

Bachelor Thesis

An Evaluation of the Common European Asylum System's Shortcomings and Proposed Reforms

Under consideration of the Member States' reactions to the "European Refugee Crisis" since 2015.

1st supervisor: Dr Luisa Marin

2nd supervisor: Dr Ringo Ossewaarde

Nicolina Eileen Kirby (s1614525)

B.Sc. European Public Administration | B.Sc. Public Governance across borders

University of Twente | Westfälische Wilhelms-Universität Münster

Faculty of Behavioural, Management & Social Sciences | Institut für Politikwissenschaft

Abstract

The aim of this thesis is to evaluate the Common European Asylum System (CEAS) and its reform proposals. The evaluation will be supported by analysing the asylum policies and changes therein, in both Germany and Hungary. Elaborating on the differences in asylum policies in the EU's Member States and shedding light on the current dis-functioning of the CEAS is a further goal of this thesis. The CEAS as a flawed system, allowing extensive leeway to its Member States, constitutes the starting point of this thesis. Potential future developments in EU asylum policy and whether they can foster solidarity among the Member States will be discussed. This thesis will be divided into two parts, the first focusing on the reactions of Hungary and Germany towards the refugee crisis since summer 2015, and the second one elaborating the reform proposals of the CEAS, made in 2016. I will answer the question of whether these proposals entail solutions to the CEAS and its current crisis.

Table of contents

1. Introduction.....	5
a. Background and previous research.....	5
b. Research question	7
2. Theory.....	9
a. Introduction.....	9
b. The establishment of the Common European Asylum System.....	9
c. The CEAS' academic state of the art.....	10
d. Conclusion	14
3. Methodology.....	16
a. Introduction.....	16
b. Data collection	16
c. Methods of data analysis	17
d. Concluding remarks	19
4. Following the Crisis: MS Responses and CEAS Reform Proposals.....	21
a. Comparative analysis.....	21
i. Member State response—Germany.....	21
ii. Member state response—Hungary	28
iii. Comparison and sub-conclusion	33
b. The proposed reform of the CEAS	35
i. Content of the CEAS reform proposals	36
ii. Reactions towards the CEAS reform proposals	38
iii. Compliance with Member State responses	40
iv. Solution to the CEAS shortcomings.....	40
5. Summary and Conclusion	42
6. References	45
7. Appendices.....	49

List of Figures

Figure 1: Coding scheme.....	18
Figure 2: Angela Merkel's summer press conference.....	22
Figure 3: Victor Orbán's speech at the 14 th Kötcse civil picnic.....	28

1. Introduction

a. Background and previous research

Migration has been part of human lives since the establishment of civilisation. It has been a driving force in shaping the world towards what it is now, and will continue to do so. In the last few years, however, we have seen a significant increase in irregular and forced migration all around the world. As of June 2016, 65.3 million people have forcibly been displaced from their homes, 21.3 million of these being refugees, meaning they were forced to flee their home country (UNHCR, 2016). Particularly affected have been the regions in Northern Africa and the Middle East, with a vast amount of regional and national conflicts forcing people to leave their homes and flee their countries, more often than not leading to hazardous attempts at crossing the Mediterranean Sea to reach Europe.

Based on the Geneva Convention from 1951 and its amendment from 1967, a refugee is “a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him- or herself of the protection of that country or to return there, for fear of persecution” (UNHCR, 2011). This convention has been the basis for refugee and asylum law in the European Union (EU). Although the amount of people reaching European shores is low in comparison with global numbers, the EU’s migration and asylum system has been largely overwhelmed with the numbers arriving over the past year and a half. With the arrival of over 1 million refugees by sea in 2015 and more than 300,000 in 2016, the European Union’s border controls as well as reception facilities have been stretched to their limits (UNHCR, 2016). In light of more than 300,000 asylum applications in 2016 alone, the Union’s shortcomings concerning its asylum policy have become pressingly apparent (Eurostat, 2016b).

In order to shed light on the EU’s problems in dealing with the crisis it is necessary to understand the complex system the Union’s asylum policies are embedded in. The infamous *Dublin II Regulation* was first adopted in 2003 with the purpose of identifying the responsible Member State for each asylum applicant (The Council of the European Union, 2003). This regulation, which constitutes the EU’s basis for its asylum policies, has been heavily scrutinised. The two main points of criticism are that it assumes the same adequate protection capabilities in all Member States and that its procedure policies are inadequate, unfair and ineffective (Carrera & Guild, 2010; ECRE, 2009). The regulation’s reform into the *Dublin III Regulation* has tried to tackle some of the system’s main shortcomings, but has continuously been subject to the same criticism as its predecessor (Garcés-Mascareñas, 2015). The *Common European Asylum System (CEAS)* was officially finalised in 2013, after 14 years of ongoing negotiations and the issuing of various directives and regulations (European Commission, 2014). While it was considered a milestone in

the general sphere of being a coherent asylum policy on EU level, it is nonetheless heavily flawed, not least because one of its main cornerstones is the contested *Dublin Regulation* (European Commission, 2014; Wagner et al., 2016). A further criticism is the directive nature of the system, making it effectively unsuitable to realistically promote EU-wide standards for migration. So despite this common mechanism, the differences between the Member States' asylum policies have been increasing since the emergence of the crisis (Wagner et al., 2016).

Under the pressure of a vast influx of refugees since the beginning of 2015, the shortcomings of the CEAS and its main pillar, Dublin III, have become strikingly apparent. Suspending the Dublin procedure for transfers to Greece and temporarily suspending the application of the Dublin procedure for Syrian refugees in Germany has put new pressure on an already poorly supported system (Dernbach, 2015; Greek Council for Refugees, 2015). After heavy criticism of the CEAS the European Commission released several Communications proposing various reforms in the context of a more extensive *European Agenda on Migration* (European Commission, 2015, 2016b, 2016c).

Research on the shortcomings of the CEAS has already been conducted extensively. It now needs to be assessed whether the proposed reforms would constitute valid solutions to the system's problems. Further, it is insightful to analyse the role of specific Member States (MS), whose systems and policies have been developing in very different ways, despite being subject to the same umbrella system. Most EU MS have been amending their asylum policies since summer 2015. In order to elaborate whether the reforms would be useful and in line with MS policies, an exemplary analysis of such reforms is helpful.

I therefore aim to conduct my study with a specific focus on the cases of two countries, namely Germany and Hungary, next to the CEAS as a whole.

The case of Germany is exceptional, as it was the country with the highest number of refugee arrivals and (successful) applications in the last year in terms of total numbers and in relation to its population (Eurostat, 2016b). However, this positive sentiment did not last long and has led to xenophobic sentiments among certain spheres of civil society. This change in attitude and the subsequent rise in nationalist views also forced policies to adapt. While the "open-door" policy was promoted and Germany appeared to be the most generous European country concerning asylum claims, changes in asylum law have restricted applicants in many ways, discrediting refugee claims from applicants of countries other than Syria, Eritrea and northern Iraq. Germany further constitutes the strongest economy at the heart of Europe, with no direct external Schengen borders. Hungary, on the other hand, has become the Union's "bad apple". It made headlines with xenophobic sentiments expressed by its Prime Minister, Viktor Orbán, numerous changes in policies concerning immigration and the repeated use of force to repel refugees and migrants at

its borders (Amnesty International, 2016c). Hungary's borders are external borders of the Schengen area and is therefore a country of first-entry according to the Dublin regulation.

Can such two countries operate within a common framework? This is a necessary question to be asked when trying to assess solutions to the CEAS' shortcomings.

b. Research question

The proposed research question aims to fill a gap within the analysis of the CEAS' shortcomings in order to provide a new coherent and effective solution, and is as follows:

"To what extent can the proposed reform of the Common European Asylum System tackle its current problems, exemplified by a comparison between Germany's and Hungary's asylum policies?"

Comparing the asylum policies of the Union's 28 Member States would be extremely extensive and would not serve the purpose of this research. The CEAS should not be undermined in terms of the harmonisation effects it has achieved, therefore the differences are not as prevalent in all MS. As aforementioned, Germany and Hungary have become especially noticeable throughout the crisis due to the difference in how they approach and handle it. They can be seen as the two cornerstones marking the "most open" and the "most restrictive" asylum policies within the Union, and having the "most welcoming" versus the "most apprehensive" approaches towards refugees (Akrap, 2015; Amnesty International, 2016c; Gall, 2016).

Since the proposed research question is quite complex, I broke it up into five very straightforward sub-questions. By answering them I should be able to get a clear picture of the problem, leading to my answer.

The questions to elaborate are:

SQ1: What are the shortcomings of the current CEAS?

SQ2: How have Germany and Hungary reacted since the beginning of the crisis?

SQ3: What are the proposed reforms of the CEAS?

SQ4: To what extent do the developments in the MS comply with these reforms?

SQ5: To what extent do these reforms help to overcome the CEAS' structural problems?

By answering these five questions consecutively, I will be able to show the relationship and problems between the individual countries' policies and the EU system.

The academic gap I seek to fill is a more specific focus on one of the main issues regarding the CEAS. In all previously conducted research the different levels of implementation within the various MS have been criticized; however, all this criticism lacks more specific explanation and examples. It puts the focus on developments within the individual countries and moves away from the tactic of merely seeing the EU as one entity. The EU is still a construct made up of various

entities, some of which are very different from one another; a fact that has again become more prevalent during this past crisis. Only a deeper understanding of individual cases, policies and reasons for regulations will help us to really find coherent and sustainable solutions for the EU's flawed asylum system. With the insights gained from a thorough analysis I will be able to better understand and explain the CEAS and its reforms, and whether these reforms contribute to solving the actual problem.

In the context of an inter-state comparison, these insights are of high scientific relevance since they enable further research. The aim of this thesis is to contribute towards a body of research conducted by Maarten den Heijer et al. on the shortcomings of the current CEAS (2016) and works by Carrera and Guild (2015) who see the Dublin regulation as one of the CEAS' greatest weaknesses. According to these authors, the main problems are due to differences between the MS' capabilities and their asylum policies. These findings will be further elaborated in the following thesis by shedding light on such MS differences. These findings also hint at the great societal relevance as they will foster greater understanding of the individual MS, especially through the law-in-context approach of analysis. Lastly, the insight gained by this thesis will help to support not only new, more effective policy measures for solving the refugee crisis at an EU and national level but also an EU-wide umbrella system governing these measures.

2. Theory

a. Introduction

In the following, I will assess the theoretical idea behind this research. To understand the Common European Asylum System as a concept I will first give a brief historical introduction to foster its understanding as a European *sui generis* and explain the reasons for its establishment and development. Following the historical placement, I will analyse and discuss the CEAS' academic state of the art. As already indicated, the CEAS, due to its unique nature, has been subject to vast amounts of previous research. In order to conceptualise this theoretical framework, I will analyse different approaches towards it, to further support my argumentation. The aim here is to construct a frame of analysis as the research basis of this thesis.

b. The establishment of the Common European Asylum System

The development of the CEAS has been an incremental one, officially starting in 1999 with the Amsterdam Treaty coming into effect and the European Council's Tampere conclusions of the same year (European Communities, 1997; European Union: Council of the European Union, 1999). Previous to these the Schengen Area had been established, which enabled "four freedoms" of movement through the Single European Act of 1986 (1987) (European Community, 1987).

With the establishment of the "Area of Freedom, Security and Justice" through the Amsterdam Treaty in 1999, the groundwork for a common European visa, asylum and immigration policy was laid. Articles 73j and 73k lay out provisions for the adoption of common measures regarding asylum in accordance with the Geneva Convention and its Protocol relating to the status of refugees. These provisions entail the adoption of common minimum standards, mechanisms of determining MS responsibilities, conditions of entry and residence as well as the definition of third-country nationals' rights upon residing in the European Union (European Communities, 1997). These provisions were developed further in the European Council meeting in Tampere (Finland) shortly after the Amsterdam Treaty came into effect. The Tampere conclusions evolved the idea of a "Union of Freedom, Security and Justice" and laid the groundwork for a common EU asylum and migration policy. The conclusion specifies the agreement on the establishment of a Common European Asylum System "based on the full and inclusive application of the Geneva Convention" (European Union: Council of the European Union, 1999).

The first notion of the Tampere conclusions led to the establishment of a series of important legislative measures to harmonise common minimum standards, most notably the "Directive on reception conditions for asylum seekers", the "Qualification Directive", the "Asylum Procedures Directive" and the Dublin Regulation II (Ippolito & Velluti, 2011). After the initial notion of establishing common minimum standards for asylum seekers the Union quickly realised that

cooperation would have to go further and that it needed to develop other elements, most notably enhance solidarity and intra-European cooperation. Elements of this included, on the one hand, limiting secondary movement of protection seekers once they were within EU territory, and, on the other hand, coordinated EU action for strategic external impacts and third-country collaboration to manage migration flows (Tsourdi & De Bruycker, 2015).

These measures were followed by a Green paper in 2007 and a Communication from the Commission to the European Parliament in 2008, presenting an EU policy plan on asylum. This policy plan incorporated the aforementioned overarching objectives of the CEAS, namely: access for those in need of protection, a common procedure, the establishment of uniform statuses, the incorporation of gender considerations, increased practical cooperation, a determination of responsibility and the insurance of coherence with other policies (European Commission, 2008). The policy plan concluded with the call for ensuring three main pillars to be upheld with the establishment of a CEAS: (1) better quality and enhanced harmonisation of standards of international protection; (2) greater practical cooperation among MS; and (3) greater solidarity among MS and with external states (European Commission, 2008).

These amendments finally led to the establishment of the CEAS. As a system constituting a multitude of consecutively implemented instruments, there is no specific starting date of the CEAS' functioning. However, the CEAS factsheet published by the Commission sets its "official" starting year in 2013, following the amendments and implementation of the Dublin III regulation. The main cornerstones of the system are the revised Asylum Procedures Directive, the revised Reception Conditions Directive, the revised Qualification Directive, the revised Dublin Regulation and the revised EURODAC regulation (European Commission, 2014). To this date, the CEAS constitutes the most comprehensive common system on asylum which has existed in the EU so far; however, its functioning is still far behind its envisaged goals and its implementation has been stagnant in most MS. The following academic discussion will shed further light on the reasons for these implementation issues.

c. The CEAS' academic state of the art

Throughout its establishment, the CEAS has been subject to vast amounts of criticism. While it should be considered a milestone in European refugee law it boasts great flaws which have been discussed by academics and policy makers alike.

I will discuss the system's main shortcomings by elaborating on the academic discussions and opinions. There is a broad range of different areas of criticism throughout the literature, and in the following I will outline the most prominent findings as the basis for my thesis. A first study by Elspeth Guild from 2006 is still very relevant ten years later, as it summarises most shortcomings

later found in separate papers by various authors. In her study, Guild discusses the development of the EU's Treaties, Human Rights laws and several steps towards unified asylum laws. The academic state of the art at the time of the conducted research was The Hague Programme and the draft EU Constitution, which was later rejected. The numbers of incoming refugees were also at a record low. However, despite these differences, many of the fundamental issues seem to be unchanged. The criticisms the CEAS is now facing are the same as the concluding calls of Guild's study in 2006, namely the urgent need to reconsider underlying principles of territoriality within the EU, actually implementing and applying certain minimum standards, actual cooperation between MS and EU institutions, and applying principles based on the adopted Human Rights regimes (Guild, 2006).

Based upon these findings and in accordance with other literature reviewed, the CEAS' four main discussed weaknesses can be identified. These are (1) the lack of common standards and harmonised regulations within the EU; (2) the coercive internal dimension in accordance with the Dublin logic; (3) the coercive external dimension of the CEAS including border controls; and (4) the lack of solidarity among the EU MS. In the following, I will elaborate on each of these weaknesses.

Starting with the lack of common standards, one main issue is the principle of minimum harmonisation the system is based upon. The Qualification Directive constitutes an evident example here, as its implementation sought to harmonise European standards on the definition of who is to be considered a "refugee", as well as subsidiary protection by Member States due to the principle of non-refoulement¹. A 2006 study by Helene Lambert focused on the Directive's implementation and compared the implementation of foreign (European) law in France and the United Kingdom in asylum cases (Lambert, 2006, 2009). The Qualification Directive, which was finally implemented in 2006, constitutes one of the central laws of the European asylum policy. According to Lambert's study the Directive's implementation should have led to higher standards in recognising refugees, which was not the case (Lambert, 2006). The study of a transnational judicial dialogue within the EU where asylum law is concerned, further led to the conclusion that individual Member States rarely use other nation's or international conventions' laws, basing their judgements mostly on national law. This further illustrates how difficult it is to harmonise asylum law within the European Union (Lambert, 2009). Lilian M. Langford (2013) and Francesca Ippolito (2013) both discussed the CEAS' shortcomings extensively, finding the lack of common minimum and harmonised protection standards to be problematic (Ippolito, 2013; Langford, 2013). This weakness poses the danger of ultimately lowering the accepted norms of refugee protection and making mutual trust and solidarity among MS impossible (Langford, 2013).

¹ The principle of non-refoulement stemming from Humanitarian Law prohibits states from sending persons back to countries where they verifiably face physical or psychological harm (Allain, 2001).

Ippolito recognised the lack of cooperation between MS and CEAS on common protection standards. By highlighting their role in various cases of recast law, Ippolito believes the Court of Justice of the European Union (CJEU) and European Court of Human Rights (ECHR) should assume their progressive role of ensuring greater compliance with EU-wide minimum standards when dealing with asylum law. She concludes that the complexity of the CEAS is due to various different factors, ranging from diverging MS perceptions of “what a refugee is” to individual MS’ geopolitical situations, restraining them in their actions (Ippolito, 2013). Ippolito sees the CJEU and the ECtHR in an important role to ensure certain system applications; however, their scope of action is extremely limited (Ippolito, 2013). Furthermore, the lack of a compliance monitoring system, which may ensure certain standards, is criticised (Tsourdi & De Bruycker, 2015).

Secondly, the coercive internal dimension in accordance with the Dublin logic of the CEAS within the EU is problematic. The Dublin logic assumes that there are common standards throughout the EU (which has proven to be false) and makes the country of first entry into the EU responsible for dealing with the applicants’ asylum claims. This regulation prohibits refugees from choosing their host country. While this law was established to avoid accumulations in one country, it is argued that it effectively fosters disobedience and leads to a “race to the bottom” among MS (Heijer, Rijpma, & Spijkerboer, 2016). Since the assumed “level playing field” within the EU is not given, prohibiting secondary movement places an unnecessary and heavy burden on refugees and countries of first entry (Heijer et al., 2016). The coercive nature of the Dublin regulation fosters disobedience because, despite the regulation, refugees seek to reach EU countries other than those of their first entry. Brekke and Brochmann’s study (2014) examines the secondary movements of Eritrean refugees and finds increased secondary movements due to national differences in the quality of reception, employment options and welfare systems in the individual Member States (Brekke & Brochmann, 2014). The Dublin principle therefore proves to be ineffective in many cases and further disregards human rights standards for refugees as they cannot be provided in many countries of first entry (Carrera & Guild, 2015; Crépeau & Purkey, 2016a; Garcés-Mascareñas, 2015; Guild, Costello, Garlick, & Moreno-Lax, 2015). A 2015 study conducted by Guild et al. calls into question the whole purpose of the Dublin Regulation, criticising its coercion principle that even applies outside of the EU. They further excoriate the lack of a mutual recognition and asylum decision system within the CEAS (which would ameliorate Dublin) and stress the general failure of Dublin as a useful allocation system, highlighting its ineffectiveness with examples of where it was suspended (Guild et al., 2015). The paper by Carrera and Guild examines the “temporary relocation (quota) system”, which is said to constitute some positive and important improvements; however, the fact that it remains based on the Dublin logic of distribution discredits some of its merits. Relocation is merely installed as an “emergency procedure” and remains within the same coercive framework (Carrera & Guild, 2015). Going

beyond Dublin's mere ineffectiveness, a paper written by Blanca Garcés-Mascareñas in November 2015 also deals with the issues of Dublin, stating that the regulation does not work due to three basic deficiencies, namely, the generally unfair principle of allocating the refugee, lack of efficiency and the jeopardising of refugee rights (Garcés-Mascareñas, 2015). The recent study by Crépeau and Purkey furthermore calls for a human rights-based approach towards migration and refugees. It confirms that refugee rights are jeopardised within the Dublin system and urges the Union to embrace a different approach, based on human rights and with the aim of governing the whole of the EU (Crépeau & Purkey, 2016b). This is the same resolution that Langford reaches, urging for a complete reform of the Dublin system, excluding the rule on "country of first entry" and providing a fairer and more realistic burden-sharing agreement (Langford, 2013).

The third major shortcoming of the CEAS are its coercive external dimension and border controls. The system is designed primarily to keep refugees out of the Union, instead of focusing on possibilities of legal access for asylum seekers. This concept is especially visible in the controversial third-country concepts employed by the CEAS, namely the *Safe Third Country (STC)* and *Safe Country of Origin (SCO)* concepts, designating countries as either safe for an asylum application before reaching the EU, or as safe enough so there is no need to flee them at all. These provisions give the Union leeway for sending asylum seekers back to either their home countries or to "safe" countries they have travelled through previously. These concepts are, however, heavily debated and many legal scholars come to the conclusion that they neither comply with international refugee nor with human rights laws as they deny the individual claimant the possibility of an individual application and assessment process (Ippolito, 2013). Due to the fact that the implementation of the Schengen visa system in 1990 made travel into the EU without a valid visa virtually impossible for the majority of the people who are currently fleeing their countries, they have no other means than to resort to illegal passages (Heijer et al., 2016). In combination with the limited amount of legal possibilities such as resettlement programmes (of which there are very few), refugees will migrate by illegal means (Heijer et al., 2016; Tsourdi & De Bruycker, 2015). At the same time, the CEAS employs border-safeguarding schemes aimed at prohibiting refugees from entering by legal means, leading to increased casualties and deaths in the Mediterranean Sea (in 2016, the death toll exceeded 5,000 (UNHCR, 2017)). The burden of border safeguarding is solely placed on countries with an external border of the Schengen area, making de facto national borders de jure EU borders (Klepp, 2010). These countries are given a disproportionate burden in securing their borders, implying that there is a lack of solidarity among the EU's MS. The border-securing measures employed (push-backs and third-country concepts) are further criticised for violating the principle of non-refoulement (Klepp, 2010).

These three weaknesses already hint at the last and most pressing shortcoming—the lack of solidarity among MS. The previously discussed findings lead to decreasing mutual trust, solidarity

and cooperation, resulting in ineffective governance and application of the CEAS and asylum protection within the EU. Disproportionate burdening of countries with vastly differing economic and social statuses makes solidarity among the MS vital to effectively and humanely apply an asylum system; however, this kind of solidarity is essentially absent (Langford, 2013). While the concept of responsibility is partly incorporated in certain measures of a financial or operational nature, no actual physical solidarity exists between MS to allow a “fair-sharing” of the burden (Tsourdi & De Bruycker, 2015). The principle of solidarity is rooted in Article 80 of the Treaty on the Functioning of the EU (TFEU), locating the principle of solidarity and fair sharing within the scope of border checks, asylum and immigration (Vanheule, van Selm, & Boswell, 2011). However, its application remains limited. The European Asylum Support Office (EASO) and FRONTEX were created to support the implementation of the principle but have not been successful so far. There are numerous reasons for this, ranging from a lack of incentives for not directly affected MS to the general disapproval of political EU-imposed regulations (Vanheule et al., 2011).

d. Conclusion

In concluding the current academic state of the art of the research covering the CEAS and the Union’s previous policies on refugee and asylum law, several insights can be gained. While all researchers have slightly different foci, depending on their disciplines and points of view, several recurring shortcomings have been found in the evaluated literature. All of these shortcomings contribute to the prevalent finding—the strongly intergovernmental nature of the CEAS which results from its incremental establishment and its complexity. As the issue of immigration and asylum law is part of “Freedom, Security and Justice” area, this policy field belongs to the nations’ *high politics* and always risks of intervening too much with the states’ national sovereignties. This fact partially explains the unwillingness of MS to cooperate more extensively.

Therefore, the theoretical framework for researching this thesis is a heavily flawed intergovernmental system. Its primary flaws are the lack of harmonisation and common standards, the ineffectiveness of the Dublin procedure with its coercive internal dimension, the lack of solidarity among MS and their excessive reliance on external Schengen borders, and the CEAS’ coercive external dimension.

As the whole CEAS is of a directive nature, the individual MS bare the blame for the lack of harmonisation, common standards, solidarity and the Dublin procedure (with its heavy reliance on external Schengen borders) and therefore the (lack of) implementation is their responsibility. The solution to the shortcomings is therefore not only to reform the CEAS but also to get the MS to comply with the reform and be willing to cooperate with one another. This theoretical framework therefore points at the need for assessing possible solutions to the CEAS from different

angles, one being single MS actions and the other being the reform of the system as a whole. The following work therefore tries to bridge this gap by showing the lack of solidarity within the different MS and in how far their compliance and sharing of responsibility determines whether the CEAS can function as an effective system. It therefore contributes towards the research of Heijer et al., Langford, Tsourdi and De Bruycker, Carrera and Guild and the other authors, criticising the Dublin mechanism, the lack of solidarity and the lack of human rights in European asylum law. The thesis seeks to add a dimension of the internal workings of specific MS to foster understanding of these, for the implementation of more successful policies.

3. Methodology

a. Introduction

I will draw a comparison of two exemplary MS and their enactments and implementations of asylum policies to show why the individual MS responsibilities make the overall functioning of the CEAS difficult and eventually ineffective. As mentioned previously, these two states will be Germany und Hungary. Throughout the past year and a half both have not only made headlines with distinctive stances on the refugee “crisis”, but have also issued notable legislations. Within the EU, the asylum policies of most countries have been designed in a similar manner. However, I hope to derive the most distinct differences from a direct comparison. I chose Germany and Hungary as they appeared to have the most strongly differing policies (as gathered from research prior to this thesis). For further practical reasons such as language, Germany was my first choice. My comparison aims at shedding more light on the most pressing shortcomings of the CEAS and at giving a better understanding of whether the CEAS’ reform proposals hold valuable and helpful changes. For a more comprehensive placement of each MS and its position towards refugees I will look at general developments shaping each nation’s public opinion, before focusing on the policies. As the second step of my comparison is based on policy and legislation, I will compare the asylum policies, and especially recent changes, of Germany and Hungary. A “most similar system, different outcome design” approach will be used to show the differences between the two systems. While the mere analysis of legislation will not give enough insight, reports on its implementation will be regarded and evaluated analytically. This will be followed by a qualitative policy analysis of the reform proposals.

b. Data collection

More and more data on refugee policies within the European Union could be found in the past year. In order to be suitable for the length and comprehensiveness of this thesis, the amount of compared cases needed to be limited to a small number, so a deep understanding of the topic could be gained without losing sight of the general topic.

Each MS analysis will begin with a general overview of the country’s specific situation and opinion. I will therefore briefly examine the most important statements of each country’s head of state. The statements will be derived from Angela Merkel’s summer press conference in 2015 and from Viktor Orbán’s famous speech in September of the same year. Each of these speeches gained extensive amounts of public attention. (Appendix 1)

Concerning data for the MS policy comparison, information will be analysed provided in the *Asylrecht*, by the *Bundesamt für Migration und Flüchtlinge (BAMF)*, by *Asylpakete I+II* for Germany, information from Hungary’s Office of Immigration and Nationality, *Bevándorlási és*

Állampolgársági Hivatal (BMBAH), and translations of Hungary's asylum acts found on refworld.org and legislationonline.org. For each of these sources the most updated information from 2016 will be used. A further source of information will be the country reports by the Asylum Information Database (AIDA) from November 2015 and country reports provided by other institutions such as the European Council on Refugees and Exiles (ECRE), Amnesty International, the UNHCR and the Helsinki Committee. While each country's immigration office provides the most specific information on asylum application practices, AIDA gives detailed information about each country's asylum procedure so that a direct comparison is possible. Information provided by NGOs such as Amnesty International and the Helsinki Committee are insightful since their purpose is of a humanitarian nature and their emphasis on policy changes will be different to that of governmental institutions. (Appendix 2)

To answer the third sub-question, I will further look at the mentioned CEAS reform proposals and evaluate them within the discussed framework. To do so, the EU communications, press releases, factsheets and policy briefs concerning the reform will be examined. These can be found on the European Union's website, published in April, May and July 2016. Added to this will be information provided by NGOs and institutes evaluating the proposals. The NGOs and institutes chosen have varying foci and purposes for their work, they shall therefore provide a variety of viewpoints and opinions on the reform. (Appendix 3)

c. Methods of data analysis

The analysis of the collected data will be conducted in several steps. I will begin with the reaction to refugees of the individual MS since 2015, starting with Germany.

To give an overview of the public opinion I will analyse Angela Merkel's famous summer press conference of 31 August 2015 and elaborate its most crucial implications. In order to analyse the speech in a meaningful manner and to make its implications comparable, the method of a conventional content analysis will be applied. As the speech will be analysed without the use of a pre-existing theoretical framework, conventional content analysis is the most suitable method because it makes it possible to develop a code from recurring schemes within a speech (Hsieh & Shannon, 2005). The coding scheme (Fig. 1) will be split into five categories of themes addressed in the speech. The same coding scheme will also be applied to Orbán's speech. Both heads of state addressed the same main topics, which in the following constitute the five main themes, namely (1) the crisis; (2) refugees; (3) Western idealism; (4) change; and (5) plan of action, making the opposing views and statements of both politicians clearly visible.

Fig. 1: Coding scheme

Theme	Code	Example
<i>The Crisis</i>	Crisis external to the EU	Merkel: <i>“Das geschieht alles, während wir hier in geordneten Verhältnissen leben” (Transl.: All of this is happening while we are living in orderly conditions.)</i>
	Crisis internal to the EU	Orbán: <i>“I think that the phenomenon I’ve just described is no more or less than identity crisis.”</i>
<i>Refugees</i>	In need of help	Merkel: <i>“Menschen [...] müssen oft Situationen überwinden oder Ängste aushalten, die uns wahrscheinlich schlichtweg zusammenbrechen ließen.” (Transl.: These people [...] often have to endure situations and fears which would let us simply collapse.)</i>
	An invasion	Orbán: <i>“Now we are inundated with countless immigrants: there is an invasion.”</i>
<i>Western idealism</i>	European ideals as a solution	Merkel: <i>“Wir können stolz sein auf die Humanität unseres Grundgesetzes” (Transl.: We can be proud of the humanity of our constitution.)</i>
	The failure of Europe	Orbán: <i>“I am convinced that it is no longer possible in Europe to both see ourselves as good in the liberal sense and to live in prosperity.”</i>
<i>Change</i>	Open to change	Merkel: <i>“Die überwältigende Mehrheit unserer Menschen ist weltoffen.” (Transl.: The overwhelming majority of our people is open-minded.)</i>
	No change	Orbán: <i>“Hungary [...] must protect its ethnic and cultural composition.”</i>
<i>Plan of action</i>	Constructive help	Merkel: <i>“Deutsche Gründlichkeit ist super, aber es wird jetzt deutsche Flexibilität gebraucht” (Transl.: German efficiency is great, but now we need German flexibility.)</i>
	Fend off	Orbán: <i>“The first thing which must be said is that a country with no borders is no country at all.”</i>

This content analysis presents the foundation for the policy changes made in the following months, and will be followed by a legal analysis using a hermeneutic and law-in-context approach of the changes in asylum legislation since 2015. I will analyse information gathered from the *Asylrecht*, *BAMF* and Germany’s *AIDA* country report. Following this will be an elaboration of the amendments made to German asylum law, most prominently in the form of *Asylpakete I + II* (asylum “packages” of amendments). I will then analyse Germany’s *AIDA* country report as well

as other NGO reports and correlate them with identified legislation changes. The main aim of this part of the analysis is to detect and discuss the most important amendments. While the official reports and papers give an overview of the content, their aim is to positively reflect legislative changes. NGOs, however, focus on revealing shortcomings, therefore both angles need to be evaluated.

Subsequently the same analytical procedure will be applied to the Hungarian case. Viktor Orbán's famous speech in September 2015 at the Kötcsé civil picnic² will serve as the crucial speech voicing the head of state's opinion. The method of analysis applied is the same type of content analysis as with Angela Merkel, exemplified in the coding scheme Fig 1. A legal analysis with a hermeneutic and law-in-context approach will also be applied in the case of changes to Hungary's asylum legislation. Therefore, the previous Asylum Acts from 2007 will be assessed and the changes made in 2015 will be evaluated. Following this analysis, I will hermeneutically examine the information provided by *BMBAH*. As a next step the AIDA as well as other NGO reports will be assessed and its key implications formulated. The aim of this section is the same as for Germany, conducted in a manner to make the differences between the two cases obvious. The findings of those two sections will then be compared to one another and the comparison evaluated.

The second major step within the analysis will be to evaluate the proposed CEAS reforms. I will therefore analyse all available material released by the European institutions in the forms of factsheets, press releases and communications as well as various comments on the proposals by these institutions. I will further analyse comments and papers discussing these proposals. Such papers were published by the European Data Protection Supervisor (EDPS), ECRE, AIDA, EMIP and NGOs such as Amnesty International and ProAsyl. The evaluation and interpretation of these proposed reforms shall then form an answer to the sub-question whether these proposals are viable solutions to the CEAS' shortcomings identified at the beginning of the paper.

The last part of my analysis aims at bridging the gap between the individual states' responses and the development on the level of the system as a whole and in how far these developments actually comply with each other and work together. The reform proposals will therefore constitute a new framework of reference with the policy developments in the two analysed MS. Due to the systematic analysis of the developments these can simply be set in context of the new framework.

d. Concluding remarks

The methodology of this thesis does not simply follow one specific type of analysis but uses various methods from the different disciplines covered by the topic. Due to the interdisciplinary and qualitative nature of this research it is important to evaluate the policies from different angles,

² Kötcsé civil picnic is an annual "picnic" by FIDESZ, the right-wing conservative Hungarian party which Orbán is the chairman of

which is done by combining legal and policy research with hermeneutic speech and research analyses. The goal is to understand why policies and the CEAS malfunction and to generate new means of addressing these shortcomings. In line with Joseph A. Maxwell's approach towards qualitative research, the design I used aims to be a model *of* my used research, and not a model *for* it (Maxwell, 2008). Based on Maxwell's model of research design, five components are necessary for the coherence of a study, namely (1) goals, (2) a conceptual framework, (3) research questions, (4) methods and (5) validity. The first four points have already been mentioned and covered in this work, the point of validity will be assessed at the end of my analysis. By including and assessing each of these five points the study constitutes a qualitative research design, which shall answer the stated research question(s) (Maxwell, 2008).

4. Following the Crisis: MS Responses and CEAS Reform Proposals

In the following chapter, information gathered through policy papers, legislation, press releases and public speeches will be analysed. The analysis will be divided into two main parts. The first part is a comparison of the MS' reactions. I will analyse Germany's reaction towards the refugee crisis since the summer of 2015, starting with a content analysis of Angela Merkel's summer press conference in August 2015, followed by a qualitative policy analysis of Germany's asylum law and its amendments. The same procedure will be applied to the case of Hungary, with a content analysis of Viktor Orbán's speech at the Kőtcse picnic. Sub-concluding, comparison between both countries will be drawn. The second part of the analysis focuses on the reform proposals of the CEAS and whether they represent valuable solutions to the CEAS' shortcomings. Then I will assess whether the MS' reactions are compatible with these reforms.

The first part will aim at answering sub-question two: *How have Germany and Hungary reacted since the beginning of the crisis?* The second part will try to answer sub-questions three to five: *What are the proposed reforms of the CEAS? To what extent do the developments in the MS comply with these reforms? And to what extent do these reforms help to overcome the CEAS' structural problems?*

a. Comparative analysis

Both analysed speeches were held at a time when Europe was experiencing a vast influx of refugees trying to enter the European Union after they had escaped the civil wars in their home countries by crossing the Mediterranean Sea (BBC News, 2015b). More than 50% of those refugees were victims of the Syrian civil war, which the West had failed to intervene in while it still could (Sly, 2015). August and September of 2015 presented an especially remarkable time, as they were the months when Macedonia eased travel restrictions for refugees, Hungary erected its first border fences towards Serbia, and Germany's *Bundesamt für Migration und Flüchtlinge (BAMF)*/Ministry for Migration and Refugees tweeted that it would suspend the Dublin regulation if the asylum applicants were from Syria (BBC News, 2015a; Graham-Harrison, Kingsley, Waites, & McVeigh, 2015; Oltermann & Kingsley, 2016). By the end of 2015, after the first rounds of asylum policy amendments in both countries, over 1.2 million refugees had applied for asylum within the European Union (Eurostat, 2016a).

i. Member State response—Germany

First responses in 2015

My analysis of Germany's behaviour since the beginning of the crisis in 2015 will start with Angela Merkel's press conference in Berlin on 31 August 2015. While the conference itself was supposed to cover all major aspects of politics in Germany and Europe of that year, the topic on refugees

took up most time (Merkel, 2015). Prior to the conference, asylum applications in Germany had doubled in comparison with the previous year (BBC News, 2015a). Fig. 2 will give an overview of Merkel's opinion on the five pre-defined themes mentioned in her speech. To avoid the analysis from escalating, two citations will be chosen for each theme. Since the speech was published in German I translated the selected phrases into English. The content analysis seeks to establish Merkel's most prominently covered aspects which shall serve as a basis for the following legislation changes.

Fig. 2: Angela Merkel's summer press conference³

<i>Crisis – origins external to the EU</i>	<ul style="list-style-type: none"> ▪ <i>“was sich zurzeit in Europa abspielt, ist keine Naturkatastrophe, aber es gibt eine Vielzahl katastrophaler Situationen“ (transl.: What is happening in Europe at the moment is no natural disaster, but a multitude of catastrophic situations.)</i> ▪ <i>“das geschieht alles, während wir hier in geordneten Verhältnissen leben“ (transl.: this all is happening while we are living here under well-ordered conditions)</i>
<i>Refugees – in need of protection</i>	<ul style="list-style-type: none"> ▪ <i>“Menschen [...] müssen oft Situationen überwinden oder Ängste aushalten, die uns wahrscheinlich schlichtweg zusammenbrechen ließen.“ (transl.: These people [...] often have to endure situations and fears which would let us simply collapse.)</i> ▪ <i>“[...] als in einem LKW über 70 Menschen tot gefunden wurden, von skrupellosen Schleppern zugrunde gerichtet.“ (transl.: [...] when 70 people were found dead in a truck, killed by unscrupulous smugglers)</i>
<i>Western idealism – necessary for a solution</i>	<ul style="list-style-type: none"> ▪ <i>“Wir können stolz sein auf die Humanität unseres Grundgesetzes“ (transl.: We can be proud of the humanity of our constitution.)</i> ▪ <i>“[...] gleichgültig, woher und warum er zu uns kommt und mit welcher Aussicht darauf, am Ende eines Verfahrens als Asylbewerber anerkannt zu sein – wir achten die Menschenwürde jedes einzelnen“ (transl.: no matter why or from where they are coming to us, and whether they are granted asylum or not – we shall respect each person's human dignity)</i>
<i>Change – necessary</i>	<ul style="list-style-type: none"> ▪ <i>“Die überwältigende Mehrheit unserer Menschen ist weltoffen“ (transl.: The overwhelming majority of our people is open-minded.)</i> ▪ <i>“Die Nation oder die Gesellschaft, das Land verändert sich beständig, und immer wieder ist es eine Bestätigung unseres Grundgesetzes“ (transl.: Our nation and society, the whole country is</i>

³ Based upon the speech found in Appendix 1

	<i>constantly changing, and each time it is a validation of our constitution)</i>
<i>Plan of action – help</i>	<ul style="list-style-type: none"> ▪ <i>“Deutsche Gründlichkeit ist super, aber es wird jetzt deutsche Flexibilität gebraucht” (transl.: German efficiency is great, but now we need German flexibility.)</i> ▪ <i>„Drittens braucht es dann Integrationsanstrengungen [...] Es geht darum, Lehrer zu finden die Deutschunterricht geben können, die die Kinder unterrichten” (transl.: Third, we need to make integration efforts [...] we need to find teachers who can teach the children German“</i>

As fig. 2 shows, Merkel tries to promote integrating and progressive steps to handle the refugee crisis. She sees the crisis' origin as a man-made disaster in the refugees' home countries, which are catastrophic and need to be contained. As it is beyond our capabilities of imagination, we as Germans have the responsibility to help. The fleeing refugees are presented as humans in urgent need of protection, and she calls for the German people's sympathy. Western idealism is the concept necessary to find a solution to the crisis, in Merkel's opinion. Western idealism is derived from the most basic concepts found in the German constitution, which the asylum law is based upon. Merkel further promotes the importance of accepting and embracing change, not only as a burden but as a necessary factor for Germany to prosper and grow. This change has been happening in the past and will continue to be embraced in the future, by working towards integrating those in need of protection. The need for integration is also one of her main points regarding the country's future plan of action. This plan builds on necessary flexibility and open-mindedness, entailing various practical implications for the following months to take in, shelter and integrate refugees. The speech's general sentiment represents the basis for the envisaged German *Willkommenskultur*/Welcome-culture (Merkel, 2015). However, apart from material implications, this plan also entails procedural details aimed at accelerating asylum procedures by creating new lists of Safe Countries of Origin (SCOs) and Safe Third Countries (STCs). These constitute first hints at the limits of the *Willkommenskultur* (Merkel, 2015).

The public reactions following this press conference were divided. The most visible reaction was undeniably in early September 2015, when the refugees arriving from Hungary at Munich main station were greeted by masses of people, the outcries of support constituting the ultimate face of *Willkommenskultur*. While this sentiment was not shared by everyone, a very vast majority did, putting German solidarity in the foreground, at least briefly (Joffe, 2015). By the end of 2015 more than half a million asylum applications had been made to Germany, which was about half of all asylum applications made in the EU. 34% of these were made by Syrians, who are almost certainly granted at least subsidiary protection (Bundesministerium des Inneren, 2016). Following the

months of increased arrivals, the actual asylum procedures had to be carried out, the refugees had to be accommodated and the integration efforts had to be implemented. Initially, they were predominantly backed by the German public, but sentiment towards refugees started to change throughout 2016, with events such as the New Year's Eve 2015 in Cologne, where hundreds of "Northern African" men were said to have harassed women at the central station, giving right-wing movements and populist parties such as *Alternative für Deutschland (AfD)* reason to gain members (Michel, Schönian, Thurm, & Steffen, 2016). Throughout 2016 right-wing movements were on the rise in Germany and the sentiment towards refugees was changing despite decreasing numbers arriving in that year (Steinmetz, 2016).

The asylum application procedure and its amendments

Apart from the public reaction to the refugee crisis, legislation reacted as well, with a vast amount of amendments made to the *Asylrecht*, most notably in the form of *Asylpakete I + II*. Each *Asylpaket* is a list of amendments regarding the asylum application procedure, the Residence Act (*Aufenthaltsgesetz/AufenthG*), the Asylum Act (*Asylgesetz/AsylG*), the Asylum Seeker's Benefits Act (*Asylbewerberleistungsgesetz/AsylBLG*), the employment directive and the integration directive (Die Bundesregierung, 2015, 2016).

Before elaborating the amendments, I will give a general overview of the German asylum procedure to clarify how it works and the notable features it contains. The procedure is published by the *BAMF* and is embedded in the previously mentioned asylum policies. Upon arrival at a German border, asylum seekers can start their application at the border authority, or, once they are inside the country, with the police, the foreigner's registration office or directly at the asylum reception facilities. The application starts with the data registration of fingerprints and biometrical photos. Following this, the applicant receives an arrival certificate which serves as a first official document of identification. In the following, registered applicants are distributed throughout Germany via the *EASY* allocation system, a system which allocates the federal state and reception facility the applicant should be sent to, based on a specified national distribution key as well as the applicant's country of origin. The allocated reception facility is then responsible for dispensing cash and non-monetary benefits (actual scope is under constant change, regulated in *AsylBLG*). Once in a reception facility, the application procedure begins by comparing the fingerprints to the EU-wide EURODAC database to verify the applicant's identity. If the EURODAC database reveals that the applicant has previously been registered at a different EU reception facility, he needs to be sent back to this EU MS, per Dublin regulation (continuous changes here, will be specified and differentiated). However, if Germany is responsible (no EURODAC match), the application procedure begins. In that case, an applicant is subject to a residential obligation of up to six months. If the applicant's country of origin has a low chance of recognition, this obligation

lasts until a final decision is made. The key element of the actual application process is a personal interview, where an official conducts a hearing to find out about the applicant's individual escape (route), his story and individual reasons. Hereby compliance with the Geneva refugee convention needs to be assured. Based on this interview, the *BAMF* then decides whether the applicant has a right to stay. An applicant can be granted to stay based on four possible decisions: (political) asylum, refugee protection, subsidiary protection or deportation ban (due to the principle of non-refoulement). He may be granted (political) asylum based on Art 16a GG (*Grundgesetz*/German Constitution) as a subject of political prosecution in his country of origin. This grants him a residence permit of 3 years, a possible settlement permit after 5 years (if certain requirements such as language and income are rendered), a work permit and the possibility of a family reunification. Family reunification is the right to bring one's direct family (parents/spouse/children) into the country, under the same status as the refugee. The second possibility is refugee protection based on the Geneva convention under Sect. 3 Sub-Sect. 1 AsylG and has the same rights as the asylum status. The difference here is mainly a legal one, since political asylum is granted through the German constitution and the recognition as a refugee is granted through the *Asylgesetz* based on the Geneva convention. Most refugees are recognised based on the Geneva convention and only very few are granted political asylum. A third possibility, which has increasingly been applied in the past year, is subsidiary protection, meaning that Germany cannot send the applicant back to his home country due to its current situation and imminent fear or prosecution (e.g. war). This type of protection is based on Sect. 4 Sub-Sect. 1 AsylG and entails a residence permit of one year, which is automatically extended for another two if the situation in the home country remains unchanged. Similar requirements to the previous two statuses apply to settlement and work permits. A notable difference, however, is the absence of a possibility for family reunification (an amendment which was implemented with *Asylpaket II*). The last possibility is a deportation ban which comes into effect if a deportation would lead to a breach with the European Convention on Human Rights based on Sect. 60 Sub-Sect. 5 and 7 AufenthG, granting the same rights as subsidiary protection but with stricter regulations for work permits. If none of these four cases applies the applicant will be denied asylum, a decision which he has the right to file a suit against (AIDA, 2015a; BAMF, 2016).

The issued *Asylpakete* had several goals and various consequences in different areas of the asylum application procedure. The first package came into effect on 24 October 2015 and had the general goal of supporting the federal states, speeding up the application procedure and ensuring better possibilities of integration. More specifically, this entailed the addition of Albania, Kosovo and Montenegro as SCOs (in addition to Bosnia and Herzegovina, Ghana, Macedonia, Senegal and Serbia) to speed up the deportation of people from these countries. This amendment continues Merkel's implications of only accepting specific refugees and not everyone, deciding prior to the

individual asylum procedure who may be in real need of asylum. New rules were established to allow faster deportations in case of non-recognition. The establishment of the “cluster procedure” also aimed at speeding up the application process by grouping applicants into clusters from A–D, where (A) are applicants whose countries of origin have a high chance of getting protection granted (at least 50% chance); (B) are applicants whose countries of origin have a low chance of getting protection granted (below 20%); (C) are complex cases; and cluster (D) constitutes the Dublin cases. The newly developed “integrated refugee-management” was another pillar of the government’s plan to speed up the procedure and to make the whole asylum system work more efficiently. Previously there was neither a uniform online database for the documentation and identification of applications, nor were there uniform documents, a shortcoming which the “integrated refugee management” tries to curb through a unified nation-wide procedure system and documentation database (Die Bundesregierung, 2015).

This new system seems to incorporate what Merkel called for in her press conference to make the asylum procedure more effective and efficient. Applicants with a high chance of recognition are supposed to have more opportunities for faster integration, through means such as mandatory German-language courses and employment possibilities. German lessons in particular were mainly possible from volunteers in reception facilities. Further changes to the reception facilities and the Federal States included increased financial assistance granted by the *Bund* for each applicant and more material assistance for personal needs instead of larger monetary allowances. The last major implementation of *Asylpaket I* concerned unaccompanied minors, by increasing the age of legal capacity to 18 (previously 16) and by transferring more responsibility to the municipalities regarding their care and welfare (Die Bundesregierung, 2015). In general, the contents of *Asylpaket I* constitute the realisation of Merkel’s promises and demands, where the humanitarian and pragmatic dimension of her implications becomes visible. It translates the need for solidarity and help into practical measures for well-functioning first-reception and integration procedures, the demarcation of undeserving asylum applicants into an extended list of STCs, and accelerates application processes through the cluster procedure.

Asylpaket II came into effect on 17 March 2016 and bore more amendments to the Asylum Act. While the first package had welcoming means such as enhanced integration, the second package bore mainly further restraints. It came into effect at a time of growing resentment against incoming refugees and therefore underpins the changes in public opinion. It included accelerated application procedures in special reception facilities, which are supposed to be conducted within one week, and residence obligations for all applicants of at least six months. Affected by these accelerated procedures are applicants without identifying documents, persons who seem to refuse to cooperate and applicants from SCOs (Pro Asyl, 2016a). The package further entailed greater reductions of benefits for the applicants and the removal of obstacles to deportation, such

as the inadmissibility of psychological medical certificates. Most prominently, *Asylpaket II* made a change in the law concerning subsidiary protection, prohibiting family reunification under this status. This is especially relevant since the majority of Syrian asylum applicants were given this status (Die Bundesregierung, 2016; Pro Asyl, 2016a).

Both packages have been subject to approval as well as criticism. The general accelerating of procedures (having previously been up to a year (AIDA, 2015a)) was welcomed; however, without infringing the rights of the individual applicants. Increasing the availability of German courses and their provision in reception facilities was also seen as an important step forward, although this was largely due to the efforts of extensive numbers of volunteers and not necessarily due to legislative changes.

The second package has been heavily scrutinised. NGOs such as Amnesty International and Pro Asyl criticised it for its disregard of human rights and its incompatibility with the European Convention on Human Rights (Amnesty International, 2016a). The two most prominent aspects are the prohibition of family reunification for applicants with subsidiary protection status and the accelerated procedures, as they lead to premature decisions, not based on the need of the individual, and force family members of refugees to endure the same sufferings because there are no legal means to reach Europe. The addition of more SCOs in the first package has also been heavily criticised, especially since its concept in general is said to collide with international refugee law and the Human Rights convention (Amnesty International, 2016a). However, these procedures came into effect to appease the opponents of a welcoming refugee policy, who have been on the rise over the past year.

Concluding, a generally welcoming sentiment towards refugees in Germany was prevalent at first; however, it was undermined by various policies. While a certain group of asylum seekers (Syrians, Eritreans and Iraqis) increased their chance of acceptance, they are predominantly given subsidiary protection while applicants from other countries such as Afghanistan experienced much lower acceptance rates than previously. One can almost speak of a move towards a two-class asylum system. In the last weeks of 2016, discussions about tightening refugee law due to internal security issues were on the rise, especially with the terrorist attack in Berlin on 19 December 2016, which killed twelve people (tagesschau.de, 2016). Recent proposals by the governing parties and the CSU⁴ (Christian Social Union in Bavaria) concerning greater centralisation of the application procedure, stricter rules regarding deportation, detention, and cooperation with the Maghreb states to take back their citizens have met with increasing acceptance by most parties, hinting at further tightening reforms in the following year (tagesschau.de, 2017). Although Merkel's policies in general were seen as an "open-door" policy

⁴ The CDU's (Christian Democratic Union of Germany) more conservative, Bavarian branch

throughout the world, looking at the actual changes in legislation revealed that German asylum law has, in reality, been tightened throughout the course of the crisis. The two-class asylum system can further be illustrated by Germany's recognition rates of asylum seekers. While more than 50% of all applications were successful, more than 70% percent of successful applications were made by Syrians, recognition rates of applicants from the Balkans on the other hand were below 3% (Eurostat, 2016c). However, at the end of 2015, Germany had the highest amount of recognition rates across the European Union.

In the following, I will analyse the changes within the Hungarian asylum system and then compare the different developments in light of the CEAS.

ii. Member state response—Hungary

First responses 2015

While Angela Merkel's press conference became globally known for its compassionate voice and liberal sentiment, the famous speech of Hungary's PM Viktor Orbán produced very contrary reactions. At the time of his speech, refugees were refused entry at the Hungarian border and sent to Munich en mass, which popularised *Willkommenskultur* in Germany but gave Orbán the chance to voice his very different opinion on the crisis. His speech was made following the publication of the photo of a toddler's dead body, washed up against Turkish shores, which symbolised the tragedy of the refugee crisis for many (UNHCR, 2015).

He held his speech at the 14th Kötcsé civil picnic on 5 September 2015, addressing the public and fellow politicians during this annual event. Fig. 3 illustrates Orbán's opinion towards the refugee crisis and is based on the same themes as analysed in Merkel's speech. The selected phrases are already in English as the officially translated speech from the Hungarian government's website was used for analysis.

Fig. 3 Viktor Orbán's speech at the 14th Kötcsé civil picnic ⁵

<i>Crisis – origins internal to EU</i>	<ul style="list-style-type: none"> ▪ <i>"I think that the phenomenon I've just described is no more or less than an identity crisis"</i> ▪ <i>"Probably all that happened to us in recent years is because there is something which fundamentalists might call a crusade, but which moderates like me rather describe as a challenge posed by the problem of 'the Islamization of Europe'."</i>
<i>Refugees – an invasion</i>	<ul style="list-style-type: none"> ▪ <i>"Now we are inundated with countless immigrants: there is an invasion"</i> ▪ <i>"And so these people are not seeking safety but just the opposite: they are risking their existing safety [...]"</i> ▪ <i>"It seems that they want our lives, they want the lives we have."</i>

⁵ Based upon the speech found in Appendix 1

<i>Western idealism – root of the problem</i>	<ul style="list-style-type: none"> ▪ <i>“I am convinced that it is no longer possible in Europe to both see ourselves as good in the liberal sense and to live in prosperity”</i> ▪ <i>“But now, Ladies and Gentlemen, we are witnessing the liberal identity crisis. Viewed from the right perspective, the whole issue of asylum and mass migration, the whole problem of economic migration is nothing more than the identity crisis of liberalism.”</i>
<i>Change – must be stopped</i>	<ul style="list-style-type: none"> ▪ <i>“Hungary [...] must protect its ethnic and cultural composition”</i> ▪ <i>“I am convinced that Hungary has the right – and every nation has the right – to say that it does not want its country to change.”</i>
<i>Plan of action – defence</i>	<ul style="list-style-type: none"> ▪ <i>“The first thing which must be said is that a country with no borders is no country at all”</i> ▪ <i>“Finally, the fourth thing, which I think follows from all this [...] everyday patriotism.”</i>

Orbán addressed the same themes as Merkel in a very different manner. Regarding the term “crisis” he does not mention the civil wars as reasons for the refugees at all, but rather focuses on the crisis of liberalism and our European identity, as well as Islamisation. In his opinion the crisis originates from the European liberal ideal of a globalised world. Refugees in his opinion are therefore not humans in need of protection but rather immigrants who, as a result of liberals’ attempts to globalise and connect the world, seek a better life in Europe, therefore risking their lives. Refugees are described as being able to strip us of our prosperity. Hence, Western idealism does not constitute a solution to the crisis but rather the crisis in itself. Orbán blames Western ideals such as liberty, shared responsibility and change for the crisis. These ideals therefore need to be stopped from spreading to stop change itself. This starts by protecting national borders and Hungary’s ethnic composition and does not end by increasing the sense of “everyday patriotism” in Hungary. This fear of change is also envisaged by Orbán’s plan of action, which is defensive towards all refugees and its first premise is to fence off all national borders as soon as possible. *Willkommenskultur* is seen as naïve and intolerable, a return to the Nation State is stated as the imperative of action (Orbán, 2015).

The essence of his speech was very clear, discrediting the speech and actions of Angela Merkel from a few days earlier, by calling on the need for Europe to protect itself. Asserting the public reaction to his speech and the crisis’ outbreak one needs to acknowledge that not all public opinion in Hungary voiced the same sentiment as their Prime Minister, but the general reaction towards refugees was indeed quite different from a *Willkommenskultur*. Due to restrictions by Hungarian authorities, thousands of Syrian refugees were stranded at the Hungarian-Serbian border in September 2015, forced to reside under inhumane conditions while waiting to be allowed into the country and then be sent to a reception facility. The conditions at the border and

treatment by the border police were reportedly violent and inhumane, involving the use of force (Kingsley, 2015). On 5 September 2015, more than one thousand refugees in Budapest left the Hungarian capital on foot to reach the German-Austrian border where they expected to be treated more humanely. On 15 September 2015 the border fence along the Serbian border was completed and border controls reinstated, leaving many refugees in limbo and ending two decades of an EU open-border policy (UNHCR, 2015).

The asylum application procedure and its amendments

While the first reactions of Hungary and Germany were very different, an assessment of the changes within Hungary's asylum policy since the outbreak of the crisis will show how much the policies differed from one another and how far Orbán was able to implement the policies addressed in his speech.

The analysis will start by giving an overview of the Hungarian asylum procedure in general, commenting on some amendments made with the emergence of the crisis and then elaborating the amendments implemented since then. The information on the general asylum procedure can be found on the Office of Immigration and Nationality's (OIN) website (*BAMBAH*) as well as in Hungary's AIDA report. The Migrant Solidarity Group of Hungary (MIGSZOL) as well as other NGOs focus further on the changes in asylum law and its procedures.

For the asylum application process to begin, the application needs to be submitted to the refugee authority for recognition and must entail the declaration of the applicant's intention to request international protection in Hungary. The application must be submitted to the asylum authority in person when entering the country, while undergoing the immigration procedure, while in an international airport or transit zone (BAMBAH, 2016).

The OIN is a government agency under the Ministry of the Interior and in charge of asylum procedures through the directorate of refugee affairs. It is responsible for the administrative instance of the asylum procedure once the application has been submitted. The application procedure then begins with a possible detention of applicants, which was initially to last a maximum of 72 hours; however, it can be extended to up to six months. Hungary has been widely criticised for this detention procedure as it disregards basic human rights (MIGSZOL, 2016b). By November 2015, more than 50% of all asylum applicants in Hungary were held at detention centres (AIDA, 2015b). In a second step, the applicant's fingerprints and photographs are taken, which are then transmitted to the EURODAC system to check whether Hungary is responsible or whether the Dublin procedure applies. If Hungary is found to be responsible the actual procedure begins, which is limited to a maximum of 60 days. Within this period a decision needs to be made. Hence, the following step assesses whether the applicant should be subject to the "normal" procedure, the "inadmissibility" procedure or the "accelerated" procedure. If an applicant is an EU

citizen, has already been granted protection by another EU MS or another third country or has travelled through a Safe Third Country (STC), his procedure is inadmissible and a rejection is issued within 15 days. Since 2015, Hungary has issued an “accelerated” procedure, which is also limited to 15 days and comes into effect if the applicant comes from an SCO, has shared irrelevant information with authorities, has given false information about his identity or country of origin, destroyed travel documents, submits more than one asylum application or did not apply for asylum within a reasonable amount of time or presents a risk to Hungarian security. Hence, this procedure can be applied to most asylum seekers depending on its interpretation. Subject to heavy criticism, the accelerated procedure does not give enough time for sufficient assessment of the individual claims, lacking sufficient time for personal interviews, legit interpreters, the provision of medical and legal assistance and the gathering of all relevant information (AIDA, 2015b). Only if the applicant is not admissible to either of these other procedural options is he given the chance for the regular procedure, which is then limited to a duration of 60 days. This procedure begins with a personal interview by an asylum officer and an interpreter who ask questions about personal data, the applicant’s route to Hungary and his main reasons for seeking international protection. Following this interview the OIN decides whether the procedure will be conducted in an open centre or whether to order asylum detention for the applicant (AIDA, 2015b; BMBAH, 2016).

Five possible outcomes result from this procedure. In case of a successful application the applicant may be granted refugee status per Chapter 3, Sect. 6 Asylum Act. Refugee status is granted for three years and then reviewed and remains in place until the refugee receives Hungarian citizenship or until the refugee status is withdrawn. Upon request, family reunifications are possible. The second possible successful status is that of subsidiary protection, which may be granted to an applicant if he does not qualify as a refugee but cannot be returned to his home country due to founded belief that he may suffer serious harm there. A person’s family may be granted subsidiary protection upon request. The subsidiary protection status is reviewed by the OIN every three years. The third possible outcome is temporary protection by Hungary, where the non-refoulement principle prohibits the person’s return to his home country due to armed conflicts or war. Temporary protection is generally granted to groups leaving their home country, such as in the case of Syrian refugees. Protection is only granted for a specific period and may be extended by Parliament after one year. If an applicant is denied asylum this may be on either of two grounds. Either their application is rejected as inadmissible or it may be rejected on the merits (AIDA, 2015b; BMBAH, 2016).

Regarding the changes within Hungarian asylum policy, the most notable procedure was the erection of border fences with Serbia and Croatia. 175km of razor-wire fence separate Serbian from Hungarian territory, constituting a visible border at the external Schengen borders, which

went in line with Orbán's proclamations of the need to secure national borders (BBC, 2015). With the erection of the fence came the opening of "transit zones", where refugees should start their application procedure; however, these zones proved to be ineffective and not capable of managing the masses of refugee flows. Hungary further issued a national list of STCs on 1 August 2015, which included countries such as Serbia, Greece and Macedonia. This list entails that refugees who passed through any of the countries on the list on their way to Hungary are to return to these countries as they are deemed safe and the refugee is to apply for asylum there. However, Serbia does not qualify as an STC according to EU guidelines (Hungarian Helsinki Committee, 2015). Hungary further amended its criminal code, automatically criminalising all individuals unlawfully entering Hungarian territory (e.g., all refugees). These two developments were supported further with the authorisation of military forces to assist the police in securing the border, using force "when needed" (Amnesty International, 2016c). These developments all underline the populist proclamations Orbán made at the Kötcse picnic, seeking to keep asylum applicants out of the country at all costs and discrediting them of their need for protection by criminalising them. Furthermore, the accelerated procedure, which was implemented on 1 August 2015, remains a highly critical process as its interpretation allows most asylum applicants to be treated under this procedure with the intent of rejecting them (Hungarian Helsinki Committee, 2015).

Notable legislative changes were also made for individuals with successful asylum applications. While refugee status used to be granted for five years at a time, it was reduced to three years before being subject for re-evaluation. The further abolishment of all integration support for refugees makes it increasingly difficult for successful applicants to build a "normal" life in Hungary. People in refugee camps have no right to work, have no monthly support, no opportunity of receiving education or language courses and are no longer part of Hungary's "integration contract" system (MIGSZOL, 2016a). These amendments align with Orbán's statements on ethnic homogeneity in Hungary and the need to stop multiculturalism.

As expected, Hungarian asylum law has been extremely tightened since the summer of 2015, accompanied by an extremely apprehensive sentiment of the country's government. Hungary's numbers of accepted refugees further underline the apprehensive policy developments. With recognition rates below 20%, they are among the lowest throughout the whole Union (Eurostat, 2016c). While more than 170,000 refugees applied for asylum in Hungary, less than 1000 were granted protection through first-instance decision procedures (Eurostat, 2015). Making Serbia an STC has led to an almost automatic rejection of most asylum claims, regardless of the applicant's country of origin. The practical implications of Orbán's speech are visible in all asylum policy amendments made in Hungary, making the policies even more restrictive than previously.

iii. Comparison and sub-conclusion

In the following, I will compare both countries' evaluated policy changes and first reactions. The comparison will be based on a "most similar system, different" approach by pointing out each country's most distinct reactions since the crisis began.

Starting with the speeches by Merkel and Orbán we can see the most striking differences. While both heads of state urged for national unity they did so with opposing objectives. Both leaders start their speeches by stating the crisis situation which the EU and their respective countries were facing at the time. However, while Merkel situates the crisis in the "man-made" disaster in the countries of civil war (especially Syria), Orbán stresses the crisis to be one of the European Union and "Islamisation" itself. Whereas Merkel acknowledges the humanitarian dimension in the countries of war as well as within Europe, Orbán discredits the crises in the refugees' countries of origin. In his opinion the crisis Europe is facing is a crisis of liberalism, constituting the end of the "liberal era". Hence this crisis is a chance for a renewed upheaval of Christian ideology and nationalism. The Hungarian Premier further states that the refugees are not fleeing persecution but are trying to take hold of European and Western privileges as they are dissatisfied with their own standards of living. He clearly states that their flights are a choice motivated by greed, while Merkel recognises the flights to be borne out of despair. Furthermore, both leaders include their stances on Western liberalism as an essential part of their speeches. However, while Merkel uses it to promote European values which Germans need to defend by helping the refugees, Orbán criticises it by making Western liberalism and expansionism the crises' scapegoat. Following these stances, both speakers present several points of action on how to handle the current situation. Merkel calls for practical implications to help the country's internal procedures with refugees, while Orbán focuses on how to keep refugees out of the country. The most prevalent point here can be seen in Merkel's call to embrace change and to re-define what "being German" means, while Orbán does the opposite and urges his people to revert to traditional Hungarian nationalism and to reintroduce great patriotism which shall never be subject to change. *Willkommenskultur towards* refugees in Germany is counteracted by the use of force *against* them in Hungary.

Comparing these two speeches makes each speaker's underlying ideals visible. While the German chancellor bases her whole speech on the need for solidarity with and support for the refugees, the Hungarian PM discredits the refugees' truthfulness in general. Instead of promoting a strengthening of the European idea and openness to change he urges for a return to nationalist and "Christian" ideals. These diverging underlying tones have stayed prevalent in the differing policies both countries have implemented since the summer of 2015, which the following comparison will demonstrate.

At first glance the general framework of the asylum procedures in both countries appears very similar, there are, however, some significant differences. The most striking difference concerning

the framework is the procedural time limit. While Germany aims at accelerating asylum procedures, no set time frame to conduct the procedure is given, whereas Hungary limits the procedure's duration to a maximum of two months, in case of an accelerated procedure to 15 days. The second main difference concerns what follows the refugee's application for asylum. While Germany provides reception facilities which the applicants are allocated to, refugees in Hungary may either be accommodated in open reception facilities or in a detention centre. Since more than 50% of the refugees are effectively held in detention centres, one can conclude that they do not constitute an individually elaborated exception but a collective norm. These detention centres are further in line with Hungary's legislation change regarding the legal status of refugees, which automatically criminalises them due to unlawful entrance into the country. The equivalent legislation amendment in Germany can be found in the applicant's obligation of residence, which restricts the refugee's movement, but to a lesser extent. Further major differences can be seen in each country's actual procedure. While the German system grants the regular application procedure to all applicants who are not subject to the Dublin regulation or an airport procedure, Hungarian authorities have various options for further handling refugee cases. The accelerated procedure lacks necessary safeguards from exploitation, leading to its increased use, jeopardising real chances for international protection. Concerning the status of recognised refugees both countries have implemented similar policies, although the number of recognised refugees in Hungary is much lower than in Germany.

Regarding further amendments to asylum law, both countries have published extended lists of SCOs to enable quicker deportation. In addition to these lists, however, Hungary has extended the same list to a national list of STCs, which makes valid asylum claims in Hungary virtually impossible. Concerning successful applicants both states have tightened regulations and reduced benefits, although Germany did implement a new approach for integration support while Hungary almost abolished it.

These were the points where the legislative changes of both countries were comparable, while the changes beyond these were much more specific in each case. Legislative changes in Germany mainly focused on practical implications regarding the asylum procedure and the handling of applicants from SCOs, which have been somewhat restrictive but remain at a humane level. The main impact of legislative changes in Hungary affected the protection of the country's borders to prohibit refugees from entering the country altogether, as well as the new list of STCs, which minimises the number of possibly successful applicants.

In both countries, the analysed speeches can be regarded as catalysts or starting points for the asylum policy reforms. In both cases, they constituted reactions towards the ongoing developments regarding vast refugee influxes in their countries. While Hungary had to bear the burden of being on the border with Serbia, a non-EU country, Germany had become the most

desired destination for many refugees. While it needs to be acknowledged that Germany has, due to its economic strength and size, greater capabilities of taking in more refugees, the amount taken in by Hungary in comparison is of no relation. In Germany, legislative changes were in line with many of Merkel's statements in the beginning, but started to become more restrictive as anti-refugee sentiments increased in the country. In Hungary, the changes in legislation remained in line with Orbán's speech and the goal of securing Hungary from incoming refugees, by defending its borders with force and externalising the issue of asylum applicants by deferring them back to Serbia.

Concluding this comparison, tightening in asylum law has occurred in both countries, despite the initial welcoming sentiment in Germany. However, the restrictions in Hungarian law are much more extensive and have been accused of being inconsistent with European asylum law. Developments towards greater restrictions in asylum law have furthermore been prevalent throughout the whole European Union. Instead of promoting a European open-door policy, most countries and citizens opted for securing "fortress Europe" further by increasing measures such as FRONTEX' border controls in the Mediterranean (European Parliament, 2016). While the real reason for these developments is a fear of the Union collapsing under the pressure of refugees, populist political movements fuel this fear. Throughout the Union and throughout the West in general, fear and dissatisfaction are used to devalue the status quo and to call for a reverse of liberal values.

Regarding a reform of the CEAS a development towards more deprecating asylum laws can also be expected. In how far this assumption holds truth will be elaborated in the following assessment of the CEAS' reform proposals.

b. The proposed reform of the CEAS

The current CEAS' shortcomings have been evaluated within the academic state of the art. These have not only been visible to academia but also in political discussion. The final proposal for a reform of the CEAS was issued on 13 of July 2016 (following a first proposal in May 2016) and is currently being discussed by the Council and the European Parliament (European Commission, 2016b, 2016c). These reforms have therefore not been implemented yet; however, I will analyse the policy documents and press releases of the proposal as well as policy discussion papers on the reform published by Brussels-based think tanks and NGOs. Analysed documents on the reform include the European Agenda on Migration (2015), the Commission's communication towards a reform of the CEAS in April 2016, the Commission's first proposal of May 2016 and the second proposal of July 2016. The analysed statements and policy briefs discussing the impact and criticism of these reforms were issued by the European Committee for Refugees and Exiles

(ECRE), Pro Asyl, the European Data Protection Supervisor (EDPS), the European Economic and Social Committee (EESC), the European Programme for Integration and Migration (Epim) as well as press releases by Amnesty International and the Greens Alliance in the European Parliament. By analysing these documents, the proposal's practical policy implications and shortcomings will be elaborated. Statements on the proposals were sampled to include a variety of different institutions with differing opinions about European asylum policy and differing objectives, ranging from NGOs to representatives of civil society.

i. Content of the CEAS reform proposals

First implications for a planned reform of the CEAS can be found in the European Agenda on Migration from May 2015. The Agenda covers a broad range of topics regarding migration in general, but grants an extensive section to the CEAS reform. Its key implications are the necessity of a coherent implementation of the CEAS, the need to improve standards of reception conditions, the strengthening of SCO provisions to support swifter processing, an upgrade of the European Asylum Support Office (EASO) to step up practical cooperation and the call for a greater sharing responsibility under Dublin, as well as a revision of the Dublin regulation (European Commission, 2015). Following the agenda was a Communication by the European Commission from April 2016, which constitutes the first request for a reform, addressing five structural shortcomings of the CEAS, namely (1) the need for a sustainable and fair system with an amended Dublin regulation; (2) the reinforcement of EURODAC and an expansion of its competences; (3) the necessity for greater convergence regarding EU asylum law; (4) the need to prevent extensive secondary movements of asylum seekers; and (5) the proposal for a new mandate for an EU asylum agency (European Commission, 2016a). These first proposals were incorporated in the finalised first reform proposal round in May 2016, which elaborated three of these components.

Under the pretence of making the CEAS “fairer, more efficient, more sustainable” (European Commission, 2016c) the May 2016 proposal's main proposition was an extensive reform of the Dublin regulation. It acknowledges several of the regulation's current shortcomings and seeks to make the Dublin system more transparent and effective, as well as to implement a new mechanism to deal with disproportionate pressures in different MS. This new mechanism shall be a “fairer system based on solidarity” (European Commission, 2016c) and constitutes a corrective allocation mechanism to come into effect as soon as one MS exceeds a certain intake of asylum applicants. This fairness mechanism will then automatically decide on relocation based on other countries' refugee intakes and contributions towards resettlement efforts. The new Dublin regulation will further be made more efficient by reducing time limits for transfer requests and carrying out these transfers of asylum seekers between MS. Overall, the revised Dublin regulation will provide clearer obligations for the MS as well as the applicants concerning responsibilities to

discourage abuse of the asylum system and secondary movements of applicants. However, apart from stricter regulations, the reform will also provide stronger guarantees for unaccompanied minors entering the EU and an extension of the definition of “family members” (European Commission, 2016c). The second main proposition of the Commission’s proposal regards the reinforcement of the EURODAC system as well as an extension of its scope of power. It proposes to store, in the EURODAC system, the data of third-country nationals irregularly staying in the EU, to make it easier for MS the search for and store this information. The EURODAC system will also be broadened in terms of the asylum applicant information stored, to include data such as biometrical facial images, identity and travel documents and further identity details (European Commission, 2016c). The Commission’s third main proposal concerned the establishment of an EU Agency for Asylum by transforming the already existing EU Asylum Support Office (EASO) into a fully-fledged EU Agency with an enhanced mandate and expanded tasks to address the weaknesses of the CEAS’ application. Its main tasks will be the correct application of the fairness mechanism under the new Dublin regulation, to ensure the convergence of CEAS applications across the EU, to strengthen practical cooperation and information exchange and to promote EU law and operational standards. The Agency will also be given the possibility to deploy asylum support teams of a reserve of experts to provide operational assistance in specific cases (European Commission, 2016c).

Following this first proposal the European Commission issued a second one in July 2016 for “Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy” (European Commission, 2016b). This second round of proposals further elaborates the April 2016 Communication’s call for greater convergence within EU asylum law. This is to be achieved by implementing common procedures for international protection and harmonising reception facilities in the EU with the aim to simplify and shorten asylum procedures, further discourage secondary movements and increase integration prospects (European Commission, 2016b). This harmonisation will be achieved by replacing the Asylum Procedure and Qualification Directives by Regulations as well as reforming the Reception Conditions Directive. More specifically, the proposed Asylum Procedure Regulation will aim at fully harmonising a common EU procedure for international protection and at reducing the differences in recognition rates among MS. In detail, this procedure is meant to simplify and shorten asylum procedures to ensure common guarantees for asylum seekers (including the right to a personal interview, free legal assistance and representation as well as safeguards for vulnerable applicants) but also to ensure stricter rules to combat abuse of the CEAS. This Regulation also aims at harmonising the rules on STOs as well as SCOs, making their application mandatory and replacing national designations of safe countries (European Commission, 2016b). The proposed Qualification Regulation is further designed to “harmonise protection standards and rights” (European

Commission, 2016b) to ensure applicants receive the same protection within the EU, regardless of MS. This is to achieve greater convergence of recognition rates and to harmonise the types of protection across MS under guidance of the EU Asylum Agency. Apart from harmonisation, this regulation also entails firmer rules for sanctioning secondary movements and one of numerous measures to prevent this recurring issue (European Commission, 2016b). The Commission's last proposition illustrates a reform of the Reception Conditions Directive to ensure the harmonised application of standards and reception conditions developed by the EASO. These include an obligation of residence for asylum seekers and the possibility of detention in cases of non-compliance, but also benefits, such as granting earlier access to the labour market to reduce dependency and reinforcing guarantees for unaccompanied minors and refugees with special needs (European Commission, 2016b).

The sum of these proposal rounds has been presented to the Parliament and the Council and is currently subject to discussion in the European policy debate. While some of the propositions constitute promising improvements to the CEAS, many have been subject to heavy criticisms. In the following the main reactions towards the proposals as elaborated by numerous NGOs, institutes and civil society groups will be discussed.

ii. Reactions towards the CEAS reform proposals

As one of Europe's most important institutions concerning asylum law, ECRE published a list of statements on the reform, dealing with four of its pillars. The main point of criticism was the Dublin regulation. Despite recurring calls for an abolishment of the regulation due to its fundamentally flawed mechanism it will be implemented and strengthened again, which raises serious concerns, according to ECRE. In their opinion, real advance can only be made by introducing a new system, especially one which does not put greater stress on the countries of first entry, who will have to bear a greater burden despite the mechanism for fairer distribution (ECRE, 2016). Also opposing the mechanism, Pro Asyl issued a lengthy report on the proposed Dublin IV regulation, which they criticise as being impractical and inhumane (Pro Asyl, 2016b). Amnesty International and the Greens in the European parliament advocate similar positions towards retaining the Dublin regulation as the CEAS cornering mechanism, accusing the reform of being misused as a tool for migration control instead of regarding refugee seekers as vulnerable humans in need of protection (Amnesty International, 2016b; The Greens, 2016).

Since the Dublin regulation has been criticised ever since it came into effect, one may wonder why it has not been abolished yet. Any other mechanism would require greater coordination and solidarity throughout the Union, a procedure which most MS seem apprehensive to adopt.

Regarding the expansion of the EURODAC system, most organisations are concerned with the accompanying implications for the individuals' human rights and the danger of exploitation. ECRE

demands safeguards to accompany the recast, while the EESC requires more justifications for its necessity (ECRE, 2016; European Economic and Social Committee, 2016). The EDPS acknowledges the necessity to expand the centralised registration system, but urges for more measures regarding safeguards to avoid an abuse of the system (EDPS, 2016). As Dublin and EURODAC depend on each other criticism against them is of a similar nature because they adhere to the old principle of allocating refugees based on their point of entry, assuming premises throughout the EU to be similar. Especially the Dublin regulation, it is said, is an inappropriate tool for distributing asylum seekers fairly.

The proposal for an EU Agency for Asylum is welcomed in general; however, the need for the agency to be advised by academic experts is stressed as well as the importance of increasing the quality of decision-making within the EU institutions when aiming for greater harmonisation (ECRE, 2016). The agency as well as the general reform proposals regarding uniform regulation need to be based on the EU's guiding principles of human rights and proportionality (European Economic and Social Committee, 2016).

Regarding the second round of reform proposals the general step of heading towards greater harmonisation and convergence among EU MS, the reactions are predominantly in favour; however, they need to be regarded with care. While the concept of harmonising conditions throughout the EU is necessary, the danger of a "race to the bottom" dangerously prevails. While the regulations would force some states to increase their standards to meet harmonisation, others will be stripped of their freedom to provide more generous asylum policies (Funk, Rose, Pascouau, & European Policy Centre, 2016). While the Qualification Regulation entails mainly favouring implications, the Asylum Procedure Regulation has been subject to heavier criticism. Its inclusion of SCO and STC lists expands an already heatedly debated procedure (Funk et al., 2016). Pro Asyl also criticises the STC concept as a means of making asylum claims almost impossible, calling it an "Orbanisation" of European Asylum law, as the mechanisms aim at keeping asylum seekers out of the EU and thereby contribute to safeguarding the "fortress Europe" (Pro Asyl, 2016b). EPIM further questions the Commission's overarching goal of using harmonisation to limit asylum seekers' secondary movements, as the CEAS coercive nature is considered to be one of its most fundamental shortcomings (Funk et al., 2016). Amnesty International and The Greens also have strong opinions towards the new Safe Country lists, deeming them to be out of line with the EU's guiding principles (Amnesty International, 2016b; The Greens, 2016).

The general sentiment towards the reform proposals is very critical. The most crucial points are the Dublin IV regulation and the EURODAC recast, two already heavily debated mechanisms of the system. A general issue seems to be the seeming disregard of the refugees' rights. Regulations instead of Directives in general is a welcomed idea, since it would lead to harmonisation of standards; unfortunately, a lowering of standards in many cases seems likely and needs to be

safeguarded against. Lower standards, disregard of human rights and the defensive character of the proposals constitute the proposal's main criticisms.

iii. Compliance with Member State responses

The proposed reform of the CEAS does address some of its current shortcomings; however, many shortcomings elaborated in the academic discussion have been left out or intensified. The issue of major differences between MS within the CEAS remains pressing. In the following, I will assess how far the different developments of asylum policies within the individual MS are in line with the CEAS and its proposed reform, and what this might indicate for the future of the CEAS.

The reform proposal indicates the aim of accelerating the whole asylum application process, which is in line with political and legal developments in both MS. Although Germany has not yet managed to successfully achieve this, Hungary has a set time limit for all asylum application procedures. Hungary's and Germany's national lists of STCs and SCOs would both become obsolete with the reform, due to the implementation of EU-wide third-country lists. In detail, however, these do not differ much from the lists proposed by Hungary. The developments within that sphere seem to be heading in a similar direction. While an extension of the SCO list will harmonise the possibilities to repel asylum seekers, the new list of STCs may be less extensive than Hungary's current one, curbing the amount of rejected people who crossed through Serbia, for example. Hungary's closing of its borders demonstrates the disproportionate burden levied on the Schengen border countries, and, regarding the CEAS the country has the right to do so. The reformed CEAS would grant Hungary the possibility of detaining asylum applicants as a measure of compliance with the application procedure. With the implementation of a Qualification Regulation and a revised Reception Conditions Directive, Hungary may have to revise its shortened integration benefits. However, since the Reception Conditions Directive remains a directive, the MS may still be able to limit its application.

The difficulty of identifying concrete breaches with the revised CEAS proposal hints at one of the proposal's main shortcomings. Although it seeks to be more specific and encompassing it leaves the most important decisions and actions to the MS and relies on their willingness for solidarity. When looking at measures such as those implemented in Hungary, solidarity is an unheard-of concept. The proposed reform of the CEAS does not constitute a more humane and fair approach than the current system, which reflects the current developments in most MS. Ever since the crisis started, the tightening of asylum laws has been a trend which has now spread to Union level.

iv. Solution to the CEAS shortcomings

While the reform proposal has justifiably suffered under various forms of criticism, it needs to be elaborated whether it constitutes some valid solutions to the CEAS shortcomings discussed at the beginning of this thesis.

The CEAS discussion in academia led to some valuable insights into some of the CEAS' and therefore also the EU's most elementary shortcomings. The problem of the system's intergovernmental nature has been expressed mainly in the lack of common standards, the inconsistent application of directives and the disproportionate burden levied on specific MS, making attempts at secondary movements within the EU inevitable (Brekke & Brochmann, 2014; Klepp, 2010; Lambert, 2006; Tsourdi & De Bruycker, 2015). The proposed reform holds possible solutions to these problems, the most obvious one being the move to transform the Qualification Directive and the Asylum Procedure Directive into Regulations. This move would lead to greater harmonisation concerning refugees' rights and status across the entire Union. However, the issue of a "race to the bottom" does not cease to exist. While the implementation of regulations would lead to greater convergence, it may also imply the lowering of standards and of successful asylum applications in countries which currently employ more generous asylum regulations. The disproportionate burden on some MS is partly addressed by the "fairness relocation" mechanism; however, its suitability remains questionable especially since it is based on the Dublin regulation. A solution for ensuring the application of regulations may be the establishment of an EU Asylum Agency, given more extensive rights than the current EASO. While the scope of their competences needs to be further specified and the selection of advisors re-defined, this agency would tackle some of the CEAS' current problems of the system's governance and application. However, the reform of the Asylum Procedure Directive also intensifies one of the CEAS' most controversial issues, namely the (extension of) STC and SCO concepts. The concepts have been contested by various authors and discussed as violating the non-refoulement principle, being a concept disregarding human rights, and not being in line with the European convention on human rights, therefore their preservation is controversial in itself (Ippolito, 2013; Klepp, 2010).

Drawing especially on the studies by Heijer et al. (2016), Carrera and Guild (2015) and Garcés-Mascareñas (2015), who contest the entire Dublin logic as the system's cornerstone and see the CEAS' perils in its coercive nature, the main body of the reform proposal constitutes not a solution, but the problem itself (Carrera & Guild, 2015; Garcés-Mascareñas, 2015; Heijer et al., 2016). In its essence, the reform proposal is based on the same presumptions as the Dublin logic, which has evidently failed various times. Despite the new relocation mechanism, the concept stays the same. While the coercive nature of the CEAS concerning its internal and external dimension has been heavily criticised, especially by Heijer et al (2016), the focus remains on prohibiting secondary movements instead of understanding their incentive and finding solutions to them. The presumption that each MS has the same standards for taking in new refugees does not uphold, therefore a mechanism mainly based on this assumption will not work more successfully than its predecessor. The other predominant criticism of the CEAS and the EU was a total lack of solidarity among MS, an issue which is not addressed at all in the reform proposal.

5. Summary and Conclusion

In summarising this thesis, I will give a brief overview of the discussed findings before putting both parts of the analysis into a coherent and elaborative conclusion, making the purpose and success of the analysis clear.

When setting my theoretical framework, I stated that the current CEAS is an intergovernmental system whose coercive character and lack of harmonisation, mutual recognition rates and solidarity make it ineffective at managing the European refugee crisis. Its main contested cornerstone was the Dublin regulation, which makes the first EU state of entry responsible for the asylum applicant. This underlying mechanism, which constitutes the CEAS' most important but also most disregarded and contested aspect, remained relevant throughout the whole analysis. Following the CEAS' discussion, the reactions of Germany and Hungary to the refugee crisis were analysed and compared. The content analyses of the speeches made by the countries' heads of state were instrumental in understanding the amendments later made to each nation's asylum law. While Angela Merkel's speech was essentially driven by compassion for the refugees and the urge to apply practical implications for handling the influx of asylum seekers, Viktor Orbán's speech promoted nationalist sentiment across the country by discrediting the refugees' reasons of flight instead of voicing any compassion. His goal to revert European and Western liberal politics can be seen to a certain extent in the changes made to the Hungarian Asylum Act. The main amendments concerned accelerated procedures, detention procedures, the erection of fences at the borders and new STCs. In Germany, the *Asylpakete* included changes regarding SCOs, a new integrated refugee management, and measures for more extensive integration. While integrative measures were in line with Merkel's speech promoting *Willkommenskultur*, the new list of SCOs made it easier to dismiss asylum applicants from certain countries, creating a two-class asylum system.

Discussing the CEAS' proposed reforms, several positive reactions could be found. Its six main measures are (1) an amended Dublin regulation with an incorporated fairness relocation mechanism; (2) a recast of EURODAC; (3) a transformation of the EASO; (4) the Asylum Procedure regulation; (5) the Qualification Regulation; and (6) the revised Conditions Directive. The reform's aim of increasing harmonisation and recognition rates of asylum seekers throughout the EU by replacing directives with regulations has been welcomed. However, these measures of harmonisation bear the danger of a lowering in standards in general, ultimately resulting in a "race to the bottom" of the different MS. The transformation of EASO was seen as a necessary measure overall; however, it needs to be given further specifications and regulations. The main issues with the reform remain the Dublin regulation, which, despite the relocation mechanism, continues to function in its criticised and questioned logic, which has repeatedly been unable to withstand immense pressures, especially of refugee crises such as the one in 2015. By retaining

the Dublin logic, the coercive nature of the CEAS remains unchanged. Furthermore, no specific change or mechanism addressing the lack of solidarity among MS was considered.

Regarding the MS' compliance with the proposed reforms it becomes apparent that even within the reformed framework most policy amendments would still be possible, effectively giving the MS the same extensive leeway as before, fostering numerous national differences in asylum policy. As the dimension of the proposed regulations is not yet clear, it is uncertain whether greater harmonisation and convergence will make the EU a more level playing field or whether it will lead to a general lowering of standards. In consideration of the general trend in asylum policies, however, the "race to the bottom" seems to be the more realistic direction to avoid the promotion of "pull factors" (which can be seen in measures implemented by *Asylpaket II* in Germany).

In concluding this thesis, I will answer my issued research question:

To what extent can the proposed reform of the Common European Asylum System tackle its current problems, exemplified by a comparison between Germany's and Hungary's asylum policies?

While the reform addresses several of the CEAS' shortcomings, especially regarding harmonisation and convergence, it dismisses the repeated notion of substituting the Dublin regulation with a more suitable mechanism. As the MS analysis shows, the reform is also unable to curb the amendments made by the individual MS analysed, so extensive national differences will prevail. As the aspect of solidarity was not addressed, it may remain the most pressing issue of the crisis. Both analysed MS show a trend towards a tightening of their procedures, although to different extents. These developments can be found in the CEAS reform proposals, too. Correlating them with the widespread apprehension of immigrants and refugees across the EU, one cannot expect any movement towards greater cooperation in the near future. EU-wide legislation on the STC and SCO concepts seems to point out a general trend. These concepts provide measures for the MS to legally push back refugees by externalising the issue of asylum applications. The refugee crisis therefore becomes less of a crisis for Europe (although in reality it remains) and removing the political incentives to find further solutions.

At the same time, the EU's main issue with solidarity cannot be solved by issuing new regulations or changing laws—and here lies one of the EU's major problems. With the rise of right-wing sentiments throughout the Union, liberal achievements of the past decades are under threat, forcing the MS to act. However, the question of which type of action remains. Reforming the CEAS has been a step in the right direction, but these reforms are short of addressing all its current shortcomings. Most notably the points discussed by Heijer et al. (2016), Crépeau and Purkey (2015), Garcés-Mascareñas (2015) and Carrera and Guild (2015) remain relevant and pressing, as their criticism of the lack of solidarity, the coercive external dimension of the CEAS and the inappropriate Dublin mechanism have not been fully addressed. To enhance solidarity among MS,

trust and union within the EU need to be re-established. This can only happen within the countries themselves.

With the establishment of the common market, the EU's Member States were willing to give up parts of their sovereignty as the membership promised economic gains. With the refugee crisis, each asylum applicant is considered a burden to the receiving MS, therefore constituting an economic loss (even though this is not true). As a result, MS have no great incentive to act in unison and solidarity, as there is no direct gain. Externalising the whole issue by expanding the third-country lists therefore represents a welcome solution to many. But this development may lead to the assumption that the European Union is barely more than an economic entity whose existence is only justified as long as it suits its gains.

As a European I believe there are more reasons for this deadlock than the mere economic ones. The situation within each MS needs to be assessed individually, the reasons for rising nationalist and right-wing sentiments addressed and discussed, by politicians as well as groups representing civil society, NGOs and other institutions. What is necessary is a more open and honest dialogue in national politics without populism to create an environment where the European idea can thrive again. This entails the principles of humanity and the handling of the incoming refugees. It is in the hands of the European people and their leaders to bring change in the right direction, by tackling anti-European, right-wing and nationalist sentiment and resurrecting the European ideals of humanity, unity and peace which the Union was once built upon.

6. References

- AIDA. (2015a). *Country Report: Germany*.
- AIDA. (2015b). *Country Report: Hungary*.
- Akrap, D. (2015). Germany's response to the refugee crisis is admirable. But I fear it cannot last. Retrieved from <https://www.theguardian.com/commentisfree/2015/sep/06/germany-refugee-crisis-syrian>
- Allain, J. (2001). The jus cogens Nature of non-refoulement. *International Journal of Refugee Law*, 13(4), 533-558.
- Amnesty International. (2016a). Das Asylpaket II: Menschenrechte in Gefahr [Press release]. Retrieved from <http://www.amnesty.de/presse/2016/2/3/das-asylpaket-ii-menschenrechte-gefahr>
- Amnesty International. (2016b). European Commission: Proposals on Resettlement and Asylum a cynical attempt to strengthen the Walls fo Fortress Europe [Press release]. Retrieved from <http://www.amnesty.eu/en/news/press-releases/all/european-commission-proposals-on-resettlement-and-asylum-a-cynical-attempt-to-strengthen-the-wa-0990/#.WGZqZ1zrbIW>
- Amnesty International. (2016c). *Hungary trampling on the Rights of Refugees and Asylum Seekers*. Retrieved from
- BAMF. (2016). *Ablauf des deutschen Asylverfahrens. Ein Überblick über die einzelnen Verfahrensschritte und rechtlichen Grundlagen*. Nürnberg: Publikationsstelle des Bundesamtes für Migration und Flüchtlinge.
- BBC. (2015). Migrant crisis: Hungary's closed border leaves many stranded. Retrieved from <http://www.bbc.com/news/world-europe-34260071>
- BBC News. (2015a). Europe migrant crisis: Germany 'will cope with surge'. *Europe migrant crisis*. Retrieved from <http://www.bbc.com/news/world-europe-33992563>
- BBC News. (2015b). Migrant crisis: One Million enter Europe in 2015. Retrieved from <http://www.bbc.com/news/world-europe-35158769>
- BMBAH. (2016). Welcome to the site of the office of immigration and nationality - Asylum procedure. Retrieved from http://bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=521&Itemid=728&lang=en#asylum_procedure
- Brekke, J.-P., & Brochmann, G. (2014). Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation *Jurnal of Refugee Studies*.
- Bundesministerium des Inneren. (2016). 2015: Mehr Asylanträge in Deutschland als jemals zuvor [Press release]
- Carrera, S., & Guild, E. (2010) 'Joint Operation RABIT 2010' - FRONTEX Assistance to Greece's Border with Turkey: Revealing the Deficiencies of Europe's Dublin Asylum System. *CEPS 'Liberty and Security in Europe'*: Centre for European Policy Studies
- Carrera, S., & Guild, E. (2015). Can the new refugee relocation system work? Perlis in the Dublin logic and flawed reception conditions in the EU. *CEPS Policy Brief - Thinking ahead for Europe*, 334.
- Crépeau, F., & Purkey, A. (2016a). Facilitating Mobility and Fostering Diversity - Getting EU Migration Governance to Respect the Human Rights of Migrants. *CEPS Paper in Liberty and Security in Europe*, 92.
- Crépeau, F., & Purkey, A. (2016b). Facilitating Mobility and Fostering Diversting. Getting EU Migration Governance to Respect the Human Rights of Migrants *CEPS essay in Liberty and Security in Europe*, 92.
- Dernbach, A. (2015). Deutschland setzt Dublin-Abkommen für Syrien-Flüchtlinge aus. *Der Tagesspiegel*.
- Die Bundesregierung. (2015). Gesetzespaket in Kraft getreten. Effektive Verfahren, frühe Integration Retrieved from

- <https://www.bundesregierung.de/Content/DE/Artikel/2015/10/2015-10-15-asyl-fluechtlingspolitik.html>
- Die Bundesregierung. (2016). Asylpaket II in Kraft. Kürzere Verfahren, weniger Familiennachzug. Retrieved from <https://www.bundesregierung.de/Content/DE/Artikel/2016/02/2016-02-03-asylpaket2.html>
- ECRE. (2009). Comments from the European Council on Refugees and Exiles on the European Commission Proposal to recast the Dublin Regulation European Council on Refugees and Exiles (ECRE).
- ECRE. (2016). ECRA Comments on Commission Proposals for Reform of the Common European Asylum System Retrieved from <http://www.asylumineurope.org/news/07-10-2016/ecre-comments-commission-proposals-reform-common-european-asylum-system>
- EDPS. (2016). *EDPS Opinion of the First Reform package on the Common European Asylum System (Eurodac, EASO and Dublin regulations)*. Retrieved from
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions. Policy Plan on Asylum - An Integrated Approach to Protection Across the EU, (2008).
- European Commission. (2014). *A Common European Asylum System*. Brussels: European Union
- European Commission. (2015). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration *COM(2015) 240 final*. Brussels.
- Communication from the Commission to the European Parliament and the Council. Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe, (2016a).
- European Commission. (2016b). Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy [Press release]
- European Commission. (2016c). Towards a sustainable and fair Common European Asylum System [Press release]
- Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Certain Related Acts, (1997).
- Single European Act (1987).
- European Economic and Social Committee. (2016). *Reform of the Common European Asylum System (CEAS) - 1st package*. Retrieved from
- European Parliament. (2016). *European Border and Coast Guard system*. Brussels.
- Tampere European Council Presidency Conclusions, (1999).
- Eurostat. (2015). 185 000 first time asylum seekers in the EU in the first quarter of 2015 [Press release]
- Eurostat. (2016a). Asylum in the EU Member States. Record number of over 1.2 million first time asylum seekers registered in 2015 [Press release]
- Eurostat. (2016b). Asylum quarterly report. Retrieved 18.10.2016, from eurostat http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report
- Eurostat. (2016c). EU Member States granted protection to more than 330 000 asylum seekers in 2015 [Press release]
- Funk, M., Rose, N., Pascouau, Y., & European Policy Centre. (2016). Policy Update October 2016. *Epim. European Programme for Integration and Migration*.
- Gall, L. (2016). Pig-head propaganda: Hungary's war on refugees. Retrieved from <https://euobserver.com/opinion/134762>
- Garcés-Mascarenas, B. (2015). Why Dublin "doesn't work". *Notes internationals CIDOB*(135).
- Graham-Harrison, E., Kingsley, P., Waites, R., & McVeigh, T. (2015). Cheering German crowds greet refugees after long trek from Budapest to Munich. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2015/sep/05/refugee-crisis-warm-welcome-for-people-bussed-from-budapest>

- Greek Council for Refugees. (2015). "Dublin" in Greece. Retrieved 18.10.2016, from Asylum Information Database <http://www.asylumineurope.org/reports/country/Greece/asylum-procedure/procedures/dublin>
- Guild, E. (2006). The Europeanisation of Europe's Asylum Policy. *International Journal of Refugee Law*, 18(3-4).
- Guild, E., Costello, C., Garlick, M., & Moreno-Lax, V. (2015). Enhancing the Common European Asylum System and Alternatives to Dublin. *CEPS Paper in Liberty and Security in Europe*, 83.
- Heijer, d. M., Rijpma, J., & Spijkerboer, T. (2016). Coercion, Prohibition and Great Expectations: The Continuing Failure of the Common European Asylum System. *Common Market Law Review*, 53, 607-642.
- Hsieh, H.-F., & Shannon, S. E. (2005). Three Approaches to Qualitative Content Analysis. *Qualitative Health Research*, 15.
- Hungarian Helsinki Committee. (2015). Building a legal fence - Changes to Hungarian asylum law jeopardise access to protection in Hungary.
- Ippolito, F. (2013). The Contribution of the European Courts to the Common European Asylum System and its Ongoing Recast Process. *Maastricht Journal*, 20(2), 261-281.
- Ippolito, F., & Velluti, S. (2011). The Recast Process of the EU Asylum System: A Balancing Act between Efficiency and Fairness. *Refugee Survey Quarterly*, 30(3), 24-62.
- Joffe, J. (2015, 01.09.2015). Das deutsche Wunder. *Die Zeit*. Retrieved from <http://www.zeit.de/2015/37/willkommenskultur-deutschland-fluechtlinge-zeitgeist>
- Kingsley, P. (2015). Syrian refugees in Hungary: 'This is the so-called developed Europe?'. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2015/sep/07/syrian-refugees-hungary-camp-cold-hungry>
- Klepp, S. (2010). A Contested Asylum System: The European Union between Refugee Protection and Border Control in the Mediterranean Sea. *European Journal of Migration and Law*, 12, 1-21.
- Lambert, H. (2006). The EU Asylum Qualification Directive, Its Impact on the Jurisprudence of the United Kingdom and International Law. *The International and Comparative Law Quarterly*, 55(1), 161-192.
- Lambert, H. (2009). Transnational Judicial Dialogue, Harmonization and the Common European Asylum System. *The International and Comparative Law Quarterly*, 58, 519-543.
- Langford, L. M. (2013). The Other Euro Crisis: Rights Violations Under the Common European Asylum System and the Unraveling of EU Solidarity. *Harvard Human Rights Journal*, 26, 217-264.
- Maxwell, J. A. (2008). Designing a Qualitative Study. *Applied Research Design*.
- Merkel, A. (2015) *Sommerpressekonferenz von Bundeskanzlerin Merkel/Interviewer: Press*.
- Michel, A. M., Schöniar, V., Thurm, F., & Steffen, T. (2016). Was geschah in Köln? *Zeit Online*.
- MIGSZOL. (2016a). Draft amendments to asylum law in Hungary will drive refugees to Western Europe. Retrieved from <http://www.migszol.com/blog/draft-amendments-to-asylum-law-in-hungary-will-drive-refugees-to-western-europe>
- MIGSZOL. (2016b). Hungarian Asylum Policy. Retrieved from <http://www.migszol.com/hungarian-asylum-policy.html>
- Oltermann, P., & Kingsley, P. (2016). 'It took on a life of its own': how one rogue tweet led Syrians to Germany. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2016/aug/25/it-took-on-a-life-of-its-own-how-rogue-tweet-led-syrians-to-germany>
- Orbán, V. (2015). Viktor Orbán's speech at the 14th Kötöcs civil picnic.
- Pro Asyl. (2016a). Asylpaket II in Kraft: Überblick über die geltenden asylrechtlichen Änderungen. Retrieved from <https://www.proasyl.de/hintergrund/asylpaket-ii-in-kraft-ueberblick-ueber-die-geltenden-asylrechtlichen-aenderungen/>

- Pro Asyl. (2016b). *Stellungnahme von PRO ASYL zur geplanten Reform der Dublin-Verordnung (Dublin-IV, COM (2016) 270)*. Retrieved from
- Sly, L. (2015). 8 reasons Europe's refugee crisis is happening now. Retrieved from https://www.washingtonpost.com/news/worldviews/wp/2015/09/18/8-reasons-why-europes-refugee-crisis-is-happening-now/?utm_term=.e179fde5dd5f
- Steinmetz, V. (2016). Die Willkommenskultur verabschiedet sich. *Spiegel Online*. Retrieved from <http://www.spiegel.de/politik/deutschland/fluechtlinge-deutsche-ruecken-von-willkommenskultur-ab-a-1101494.html>
- tagesschau.de. (2016). Fassungslosigkeit, Trauer und Entsetzen. Retrieved from <http://www.tagesschau.de/inland/breitscheidplatz-ueberblick-103.html>
- tagesschau.de. (2017). Im Dschungel der Vorschläge. Retrieved from <http://www.tagesschau.de/inland/innere-sicherheit-101.html>
- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (2003).
- The Greens. (2016). EU asylum rules. Retrograde proposals on rights and criteria for asylum seekers [Press release]
- Tsourdi, E. L., & De Bruycker, P. (2015). EU Asylum Policy: In Search of Solidarity and Access to Protection. *Migration Policy Centre, European University Institute*, 6.
- UNHCR. (2011). The 1951 Convention relating to the Status of Refugees and its 1967 Protocol In U. T. U. R. Agency (Ed.): UNHCR.
- UNHCR. (2015). 2015: The Year of Europe's Refugee Crisis. *Tracks*. Retrieved from <http://tracks.unhcr.org/2015/12/2015-the-year-of-europes-refugee-crisis/>
- UNHCR. (2016). Refugees/Migrants Emergency Response - Mediterranean. Available from UNHCR Retrieved 18.10.2016, from UNHCR <http://data.unhcr.org/mediterranean/regional.php>
- UNHCR. (2017). *Key Data Europe - Sea Arrivals in Europe*.
- Vanheule, D., van Selm, J., & Boswell, C. (2011). *The implementation of Article 80 TFEU. On the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States in the field of border checks, asylum and immigration*. Retrieved from
- Wagner, M., Baumgartner, P., Dimitriadi, A., O'Donnell, R., Kraler, A., Perumadan, J., . . . Yabasun, D. (2016). *The Implementation of the Common European Asylum System*. Retrieved from Brussels:

7. Appendices

Appendix 1: Speeches

Summer press conference Angela Merkel (31.08.2015) Retrieved from:

<https://www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2015/08/2015-08-31-pk-merkel.html>

Viktor Orbán's speech at the 14th Kötcsé civil picnic (05.09.2015) Retrieved from:

<http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/viktor-orban-s-speech-at-the-14th-kotcse-civil-picnic>

Appendix 2: Asylum procedures + amendments

Procedures

Bundesamt für Migration und Flüchtlinge (BAMF) 2016. *Ablauf des deutschen Asylverfahrens. Ein Überblick über die einzelnen Verfahrensschritte und rechtlichen Grundlagen*. Published by: Publikationsstelle des Bundesamtes für Migration und Flüchtlinge. Nürnberg

Asylum Information Database (ADIA) 2015. *Country Report: Germany*. Published by the European Council on Refugees and Exiles.

Asylum Information Database (AIDA) 2015. *Country Report: Hungary*. Published by the European Council on Refugees and Exiles.

Office of Immigration and Nationality (*Bevándorlási és Állampolgársági Hivatal*) BMBAH (2016). Welcome to the site of the office of immigration and nationality - Asylum procedure. Retrieved from

http://bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=521&Itemid=728&lang=en#asylum_procedure

MIGSZOL. (2016b). Hungarian Asylum Policy. Retrieved from

<http://www.migszol.com/hungarian-asylum-policy.html>

Amendments Germany

Die Bundesregierung. (2015). Gesetzespaket in Kraft getreten. Effektive Verfahren, frühe Integration. Retrieved from

<https://www.bundesregierung.de/Content/DE/Artikel/2015/10/2015-10-15-asyl-fluechtlingspolitik.html>

Die Bundesregierung. (2016). Asylpaket II in Kraft. Kürzere Verfahren, weniger Familiennachzug. Retrieved from <https://www.bundesregierung.de/Content/DE/Artikel/2016/02/2016-02-03-asylpaket2.html>

Amnesty International. (2016a). Das Asylpaket II: Menschenrechte in Gefahr [Press release]. Retrieved from <http://www.amnesty.de/presse/2016/2/3/das-asylpaket-ii-menschenrechte-gefahr>

Pro Asyl. (2016a). Asylpaket II in Kraft: Überblick über die geltenden asylrechtlichen Änderungen. Retrieved from <https://www.proasyl.de/hintergrund/asylpaket-ii-in-kraft-ueberblick-ueber-die-geltenden-asylrechtlichen-aenderungen/>

Amendments Hungary

Hungarian Helsinki Committee. (2015). Building a legal fence - Changes to Hungarian asylum law jeopardise access to protection in Hungary.

MIGSZOL. (2016a). Draft amendments to asylum law in Hungary will drive refugees to Western Europe. Retrieved from <http://www.migszol.com/blog/draft-amendments-to-asylum-law-in-hungary-will-drive-refugees-to-western-europe>

Appendix 3: reform proposals

European Commission. (2015). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration *COM(2015) 240 final*. Brussels.

Communication from the Commission to the European Parliament and the Council. Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe, (2016a).

European Commission. (2016b). Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy [Press release]

European Commission. (2016c). Towards a sustainable and fair Common European Asylum System [Press release]