in August of that year the new EU-Directives Implementation Act came into force, implementing 11 EU directives but also containing some more general revisions based on an evaluation of the Immigration Act ([www.en.bmi.bund.de](http://www.en.bmi.bund.de)). Through this act both the Asylum Procedure Act and the Residence Act were revised. Below these changes will be detailed in the sections on the respective directives.

#### **3.3.2.1 Directive 2001/55/EC**

The implementation of this directive is provided for in Section 24 of the Residence Act ([www.proasyl.de](http://www.proasyl.de)). It is worth mentioning that the Residence Act provides that information must be given to the person enjoying protection in a language he or she can understand. This goes further than the text of the directive, that speaks of 'a language likely to be understood' in its article 9. Germany has, in this specific case, decided to apply a higher standard. Because there are no evaluations available on implementation of this specific directive in Germany, it is very difficult to judge whether the overall effect of the changes that have been made according to the provisions of the directive have had a positive effect on the protection of temporary displaced persons or not. This is exacerbated by the fact that the implementation of this directive has come among a very comprehensive reform of German Asylum law, mainly in the form of one implementing Act that deals with several directives as outlined

above. This does not make it any easier to ascribe a certain change in law to this specific directive. It is not possible to draw any conclusions based on the available information with regard to both the degree and the direction of change due to the implementation of the provisions of Directive 2001/5/EC.

### **3.3.2.2 Directive 2003/9/EC**

German asylum law was not changed much in order to implement the minimum standards that have been put forward by the Reception Conditions Directive (Odysseus Network 2006). The Asylum Procedure Act was amended slightly with regard to the issuing of a preliminary residence permit within three days after having applied for asylum, and the need to inform the asylum seeker of the reasoning behind the decision and a notification of appeals in a language that he or she is reasonably believed to understand (EMN 2008c). Furthermore, the rules provided in the Act on Benefits for Asylum Seekers have been amended in order to prevent the 'misuse' of the social benefits that have been provided to the asylum seeker through the Asylum Procedure Act. The restriction of this Act has been justified by referring to article 16 of the Directive. The Bavarian Social Court of Appeal has stated that if an asylum seekers acts in a way that is described in article 16, paragraph 1 or 2, 'misuse' can be determined (Odysseus Network 2007b).

Criticism has been put forward with regard to the narrow interpretation that German asylum law employs of the term 'family' (Odysseus Network 2006). Germany is also one of the few MS that limit the freedom of movement of asylum seekers to a certain district, without however being in violation of the directive. The care for those with special needs is not always provided for in Germany, which is also an issue of concern (Odysseus Network 2006). On the other hand, a positive element of German practice is the fact that NGO's are represented in the advisory board for reception conditions. Germany has also opted to extend reception conditions to those applying for subsidiary status, while this is not required by the directive. This is also a positive development and not all MS have opted to do so (Odysseus Network 2006).

All asylum seekers that have a preliminary permit, which is to be provided to him/her within three days of having lodged the application, are entitled to receive social benefits, including those whose application will be determined through the airport procedure (Odysseus Network 2007b). This is in



contrast to the Dutch system, that only applies the Directive indirectly through the Rva 2005 to asylum seekers that are in a regular reception facility. As mentioned in the paragraph on the implementation of the directive in the Netherlands, asylum seekers may not be housed in one of these facilities at all when their claim is being assessed through the accelerated procedure, and when they have been admitted to the full procedure they may have to wait up to three weeks before they can apply. Reception conditions are never fully withdrawn after a negative ruling in Germany, again in contrast to the Dutch system. Reception conditions may be reduced if the asylum seeker is thought to be in the country with the main aim of receiving social benefits or if he/she cannot be deported due to his/her own actions. However, a certain minimum, always including emergency health care, housing and food, is always guaranteed (Odysseus Network 2007b).

The fact that the Länder in Germany are responsible for the implementation of the directive (through the Act on Benefits for Asylum Seekers and the Asylum Procedure Act), potentially leads to different interpretations and therefore different reception conditions within the country. There are no common standards for reception centres or other facilities that may provide housing and social benefits (Odysseus Network 2007b). This makes it very difficult to analyse the standard of protection granted to asylum seekers in Germany in general. However, reports have stated that asylum law was not altered substantially (Odysseus Network 2006). Only minor changes were made, so that reception conditions in Germany have not changed much due to EU legislation. The degree of change is therefore low. The direction of change must be labelled as unclear as there are both elements that are more generous than required by the directive, and changes in law that have tightened policy.

### ***3.3.2.3 Directive 2004/83/EC***

Most of the provisions that had to be transposed into national law according to the Qualifications Directive had already been a part of German asylum law before the implementation was required to be finalized. It is worth noting that Germany has actually been able to introduce some of its national practices in this field into the directive. An example of this is the wording that is used in the directive recognising non-state agents as 'relevant actors of persecution', that is identical to the wording used in the Immigration Act of 2004 (Bank 2007). Some changes were made to the Residence Act in order to be

in conformity with EU legislation (EMN 2007b). Mainly those provisions on the criteria one has to fulfil in order to obtain refugee status and subsidiary protection still needed to be implemented (Bank 2007). Article 15 of the directive, providing a definition of what constitutes 'serious harm', has been implemented in the Residence Act and among other things, states that deportation cannot take place when the asylum seekers faces the danger of torture or inhumane or degrading treatment of punishment in the country of origin in the individual case (EMN 2008c). Article 15(a), stating that the death penalty is considered to be 'serious' harm, is also transposed into the Residence Act (Bank 2007).

Bank goes on to mention several issues that still need to be addressed in order to get German asylum law in line with the Qualification Directive (at the time of the analysis by Bank, there was only a draft version of revisions available. The final amendments to the Residence Act entered into force afterwards). He states that the definition of persecution would have to be revised, considering that German law does not take into account that an accumulation of acts may constitute persecution (which is proscribed by article 9(1) of the Directive). Furthermore, protection based on religion must be widened and 'the scope of the concept of an internal protection alternative is more limited and consequently will lead to a rejection of less applicants than under the current German approach [with the unrevised Acts]' (Bank 2007: 125). Some changes were also made to the Asylum Procedures Act in August 2007, regarding the conditions for granting protection to refugees. However, practice did not change much after this amendment. Another amendment relates to the widening of the possibility to withdraw refugee status (Duchrow 2008).

The evaluation of implementation of the directive in Germany done by ECRE mentions several issues that do not seem to be in conformity with EU legislation or the Convention. For example, German law does not mention that the applicant should be given the benefit of the doubt (see also the paragraph on the implementation of this same Directive in Belgium) and extra exclusionary provisions have been introduced with regard to those asylum seekers that could constitute a threat to national security, which is considered to be in violation of the Refugee Convention (ECRE 2008). The report also mentions that the implementation of article 15(c) is considered to be very vague. On the other hand, Germany does provide a higher standard of protection for applicants that are persecuted based on their sex. While

'sex' is not defined as belonging to a certain 'social group' in the directive, German law provides that persecution on the basis of sex can be characterised as 'persecution due to membership of a certain social group' (ECRE 2008: 40).

In conclusion, one can say that change in domestic law with regard to the implementation of this specific piece of EU legislation was limited. The degree of change is thus low. The direction of change is unclear.

#### **3.3.2.4. Directive 2005/85/EC**

Again not much was changed in German law to bring it in line with EU legislation (EMN 2008c; Duchrow 2008). This is also due to the fact that some provisions that have made into the final version of the directive, already existed in German law for a longer period of time. An example is the notion of a 'safe third country' which was introduced into the German Constitution by 1993 (Duchrow 2008). The most important changes that were implemented in the Asylum Procedure Act regard the provision of information towards asylum seekers with regard to the procedure that will ensue after having applied for asylum, especially considering his/her rights and duties, and an amendment of the provision on safe countries of origin (EMN 2008C). There seems to be evidence to support that Germany has used this directive to lower existing standards. An example of this is the fact that an appeal that is lodged by an asylum seeker where his initial claim was found to be inadmissible must be awaited in the country of origin (Duchrow 2008). This was not the case before implementation was secured. Duchrow says the following regarding this practice: 'To proceed with the case from outside of Germany mostly leads to a closure of the case, because the appeal is seen as dropped according to Sec. 81 of the Asylum Procedures Act' (Duchrow 2008: 153).

Examples of German provisions that do not seem to be in compliance with the directive also exist. One could mention the fact that the Asylum Procedures Act does not refer to the special needs of children in the process of determining the legitimacy of their asylum claim, and the fact that Germany uses a contradictory definition of what constitutes a minor altogether: in Germany, one considered to be a minor under the age of 16, while the directive explicitly states that minors are children under the age of

18 (Duchrow 2008). However, this cannot be blamed on EU legislation as it is clearly the choice of the MS to deviate from the provisions that have been laid down in the directive.

As not much was changed in German law to implement Directive 2005/85/EC, one must conclude that EU legislation has, in this case, not led to a major change in domestic policy. The degree of change is low. Based on the above information, the direction of change is downward.

### **3.4 United Kingdom**

The responsible government department with regard to asylum issues in the United Kingdom is the Home Office. The Secretary of State for the Home Department is responsible for formulating the Immigration Rules. The UK Border Agency, that is part of the Home Office, deals with all migration and asylum issues in the UK (EMN 2009b). Amongst its tasks are the examination and decisions on asylum applications and the transposition of EU law into domestic law ([www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)). It has only been operational since 2008. Before its creation, tasks were performed by several other agencies, including the Border and Immigration Agency. The Minister of State for borders and immigration is responsible for all the work that is done by the UK Border Agency (EMN 2009b).

#### **3.4.1 Asylum policy before CEAS**

Before 1993, there was no specific law in the field of asylum in the United Kingdom. Asylum matters were governed by the **Immigration Act** of 1971 (Hassan 2000; Clements 2007). The past decades have seen extensive and thorough reforms of legislation in the UK, that have been criticized for their restrictiveness (Hassan 2000; Clements 2007). The most significant changes were the introduction of the 1993 **Immigration and Appeals Act**, the 1999 **Immigration and Asylum Act** (replacing the 1996 **Asylum and Immigration Act**) and the 2002 **Nationality, Immigration and Asylum Act** (EMN 2009). The 1993 Immigration and Appeals Act has often been criticized for its provisions allowing authorities to detain asylum seekers, and since its introduction the number of asylum seekers in detention had tripled by the year 2000 (Hassan 2000). In 1995, the Conservative government had removed support for asylum seekers who had made their claims in-country as opposed to those who applied for asylum at the port of

entry (European Community 2001)The Asylum and Immigration Act of 1996 further restricted welfare entitlements to asylum seekers, while allowing for a distinction between asylum seekers who applied for protection at the port of entry and those who made their claims in-country. While the first group was entitled to only 90% of the social security benefit income support, the latter group was not entitled to support at all, in line with the changes introduced by the government as mentioned above (Bloch 2000). Even the claim by the government that 90% of the social security benefit income support is provided to asylum seekers, this is often disputed as monetary support only provides 70%. The other 20% is then provided in kind (Odysseus Network 2007c).

Further restrictive measures were introduced through the new Immigration and Asylum Act of 1999, that determined all benefits would be granted to the asylum seeker in vouchers, except for a £10 fee. With the £10 cash benefit and the one-off donation of furniture and the payment of utility bills the value of the grant to the asylum seeker remains 90% of the social security benefit (Bloch 2000). The Act was introduced mainly to speed up decision-making procedures, and also included measures to disperse asylum seekers throughout the UK more evenly (European Community 2001b). The Nationality, Immigration and Asylum Act of 2002 no longer allowed asylum seekers to work and was criticized heavily for its article 55, that stipulates that asylum seekers who have not applied for asylum as soon as possible are excluded from support altogether (Clements 2007). It is worth mentioning that unaccompanied children were not included in the Immigration and Asylum Act, but fall under the Children Act 1989. Unaccompanied children are therefore provided with the same level of support as any other British citizen (European Community 2001b). A last piece of secondary legislation in the field of asylum that must be mentioned are the **Immigration Rules**, that deal with first-instance asylum decision making (Costello 2008). The Immigration Rules have been amended due to several directives that will be discussed in the next chapter. The changes that have been made will be discussed below.

### **3.4.2. Asylum policy after CEAS**

The United Kingdom has transposed most of the directives through secondary legislation. The changes that have been made will be outlined below, according to the directive that the changes were inspired by.

### **3.4.2.1 Directive 2001/55/EC**

Two measures were taken to ensure the implementation of this directive in the UK: a new part to the Immigration Rules was introduced (11A) and the Displaced Persons (Temporary Protection) Regulations 2005 came into force. The provisions of the directive that did not 'fit' into already existing legislation were introduced in this new Regulation, dealing with 'means of subsistence, housing, the treatment of claims for asylum by persons granted temporary protection (...) and the waiving of consular fees for those seeking to enter the UK on the basis of temporary protection' (Home Office 2005: 3). The provisions described in the Regulations are applied to persons who have been granted temporary protection status according to the Immigration Rules, article 11A which in turn is based on article 5 of Directive 2001/55/EC (Home Office 2005). The Displaced Persons Regulations came into force on 15 June 2005, the new paragraph to the Immigration Rules came into force on 1 January 2005. Both measures were implemented more than two years after transposition was required.

With regard to the provision of health care, it is worth mentioning that no changes have been made to the legislation that was already in place. This legislation provides that regardless of immigration status, everyone is entitled to both primary and secondary health care (Home Office 2005). The directive requires that temporary protected persons have access to 'emergency care and essential treatment of illness' (art. 13(2)). Therefore the UK applies higher standards with regard to this specific provision. This is a clear example of a MS not downgrading its legislation even though the directive has given the room to do so.

An overall assessment of the impact of the changes that were made to British law in order to comply with this directive is difficult due to the absence of an evaluation. However, as a new regulation was introduced for measures that did not fit into current legislation, the degree of change may be considered as modest. The direction of change is not clear due to the lack of available information.

### **3.4.2.2 Directive 2003/9/EC**

The United Kingdom implemented the provisions of this directive just in time: while the transposition deadline was set for 6 February 2005, the UK adopted the necessary legislation on 5 February 2005 through three amended rules and regulations (Odysseus Network 2007c). According to the synthesis

report that was done by the Odysseus Network on the implementation of this directive in the different MS, there are some important problems in the transposition and implementation of the required provisions. One of the identified issues is the fact that the UK does not provide for a special procedure in determining whether an asylum seeker has special needs. In practice this means that staff, that may not be fully equipped to assess such a need, will have to make a decision on something this important. This may be a disadvantageous for the asylum seeker in question. Furthermore, the fact that the UK does not grant the reception conditions as described by Directive 2003/9/EC to those who have applied for subsidiary protection has been criticized. However, the directive does not demand this, and therefore the UK is in compliance with the directive with regard to this specific provision. A final criticism that must be mentioned with regard to the implementation of this directive is the fact that the UK is named in the synthesis report as the only country in which the law has actually become more complicated because of the amended and new provisions (Odysseus Network 2006).

On the other hand, the fact that the UK has taken to showing applicants a DVD containing information on reception conditions has been applauded. Also, the fact that access to health care is granted regardless of immigration status is considered to be a positive feature of the British system. The changes that were made with regard to access to the labour market have been a positive development for asylum seekers. Whereas before access was to be determined by the Home Office, it is now an entitlement that has been laid down in law (Odysseus Network 2006).

With the implementation of this directive into UK law we conclude that some provisions have improved the reception conditions of asylum seekers, but criticism prevails. Overall it seems fair to say that conditions have not improved, and may even have deteriorated since the transposition of the directive. The degree of change with regard to the implementation of this directive into UK law is low as no fundamental changes were introduced. The direction of change is slightly downward.

#### ***3.4.2.3 Directive 2004/83/EC***

This directive has been transposed into UK law through the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 and an amendment of the Immigration Rules (ECRE 2008).

The Regulations and rules came into force on 9 October 2006, only one day before the transposition deadline was set. No substantial changes were necessary according to the government in order to have British law conform to the directive. Before implementation was secured, the government consulted with the UK Refugee Council based on a proposal for transposition of the directive. The reaction that was provided by the Refugee Council was mixed: while they welcomed several elements, they remained critical of others. Main points that were mentioned as positives include the fact that the UK did not intend to implement article 5 (3) of the directive, that states that a second application will generally lead to a rejection if the risk of persecution has changed due to actions of the applicant of his own decision since leaving the country of origin. Another welcome fact is that the UK intended to continue applying friendlier norms as to what may constitute persecution in relation to article 9 of the directive (Refugee Council 2006). There are several other references in the opinion paper to instances in which the UK does not intend to lower standards just because the directive has provided the opportunity to do so. This can be considered as a positive development.

There is criticism on the transposition of the directive in the UK as well. First, the Refugee Council criticizes the fact that the UK, during negotiations on the directive, has been actively trying to ensure that it would contain as little provisions that would lead to domestic law having to be amended. Furthermore, the UK uses a very restrictive definition of 'a particularly serious crime' as mentioned in article 21 of the directive as a possible reason to deviate from not being allowed to refouler<sup>11</sup> an asylum seeker. The Nationality, Immigration and Asylum Act 2002 states that offences that lead to a two-year sentence can be considered to be such a serious crime, which would mean that an asylum seeker might then not be protected from refoulement. Offences that could lead to a two-year sentence include shoplifting (Refugee Council 2006). This is clearly an example of British law that would require revision in the light of the directive. One could argue very well that the standards of the UK in this regard does not

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<sup>11</sup> The principle of 'non-refoulement' is defined in the Convention Relating to the Status of Refugees and means that 'no Contracting State shall expel or return ('refouler') a refugee, against his or her will, in any manner whatsoever, to a territory where he or she fears persecution' (UN General Assembly 1967: 5)



conform to EU norms as set out by the directive. The way that the UK interprets this specific term is of course not to be blamed on harmonisation of asylum policy at the EU level.

The degree of change was low, while the direction of change in domestic policy in the UK is unclear as some changes were met with positive reviews while others were criticised.

#### ***3.4.2.4 Directive 2005/85/EC***

Implementation of this directive has been secured through secondary legislation, namely the Asylum Regulations 2007. This regulation amends the Nationality, Immigration and Asylum Act of 2002 with regard to its provisions on the 'safe country of origin' concept and changes provisions on the right to have an interpreter and a written notification when refugee status is withdrawn in an appeal (Costello 2008). A very important comment that Costello (2008) makes, is the fact that changes to the asylum process in the UK are mainly inspired by domestic developments, and are usually not due to EU legislation. New EU legislation only provides a new framework in which domestic changes can take place.

Costello argues that in at least one case the UK has used the opportunity to lower standards, referring to the directive to justify the change in policy. This has been the case with regard to the standards to which interview reports must conform. Previous to the implementation of the directive through the Asylum Regulations 2007, the UK used to 'provide a copy of the complete interview record', but has now decided that the report only needs to mention 'essential information' as is required from article 14(1) of the directive (Costello 2008: 123). She also laments the implementation of one of the most criticized provisions of the directive regarding the exception to having to hold an interview with the asylum seeker. She does however state that 'the additional constraints on national safe country of origin designation are welcome' (Costello 2008: 132).

Even though the UK legislator has stated that not much needed to be done to bring British law into line with the directive, there are examples of articles that have not been transposed, while they arguably should have. A good example is the omission of article 18 of the directive in British law. Article 18 deals

with the right to hold an asylum seeker in detention. It explicitly states that asylum seekers may not be detained solely based on the fact that they are asylum seekers.

The degree of change in the UK in order to comply with Directive 2005/85/EC is low, while the direction of change is unclear. There are both negative and positive aspects about current British law with regard to provisions relating to this directive.

## 4. Analysis

The previous chapter has extensively outlined asylum policy in the four selected MS both before and after the introduction of new EU legislation. Sub question 3, 'In which sense has new EU legislation led to a change in policy in the selected MS?' has already been discussed in the previous chapter, but will be elaborated further in this analysis, as both the degree and direction of change will be analysed more closely. Sub question 4, 'Have national asylum policies converged due to harmonised EU legislation?' will also be answered in this chapter. First, the results of the study will be presented in the form of a comprehensive, summarising table. The table will then be analysed more closely. Other important observations based on the previous chapter will also be discussed.

Country	Directive	Degree of change	Direction of change
<b>Netherlands</b>	2001/55	Low	Downward
	2003/9	Modest	Upward
	2004/83	Low	Not enough data
	2005/85	Low	Upward
<b>Belgium</b>	2001/55	High	Upward
	2003/9	High	Upward
	2004/83	High	Upward
	2005/85	No changes made	No changes made
<b>Germany</b>	2001/55	Not enough data	Not enough data
	2003/9	Low	Unclear
	2004/83	Low	Unclear
	2005/85	Low	Downward
<b>United Kingdom</b>	2001/55	Modest	Not enough data
	2003/9	Low	Downward
	2004/83	Low	Unclear
	2005/85	Low	Unclear

**Table 1: Degree and direction of change in domestic policy due to EU Directives**

A first observation when looking at the above table is that in most cases the implementation of the EU directive has not led to a great change in domestic policy. In the Netherlands, Germany and the UK the degree of change was limited. This is in line with the theory put forward by Holzinger and Knill, stating that within an 'international harmonisation' context convergence of policies will likely be limited. As policy does not seem to have changed much we may safely assume that the policies of the different countries have not converged greatly. Belgium, unlike the other three studied countries, has in fact changed its asylum laws considerably due to new EU legislation. However, one must take into account that several of the changes that were made to Belgian law did not end up changing current practice in the country. Based on the degree of change that has been established during the study in the four studied countries combined, the theory that overall changes to domestic policy will be limited in a situation of international harmonisation is therefore confirmed by the results of this study.

With regard to the direction of change, there are mainly mixed outcomes. In four out of the sixteen studied cases, no clear direction could be determined after transposition of the respective directive into domestic law. With three cases suggesting a downward direction of change and five suggesting the opposite (an upward direction of change) the results of this study seem to corroborate the expectation of Holzinger and Knill that overall standards will not be lowered. However, the outcomes do not seem conclusive enough to say that overall, standards in domestic asylum policies have shown an upward trend.

The expectation that not all countries will lower standards when presented with the opportunity to do so must be confirmed. Earlier observations in previous studies, that have found that countries will in fact take the opportunity to lower standards when possible, are not in line with the results of the current study. This can be deduced from several examples that have been presented in the previous chapter, showing very clearly that even though the opportunity existed, MS preferred to stick to their own policy. This brings us to another and very important observation: MS tend to often perceive their own policy to be in line with the respective directive that requires transposition. In turn, they do not introduce a lot of changes to their policy even if several observers have questioned the current policy and its compatibility with the directive that deals with the specific issues at hand. In almost all cases where an evaluation of

implementation was available, criticism was put forward by scholars and human rights organisations in this regard. At the same time, it has frequently been the case that both positive and negative aspects of domestic asylum law were commented upon with regard to the same directive. An example of this is the implementation of Directive 2004/83/EC in Belgium, where positive steps were taken with regard to introducing new grounds for asylum status, but several other aspects of Belgian law were seemingly still not in line with the directive. Overall, MS do not seem to either apply higher or lower standards with regard to a specific directive, but one can both detect high and low standards regarding the same directive. This confirms the expectation that MS will not simply lower standards when the opportunity is provided to do so because of new EU legislation. It also confirms the above conclusions that MS prefer to stick to their own policy. This is a significant observation.

The above observation that the four MS did not change their policy to a great extent based on the assumption that it is already in line with European provisions is closely linked to the fact that there seems to be evidence in some cases that MS have tried to influence the contents of a specific directive in such a way that they would not have to change their current policy. In other words, they have tried to make sure the provisions in a directive reflected their own national policy so that implementation would not require severe changes. Examples of this are German influence on Directive 2004/83/EC and lobbying activities of the UK that have been commented upon by the Refugee Council in the negotiation of the same Directive. Germany's success in getting the exact wording for the definition of non-state actors as it is used in its 2004 Immigration Act into the final version of Directive 2004/83/EC is striking. Also the negotiations of Directive 2005/85/EC suggest a similar attempt to influence provisions by several MS, leading to a watered-down directive with a great degree of leeway for the MS to interpret provisions in the light of their own national practices. This is reflected in the degree of change that this directive has caused. In the above table it shows clearly that the degree of change in order to be in compliance with the directive was low in The Netherlands, Germany and the UK. No changes at all were made in Belgium.

The observed evidence in this study that MS want to influence, and in fact have been successful in influencing, EU policy furthermore suggests that decision-making procedures in the field of asylum

policy within the EU play an important role in the final outcome of harmonisation efforts. As during the first stage of the CEAS decisions were taken based on unanimity and the consultation procedure, it is not surprising that the observed degree of convergence among the Netherlands, Belgium, Germany and the UK has been limited.

## 5. Conclusion

In order to make sense of all the gathered information, this concluding chapter will first provide an overview of the main conclusions that can be drawn with regard to the main research question. Lastly, some final remarks and suggestions for further research will hopefully provide something to think about for the future.

As already outlined in the introduction of this thesis, the aim of the research was to describe what has happened to national asylum policy within the EU over the past ten years due to harmonisation of EU legislation. In describing changes that have been made to domestic policy in the Netherlands, Belgium, Germany and the United Kingdom, both the *degree* and the *direction* of change were taken into account. Whether changes had occurred in domestic asylum policy due to EU legislation, was based on the transposition of four Council Directives that were adopted within the framework of the Common European Asylum System. A close analysis of the implementation of the necessary provisions put forward in these directives into national law, has led to the following conclusions:

The degree of change due to EU legislation was low for the Netherlands, Germany and the UK. This was mainly the case because policy makers did not deem extensive changes necessary in order to be in compliance with EU directives. This outcome did not come as a surprise, as theories on policy convergence predicted little change in domestic policy with 'harmonisation' as the cause for change. The exception to this observation was Belgium, that saw some more far-reaching adjustments to national asylum law in reaction to new EU legislation. It is however fair to say that practice in Belgium was not changed much, even though significant changes have been made to Belgian law. As change overall in these four countries was not extensive, one must conclude that policies in the field of asylum have not converged significantly, contrary to the very aims of the Common European Asylum System.

With regard to the direction of changes in domestic asylum policy that took place due to EU legislation on asylum issues, one can only conclude that overall standards were not lowered. However, the

expectation that standards might in fact have been raised cannot be confirmed based on the current research.

Previous research suggesting countries will lower standards when given the opportunity through minimum standards put forward in directives, is not in line with the results of this study. While there are cases in which standards were lowered, there are also plenty of examples illustrating the tendency of MS to hold on to their own policy even if it provided higher standards than required by the respective directive. In fact, MS do not only prefer to hold on to their own policy, they have actively involved themselves in the negotiation process of directives to make sure new EU legislation would allow them to keep their policies in place or, when possible, would reflect their own laws. Member States seem to prefer their own policy over any kind of change. This is also confirmed by the observation that MS do not consistently apply either higher or lower standards with regard to a single directive, but rather leave in place their own policy that is sometimes friendlier, and sometimes stricter than the provisions of a certain directive.

The above leads us to tentatively answer the research question 'What is the result of European harmonisation in the field of asylum policy over the past ten years?' in the following manner: as the overall degree of change in domestic policy in the field of asylum policy has been low, no clear overall direction of change has been established and convergence among the four studied MS was not significant, the result of EU harmonisation in the field of asylum is that MS have mostly been able to keep in place their national policies.

The fact that MS have overall been successful in retaining their own policies is partly due to decision-making procedures that were employed during the first stage of the CEAS, in which the Council based its decisions on legislation unanimously. After 2005 this has changed, shifting power towards the European institutions by now employing the co-decision procedure (since the Treaty of Lisbon referred to as the ordinary decision making procedure ) and allowing for Qualified Majority Voting in the Council (Hatton 2005; Ferguson Sidorenko 2007). While it is clear that the approach that has been taken so far to harmonise asylum policies in the EU does not seem to have had the intended effect, one must not forget that harmonising procedures of 27 countries will not happen overnight. Now that minimum standards



have been formulated and goals have been adjusted upwards accordingly in the new Treaty on the Functioning of the European Union, the next step towards creating a uniform asylum system can be taken. With the adoption of the Stockholm Programme a commitment is made to finalize the creation of a Common European Asylum System by 2012. Only time will tell whether such an achievement is feasible, but it is clear that much work is still to be done.

Now that we have answered the research question, some final remarks regarding the research are in place. First of all, only four of the current 27 MS have been studied in this research. One could argue that more reliable results would have been obtained if more MS had been included in the study. It would therefore be very useful to continue similar research including different Member States. While little was changed in the four selected MS, this does not automatically mean that no changes were made in other MS. Furthermore, the focus of this study has been change in policy that can be attributed to EU legislation. However, sometimes it is not so easy to separate domestic influence on a change in policy from an EU inspired change. While the choice to focus on EU-inspired changes was intentional and necessary when considering time and space limitations, further research on domestic developments that have made their mark on changes in asylum policy during the period that was studied, should be engaged in. More research is also welcome due to the recent nature of many changes in the field of asylum policy in the EU, making it a very interesting subject of study for many years to come.

## References

Balzacq, T. & Carrera, S. (2006). The Hague Programme: The Long Road to Freedom, Security and Justice. In T. Balzacq, S. Carrera (Eds.), *Security vs. Freedom? A Challenge for Europe's Future*. Pp. 1-32. Aldershot: Ashgate Publishers Limited.

Bank, R. (2007). Transposition of the Qualification Directive in Germany. In: K. Zwaan (Ed.), *The Qualification Directive: Central Themes, Problem Issues and Implementation in selected Member States* (pp. 109-126). Nijmegen: Wolf Legal Publishers.

Barbou des Places, S. and Deffains, B. (2004). Cooperation in the shadow of regulatory competition: the case of asylum legislation in Europe. *International Review of Law and Economic*, 23, pp. 345-364.

Bloch, A. (2000). A New Era or More of the Same? Asylum Policy in the UK. *Journal of Refugee Studies*, 13(1), pp. 29-42.

Börzel, T. A. & Risse, T. (2000). When Europe Hits Home: Europeanization and domestic change. *European Integration Papers Online*, 4(15), pp. 1-20. Retrieved from <http://eiop.or.at/eiop/texte/2000-015a.htm>

Brouwer, E. (2007). Effective Remedies in Immigration and Asylum Law Procedures: A Matter of General Principles of EU Law. In: A. Baldaccini, E. Guild, H. Toner (Eds.), *Who's Freedom, Security and Justice? EU Immigration and Asylum Law and Policy*. Pp. 57-84. Oxford: Hart Publishing.

Byrne, R., Noll, G. and Vedsted-Hansen, J. (2004). Understanding Refugee Law in an Enlarged European Union. *European Journal of International Law*, 15(2), pp. 355-379.

Clements, L.M. (2007). Asylum in Crisis, An assessment of UK Asylum law and policy since 2002: Fear of Terrorism or Economic Efficiency? *Web Journal of Current Legal Issues*. Retrieved from <http://webjcli.ncl.ac.uk/2007/issue3/clements3.html>

Costello, C. (2008). Implementation of the Procedures Directive (2005/83) in the United Kingdom. In: K. Zwaan (ed.), *The Procedures Directive: Central Themes. Problem issues, and Implementation in Selected Member States*, (pp. 111-132). Nijmegen: Wolf Legal Publishers.

Council of Europe (1950). *European Convention on Human Rights*. Retrieved from <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

Craig, P. & De Búrca, G. (2008). *EU Law: Text, Cases and Materials*, Oxford: University Press.

Davies, K. (2003). *Understanding European Union Law*, London: Cavendish Publishing Limited.

De Vaus, D.A. (2001). *Research Design in Social Research*. London: Sage.

Dinan, D. (2005). *Ever closer union: an introduction to European integration*. Basingstoke: Palgrave MacMillan.

Duchrow, J. (2008). The Implementation of the Asylum Procedures Directive in Germany. In: K. Zwaan (ed.), *The Procedures Directive: Central Themes. Problem issues, and Implementation in Selected Member States*, (pp. 57-73). Nijmegen: Wolf Legal Publishers.

ECRE (2001). *ECRE Information Note on the Council Directive 2001/55/EC of 20 July 2001*. Retrieved from [http://www.ecre.org/files/ECRE\\_note\\_temporary\\_protection.doc](http://www.ecre.org/files/ECRE_note_temporary_protection.doc)

ECRE (2008). *The Impact of the EU Qualification Directive on International Protection*. Retrieved from [http://www.ecre.org/files/ECRE\\_QD\\_study\\_full.pdf](http://www.ecre.org/files/ECRE_QD_study_full.pdf)

European Community (2001a). *Country Profile: Belgium*. PLS Ramboll Management. Retrieved from [http://ec.europa.eu/justice\\_home/doc\\_centre/asylum/studies/docs/belgium\\_final\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/asylum/studies/docs/belgium_final_en.pdf)

European Community (2001b). *Country Profile: United Kingdom*. PLS Ramboll Management. Retrieved from [http://ec.europa.eu/justice\\_home/doc\\_centre/asylum/studies/docs/uk\\_final\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/asylum/studies/docs/uk_final_en.pdf)

European Economic and Social Committee (2002). *Immigration, Asylum and Social Integration*. Luxembourg : Office for Official Publications of the European Communities.

EMN (2007a). *Belgian Policy Report 2006 regarding asylum and migration*. Brussels: EMN Belgian Contact point. Retrieved from <http://emn.sarenet.es/Downloads/download.do;jsessionid=EB3D4C9C249AE378F16BFB9E3FDB7449?fileID=594>

EMN (2007b). *2006 Policy Analysis Report on Migration and Asylum*. Federal Office for Migration and Refugees. Retrieved from <http://emn.sarenet.es/Downloads/download.do;jsessionid=37D285314E331F503C2DEDBE35E18CF8?fileID=577>

EMN (2008a). *Annual Policy Report 2007: Developments in Dutch Migration and Asylum Policy 1 January 2007 – 31 December 2007* (INDIAC EMN NCP). Rijswijk: IND. Retrieved from <http://emn.sarenet.es/Downloads/download.do;jsessionid=CD98F2571A7709BE84FA2BAE296054F4?fileID=679>

EMN (2008b). *Annual Policy Report 2007 regarding asylum and migration: Belgium*. Brussels: EMN Belgian National Contact Point. Retrieved from

<http://emn.sarenet.es/Downloads/download.do;jsessionid=37D285314E331F503C2DEDBE35E18CF8?fileID=668>

EMN (2008c). *Policy Report 2007*. Federal Office for Migration and Refugees. Retrieved from <http://emn.sarenet.es/Downloads/download.do;jsessionid=37D285314E331F503C2DEDBE35E18CF8?fileID=676>

EMN (2008d). *The Organisation of Asylum and Migration Policies in Germany*. Federal Office for Migration and Refugees. Retrieved from <http://emn.sarenet.es/Downloads/download.do;jsessionid=B7F5153092F160573973B9140650664B?fileID=686>

EMN (2009a). *The organisation of Asylum and Migration Policies in Belgium*. Brussels: EMN Belgian Contact Point. Retrieved from <http://emn.sarenet.es/Downloads/download.do;jsessionid=1FE256C374BCD7C5759400DDFC592B2?fileID=685>

EMN (2009b). *The organisation of Asylum and Migration Policies in the UK*. Poppleton, S. & Rice, L. Retrieved from <http://emn.sarenet.es/Downloads/download.do;jsessionid=B7F5153092F160573973B9140650664B?fileID=762>

EMN (2010a). *Annual Policy Report 2009: Policy Report regarding Asylum and Migration Belgium*. Brussels: EMN Belgian Contact Point. Retrieved from <http://emn.sarenet.es/Downloads/download.do;jsessionid=EB3D4C9C249AE378F16BFB9E3FDB7449?fileID=931>

EMN (2010b). *Annual Policy Report 2009*. Nuremberg: Federal Office for Migration and Refugees – German EMN National Contact Point. Retrieved from <http://emn.sarenet.es/Downloads/download.do;jsessionid=EB3D4C9C249AE378F16BFB9E3FDB7449?fileID=981>

European Union, 'Dublin II Regulation', retrieved from [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/l33153\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm)

European Union, 'Subsidiarity', retrieved from [http://europa.eu/scadplus/glossary/subsidiarity\\_en.htm](http://europa.eu/scadplus/glossary/subsidiarity_en.htm)

European Union, 'Treaty of Lisbon', retrieved from [http://europa.eu/lisbon\\_treaty/full\\_text/index\\_en.htm](http://europa.eu/lisbon_treaty/full_text/index_en.htm)

Fedasil (2007). Jaarverslag 2006. Retrieved from <http://www.fedasil.be/home/attachment/i/12746>

Federal Ministry of the Interior (Germany). 'Components of the Immigration Act', retrieved from [http://www.en.bmi.bund.de/cIn\\_012/nn\\_174390/sid\\_9F5EF15554D88D5E783FB7DB8755B9FC/Internet/Content/Themen/Auslaender\\_Fluechtlinge\\_Asyl\\_Zuwanderung/DatenundFakten/Immigration\\_Act\\_en.html](http://www.en.bmi.bund.de/cIn_012/nn_174390/sid_9F5EF15554D88D5E783FB7DB8755B9FC/Internet/Content/Themen/Auslaender_Fluechtlinge_Asyl_Zuwanderung/DatenundFakten/Immigration_Act_en.html)

Federal Ministry of the Interior (Germany). 'The Immigration Act', retrieved from [http://www.en.bmi.bund.de/cIn\\_028/nn\\_122730/Internet/Content/Themen/Auslaender\\_Fluechtlinge\\_Asyl\\_Zuwanderung/Einzelseiten/Summary\\_Immigration\\_Act\\_en.html](http://www.en.bmi.bund.de/cIn_028/nn_122730/Internet/Content/Themen/Auslaender_Fluechtlinge_Asyl_Zuwanderung/Einzelseiten/Summary_Immigration_Act_en.html)

Ferguson Sidorenko, O. (2007). *The Common European Asylum System: Background, Current State of Affairs, Future Direction*. The Hague: T.M.C. Asser Press.

Hassan, L. (2000). Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States. *Journal of Refugee Studies*, 13(2), pp. 184-204.

Hatton, T.J. (2005). European Asylum Policy. *National Institute Economic Review*, 194(1), pp. 106-119.

Holzinger, K., & Knill, C. (2005). Causes and conditions of cross-national policy convergence. *Journal of European Public Policy*, 12(5), pp. 775-796.

Home Office (2005). *Explanatory Memorandum to the Displaced Persons (Temporary Protection) Regulations 2005*, no. 1379. Retrieved from [http://www.opsi.gov.uk/si/em2005/uksiem\\_20051379\\_en.pdf](http://www.opsi.gov.uk/si/em2005/uksiem_20051379_en.pdf)

Kromhout, M.H.C., Kok, L.D., Munk, K., & Beenackers, E.M.Th. (2006). *Invoering en uitvoering van de Vreemdelingenwet 2000 met betrekking tot asiel: een procesevaluatie*. Retrieved from <http://www.wodc.nl/onderzoeksdatabase/02.067a-procesevaluatie-asielprocedure-vreemdelingenwet-2000-deelproject-1.aspx#publicatiegegevens>

Lambert, H., Massineo, F., & Tiedemann, P. (2008). Comparative perspectives of constitutional asylum in France, Italy and Germany: Requiscat in Pace? *Refugee Survey Quarterly*, 27(3), pp. 16-32.

Liedtke, M. (2002). National welfare and asylum in Germany. *Critical Social Policy*, 22(3), pp. 479-497.

Mc Adam, J. (2007). The Qualification Directive: An Overview. In: K. Zwaan (ed.): *The Qualification Directive: Central Themes, Problem Issues and Implementation in Selected Member States*, pp. 7-29. Nijmegen: Wolf Legal Publishers.

Meyerstein, A. (2005). Retuning the Harmonization of EU Asylum Law: Exploring the Need for an EU Asylum Appellate Court. *California Law Review*, 93(5), pp. 1509-1556.

Odysseus Network (2006). *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down Minimum Standards for the Reception of Asylum Seekers in the EU Member States*. Retrieved from [http://ec.europa.eu/justice\\_home/doc\\_centre/asylum/studies/docs/odysseus\\_synthesis\\_report\\_2007\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/asylum/studies/docs/odysseus_synthesis_report_2007_en.pdf)

Odysseus Network (2007a). *National report done by the Odysseus Network for the European Commission on the implementation of the Directive on Reception Conditions for Asylum Seekers in: The Netherlands.*

Retrieved from

[http://ec.europa.eu/justice\\_home/doc\\_centre/asylum/studies/docs/netherlands\\_2007\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/asylum/studies/docs/netherlands_2007_en.pdf)

Odysseus Network (2007b). *National report done by the Odysseus Network for the European Commission on the implementation of the Directive on Reception Conditions for Asylum Seekers in: Germany.*

Retrieved from

[http://ec.europa.eu/justice\\_home/doc\\_centre/asylum/studies/docs/germany\\_2007\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/asylum/studies/docs/germany_2007_en.pdf)

Odysseus Network (2007c). *National report done by the Odysseus Network for the European Commission on the implementation of the Directive on Reception Conditions for Asylum Seekers in: United Kingdom.*

Retrieved from

[http://ec.europa.eu/justice\\_home/doc\\_centre/asylum/studies/docs/united\\_kingdom\\_2007\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/asylum/studies/docs/united_kingdom_2007_en.pdf)

Ministry of Interior Affairs (Netherlands). Official announcements. Kamerstukken dossier 29031.

Retrieved from

[https://zoek.officielebekendmakingen.nl/dossier/29031?\\_page=2&sorttype=1&sortorder=4](https://zoek.officielebekendmakingen.nl/dossier/29031?_page=2&sorttype=1&sortorder=4)

Parliamentary Papers (2004a). Parliamentary Papers II 2003/2004, 29 031, no. 10 (Letter)

Parliamentary Papers (2004b). Parliamentary Papers I 2003/2004, 29 031 nr. C (Memorandum in reply)

Parliamentary Papers (2007a). Parliamentary Papers II 2006/2007, 30925 nr. 3 (Explanatory memorandum)

Parliamentary Papers (2007b). Parliamentary Papers I 2007/2008, 30925 nr. D

Parliamentary Papers (2007c). Parliamentary Papers I 2007/2008, 30925 nr. G (Memorandum in reply)



Parliamentary Papers (2009). Parliamentary Papers I 2009/2010, 31994 nr. A

Pollet, K. (2008). The New Asylum Procedure in Belgium. In: K. Zwaan (ed.), *The Procedures Directive: Central Themes. Problem issues, and Implementation in Selected Member States*, (pp. 57-73). Nijmegen: Wolf Legal Publishers.

Pro asyl, 'Directive on temporary protection'. Retrieved from <http://www.proasyl.de/en/topics/eu-legislation/refugee-law/>

Prechal, S. (2005). *Directives in EC Law*. Oxford: University Press.

Refugee Council (2006). *Refugee Council response to the Home Office Consultation on the Qualification Directive: Implementation of 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 international protection and the content of the protection granted*. Retrieved from <http://www.refugeecouncil.org.uk/policy/responses/2006/euasylumlaw>

Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen (Regulation on the provisions for asylum seekers and other categories of aliens 1997 (Rva 1997)). Retrieved from <https://zoek.officielebekendmakingen.nl/stcrt-1997-246-p12-SC11863.pdf>

Reneman, M. (2008). Implementation of the Procedures Directive in the Netherlands, in: K. Zwaan (ed.), *The Procedures Directive: Central Themes. Problem issues, and Implementation in Selected Member States*, (pp. 133-146). Nijmegen: Wolf Legal Publishers.

Spijkerboer, T.P. & Vermeulen, B.P. (2005). *Vluchtelingenrecht*. Nijmegen: Ars Aequi Libri.

Strik, T. (2008). Procedures Directive: An Overview. In: K. Zwaan (ed.), *The Procedures Directive: Central Themes. Problem issues, and Implementation in Selected Member States*, (Pp. 7-19) Nijmegen: Wolf Legal Publishers.

Stockholm European Council (2009). *The Stockholm Programme – An open and secure Europe serving and protecting the citizens*. Retrieved from [http://www.se2009.eu/polopoly\\_fs/1.26419!menu/standard/file/Klar\\_Stockholmsprogram.pdf](http://www.se2009.eu/polopoly_fs/1.26419!menu/standard/file/Klar_Stockholmsprogram.pdf)

Tampere European Council (1999). *Presidency Conclusions*. Retrieved from [http://www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm)

Tellis, W. (1997). Application of a Case Study Methodology. *The Qualitative Report*, 3(3). Retrieved from <http://www.nova.edu/ssss/QR/QR3-2/tellis1.html>

Thielemann, E. & El Enany, N. (2009). Beyond Fortress Europe? How European Cooperation Strengthens Refugee Protection. *Paper prepared for the European Union Studies Association's 11<sup>th</sup> Biennial International Conference, Marina Del Rey, Los Angeles*.

UN General Assembly (1967). *Convention and Protocol relating to Status of Refugees*. Retrieved from <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>

UNHCR (2006). *The Dublin II Regulation: A UNHCR Discussion Paper*. Retrieved from <http://www.unhcr.org/refworld/docid/4445fe344.html>

UNHCR (2003). *Implementation of the Aliens Act 2000: UNHCR's Observations and Recommendations*. Retrieved from <http://www.unhcr.org/refworld/docid/410f83f44.html> on 27 april 2010.

Vanheule, D. (2007). The Qualification Directive: A Milestone in Belgian Asylum Law. In: K. Zwaan (Ed.), *The Qualification Directive: Central Themes, Problem Issues and Implementation in selected Member States* (pp. 71-77). Nijmegen: Wolf Legal Publishers.

Vedsted-Hansen, J. (2005). Common EU Standards on Asylum – Optional Harmonisation and Exclusive Procedures? *European Journal of Migration and Law*, 7, pp. 369-376.

VluchtelingenWerk (2006). Vreemdelingenwet 2000, een ontspoorde asielwet: Samenvatting. Retrieved from <http://www.vluchtelingenwerk.nl/bibliotheek/Page-3.php> on 27 April 2010.

Vluchtelingenwerk Vlaanderen, 'De uitvoering van Amsterdam', Retrieved from [http://www.vluchtelingenwerk.be/thema/uitvoering\\_amsterdam.php](http://www.vluchtelingenwerk.be/thema/uitvoering_amsterdam.php)

Yin, R.K. (2003). *Case study research: design and methods*. Thousand Oaks: Sage.