UNIVERSITY OF TWENTE

The Implementation of the EU Reception Conditions Directive in the National Legislation of Germany, Austria and Belgium

On the Way to more Liberal National Asylum Policies?

School of Management and Governance
Thesis for the Bachelor of Science in European Public Administration

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Abstract

During the last decade, much has been written on the conceptualization of Europeanization, yet its impact on the sector of asylum has been neglected. Little is known about the motivation for stimulating the Europeanization of asylum or its arising effects on asylum seekers in EU member states. Hence, the following Bachelor thesis aims at contributing to fill this gap. It poses the question if European asylum legislation is more liberal or stricter than corresponding national legislation in Germany, Austria and Belgium. The question is answered by having a closer look at the Reception Conditions Directive 2013/33/EU, which constitutes a part of the Common European Asylum System (CEAS) and by having it compared to the corresponding national legislation.

The analysis shows that the national legislations concerning the reception conditions in Germany, Austria and Belgium are stricter than the EU Directive calls for. The countries seem to aim at implementing the minimum standards, without necessarily infringing the rules set out in the EU legislation. Nevertheless, calling the EU Directive a liberal approach towards asylum protection would go too far. The CEAS aims at providing an area of protection for asylum seekers and refugees, yet when analyzing the Reception Conditions Directive, this cannot be detected. The phrasing of the member states responsibilities is often too broad and filled with exceptions, allowing member states to implement strict measures. The changes of the regulations and directives of the CEAS over the last decade admittedly do show that the EU is interested in constantly improving its asylum system and also the situation for asylum seekers, yet to fulfill its aim of providing an area of protection for asylum seekers, tremendous amendments need to be implemented.

List of Abbreviations

AMIF	Asylum, Migration and Integration Fund
AsylbLG	Asylum Seeker's Benefit Act
AsylVfg	Asylum Procedure Act
CEAS	Common European Asylum System
EASO	European Asylum Support Office
EC	European Commission
ECRE	European Council on Refugees and Exiles
EU	European Union
HCR	High Commissioner for Refugees
IOM	International Organization for Migration
IRO	International Refugee Organization
NGO	Non-governmental organization
SchPflG	Schulpflichtgesetz
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commission for Refugees
UNRRA	United Nations Relief and Rehabilitation Administration
US	United States
USSR	Union of Soviet Socialist Union

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1. Introduction

Traditionally, asylum policies were an area, in which a high sovereignty of the nation state reigns. Since the 1980s (Guiraudon, 2000), decisions on asylum were increasingly decided on a supranational basis and in 1999, the development of a Common European Asylum System (CEAS) was initiated. Over the years, the Europeanization of asylum became more severe and the EU adopted several legislative measures to harmonize common minimum standards for asylum, achieve effective and well-supported practical cooperation between the EU states and increase solidarity and a sense of responsibility within the EU (European Commission, 2014a). Currently, the CEAS is heavily based on the Asylum Procedures Directive[1], the Reception Conditions Directive[2], the Qualification Directive[3], the Dublin Regulation[4] and the EURODAC Regulation[5]. According to the European Commission (EC), these directives facilitate the EU to constitute an area of protection for refugees (European Commission, 2014a), which is said to be one of the main purposes of the system.

Liz Fekete (2005) however claims that rather than protecting the rights of asylum seekers[6], the common European asylum policy only aims at guarding states from the increasing refugee burden. In 2013, around 436.000 asylum applications[7], 100.000 more compared to 2012, were registered in the EU (Eurostat, 2014). Numbers of applicants have been rising sharply over the last six years (Eurostat, 2014) and the media is painting a depressing picture of overwhelmed EU member states, unable to cope decently with the increase of asylum seekers in their countries (Fortress Europe: How the EU Turns Its Back on Refugees, 2013). Asylum seekers, one of the most vulnerable groups of society, find often little compassion and face national policies of restriction (Ehrich, 2012). Thousands[8] of asylum seekers are deported[9] from EU member states each year and Liz Fekete (2005) goes as far as describing the EU as a deportation machine, leading a war on refugees.

Reinforcing these thoughts, Guiraudon (2000), Lavenex (2006) and Maurer & Parker (2007) argue that the Europeanization of asylum is based on the strategy of venue-shopping. Meaning, political actors moved policy-making on asylum from the national level to the new EU policy-venue, "in a bid to circumvent the liberal pressures and obstacles that they increasingly faced at the domestic level" (Kaunert & Leonard, 2011, p.2). These pressures are e.g. constructed by non-governmental organizations or national asylum law, preventing political actors to tighten rules on asylum. Guiraudon reasons the aim was and is, not to protect asylum seekers and provide them with an area of protection as stated by the EC, but to

[1] Available at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0032
[2] Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0096:0116:EN:PDF
[3] Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF
[4] Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF
[5] Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0001:0030:EN:PDF
[6] In this thesis it is differentiated between asylum seekers and refugees: asylum seekers are persons who arrive in the EU, applying for refuge but it has not been decided on their status yet; refugees are persons whose application has been successful
[7] See Figure 1 and Figure 2
[8] In 2013 in the EU28, 65% of first instance decisions made on asylum applications were rejections (Eurostat, 2014a)
[9] According to Schuster (2004, p.8), governments even charter aircrafts to deport people collectively, contrary to Article 4 of Protocol 4 to the European Convention on Human Rights, to avoid public confrontations

relieve EU member states from their refugee burden, by implementing stricter laws on the EU level.

Kaunert and Leonard (2011) however explicate that today the venue-shopping argument has become obsolete. Their perception is indeed that political actors did not succeed in establishing more restrictive regulations on asylum by switching their asylum policy venue onto the EU level (Kaunert & Leonard, 2011). If anything, the EU regulations have become more liberal over time. The EC managed EU member states to pool sovereignty on the EU level, having it firmly established in international refugee protection norms (Kaunert, 2009). On that score, Kaunert's and Leonard's (2011) notion on the Europeanization of EU asylum legislation would comprise the ability to push EU member states to capture a more liberal approach for their asylum policies. Guiraudon's (2000) assertions would have the opposing effect and support an increasingly strict national asylum policy, evoked by the corresponding EU legislation.

The illustration of the contrasting views on the Europeanization of asylum brings me to the purpose of my thesis. The main question is whether the EU promotes a more liberal or a more restrictive asylum policy, compared to the EU member states. To come to a conclusion, one directive of the current CEAS, namely the Reception Conditions Directive, first implemented in 2003 and recast in 2013, is compared to the corresponding national legislation in Germany, Austria and Belgium. The main research question is "Does the Reception Conditions Directive of 2013, as part of the CEAS, constitute a more liberal or stricter approach towards asylum protection than corresponding national legislation in Germany, Austria and Belgium?". Following the comparison of the different legislations, an overview of the results in the three different countries is constituted. This brings about my first sub question, namely "To what extent are similarities and distinctions perceptible in the asylum legislation in Germany, Austria and Belgium?". The outcome allows drawing a conclusion of the comparability of Western Europe states and their asylum policies.

The last question which I wish to cover is if national politicians achieved to implement stricter rules over time. Hence, an assessment of the adjustments made to the EU Directive is provided. The sub question of my research is accordingly "To what extent does the recast Reception Conditions Directive from 2013, compared to the Reception Conditions Directive from 2003 indicate a tightening of asylum legislation on the European level?".

My hypotheses regarding to the three research questions are:

1. The directive of the CEAS pursues a more liberal approach towards the protection of refugees than the national ones.
2. The asylum legislation of Germany, Austria and Belgium is very similar; some extent of convergence is expected.
3. The recast Reception Conditions Directive, implemented in 2013 does pursue a more liberal approach towards asylum protection than the first Reception Conditions Directive, implemented in 2003.

It is important to clarify that the aim of my thesis is to assess, if national politicians are successful in uploading stricter rules on asylum onto the European level and if this can be

detected by comparing the EU Reception Conditions Directive with the national legislation of Germany, Austria and Belgium. The above illustrated research questions are crucial to do so.

Concluding, it furthermore must be enhanced that the thesis mainly provides a comparison of EU and national legislation. Hence, it will not be assessed to what extent the EU member states are fulfilling their obligations stating in the legislation. Also, it must be noted that it will be only looked at three EU member states and one directive of the CEAS. As a consequence, the final conclusion of the research will not be universally applicable. Nevertheless, the topic of my thesis is of importance and contributes to the current available literature on the Europeanization of asylum.

1.1 Relevance of Research

In general it can be said that over the last decades, Europeanization has become a topic of increasing interest in European Union studies (Bulmer, 2007). Nevertheless it is still in its "infancy" (Post & Niemann, 2007, p.8) and the "sectoral balance of theoretically informed work is somewhat skewed" (Bulmer, 2007, p.57). Much can for instance be found on the Europeanization of environmental or transport policy, whereas strikingly intergovernmental ones, which include asylum policy are less prominent (Bulmer, 2007). Furthermore, little is known of the motivation for stimulating the Europeanization of asylum and its effects on asylum seekers (Sicakkan, 2008a).

The paragraph above clarifies the importance of the research on the Europeanization on asylum on a scientific basis but there is also a moral aspect, which must not be forgotten. Due to an increasing number of violent conflicts and environmental catastrophes, triggered by climate change, the number of asylum seekers is rising. A high number of people choose to seek refuge in the EU and therefore we do need a humane and productive CEAS. It needs to have a positive influence on the asylum systems of the European member states and provide them with the means to successfully deal with asylum seekers. But further and most importantly, it also needs to give impetus to improve the situation of asylum seekers in the EU as such, not only of the country. We are responsible for the well-being of asylum seekers, arriving in the EU and it is our obligation to provide them with the necessary means to lead a humane life. This can only be achieved by promoting a more liberal approach towards asylum politics within the EU member states and if this is accomplished by the current Reception Conditions Directive, will be illustrated in my thesis.

1.2 Thesis Overview

The bachelor thesis commences with a short presentation of the history of the refugee regime. It is necessary to provide a framework for understanding the processes of the Europeanization of asylum and the current European attitude towards asylum seekers. Additionally, the legal basis for the protection of asylum seekers is illustrated. Again, these chapters supply necessary facts to comprehend and place the situation of asylum seekers in Germany, Belgium and Austria correctly and provide a sound background.

The subsequent theoretical part illustrates the concept of Europeanization as such, as well as the latest literature on the Europeanization of asylum, with a special focus on the strategy of venue-shopping. This chapter is ensued by a methodology part, explaining the research design and the data analysis. The following analysis part of the thesis encompasses

the comparison of the EU Reception Conditions Directive to the corresponding national legislation of Germany, Austria and Belgium, as well as a overview of the results in the three countries. Furthermore, the adjustments which were made to the original Reception Conditions Directive are discussed. The conclusion, worked out of the analysis will be linked to the literature in the theoretical part of the thesis.

2. Background Information

2.1 The History of the International Refugee Regime

Since the Peace of Westphalia[10] in 1648, the refugee regime has developed with the modern state system (Barnett, 2002). The first refugees, being recognized as such, were the Huguenots[11] fleeing France in 1685. Until the creation of the League of Nations[12] in 1919, the refugee regime was a national one. Every state dealt with refugees on its own and there were no implemented policies or even a consistent definition of the term refugee (Barnett, 2002).

With the establishment of the League of Nations, eventually appointing the League's first High Commissioner for Refugees[13] (HCR) in 1921, the refugee regime obtained an international character (Barnett, 2002; Feller, 2001). Yet, neither the US nor the USSR, were members of the League of Nations, which illustrates the regimes' still rather small scope. The HCR was intended to be a temporary agency, dealing only with the more than one million Russian refugees, who fled during the Russian Revolution[14] from 1917 until 1921 (Barnett, 2002; Hathaway, 1991). It created no general definition of a refugee but relied on a "category-oriented approach that identified refugees according to group affiliation and origin" (Barnett, 2002, p. 242). Hathaway elaborates this further and states that until 1935, refugees were largely defined in juridical terms and they were supported to "correct an anomaly in the international legal system" (1991, p.4). Refugees were deprived of the protection of their state of origin and therefore the international community had to step in.

The ratification of the Convention relating to the international Status of Refugees[15] in 1933 and the signing of the Convention concerning the Status of Refugees coming from Germany[16] in 1936, provided a more precise framework for defining who qualified as a refugee. Moreover, until 1939 the nations adopted a more social approach to the refugee definition and according to Hathaway (1991), refugees were now assisted to ensure their safety and wellbeing. At the end of World War II, when more than 30 million people were forced to leave their home countries, the refugee regime was brought to a new level. The League of Nations did not exist anymore and the United Nations Relief and Rehabilitation

[10] It ended the Thirty Years` War, the Eighty Years' War between Spain and the Dutch as well as introduced the concept of a sovereign state; for further information see Gross, L. (1948)
[11] Protestants in France in the 16th and 17th centuries; for further information see http://www.britannica.com/EBchecked/topic/275000/Huguenot
[12] Established to facilitate and maintain world peace; for further information see http://www.un.org/cyberschoolbus/unintro/unintro3.htm
[13] Friedtjof Nansen (1861-1930); for further information see Christensen, C. A.R. (1961)
[14] Terminated the Tsarist autocracy; for further information see http://www.bbc.co.uk/history/worldwars/wwone/eastern_front_01.shtml
[15] Available at http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3dd8cf374
[16] Available at http://www.refworld.org/docid/3dd8d12a4.html

Administration[17] (UNRRA) was established in 1943 as a substitute, to deal with the refugee problem

Being only of short existence, the UNRRA was superseded in 1947 by the International Refugee Organization[18] (IRO) (Feller, 2001; Gallagher, 1989). The IRO Constitution[19] defined refugees as "victims of Nazi, fascist, or similar regimes; victims of persecution for reasons of race, religion, nationality, political opinion, and refugees of long standing" (Barnett, 2002, p. 244). The decision as to whether or not a person was a refugee was no longer made strictly by a categorical approach, "rather, the accords of the immediate post-war era prescribed an examination of the individual merits of each applicant's case" (Hathaway, 1991, p.5).

Finally, during the Cold War[20], it was recognized that the refugee problem was not a temporary one. On that account, the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, recognized the right of asylum as a fundamental human right.

Article 14 paragraph 1 of the declaration states that "everyone has the right to seek and enjoy in other countries asylum from persecution". Paragraph 2 of Article 14 further elaborates that "this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations" (UN General Assembly, 1948)[21].

It was also recognized that to be able to address the refugee issue successfully, an institution established for the long haul was needed. This brought the United Nations High Commissioner for Refugees[22] (UNHCR) into life, which assumed the responsibilities of the IRO in 1951 (Feller, 2001). In support of the UNHCR, the Intergovernmental Committee for European Migration, today the International Organization for Migration[23] (IOM) was created, charged with resettling the millions of people who fled during World War II (Gallagher, 1989). The UNHCR's main work was to ensure that countries acted in accordance with the Convention Relating to the Status of Refugees[24] (Feller, 2001), which was signed in 1951 and entered into force in 1954. It is until today the only universal binding instrument to protect refugees, "regularizing the status of refugees and setting out a series of rights and obligations" (Barnett, 2002, p.245). It further was the first attempt to make states responsible for the protection of refugees (Fekete, 2005). The Convention and the UNHCR Statute not only define who qualifies as a refugee but also "establish international standards for the treatment of refugees, confer certain rights and freedoms, and list the world community's responsibilities toward refugees" (Nanda, 1981, p. 454).

[17] For further information see http://www.ushmm.org/wlc/en/article.php?ModuleId=10005685
[18] Existed from 1946 until 1952; for further information see http://www.ushmm.org/wlc/en/article.php?ModuleId=10005685
[19] Available at http://avalon.law.yale.edu/20th_century/decad053.asp
[20] Here period of 1947-1991
[21] Available at http://www.un.org/en/documents/udhr/
[22] For further information see http://www.unhcr.org/cgi-bin/texis/vtx/home
[23] For further information see http://www.iom.int/cms/en/sites/iom/home/about-iom-1/history.html
[24] Available at http://www.unhcr.org/3b66c2aa10.html

A refugee is defined in Article 1 A(2) "as a person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable, or owing to such fear, is unwilling to return to it" (Convention Relating to the Status of Refugees, 1951).

Before the Convention was amended in 1967, the refugee definition was indeed finally an individual one but it covered only refugee movements provoked by events that occurred before January 1951 and encompassed solely refugees from Europe (Feller, 2001; Gallagher, 1989). The protocol established in 1967 lifted these geographical and time limitations (Feller, 2001; Nanda, 1981). Also regional instruments were increasingly established and for instance in 1969, the Organization of African Unity[25] adopted an expanded definition of the term refugee (Feller, 2001; Gallagher, 1989, Nanda, 1981). It adds to the Article 1 of the 1951 Convention the following words:

"Every person who owing to external aggression, occupation, foreign domination, or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality" (OAU Convention Governing the specific aspects of the Refugee problems in Africa, 1969, Art(2))[26].

Since the end of World War II, the US was part of the refugee regime and together with Western Europe, dominating the system. "They were the prime movers in setting up the regime and have been the mainstays politically and economically" (Keely, 2001, p.304). Western countries were very welcoming towards refugees, at that point mainly arriving from Communist states[27], and even eager to admit them. Keely (2001, p. 308) on the one hand, states that the regime "itself was a tool to further reinforce internal political support for an anti-Soviet, anti-communist foreign policy because Western generosity would reinforce the domestic constituencies' indignation at the evils of communist ideology". The Western world welcomed refugees, whose flight was mainly motivated "by pro-Western political values" (Hathaway, 1991, p.6). Barnett (2002) on the other hand, explains the goodwill towards refugees rather with the fact that the Western countries were suffering a loss of manpower due to the war period and thereof needed workers (Barnett, 2002). Further, the refugees arrived in manageable numbers and their ethnic background was close to the Western one (Feller, 2001).

Nevertheless, the 1970s saw a shift in refugee flows as increasing numbers began to come from the developing world (Gallagher, 1989, Feller, 2001, Paludan, 1981). Refugees were progressively seen as a "threat to political, economic, and social stability" (Feller, 2001, p.134, Paludan, 1981, Boswell, 2003). The economic growth in Western states had declined and a bigger workforce was no longer needed (Barnett, 2002). The end of the Cold War

[25] Established in 1963, later replaced by the African Union; for further information see http://www.princeton.edu/~achaney/tmve/wiki100k/docs/Organisation_of_African_Unity.html
[26] Available at http://www.unhcr.org/45dc1a682.html
[27] The Hungarian crisis in 1956 created the first mass flux of refuges from the East (more than 200000 people fled the country), followed by the Czech refugees fleeing Soviet repression of the nationalist uprising in 1968 (Gallagher, 1989).

entailed conflicts all over the world and an increasing mass migration on a global scale. Russia joined the UNHCR, which received more and more responsibility and broadened its scope, especially during the Yugoslavia crisis[28]. When the free movement of goods, services, capital and people was realized within the EU, the entry of asylum seekers began to be perceived as a threat to the social order (Lindstrom, 2005).

Changes concerning the responsibility and scope of the refugee regime have been made over the years but today, the system is blocked by national and economic priorities (Barnett, 2002, p.253). Today, the refugee regime is according to Barnett (2002) not supported by the state but by civil society, Non-governmental organizations (NGOs), the media and the UNHCR. Western states mainly support domestic restrictions for decreasing the number of refugees entering the country. Whereas the deportation, detention and dispersal of asylum seekers were only occurring now and then in the twentieth century, it is today a normal event (Schuster, 2004). In addition, the externalization of migration control becomes increasingly popular[29]. Keely (2001, p.312) states that European countries slowly "moved away from a system that bent over backward in favor of the asylum applicant" to "strict interpretations of what is required under international treaty obligations". An increasing "fortress mentality" is developing in Europe (Barnett, 2002), despite the fact that this places a burden on the developing world, which still hosts more than 90 % of refugees (Hathaway, 2007). The access to international protection in the EU "has been made dependent not on the refugee's need for protection, but on his or her own ability to enter clandestinely the territory of a member state (European Parliament, 2013, p. 12).

Keely's and Barnett's observations provide a clear transition to the criticism of Fekete (2005), who says, like already presented in the introduction, that rather than protecting the rights of asylum seekers, the common European asylum policy today only aims at guarding states from the increasing refugee burden. It also presents a link to the venue-shopping argument of Guiraudon (2000), Lavenex (2006) and Maurer & Parker (2007), suggesting that national policy makers are attempting to tighten the national asylum legislation by adopting more restrictive measure on the EU level. Yet, before analyzing to what extent the criticism on the European asylum system is eligible, the next section demonstrates the most important principles of the legal protection of refugees, on which also the CEAS is based.

2.1.1 The International Legal Framework for the Protection of Refugees

The international legal framework for the protection of refugees is composed of a complex interaction of guidelines, conventions and international and national law. Today, the United Nations Convention Relating to the Status of Refuges and the amendment in the form of the 1967 Protocol, present next to Article 14 of the UDHR, the centerpieces for the protection of refugees (UNHCR, 2010). These are backed by international human rights law, several regional protection regimes (UNHCR, 2010) and humanitarian law[30]. They stipulate the rights and obligations of asylum seekers and refugees but also the rights and obligations of nation states.

[28] During Yugoslavia Wars from 1991 – 1999, number of refugees exceeded four millions (Feller, 2001)
[29] For further information see Boswell (2003)
[30] For further information on the interface of humanitarian law and refugee law see Jaquemet (2001)

The laws concerning the protection of refugees are developing and transforming over time, adjusting to the needs of human kind. Current developments in international human rights law for instance "also reinforce the principle that the 1951 Convention be applied without discrimination as to sex, age, disability, sexuality, or other prohibited grounds of discrimination" (UNHCR, 2003, p.3). This constitutes a broadening of the framework for granting refugee status. Also the problematic of climate change refugees is increasingly discussed and it is argued to accommodate them in international refugee law. Nevertheless, there are some principles, which are deeply anchored in the international legal framework for the protection of refugees and these will be shortly presented.

One of the most crucial principles is probably the one clarifying that subject to specific exceptions, refugees should not be penalized for their illegal entry or stay[31]. It is therewith recognized that the seeking of asylum can require refugees to breach immigration rules and that they nonetheless do have the right to stay in the country. In the EU, Article 7(1) of the Directive 2005/85/EC[32] stipulates that "Applicants shall be allowed to remain in the Member state, for the sole purpose of the procedure, until the determining authority has made a decision in accordance with the procedures". Important to mention is also that the EU grants protection to two groups of individuals (Chalmers et al., 2010). The first group encompasses refugees and the second one, persons eligible for subsidiary protection[33]. Nevertheless the right of protection does not apply to asylum seekers arriving from a so-called safe third country. Asylum applications from a safe state of origin[34] or if the asylum seeker transited a safe country[35] on the way to the country where he is applying for refugee status, will be considered inadmissible (Chalmers et al., 2010).

Another important aspect of the protection of refugees is the principles of non-refoulement[36], stated in the 1951 Convention. It provides that no "one shall expel or return a refugee against his or her will, in any manner whatsoever, to a territory where he or she fears threats to life or freedom[37] (UNHCR, 2010, p.3). Nevertheless, the refugee status is not a permanent one and can cease[38] when the grounds for granting refugee status are no longer given. When conflicts wind down in the country of origin, host countries often aim at repatriating the refugees. Yet, this can only be achieved when a fundamental change of

[31] See Article 31 of the Convention Relating to the Status of Refugees
[32] Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF
[33] "person eligible for subsidiary protection' means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm" Directive 2004/83/EC, Article 2(e), available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:en:HTML
[34] See Directive 2005/85/EC Article 31(2)
[35] See I*bid.* Article 27(2)(a)
[36] Problem is that "Member States consider that the non-refoulement obligation applies only to those persons who fulfill two criteria: (a) they have arrived at the border of the state where they seek protection (or are inside it); (b) there is no safe third country to which they can be sent". The consequence is that that people seeking "international protection are left to die in international waters because no state wants to take on responsibility for their protection claims. Or, they have led to people with international protection claims being pushed back to unsafe countries by the authorities of the EU states" (European Parliament, 2013, p.9)
[37] See Article 33 of the Convention Relating to the Status of Refugees
[38] For further information see Fitzpatrick & Bonoan (2004)

circumstances in the state of origin occurred[39]. Another event implicating the cessation of the refugee status is the voluntary decision of a refugee, who still has the well-founded fear of being persecuted, to go back to the country of origin. If the person is successfully re-established in the home country, but only then, the refugee status comes to an end (Hathaway, 2005).

However, not every person who has the well-founded fear of being persecuted will be granted refugee status. People who have committed a crime against peace, a war crime, a crime against humanity or a serious non-political crime outside their country of refugee[40] or they are guilty of acts contrary to the purposes and principles of the United Nations[41], are excluded" from the refugee regime. This is spelled out by the so-called exclusion clause, which can be found in Article 1F of the 1951 Convention. Yet, the state concerned can still choose to grant the individual a residence permit. Furthermore, the people are still protected by for example the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[42], which prevents them from being returned to their home country when facing these threats (UNHCR, 2003, p4). The exclusion clause is also of importance when the crime the refugee committed is only recognized after the granting of the refugee status. If credible evidence is given, the refugee status can be canceled (UNHCR, 2003).

To conclude this chapter, it is very important to realize that "each state has the exclusive authority to grant or withhold asylum" (Nanda, 1981, p.456). The right of asylum is not given and states cannot be forced to grant asylum to a refugee. There are many human rights issues concerning the treatment of asylum seekers and refugees and it is often argued that the international legal framework for the protection of refugees is not strong enough. Countries, especially Western states do often find loopholes in the legislation to avoid responsibility.

2.2 The Development of a Common European Asylum System

With the adoption of the 1990 Dublin convention, a first major milestone concerning the harmonization of asylum in Europe was accomplished. The Dublin convention[43] encompassed a hierarchy of criteria for "allocating responsibility to a specific member state for processing an asylum claim" (ECRE, 2006, p.3). Nevertheless, only under the establishment of the Maastricht Treaty in 1993, asylum became part of the EU framework. The actual development of the CEAS began then in 1999 in Tampere, when the entry into force of the 1997 Amsterdam Treaty on the European Union enabled the establishment of the Area of Freedom, Security and Justice (Lindstrom, 2005). EU policies concerning asylum were transformed into a "fundamental Treaty objective under the first pillar" (Lindstrom, 2005), with Article 78 of the Treaty on the Functioning of the European Union[44] (TFEU)

[39] See Article 1C of the Convention Relating to the Status of Refugees and Hathaway (2005) for further information on the problematic of the repatriation of former refugees

[40] If committed within the country, the individual has to abide to the country's criminal law process or Articles 32 and 33(2) of the 1951 Convention

[41] "activity which attacks the very basis of the international community's coexistence, crimes capable of affecting international peace, security and peaceful relations between states, as well as serious and sustained violations of human rights (UNHCR, 2003, p5)

[42] Available at http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx

[43] Available http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:41997A0819(01)

[44] Available http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT

comprising the aim of developing a common policy on asylum (Toshkow & de Haan, 2013). In the following years, various legal acts determining the responsibilities and rights of states, asylum seekers and refugees were adopted. The most significant ones will be presented in the following paragraphs.

In 2003, the Reception Conditions Directive[45], setting out the minimum standards concerning the reception of asylum seekers as well as the Dublin II Regulation[46], replacing the Dublin Convention were adopted. The Dublin II Regulation, which is directly binding on the EU Member States, is based on the "presumption that an asylum seeker will receive equivalent access to protection in whichever Member State a claim is lodged" (ECRE, 2006, p. 24). Asylum seekers are required to lodge their application in the first EU member state entered (Toshkov & de Haan, 2013) and with this, asylum seekers shall be guaranteed that their application is to be processed by one of the member states and an unnecessary referral from one state to another will be avoided. Furthermore, the states can prevent an asylum seeker from issuing multiple asylum claims in different countries. To improve the efficiency of the asylum procedure, EURODAC[47], responsible for the storage of fingerprints of asylum seekers and therewith, the first application of biometric identification technology within a supranational political entity (Aus, 2006), was introduced in 2000. From 2003 on, member states were able to check if the asylum seeker had already applied for refugee in another EU country. In 2004, the adoption of the Qualification Directive[48], setting out the criteria for the qualification of asylum seekers, and the adoption of the Asylum Procedures Directive[49] in 2005, aiming at harmonizing the asylum procedures within Europe, followed. The Asylum Procedures Directive further illustrates the rules on the process of claiming asylum, for instance on how to apply for asylum and how the application needs to be examined (European Commission, 2014b). The establishment of the European Refugee Fund, set up for the period 2008 until 2014 strengthened the financial solidarity.

After a period of consultation and the evaluation of the existing directives and regulations, it was concluded that improvements of the CEAS were necessary. It was especially aimed at implementing higher common standards and stronger cooperation, enabling an open and fair system in which asylum seekers are treated equally (European Commission, 2014a). These objectives resulted in the revision of the above mentioned directives and regulations.

In 2011, a revised Qualification Directive was adopted and in 2012, a recast of the Dublin Regulation and the Reception Conditions Directive were implemented. The new Reception Conditions Directive introduced for the first time rules concerning asylum-related detention and the access to employment must now be granted within 9 months, which constitutes an improvement to the previous 12 months (European Commission, 2014c). In general, the recast Reception Conditions Directive shall ensure better and more harmonized standards of reception conditions (European Commission, 2014c). The new Dublin

[45] Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF
[46] Available at http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003R0343; on its implementation in the EU Member States see ECRE (2006)
[47] Available at http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000R2725
[48] Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:en:HTML
[49] Available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF

Regulation enhances the importance of the maintenance of family unity and the right to appeal against transfer decisions (European Commission, 2013a).

In 2013, agreement was reached on the recast of the Asylum Procedures Directive and the EURODAC regulation. The Commission argues that the revised Asylum Procedures Directive will "lead to fairer, quicker and better quality asylum decisions, and the special needs of vulnerable people will be better taken into account and in particular there will be greater protection of unaccompanied minors and victims of torture" (European Commission, 2013a, p. 11). The revised EURODAC Regulation will furthermore "allow law enforcement access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder and terrorism" (European Commission, 2013a, p. 11). The European Refugee Fund, which ran out in 2013, is superseded by the Asylum, Migration and Integration Fund (AMIF), set up for the period of 2014-20[50].

The aim of the CEAS[51] is the harmonization of common standards on the fair treatment of asylum seekers in all EU member states (Bovens et. al, 2011). All member states have to share the responsibility of dealing with the issue of asylum seekers and welcoming them in a dignified manner (European Commission, 2014b). To achieve this aim, the CEAS is according to the EC a promising measure. Cecilia Malmström, the Commissioner of Home Affairs of the European Commission states that the CEAS will "provide better access to the asylum procedure for those who seek protection; will lead to fairer, quicker and better quality asylum decisions; will ensure that people in fear of persecution will not be returned to danger; and will provide dignified and decent condition both for those who apply for asylum and those who are granted international protection within the EU" (European Commission, 2014b, p.1)

3. Theoretical Framework

3.1 A Definition of Europeanization

To go on and to answer my research question successfully, I first need to clarify the concept of Europeanization. Unfortunately, this proves to be more difficult than expected, since many slightly different conceptualizations of Europeanization do exist, and there is no single "all-encompassing theory" (Jordan & Liefferink, 2003, Olsen, n.d., Auel, 2005), which can be utilized. The available literature fails in defining the boundaries of Europeanization (Radaelli, 2000). As a consequence, it is brought into contact with and is supposed to explain a substantial amount of processes, like cultural change, new identity formation, policy change, administrative innovation and modernization (Radaelli, 2000). Bulmer (2007, p.47) even states that Europeanization is not a theory as such but is the "phenomenon, which a range of theoretical approaches have sought to explain". Nevertheless, after having analyzed the existing literature on Europeanization, I agree with Olsen (n.d.), who explicates that the

[50] For further information see http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/index_en.htm

[51] See Figure 3 for an illustration of the CEAS

different conceptualizations of the term do not necessarily exclude but rather complement each other. So what is Europeanization?

A rather broad conceptualization of Europeanization is given by Olsen (n.d.). He sees Europeanization as "evoking changes in external territorial boundaries, as the development of institutions of governance at the European level, as the central penetration of national and sub-national systems of governance, as exporting forms of political organizations and governance that are typical and distinct for Europe beyond the European territory and as a political project aiming at a unified and politically stronger Europe"[52]. He basically divides Europeanization into a broad mechanism: "the transfer from Europe to other jurisdictions of policy, institutional arrangements, rules, beliefs, or norms on the one hand; and building European capacity on the other" (Bulmer, 2007, p. 47).

Radaelli's (2000) definition is solely about the accumulation of policy competences at the European level (Jordan & Liefferink, 2003). He defines Europeanization as the "the emergence and development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problem-solving that formalize interactions among the actors, and of policy networks specializing in the creation of authoritative rules" (2000, p.2). Radaelli (2000) further defines Europeanization by isolating it from the process of European Integration, as both are often confounded. "Theories of integration focus on the issue whether European integration strengthens the state, weakens it, or triggers multi-level governance dynamics. The focus of Europeanization brings us to other, more specific, questions, such as the role of domestic intuitions in the process of adaption to Europe" (Radaelli, 2000, p.6)

Jordan and Liefferink (2003) elaborate on two main views on Europeanization. The first "concerns the process through which European integration penetrates and, in certain circumstances brings about adjustments to, domestic institutions, decision-making procedures and public policies" (2003, p.2). The second view sees Europeanization as a "two-way street, in which states affect the EU at the same time as the EU affects states" (Jordan & Liefferink, 2003, p. 2). Börzel (2002, 2003) consents to this view, stating that EU member do not only passively receive domestic policies and implement them but have the opportunity to influence EU politics, which they will adapt later on.

It is perceptible that all the conceptualizations included are rather similar in their structure. They all do include the notions of top-down and/or bottom-up processes, which are clearly affiliated with each other and as already mentioned above, the definitions do complement each other and are difficult to segregate. In the beginning of the development of theory on Europeanization, it was concentrated on the bottom-up dimension of the process, yet in the 1990s the literature increasingly focused on top-down processes (Börzel, 2003). Nevertheless, both are crucial for the understanding of the Europeanization of asylum, therefore I decided against concentrating on just one aspect.

3.1.1 Mechanisms of Europeanization

Now that the term Europeanization is conceptualized, the next step is to explain how the process of Europeanization occurs. What are the mechanisms? They are in the following

[52] To have Olsen's phenomena explained more closely see Olsen (n.d.)

paragraphs shortly presented, without discussing them in depth, since the aim is to only achieve a general understanding of how Europeanization arises and how member states do react to its occurrence. Again, the aim of my thesis is about assessing if national politicians are successful in uploading stricter rules on asylum to the European level and if this can be detected by comparing the EU Reception Conditions Directive with the national legislation of Germany, Austria and Belgium.

First of all, the impact of European policies on EU member states varies widely and can according to Jordan & Liefferink (2003), Börzel & Risse (2003), Radaelli (2000) and Börzel (2003, p.2), explained by the "goodness of fit" between "European and national policies, institutions, and processes, on the one hand, and the existence of mediating factors or intervening variables that filter the domestic impact of Europe, on the other hand". If great differences do exist between EU and domestic policies, there are high adaption pressures, which force EU member states to adapt to the EU policies (Radaelli, 2000). The pressures are often affiliated with great costs and hence, member states aim at "uploading" (Börzel, 2002) their policies on the EU level to avoid the pressure of adjustment costs and political and legal uncertainty connected to the policy or institutional misfit (Jordan & Liefferink, 2003, p. 3).

Nevertheless, adaption pressures alone are insufficient to achieve Europeanization. Other factors like veto points, supporting institutions, norm entrepreneurs and national interest groups, as well as the support for the national or EU policy play an important part of influencing the extent of Europeanization (Börzel & Risse, 2003, Jordan & Liefferink, 2003).

Börzel (2003) identifies three different strategies, how EU member states can pursue to shape European policies. These are pace-setting, the active pushing of policies at the EU level, foot-dragging, the blocking and delaying of costly policies, and fence-sitting, the building of tactical coalitions with both pace-setters and foot-draggers without actively pushing or blocking policies (Börzel, 2003, p. 194). The ability to pace-set, is naturally dependent on the abilities of the member state, hence economically successfully countries are more likely to push policies. Further, Börzel & Risse (2003) and Börzel (2003) differentiate between five degrees of domestic change as a response to Europeanization pressures. These are inertia[53], retrenchment[54], absorption[55], accommodation[56] and transformation[57].

3.2 The Europeanization of Asylum

The Europeanization of asylum is a topic, which has not been explored to a satisfactory extent, quite contrary to the Europeanization of the environment sector[58], which seems to be a favored topic. Nevertheless, during the last years, a certain amount of literature came into existence and it becomes clear that when discussing the Europeanization of asylum,

[53] the absence of change; states refuse to adapt European requirements (Börzel, 2003, p. 15)
[54] "resistance to change which may have the paradoxical effect of increasing rather than decreasing misfits" (Börzel, 2003, p.15)
[55] "states incorporate European requirements into their domestic institutions and policies without substantial modifications of existing structures and the logic of political behavior" (Börzel, 2003, p.15)
[56] „states accommodate European pressure by adapting existing processes, policies and institutions in their periphery without changing core features" (Börzel, 2003, p.16)
[57] „states replace existing policies, processes, and institutions by new, substantially different ones, or alter existing ones to the extent that their core features are fundamentally changed" (Börzel, 2003, p. 16)
[58] See Jordan & Liefferink

the venue-shopping strategy must not be unmentioned. It is so far considered to be the most suitable framework for explaining the Europeanization of asylum (Kaunert & Leonard, 2011).

3.2.1 Venue-shopping in the EU Asylum Policy

First of all it needs to be clarified what venue-shopping means. Venue-shopping is a strategy to move a policy from one political venue to another political venue, to change the policy image and hence achieve aims, which would not have been possible to achieve on the previous venue. Maurer & Parkes (2007) elaborate that to achieve a successfully policy venue change, two prerequisites must be given: "a dimension that legitimates actors' presence and function in the policy process", as well as "a dimension that legitimates the pursuit of their preferences" (Maurer & Parker, 2007, p.3). Actors need to be able to exploit the opportunities they are given due to the venue-change.

The most prominent advocate of the venue-shopping strategy, to explain the Europeanization of asylum is Guiraudon (2000). She argues that political actors moved policy-making on asylum from the national level to the new EU policy-venue, in order to install more restrictive rules on asylum[59]. Policies on asylum were increasingly rendered worthy of broader, public attention to achieve a change in venue (Maurer & Parkes, 2007). According to Guiraudon (2000), legal principles, domestic constitutional principles and national laws have since the 1970s aimed at constraining the restrictive objectives of migration control policy. Policy maker on the national level do have to face several levels of government, social groups and institutions, which are able to veto their political decisions. Deciding in pushing policies on the European level, diminishes the role of the national courts and other groups favoring a more liberal approach to asylum (Guiraudon, 2000). Lopatin (2013) agrees, stating that in general EU legislative bodies have gained additional authority because member states thought their aims were best to be achieved on the EU level.

Kaunert and Leonard (2011) however, do state that today the venue-shopping argument has become obsolete. Their perception is indeed that political actors did not succeed in establishing more restrictive regulations on asylum, by switching their asylum policy venue onto the EU level (Kaunert & Leonard, 2011). If anything, the regulations have become more liberal. This is in line with the work of Lavenex (2006, p. 1298), who concludes that the previous aim of politician to change the policy venue to tighten have been "caught up in a supranational logic of integration". Nevertheless, this does not exclude the fact that actors are constantly aiming at decreasing the supranational obligations and even preventing a further liberalization of asylum rules.

The illustrated theory on Europeanization in general, as well as the theory on the Europeanization of asylum in particular provides a sufficient framework for answering my research questions successfully. How I proceed to do so, will be discussed in the subsequent methodology part.

[59] Interestingly German Chancellor Kohl was one of the main initiators; the asylum and refugee problem was moved to the third pillar and specified as a matter of common interest (Hellmann et al, 2005); Post & Niemann (2007)

4. Methodology

The main research question of my thesis is whether the EU promotes a more liberal or a more restrictive strategy of asylum policy compared to the EU member states. To come to a conclusion, one directive of the current CEAS, namely the Reception Conditions Directive, first implemented in 2003 and recast in 2013, is compared to the corresponding national legislation in Germany, Austria and Belgium. Hence, the research question is "Does the Reception Conditions Directive of 2013, as part of the CEAS, constitute a more liberal or stricter approach towards asylum protection than corresponding national legislation in Germany, Austria and Belgium?". It must be enhanced that the thesis mainly provides a comparison of EU and national legislation; it will not be specifically reviewed, to what extent the EU member states in reality are fulfilling the notions of the legislation. My hypothesis is that the Reception Conditions Directive pursues a more liberal approach to the protection of refugees than the national ones.

The comparison of the EU legislation and the national legislations of Germany, Austria and Belgium is constituted in a table. It is assessed if Articles 5 – 18, namely Chapter II of the Directive constituting the so called general provisions on reception conditions (e.g. rules on housing, employment and education), are sufficiently implemented in the national legislation. If this is the case, it is rated with a (+) and if the national legislation fails to implement the paragraph of the EU Directive, it is rated with a (-). Important to add is that the national legislation of the three countries is written down in English, German, Dutch and French and to avoid translation mistakes, the tables do include occasionally information in different languages. The results of the comparison will give an indication, if the EU legislation pursues a more liberal approach towards the protection of asylum seekers than the national ones or visa verse.

Following the comparison of the different legislations, an overview of the implementation results of the directive in the three different countries is constituted. This brings about my first-sub question, namely "To what extent are similarities and distinctions perceptible in the asylum legislation in Germany, Austria and Belgium?. The result allows a conclusion concerning the comparability of Western European concerning their asylum policies. I expect the asylum legislation of the three countries to be quite similar, yet it must be added that this could be a result of the Europeanization of asylum but also be reasoned in the fact that the three countries are similar in their political culture and economic abilities.

Another interesting question I wish to cover is if there is an indication for a tightening of the rules on asylum on the European level identifiable. Hence, to asses if national politicians achieved to implement stricter rules over time, a short comparison between the Reception Conditions Directive, implemented in 2003[60] and its recast from 2013 is provided. The sub question of my research is accordingly "To what extent does the recast Reception Conditions Directive from 2013 compared to the Reception Conditions Directive from 2003 indicate a tightening of asylum legislation on the European level?". I expect the recast Reception Conditions Directive, implemented in 2013 to pursue a more liberal approach

[60] Available at http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0009

towards asylum protection than the previous Reception Conditions Directive, implemented in 2003.

The thesis is mainly based on the existing literature of Europeanization in general and the Europeanization of asylum in particular. Especially the discussion of venue-shopping is crucial to explain the motivation for a further Europeanization of asylum.

The Reception Conditions Directive was chosen, since it constitutes an important part of the CEAS. I chose Germany, Austria and Belgium as countries because of their similarity. All of them are rich Western European countries and similar in their approach towards asylum politics. This makes is easier to come to a conclusion, suitable to be applied to other Western European countries. I did not choose the countries randomly, since I wanted to include Germany as one of the most important European countries, as well as choose other Western European countries to be able to compare. Furthermore, according to Haverland (2005), when only a limited number of cases are available, a random selection may bias conclusions. Nevertheless, having no control cases, like non-EU states or East-European states included in the analysis, might lead to false reasoning in the conclusion. An EU influence could be detected, where really another variable is responsible for the effect.

As a consequence, the final conclusion of the research will not be universally applicable. Other research needs to be conducted to verify the answers to the chosen research questions.

5. Analysis

In the following chapter, the implementation of the EU Reception Conditions Directive in the national legislation of Germany, Austria and Belgium is analyzed. The results are displayed in a table and shortly discussed. Furthermore, the results of the three countries are compared, again by visualizing them in a table.

5.1 The Reception Conditions Directive

The next paragraphs will provide a short description of the Reception Conditions Directive. Important aspects have already been presented in the chapter of the "Development of a Common European Asylum System", nevertheless I would like to elaborate on them further.

As already mentioned above, the EU Reception Conditions Directive outlines the necessary reception conditions for asylum seekers during the application process. These include rules on housing, employment and health care. The Directive was first implemented in 2003 and in 2013 a recast was adopted, which needs to be fully implemented by the EU member states by July 20th in 2015. Thereby it is important to keep in mind that the directive specifies the ends to be achieved but not the means of doing so.

The recast Reception Conditions Directive introduced several changes (European Commission, 2014c, Reception Conditions Directive. 2013):

1. rules concerning asylum-related detention were included

2. access to employment must now be granted within 9 months, which constitutes an improvement to the previous 12 months
3. more restrictions for member states to reduce or withdraw material reception conditions
4. more rules on conditions under which applicants can receive free legal assistance and representation in appeal procedures
5. specific rules on reception needs of minors and victims of torture

In general, the recast Reception Conditions Directive shall ensure better and more harmonized standards of reception conditions (European Commission, 2014c). By 20th July 2017 at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.[61].

After having illustrated which changes were made to the original Reception Conditions Directive of 2003, it can be stated that the policy was improved in favor of the asylum seekers. At least on paper, the recast directive seems to be able to positively influence the life of people seeking refuge. Although the real added value can earliest be assessed by 2015, when all member states will have the directive fully included in the national legislation, it can definitely be concluded that national politician did not achieve to tighten the rules on asylum. This does not preclude the possibility that EU member states did indeed achieve to block further improvements, which would have made the Reception Conditions Directive even more efficient and liberal.

The following chapter will now illustrate the comparison of the EU Reception Conditions with the national legislations of Germany, Austria and Belgium.

5.1.1 Germany

The German legislation on the protection of refugees and asylum seekers is anchored in Article 16a of the Basic German Law[62], which among other things stipulates that persons persecuted on political grounds shall have the right of asylum[63].

The EU Reception Conditions Directive is in Germany partly laid out in the Asylum Procedure Act (AsylVfG)[64] and in the Asylum Seekers' Benefit Act (AsylbLG)[65]. Furthermore, the Residence Act[66] does give crucial information concerning the rights of asylum seekers and is of importance when comparing the EU Reception Conditions Directive to the national legislation. A difficulty for the analysis of Germany is that the country is distributed into sixteen federal states. This means that there are often different rules concerning the implementation of the reception conditions. Nevertheless, sufficient information is provided, to enable a sound comparison between EU and national legislation.

After having compared the European Reception Conditions Directive with the corresponding German legislation, it becomes apparent that Germany does not fulfill all its

[61] See Article 30 of the Reception Conditions Directive
[62] See http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0088
[63] For a detailed overview of the development of Asylum Policy in Germany see Boswick (2000)
[64] See http://www.gesetze-im-internet.de/englisch_asylvfg/
[65] See http://www.gesetze-im-internet.de/asylblg/
[66] See http://www.gesetze-im-internet.de/englisch_aufenthg/

obligations. This especially encompasses rules on detention, family unity and schooling and the education of minors.

The recast EU Directive for once illustrates very precise rules on the detention of asylum seekers and these are not implemented in Germany. For instance, the specification to provide special detention facilities for asylum seekers, which are separated from prisons, is not necessarily given in Germany. The responsibility for detention lies with the Federal State and the conditions differ tremendously throughout the country.

In the Reception Conditions Directive it is also illustrated that member states shall take appropriate measures to maintain as far as possible family unity, yet this is not sufficiently provided for in the German legislation. When family unity is mentioned in the German legislation, it is about minors, the definition of family in the Reception Conditions Directive is however a much broader one and encompasses for instance spouses and unmarried partners.

Also rules on the schooling and the education of minors are not adequately implemented in the German legislation. As a matter of principle, the right and the obligation to attend school extends to all children who reside in Germany, regardless of their status. However, since the education system is within the responsibility of the Federal States, there are some important distinctions in laws and practices (Kalkmann, 2013). Compulsory education ends at the age of 16 in several Federal States, therefore minors in those states do not have the right to enter schools when they are 16 or 17 years old. The EU legislation stipulates that Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority, yet this is the case in Germany

Important to notice is that also the EU articles, which are correctly implemented in the national legislation, do only fulfill the minimum standards. This becomes especially apparent when having a look at Article 7 of the EU legislation and Article 56 of the Germany legislation concerning residence and the freedom of movement. The freedom of movement of asylum seekers is in Germany broadly restricted and they do have to remain in the municipality where their claim is processed. Although this is in breach of Article 13 of the Universal Declaration of Human Rights, which stipulates that everyone has the right to freedom of movement and residence within the borders of each state, it is in line with the EU Reception Conditions Directive (Statewatch, 2012), which allows EU Member States to decide on the area asylum seekers have to reside in.

Article 15 of the EU legislation concerning employment is officially met by Section 61 and 39 of the German AsylVfG. The EU legislation allows Member States to decide on the conditions for granting access to the labor market and these are in Germany very restrictive for asylum seekers. So if in reality an effective access to the labor market is given can be doubted, nevertheless is the German legislation in line with the EU legislation. The same can be said about the access of asylum seekers to vocational training. Article 16 of the EU Directive only stipulates that member states may grant asylum applicants with access to vocational training and although the access is in Germany for asylum seekers almost impossible, the national legislation fulfills the EU legislation.

Further articles of the EU Reception Conditions Directive, which are fulfilled are the availability of information, documentation, medical screening, the general rules on material reception conditions and health care.

Reception Conditions Directive 2013/33/EU	Germany	Comparison
Article 5: Information • 1. Member States shall inform applicants within 15 days of established benefits and obligations relating to reception conditions; applicants should be provided with information on organisations or groups of persons that provide legal assistance and concerning reception conditions • 2. information shall be in writing, in a language the applicant understands; information may also be supplied orally	Section 47 (AsylVfG): Residence in reception centres • (4) within 15 days of the filing of an asylum application, the reception centre shall inform the foreigner, if possible in writing and in a language which he can reasonably be assumed to understand, of his rights and duties under the Act on Benefits for Asylum Applicants • (4) with the information referred to in the first sentence, the reception centre shall also inform the foreigner about who is able to provide legal counsel and which organizations can advise him on accommodation and medical care	• Article 5 of the EU legislation is met by Section 47 of the German AsylVfG +
Article 6: Documentation • 1. Member States shall ensure that within three days of lodging of application, applicant is provided with a document issued in his or her own name certifying, his or her status as an applicant; if holder is not free to move within all or a part of the territory of the Member State, the document shall also certify that fact • 4. Member States shall adopt the necessary measures to provide applicants with the document referred to in paragraph 1, which must be valid for as long as they are authorized to remain on the territory of the Member State concerned • 6. Member States shall not impose unnecessary or disproportionate documentation or other administrative requirements on applicants before granting them the rights to which they are entitled under this Directive	**S**ection 63 (AsylVfG): Certificate of permission to stay (*Aufenthaltsgestattung*) • (1) within three days of filing an asylum application, the foreigner shall be issued a certificate of permission to reside (*Aufenthaltsgestattung*) containing the holder's photograph and personal information, unless the foreigner has a residence title • (2) the certificate shall be valid for a limited period; as long as the foreigner is required to reside in a reception centre, it shall be valid for no more than three months, and otherwise for no more than six months • (3) conditions and changes to geographical restrictions may also be indicated in the certificate	• Article 6 of the EU legislation is met by Section 63 of the German AsylVfG • yet the necessary renewing of the certificate after three or six months means more bureaucratic effort for asylum seekers +
Article 7: Residence and freedom of movement • 1. applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State; assigned area shall not	Section 47 (AsylVfG): Residence in Reception Centres • (1) foreigners required to file their asylum application with a branch office of the Federal Office (Section 14 (1)), shall be required to live for a period of up to six weeks, but no longer than three months, in the reception centre responsible for	• Article 7 of the EU legislation is met by Section 47, 53, 56 and Section 57 of

affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive ● 2. Member States may decide on the residence of the applicant ● 4. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence; the applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary ● 5. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible	receiving them ● (3) during the period of obligatory residence in a reception centre, the foreigner shall be required to ensure that the competent authorities and courts can contact him. Section 53 (AsylVfG): Collective accommodation ● (1) foreigners who have filed an asylum application and are not or no longer required to live in a reception centre, should, as a rule, be housed in collective accommodation. Both the public interest and the foreigner's interests shall be taken into account in this context. ● (2) the foreigner's obligation to live in collective accommodation shall end when the Federal Office has recognized him as a person entitled to asylum or when a court has required the Federal Office to recognize him, even if an appeal has been made, as long as the foreigner is able to prove that he has found accommodation elsewhere and that this will not result in additional costs for a public authority; the same shall apply if the Federal Office or a court grants the foreigner refugee status Section 56 (AsylVfG): Geographic restrictions ● (1) permission to stay (*Aufenthaltsgestattung*) shall be limited to the district of the foreigners authority where the reception centre responsible for receiving the foreigner is located; in cases pursuant to Section 14 (2) first sentence, permission to stay shall be limited to the district of the foreigners authority where the foreigner is staying ● (2) if foreigner is required to take up residence in the district of another foreigners authority, permission to stay shall be limited to that district ● (3) geographic restrictions shall remain in force, even after expiry of the permission to reside, until they are lifted Section 57 (AsylVfG): Leaving the area of a reception centre ● (1) foreigner required to stay in a reception centre may be permitted by the Federal Office to temporarily leave the area specified in his permission to stay (*Aufenthaltsgestattung*) if compelling reasons so require ● (2) such permission is to be granted without delay in order to enable the foreigner to keep appointments with legal representatives, the United Nations High Commissioner for Refugees and organizations providing welfare services to refugees ● (3) foreigner shall need no permission to attend appointments at authorities or court hearings where his personal appearance is necessary. He shall inform the reception centre and the Federal Office of such appointments	the German AsylVfG ● although the German legislation is stricter than the European legislation requires, it still remains in line with the EU Reception Condition +

Article 8 to Article 11: Detention ● define legislation concerning the detention of asylum seekers; the most important facts are: ● 1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection ● 2. when it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively Article 9: Guarantees for detained applicants ● 1. an applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable Article 10: Conditions of detention ● 1. detention of applicants shall take place, as a rule, in specialised detention facilities; where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners Article 11: Detention of vulnerable persons and of applicants with special needs ● 1. the health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities; where vulnerable persons are detained, Member State shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.	● in the German legal system, the responsibility for detention lies with the Federal State; conditions differ very much throughout the country ● asylum seekers are normally not detained as long as their application is not finally rejected, yet there are no special detention centres for asylum seekers (Kalkmann, 2013)	● the European legislation clearly defines the rules concerning detention ● in the German legislation, the conditions differ throughout the country, therefore it cannot be compared to the EU legislation ● Germany does not possess specialized detention facilities for asylum seekers; certain Articles of the EU legislation are not fulfilled –
Article 12: Families ● Member States shall take appropriate measures to maintain as far as possible family unity as present	Section 14a (AsylVfG): Family unity ● (1) when an application for asylum is filed in accordance with Section 14, the application also includes each unmarried child under age 16 residing in the Federal	● Article 12 of the EU legislation is not sufficiently met by

within their territory, if applicants are provided with housing by the Member state concerned; such measures shall be implemented with the applicant's agreement	territory at the time without the right to freedom of movement or without a residence title, if the child had not already filed an application for asylum. ● (2) if a foreigner's unmarried child under age 16 enters Federal territory or is born here after the foreigner has applied for asylum, the Federal Office shall be notified immediately if one parent has permission to reside (*Aufenthaltsgestattung*) or is residing in Federal territory after the asylum procedure has been completed without a residence title or with a residence permit pursuant to Section 25 (5) of the Residence Act; such notification shall be the responsibility of both the child's representative as defined in Section 12 (3) and the foreigners authority; as soon as the Federal Office has received the notification, the application for asylum shall be considered filed on behalf of the child ● (3) the child's representative as defined in Section 12 (3) may waive the processing of an asylum application for the child at any time by stating that the child faces no threat of political persecution Section 47 (AsylVfG): Residence in Reception Centres ● (2) if the parents of a minor, unmarried child are required to live in a reception centre, the child may also live in the reception centre, even if he has not filed an asylum application Section 53 (AsylVfG): Collective accommodation ● (2) the foreigner's obligation to live in collective accommodation shall end when the Federal Office has recognized him as a person entitled to asylum or when a court has required the Federal Office to recognize him, even if an appeal has been made, as long as the foreigner is able to prove that he has found accommodation elsewhere and that this will not result in additional costs for a public authority; the same shall apply if the Federal Office or a court grants the foreigner refugee status. In cases pursuant to sentences 1 and 2 above the obligation shall also terminate for the foreigner's spouse and minor children	the German legislation ● when family unity is mentioned in the German legislation, it is mainly about minors, the definition of family in the Reception Conditions Directive is yet a much broader ones and encompasses spouses, unmarried partners etc.; these are not mentioned in the German legislation -
Article 13: Medical screening ● Member States may require medical screening for applicants on public health grounds	Section 62 (AsylVfG): Medical Examination ● (1) foreigners who are required to stay in a reception centre or in collective accommodation shall be required to undergo a medical examination for communicable diseases including an x-ray of the respiratory organs ● (2) the authority responsible for the foreigner's accommodation shall be informed of the examination results.	● Article 13 of the EU legislation is met by Section 62 of the German AsylVfG +
Article 14: Schooling and education of minors	● as a matter of principle, the right and the obligation to attend school extends to all	● Article 14 of the EU

• 1. Member States shall grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals for so long as an expulsion measure against them or their parents is not actually enforced • the Member State concerned may stipulate that such access must be confined to the State education system; Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority • 2. access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor; preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system as set out in paragraph 1 • 3. where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State concerned shall offer other education arrangements in accordance with its national law and practice	children who reside in Germany, regardless of their status; however, since the education system is within the responsibility of the Federal States, there are some important distinctions in laws and practices (Kalkmann, 2013) • compulsory education ends at the age of 16 in several Federal States, therefore minors in those states do not have the right to enter schools when they are 16 or 17 years old; furthermore, it has frequently been criticized that parts of the education system are insufficiently prepared to address the specific needs of newly arrived children, e.g. lack of access to language and literacy courses or to regular schools (Kalkmann, 2013)	legislation is not addressed in the German asylum legislation • the EU legislation stipulates that Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority; yet this is the case in Germany -
Article 15: Employment • 1. Member States shall ensure that applicants have access to the labor market no later than 9 months • 2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market; for reasons of labour market policies; Member States may give priority to Union citizens and nationals of States parties to the Agreement on the European Economic Area, and to legally resident third-country nationals • 3. access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a	Section 61 (AsylVfG): Employment • (1) foreigners shall not be allowed to take up paid employment as long as they are required to stay in a reception centre • (2) an asylum applicant who has lawfully stayed in the Federal territory for nine months, in derogation from Section 4 (3) of the Residence Act, be permitted to take up employment if the Federal Employment Agency has granted its approval or a statutory instrument stipulates that taking up such employment is permissible without the approval of the Federal Employment Agency; previous periods of tolerated or lawful residence shall be counted as part of the waiting period under sentence 1. Sections 39 through 42 of the Residence Act shall apply mutatis mutandis. Section 39 (AufenthG): Approval of employment for a foreigner • (1) a residence title which permits a foreigner to take up employment may only be granted with the approval of the Federal Employment Agency, in the absence of	• Article 15 of the EU legislation is met by Section 61 and 39 of the German AsylVfG • the EU legislation allows Member States decide on the conditions for granting access to the labour market and this is what Germany does, nevertheless, if an

negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified	any provisions to the contrary in statutory instruments, such approval may be granted if laid down in inter-governmental agreements, an act or a statutory instrument ● (2) The Federal Employment Agency may approve the granting of a residence permit to take up employment pursuant to Section 18 if ● a) the employment of foreigners does not result in any adverse consequences for the labour market, in particular with regard to the employment structure, the regions and the branches of the economy, and; b) no German workers, foreigners who possess the same legal status as German workers with regard to the right to take up employment or other foreigners who are entitled to preferential access to the labour market under the law of the European Union are available for the type of employment concerned or ● 2. it has established, via investigations for individual occupational groups or for individual industries in accordance with sentence 1, no. 1, letters a and b, that filling the vacancies with foreign applicants is justifiable in terms of labour market policy and integration aspects and the foreigner is not employed on terms less favourable than apply to comparable German workers; German workers and foreigners of equal status shall also be deemed to be available if they can only be placed with assistance from the Federal Employment Agency; he potential employer of a foreigner who requires approval in order to take up employment shall be required to furnish the Federal Employment Agency with information on pay, working hours and other terms and conditions of employment	effective access to the labor market is given can be doubted +
Article 16: Vocational training ● Member States may allow applicants access to vocational training irrespective of whether they have access to the labour market ● access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article 15	● conditions for access to vocational training are identical to the conditions for access to the labour market, they are not specifically addressed in asylum law ● therefore access to vocational training is severely restricted for asylum-seekers	● Article 16 of the EU Directive only stipulates that member states may grant asylum applicants with access to vocational training +
Article 17: General rules on material reception conditions and health care	(AsylbLG): ● asylum-seekers are entitled to reception conditions as defined in the Asylum	● Article 17 and 18 are fulfilled by the

• 1. Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection • 2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health • 3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence • 4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, Member States may ask the applicant for a refund. • 5. Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is partially provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive Article 18: Modalities for material reception conditions • 1. where housing is provided in kind, it should take one or a combination of the following forms: (a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones; (b) accommodation centres which guarantee an adequate standard of living; (c) private houses, flats, hotels or other premises adapted for housing applicants. • 2. without prejudice to any specific conditions of detention as provided for in Articles 10 and 11, in relation to housing referred to in paragraph 1(a), (b) and (c) of this Article Member States shall ensure that: (a) applicants are guaranteed protection of their family	Seekers' Benefits Act (AsylbLG) until a final, non-appealable decision is made on their application (Kalkmann, 2013) • benefits are significantly lower than standard social benefits granted to German citizens or to foreigners with a secure residence status (Kalkmann, 2013) • amount of the financial allowance/vouchers granted to asylum seekers on 31/12/2012 (per month, in original currency and in euros): (minimum) 78 € – 134 €, (maximum) 205 € – 346 € (Kalkmann, 2013) Section 2 (AsylbLG): • benefits are granted for a maximum period of 48 months, after this period asylum-seekers are entitled to social benefits as regulated in the Twelfth Book of the Social Code (Sozialgesetzbuch) (Kalkmann, 2013) Section 7 (AsylbLG): • if asylum-seekers have income or capital at their disposal, they are legally required to use up these resources before they can receive benefits under the Asylum Seekers' Benefits Act	national AsylbLG 

life; (b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non- governmental organisations and bodies; (c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access in order to assist the applicants. Limits on such access may be imposed only on grounds relating to the security of the premises and of the applicants.		
Article 19: Health care ● 1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders ● 2. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed	Section 4 of the AsylbLG: Benefits during illness, pregnancy, delivery ● (1) law restricts health care for asylum-seekers to instances of acute diseases or pain ● (2) pregnant women and women who have recently given birth are entitled to medical and nursing help	● Article 19 of the EU Directive is met by Section 4 of the AsylbLG +

5.2.2 Austria

In Austria, the Basic Provision Agreement (Grundversorgungsvereinbarung)[67] contributes to the implementation of the EU Directive, laying down competences of the government and state, as well as defining services and target groups. The Federal Basic Provision Act 2005[68], the Federal Act on the Exercise of Alien's Police[69], the Compolsury Education Act (SchPflG)[70] and the Aliens Employment Act (Ausländerbeschäftigungsgesetz)[71], are further of importance to compare the EU Reception Conditions with the Austrian legislation. Since Austria does have Federal States, which do occasionally have different rules concerning the reception conditions, the comparison of the EU Directive with the national legislation is sometimes complicated. Nevertheless, enough information is provided to come to a sound conclusion and decide if Austria fulfills the notions of the EU Directive.

After having compared the European Reception Conditions Directive with the corresponding Austrian legislation, it becomes apparent that Austria does not fulfill all its obligations. This especially encompasses rules on the provision of crucial information for asylum seekers, detention, family unity and the schooling and education of minors.

According to the EU Directive, asylum applicants shall within 15 days be informed about their benefits and obligations relating to the reception conditions. The 15 day provision is not included in the Austrian legislation and further it depends on the federal state, to which extent information are provided.

The recast EU Directive, illustrates very precise rules on the detention of asylum seekers and these are not implemented in Austria. For instance the specification to provide special detention facilities for asylum seekers, which are separated from prisons, is not necessarily given. The responsibility for detention lies with the Federal State and therefore the conditions differ tremendously throughout the country.

In the Reception Conditions Directive it is also illustrated that member states shall take appropriate measures to maintain as far as possible family unity, yet this is not sufficiently provided for in the Austrian legislation. When family unity is mentioned in the Austrian legislation, it is about minors, the definition of family in the Reception Conditions Directive is however a much broader one and encompasses for instance spouses and unmarried partners.

As a matter of principle, the right and the obligation to attend school extends to all children who reside in Austria, regardless of their status. Nevertheless, compulsory education ends with the 9th grade and therefore education for asylum seekers who are older than 15 years old may be difficult. Since the EU legislation stipulates that Member States shall not

[67] See https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003460
[68] See https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20004240
[69] See http://www.refworld.org/docid/46adc4932.html
[70] See http://www.jusline.at/Schulpflichtgesetz_(SchPflG).html
[71] See https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008365

withdraw secondary education for the sole reason that the minor has reached the age of majority, the national legislation does not fulfill the notion of the EU Directive.

Articles of the EU Directive, which are sufficiently implemented in the national legislation, encompass the notion on documentation, the residence and freedom of movement, medical screening, material reception conditions, employment and health care. In Austria, differently to the situation in Germany, asylum seekers do have access to the entire territory of Austria. In this case it could be said, that the Austrian perception of the freedom of movement is a more liberal one than the EU Directive requires.

Yet, also the articles which are correctly implemented in the national legislation, do only fulfill the minimum standard. Article 15 of the EU legislation concerning employment is officially met by Article 4 of the national Aliens' Employment Act. Asylum seekers do have access to the labor market; nevertheless there are many restrictions in place which make it difficult for find a real job. Still, the national legislation is in line with the notion of the EU Direction. The same can be said about the access of asylum seekers to vocational training. Article 16 of the EU Directive only stipulates that member states may grant asylum applicants with access to vocational training and although the access is in Austria for asylum seekers almost impossible, the national legislation fulfills the EU legislation.

Reception Conditions Directive 2013/33/EU	Austria	Comparison
Article 5: Information ● 1. Member States shall inform applicants within 15 days of established benefits and obligations relating to reception conditions; applicants should be provided with information on organizations or groups of persons that provide legal assistance and concerning reception conditions ● 2. information shall be in writing, in a language the applicant understands; information may also be supplied orally	● asylum seekers receive information by initial reception centers but it depends on the Federal State what about and to what extent ● the provision that Member States shall inform applicants within 15 days cannot be found in Austrian law Article 6 Basic Law Provision:: ● the information, consulting and social care of the foreigners is included in the Basic Law Provision and shall be provided by suitable staff, supported by translators information about orientation in Austria and voluntary return	● Article 5 of the EU Directive is not directly implemented in Austrian national law -
Article 6: Documentation ● 1. Member States shall ensure that within three days of lodging of application, applicant is provided with a document issued in his or her own name certifying, his or her status as an applicant; if holder is not free to move within all or a part of the territory of the Member State, the document shall also certify that fact ● 4. Member States shall adopt the necessary measures to provide applicants with the document referred to in paragraph 1, which must be valid for as long as they are authorized to remain on the territory of the Member State concerned ● 6. Member States shall not impose unnecessary or disproportionate documentation or other administrative requirements on applicants before granting them the rights to which they are entitled under this Directive	Article 17 Asylum 2005: Conduct of Procedure ● (6) asylum seeker shall be issued with a procedure card within three days Article 50 Asylum Act 2005: Cards for Asylum Seekers ● (1) an asylum seeker shall be issued with a procedure card at the initial reception center; this card shall confer entitlement to stay at the initial reception center and to use the welfare support services there, in accordance with the provisions of the Federal Act Regulating Basic Welfare Support of Asylum Seekers in Admission Procedures and of Certain Other Aliens (GVG-B 2005), FLG No. 405/1991; the procedural stages that are required for the purpose of completing the admission procedure may be recorded using the procedure card. ● (2) the procedure card shall in particular contain the designations "Republic of Austria" and "Procedure Card", the name, sex, date of birth and a photograph of the asylum seeker; yet Federal States are responsible for them Article 51 Asylum Act 2005: Residence Entitlement Card ● (1) an asylum seeker whose procedure is to be admitted shall be issued with a residence entitlement card; card shall be valid until an enforceable decision is rendered, until the discontinuation or the non-	● Article 6 of the EU Directive is met by Article 50, 51 of the Asylum 2005 and +

	relevance of the procedure ● (2) the residence entitlement card shall serve as proof of identity for procedures pursuant to the present federal act and as proof of lawfulness of residence in the federal territory; residence entitlement card shall be returned by the alien to the Federal Asylum Agency upon completion of the procedure or in the event of withdrawal of right of residence ● (3) the specific layout of the residence entitlement card shall be regulated by order of the Federal Minister of the Interior; the residence entitlement card shall in particular contain the designations "Republic of Austria" and "Residence Entitlement Card", the name, sex, date of birth, nationality, a photograph and the signature of the asylum seeker and also the title of the authority, date of issue and signature of the authorizing official	
Article 7: Residence and freedom of movement ● 1. applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State; assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive ● 2. Member States may decide on the residence of the applicant ● 4. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence; the applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary ● 5. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible	● after submitting their asylum application at the initial reception center (EAST), asylum seekers are obliged to stay within the center for up to 120 hours (exceptionally 148 hours), until the first interview on the asylum application took place; during this first phase of the admissibility procedure, they receive a red card, which shall be replaced by a green card (procedure card) after the first interview, which indicates the tolerated stay in the district of the reception centre. ● asylum seekers whose application is admitted to the regular procedure receive the white card, which is valid until the final decision on the application and allowing free movement on the entire territory of Austria; if they stay away from their designated place (reception facility) without permission for more than 3 days, basic care will be withdrawn (Knapp, 2013)	● Article 7 of the EU Directive is met by the Austrian legislation +
Article 8 to Article 11: Detention ● define legislation concerning the detention of asylum seekers; the most important facts are: ● 1. Member States shall not hold a person in detention	● in general, in Austria the laws on detention of asylum varies in different regions; makes it difficult to compare the EU and national legislation; special facilities for asylum seekers are not given ● the Aliens`s Police Law (FPG) provides the most important source	● Article 8 to 11 are not fulfilled in the Austrian legislation

for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection ● 2. when it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively Article 9: Guarantees for detained applicants ● 1. an applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable Article 10: Conditions of detention ● 1. detention of applicants shall take place, as a rule, in specialised detention facilities; where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners Article 11: Detention of vulnerable persons and of applicants with special needs ● 1. the health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities; where vulnerable persons are detained, Member State shall ensure regular monitoring and adequate support taking into account their particular situation, including their health	Article 76 Aliens' Police Law: Detention Pending Deportation ● (1) aliens may be arrested and detained (detention pending deportation), provided that such action is necessary as procedural guarantee in connection with the imposition of a residence prohibition or expulsion order, until commencement of enforceability thereof, or to guarantee deportation, forcible return or transit; detention pending deportation may be imposed on aliens lawfully resident in the federal territory if, on the basis of certain facts, it may be assumed that they are likely to evade the procedure Article 77 Alien's Police Law: More Lenient Measures ● (1) the authority may refrain from imposing detention pending deportation if there is reason to assume that its purpose can be achieved by use of more lenient measures; in the case of minors, the authority shall be required to use more lenient measures unless there is reason to assume that the purpose of detention pending deportation cannot be achieved thereby	-
Article 12: Families ● Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing by the Member state concerned; such measures shall be implemented with the applicant's agreement	Article 6 Grundversorgungsvereinbarung: ● 1. Respect of family unity is provided when taking residence Article 7 Grundversorgungsvereinbarung: • Family unity especially important when taking care of minors	● Article 12 of the EU legislation is not sufficiently implemented in the national legislation of Austria -

Article 13: Medical screening ● Member States may require medical screening for applicants on public health grounds	● Medical screening is not a must in Austria but can be applicable if necessary	● Article 13 is met by Austrian national legislation +
Article 14: Schooling and education of minors ● 1. Member States shall grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals for so long as an expulsion measure against them or their parents is not actually enforced ● the Member State concerned may stipulate that such access must be confined to the State education system; Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority ● 2. access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor; preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system as set out in paragraph 1 ● 3. where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State concerned shall offer other education arrangements in accordance with its national law and practice	Article 1 SchPflG Personenkreis ● for all children, residing in Austria for a longer period is school attendance compulsary ● school attendance is mandatory for all children living permanently in Austria until they have finished 9 th grade; education for asylum seekers who are older than 15 may be difficult ● asylum-seeking children attend primary and secondary school after their asylum application has been admitted to the regular procedure; as long as they reside in the initial reception centre they do not have access to education (Kanpp, 2013)	● Article 14 is only partly met by the corresponding national legislation -
Article 15: Employment ● 1. Member States shall ensure that applicants have access to the labor market no later than 9 months ● 2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring	Articel 4 Aliens‘ Employment Act ● (1) an employer shall be granted if the foreign national has been admitted to asylum procedure, with admission dating back three months, and enjoys factual protection from deportation or holds a residence title pursuant to Article 12 or 13 of the 2005 Asylum Act (AsylG 2005) or enjoys exceptional leave to remain in Austria	● Article 15 of the EU Directive is met by the Austrian national legislation, although the Austrian law is quite restrictive

that applicants have effective access to the labour market; for reasons of labour market policies; Member States may give priority to Union citizens and nationals of States parties to the Agreement on the European Economic Area, and to legally resident third-country nationals ● 3. access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified	(Duldung) an employment permit upon request for the foreign national indicated in the request if the situation and the development of the labour market permit such an employment (labour market test), and if it does not conflict with important public or overall economic interests, and ● the Foreigner Employment Law states that an employer can obtain an employment permit for an asylum seeker, three months after the submission date of the asylum application, provided that no final decision in the asylum procedure has been taken prior to that date ● the possibility of obtaining access to the labour market is restricted by a procedure (Labour Market Test/Ersatzkräfteverfahren), which requires proof that the respective vacancy cannot be filled by an Austrian citizen, citizens of the EU or a legally residing third country national with access to the labour market (longtime resident, family member etc.) ● restrictions on sectors in which asylum seekers can work	+
Article 16: Vocational training ● Member States may allow applicants access to vocational training irrespective of whether they have access to the labour market ● access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article 15	● asylums seekers in Austria do normally not have access to vocational training	● Article 16 of the EU Directive is met by the national legislation since Member States only may allow applicants access to vocational training +
Article 17: General rules on material reception conditions and health care ● 1. Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection ● 2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health ● 3. Member States may make the provision of all or some of the material reception conditions and health	Article 1: Zielsetzung der Grundversorgungsvereinbarung ● (1) Ziel der Vereinbarung ist die bundesweite Vereinheitlichung der Gewährleistung der vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde, die im Bundesgebiet sind, im Rahmen der bestehenden verfassungsrechtlichen Kompetenzbereiche; die Grundversorgung soll bundesweit einheitlich sein, partnerschaftlich durchgeführt werden, eine regionale Überbelastung vermeiden und Rechtssicherheit für die betroffenen Fremden schaffen Article 2: Begriffsbestimmunge/Zielgruppe der Grundversorgungsvereinbarung ● (1) Zielgruppe dieser Vereinbarung sind hilfs- und schutzbedürftige	● Article 17 and 18 are sufficiently met in the Austrian legislation and can be ● more precise facts are to be found in the Austrian "Grundversorgungsvereinbarung" (https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003460), which is not available in English

care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence ● 4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, Member States may ask the applicant for a refund. ● 5. Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is partially provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive Article 18: Modalities for material reception conditions ● 1. where housing is provided in kind, it should take one or a combination of the following forms: (a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones; (b) accommodation centres which guarantee an adequate standard of living; (c) private houses, flats, hotels or other premises adapted for housing applicants. ● 2. without prejudice to any specific conditions of detention as provided for in Articles 10 and 11, in relation to housing referred to in paragraph 1(a), (b) and (c) of this Article Member States shall ensure that: (a) applicants are guaranteed protection of their family life; (b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non- governmental organisations and bodies; (c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access in order to assist the applicants. Limits on such	Fremde, die unterstützungswürdig sind; hilfsbedürftig ist, wer den Lebensbedarf für sich und die mit ihm im gemeinsamen Haushalt lebenden unterhaltsberechtigten Angehörigen nicht oder nicht ausreichend aus eigenen Kräften und Mitteln beschaffen kann und ihn auch nicht oder nicht ausreichend von anderen Personen oder Einrichtungen erhält ● Article 6 and 9 of the „Grundversorgungsvereinbarung“ explain what is entailed in the material reception conditions and a precise cost report is provided	+

access may be imposed only on grounds relating to the security of the premises and of the applicants.		
Article 19: Health care ● 1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders ● 2. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed	● every asylum seeker who receives Basic Care has a health insurance; treatment or cure that is not covered by health insurance may be paid upon request by the federal provinces or Ministry for the Interior departments for Basic Care to the asylum seeker ● if Basic Care is withdrawn, asylum seekers are still entitled to emergency care and essential treatment	● Article 19 of the EU Directive is met by the Austrian national law +

5.2.3 Belgium

For comparing the national legislation with the EU Reception Conditions Directive, the Belgian Law of 15 December regarding the entry, residence, settlement and removal of aliens (Aliens Act/Vreemdelingenwet (VW)/ Loi 1980)[72] and the Law of 12 January regarding the reception of asylum seekers and other categories of aliens (Reception Act/ Loi d'Accueil/ Opvangwet)[73] are the most important instruments. Essential are also the Royal Decree Foreign Workers (AR Travailleurs étrangers/ KB buitnelandse werknemers)[74] and the 29 Juin 1983 Loi concernant l'obligation scolaire[75].

After having compared the European Reception Conditions Directive with the corresponding Belgian legislation, it becomes apparent that Belgium does not fulfill all its obligations. This especially encompasses rules on the provision of documentation for asylum seekers, detention and family unity. Nevertheless, its legislation seems in general to be more liberal than the ones of Germany and Austria.

The recast EU Directive illustrates very precise rules on the detention of asylum seekers and these are not implemented in Belgium. For instance, the specification that detention of asylum seekers should be a measure of last resort is not given in Belgium. The EU Reception Conditions Directive is not considered to be applicable on detention situations.

In the Belgian legislation there is also no explicit information to be found concerning family unity and since only the legislation in assessed and not the proceedings in reality, it is stated that Article 12 of the EU Directive is not sufficiently implemented in the national legislation.

Articles of the EU Directive, which are sufficiently implemented in the national legislation, encompass the notion on information, residence and freedom of movement, medical screening, the schooling and education of minors, employment, vocational training and healthcare.

In Belgium, differently to the situation in Germany, asylum seekers do have access to the entire territory of Belgium. In this case it could be said, that the Belgian perception of the freedom of movement is a more liberal one than the EU Directive requires. Also the rules on the education of minors are in Belgium more sufficient implemented than in Germany or Austria. Asylum seekers do have until their 18th Birthday access to school education and are also supported later on. Article 15 of the EU legislation concerning employment is also officially met by the national legislation of Belgium; the same can be said about the access of asylum seekers to vocational training.

[72] See https://dofi.ibz.be/sites/dvzoe/FR/Documents/19801215_F.pdf
[73] See http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2007011252&table_name=wet
[74] http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1999060935&table_name=loi
[75] See http://www.jeminforme.be/images/enseignementsecondaire/LB-ObligationScolaire-29061983-Maj27082013.pdf

Reception Conditions Directive 2013/33/EU	Belgium	Comparison
Article 5: Information ● 1. Member States shall inform applicants within 15 days of established benefits and obligations relating to reception conditions; applicants should be provided with information on organisations or groups of persons that provide legal assistance and concerning reception conditions ● 2. information shall be in writing, in a language the applicant understands; information may also be supplied orally	● according to Article 14 and 15 of the Reception Act, asylum seekers receive information regarding benefits and obligations, which are available in 11 languages Article 14 (Reception Act): ● bij de toewijzing van de verplichte plaats van inschrijving biedt het Agentschap de asielzoeker een informatiebrochure aan; deze is in de mate van het mogelijke opgesteld in een taal die de asielzoeker begrijpt en beschrijft met name zijn rechten en plichten zoals beschreven in deze wet of in de organieke wet van 8 juli 1976 betreffende de openbare centra voor maatschappelijk welzijn; voorts bevat ze de adressen en verdere gegevens van de bevoegde instanties en van de verenigingen die hen medische, sociale en juridische bijstand kunnen verlenen ● zodra de asielzoeker in de hem toegewezen opvangstructuur aankomt, wordt deze informatie aangevuld door het aan de asielzoeker overgemaakt huishoudelijk reglement van de opvangstructuur bedoeld in artikel 19 Article 15 (Reception Act): ● het Agentschap of de partner ziet erop toe dat de begunstigde van de opvang toegang heeft tot sociale tolk- en vertaaldiensten in het kader van de uitoefening van zijn rechten en plichten zoals deze in deze wet worden beschreven ● het Agentschap of de partner kan overeenkomsten afsluiten met diensten of organisaties die gespecialiseerd zijn op het vlak van sociaal tolk- en vertaalwerk	● Article 5 of the EU Directive is not directly implemented in Belgian national law ● the provision that Member States shall inform applicants within 15 days cannot be found in Belgian law ● nevertheless due to the proceedings of the Belgian asylum procedure, it can be assumed that asylum seekers receive necessary information within 15 days after their application (see http://fedasil.be/en/content/reception-asylum-seekers) +
Article 6: Documentation ● 1. Member States shall ensure that within three days of lodging of application, applicant is provided with a document issued in his or her own name certifying, his or her status as an applicant; if holder is not free to	● no information given in the legislation about the documentation of asylum seekers; at least not in the way the EU legislation requires	● Article 6 of the EU legislation is not implemented in the national legislation of Belgium

move within all or a part of the territory of the Member State, the document shall also certify that fact ● 4. Member States shall adopt the necessary measures to provide applicants with the document referred to in paragraph 1, which must be valid for as long as they are authorized to remain on the territory of the Member State concerned ● 6. Member States shall not impose unnecessary or disproportionate documentation or other administrative requirements on applicants before granting them the rights to which they are entitled under this Directive		-
Article 7: Residence and freedom of movement ● 1. applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State; assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive ● 2. Member States may decide on the residence of the applicant ● 4. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence; the applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary ● 5. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible	● in Belgium, asylum seekers are free to move throughout the country Article 9 Reception Act: ● de opvang, bedoeld in artikel 3, wordt toegekend door de opvangstructuur of het openbaar centrum voor maatschappelijk welzijn toegewezen als verplichte plaats van inschrijving , onverminderd de toepassing van artikel 11, § 3, laatste lid, of van artikel 13 Article 10 Reception Act: ● het Agentschap wijst een verplichte plaats van inschrijving toe aan vreemdelingen : 1° die het Rijk binnengekomen zijn zonder te beantwoorden aan de voorwaarden die zijn vastgelegd in artikel 2 van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen en een asielaanvraag hebben ingediend; 2° die een asielaanvraag ingediend hebben, nadat hun verblijfsvergunning was verlopen; 3° die behoren tot de categorieën van personen die bij een koninklijk besluit vastgesteld na overleg in de Ministerraad zijn aangewezen in het kader van bijzondere maatregelen met het oog op de tijdelijke bescherming van personen. 4° die gemachtigd zijn tot een verblijf in het Rijk op grond van artikel 57/30, § 1, of artikel 57/34 van de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen.	● Article 7 of the EU legislation is met by the national legislation of Belgium +

Article 8 to Article 11: Detention ● define legislation concerning the detention of asylum seekers; the most important facts are: ● 1. Member States shall not hold a person in detention for the sole reason that he or she is an applicant in accordance with Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection ● 2. when it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively Article 9: Guarantees for detained applicants ● 1. an applicant shall be detained only for as short a period as possible and shall be kept in detention only for as long as the grounds set out in Article 8(3) are applicable Article 10: Conditions of detention ● 1. detention of applicants shall take place, as a rule, in specialised detention facilities; where a Member State cannot provide accommodation in a specialised detention facility and is obliged to resort to prison accommodation, the detained applicant shall be kept separately from ordinary prisoners Article 11: Detention of vulnerable persons and of applicants with special needs ● 1. the health, including mental health, of applicants in detention who are vulnerable persons shall be of primary concern to national authorities; where vulnerable persons are detained, Member State shall ensure regular monitoring and adequate support taking into account their particular situation, including their health.	● the EU Reception Conditions Directive is not considered to be applicable on detention situations (Wissing, 2014) ● rules on detention of asylum seekers is stricter in Belgium than the EU legislation	● Article 8-11 of the EU legislation are not implemented in the national legislation -
Article 12: Families ● Member States shall take appropriate measures to maintain as far as possible family unity as present	● No information to be found in national legislation of Belgium concerning unity of families	● Article 12 of the EU legislation is not implemented in the national legislation of Belgium

within their territory, if applicants are provided with housing by the Member state concerned; such measures shall be implemented with the applicant's agreement		-
Article 13: Medical screening ● Member States may require medical screening for applicants on public health grounds	● Medical screening of all refugees is carried out in reception centres	● Article 14 of the EU legislation is met by the legislation of Belgium +
Article 14: Schooling and education of minors ● 1. Member States shall grant to minor children of applicants and to applicants who are minors access to the education system under similar conditions as their own nationals for so long as an expulsion measure against them or their parents is not actually enforced ● the Member State concerned may stipulate that such access must be confined to the State education system; Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority ● 2. access to the education system shall not be postponed for more than three months from the date on which the application for international protection was lodged by or on behalf of the minor; preparatory classes, including language classes, shall be provided to minors where it is necessary to facilitate their access to and participation in the education system as set out in paragraph 1 ● 3. where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State concerned shall offer other education arrangements in accordance with its national law and practice	Article 1 Loi concernant l'obligation scolaire ● le mineur est soumis à l'obligation scolaire pendant une période de douze années commençant avec l'année scolaire qui prend cours dans l'année où il atteint l'âge de six ans et se terminant à la fin de l'année scolaire, dans l'année au cours de laquelle il atteint l'âge de dix-huit ans Article 35 Reception Act: ● onverminderd de naleving van de regels inzake de toegang tot beroepsopleidingen worden er cursussen en opleidingen voorgesteld aan de begunstigde van de opvang die door de opvangstructuur of door derden georganiseerd worden	● Article 14 of the EU legislation is met by the national legislation of Belgium ● in Belgium all children under 18 are obligated to go to school ● asylum seekers do have the possibility to continue their studies +
Article 15: Employment ● 1. Member States shall ensure that applicants have access to the labor market no later than 9 months	Articles 3 Royal Decree Foreign Workers: ● le permis de travail appartient à l'une des catégories suivantes : 1° le permis de travail A : le permis de travail d'une durée illimitée et	● Articles 15 of the EU Directive is met by Articles 3 and 17 of the

• 2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market; for reasons of labour market policies; Member States may give priority to Union citizens and nationals of States parties to the Agreement on the European Economic Area, and to legally resident third-country nationals • 3. access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified	valable pour toutes les professions salariées; 2° le permis de travail B : le permis de travail d'une durée déterminée, de maximum douze mois et limité à l'occupation auprès d'un seul employeur; (3° le permis de travail C : le permis de travail d'une durée limitée et valable pour toutes les professions salariées.) Articles 17 Royal Decree Foreign Workers: • le permis de travail C est accordé : a) aux ressortissants étrangers ayant introduit une demande d'asile après le 31 mai 2007 et qui, six mois après avoir introduit leur demande d'asile, n'ont pas reçu notification de la décision du Commissaire général aux Réfugiés et aux Apatrides, jusqu'à ce qu'une décision soit notifiée par celui-ci ou, en cas de recours, jusqu'à ce qu'une décision soit notifiée par le Conseil du Contentieux des Etrangers; b) aux ressortissants étrangers ayant introduit une demande d'asile avant le 1er juin 2007, dont la demande a été jugée recevable ou n'a pas fait l'objet d'une décision quant à sa recevabilité, jusqu'à ce qu'une décision soit notifiée quant au bien-fondé de leur demande de reconnaissance de la qualité de réfugié par le Commissaire général aux Réfugiés et aux Apatrides ou, en cas de recours, par le Conseil du Contentieux des Etrangers; aux ressortissants étrangers bénéficiant du statut de protection subsidiaire durant la période pendant laquelle leur séjour est limité; aux ressortissants étrangers qui, dans le cadre des mesures de la lutte contre la traite des êtres humains, se sont vus délivrer un titre de séjour, en application de l'article 110bis de l'arrêté royal du 8 octobre 1981 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers;	national legislation • according to Articles 17 of the Royal Decree Foreign Work, asylum seekers can work after six months • EU notion is met, although in practice the access to the labor market is highly restrictive +
Article 16: Vocational training • Member States may allow applicants access to vocational training irrespective of whether they have access to the labour market • access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article 15	• adult asylum seekers are entitled to vocational training (Wissing, 2014)	• Article 16 of the EU Directive are met by the national legislation of Belgium +
Article 17: General rules on material reception conditions and health care	Article 3 Reception Act: • elke asielzoeker heeft recht op een opvang die hem in staat moet	• Articles 17 of the EU legislation is sufficiently met by Articles 3,

• 1. Member States shall ensure that material reception conditions are available to applicants when they make their application for international protection • 2. Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health • 3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence • 4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, Member States may ask the applicant for a refund. • 5. Member States may grant less favourable treatment to applicants compared with nationals in this respect, in particular where material support is partially provided in kind or where those level(s), applied for nationals, aim to ensure a standard of living higher than that prescribed for applicants under this Directive Article 18: Modalities for material reception conditions • 1. where housing is provided in kind, it should take one or a combination of the following forms: (a) premises used for the purpose of housing applicants during the examination of an application for international protection made at the border or in transit zones; (b) accommodation centres which guarantee an adequate standard of living; (c) private houses, flats, hotels or other premises adapted for housing applicants. • 2. without prejudice to any specific conditions of detention as provided for in Articles 10 and 11, in relation to housing referred to in paragraph 1(a), (b) and (c) of this Article Member States shall ensure that: (a) applicants are guaranteed protection of their family	stellen om een leven te leiden dat beantwoordt aan de menselijke waardigheid; onder opvang wordt de materiële hulp verstaan die op grond van deze wet toegekend wordt of de maatschappelijke dienstverlening die wordt verstrekt door de openbare centra voor maatschappelijk welzijn overeenkomstig de organieke wet van 8 juli 1976 betreffende de openbare centra voor maatschappelijk welzijn Article 34 Reception Act: • de begunstigde van de opvang die verblijft in een opvangstructuur heeft recht op een dagvergoeding; het Agentschap of de partner organiseert, voor de opvangstructuren, de betaling van een dagvergoeding die per week en per persoon wordt vastgelegd Article 45 Reception Act: • ingeval de begunstigde van de opvang een ernstige overtreding begaat van de voorschriften en werkingsregels die van toepassing zijn op de opvangstructuren bedoeld in artikel 19 kan er hem een sanctie opgelegd worden; bij de keuze van de sanctie wordt er rekening gehouden met de aard en de omvang van de overtreding evenals met de concrete omstandigheden waarin deze werd begaan • Enkel de volgende sancties mogen worden opgelegd :1° de formele verwittiging met vermelding in het sociaal dossier bedoeld in artikel 32; 2° de tijdelijke uitsluiting van deelname aan de activiteiten georganiseerd door de opvangstructuur; 3° de tijdelijke uitsluiting van de mogelijkheid tot het verrichten van betaalde prestaties van gemeenschapsdiensten zoals bedoeld in artikel 34; 4° de beperking van de toegang tot sommige diensten; 5° de verplichting om taken van algemeen nut te verrichten, waarvan de niet-uitvoering of de gebrekkige uitvoering als een nieuwe overtreding beschouwd kan worden; 6° de overplaatsing, zonder verwijl, van de begunstigde van de opvang naar een andere opvangstructuur; [1 7° de tijdelijke uitsluiting van het recht op de materiële hulp in een opvangstructuur, voor een maximale duur van een maand.]1	34 and 45 of the Reception Act +

life; (b) applicants have the possibility of communicating with relatives, legal advisers or counsellors, persons representing UNHCR and other relevant national, international and non- governmental organisations and bodies; (c) family members, legal advisers or counsellors, persons representing UNHCR and relevant non-governmental organisations recognised by the Member State concerned are granted access in order to assist the applicants. Limits on such access may be imposed only on grounds relating to the security of the premises and of the applicants.		
Article 19: Health care • 1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illnesses and of serious mental disorders • 2. Member States shall provide necessary medical or other assistance to applicants who have special reception needs, including appropriate mental health care where needed	Article 23 Reception Act: • de begunstigde van de opvang heeft recht op de medische begeleiding die noodzakelijk is om een leven te kunnen leiden dat beantwoordt aan de menselijke waardigheid Article 24 Reception Act: • onder medische begeleiding worden de medische hulpverlening en verzorging verstaan, ongeacht of zij opgenomen zijn in de nomenclatuur zoals voorzien in artikel 35 van de gecoördineerde wet betreffende de verplichte verzekering voor geneeskundige verzorging en uitkeringen van 14 juli 1994, of tot het dagelijkse leven behoren; de Koning bepaalt, bij een besluit vastgesteld na overleg in de Ministerraad, enerzijds de medische hulp en verzorging die in genoemde nomenclatuur opgenomen zijn, maar niet aan de begunstigde van de opvang verzekerd worden omdat zij manifest niet noodzakelijk blijken te zijn, en anderzijds, de medische hulp en verzorging die tot het dagelijkse leven behoren en, hoewel niet opgenomen in genoemde nomenclatuur, wel verzekerd worden aan de begunstigde van de opvang Article 30 Reception Act: • de noodzakelijke psychologische begeleiding wordt aan de begunstigde van de opvang verzekerd; met het oog hierop kan het Agentschap of de partner, overeenkomstig de nadere regels bepaald door de Koning, overeenkomsten afsluiten met gespecialiseerde instanties en instellingen	• Article 19 of the EU legislation is met by Articles 23, 24 and 30 of the Belgian legislation +

5.2.3 Overview of the Results

Reception Conditions Directive 2013/33/EU	Germany	Austria	Belgium
Article 5: Information	+	-	+
Article 6: Documentation	+	+	-
Article 7: Residence and freedom of movement	+	+	+
Article 8 to Article 11: Detention	-	-	-
Article 12: Families	-	-	-
Article 13: Medical screening	+	+	+
Article 14: Schooling and education of minors	-	-	+
Article 15: Employment	+	+	+
Article 16: Vocational training	+	+	+
Article 17 - 18: Rules on material reception conditions and health care	+	+	+
Article 19: Health care	+	+	+

The overview shows that Germany, Austria and Belgium are quite similar concerning their legislation on asylum. All do have the articles on residence and freedom of movement, employment, vocational training, medical screening, material reception conditions and health care sufficiently implemented. Albeit, this is hardly a surprise since especially these articles of the Reception Conditions Directly, are so broadly phrased and do demand such low minimum standards that they are probably impossible not to meet.

The articles on detention, family unity and the schooling and education of minors however, were not met by the three countries. Obviously, in these areas is a lot of catching-up to do, since they are decisive for the well-being of asylum seekers. Yet, it must be said that the EU countries do have time until 2015 until the Directive has to be fully implemented in the national legislations.

However, the comparisons of the results of the countries do not only show similarities. Especially Germany and Belgium are quite different in their approach towards asylum seekers. Whereas Germany mostly only fulfills the minimum standards of the EU notions, Belgium is more liberal. Austria should probably be placed in the middle of the two other countries, even though it is also more on the restrictive side. Based on the result, I would expect other Western European member states to detect similar features when comparing their asylum legislation to the European one.

6. Conclusion

The main aim of the thesis was to find out whether the EU promotes a more liberal or a more restrictive strategy of asylum policy compared to the EU member states. Furthermore, it was aimed at assessing if national politicians achieved to successfully upload restrictive policies onto the EU level. I came to a conclusion by first, comparing the EU Reception Conditions Directive of 2003, with the recast of 2013 and second, by comparing the EU Reception Conditions Directive of 2013, with the national legislation of Germany, Austria and Belgium.

According to the theory of Guiraudon (2000) and Maurer & Parker (2007), the Europeanization of asylum is based on the strategy of venue-shopping. Political actors moved policy-making on asylum from the national level to the new EU policy-venue, in order to install more restrictive rules on asylum. Due to social groups and institutions, as well as domestic constitutional principles, this was no longer achievable on the national level. Assuming this kind of motivation still prevails to advance the Europeanization of asylum, what should be expected in terms of answers for my research questions? According to Guiraudon (2000) and Maurer & Parker (2007), we would expect to see increasing restrictions of the rights of asylum seekers and Fekete (2005) would be right in her assumptions that the CEAS only aims at guarding states from the refugee burden, rather than protecting the rights of asylum seekers.

Nevertheless, my results constitute another perception. After having illustrated which changes were made to the original Reception Conditions Directive of 2003, it can be stated that the policy was improved in favor of the asylum seekers. Also the other directives and regulations of the CEAS, which I mentioned in the chapter of the "Development of a Common European Asylum System" were amended and at least on paper, the recast directives and regulations seem to be able to positively influence the life of people seeking refuge. Although the real added value can earliest be assessed by 2015, when all member states are expected to have the recasts fully included in the national legislation, it can definitely be concluded that national politicians did not achieve to tighten the rules on asylum.

This can also be shown by the comparison of the EU and national legislation. The analysis shows that the national legislations concerning the reception conditions in Germany, Austria and Belgium are stricter than the EU Directive calls for. If the national politicians would have achieved to upload stricter asylum policies to the EU level, the roles would be twisted and the EU would push its member states towards stricter rules on asylum. The countries seem to aim at implementing the minimum standards, without necessarily infringing the rules set out in the EU legislation. Nevertheless, calling the EU Directive a liberal approach towards asylum protection would go too far. The CEAS aims at providing an area of protection for asylum seekers and refugees, yet when analyzing the Reception Conditions Directive, this cannot be detected. The phrasing of the member states responsibilities is often too broad and filled with exceptions, allowing member states to implement strict measures. The changes of the regulations and directives of the CEAS over the last decade admittedly do show that the EU is interested in constantly improving its asylum system and also the situation for asylum seekers, yet to fulfill its aim of providing an area of protection for asylum seekers, tremendous amendments need to be implemented.

The results of the comparisons do not preclude the possibility that EU member states did indeed achieve to block further improvements, which would have made the Reception Conditions Directive more efficient and liberal. It must not be forgotten that Europeanization is always a "two-way street, in which states affect the EU at the same time as the EU affects states" (Jordan & Liefferink, 2003, p. 2). EU member do not only passively receive domestic policies and implement them but have the opportunity to influence EU politics, which they will adapt later on (Börzel 2002, 2003). Especially economically and politically successful Western European countries do have the opportunity to be pace-setters and "push" their favored policy forward.

Nevertheless, Maurer & Parkes (2007) elaborate that to achieve a successfully policy venue change, two prerequisites must be given: "a dimension that legitimates actors' presence and function in the policy process", as well as "a dimension that legitimates the pursuit of their preferences" (Maurer & Parker, 2007, p.3). Actors need to be able to exploit the opportunities they are given due to the venue-change. And this is where the national politicians, trying to implement stricter asylum policies on the EU level seemingly failed. Lavenex (2006, p. 1298), concludes that the previous aim of politician to change the policy venue to tighten have been "caught up in a supranational logic of integration".

When Guiraudon (2000) did write her article venue-shopping, the EU was still mainly intergovernmental in many policy areas. The rather supranational nature of the asylum policy changed only recently. EU institution received more power, e.g. due to the Amsterdam Treaty in 1999 when the role of the Commission was strengthened, as well as the role of the European Court of Justice. Furthermore, the Lisbon Treaty of 2009 gave additional power to the EU institutions and the Charter of Fundamental Rights was integrated into the EU's legal order. All these happenings "led to the adoption of asylum provisions that, although they were criticized by some observers for not being generous enough, overall made asylum provisions less restrictive than was previously the case" (Maurer & Parker, 2007). The venue-shopping argument has become obsolete.

Following the comparison of the different legislations, a comparison of the implementation of the directive in the three different countries was constituted. There are similarities but also differences perceptible and this is explained by the fact that the impact of European policies on EU member states varies widely and can according to Jordan & Liefferink (2003), Börzel & Risse (2003), Radaelli (2000) and Börzel (2003, p.2), explained by the "goodness of fit" between "European and national policies, institutions, and processes, on the one hand, and the existence of mediating factors or intervening variables that filter the domestic impact of Europe, on the other hand".

To conclude, I can say that all the hypotheses I established in the introduction of the thesis can be confirmed. With caution it can be endorsed that the EU Reception Conditions Directive does pursue a more liberal approach than the national legislation of Germany, Austria and Berlin. Furthermore, asylum legislations of Germany, Austria and Belgium are very similar and can be compared to each other. In addition, the recast Reception Conditions Directive, implemented in 2013 does clearly pursue a more liberal approach towards asylum protection than the first Reception Conditions Directive, implemented in 2003. Nevertheless, as already written down in the methodology part of the thesis, are the conclusions not universally binding and need to be verified. Further research needs to be done on the impact of the CEAS on the member states.

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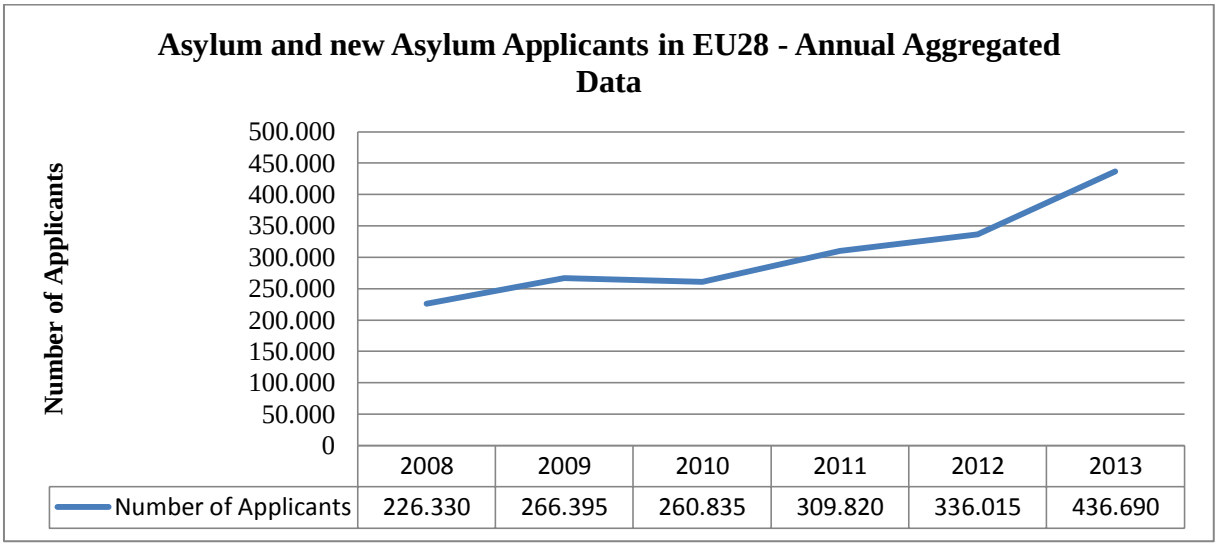
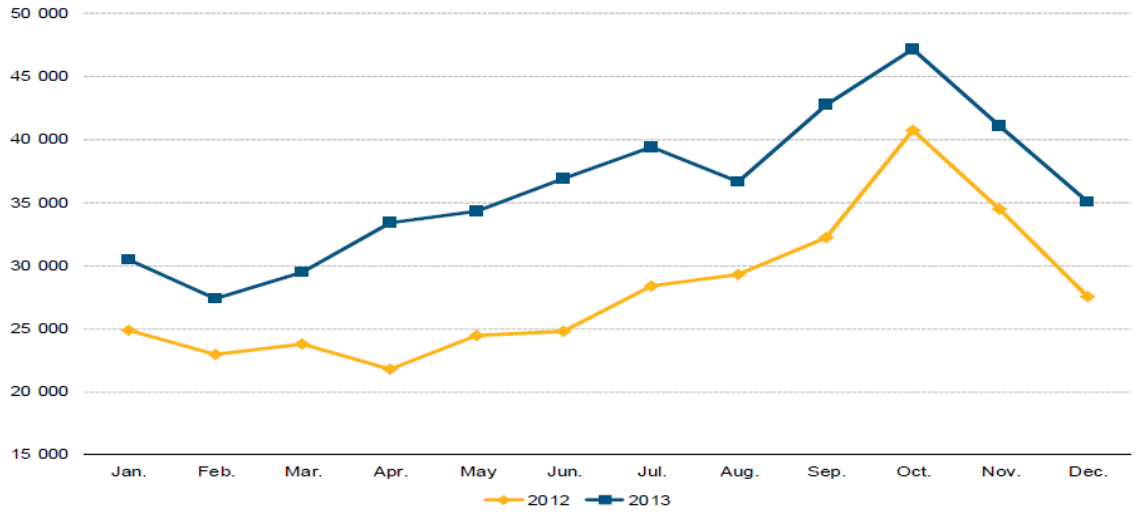
8. Annexes

Figure 1: Asylum and new Asylum Applicants in EU 28 – Annual Aggregated Data



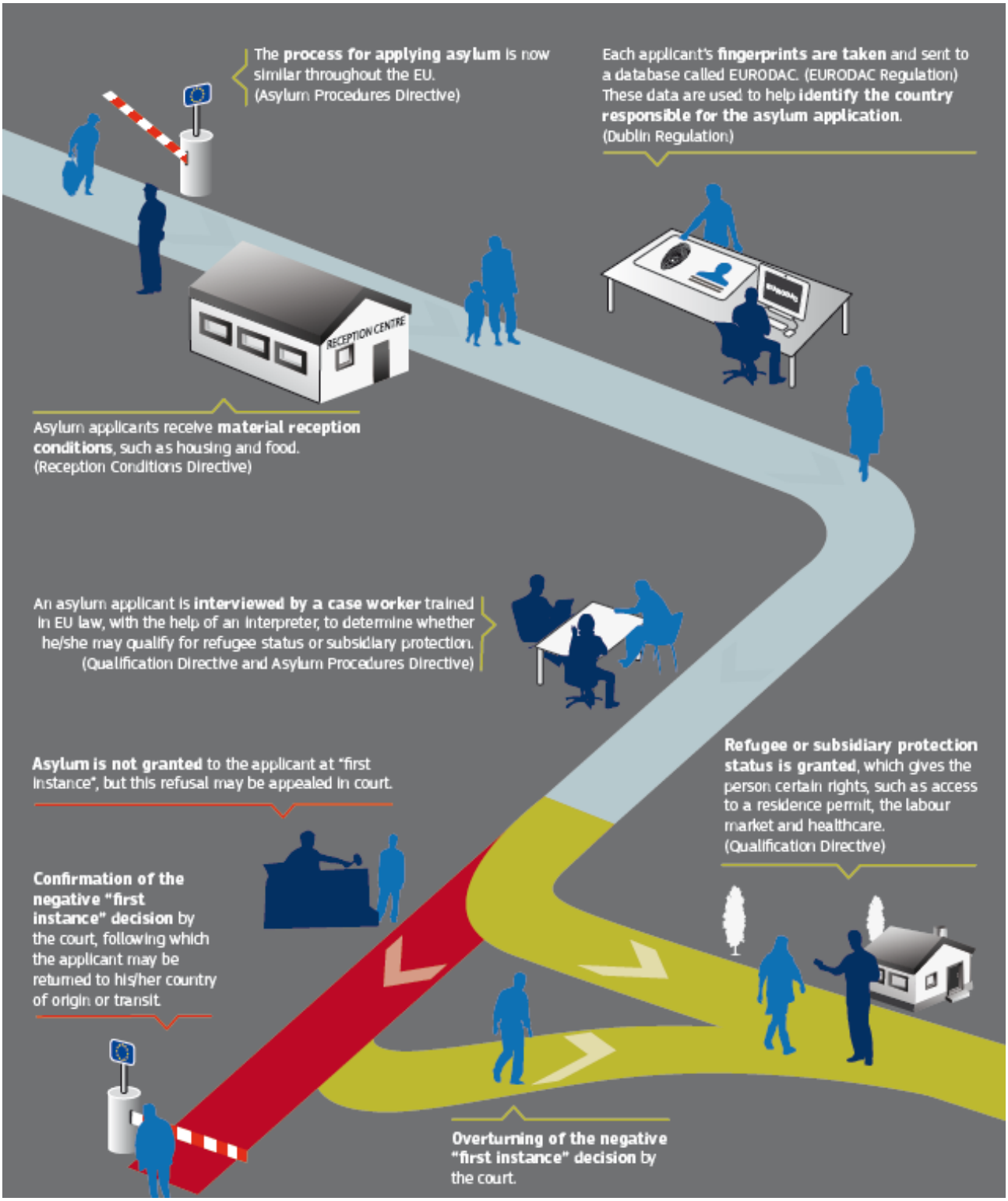
Source: http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&plugin=0&language=en&pcode=tps00191

Figure 2: asylum applicants, Eu-28, January 2012 – December 2013



Source: Eurostat (online data code: migr_asyappctzm)

Figure 3: The European Asylum Procedure


The **process for applying asylum** is now similar throughout the EU.
(Asylum Procedures Directive)
Each applicant's **fingerprints are taken** and sent to a database called EURODAC. (EURODAC Regulation)
These data are used to help **identify the country responsible for the asylum application**.
(Dublin Regulation)
RECEPTION CENTRE
Asylum applicants receive **material reception conditions**, such as housing and food.
(Reception Conditions Directive)
An asylum applicant is **interviewed by a case worker** trained in EU law, with the help of an interpreter, to determine whether he/she may qualify for refugee status or subsidiary protection.
(Qualification Directive and Asylum Procedures Directive)
Asylum is not granted to the applicant at "first instance", but this refusal may be appealed in court.
Refugee or subsidiary protection status is granted, which gives the person certain rights, such as access to a residence permit, the labour market and healthcare.
(Qualification Directive)
Confirmation of the negative "first instance" decision by the court, following which the applicant may be returned to his/her country of origin or transit.
Overturning of the negative "first instance" decision by the court.