THE ESTABLISHMENT OF THE EUROPEAN ASYLUM SUPPORT OFFICE AND ITS IMPACT ON EU ASYLUM POLICY

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1 October 2012
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LIST OF ABBREVIATIONS

CEAS  Common European Asylum System  
CIREA  Centre for Information, Reflection and Exchange on Asylum 
COI  Country of Origin  
EAC  European Asylum Curriculum  
EASO  European Asylum Support Office  
EC  European Community  
ECHR  European Charter of Human Rights  
ECRE  European Council on Refugees and Exiles  
EP  European Parliament  
EUREMA  European Relocation Malta  
EURASIL  European Union Network for asylum practitioners  
FSJ  Area of Freedom, Security and Justice  
JHA  Justice and Home Affairs  
MS  Member State(s)  
QMV  Qualified Majority Vote  
TEC  Treaty establishing the European Community  
TFEU  Treaty on the Functioning of the European Union  
UN  United Nations  
UNHCR  United Nations High Commissioner for Refugees
1. Introduction

At the end of last century the conditions for the creation of a harmonised body of asylum policies throughout the Union were rather positive. The EU was still at 15 Member States. The Treaty of Amsterdam just came into force, intending to create an ‘area of freedom, security and justice’ with the incorporation of matters of asylum, migration and judicial cooperation in civil matters into the Community pillar (hence subjecting them to the Community method). The 1990s had seen vast refugee movements from south-eastern Europe due to the wars in former Yugoslavia and the Kosovo crisis, thus highlighting the need for efficient asylum mechanisms throughout the Union. So in December 1999 the European Council in Tampere gave green light for the creation of a Common European Asylum System (CEAS). The Commission started working on instruments and five years later, in 2004, several directives and regulations concerning the harmonisation of asylum policies were adopted – signifying the end of the first implementation phase of CEAS – and the Commission was already looking at ways to improve the new status quo.

One of the main flaws that had to be addressed after the adoption of these first phase instruments was the fact that the system was just not (yet) working effectively. The differences between the Member States’ asylum practices remained as vast as ever, and even when they implemented new EU legislative instruments, variations in the application and interpretation of the often rather vague wording remained. So it became clear that in order for the eventual goal to be achieved (the prevention of so-called “asylum shopping”) the simple adoption of uniform rules throughout the Union was not enough – the legal instruments had to be understood, interpreted and used in similar ways in order to make a difference. Thus, since the legal tools were already in place, the Commission shifted its focus to the fostering of cooperation and information exchange between MS in order to streamline asylum practices.

The European Asylum Support Office was created to take over those tasks that had previously been carried out sporadically and by several different actors. Established in 2010 (becoming fully operational in early 2011), the EASO is a regulatory agency specifically designed to improve practical cooperation between Member States without actually creating new legal
instruments. Being basically independent of the European institutions (albeit financed by the EU budget), its main role lies in the collection and redistribution of knowledge, thus arguably representing a “softer” approach to harmonisation than the Commission previously employed. The office does not have any real decision-making powers nor any powers to influence MS in individual asylum cases. So the question is: Will this softer harmonisation approach succeed where hard law failed to produce results? With the southern Member States (which due to their regional location are first country of entrance for a majority of refugees) under particular stress due to the still-current debt crisis the problem of allocation of asylum seekers is as relevant as ever and the EU would do good to reach full implementation of the CEAS also for humanitarian reasons.

The thesis therefore evaluates whether the EASO is equipped to make a difference in the development of the CEAS and the further harmonisation of Member States’ asylum practices. It examines whether the EASO has the necessary tools to support further integration in the asylum area or if it needs to be amended in order to reach full effectiveness. The results give important input to the question how to proceed in the development of CEAS and accordingly how to reach its full implementation. The main research question is:

*Is EASO in its current set-up capable to support the further development of the CEAS?*

In this context ‘capable’ must be understood as being equipped with the necessary tools to be able to influence the implementation of CEAS in a positive way.

The study is a descriptive single-case study and follows a non-experimental qualitative design. After explaining the background and mandate of EASO, in order to answer the main research question the office is set in context first to the European level (at the example of the Dublin II regulation) and secondly to the national level (at the example of Germany). The examples were chosen because of their prominence in their respective fields: The Dublin II regulation is the most criticised asylum provision (yet least likely to be changed, as explained in chapter 4), while Germany is one of the main receiving countries. In the first case the set-up and specific flaws will be viewed from the perspective of EASO’s capabilities. In the second case EASO’s contact points with individual Member States will be presented at the example of the chosen
country, looking both at the individual set-up of the German asylum system and at EASO’s available tools. This will be a text-based analysis, drawing on the EASO regulation and work programmes as well as on the Dublin II regulation, literature about its flaws and literature about the German asylum system. The approach was chosen because it delivers a wholesome picture about EASO’s possible impact since it looks at both dimensions (national and European) of EASO’s influence. Moreover a text-based analysis is the most suitable approach since a quantitative survey or qualitative interviews on the necessary scale are both neither feasible (for a limited Master’s thesis) nor serve the objective aim of the research question.

Success or failure of EASO will be assessed according to the following criteria. Firstly:

To what extend does the EASO’s mandate deliver support or solutions to the individual problems that hinder full effectiveness of the CEAS?

(Due to the limited scope of the thesis this will be dealt with at the example of the Dublin regulation as mentioned above.)

Sub-questions are: How many of these areas does EASO cover? Which does it leave out? Are these important ones in respect to the development of CEAS? Are the solutions it does offer adequately equipped to effectively deal with the problems they are designed to solve (based on the actors involved, the support they need and the support EASO offers)? If EASO deals with a sufficient number of relevant problem areas (a simple majority will be sufficient) in an effective way (i.e. making a positive difference) it will be classified as a success.

Secondly:

Does EASO provide added value to Member States or does its implementation cause more work on national level without actual support?

To this end the national set-up at the example of Germany will be analysed with respect to the differences caused by the implementation of EASO. Again, if EASO provides measurable support to national asylum processes instead of putting more workload on staff this is defined as a success. In case the implementation of EASO puts more workload on staff without
improved results or the existence of EASO cannot be seen at all in the national asylum administration, this is defined as failure. Only if both areas qualify as success the implementation of EASO can be valued as a success in general. It is expected that in this way the analysis will uncover possible flaws of EASO and open up areas of improvement.

2. The development of a common EU asylum system

The following chapter first of all looks at the general development of the European asylum system. In the course of the establishment of an area of freedom, security and justice throughout the Union, asylum was one of the areas that required Community attention. The Chapter is divided in the development of the European policies eventually leading to the Common European Asylum System and its institutional and legal framework.

2.1 Development of the policy base

Although the most important harmonisation efforts in the area of asylum took place only ten to five years ago, the idea of harmonised asylum policies already dates back to the creation of the single market. The Member States of the EU officially committed to the objective of the creation of an internal market with freedom of movement for people, goods, services and capital in the Single European Act – signed in 1986 – which set its deadline of implementation at the end of 1992. In October 1986 the immigration ministers met for the first time in order to discuss measures to be taken with regard to the free movement of persons. They set up an ad-hoc group tasked with the creation of a work programme. Next to questions concerning external and possible internal border controls with regard to the fight against terrorism, trafficking and other crime, the ad-hoc group was also instructed to look into measures to be taken to achieve a common policy to eliminate asylum abuse.¹ The group later reported to the Co-ordinators Group Free Movement of People which was set up by the Rhodes European Council in December 1988 and which then in turn drafted the Palma-document – the first document that clearly set out the goal of MS asylum policy harmonisation.² Next to the so-called “essential” measures dealing with determining the responsible state for an asylum

¹ Guild / Niessen (1996)
² Hailbronner (2000)
application, movement of asylum applicants and special procedures for clearly unfounded requests, the Co-ordinators Group also proposed several “desirable” measures, like diplomatic and consular cooperation (in the form of joint reports), community funded programmes for training officials and the possible approximation of criteria for granting the right of asylum and refugee status. The first of these proposed measures was realised with the signing of the Dublin Convention in 1990, which tried to regulate the question of which Member State is responsible for an asylum application. The Schengen Implementation Convention was signed only four days later (but only by five of the then twelve Member States) and also contained a section about the determination of responsibility for asylum applications, albeit similar to the regulations under Dublin. When the Dublin Convention entered into force in 1997 the respective Schengen article was disappplied.

The decade prior to the Treaty of Amsterdam was characterised by first intergovernmental efforts to tackle the problem of asylum that resulted from the further integration in other areas. Next to the above mentioned conventions, between 1990 and 1997 several political action programmes were released by the Member States, the Council and the Commission. Albeit not being legally binding, these according to Hailbronner nonetheless “fostered the advancement of the harmonisation process through the formulation and shaping of certain goals to be reached”. The EC immigration ministers (later the JHA Council) moreover adopted conclusions about what would later be known as safe third countries as well as guidelines concerning joint reports on third countries in general. In response to obligations posed by the Dublin Convention they also established a Centre on Information, Reflection and Exchange on asylum questions (CIREA), an information clearing house with no individual decision-making power that facilitated the exchange of information on asylum related statistics, data and COI assessments. The CIREA was eventually taken over by the Commission in 2002 (renamed EURASIL – European Union Network for Asylum Practitioners). In 1996 the Council further

6 Hailbronner (2000), p.361
7 For a full account of the development of the concept of safe third countries see Hailbronner (1993)
9 For an assessment of EURASIL and the COI function see Commission Staff Working Document SEC/2006/0189 Annex C; With the establishment of EASO, the agency took over responsibility for EURASIL and the development of a COI portal.
adopted a joint position on the harmonized application of the definition of the term “refugee” in Art. 1 of the Geneva Convention, according to Hailbronner “a major step in the course of harmonizing the substantive asylum rules of the Member States”. What is more important with respect to the later establishment of EASO is the 1998 introduction of the ODYSSEUS-programme, aimed at “extend[ing] and strengthen[ing] existing cooperation in the matter of asylum, immigration, the crossing of external borders and the security of identity documents”. To this end the EU financed training and exchange measures as well as research on these matters. In the area of asylum its declared primary focus was on the coordinated application of the Dublin Convention and the closer cooperation between responsible national administrations and bodies, functions that were later taken over and extended by EASO (see Chapter 3).

Next to this programme between 1997-1999 the Council adopted several Joint Actions concerning the financing of specific projects in favour of asylum seekers and refugees, gradually increasing the body of knowledge about possible asylum measures.

With the entry into force of the Treaty of Amsterdam in 1999 and the new Title IV “Visas, asylum, immigration and other policies related to free movement of persons” of the EC Treaty, the area of asylum – previously covered by the intergovernmental third pillar – moved to the supranational first pillar under Community competence. The Treaty explicitly obliged the Council to adopt measures on asylum, refugees and displaced persons in numerous areas.

These measures included for example the criteria and mechanisms determining which Member State is responsible for an asylum application (providing the basis for the incorporation of the Dublin Convention into EU law) and minimum standards on reception, qualification and procedures. The Tampere European Council in 1999 then defined guidelines to adopt the required legislation and set out for the first time the goal of establishing a Common European Asylum System. The Commission communication that followed swiftly specified the Council’s remarks and made clear that the way to CEAS would be divided in a “short-term” stage (first phase) and a “longer term” second stage (second

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11 Council Joint Action 98/244/JHA, Official Journal L 99, 31.3.98, p. 2-7
12 Ibid. Article 7
14 Treaty establishing the European Community, consolidated version 1997, Title IV, Art. 61
15 Ibid. Article 73k
16 Tampere conclusions online at http://www.europarl.europa.eu/summits/tam_en.htm#a, last visited 20 Sept 2012
phase).\(^{17}\) Since the Amsterdam Treaty required the numerous asylum instruments to be adopted in a five-year period, 2004 saw the transition from the first phase of the CEAS into the second.

In 2004 it was time to agree on the path for the next five years, especially in light of the changed circumstances:

\[
\text{“The security of the European Union and its Member States has acquired a new urgency, especially in the light of the terrorist attacks in the United States on 11 September 2001 and in Madrid on 11 March 2004.”}^{18}
\]

As an important part of the area of freedom, security and justice 2004 saw the establishment of Frontex, the European agency for external border management, which reflects like no other agency the increased focus on security.\(^{19}\) In respect to the future direction of the FSJ the European Council in November 2004 agreed on the Hague programme, requesting from the Commission an Action Plan in 2005 with proposals and timetables for concrete actions. Concerning asylum, the Hague programme laid down that the aim of the second phase of the CEAS would be the establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection.\(^{20}\) It also urged the Commission to provide an evaluation of the first phase instruments by 2007 and to put forward proposals for second phase instruments “with a view to their adoption before the end of 2010”.\(^{21}\) The result of these evaluations was the realisation that great disparities in the asylum practices of Member States persisted, due to “a lack of common practice, different traditions and diverse country of origin information sources”.\(^{22}\) Just as in its 2000 Communication envisaged (see above) it moreover identified the amount of discretion granted to Member States in the adopted asylum instruments as a further source for these disparities. In its 2008 Policy Plan on Asylum the Commission proposed to tackle these problems by amending three of the most

\(^{17}\) Commission Communication towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, COM(2000) 755, Part 2.1; dividing the development in a short term establishment of minimum standards and a longer term “restricting the possibilities for options”.
\(^{18}\) Brussels European Council Presidency 14292/1/04 REV 1, Annex 1, Chapter I
\(^{20}\) Ibid.
\(^{21}\) Brussels European Council Presidency 14292/1/04 REV 1, Annex 1, Chapter III, Part 1.3
\(^{22}\) Commission Communication COM/2008/0360
important European asylum instruments, the Reception Conditions Directive, the Asylum Procedures Directive and the Qualification Directive, as well as improving the Dublin system.\textsuperscript{23} To further improve convergence in asylum decision-making special emphasis was put on the strengthening of practical co-operation between Member States, which would be expressed through common training, joint assessment of COI and common support for MS under particular pressure.\textsuperscript{24} As an administrative side note the Commission furthermore pointed out that the entry into force of the Lisbon Treaty would modify the legal basis of asylum policy – hence suggesting to reschedule the completion of the second phase to 2012 due to the impact on the timeframe of the proposed legislature.\textsuperscript{25} However, although the proposed amendments to the Directives and the Dublin system have already been put forward by the Commission in 2008 and 2009, at the point of writing only the recast of the Qualification Directive has been adopted so far.\textsuperscript{26} In order to bring movement to this stuck situation the Commission re-drafted the proposals for the remaining two Directives in 2011, but it remains to be seen whether the Council and the EP will finally come to an agreement.\textsuperscript{27} The third five-year plan on the development of the area of freedom, security and justice – the Stockholm Programme – in 2010 nonetheless still confirms the commitment to a fully operational CEAS by the end of 2012.\textsuperscript{28} The programme puts even more urgent emphasis on harmonisation of asylum standards and procedures and thus reflects a complete shift from the minimum standard approach of the first phase of the development of CEAS. Moreover, unlike the Hague programme five years previous, the Stockholm programme mentions the necessity to prevent asylum abuse, also reflecting a shift in attitude.\textsuperscript{29} In line with the changed approach, the programme identifies EASO as an important tool in achieving the full implementation of CEAS, recognizing practical cooperation between Member States’ asylum administrations as a new approach to reach harmonisation in the field. What is interesting is that the Dublin system is clearly reaffirmed in its current state, although the Lisbon Treaty explicitly provides the legal basis for a reconsideration (see Chapter 2.2.2). This disparity, in line with the mentioning of asylum abuse, further reflects the more restrictive attitude towards asylum and burden-
sharing, and also shows the deep conflict around the system.30

2.2 Institutional and legal framework

2.2.1 Actors
Prior to the entry into force of the Amsterdam Treaty the only driving forces in the area of European asylum issues were the EU Member States, in the form of the European Council. Depending on which country assumed presidency of the Council, different issues were being prioritized – or neglected for that matter.31 In 1993 with the introduction of the pillar structure the Maastricht Treaty had entitled the Commission to take the initiative in policy-making, however its role in the area of asylum was limited since asylum was part of the intergovernmental third pillar (Justice and Home Affairs).

In 1999 the Amsterdam Treaty significantly improved the role of the Commission. The pillar structure was rearranged, putting asylum matters and other parts of the previous third pillar under Community competence. The Commission’s right of legislative initiative was thus extended to these topics. The Member States on the other hand could deliver requests to the Commission to initiate a policy proposal. After the Commission made a policy proposal the Council then had to vote unanimously on the act, while the European Parliament maintained a purely consultative role and was frequently ignored altogether.32

In 2009 the Lisbon Treaty came into force, abandoning the pillar structure and extensively expanding the areas falling under QMV and the co-decision procedure (now ordinary legislative procedure). The area of asylum was also affected and so acts in this area now only required a qualified majority in the Council, reducing the influence of individual Member States.33 Due to the introduction of the co-decision procedure the role of the European Parliament was significantly improved, rendering it another important actor in the area of asylum.

2.2.2 Legal basis
Previous to the involvement of the EU in the topic, asylum and related areas were already

30 See Chapter 4 for an account on why the Dublin system in its current state is not an effective burden-sharing tool.
31 UNHCR (2003), p.7-8
33 Sieberson (2010), p. 922
subject to several international agreements. Although not all of them explicitly mention asylum, they nonetheless interfere with the area. In 1950 the then 14 Member States of the newly founded Council of Europe (including the later founding members of the EU) signed the European Convention for the Protection of Human Rights and Fundamental Freedoms which did not directly mention any right to asylum but nonetheless built the foundation for human rights in Europe and as such has to be complied with in the treatment of asylum applicants. All EU Member States moreover are signatories to the Geneva Convention of 28 July 1951 and its Protocol of 31 January 1967 relating to the status of refugees. The Convention and its protocols constitute the international *lex specialis* on asylum and since it is the basis of all Member States’ asylum laws later EU-specific asylum legislation also explicitly refers to the provisions of the Convention (see below). In 1984 furthermore the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was signed, further expanding the body of law determining i.a. refugee treatment.

With the Maastricht Treaty and the introduction of the pillar structure to the EU treaty base in 1992, asylum was firstly mentioned in a EU context as part of the Justice and Home Affairs Pillar. However, as mentioned in Chapter 2.1, the appropriate legal basis for EU-wide asylum harmonisation measures was first created in 1999 with the introduction of the Treaty of Amsterdam. Article 73k of the Amsterdam version (later Article 63(1) TEC, now Art. 78 1/2 TFEU) in combination with Article 73o (procedure) required the Council to adopt a range of measures in the area of asylum, refugees and displaced persons. It made explicit reference to the corresponding obligations stemming from international law – especially the Geneva Convention and its protocols, and “other relevant treaties” not further specified.

While the Amsterdam Treaty calls for the adoption of minimum standards in a variety of areas concerning asylum, a decade later the Lisbon Treaty takes a different approach. As explained in Chapter 2.1 in the meantime various minimum standards based on Article 73k TEC (Amsterdam version) had been adopted without yielding the desired results, so the focus shifted to harmonisation of Member States’ asylum laws. Article 78 TFEU therefore reads:

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34 See Chapter 4 for an account of the conflict between the Dublin system and human rights obligations.
36 Consolidated version of the Treaty on European Union, Official Journal C 340, 10 November 1997
The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection [...] The Article further specifies that the EP and the Council (in contrast to the Council alone, reflecting the change in legislative procedure for the area mentioned in Chapter 2.1) shall adopt measures for the CEAS including a uniform status of asylum and international protection, a common system for temporary protection in the event of mass inflows, common granting and withdrawal procedures, common reception conditions standards and criteria and mechanisms for determining which Member State is responsible for considering an application for asylum / subsidiary protection.39 Parts of these areas have already been mentioned in the Amsterdam treaty as requiring minimum standards. The repetition reflects the change of focus and the shift towards a different approach to asylum – harmonisation instead of minimum standards.40 One of the results of this change of focus is the European Asylum Support Office, since its purpose is the improvement of cooperation between Member States’ asylum administrations to further harmonisation in the area. However its establishment is not explicitly requested in the Treaty text, rather its idea was developed later by the European Council and then based on Articles 74 (requesting measures to improve administrative cooperation in the Area of Freedom, Security and Justice) and 78 (1) and (2) TFEU, as explained in detail in Chapter 3.2. With the Lisbon Treaty also the Charter of Fundamental Rights of the European Union finds official recognition41, which for the first time introduces the right to asylum to the EU body of legislation.

2.2.3 Instruments
After establishing the general legal basis for acts in the area of asylum, I will now take a look at the specific instruments established in the first phase of the development of CEAS. First of

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38 Ibid., Art. 78
39 Note that the treaty provides the legal basis for a reconsideration of the Dublin system, since it requires the Council & EP to adopt criteria and mechanisms for determining which Member State is responsible for considering an asylum application – an area that is currently ruled under the Dublin regulation.
40 For reflections on the implications of this shift see for example Helstroffer / Obidzinski (2010)
41 Although it is not part of the Treaty but annexed to it, it nonetheless has similar legal value, see for example Franklin (2010).
all in 2003 the Dublin regulation incorporated the (only slightly amended) Dublin Convention into Community legislation, now regulating on an EU basis which Member State is responsible for an asylum application.42 Also in 2003 the Reception Directive was adopted, which lays down minimum standards for asylum seekers' living conditions.43 Areas covered include for example information policy, health care, education, employment restrictions and restrictions to secondary movements. Since it applies a minimum standard approach, the Directive explicitly allows for more generous provisions in individual Member States.44 In 2004 the Qualification Directive was added with the objective for Member States to “apply common criteria for the identification of persons genuinely in need of international protection”.45 In line with the first phase approach it specifies minimum standards for the qualification for granting refugee status or subsidiary protection, while also allowing for more generous provisions in individual Member States. The 2005 Procedures Directive completes the first phase body of law.46 It specifies minimum standards for procedures granting and withdrawing refugee status. The Directive was originally proposed already in 2000 but triggered extensive discussions, especially about the common list of safe countries of origin.47 After several redrafts the Directive could eventually be adopted, but only by acknowledging that no agreement could be found on the common list of safe countries of origin.48

As explained in Chapter 2.1 the Commission has proposed recasts for all three main asylum Directives between 2008-2011, with only the recast of the Qualification Directive adopted so far. The recast of the Qualification Directive includes i.a. greater emphasis on gender sensibility (including for example gender identity as potential ground for persecution) and the best interest of the child.49

To sum up, there already is an extensive policy base regulating the European asylum system. While the instruments adopted in the first phase of the system's development focused on the establishment of minimum standards, evaluations and reports have since shown that great

44 Ibid., Art. 4
variations in Member States’ asylum practices still persist. Since a convergence of practices is desired, the focus in the second phase has shifted to ways of improving harmonisation. One of the newly established tools to further this goal is the European Asylum Support Office, which will be examined in detail in the next chapter.

3. The European Asylum Support Office

3.1 The idea

Having explained the development of the CEAS in general I will now focus on the creation of the European Asylum Support Office in particular. The concept of a support office to foster cooperation between Member States was first mentioned in the Hague programme of 2004. The idea was to first establish structures involving the national asylum services facilitating cooperation and once a common asylum procedure would be established to transform them into a European support office. The areas these structures should cover included the assistance in reaching a uniform asylum procedure, joint compilation, assessment and application of information on countries of origin, and the evaluation of particular pressures on national asylum systems stemming from geographical location. In 2006 in a Communication to the Council and the EP the Commission further specified the advantages of practical cooperation and outlined a possible mandate for the future office:

“Practical cooperation will enable Member States to become familiar with the systems and practices of others, and to develop closer working relations among asylum services at the operational level. This will build a basis for wider areas of collaboration, with the development of trust and a sense of mutual interest.”

After the minimum standard approach of the first phase of CEAS made obvious that this was not enough to harmonise practices between Member States, a new approach had to be found – possibly even different from simply adopting new legislation. If Member States had an

50 Brussels European Council Presidency 14292/1/04 REV 1, Annex 1, Chapter III, Part 1.3
51 ibid.
52 Commission Communication COM(2006) 67 final
institutionalised platform to learn about each others’ asylum practices and a common basis of knowledge about countries of origin, the argument went, their practices would naturally align over time and a true Common European Asylum System would develop.\(^{53}\) That this was a widely held believe showed the rather smooth implementation process of the office: After the Commission had outlined its vision of such an office in communications and papers in 2006 and 2007 (as requested by the Council through the Hague programme), the JHA Council asked the Commission in 2008 to determine conditions necessary to the establishment of the support office, in February 2009 the Commission issued the policy proposal, agreement on the text was reached in November 2009 and by May 2010 the regulation was officially adopted.

### 3.2 Legal basis

As explained in Chapter 2, the regulation establishing EASO is based on Article 74 and Article 78(1) and (2) TFEU. Article 74 generally requires the Council to adopt measures to ensure cooperation between corresponding Member State administration departments (and the Commission) in the area of freedom, security and justice. Article 78 is specifically concerned with asylum questions, providing the legal basis for the CEAS. As Comte observes, basing the EASO regulation on both these Articles distinctly broadens its mandate and “allows [it] to be strongly anchored in the Asylum acquis.”\(^ {54}\) Protocol 21 and 22 annexed to the Lisbon Treaty exclude the United Kingdom, Ireland and Denmark from measures under Title V of Part III of the Treaty on the Functioning of the EU (Area of Freedom, Security and Justice), thus also from measures relating to EASO. However, the UK and Ireland kept an “opt-in right” for themselves, which they executed in the case of EASO. The only constrictions due to this special situation are their limited voting rights in cases where the management board has to take a decision about the adoption of a technical document that relates exclusively to an asylum instrument by which they are not bound.\(^ {55}\) Denmark also expressed their wish to be associated with EASO, however, since they do not dispose of the right to “opt-in” to measures relating to Title V this was not as easy.\(^ {56}\) The initial offer made by the Commission to be treated as an associate country it declined on the grounds that it is a Member State of the EU.

\(^{53}\) Ibd., p.2-3
\(^{54}\) Comte (2010), p.392
\(^{56}\) Comte (2010)
So Denmark got a completely separate status, facilitated by a separate Article in the EASO regulation which requires the support office to facilitate “operational cooperation”, “including the exchange of information and best practices in matters covered by its activities”.57 Denmark does not have voting rights, even though a representative is allowed to attend Management Board meetings.

The EASO regulation moreover mentions the Hague Programme58, the Commission’s 2008 Policy Plan on Asylum59 and the 2008 European Pact on Immigration and Asylum60.

3.3 Functions

The EASO regulation groups the office’s future functions under three general headlines congruent with the areas envisaged in the Hague programme – support for practical cooperation, support for MS under particular pressure and contribution to the implementation of CEAS. Overall the regulation specifies ten functions under these three headlines. An essential part of the first group of functions concerning practical cooperation is the identification and distribution of best practices, the office is thus responsible to promote and facilitate ways to do so.61 This is an element taken from the open method of coordination, a rather intergovernmental way of harmonising national policies in areas not covered by the community method. Although the Commission does have legislative power in the area of asylum, the implemented EU laws still allow for huge variations in Member States’ practices.62

So communication about these practices between MS might identify strengths and weaknesses and naturally lead to further alignment. The EASO’s role here is that of an institutionalised promoter and mediator, offering a forum for exchange of MS asylum administrators’ practices – but more importantly encouraging and initiating said exchange between Member States. Being composed of asylum experts the EASO is moreover asked to support the identification of best practices, thus streamlining said exchange to maximise benefits from a European perspective.

57 Regulation (EU) No 439/2010, Article 48
58 Which, as mentioned in Chapter 3.1, first envisaged its creation.
59 Which expressed the Commission’s intention to strengthening practical cooperation between MS through the establishment of EASO – Commission Communication COM/2008/0360 final, 17 June 2008, Section 2
60 Which included the Council agreement to the establishment of EASO in 2009 - European Pact on Immigration and Asylum 13189/08 ASIM 68, 24 September 2008, p. 11
61 Regulation (EU) No 439/2010, Article 3
62 Commission Communication COM/2008/0360 final
In order to streamline asylum decisions as much as possible, administrators need to have a common basis of knowledge on which they can base individual decisions. Information on countries of origin is here of central importance. Thus, the EASO has been made responsible for the management of this area as well.\footnote{Regulation (EU) No 439/2010, Article 4} Next to simply gathering all relevant information from all available sources, the office also drafts reports on individual countries of origin based on this information. Its tasks further include the management and development of a portal from which the gathered information can be accessed as well as the development of a common format and methodology for presenting, verifying and using such information. Article 4e however explicitly precludes the office from giving Member States instructions on individual cases.

The EASO is also responsible for the promotion, facilitation, and coordination of exchange of information and other activities relating to the relocation of an asylum seeker within the Union.\footnote{Ibd., Article 5} This possible function of the support office was already envisaged in the Commission’s 2007 Green Paper on the future of CEAS with a view to possible future tackling of the area of intra-EU resettlement.\footnote{Commission Green Paper COM(2007) 301 final, p.10} Since this area draws greatly on solidarity between Member States, its development, however, moves rather slowly. A first pilot project has been carried out between 2009-2011 and in early 2012 the Commission put forward its proposal for a permanent relocation scheme.\footnote{See for example Commission study on the feasibility of establishing a mechanism for the relocation of beneficiaries of international protection (2009), Commission Communication COM(2011) 835 final, Commission Communication COM(2012) 110 final} The hesitancy is reflected in the wording of the regulation which explicitly mentions the voluntary basis of these exchanges. Possible relocation movements need to be not only in accordance with both Member States, but also in accordance with the asylum seeker and “where appropriate” under consultation of the UNHCR.\footnote{Regulation (EU) No 439/2010, Article 5}

One of the most important functions of the support office is the provision of training for national staff involved in asylum issues (administrative, judicial or otherwise).\footnote{Ibd., Article 6} In doing so it
is expected to develop and manage a European asylum curriculum, drawing on and extending the already existing EAC. The EAC was established in 2006 by the Swedish, Dutch, Czech and Spanish immigration services (in cooperation with the Odysseus network) to develop a training system for government officials dealing with asylum and related matters. The transfer of responsibility to EASO firmly integrates the existing network into the European strategy towards a common asylum system.

The EASO regulation identifies six areas in which training should be provided, explicitly leaving room for future additional fields of training. These areas include informational issues like the European asylum acquis and the handling of applications of minors or persons with special needs as well as administrative issues like interview techniques, use of medical or legal reports and production and use of COI. With a view to greater convergence of administrative and legal methods and decisions the training should also focus on best practices – without of course interfering with the independence of national courts and tribunals.

In respect to the external dimension of the Common European Asylum System EASO also has a mandate to coordinate exchanges of information and other actions. Areas include general issues arising from the implementation of instruments relating to the external dimension, as well as specific issues related to resettlement and capacity-building in third countries.

The second group of functions as specified in the EASO regulation is concerned with the support of MS under particular pressure. The situations actually falling into the category of “particular pressure” are rather vaguely defined as “sudden arrival of a large number of third-country nationals who may be in need of international protection” under consideration of the Member State’s geographical or demographical situation. This vague wording has the advantage that it covers a wide array of possible pressure situations, which can be quite individual depending on the size of the Member State in question as well as on the specific nature of the particular refugee crisis. In these situations the EASO has a coordinative and information gathering role. In order to evaluate the needs of the Member State in question:

69 EAC Newsletter No. 1, 27 June 2006, p.1
70 Regulation (EU) No 439/2010, Article 7
71 Ibid., Art. 8-10
72 Ibid., Art. 8
and define appropriate support measures the office processes information by Member States, the UNHCR and other organisations. On side of the MS under particular pressure the office collects information on structures and available staff which it then further distributes to the other Member States’ asylum offices. In a more general manner, EASO also analyses data on sudden spikes of refugee inflows and disposes of the mandate to set up an own early warning system if necessary.\textsuperscript{73}

To further support MS under particular pressure the agency can moreover coordinate common action with the purpose of assisting national asylum and reception systems.\textsuperscript{74} Action in this respect includes for example support in initial analyses of asylum applications or availability of reception facilities like accommodation, transport and medical assistance. EASO also disposes of asylum support teams, which can be deployed at the request of Member States' in need.\textsuperscript{75} The teams are drawn from the so-called asylum intervention pool – a pool of experts in different asylum-related fields (for example interpreters or administrators) set up by EASO to which Member States deploy units from their own pools of experts. The size and composition of the support teams varies according to the specific needs of the Member State requesting help.

A third group of functions mentioned in Section 3 of the EASO regulation concerns the implementation of the CEAS. To this end the EASO is to create factual, legal and case-law databases on national, Union and international asylum instruments.\textsuperscript{76} It thus overtakes parts of the monitoring function of the Commission since its main focus here lies on the processing of asylum applications by national administrations as well as national legal developments in the field of asylum. In general the work of EASO lies to a large part in information gathering and analysis.\textsuperscript{77} While several information collecting entities already existed in the area of asylum, the EASO combines these shattered pieces in one central point. Hence the adoption of the EAC, the COI portal and other similar programmes (see above). Other FSJ agencies (which often also have an information collection function) work closely together with EASO. As the

\textsuperscript{73} Ibid, Art. 9
\textsuperscript{74} Ibid., Art. 10
\textsuperscript{75} Ibid., Art. 13-23
\textsuperscript{76} Ibid., Art. 11
\textsuperscript{77} As made clear in the preamble of the EASO regulation: “The Support Office should be a European centre of expertise on asylum”, Regulation (EU) No 439/2010, Preamble.
preamble of the EASO regulation states: “[…]to fulfil its purpose, and to the extent required for the fulfilment of its duties, the Support Office should cooperate with other bodies of the Union, in particular with the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) […].”\(^{78}\) In the case of Frontex for example its collected information on illegal border crossing might possibly prove to be essential for EASO’s task to create and maintain an early warning mechanism. However, according to its website, Frontex intends to “share expertise in managing pooled resources as a first stage of cooperation”, so it remains to be seen how the relationship between the two agencies will develop.\(^{79}\)

### 3.4 Work Programme 2011

After the adoption of the implementation regulation in May 2010 the first EASO management board meeting was held in November 2010. Here the first key priorities were negotiated that were later transformed into the first Work Programme. Work Programmes in general have to be adopted by the Management Board with a three-quarter majority on basis of a draft put forward by the Executive Director and after having received the opinion of the Commission, rendering the EASO rather independent of the EU institutions.\(^{80}\) However, the Work Programme 2011 adheres closely to the structure laid out in the founding regulation and divides its focus on the three key areas support for practical cooperation, support for MS under particular pressures and contribution to the implementation of CEAS. Since the goal was to become fully operational by June 2011, EASO’s first concern was with setting up the necessary framework structures. Especially the implementation of the already existing measures that it should take over (like EURASIL, the COI portal, the EAC and the Interpreters’ Pool) were here of primary importance. These external projects had to be incorporated into the different areas of EASO by the respective divisions.\(^{81}\) Next to these general structural tasks the work programme already set specific tasks with a view to the operational activity of the office. In terms of support for practical cooperation EASO would start drafting a report on

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\(^{78}\) Ibid.
\(^{80}\) Regulation (EU) No 439/2010, Article 29
\(^{81}\) The office is divided into three operational centres – the Centre for Information, Documentation and Analysis, the Centre for Operational Support and the Centre for Training, Quality and Expertise – each with a number of specialized divisions, and one horizontal administrative unit.
Afghanistan as first step under the COI service headline.\textsuperscript{82} Regarding best practices as first responsibility the office would support the EU Action Plan on Unaccompanied Minors.\textsuperscript{83} In support for relocation and resettlement – next to recruiting staff – the first step is the development of a methodology under consideration of the lessons learned from the Malta pilot project EUREMA.\textsuperscript{84} The first country to be supported by the EASO under the “particular pressure” function is Greece, which asked the European Commission for help already before the set-up of EASO.\textsuperscript{85} The office would support the Greek Action Plan on Asylum Reform and Migration Management (submitted by Greece to the Commission in August 2010) and process the Greek request for deployment of an asylum support team. Concerning the expected contribution to the implementation of CEAS the work programme sets out the building of the analysis and information function as well as the publication of the first annual report on the situation of asylum in the European Union and the launch of the EASO website. In general the programme outlines an ambitious first year, focusing both on the institutional set-up of the office as well as its quick as possible practical operability.

\textbf{3.5 Work Programme 2012}

EASO had a successful first year, achieving most of the goals it set for itself. However, due to general economisations throughout the EU its budget was cut by 17\% in April 2011 and it was asked by the Commission to keep its staff at 2011 levels.\textsuperscript{86} This makes it harder for the office to reach its full potential and consequently it announced that in 2012 there would be no concentrated attention on the external dimension of CEAS. Since in 2011 the only goal in this area had been to recruit staff – which could not be reached due to the staff limitations – this area has not yet been developed at all. The envisaged EASO Action Plan on the external dimension will shed light on EASO’s plans for this area in the future.

The Work Programme 2012 sees a more structured approach to its tasks and goals, dividing EASO’s areas of responsibility into Permanent Support, Emergency Support, Information, Documentation & Analysis and Relocation, Resettlement & External Dimension. In general the

\begin{itemize}
  \item \textsuperscript{82} EASO WP 2011, p. 7
  \item \textsuperscript{83} Ibid.; Commission Communication COM(2010)213 final
  \item \textsuperscript{84} EASO WP 2011, p. 8
  \item \textsuperscript{85} EASO WP 2011, p. 12
  \item \textsuperscript{86} EASO WP 2012, p. 9
\end{itemize}
activities in 2011 have been a good starting point, so that most responsibilities of EASO are already functional. The focus in 2012 is on further developing these first efforts. Especially in the area of support for practical cooperation (permanent support) progress has been made – the COI and training functions are operable and the first COI report is ready for publication. In 2012 the COI and training functions will be further refined, a next COI report will be drafted and COI workshops and conferences will be held.\textsuperscript{87} As additional tasks the office will start sharing information and best practices on unaccompanied minors and age assessment as well as generally strengthen its activities in the quality area.\textsuperscript{88} In the field of emergency support after preparations in 2011 the first asylum support team will be deployed to Greece.\textsuperscript{89}

Obviously the focus of EASO’s work in 2011 has been on these first two fields of responsibility since the remaining two areas are not as developed yet. The launch of the EASO website had to be postponed and the first annual report on the situation of asylum in the EU is envisaged to be published in the second half of 2012. Similarly the area of relocation and resettlement will get first attention in 2012. As mentioned above the external dimension of CEAS will be neglected for the time being except for the drafting of an EASO Action Plan in the field. Thus at the moment EASO is more focused on concrete support for Member States and their specific problems and less on general supportive tasks in terms of CEAS.

\textbf{Table: Overview currently most important EASO functions according to Work Programmes One and Two}

\begin{center}
\begin{tabular}{|l|l|l|}
\hline
 & WP 2011 & WP 2012 \\
\hline
Support for practical cooperation & Permanent Support \\
\hline
COI & Setting up COI function & Define methodology \\
\hline
 & & Set up standardized content determination procedure \\
\hline
Draft report on Afghanistan & Publish report on Afghanistan & \\
\hline
 & Start work on next report & Organise COI workshops & conferences \\
\hline
Best practices & Support EU Action Plan on Unaccompanied Minors & Start sharing information and best practices on unaccompanied minors and age assessment \\
\hline
Training & Develop training strategy & Further develop EAC training \\
\hline
\end{tabular}
\end{center}

\textsuperscript{87} Ibid., p. 16-19
\textsuperscript{88} Ibid., p. 19
\textsuperscript{89} Ibid., p. 12-13
To sum up, the EASO established itself quite well in its two years of existence. Although it could not yet activate all areas lined out in its founding regulation it nonetheless already made considerable advancements in some of them. The disposal of support teams to Greece and the finished country report on Afghanistan can be highlighted as especially important. The next two chapters will examine whether EASO has the capacities necessary to fulfil its foremost obligation – the support of the development of the Common European Asylum System.

4. EASO and Dublin II

This chapter will examine the relationship and points of contact between EASO and the Dublin regulation. The Dublin system is one of the problem children of the CEAS and since its recast will likely take another few years, the EASO might be capable to aid with the most urgent problems – as Section 4.3 will show. Section 4.1 and 4.2 first of all explain the Dublin system and its problems.

**4.1 The Dublin regulation**

The Dublin system comprises Council Regulation No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum...
application lodged in one of the Member States by a third-country national (Dublin regulation), its implementing regulation, and Council Regulation (EC) No 2725/2000 of 15 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention (Eurodac regulation) and its implementing regulation.\(^{90}\) The Dublin regulation (or Dublin II) is the Community law successor of the Dublin Convention signed on June 15, 1990 in Dublin (becoming operational only on March 26, 1995).\(^{91}\) Operational from February 18, 2003, it regulates the question of responsibility for asylum applications and is as such a central part of the European asylum acquis. The primary-law basis for the regulation was created with the Treaty of Amsterdam, which required in Article 61 the Council to adopt flanking measures to ensure free movement of people with respect to asylum and in Article 63 to adopt criteria and mechanisms to determine the MS responsible for the examination of an asylum application. It is in general similar to the original Dublin Convention, however a few minor changes were made. Its proposal was fiercely contested, the discussions orbiting around two opposite viewpoints: The majority of MS wanted to transfer the rules of the Dublin Convention in large parts except for minor practical adaptations while a smaller group of MS wanted to fundamentally alter the responsibility determination rules away from the initial entrance regulation. Agreement on these matters was so difficult to reach that the then Danish presidency saw itself forced to use a method that came to be known as the “silent procedure” which left MS a week to decide whether they were willing to accept the text of the proposal, so that the regulation could finally become active.\(^{92}\) Hence the Dublin regulation is a controversial piece of law, based on hardly reached compromises and over time became no less contested. It determines responsibility for asylum applications based on a hierarchical system of criteria. Essentially, if an asylum seeker has illegally entered the Union from a third country, that country whose border was first crossed is responsible for the asylum application. This responsibility ceases 12 months after the illegal border-crossing. If no MS can be deemed responsible in this way, that MS in which the applicant has lived for a continuous period of at least five months is in charge (or in case of multiple stays in different countries, that MS in which the applicant has lived most recent for a period of at least five months). Only if these rules fail to produce a

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\(^{92}\) Peers/Rogers (2006)
result responsibility falls on that MS in which the asylum application was first lodged. The regulation does however include a sovereignty clause, which leaves Member States the option to take over responsibility for an asylum application for reasons not specified, even if strict application of the criteria would see another MS responsible. The regulation also includes a humanitarian clause which states that any MS can bring together family members on humanitarian grounds even if they would not be responsible under strict application of the criteria. So the regulation determines responsibility for examinations of asylum applications but leaves MS two ways to assume responsibility on their own if they so wish. Refusal of responsibility however – once established – is not possible.

4.2 The problem with Dublin II

In 2006 both ECRE and UNHCR issued evaluation reports about Dublin II. Although they did not reject the system completely they did bring forward numerous point of critique in its application. They especially condemned that some countries (especially Greece) in some cases did not grand returned asylum applicants access to an asylum procedure. Moreover they criticised the lack of suspensive effect of some methods of appeal as well as infringes against the principle of family unity in some cases.

From 2007 criticism of Dublin II became stronger, since large disparities in acceptance rates in the individual MS pertained and the situation in the Mediterranean states (especially Greece) worsened. The apparently severely overburdened Greek asylum administration and the resulting disadvantages for returned asylum applicants even eventually caused the UNHCR to issue a statement advising against the transfer of asylum applicants to the country. In June 2007 the Commission issued a detailed evaluation report itself, preparing for a recasting proposal in 2008. In it, the Commission mentioned especially the diverging interpretations of the provisions in the individual MS as an obstacle against the full effectiveness of Dublin II. The sovereignty and humanitarian clauses were applied under very different circumstances. Both were rather openly defined in the Dublin regulation which left a

94 Filzwieser (2010)
95 UN High Commissioner for Refugees (2008)
lot of leeway in their application. In the case of the former, MS had applied them for a variety of different reasons while the Commission saw its purpose specifically in the humanitarian area. In the case of the latter the reasons were obvious (family reunification) but the circumstances, like deadlines for requests or applicability at request of an asylum seeker, remained ambiguous. These imprecisions the Commission saw the need to clarify. Also, in case of the sovereignty clause, the consent of the asylum applicant was not required, a deficit that the Commission planned to remove. Furthermore ambiguities remained in the area of provisions ending responsibility, as well as the applicability of the Dublin rules to unaccompanied minors. So the Commission saw the flaws of the Dublin regulation primarily in unspecific wording and following diverging interpretations resulting from this fact. Based on this evaluation, in 2008 it then presented a comprehensive recast proposal for the regulation.\textsuperscript{97} In it, it clarified the mentioned imprecisions in order to improve efficiency, but also reacted to some of the critic points raised by human rights parties (like ECRE and the UNHCR). In particular this meant strengthening the rights of applicants by for example inserting the right to appeal against a transfer decision as well as including a provision prohibiting detention for the sole reason of seeking international protection. In terms of strengthening the emphasis on family unity the Commission proposed to make compulsory the reunification of dependent relatives instead of leaving this decision at the discretion of the MS and the voluntary usage of the humanitarian clause. Following the results of the evaluation report the recast proposal also includes provisions aimed at better protection of unaccompanied minors. Reacting to the above mentioned deteriorating asylum situation particularly in Greece the Commission moreover proposed a new procedure allowing for the suspension of Dublin transfers to MS under particular pressure, when there is serious concern about the adequateness of the level of protection offered to applicants. Especially this last point was met with strong resistance by MS asylum administrations and as yet the recast proposal has not been adopted.\textsuperscript{98}

ECRE has responded to the recast proposal with even stronger critique against the Dublin system.\textsuperscript{99} While it makes clear that the functioning of the Dublin system depends heavily on a fully harmonised CEAS (which is currently not the case) it also stresses that fundamental

\textsuperscript{97} Commission Recast Proposal COM(2008) 820 final
\textsuperscript{98} Filzwieser (2010)
\textsuperscript{99} ECRE (2009)
flaws persist even beyond this dependence. According to ECRE the only way is the
dismantlement of the current system and replacement “by a system based on integration and
solidarity”.^{100} Currently the Dublin structures would result in human rights violations as well
as increased illegal immigration and smuggling practices.^{101} While it welcomes most of the
Commission’s recast suggestions, ECRE nonetheless dismisses the proposal for not going far
enough. It acknowledges the improving effect of the suggestions but makes clear that these
corrections will not result in the desired outcome – only a reconsideration of the allocation
criteria (ECRE proposes connection to a MS and free choice as alternative criteria) and a
fundamental shift in attitude towards asylum-seekers (away from the counterproductive
restrictive policies) will lead to a truly fair and efficient asylum system.

ECRE is not alone in its assessment that the Dublin system in its current (and envisaged
revised) state is inadequate. Scholars like Ippolito criticize that its underlying assumption –
equal access to equal level of protection in every MS – just does not exist yet.^{102} The allocation
mechanism is built on the premise of 27 identical Member States (in terms of asylum
conditions). It ignores differences of any kind – not even the geographical location and the
from this fact resulting naturally unequal distribution of asylum seekers across the Union is
taken into account. An exception rule for overburdened MS has been included in the recast
proposal, but this – albeit being an attempt at burden-sharing – only covers a small fraction of
the underlying problem. The suspension of Dublin transfers to overburdened states does not
lead to a fairer distribution of asylum seekers and thus true burden-sharing, it simply aids in
not worsening the situation in overburdened states even more. An allocation mechanism that
does not consider the number of inhabitants, number of asylum beneficiaries already present
or GDP per capita of the states but simply the point of first entrance of the asylum seeker
naturally cannot be an instrument for burden-sharing, since the burden an asylum seeker
presents to a society is dependent on exactly these facts. There is a huge difference in
reception capabilities between a state of 80 million inhabitants with a GDP per capita of
32.000€ and a state of 10 million inhabitants with a GDP per capita of 20.000€, yet if 10.000
asylum seekers arrive at the border of the latter state, the Dublin system fails to aid in this
situation in any way. Or as Martin Schulz, current president of the EP, says: “If 20.000 people

^{100} Ibid.
^{101} ECRE (2009)
^{102} Ippolito (2011) p. 33
sit in Lampedusa and they are distributed among the 500 million inhabitants of 27 EU states, this does not pose a problem to individual states.”\textsuperscript{103} - the Dublin system as the prime EU distribution mechanism however is in its current state not equipped in any way to deal with this kind of problem. This also leads to serious problems for Member States applying the regulation, as recent cases before the European Court of Human Rights and the European Court of Justice show (see below).

The fact that the allocation mechanism assumes equal protection across the Union but the actual MS asylum systems display huge variations in protection levels as well as easiness of access to the asylum procedure results in “unfairness” towards Member States as much as asylum seekers.\textsuperscript{104} Unfair to asylum seekers since they are not treated equally wherever they are send. Whereas minimum standards of protection are regulated by the EU, implementation and application of these rules varies from state to state. While some countries do quite well in the treatment of asylum seekers, other states pose to be more troublesome. This situation has resulted in several judgements against Member States that by applying the Dublin regulation sent asylum applicants back to other Member States which were not in compliance with basic human rights obligations. In MSS v Belgium and Greece the European Court of Human Rights ruled that Belgium acted in violation of Art. 3 ECHR by applying the Dublin regulation.\textsuperscript{105} Art. 3 ECHR prohibits the expulsion of an alien to a country where he or she runs a real risk of being subjected to torture or to an inhuman or degrading treatment or punishment, so the question was whether or not Belgium was allowed to apply the Dublin regulation even though the human rights short comings of Greece were well documented by respective institutions.\textsuperscript{106} The court ruled that Belgium indeed acted in violation of Art. 3, effectively for the first time putting the Dublin system in conflict with human rights obligations. A similar setting appeared one year later before the European Court of Justice in Joint Cases C-411/10 and C-493/10, where asylum applicants in the UK and Ireland took action against their imminent transfer back to Greece under the Dublin regulation.\textsuperscript{107} Here the court based the prohibition of transfer to a country known to not adhere to human rights standards in the asylum context on

\textsuperscript{103}Busse (2012)
\textsuperscript{105}Case 30696/09 M.S.S. v. Belgium and Greece: An Afghan asylum seeker that had lodged an asylum application in Belgium was sent back to his point of first entrance – Greece – under the Dublin system, where he was twice subject to detention under degrading circumstances and then left by himself without support from the Greek authorities.
\textsuperscript{106}Compare for example Lavrysen (2011)
\textsuperscript{107}ECJ Joint Cases C-411/10 and C-493/10, 21 December 2011
Article 4 of the Charter of Fundamental Rights of the EU\textsuperscript{108}, and ruled that in these cases the sovereignty clause\textsuperscript{109} had to be applied. These cases show that the Dublin system clearly does not work. As said above, the system is based on the assumption of equal protection across all Member States. The rulings show that Member States cannot be safe to assume that these preconditions prevail – and in fact risk persecution if they do so. As Lavrysen observes: This “more or less means the end of mutual trust in EU Asylum Law”.\textsuperscript{110} As mentioned above the Dublin recast proposal – that is not even adopted yet – does not sufficiently deal with this kind of problem, giving rise to the question of alternatives to the recast way. The EASO might be a starting point to solve this kind of problems as will be explained in detail in Chapter 4.3.

As a last problem, Ippolito criticizes that the Dublin system does not work because it leads to unequal distribution of asylum seekers across the EU, with already overburdened border countries (CEECs and Mediterranean countries) receiving even more applicants.\textsuperscript{111} This however is not confirmed by figures issued by the Commission. According to these the overall allocation between border and non-border countries is actually rather balanced: in 2005 for example 3055 transfers have been carried out towards external border MS while 5161 transfers took place towards non-border countries. In most Member States Dublin transfers did not alter the number of asylum seekers by more than 5%. Only Poland recorded a 20% increase, while Luxembourg and Iceland each recorded a 20% decrease in total number of asylum seekers. In Slovakia, Lithuania, Latvia, Hungary and Portugal the total number of asylum seekers increased by 10% due to Dublin transfers.\textsuperscript{112} While these countries indeed belong only to the CEEC and Mediterranean groups, the Commission does not see an alarming trend in these figures. What is moreover important to keep in mind in this context is that the distribution of asylum seekers throughout the Union already is unequal. Be it due to alleged openness of the asylum system, a favourable geographical location or any other reason, it is a fact that some countries receive a much larger number of asylum seekers than other countries both in relative and absolute numbers. The goal of the Dublin system is not to make the distribution more equal – because for that to happen completely different allocation criteria

\textsuperscript{108}Charter of Fundamental Rights of the EU, Official Journal C 364, 18 December 2000, p. 1-22, Article 4 – the wording is identical to Art. 3 ECHR.
\textsuperscript{109}Council Regulation (EC) No 343/2003, Article 3.2
\textsuperscript{110}Lavrysen (2011)
\textsuperscript{111}Ippolito (2011), p. 34
\textsuperscript{112}Commission Report COM(2007) 299 final
would have been needed (as explained above) – but to prevent “asylum-shopping” by regulating conclusively which MS is responsible for any one asylum applicant.\textsuperscript{113} So while the critique that the Dublin system does not lead to a more equal distribution of asylum seekers and better burden-sharing between MS is of course valid from a general perspective, it has to be kept in mind that the Dublin system has not been created to cater for these wishes in the first place.

\section*{4.3 Dublin and EASO}

While the EASO mandate does not particularly mention any one asylum regulation, its implementation and work nonetheless possibly influences the functioning of the asylum acquis. The following section analyses in which way the existence of EASO impacts the working of the Dublin system. The Dublin regulation poses here as an example for the interaction of the support office with other European asylum regulations in order to work out its influence on the development of the CEAS.

So even though support for the Dublin system is not explicitly mentioned in the EASO regulation, its mandate and consequent future work has several points of contact with it either directly or indirectly. First of all under the headline of support for practical cooperation (or permanent support), EASO is taking over and extending the Commission’s COI function. The goal is to build a comprehensive pool of information about possible countries of origin of asylum seekers. The office has just started on the project but once fully operational the EASO-managed COI database will build a common basis of information for MS asylum administrations. Information on the situation in the country of origin of the asylum seeker is important to assess the validity of their claims and to make a decision on the status to be granted. One of the problems the Commission mentioned in its Dublin evaluation report is the huge variation in acceptance rates across Member States. Next to ambiguous wording of the regulation itself, the variations of acceptance rates of the same nationalities in different MS allows the conclusion that MS work with unequal information about COI (different assessment of the situation leads to different decisions). A common basis of knowledge could

\textsuperscript{113}Council Regulation (EC) No 343/2003 – The preamble of the Dublin regulation indeed does not mention burden-sharing or a fairer distribution of asylum-seekers at all.
thusly remove this information bias and contribute to a harmonisation of acceptance rates.

Another area that in the Commission evaluation report became apparent to be in need of further clarification was the handling of unaccompanied minors and other vulnerable persons. The Commission added further regulations on this topic in the recast proposal, which however has not been adopted yet. The EASO is involved in this area as part of its ambitions to collect and share best practices in the asylum field. The Action Plan envisaged the beginning of the sharing of information and best practices concerning the handling of unaccompanied minors in 2012. Ideally the learning about other administrations' working habits will eventually lead to a harmonisation in practices. This could then result in better and more similar handling of the special needs of unaccompanied minors even without a concrete legal basis in the regulation. So while the Commission and MS figure out how to agree on a Dublin recast proposal the important question of how to handle the special needs of unaccompanied minors is already taken care of in a more informal way. The EASO's gathered knowledge could then in turn also be used to reach the best possible legal basis for this area.

An important aspect that both the human rights parties and the Commission criticized is the fact that some MS did not oblige with the demands put on them by the Dublin regulation. This was especially the case with Greece, for which the UNHCR recommended the suspension of transfers in 2007, and which already lead to several court cases as explained in Chapter 4.2. Defaults of this kind are often caused by excessive demands on the national asylum systems the amount of which they are simply not equipped to handle. The Dublin regulation in its current form does not specifically regard these kinds of situations. The allocation system works regardless of the individual Member States’ situations, which is why the Commission recast proposal includes a provision to suspend Dublin transfers in cases of extreme over-burden that would allow the MS in question to work off the backlog without getting additional cases from other MS. This is not actual support but a commitment to not over-burden the state even more. So the MS would need to get to the position to once again be able to fulfil its Dublin obligations on its own. This way is rather time-consuming and overly inefficient. Since the Dublin regulation in its strict sense is simply an allocation mechanism the question is to be asked to what extent it has the mandate to deal with these kinds of situations in the first place.
Here is where the EASO could become important. Since one of the three pillars of its mandate specifically handles support for MS under particular pressure, the strategy to get overburdened MS to comply with the European asylum acquis could be twofold: Suspension of transfers for a limited time on part of the Dublin system and concrete support for its asylum administrations on part of the support office. Since the recast proposal is not adopted yet support from EASO becomes even more important. It has already deployed an asylum support team to Greece where it supports the local staff both in numbers and expertise. In this way the overburdened state (i.e. Greece) can get back to compliance more quickly and efficiently and the harm for asylum seekers remains minimal. Thus the EASO has the potential to become an important tool complementing the Dublin regulation and supporting its efficient application on part of the MS.

EASO’s work can also be a basis for further improvements of the Dublin system itself. As mentioned above the Union is in dire need of a true burden-sharing mechanism – something that the Dublin system currently cannot provide. The EASO is responsible for evaluating the EUREMA project (pilot project in the area)\(^\text{114}\) and generally building knowledge on the topics of relocation and resettlement. The collected information could become invaluable for possible future action in burden-sharing either through the renewal of the Dublin regulation or additional mechanisms.

As shown above the EASO has the potential to support the improvement of the Dublin system in two ways. On the one hand its support for MS ideally has a positive influence on the efficiency and effectiveness of the status quo. The office collects common information on countries of origin and educates Member States’ asylum administrations on methods and best practices in a variety of topics, both activities potentially leading to a harmonisation of procedures and practices across the states, eradicating the currently huge variations in the application of the Dublin regulation. It also provides common training for asylum administrators from different MS, also contributing to a more similar application of regulations across the states. It moreover provides concrete support for MS under particular pressure in form of asylum support teams who can be deployed to MS in need and then actively work with the local asylum administrators. In this way backlogs can be worked off

\(^{114}\)EASO WP 2011, p. 8 – for further information on EUREMA see for example Raspotnik/Jacob/Ventura (2012)
more quickly and deficiencies in the application of regulations like Dublin II can be removed. This quick aid to MS in need ideally helps reduce European law infringements and human rights violations caused by over-burdance. It therefore complements the Dublin regulation which currently does not consider situations like these. Through harmonisation of MS asylum practices and support for MS under particular pressure the EASO thus contributes to solve many of the problems of the Dublin system as mentioned by the Commission. On the other hand tasks like organising exchange of information on Dublin-related topics like relocation and resettlement and evaluation of pilot projects in these fields will build a basis of knowledge invaluable to future modifications of the Dublin system. All things considered, the EASO both contributes to the improvement of the functioning of the Dublin system through its work on MS basis and to the future improvement of the system in general through the collection of knowledge in related fields.

The next chapter will examine EASO from a Member State perspective.

5. EASO and the Member States — Example: Germany

After having examined EASO’s possible influence on the legislative side of the CEAS, this chapter will examine EASO’s possible influences on Germany as a sample Member State. As explained in Chapter 1 Germany was chosen because of its function as one of the main receiver of asylum applications. Since Germany is also rather reluctant when it comes to burden-sharing (as explained in Section 5.1), EASO might (or might not) be able to shift this attitude, as Section 5.2 examines.

5.1 General legal situation in Germany

After the end of the Second World War and the rehabilitation of Germany the right to asylum was added to the new Constitution. Article 16 GG stated that politically persecuted were granted the right of asylum and as such rendered Germany one of the only countries in the world with a constitutionally guaranteed right to asylum.\(^\text{115}\) The public debate about foreigner policies at the time however did not revolve around questions of asylum until much later.\(^\text{116}\)

\(^{115}\)Hailbronner (2000)

\(^{116}\)Schneider (2009) - The three important groups of immigrating foreigners at the time were firstly East Germans,
In 1965 the new Aliens Act for the first time established a procedure for the granting of asylum, which presented according to Fröhlich “the procedural activation of the right to asylum”\textsuperscript{117}. Apart from the Geneva Convention in 1953 the German asylum policy was pretty much left alone from both inside and outside influences until the mid-1980s when the until then negligible influx of asylum-seekers started to grow substantially. In 1988 (then still West-)Germany received 103,000 applications and these numbers continued to grow until they reached their preliminary maximum in 1992 with 438,000 applications (in re-united Germany). In the face of these climbing numbers as well as the agreed upon abolition of internal borders between the original Schengen members Germany, France and the Benelux countries, increased cooperation on a supranational level became important. As mentioned above, as a basic framework the EU Member States signed the Dublin Convention on 15 June 1990, which however only became effective seven years later. In the meantime Germany still had to deal with the mass influx of asylum applicants as well as increasing racist outbreaks against these foreigners. The centre-right government at the time acknowledged the need for integration strategies, on the other hand however struggled to keep or re-gain far right voters (to not strengthen extreme right parties even further) which they thought could be reached by displaying toughness towards asylum-seekers\textsuperscript{118}. The political transitions of the early 1990s provided further opportunity to legitimise the change of the Constitution that would be needed to restrict the right to asylum. As a third factor the allegedly necessary preparation for European asylum harmonisation was put forward, as then-chancellor Helmut Kohl suggested: “The new regulation of the right to asylum of 1 July was an important precondition for the fact that Germany can fully participate in a common European asylum policy”\textsuperscript{119}. Scholars like Borkert/Boswick however exposed this argumentation as an example of how EU membership is used to justify executive measures before parliament and population, an easy excuse since at the time only very limited information about EU asylum policy was available\textsuperscript{120}. Since the generous design of the pre-amendment law would not actually have come in direct conflict with the minimum standard design of the later CEAS, the chancellor’s statement on second glance thus might reveal a different meaning and instead hint at the

secondly actively recruited workers from the Mediterranean countries as well as Turkey, Morocco, Tunisia and Yugoslavia, and thirdly the “Aussiedler”, people of German origin from the former Soviet Union.

\textsuperscript{117}Fröhlich (2011), p.28
\textsuperscript{118}Klusmeyer / Papademetriou (2009), p.168/169
\textsuperscript{119}Koslowski (2000) as cited in Klusmeyer / Papademetriou (2009), p.169
\textsuperscript{120}Borkert / Boswick (2007), p.17
future reluctance for burden-sharing. In any way, the amendment to Article 16 GG that came into force on 1 July 1993 severely restricted the right to asylum, inserting both the concepts of safe country of origin and safe third country. In a way it anticipated the Dublin regulation in that it stated that asylum seekers coming to Germany via a MS of the EU (a safe third country) would not be granted the right to apply for asylum in Germany and instead had to be sent back to the safe third country. Same if the asylum seeker came from a state on the list of “safe countries of origin”. Since Germany's geographic position is in the middle of Western Europe with a Northern coastline opening to the Scandinavian countries, practically the only way to directly reach the country without travelling through a “safe third country” would be by air – the new provision thus limiting drastically the legitimate claims for asylum. And indeed the numbers of asylum applicants declined in the following years. Since 1998 they have been consequently below 100,000 per year (while the applications EU-wide were still increasing until 2001) and in 2007 reached a preliminary low with 19,165 (as compared to 222,635 EU-wide). Since then annual applications have been slightly increasing again but with 45,741 in 2011 there are still nowhere near the level of the early 1990s. In the early years after the amendment the third country rule however has not always worked as expected, as Hailbronner observed, because third countries in a considerable number of cases refused to take back the asylum seeker. In this way the European developments in the area of asylum has been complimentary to German demands, since the Dublin Convention and its later enshrinement in EU law basically binds all EU Member States to the German safe third country rule. Since all MS are now committed to the Dublin regulation the system is well established, reducing the problematic instances experienced previously by Germany when it was still just a domestic provision to a minimum (and also increasing possible enforcement strategies towards unwilling partner MS).

In 2005 the new Immigration Act combined the regulation of different kinds of immigration into one comprehensive law and in 2007 another Act implemented in one go the different asylum directives negotiated on EU level. In general it has to be said that Germany was an

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121 The list was originally composed of Bulgaria, Gambia, Ghana, Poland, Romania, Senegal, the Slovak Republic, the Czech Republic and Hungary – however from 1994-1996 all African states on the list have been removed, rendering the concept basically negligible today since the remaining countries since 2007 at the latest are part of the list of safe third countries qua their EU membership.


123 Hailbronner (1994) as cited in Klusmeyer / Papademetriou (2009), p. 171
important actor in the development of European migration and asylum law from the beginning and shaped European policy to a considerable extent.\textsuperscript{124} Examples for German influence are the third country rule (as explained above), the German support of the deviant interpretation of the Geneva Convention’s definition of the term refugee which had already been applied by German courts before and which made its way to a 1996 EU Joint Position and the German initiation of the Budapest Process (an international consultative forum dealing with illegal immigration)\textsuperscript{125} Since the end of the first phase of the CEAS – which in Germany was completed with the implementation of the different EU asylum directives in 2007 – Germany has been rather obstructive to further developments in EU asylum policy. The proposed minimum standards for asylum procedures as well as the proposed change of the Dublin system have both been opposed by Germany (and other MS).\textsuperscript{126} Both would have adverse consequences for the German asylum system, since the former would possibly mean the abolishment of the German accelerated “airport procedure” while the latter could possibly increase the influx of asylum-seekers to Germany.

\textbf{5.2 EASO in practice: Possible influences on the German system}

As shown, Germany has had a considerable impact on the development of a European asylum policy. In a number of incidents Germany used the European level to shape EU policies beforehand according to its own needs, thus removing conflict possibilities before they could actually arise in the implementation into national law. The conformance to European asylum law has therefore happened rather smoothly. Also due to the particular shape of the current European asylum system, Germany does not have to handle particularly large influxes of asylum seekers in short time periods (i.e. does not count to MS under particular pressure). In general Germany can rather be seen as a deployer of experts to EASO than as a receiver.

According to Borkert/Boswick (2007) the German activities in the asylum area at EU level mainly involve the three areas harmonisation of the right to asylum, border controls and burden-sharing.\textsuperscript{127} In terms of harmonisation activities the German asylum authority already in 1994 implemented regular meetings with the French, Belgian and Dutch asylum

\textsuperscript{124}Borkert / Boswick (2007), p.17
\textsuperscript{125}Borkert / Boswick (2007), p.18
\textsuperscript{126}Prössl (2010)
\textsuperscript{127}Borkert / Boswick (2007), p.18
authorities, which since have been expanded to other countries as well. In the case of Central and South-East European countries like Bulgaria, Lithuania, the Czech Republic, Slovakia and Poland cooperation had the explicit purpose to improve their asylum systems so they would stand the application criteria of the safe third country rule. Borkert/Bosswick does not specify what constitutes German burden-sharing activities on European level, but it can be assumed that the German involvement in the development of the Dublin system falls under this category. So in terms of German asylum related activities at EU level, the EASO clearly supplements the German intentions to improve asylum systems of other Member States (after all this is what the establishment of EASO effectively tries to achieve through practical cooperation). The regular meetings of national asylum authorities initiated by Germany are being institutionalised by MS asylum forums held by EASO, in which all MS (instead of just a selected few) can participate and which thus present a more inclusive and fair approach to supporting practical cooperation. Moreover, the German involvement in the improvement of the asylum systems of the Central and South-East European countries anticipated the EASO’s mandate to support the implementation of the CEAS. While the German activities were motivated by self-interest rather than humanitarian ideas (to be able to send asylum-seekers back to those countries under the safe third country rule) the goal nonetheless implies the raise of protection levels in these countries and thus ultimately the harmonisation of EU asylum systems. The implementation of EASO followed the same rationale and institutionalised the German efforts through its mandate for training activities and its asylum support teams. Through the involvement of a European agency the harmonisation efforts firstly have a broader scope (involving all MS) and secondly become better coordinated and focused (representing a European approach for all MS instead of a MS approach towards other MS).

So the implementation of EASO clearly supplements the German asylum-related activities on EU level, but what about the other way round? Germany is not currently under particular pressure by extensive refugee inflows nor is it particularly reluctant in implementing existing European asylum measures, so does the EASO affect the German asylum system? The answer remains ambiguous. On the one hand Germany does not currently need active support from EASO, on the other hand it can profit indirectly from EASO’s work. Here especially the

128Borkert / Boswick (2007), p.18
information collecting role needs to be mentioned. EASO for example establishes a COI database aimed at harmonising the recognition levels across the EU (as explained in detail in Chapter 3) and will host workshops and conferences on the topic. Germany can include this collection of information into its own assessment procedures, reducing time and money otherwise spend on the compilation of similar information. Also if asylum administrators will base future decisions on these EU-wide unitary informations and take part in the exchange with other MS administrators in EASO-hosted conferences and workshops, recognition levels for refugees of different origins might change and adjust to that of other MS.

In a similar way Germany can profit from EASO’s work on best practices in the area of unaccompanied minors and age assessment, an area which is currently not explicitly regulated by EU law but which does receive increased attention of late.\(^ {129} \) The German administrators can thus draw on experiences made in other MS in order to improve efficiency and fairness of its own procedures.

Moreover the EASO training offer is also open to Germany. So in case new circumstances arise either on a legal or practical level, German administrators can attend workshops or other training activities organised by EASO to adapt to the new situation in a time- and thus cost-efficient way.

Germany also indirectly profits from EASO’s support for MS under particular pressure. In the case of Greece for example, things became so unacceptable that Dublin transfers back to Greece could not be carried out. This affected the other MS since they then had to keep the refugees on their own territory and give them access to their own asylum procedure. Hence it is in the interest of all MS if those under particular pressure get support to deal with backlogs and improve ineffective procedures, so that the Dublin system can run smoothly. Moreover, the EASO way with its asylum support teams is the least cost-intensive way for other MS to support their partners under particular pressure. Instead of having to reconsider the Dublin procedure to make it able to deal with particular pressures in a more effective way or at least relocating money to those MS, the “EASO way” does not change the status quo nor require extra money from MS and still might be able to support MS under particular pressure in such

\(^ {129} \)Frontex (2010); Kühlmann (2010)
a way that they will again be able to carry out their Dublin duties.

Germany is like many other Member States in that it implemented the current EU asylum acquis correctly and does not suffer from particularly heavy refugee influx, thus it shares the above mentioned benefits from EASO’s work with other MS. These benefits could have a positive influence on cost- and time-related improvements of asylum procedures but they do not significantly alter the structures themselves. Germany is a well functioning member of the European asylum system at this point in time, but the country’s particularity lies in the fact that it is against any significant changes in the status quo. For instance the country rejects further changes in asylum procedure laws as put forth by the Commission since the proposed minimum standards could possibly mean significant changes in the German asylum system (i.e. the unlawfulness and consequent abolition of the accelerated airport procedures).  

It also refuses any attempts to revise the Dublin system. EASO does not have any direct influence on policy-making and can only work in context of the existing policy structure. However there are two ways in which the existence of EASO could lead to a long-term climate change in EU asylum matters. First of all it has a pioneer function in the area of relocation and resettlement, two important but not yet thoroughly developed concepts in burden-sharing activities. EASO’s mandate stipulates its role in the evaluation of pioneer relocation project EUREMA, its support role in a possible extension of the project and the facilitation of exchange of information and best practices in the area. Thus, EASO becomes a prime support actor in the development of relocation/resettlement mechanisms in the EU. Since the agency is not located in top-level decision-making structures but rather on working level between national asylum administrations it implies a bottom-up rather than a top-down approach, which could thus lead to a climate change on administrator level that in the next step could possibly influence the direction of asylum politics. This could be a first step to alter the deadlock in recasting the Dublin regulation and especially the German attitude towards it. However there are certain limits to this idea as explained below. The second way in which EASO can contribute to a climate change in asylum matters and getting large MS like Germany to be more open to a change in the stats quo is through its knowledge exchange and distribution function (e.g. holding workshops, discussion forums etc.). Since asylum is an area intimately connected to the very foundations of the state – sovereignty, territory and people –
the development of a true, fair and functioning Common European Asylum System is extremely difficult and quite possibly take even longer than anticipated. An agency like EASO located on working level with MS administrators and providing a forum for knowledge exchange on an unprecedented institutionalised level can be a tool to strengthen solidarity between Member States from the inside out. Through informal exchange of opinions and experiences in EASO hosted discussion forums and workshops a concrete harmonisation of practices on administrator level might occur, reducing points of conflicts between Member States. However, it is highly questionable whether exchange of information can alter a state’s basic attitude towards asylum-seekers – which after all is the underlying rationale behind a state’s behaviour in asylum questions. In the case of Germany its resistance towards changes in the status quo is rooted in a strong negative bias against asylum-seekers (fear of “Überfremdung”132 and the abuse of the asylum claim for economic reasons here play an important role) and the fact that the current status quo protects those German interests quite well (for example as explained in Chapter 5: the Dublin criteria significantly reducing the amount of legitimate asylum claims in Germany). The criticised accelerated airport procedure is one expression of the German approach towards asylum-seekers, which has less to do with (not strong enough) solidarity between Member States but much more to do with the wish to allow as few asylum-seekers as possible into the country. This is precisely where EASO’s influence reaches its limits. While the exchange of information and best practices might lead to a harmonisation in asylum practices within the limits of the current system of asylum laws it has much less influence on actually changing the system itself. Concretely: What would lead Germany to abolish its accelerated airport procedure and hence to dismiss its blocking position in the further development of the CEAS? A significant fall in asylum-seekers Union-wide, a grave change in attitude towards asylum-seekers inside the country or international pressure from institutions actually capable of sanctioning Germany. All three variables factors that EASO has no influence on. Thus, while Germany can benefit from the above mentioned EASO services if it so chooses, the agency’s establishment will probably not have any significant effect on Germany’s position towards the further development of the CEAS nor its established asylum practices on any significant level.

132A term frequently used in domestic asylum debates, translatable approximately with “superalienation” or “foreign infiltration” (being declared the German “unword of the year” of 1993) - for an account of the German attitude towards asylum-seekers see for example Klusmeyer/Papademetriou (2009) p.168ff
6. Conclusion

Having been operational for a little over a year, the European Asylum Support Office is still in its early development stages. Some parts have been operational from the beginning, others are currently developing (like the COI function) and others are yet to be established (like the external dimension). Thus, EASO’s full impact cannot be determined yet. However, based on its mandate some good approaches are already visible and allow predictions concerning future developments.

Considering its goal to further harmonisation between Member States a few aspects are especially promising. In my opinion these include first of all the COI function. Collecting information about countries of origin on European level and pooling them in a EU-wide database ensures equality of information in all Member States and in the future hopefully overrules what biased and outdated or simply imprecise information is still fuelling the COI-divided inequalities in asylum decisions in different MS. EASO has already started with this function and has already finished its first country report on Afghanistan.

Secondly EASO’s information sharing function (e.g. sharing of best practices, workshops, discussion forums) seems promising concerning the harmonisation of current practices in the long-term. However whether a harmonising effect of these working level exchanges actually exists can only be determined in a few years when the EASO has been operational for some time. The collection of best practices has only been started in the first area of dealing with unaccompanied minors; here it remains to be seen whether the EASO can actually have an impact on the handling of the topic in different Member States – which then will be an indicator for other areas in the future. In June EASO held a practical cooperation workshop on the developments in Syria, bringing together COI specialists and country practitioners on Syria, and reacting to the deteriorating conflict situation in the country which will likely result in higher influxes of refugees from that area.\textsuperscript{133} Although actual effects from the workshop cannot be derived yet, this nonetheless shows that the agency is able to react to pressing topics in a timely manner and can present itself as a forum for discussion and education.

\textsuperscript{133}EASO (2012)
EASO’s second big goal apart from supporting harmonisation is the support for over-burdened Member States. The concept of sending ad-hoc asylum support teams to MS in need is a good idea in theory (which has already been put into practice with the deployment of teams to Greece), although the effectiveness of this method has to be determined in the future. In the case of Greece a team of experts has been deployed to support the development of the Greek asylum system in a consultative manner, however they are bound by the preconditions of the country. That means for example that the experts can observe that more staff is necessary in order for the asylum system to function properly, but if no money is available then their hands are tied. In Greece about 700 new staff were planned to be employed in the beginning of 2012, however until June 2012 only 11 new people were actually employed, due to the severe financial situation of the country and a hiring stop in the official sector. In cases of over-burdance it is often not necessarily knowledge that is missing but other resources like money or simply space. Expert knowledge which sets up properly functioning asylum systems is needed before the over-burdance occurs – however since the latter follows from the absence of the former, the situation is not as easily solved. What is clear however is that sending a few experts to problematic countries will not be enough to improve the refugee situation at the EU’s borders. Instead of trying to improve the asylum systems while they are in a state of over-burdance, a more efficient way might be to first take away the overload (i.e. relocate the majority of refugees to better equipped systems) and then improve the system with expert knowledge and additional financial assistance. Since EASO is also responsible for evaluating relocation pilot projects, the solution might still lie in the work of the office. Only without the second supporting leg of an operative relocation plan the support for over-burdened MS as currently provided by EASO seems a bit lopsided for now.

All in all the EASO has some good approaches to contribute to the harmonisation of practices inside existing boundaries. However, it does not have any power to influence the current status quo, which is why it can only play (at best) a supporting role in the establishment of the CEAS. Since the establishment of the CEAS not only relies on the better application of existing rules but also on the actual recast of some and new implementation of others, the creation of EASO is not the great solution to the problems of the European asylum system(s)

134Falzon (2012)
per se. It is certainly a step in the right direction to centralise knowledge about asylum in one European agency and in the future EASO's role in the area might even become more important. Good approaches are present, but with everything in the European Union success in the long term depends largely on the willingness of the Member States involved.
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