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# A Common European Asylum System: Utopian or Dystopian Expectations?

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Editorial

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

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

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

**Issue**
This editorial is a part of the issue "A Common European Asylum System: Utopian or Dystopian Expectations?" edited by Birgit Glorius (Chemnitz University of Technology) and Jeroen Doomernik (University of Amsterdam).



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## References

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

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

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

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Article

# Between a Rock and a Hard Place: Afghan Migration to Europe From Iran

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**Abstract**
Afghans have consistently been one of the largest groups of refugees arriving in Europe, with more than 600,000 Afghan asylum applications in European countries over the past ten years, second only in number to Syrians. Afghan migration to Europe is a response to both the deteriorating security situation in Afghanistan and protracted displacement in countries hosting the vast majority of Afghan refugees, including Iran, where there is a well-documented lack of protection, rights, and opportunities. Drawing on interviews undertaken in Turkey and Greece during the last three months of 2015, this article examines the experiences of Afghans who travelled to Europe from Iran, where they had been living for many years, and in some cases had been born. Their experiences, particularly when seen in the context of Afghan mobility historically, complicate dichotomies between "forced" and "voluntary" migration, and "origin" and "destination" countries, which underpin the Common European Asylum System. It is clear that mobility forms an important survival strategy for Afghans and others living in situations of protracted displacement, for whom efforts to provide durable solutions have been largely unsuccessful. Harnessing this mobility by facilitating and supporting—rather than preventing—onward migration is the key to unlocking protracted displacement.

**Keywords**
Afghanistan; categories; Europe; Iran; migration; mobility; protracted displacement; refugees

**Issue**
This article is a part of the issue "A Common European Asylum System: Utopian or Dystopian Expectations?" edited by Birgit Glorius (Chemnitz University of Technology) and Jeroen Doomernik (University of Amsterdam).



## 1. Introduction

Khalil Hussaini (not his real name) was just five years old when his family left Afghanistan. He doesn't remember much about his time in Afghanistan but recalls all too clearly the difficulties of building a life in Iran: the constant search for security; the harassment and discrimination; his failed attempts to become an engineer. Life for the family was hard without papers establishing their right to be in the country. Khalil met an Iranian, and together they opened a garage, but when Khalil's friend left Iran, a rival garage owner, who knew he didn't have a work permit, had his business closed down. Khalil took up construction work to support the family, including his mother, who was suffering from poor health and needed to make frequent, expensive trips to the hospital. "An Afghan can only become a manual worker in Iran" he told us, "all the dirty jobs are done by Afghans, and their salaries are much lower than the Iranians." Worse still, he said, there are no rights, no freedoms: "Afghans don't have a right to drive a motorcycle or a car. You cannot buy a SIM card if you are an Afghan in Iran." Then there was the violence: "Iranians treat Afghans as if they are animals. I was stabbed twice while working at a construction site in Iran." However, it was only when Khalil talked about his fiancé and their desire to get married that his sense of hopelessness became apparent and he started to cry. "Our lives," he said, "slipped through our hands in Iran." Faced with a lifetime of poverty and with no hope for a better future, the family sold everything they had, crossing the Iranian border to Turkey and onwards to Greece.

We interviewed Khalil, a 20-year-old Hazara Afghan, while he was waiting for a ferry at the Greek island port of Mytilene with his fiancé, parents, two brothers, and their children. It was October 2015, and Khalil and his family were nearing the end of a difficult and dangerous journey that had taken them many months. They were not alone. This was the height of the so-called "migration crisis" in Europe, when more than a million people crossed the Mediterranean (Crawley et al., 2018), among them 178,000 Afghans who claimed asylum (Eurostat, 2016). During the last three decades, Afghans have consistently constituted one of the single largest groups of asylum seekers in European countries, with more than 600,000 Afghan asylum applications in Europe over the past ten years, second only in number to those arriving from Syria (Eurostat, 2021).

One of the main reasons for the arrival of Afghans in Europe is the volatile security situation in Afghanistan and the limited success of the reconstruction effort (Donino et al., 2016). Afghanistan has been marked by war, conflict, and displacement for over 40 years, beginning with the Soviet invasion in 1979. The refugee population peaked at more than six million in 2002 and stood at 2.6 million registered refugees and a further three million undocumented Afghans at the time of our research, 85% of whom were hosted by neighbouring Pakistan and Iran (UNHCR, 2016). The Taliban, which captured much of Afghanistan in the mid-1990s, has been steadily rebuilding its power base after being overthrown in 2001. This process accelerated in 2014 following the withdrawal of NATO forces and events in neighbouring countries, most notably Pakistan, which dislodged thousands of mainly Uzbek, Arab, and Pakistani militants, who then travelled into Afghanistan, swelling the Taliban's ranks. In February 2020, the United States signed a peace agreement with the Taliban pledging to withdraw troops in 2021. Ahead of their departure, the Taliban laid claim to large swaths of Afghanistan, culminating in their return to power in August 2021.

But increased violence and insecurity in Afghanistan is not the only reason why Afghans move to Europe. Just as importantly, there are limited opportunities for protection in the region where the vast majority of displaced Afghans live. Afghans living in Iran are among a growing number of refugees living in situations of protracted displacement for whom there are no immediate prospects of a "durable solution," defined as safe and dignified return, local integration, or resettlement to another country (UNHCR, 2020). Although Iran has been praised for hosting millions of Afghans with virtually no assistance from the international community, most have limited rights (Human Rights Watch, 2013). For those who were born in Iran or arrived with their parents when they were very young, the incentives to remain in the country are in rapid decline. They see no prospects for their future, no hope of securing education or meaningful employment, or of establishing their own families. The incentives to go to Afghanistan are also low: This is a country to which many have never been, in which they have few established links and where, particularly for groups such as the Hazara, discrimination and ethnic violence is on the rise. Meanwhile, it has become increasingly difficult for Afghans to secure protection elsewhere. Afghans arriving in Europe have come to be seen as "second class" asylum seekers (Ruttig, 2017a; Skodo, 2017), often viewed as "economic migrants" rather than as being genuinely in need of protection (Schuster, 2011), with recognition rates often significantly lower than those of asylum seekers from Syria and other conflict zones.

This article draws on data gathered through semi-structured interviews with 56 Afghans, mostly men, who were interviewed in Greece and Turkey as part of the MEDMIG project. All of our respondents arrived during the last three months of 2015, when the so-called European "migration crisis" was at its peak. Detailed information about our methods, including reflections on the ways in which methodological issues can inadvertently reinforce and amplify policy narratives about the nature of migration flows to Europe, can be found elsewhere (Crawley et al., 2018; Crawley & Hagen-Zanker, 2018; Crawley & Jones, 2020; Crawley & Skleparis, 2017). For the purpose of this article, it is important to note that we understand the "migration journey" as a social and analytical category rather than simply the movement from one country to another. Methodologically, this means not only asking people about their migration decisions and journeys, but also about their experiences in the places where they had lived outside their country of origin, and exploring the meanings of these place(s) for their everyday lives and mobility decisions (Crawley & Jones, 2020). This approach brings to the surface experiences of protracted displacement that might have otherwise remained hidden.

One of the most striking aspects of the data from our Afghan respondents was the significant period of time that most had been living *outside* Afghanistan prior to their arrival in Turkey and Greece. Nearly half (43%) had left Afghanistan more than five years before our interview with them and, of these, a significant proportion (39% of the total) had been living outside Afghanistan, mainly in Iran, for more than ten years. Seven respondents had not been to Afghanistan for more than 20 years, and some for as long as 35 years. In addition, nearly a quarter had never been to Afghanistan at all, having been born in either Iran or Pakistan. That means that two-thirds of our Afghan respondents had either never been to Afghanistan or had not lived there for a considerable period of time. Most were young, less than 30 years of age, and just under half (45%) were Hazara. Most had left their homes in Tehran, Isfahan, Shiraz, and Qum because the discrimination they faced in Iran had become intolerable, and because they feared being deported to the ongoing conflict in Afghanistan, including targeted discrimination and persecution of the Hazara, who, unlike the majority population and Taliban, are Shia Muslims.

These findings raise important questions about the ways in which the experiences of Afghans living outside of Afghanistan who arrive in Europe are conceptualised and understood, with implications for approaches to protracted displacement more generally. Afghans arriving in Europe are typically assumed to have travelled directly from Afghanistan, overlooking the complex interplay of factors that underpin Afghan mobility. There is a long history of migration between Afghanistan and neighbouring countries, particularly Iran: Afghans have historically made their way to Iran for work, travelling via networks that have formed over time, and made easier by the fact that large numbers of Afghans share a language (Dari), and religion (Shia Islam), with the Iranians. In addition, successive waves of conflict following the Soviet invasion of Afghanistan in December 1979, means that hundreds of thousands of Afghans have also sought refuge in Iran, arriving either directly across the Afghan border or by taking a long detour through Pakistan. This has resulted in highly mixed flows of refugees and labour migrants (PRIO, 2004).

In unpacking the reasons why Afghans decided to leave Iran and travel to Europe, this article's focus on mobility in contexts of protracted displacement contributes to a growing body of literature that complicates ideas around "the journey" of refugees and migrants. It does so by de-exceptionalising migration and de-stabilising the presumed sedentary optics of migration studies that tend to frame people's pre-departure and post-arrival lives as predominantly immobile (Schapendonk et al., 2021). It also builds on related research that challenges dominant forms of categorisation, including the dichotomy between "refugees" and "migrants" (Crawley & Skleparis, 2017), and the use of associated policy categories to marginalise and exclude those whose experiences and needs for protection are not seen to "fit." Finally, it challenges the dichotomy of country of origin and destination by drawing attention to the lengthy and circuitous journeys of Afghans (Kaytaz, 2016; Monsutti, 2008), and their ongoing precarity and deportability on arrival in Europe (Rytter & Ghandchi, 2020).

Our analysis begins with a brief overview of the issue of protracted displacement, before turning to the experiences of Afghan respondents who had been living in Iran prior to their arrival in Europe. It is clear that the three solutions to protracted displacement—return, local integration, and resettlement—are incapable of resolving protracted displacement for Afghans in Iran. This is partly because of the constrained political contexts in which these solutions operate, but also because of the failure to recognise that mobility has long been employed as a survival strategy in contexts of protracted displacement (Long, 2011; Monsutti, 2008). Next, we turn to EU failings when it comes to addressing issues of protracted displacement, arguing that simplistic understandings of refugee and migrant journeys exacerbate protracted displacement, including within Europe. We conclude by proposing a new approach to protracted displacement, one which harnesses the potential of refugee mobility to unlock situations of protracted displacement, including for Afghans in Iran.

## 2. The Problem of Protracted Displacement

According to UNHCR (2021), an estimated 82.4 million people were forcibly displaced worldwide in 2020, of whom 86% are hosted in the countries of the Global South. Of these, around 15.7 million refugees are living in situations of protracted displacement. Protracted displacement is defined by UNHCR (2020) as a situation in which 25,000 or more refugees from the same country have been living in exile for at least five consecutive years in a given host country, and find themselves in a state of limbo, unable to return home but without rights to live permanently elsewhere. Protracted displacements are, by definition, displacements for which there are "no solutions in sight" (Long, 2011). Over 12 million Afghans have been displaced internally or abroad over the past 40 years, making this one of the largest and longest crises of protracted displacement.

As noted elsewhere (see, for example, Etzold et al., 2019; Long & Crisp, 2010; Zetter & Long, 2012), dominant conceptualisations of protracted displacement take a sedentarist approach, representing protracted displacement as a static situation in which refugees are "stuck." Such approaches fail to take account of the agency of those living in situations of protracted displacement, and the ways in which mobility is strategically employed by them in order to create a future. Unlocking protracted displacement requires the development of approaches that acknowledge, and respond to, the agency of refugees and the structural factors and power relations that result in their displacement becoming protracted. Reflecting this, Etzold et al. (2019) re-define protracted displacement as a "figuration," in which multiple structural forces constrain refugees from using their capacities and making free choices for prolonged periods. These forces include: *displacing* forces that cause refugees to leave their homes and hinder return; *marginalising* forces that prevent local integration in the country of stay, for example by restricting access to citizenship and putting refugees at a social and economic advantage; and *immobilising* forces, which hinder onward mobility, for example, restrictive visa regimes and limited resettlement quotas (Hyndman & Giles, 2017; Long & Crisp, 2010). The operation of these three forces can be seen in the experiences of Afghans living in Iran.

## 3. The Experiences of Afghans in Iran

### *3.1. The History of Afghan Migration to Iran*

Migration from Afghanistan to Iran has a long history that includes: seasonal movements of nomads bringing their

herds to better pasture lands and trading with sedentary farmers; mountain people who go to urban centres or lowlands in order to find work; and pilgrims, soldiers, and refugees (Long, 2011; Monsutti, 2008; Olszewska & Adelkhah, 2007; Safri, 2011). Research by Monsutti (2008) has shown that Afghan transnational regional migration to Pakistan and Iran is an important structural component of the Afghan economy. This migration pre-dates the modern cycles of conflict in the area but has become increasingly important to Afghan livelihood strategies due to compounded, and protracted, displacements. Large-scale forced migration from Afghanistan to Iran began with first the Marxist coup d'état in Kabul in 1978, followed by the Soviet invasion of Afghanistan in 1979. Approximately three million Afghan refugees had arrived in Iran by 1989 (Abbasi-Shavazi et al., 2015). In the 1990s, a new wave of Afghan refugees began arriving primarily to escape the rule of the Taliban, some of whom returned after the fall of the Taliban in 2001. At the time of our research in 2015, Iran was the fourth largest refugee-hosting country in the world with nearly one million registered Afghan refugees, and a further two million Afghans who were undocumented (UNHCR, 2016). According to the 2011 census, more than half of registered Afghan refugees were born in Iran (Abbasi-Shavazi et al., 2015).

For the purpose of this article, it is important to understand that Afghan migration is not simply one outward flow of migrants, but rather involves multi-directional flows (Safri, 2011). Elsewhere, we have drawn on the MEDMIG project data, to challenge the use of categories to differentiate between those arriving in Europe and the legitimacy, or otherwise, of their claims to international protection (Crawley & Skleparis, 2017). This "categorical fetishism" is generally problematic but perhaps nowhere more so than in relation to Afghans and others who have been living in situations of protracted displacement. As noted by Monsutti (2008, p. 59), the complex history of migration between Iran and Afghanistan, combined with competing conceptions of Afghans in Iran over time, renders these categories meaningless:

> The concepts of "economic migrant," "political refugee," "country of origin," "host country," "voluntary" or "forced" migration, or even "return," appear singularly reductionist in the Afghan context. All these categories overlap with a combined presence of political, cultural, economic and ecological factors.

This is a point to which we will return.

### *3.2. Insecurity of Residence*

As with many other countries of first asylum, the Iranian government will not consider the permanent integration of refugees (Hyndman & Giles, 2017). Until 1992, Afghan refugees could obtain residency in Iran based on their nationality as *mohajirin.* By 1997, however, the Iranian government had mostly stopped granting residency status to newly arrived Afghans (Human Rights Watch, 2013). Since 2003, the primary way for Afghan refugees to obtain residence in Iran has been through the *amayesh* system, a form of temporary protection that requires Afghan refugees to re-register for a fee. Whilst there have been several registration exercises, the latest of which took place in 2021, it is clear from our respondents that registration costs are prohibitive, especially given limited rights to employment and education. As one woman told us:

> The first year was okay in Iran. Afterwards, things got hard. My husband has been arrested and deported to Afghanistan many times. Every six months we had to pay a lot of money in order to renew our residence permit. We didn't have the money. And we couldn't move from one city to another in Iran. It wasn't allowed. The last few years in Iran were even harder. Our salaries were not enough to survive, not even to mention renewing our residence permits. And we couldn't afford going to the doctor. There was no money. (female, Hazara, aged 28, married, no children)

Undocumented Afghans experience an array of protection concerns, from their initial experience out-migration through to experiences living irregularly in countries of transit and destination. Moreover, the challenges of registering as a refugee and the lack of options for regularising status renders the majority of Afghans living in Iran liable to removal. The first mass deportation programmes from Iran started in 2007, and have continued since that time. In November 2012, for instance, the government ordered the deportation of 1.6 million undocumented Afghans by the end of 2015 and the repatriation of a further 200,000 (Human Rights Watch, 2013). At the time of our research in 2015, Iran was deporting around 25,000 Afghans from the border point Islam Qala in addition to a further 30,000 who were returning voluntarily each month. The International Organisation for Migration (IOM), estimates that more than half of the 912,000 Afghans arriving from Iran between 1 January and 22 September 2021 had been forcibly removed (IOM, 2021). These deportations are often associated with violence (Human Rights Watch, 2013; Kaytaz, 2016).

### *3.3. Hostility and Discrimination*

In the last two decades, the humanitarian space for Afghans in Iran has shrunk considerably due to the restrictions placed on registered refugees, the poor living conditions for all Afghans, and increased deportations. The mood towards refugees has also shifted, with Afghans now referred to as *panahandegan*, a word carrying a pejorative connotation of impoverishment (Safri,

2011). The Iranian government has helped turn this into a reality by withdrawing subsidized health service, primary and secondary education, transport, fuel and other subsidies, and restricting refugees to designated residential areas and refugee camps, as well as preventing them from opening bank accounts or owning businesses (Hyndman & Giles, 2017). Today, Afghan refugees are socially positioned as having introduced a host of ills into society: terrorism, arms proliferation, drugs, environmental degradation, polio, high unemployment, and conflict are all allegedly the fault of Afghan refugees. Afghans in Iran live with hostility and discrimination—in their everyday lives, in the workplace, and from public institutions—with no possibility of challenging the injustices committed against them (Human Rights Watch, 2013). Even those Afghans able to secure the resources needed to register have limited rights to employment, education, and freedom of movement, rights that are regularly subject to change. Afghans are prevented from working in particular sectors and have to pay to attend university. Travel restrictions on Afghans, and foreign nationals in general, mean that registered refugees can only work within their designated cities when they have permits to do so. Most Afghans in Iran are forced to undertake low-paid employment under exploitative conditions: Their education, skills, and class prior to arrival have little to do with their choice of livelihood (Hyndman & Giles, 2017). As Khalil told us, Afghans in Iran do "all the dirty jobs." They experience abuse and hostility in all walks of life, with numerous examples provided by our respondents:

> In Iran, I was afraid to go out. They are treating Afghans as if they are dogs. Afghans are going to Iran because they share the same language and the same religion, and they are expecting that everything will be good, but actually these are all lies. The Iranians are torturing the Afghans. When I went to another city in Iran in order to work, they arrested me and wanted to deport me, because Afghans are not allowed to move cities. (male, Sayyid, aged 32, divorced, no children)

> Life in Iran was very hard. We were living in a very small house. Iranians were racist towards Afghans. And my boss still owes me 50% of [my] money. He never gave it to me. Afghans [are] worth nothing in Iran. I was threatened and beaten up by my bosses many times whenever I went to ask them for my money….My wife was also not getting paid often. She was working at a restaurant. Even when I was holding my wife's hand on the street Iranians were swearing at me. They were swearing at me in front of my wife, and I couldn't respond a single word. Once, Iranians forced me to get in a car. They swore at me, they hit me, and they stole my money and mobile phone. (male, Sayyid, aged 32, married, two children)

### *3.4. Precarious Inclusion*

Scholars of Afghan migration have portrayed the treatment of Afghan refugees in Iran as paradoxical. Olszewska (2015, p. 21) writes, for instance, that Afghans:

> Have been welcomed as oppressed co-believers and yet excluded as noncitizens; appreciated for cheap labour and yet blamed for stealing jobs; lauded as fellow Persian speakers and yet mocked as primitive country cousins; allowed to settle in cities and integrate into Iranian society and yet discriminated against in most aspects of public life.

Rather than being seen as a paradox, however, the treatment of Afghans in Iran can also be understood as part of a deliberate government strategy of "precarious inclusion" (Karlsen, 2021). This is reflected in comments made by our respondents:

> Iran doesn't give Afghans any opportunities on purpose. The Iranians are using Afghans as a ladder in order to climb higher. The Iranians don't want the Afghans to leave Iran, because they need them. That's why they don't let Afghans leave Iran legally. (male, Sayyid, aged 32, divorced, no children)

Meanwhile, the ongoing conflict in Syria has had ripple effects across the region, including for Afghans living in Iran. According to Human Rights Watch (2016), Iran's Revolutionary Guards Corps has recruited thousands of undocumented Afghans living there to fight in Syria, some of whom have reported coercion. At the time of our research, there was emerging evidence of Afghans being actively recruited into the Iranian army with threats of deportation and promises, usually false, that their status would be regularised in return (Human Rights Watch, 2016). One of our respondents, a 16-year-old boy, experienced this himself. The police threatened him with deportation unless he fought in Syria:

> They told me that I will get a permanent residence permit in Iran if I go and fight in Syria. I rejected their offer. They threatened me that they will put me in prison if I am arrested again. And they arrested me again. They threatened me with deportation. They told me again to go and fight in Syria. Finally, they sent me to Syria, together with many other young people….Long story short, I went two more times to Syria. Yet, they never gave me a permanent residence permit. When they told me to go a fourth time, I accepted their offer, but I decided to flee. So I fled as fast as I could and I took my mother with me. (16-year-old son of a Sayyid woman aged 38, widowed with seven children)

It is clear that years of marginalisation and discrimination prevented our Afghan respondents from living their lives

in Iran (see also Grawert & Mielke, 2018; Hyndman & Giles, 2017). The diminishing prospects of a durable solution in Iran, combined with a lack of trust in the government and fears of being forcibly conscripted or removed, were all factors that played a part in the decision of our respondents to leave Iran and travel onwards to Europe. Mobility provides the possibility of a durable solution where no other is available.

### *3.5. Mobility as a Response to Protracted Displacement*

> Migrants like me, whatever they dream or plan, they cannot be successful, they are always disappointed. We are just continuing living on a daily basis. In a normal situation when you ask a child what they want to be in [the] future, because they trust the family, the[ir] environment, they can say that they will be a doctor or an engineer, they can achieve their goals. But people from our country, even the ones who are doctors and engineers, they cannot find a job, they need to work as labourers in [a] factory or tailor. Me, my father, and my brother, we all want to plan for our future and build our life according to our own plans and dreams. I want to get married and have my own family….Maybe it is late for me, my father, and my brothers, but my nephew is eight years old, he needs a place to learn sports and a place [where] he can improve his skills. [Children] are like pigeons, they have wings but they cannot fly. (male, Tajik, aged 32, single)

Afghans in Iran find themselves between a rock and hard place, unable to return to Afghanistan but unable to make a life in Iran. Moreover, structural inequalities in the right to move means a lack of opportunities to migrate legally elsewhere. Those in search of protection often have no legal travel routes, and are barred from using regular means of travel due to carrier sanctions (Costello, 2018). As noted by Hyndman and Giles (2017), protracted displacement is exacerbated by states in the Global North when they externalize asylum and refuse access to their borders. In the context of Iran, Afghans find ways to counter these *immobilising* forces (Etzold et al., 2019), moving as they have done historically, often taking significant risks to reach destinations where they perceive a potentially better future for themselves and their families.

As noted earlier, refugees living in situations of protracted displacement exert their agency by employing diverse strategies to cope with difficult situations, mobilising whatever social, economic, and political assets they are able to access in order to navigate through governance regimes of aid and asylum (Etzold et al., 2018; Monsutti, 2008; Vancluysen, 2022; Zetter & Long, 2012). Mobility is a widespread livelihood strategy requiring no donor resources and a crucial component of people's response to their protracted displacement (Scalettaris, 2009). Indeed, "in terms of unlocking protracted displacement crises, migration can perhaps be best described as the deliberate and strategic employment of movement to maximize access to rights, goods and opportunities" (Long, 2011, p. 12). Acknowledging that refugees have agency means accepting that those who are displaced may also choose to migrate in order to create a future for themselves and their families (Crawley & Skleparis, 2017; Long, 2011; Vancluysen, 2022). That decision does not—and should not—preclude the possibility of securing access to international protection. However, because mobility does not fit within the "durable solutions" proposed by the international refugee regime, it continues to be seen as a problem (Scalettaris, 2009).

## 4. The EU Response to Afghan Refugees

### *4.1. Failure to Address Protracted Displacement*

The EU response to Afghans seeking asylum in Europe is shaped by the Common European Asylum System (CEAS), which is the legal and policy framework developed to guarantee harmonised and uniform standards. The CEAS was born out of the recognition that, in an area without internal borders, asylum needed harmonised regulation at the EU level. Its aim was to enhance practical cooperation on asylum matters between EU member states whilst ensuring that states fulfilled their European and international obligations, providing protection to those in need (EASO, 2016). There are, however, significant gaps within the CEAS when it comes to addressing livelihood (in)security and immobility associated with protracted displacement situations (Ferreira et al., 2020). Most notably, European resettlement and relocation schemes, which provide legal migration opportunities for those living in contexts of protracted displacement, have fallen dramatically below the current needs. The "good refugee" is expected to wait to be resettled, even if there is virtually no possibility of that actually happening. In addition, there is a lack of humanitarian visas and private sponsorship schemes at a European level (Ferreira et al., 2020; Hyndman & Giles, 2017).

The failure to address protracted displacement also extends to the impact of its policies on what happens outside Europe. For example, the EU emphasises the need to facilitate access to durable solutions and enhance the self-reliance of displaced populations whilst promoting policies that are oriented primarily towards preventing migration to Europe, including through returns (Etzold et al., 2019). And there is a misplaced emphasis on returning Afghans whose claims for protection are unsuccessful. In 2016, at the height of the so-called "migration crisis" in Europe, the EU and the Islamic Republic of Afghanistan signed the Joint Way Forward on Migration Issues (2016), which was extended in 2021 by the Joint Declaration on Migration Cooperation (2021). The Joint Way Forward essentially makes continued development assistance contingent upon the "return" to Afghanistan

of Afghans refused protection or settlement in the EU by way of either deportation or "assisted voluntary returns" (Quie & Hakimi, 2020; Ruttig, 2017a). This approach to returns ignores the fact that, for many Afghans who move to Europe, the notion of "return" to Afghanistan is meaningless because they were born in Iran or left the country decades previously. In so doing, it may exacerbate protracted displacement rather than addressing it. Afghans who are deported from Europe arrive with no assets, no family, no legal rights, and an absence of opportunities, risk becoming internally displaced or even being forced to re-migrate due to insecurity and a lack of family and/or livelihood opportunities (Pitonak & Beşer, 2017; Quie & Hakimi, 2020; Schuster & Majidi, 2013).

### *4.2. Afghans as "Second Class" Asylum Seekers*

Although the CEAS aims to improve the quality of asylum decision making in Europe, it has been widely criticised for its shortcomings in terms of fairness and responsibility-sharing. As noted by Quie and Hakimi (2020), hardening popular attitudes towards immigration and the rise of populist narratives in Europe have encouraged restrictive EU policies that—while framed as beneficial in treating displacement holistically—are often harmful to refugees and migrants. These problems are highlighted by the experiences of Afghans (Parusel, 2018; Schuster, 2018). Firstly, in the absence of an EU-wide distribution system, most of the roughly 400,000 Afghan asylum seekers that reached the EU between 2014 and 2016 lodged their claims in Germany (168,000), Hungary (65,000), Sweden (46,000), and Austria (41,000). Other countries (such as Latvia, the Czech Republic, Poland, and Portugal) received less than 100 applications from Afghan asylum seekers during the same period. In countries where there are large numbers of applications, Afghans can face considerable delays in receiving a decision (Parusel, 2018).

Secondly, refugee recognition rates for Afghans claiming asylum vary hugely between different EU countries: In 2016, for example, 97% of Afghans were granted protection in Italy, 82% in France, and 60% in Germany, compared with 34% in the Netherlands and just 2.5% in Bulgaria (ECRE, 2021). Since 2016, more than half of all Afghan asylum applicants have been denied protection in the EU despite a worsening security situation in Afghanistan. While an overall rejection rate of 52% is comparable to the average rate for all first time asylum applicants, it is high when compared to rejection rates from other conflict zones (Pitonak & Beşer, 2017), such as Syria (5%), Yemen (5%), or Eritrea (7%). These differences are striking given that the EU has worked towards the harmonization of national asylum decision-making standards for more than two decades. And they have consequences—not least they were used to disqualify Afghans from the refugee relocation programme put in place to address the so-called "migration crisis" by moving those who had arrived in Greece to other EU members states because they had an average refugee recognition rate of less than 75% (Crawley et al., 2018).

Finally, and perhaps most importantly, EU decision making takes no account of the fact that, as our research has shown, many Afghans claiming protection in Europe have not travelled directly from Afghanistan but rather have been living in situations of protracted displacement for many years. As argued by Foster (2007), many claims based on socio-economic harm properly fall within the scope of the Refugee Convention. This would include the forms of discrimination experienced by Afghans living in Iran. The failure to find out about, let alone engage with, the experiences of Afghans in Iran means that these issues are simply not taken into account during the determination process. Providing meaningful protection for Afghans requires EU decision-makers to take into consideration the experiences of Afghans who have been living in Iran, a country in which there is systematic discrimination and hostility, and where it is virtually impossible for Afghans to obtain secure residency and build their lives. These failures, combined with delays in EU decision making, huge variations in outcomes between EU member states, and the focus on returns, lead to the protracted displacement and exclusion of Afghans, this time in Europe (Parusel, 2018; Ruttig, 2017b; Rytter & Ghandchi, 2020).

## 5. Conclusion

This article reflects on the migration of Afghans to Europe from Iran, raising important questions about the ways in which protracted displacement is conceptualised and responded to under the CEAS. The CEAS presupposes that those who are in need of protection fall neatly into a number of legal and policy-orientated categories (Crawley et al., 2018). It also assumes that those in need of international protection are able to move directly to Europe from their country of nationality. Both of these assumptions are challenged by the arrival of Afghans from Iran. Their stories highlight the complexity of Afghan migration histories and the realities of protracted displacement, bringing into question the relevance of dichotomies between "forced" and "voluntary" migration, and between countries of "origin" and "destination," for those who are forced to seek protection in the region but find it impossible to build meaningful lives, and eventually move on.

Although the data on which this article is based was gathered during the so-called "migration crisis" of 2015, our findings are relevant to the situation facing Afghans today. The rising trend in Afghan applications has not only continued since 2015 but accelerated: Afghans constituted 14.5% of all new asylum applications in Europe between October 2020 and September 2021, becoming the largest group of applicants for asylum for the first time on record after the Taliban took control of Afghanistan in August 2021 (EASO, 2021). At the time of writing, the situation in Afghanistan remains fluid and

uncertain. The rapid seizure of the country by the Taliban in 2021 has raised fears of human rights violations, creating an immediate risk of persecution for different groups, such as human rights defenders, former government employees and soldiers, journalists, and persons belonging to religious, ethnic, and other minority groups (ECRE, 2021). Meanwhile, there are escalating humanitarian needs and a deteriorating protection environment for civilians, exacerbated by the Covid-19 pandemic, subsequent economic downturn, and drought, which was officially declared in June 2021 (IOM, 2021). These factors are driving a large volume of internal displacement and cross border movements between Afghanistan, Iran, Pakistan, and other countries in the region. It is important to acknowledge that the EU has responded to this situation by increasing the protection available to Afghans arriving in Europe: Afghans had the highest recognition rate on record in October 2021 (EASO, 2021). However, it is also important to recognise that most of those granted refugee status since the return of the Taliban to power travelled directly to Europe from Afghanistan as part of the evacuation effort and were therefore likely to "fit" within dominant conceptualisations of a refugee. It is important that protection claims made by those arriving from situations of protracted displacement, some of whom have been in Europe for many years, are not overshadowed or "leap-frogged" by these more conventional claims.

There is clearly an urgent need for new and innovative approaches that move beyond the narrow frame of the conventional durable solutions—return, local integration, and resettlement—and "unlock" protracted displacement facing Afghans and other populations arriving in Europe (Long, 2011). These approaches should reflect four important conclusions drawn from our research. Firstly, those responsible for assessing asylum claims under the CEAS need to understand the importance of history and, in particular, the ways in which Afghans have always used mobility as a livelihood strategy. Migration between Afghanistan, Pakistan, and Iran is an ongoing historical phenomenon, the scale of which has dramatically increased with war but which will continue, as it did before, even in the absence of military and political crises (Monsutti, 2008). In nearly all regions of protracted displacement, migration has played an important role in economic, social, and cultural relations before any crisis of governance, and such movements continue to occur alongside displacement, and will continue after any crisis of displacement has been unlocked. Recognizing the long historical trajectory of protracted displacement is useful because it underlines the need for new approaches that may help to break the impasse in facing old—but still unresolved—problems of displacement (Long, 2011).

Secondly, it is important to recognise that protracted displacement is rarely the consequence of a one-off event, rather it reflects a landscape of recurring crisis and the existence of multiple structural forces that constrain refugees from using their capacities and making free choices for prolonged periods of time (Etzold et al., 2019). This includes marginalising forces that prevent Afghans from building a meaningful social and economic life in Iran and immobilising forces that hinder mobility. These immobilising forces include EU policy under the CEAS, which fails to provide protection for Afghans who arrive in Europe, leading to the continuation of their protracted displacement (Long, 2011). Understanding the intersection of displacing, marginalising, and immobilising forces in different displacement contexts will help international actors to develop appropriate policies that address the causes of protracted displacement.

This links to the third lesson from our research, namely the need to de-exceptionalise mobility and move away from the normative "sedentary bias" that derives from nation-state agendas (Schapendonk et al., 2021). As noted by Monsutti (2008), the three solutions to the problem of the refugees promoted by the UNHCR—return, local integration, and resettlement—are based on the idea that solutions are found when movements stop. Yet in many contexts of protracted displacement, mobility is a key strategy employed by refugees to address a lack of rights and their precarious inclusion into the country of stay (Vancluysen, 2022). Although migration is not a solution in itself, it is an important means of connecting and facilitating the access of the displaced to meaningful citizenship.

Finally, we need to rethink refugee mobilities, recognising its potential to address situations of protracted displacement as part of a well-functioning system of international protection (Aleinikoff & Zamore, 2018; Crépeau, 2018; Ferreira et al., 2020; Long, 2011; Long & Crisp, 2010; Scalettaris, 2009; Zetter & Long, 2010). Mobility is increasingly recognised as central in combating the human rights violations that frequently occur as a result of irregular or secondary movements from the first country of asylum, often in search of effective protection, and as offering a possible solution to refugees' displacement in itself. As noted by Aleinikoff and Zamore (2018), the current refugee regime—including CEAS—gets agency wrong in both directions, failing to recognize agency where it exists and tolerating structures and practices that severely restrict it. An important first step towards formulating alternatives, then, is to recognise and effectively build upon displaced people's own preferences as well as their local and translocal networks (Etzold et al., 2019). People with protection needs will move—and should be able to move—in order to find effective protection. Indeed, "this principle is central to the very concept of the international refugee regime" (Long & Crisp, 2010, p. 57). Harnessing this mobility by letting refugees move to where they believe they can best rebuilt their lives is the key to "unlocking" protracted displacement (Crépeau, 2018). That such a simple idea should seem so radical is, as Aleinikoff and Zamore (2018) suggest, an indication of how far we need to go in listening to the experiences of those living in situations of protracted displacement and understanding mobility as a "fourth solution.''

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The authors declare no conflict of interests.

**References**

Abbasi-Shavazi, M. J., Hugo, G., Sadeghi, R., & Mahmoudian, H. (2015). Immigrant–native fertility differentials: The Afghans in Iran. *Asian and Pacific Migration Journal*, *24*(3), 273–297.

Aleinikoff, A., & Zamore, L. (2018). *The arc of protection: Toward a new international refugee regime*. Center on International Cooperation. https://cic.nyu.edu/news/arc-of-protection-refugees-zamore

Costello, C. (2018). Refugees and (other) migrants: Will the Global Compacts ensure safe flight and onward mobility for refugees? *International Journal of Refugee Law*, *30*(4), 643–649.

Crawley, H., Düvell, F., Jones, K., McMahon, S., & Sigona, N. (2018). *Unravelling Europe's migration crisis: Journeys over land and sea*. Policy Press.

Crawley, H., & Hagen-Zanker, J. (2018). Deciding where to go: Policies, people and perceptions shaping destination preferences. *International Migration*, *15*(1), 20–35.

Crawley, H., & Jones, K. (2020). Beyond here and there: (Re)conceptualising migrant journeys and the "in-between.'' *Journal of Ethnic and Migration Studies*, *47*(14), 3226–3242.

Crawley, H., & Skleparis, D. (2017). Refugee, migrant, neither, both: Categorical fetishism and the politics of bounding in Europe's "migration crisis." *Journal of Ethnic and Migration Studies*, *44*(1), 48–64.

Crépeau, F. (2018). Towards a mobile and diverse world: "Facilitating mobility" as a central objective of the Global Compact on migration. *International Journal of Refugee Law*, *30*(4), 650–656.

Donino, A., Monsutti, A., & Scalettaris, G. (2016). *Afghans on the move: Seeking protection and refuge in Europe* (Research Paper 2016/17). Global Migration Centre. https://www.asyl.at/files/93/25-afghans_on_the_move.pdf

EASO. (2016). *Annual report on the situation of asylum in the European Union 2015*. European Asylum Support Office. https://www.easo.europa.eu/sites/default/files/public/EN_%20Annual%20Report%202015_ 1.pdf

EASO. (2021). *Afghans lodge 72% more asylum applications in the EU+.* https://www.easo.europa.eu/news-events/afghans-lodge-72-more-asylum-applications-eu

ECRE. (2021). *EU support to Afghanistan: Scoring high on humanitarian assistance and low on protection in Europe?* https://ecre.org/wp-content/uploads/2021/12/Policy-Note-39.pdf

Etzold, B., Belloni, M., King, R., Kraler, A., & Pastore, F. (2019). *Transnational figurations of displacement—Conceptualising protracted displacement and translocal connectivity through a process-oriented perspective* (TRAFIG Working Paper 1/2019). BICC.

EU, & Islamic Republic of Afghanistan. (2016). *Joint Way Forward on migration issues between Afghanistan and the EU*. https://eeas.europa.eu/sites/default/files/eu_afghanistan_joint_way_forward_on_migration_issues.pdf

EU, & Islamic Republic of Afghanistan. (2021). *Joint Declaration on migration cooperation between Afghanistan and the EU*. https://eeas.europa.eu/sites/default/files/jmcd_-english_version_signed_26apr2021.pdf

Eurostat. (2016, March 4). *Record number of over 1.2 million first time asylum seekers registered in 2015* [News Release]. https://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf

Eurostat. (2021). *Asylum quarterly report*. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_quarterly_report#Main_trends_in_the_number_of_asylum_applicants

Ferreira, N., Jacobs, C., Kea, P., Hendow, M., Noack, M., Wagner, M., Adugna, F., Alodat, A. M., Ayalew, T., Etzold, B., Fogli, C., Goumenos, T., Hatziprokopiou, P., Javed, M. M., Kamanga, K. C., Kraler, A., Momani, F. A., & Roman, E. (2020). *Governing protracted displacement: An analysis across global, regional and domestic contexts* (TRAFIG Working Paper No. 3). BICC.

Foster, M. (2007). *International refugee law and socio-economic rights: Refuge from deprivation*. Cambridge University Press.

Grawert, E., & Mielke, K. (2018). *Coping with protracted displacement: How Afghans secure their livelihood in Afghanistan, Iran and Pakistan* (Working Paper No. 2/2018). BICC. https://nbn-resolving.org/urn:nbn:de:0168-ssoar-61301-9

Human Rights Watch. (2013). *Unwelcome guests: Iran's violation of Afghan refugee and migrant rights*. https://www.hrw.org/report/2013/11/20/unwelcome-guests/irans-violation-afghan-refugee-and-migrant-rights

Human Rights Watch. (2016). *Iran sending thousands of Afghans to fight in Syria*. https://www.hrw.org/

news/2016/01/29/iran-sending-thousands-afghans-fight-syria

Hyndman, J., & Giles, W. (2017). *Refugees in extended exile: Living on the edge*. Routledge.

International Organisation for Migration. (2021). *Afghan crisis response plan*. https://crisisresponse.iom.int/sites/default/files/appeal/pdf/2021_Afghanistan_Crisis_Response_Plan_2020__2021.pdf

Karlsen, M. A. (2021). *Migration control and access to welfare: The precarious inclusion of irregular migrants in Norway*. Routledge.

Kaytaz, E. S. (2016). Afghan journeys to Turkey: Narratives of immobility, travel and transformation. *Geopolitics*, *21*, 284–302.

Long, K. (2011). *Permanent crises? Unlocking the protracted displacement of refugees and internally displaced persons*. Refugee Studies Centre Oxford. http://www.regionaldss.org/wp-content/uploads/2017/09/Unlocking-Protracted-Displacement.pdf

Long, K., & Crisp, J. (2010). Migration, mobility and solutions: An evolving perspective. *Forced Migration Review*, *35*, 56–57.

Monsutti, A. (2008). Afghan migratory strategies and the three solutions to the refugee problem. *Refugee Survey Quarterly*, *27*(1), 58–73.

Olszewska, Z. (2015). *The pearl of Dari: Poetry and personhood among young Afghans in Iran*. Indiana University Press.

Olszewska, Z., & Adelkhah, F. (2007). Iranian Afghans. *Iranian Studies*, *40*(2), 137–165.

Parusel, B. (2018, February 19). Afghan asylum seekers and the deficits of the Common European Asylum System. *FluchtforschungsBlog*. https://blog.fluchtforschung.net/afghan-asylum-seekers-deficits-common-european-asylum-system

Pitonak, A., & Beşer, M. E. (2017). *A neglected population: Afghan migrants in Europe* (IAI Commentaries 17/29). Istituto Affari Internazionali. https://www.iai.it/en/pubblicazioni/neglected-population-afghan-migrants-europe

PRIO. (2004). *Afghan refugees in Iran: From refugee emergency to migration management*. https://www.files.ethz.ch/isn/38085/2004_06_16_CMI-PRIO-AfghanRefugeesInIran.pdf

Quie, M., & Hakimi, H. (2020). *The EU and the politics of migration management in Afghanistan*. Chatham House. https://www.chathamhouse.org/2020/11/eu-and-politics-migration-management-afghanistan

Ruttig, T. (2017a). *Afghan exodus: Afghan asylum seekers in Europe (1)—The changing situation.* Afghan Analysts Network. https://www.afghanistan-analysts.org/en/reports/migration/afghan-exodus-afghan-asylum-seekers-in-europe-1-the-changing-situation

Ruttig, T. (2017b). *Afghan exodus: Afghan asylum seekers in Europe (3)—Case study Germany*. Afghan Analysts Network. https://www.afghanistan-analysts.org/afghan-exodus-afghan-asylum-seekers-in-europe-3-case-study-germany

Rytter, M., & Ghandchi, N. (2020). Workers for free: Precarious inclusion and extended uncertainty among Afghan refugees in Denmark. In K. McKowen & J. Borneman (Eds.), *Digesting difference: Migrant incorporation and mutual belonging in Europe* (pp. 185–207). Palgrave Macmillan.

Safri, M. (2011). The transformation of the Afghan refugee: 1979–2009. *Middle East Journal*, *65*(4), 587–560.

Scalettaris, G. (2009). Refugees and mobility. *Forced Migration Review*, *33*, 58–59.

Schapendonk, J., Bolay, M., & Dahinden, J. (2021). The conceptual limits of the "migration journey." De-exceptionalising mobility in the context of West African trajectories. *Journal of Ethnic and Migration Studies*, *47*(14), 3243–3259.

Schuster, L. (2011). Turning refugees into "illegal migrants": Afghan asylum seekers in Europe. *Ethnic and Racial Studies*, *34*(8), 1392–1407.

Schuster, L. (2018). The Common European Asylum System: Inconsistent, incoherent and lacking credibility. *This Century's Review Journal for Rational Legal Debate*, *1*, 40–44.

Schuster, L., & Majidi, N. (2013). What happens post-deportation? The experiences of deported Afghans. *Migration Studies*, *1*(2), 221–240.

Skodo, A. (2017). *How Afghans became second-class asylum seekers*. The Conversation. https://theconversation.com/how-afghans-became-second-class-asylum-seekers-72437

UNHCR. (2016). *Global trends: Forced displacement in 2015*. http://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html

UNHCR. (2020). Protracted refugee situations explained. https://www.unrefugees.org/news/protracted-refugee-situations-explained

UNHCR. (2021). *Global trends: Forced displacement in 2020*. https://www.unhcr.org/60b638e37/unhcr-global-trends-2020

Vancluysen, S. (2022). Deconstructing borders: Mobility strategies of South Sudanese refugees in northern Uganda. *Global Networks*, *22*, 20–35.

Zetter, R., & Long, K. (2012). Unlocking protracted displacement. *Forced Migration Review*, *40*, 34–37.

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Article

# Reforming the Reception and Inclusion of Refugees in the European Union: Utopian or Dystopian Changes?

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**Abstract**
The provision of high-quality reception conditions and the effective inclusion of refugees are permanent challenges in the implementation of the European asylum agenda. The EU legal framework for the reception of refugees has evolved over time through various legislative reforms, notably including those launched in 2016 and the New Pact on Migration and Asylum proposed in 2020. The European Union has also tried to reinforce its non-binding integration policy with the adoption of the Action Plan on Integration and Inclusion 2021–2027. While this plan is intended to promote an alternative "social resilient" integration model for refugees that emulates community sponsorship in Europe, it also generates great bottom-up expectations to provide better integration. These legislative reform proposals and their programmatic framework are theoretically intended to consolidate the European reception and integration system, but in practice have increased the dichotomous tension between utopia and dystopia. Drawing on a political interpretation of both concepts, this article critically analyses the real nature of the changes proposed in the legislative CEAS reforms and in the action plans. Both visions are useful to evaluate the desirability, viability, and achievability of these transformative changes in the future asylum system.

**Keywords**
change; dystopia; European Union; integration; reception; refugees; utopia

**Issue**
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## 1. Introduction

Both the so-called refugee crisis of 2015 and the pandemic emergency in major refugee-receiving states have vastly broadened the scope of the legal and political challenges in implementing the European asylum agenda. As noted by Bauböck (2019), despite the message that the European Union and its member states are still in control of the situation, failure to implement a short-term replacement for the Dublin Regulation and distribute refugee-related responsibilities fairly has cast a shadow over the future of the "desired" asylum system. Since the approval of the legal framework of the Common European Asylum System (CEAS), the European Union has attempted to address the structural problems and dysfunctionality of the asylum system. This entailed introducing more effective examination criteria in the Dublin III Regulation and further harmonising national legislation, with varying degrees of success (Tsourdi, 2020, p. 375). As of 2016, the EU put forward some intermittent initiatives to address these deficiencies, which have become design guidelines for action in reform proposals. However, not all of them have had the same regulatory scope. The challenges faced by international protection beneficiaries in terms of reception and integration have paradoxically played a minor role, although this is a dynamic process, subject to constant border-security changes in the political and legislative agenda in the 2016–2020 period.

Pending the entry into force of the unfinished reform proposals of Directive 2013/33/EU on minimum reception standards (European Parliament and Council, 2019),

the effects of the pandemic have also accelerated an even more exclusionary and restrictive turn (La Spina, 2021b). The health measures have been placed at the service of migration control and some asylum seekers and refugees have been forced into a condition of extreme vulnerability due to the extension of policies of the "neglect" (Garcés-Mascareñas & López-Sala, 2021, p. 22). However, while prevailing restrictions have been set, some opportunities for improving reception have quietly emerged in new reform proposals. In the meantime, the New European Immigration and Asylum Pact adopted in 2020, in line with the Directive 2011/95/EU on qualification, issued some recommendations "for more inclusive societies," supporting and promoting integration by states. The member states grant beneficiaries of international protection access to integration programmes taking into account the applicants' specific needs but are free to organise those programmes as they consider appropriate (García-Juan, 2020). In addition, the implementation of the Action Plan on Integration and Inclusion 2021–2027, which focuses on the main sectoral areas of social inclusion and suggests an alternative model of "resilient" integration or community sponsorship for refugees, offers an illusory panacea of positive transformative changes.

Although these legislative reform proposals and their programmatic framework have theoretically sought to reinforce the European reception system and the integration paradigm, they have actually created a dichotomous tension between utopia and dystopia. Zapata-Barrero (2013, p. 174) considered both concepts useful in the utopian political discourse because they encourage analysis of the forms and deficiencies of social change. Utopia is generally characterised as "something unattainable, ambiguous, speculative, and it belongs to the semantic terrain of unfounded beliefs" (Zapata-Barrero, 2013, p. 173), although it could be also a vehicle for the critique of existing circumstances. Dystopia is a negative utopia, where reality proceeds under a rationale that runs against an ideal society. It generally refers to "an oppressive, totalitarian or undesirable society" (Zapata-Barrero, 2013, p. 183). According to the political literature, utopian and dystopian approaches can be useful despite their limitations (Bauböck, 2019, p. 3), since they may sharpen the critical perception of the real nature of changes and guide us to reject possible unworthy effects that are contrary to human rights.

The field of normative theories of migration and political discourse contains a substantial body of literature on the utopian/dystopian paradigm and harbours one of the main debates on migration politics. The controversial imagining of open borders (Bauder, 2018, p. 3; Best, 2003, p. 3), the ethical and political management of immigration (Betts, 2021; Carens, 1996), and the integration of migrants (Klarenbeek, 2021, p. 903) have been labelled as "utopian." In contrast, critical theories have tended to produce migration dystopias, such as that used by Agamben (1998) to describe the situation of refugees and irregular migrants as "a permanent state of exception under which they are reduced to their bare lives." Whereas the term utopia has invariably been applied pejoratively and not in the "right sense" within international relations and international law (Heir, 2017, p. 5), there have been some indirect references to utopia in the analysis of the asylum legal framework concerning family reunification (Brandl, 2016) and the exploitation of child refugees (Mujahid Chak, 2018, p. 21), and some indirect allusions to dystopia by legal scholars, among others, Maiani (2017) and Dijstelbloem et al. (2020, p. 153).

Although the binary notions of utopia and dystopia are sometimes controversial, I intend to use them to identify evidence of (utopian) progress in the future European asylum and integration systems (Levitas, 1990; Mannheim, 1991) and illustrate cases of (dystopian) rupture or domination (Martorell Campos, 2020). Different scholars have used them as conceptual tools for the critical analysis of contemporary society and for defining an alternative world (Ongaro, 2020). Wright's (2007, p. 31) three criteria of desirability, viability, and achievability are useful here to critique existing institutions and social structures by identifying the damage caused by existing arrangements and measuring transformative strategies.

Drawing on these theoretical discussions, I will analyse the real nature of the legal changes and political strategies in two interconnected case studies, based on insights gleaned from existing empirical research. Firstly, I will enquire whether the refugee reception system is moving towards a utopian process that promotes the protection and agency of refugees so that they can live properly where and how they want to live—or whether the European asylum legal system is constructing a dystopia based on a political chimaera that is overstepping its limits and jeopardising the most basic human rights principles and values. Secondly, although some inclusion action plans promote bottom-up changes, the utopian goal of a fully integrated society without (the current forms of) discrimination seems to have been forgotten. Attention will therefore focus on the problems of a two-way integration process (Klarenbeek, 2021, p. 903) that underestimates the resilient effect of community sponsorship and its beneficial assumption of policy transfer to Europe. Additionally, I will reflect on the absence of meaningful soft law coordination principles among levels of social responsibility in the post-reception phase (Semprebon, 2021).

In the following sections, I will first explore how the concepts of utopia and dystopia apply to the legislative reforms proposed from 2016 to 2020 including the pandemic's effects on the consolidation of a new asylums system. This will involve identifying those elements that corroborate the direction of change, from utopian to dystopian control, specifically regarding reception. I will then analyse the implementation of EU-wide action plans on integration to determine whether soft law coordination principles and community sponsorship

are oriented toward utopia or dystopia. I argue that they fail to capture the difference between integration to ensure equal rights and mere support measures that simply facilitate or assist inclusion. In other words, these plans operate on the simplistic assumption that integration between refugees and local communities will happen without states' involvement in ensuring equal rights and fighting discrimination.

## 2. Reforms to the EU Reception System: From the Utopia of Regulatory Advancement to Dystopian Control (2016–2020)

The provisions contained in Directive 2013/33/EU on minimum reception standards (still in force today) established a minimum common denominator to guarantee dignified, decent reception conditions for applicants for international protection. Pursuant to Directive 2013/33/EU, each member state sets the outlines of these minimum necessary conditions to "ensure a dignified standard of living and comparable living conditions in all member states" (European Parliament and European Council of 26 June 2013, 2013, para. 11). Therefore, the elastic definition of what constitutes a dignified standard of living and how it should be achieved is left to the discretion of the member states. This accounts for the significant differences found in existing definitions, their legal nature, the level of detail of the rules, the geographic scope, the level of quality and, ultimately, the degree of compliance with refugee rights. These areas served to articulate the legislative reform proposals for the 2016–2020 period, which further specified or expanded the most problematic aspects in the direction of change required by the 2015 crisis. This applied both to the 2016 proposals and to those made from 2020 onwards, resulting from the uncertain post-pandemic scenarios that have led to negotiations being postponed. Particularly, due to health crisis effects on specific phases of the process: access to the territory, access to the procedure, and reception and its conditions (Garcés-Mascareñas & López-Sala, 2021). These legal reforms could be desirable alternatives to change, but their viability and achievability (Wright, 2007) have not escaped the potential dichotomy between utopia and dystopia. Although "utopia does not need to be practically possible, it merely needs to be believed to be" (Levitas, 1990, p. 191), the application of other utopian criteria in these new reception conditions seems rather difficult.

### *2.1. The 2016 Reform: An Exponent of Unfeasible Utopian Advancement*

On 4 May 2016, the European Commission launched a proposal for a utopian transformation of the asylum process to move "towards a sustainable and fair Common European Asylum System" (European Commission, 2016a). Based on the amended text pending approval, it was anticipated that there would be some grey areas in the new scheme to enhance reception regulations (Slingenberg, 2021; Velutti, 2016). In this regard, according to Mannheim (1991, p. 173):

> A state of mind is utopian when it is incongruous with the state of reality within which it occurs, [when it] is oriented towards objects which do not exist in the actual situation, [or when] it tends to shatter, either partially or wholly, the order of things existing at the time.

The achievable application of indicators from the European Asylum Support Office (EASO) and the wide discretionary margin of the member states have made consistent improvements in light of the cases heard by the courts. These have included (a) a clearer, more protective definition of material reception conditions (European Commission, 2016a, art. 2.7), with minimum conditions comprising sanitary articles; (b) the clarification from the outset that reception conditions will be provided to applicants "from the moment when the person expresses his or her wish to apply for international protection to officials of the determining authority as well as any officials of other authorities…competent to receive and register applications" (European Commission, 2016a); and (c) contingency plans drawn up and constantly updated to ensure applicants' quality of life, health and well-being, and access to basic social needs (European Commission, 2016a, art. 28).

In contrast, other proposed measures are unfeasible in practice due to the multiple uncertainties and contingencies within the asylum system. For instance, the introduction of a time limit of six months for access to employment (European Commission, 2016a, art. 15.1) is merely a desirable change. There are significant bureaucratic delays in access to the labour market (six to nine months). This is due to the tardiness in recognising legal status, the high unemployment rate, the low educational level, and refugees' risk of social exclusion (Carrera & Vankova, 2019). The real scope of Article 15 in first arrival countries can be questioned by the exclusion from the reception system of migrants applying for asylum in accelerated border procedures, in contravention of the principle of non-discrimination (European Commission, 2016a). Similarly, the assessment of reception capacity (European Commission, 2016a, art. 28) must be carried out without prejudice to the operation of the Dublin system and the proposed corrective allocation mechanism (see Slingenberg, 2021).

Undoubtedly, some of these points are incongruous with the actual situation at reception and cast doubt on whether current strategies are viable and conducive to real change. The disparities in reception and protection standards and the obsessive prevention of secondary movements have reduced the protection system to little more than "a lottery" (Maiani, 2017). For instance, there is a severe lack of legislative

harmonisation on the definition of what a "vulnerable group" and "vulnerable subject" are. This makes special attention to "particular/specific reception needs" inconsistent (European Commission, 2016a). The new reform proposals do not contain certain vulnerable categories such as post-traumatic stress disorder, violence against women (European Commission, 2016a, art. 24), the LGTBI community, apostates, religious minorities, and non-believers (see also La Spina, 2021a). Assigning a guardian for unaccompanied minors no later than five or 25 days after the application has been suggested to be an improvement. However, in practice, proactive detection at the earliest stage possible is a highly unfeasible and problematic utopian advance, given controversial identification techniques and the disproportionate number of minors under the care of a guardian within Southern EU borders (EASO, 2020; European Union Agency for Human Rights [FRA], 2019). According to Eurostat, unaccompanied migrant children represented 10% of all asylum seekers in the European Union in 2020–2021. Sixty-seven percent were aged between 16–17 years old, 22% were 14–15 years old, and those under 14 years of age accounted for 11% of the total. Whereas the provisions whereby a "guardian" is appointed to represent unaccompanied minors and sending minors to prison is prohibited are necessary, they are also implausible, as unaccompanied minors are the only exception to the new pre-entry screening procedure. According to EU regulation on screening (European Commission, 2020a), this should apply to all third-country nationals who are at the external border without fulfilling the entry conditions or after disembarkation, following a search and rescue operation.

### *2.2. The New 2020 Reform and the Pandemic Impasse: The Keystones to a Controlling Dystopia*

In 2020, the scope of the 2016 reform was reconsidered in light of the impact of the pandemic on reception processes, both within and outside official programmes. While a desire for reform remained, in the face of the well-known loss of state control in global contexts, there is increasing evidence of a gradual blame-based reshaping of reception processes in the form of a dystopia (Sassen, 1996). In other words, a system has been articulated to control individuals in all life facets and deprive them of their freedoms (Martorell Campos, 2020, in a reference to Kafka's *The Trial*). The beneficiaries of international protection are therefore under constant surveillance and more perversely, they face non-compliance with asylum procedures and the system's deficiencies. As Maiani (2017, p. 632) suggested, control, deterrence, and exclusion are forms of a dystopian contrast to human rights.

There are significant (strictly legislative) weaknesses, for example, in the definition of family (European Parliament and Council, 2019, art. 12) and the right to family life. While families formed outside the applicants' countries of origin before their arrival in the territory of the member states are included for protection purposes, the concept of family members does not encompass other family members such as siblings. However, even more concerning are the conceptual problems involved in the restrictions on applicants' freedom of movement for reasons of administrative convenience (European Parliament and Council, 2019, art. 7.2), and the inconsistency between the grounds for detention provided for in Articles 8 and 11 (European Parliament and Council, 2019), and the letter of the EU Charter of Fundamental Rights (CFR, 2000). Although Article 11 (European Parliament and Council, 2019) should unequivocally prohibit the detention of people with special reception needs, several of these grounds for detention and deprivation of reception conditions are incompatible with the right to freedom, since they are not related to a specific obligation and are punitive in nature.

In particular, the term "absconding" and the concept of "risk of absconding" in the cases derived from Article 2 (sections 10 and 11; European Parliament and Council, 2019) connote a morally reprehensible conduct based on artificial legal criteria. The wide interpretation of the applicant's intentions excessively broadens the state's margin of discretion because deprivation measures are not "accessible, precise and foreseeable," as required by the CFR (2000, art. 6). The objective criteria are therefore open-ended and undefined, which fails to exhaustively delimit the cases involving abandoning or leaving the country, and those related to attempts to remain in the country. This in effect merges asylum law with criminal law (Duff et al., 2014, p. 13), whereby misconduct and escaping immigration control are prosecuted. Based on the doctrine of estoppel (negative consequences of an individual's own acts), those who escape from a dysfunctional asylum process, flee from poor living conditions while waiting for a transfer or the resolution of their application, or exercise their fundamental right to leave any country are indirectly prosecuted. Indeed, in two cases of transfers of applicants returned from other EU member states under the Dublin Regulation, *Abubacarr Jawo v. Germany* (2017) and *CK v. Slovenia* (2016), it was ruled that the provision of an adequate standard of living must be assessed not only concerning the systemic flaws of a member state's reception model but also in relation to the individual situation of the applicant. In addition, those who request asylum cannot be deprived of minimum sufficient standards (see *Saciri and Others v. Belgium*, 2013, paras. 42, 43, and 50), and the protection of these standards must unequivocally be ensured regarding reception conditions of unaccompanied minors, as in *Haqbin v. Belgium* (2019, paras. 34–53). The Court reminded the authorities involved that they cannot decide to remove the provision of material reception conditions, even if only temporarily. This would entail applicants being deprived of their most basic needs, including those related to the principle of proportionality and respect for human dignity. Particularly in

the case of unaccompanied minors, these sanctions must be applied taking into account the best interests of the child, in light of Article 24 of the CFR (2000).

Similarly, to limit secondary movements as a deterrent, despite the deletion of Recitals 8, 15, and Article 17.1 bis of the pending reform proposals, if applicants are in a different member state under the Dublin Regulation, they will not be entitled to the reception conditions established in Articles 14 to 17 (European Parliament and Council, 2019). The only exception to this provision (under Article 18.1) relates to access to health care and a dignified standard of living, in line with the CFR and the United Nations Convention on the Rights of the Child. Specifically, this requires member states to cover applicants' subsistence and basic needs in terms of physical security and dignity and interpersonal relationships, paying due attention to the intrinsic vulnerabilities of these applicants and their families or carers.

Following this control-based rationale, new obligations have been introduced to assign applicants a residence in a certain place when there is a risk that they may abscond, based on the indeterminate concepts of "public interest" and "public order." This is required when applicants are involved in a Dublin procedure or when they failed to comply with the obligation to make an application in the first member state. In addition, coercive measures have been launched related to the possibility of substituting, reducing, or withdrawing the daily allowance under Article 17 bis and replacing material reception conditions with support in kind. Specifically, the exception introduced by Article 17 is contrary to the reasoning of the Court of Justice of the European Union in the *Cimade y Groupe d'information et soutien des immigrés v. France* (2012, paras. 39–40 and 46–48), since it seeks to fragment the legal status of the person (by exclusion) depending on whether or not they arrived in the member state designated as responsible for applicants for international protection. This is a penalty imposed on applicants who fully comply with the Dublin rules and may be waiting to be transferred to the country designated as responsible for family unity reasons. The deprivation of conditions is also a double penalty applied to the category of applicants excluded from the reception system with more restricted conditions under Articles 17(a) and 19 (European Parliament and Council, 2019). This applies to the new situation in which applicants may see their material reception conditions withdrawn or reduced, including if they abscond (new insertion in Article 19.2; European Parliament and Council, 2019); if they have "seriously breached the rules of the accommodation centre or behaved in a seriously violent way"; if they fail to attend compulsory integration measures; if they have not complied with the obligation set out in Article 4(1) of the Dublin Regulation and travelled to another member state without adequate justification and made an application there; or they have been sent back after having absconded to another member state (European Parliament and Council, 2019).

In a different vein, with regard to vulnerable groups, the reference to "adequate educational activities" for children is also problematic, insofar as it disproportionately restricts their right to education. This right must be guaranteed in all cases, including detention under Article 11 (European Parliament and Council, 2019, para. 2), taking into account that children should only be detained for the shortest possible period. However, Article 17(a), establishes a restriction on the right to education during the period "pending the transfer to the member state responsible" (European Parliament and Council, 2019, para. 3). Pursuant to Article 30 of the proposed Dublin IV Regulation, the deadlines for carrying out a Dublin Regulation transfer are no longer binding on member states, as there are no repercussions if an applicant has not been transferred within the set deadlines.

While this legislative reform process was in progress, the disruptions caused by Covid-19 have severely affected refugees, highlighting dysfunctional and structural deficiencies in specific phases of the asylum process. This was particularly true for the deterioration in reception conditions and was especially alarming at the border in places of first arrival and temporary reception infrastructures. The hot spots in Greece and Italy, and detention centres/internment in transit centres in Hungary and Serbia, were examples of this (International Commission of Jurists, 2020). The precarious hygienic-sanitary conditions, the overuse of provisional collective facilities, and sine die mass lockdown without observing social distancing produced adverse effects on mental health, stigmatisation, and sexual and gender-based violence (Babicka, 2020). In the meantime, for those asylum seekers who had been accepted into state reception systems, some support services were restricted in duly justified cases and for a reasonable period of time (Garcés-Mascareñas & López-Sala, 2021, p. 18). According to a European Commission Communication on Covid-19 guidelines, "as far as possible," reception options were provided that were "different" from those that would be required in normal conditions (European Commission, 2020b). Beyond the general mitigation actions and precautionary health measures, the temporary suspension of registration and extended deadlines did not avoid the precarious access to housing that existed in the private market and the increase in homelessness. They did not improve access to health care services and working conditions either, except for some job market sectors. On the contrary, the measures enacted during the pandemic have failed to encourage a smooth transition towards the autonomy and integration of asylum seekers and refugees due to structural discrimination (International Commission of Jurists, 2020).

## 3. Integration for Refugees (2016–2020): A Difficult Balance Between Utopian and Dystopian Expectations

The regulations governing the integration of refugees and applicable public policies are exponents of the

dilemma between what is said and what is actually done (Acosta, 2012, p. 158). "Integration" has been somewhat lacking; in fact, there is a doctrinal plea for abolishing the concept as such (Schinkel, 2018). It suffices to recall the historical omission of the integration of refugees in the European Asylum legal framework, as well as the scant importance given to integration in the EU asylum law (García-Juan, 2020). The integration of beneficiaries from international protection became a key, transversal issue in the asylum regulations within the CEAS after the 2015 crisis and subsequent reform. In contrast, from a programmatic perspective, "soft law" coordination principles and indicators since 2004 have tried to reinforce integration as a "two-way process" that stimulates the bottom-up European integration paradigm for applicants for international protection, specifically with the launch of the 2016 and 2020 action plans. Drawing on a critical analysis of the absence of policy coordination (Semprebon, 2021), the two-way process (Klarenbeek, 2021) and the resilient approach (Preston et al., 2021) as transformative alternatives, these assumptions for effective integration in forced migration will be reworked from a normative perspective below.

### *3.1. Coordinating the Two-Way Integration Process Within EU Legislative Reforms (2016–2020): A Utopian Expectation*

Within the shared competencies of the European Union to develop an immigration and asylum policy, Article 79(4) of the Treaty on the Functioning of the European Union (TFEU) refers to a series of measures put in place to encourage and support the action of member states for the integration of third-country nationals who legally reside in their territories. The EU can only adopt supportive measures in terms of integration, as the harmonisation of laws and regulations is explicitly excluded under Article 352 of the TFEU. The lack of direct competence of the European Union and the arrangements based on coordination with the member states was already reflected in the Tampere Programme (1999–2004), with its 11 common basic principles for the integration policy of immigrants, which defined integration as "a dynamic, long-term, and continuous two-way process of mutual accommodation." As critiqued by Klarenbeek (2021, p. 907), while many authors have embraced the notion of a two-way process, they have not managed to avoid the unfeasibility and undesirability problems in the one-way approach that they are supposed to overcome.

Although member states define their own national integration model, the indicators, promotion, evaluation and monitoring of quality parameters continue to be an emerging European paradigm. Based on a commitment to a utopian form of coordination, issues related to integration gradually appeared in the Stockholm Programme (2010–2014), the 2010 Zaragoza Declaration, and the 2014–2020 multiannual financial framework. In particular, the 2015 European Migration and Asylum Agenda expanded the treatment of refugees' integration (Wolf & Ossewaarde, 2018), while also showing little concern for the existing convergences and synergies at the local level (Glorius et al., 2019) and the disproportionate distribution of social protection responsibility in multi-level governance (Semprebon, 2021).

At the regulatory level, member states were called upon to promote two-way integration at the initial stages of the process, in which both the local and the refugee population participate (albeit with different roles). Member states still established the scale and scope of rights and obligations associated with integration. This involved offering incentives for the active integration of refugees, while also granting some form of social support conditional on beneficiaries effectively engaging in integration measures. This change was introduced in the 2016 legislative reforms analysed above, which emphasised the need to increase the integration prospects of applicants, not only for those who already have acquired refugee status or subsidiary protection but also for those whose applications may be accepted despite practical restricted access to services. Hence, it was only suggested that asylum seekers should be able to work and earn their own income as soon as possible (3–6 months from submitting their application), even while their application is being processed. Mandatory integration measures were also mentioned for the first time in these reforms. Non-compliance could lead to the replacement of benefits and the reduction or withdrawal of material reception conditions. However, as noted by Semprebon (2021, pp. 902–902), social inclusion includes a "bundle of specific services" (accommodation, food, educational/training activities) for which local actors are made responsible. The proliferation of private and third sector actors, overlapping competencies, and the dynamics of contention negatively impact asylum seekers in terms of equal access to social protection. Therefore, many member states are more focused on disconnecting integration from rights by introducing measures that facilitate a broad process of social protection, and less intent on reducing the conditional role of legal status or eliminating discrimination and bureaucratic obstacles. For example, in Germany and Sweden, compulsory integration programmes were introduced for holders of international protection. Similarly, Austria introduced a year of "labour integration," France launched an "integration contract," and Germany established "integration courses," although restricted to applicants who were likely to obtain refugee status. An "introductory adult programme for newcomers" was also launched in Sweden, with an individualised itinerary design based on attitudes and goals (Wolffhardt & Conte, 2020). All these programmes contained a series of measures that included validation of skills, language acquisition programmes, support for qualifications to be recognised, civic courses, educational measures, and access to the

labour market. Similar initiatives were also introduced in 2018 in other destination countries on the southern border such as Italy, Spain and Greece (FRA, 2019).

To achieve this utopian expectation, the implementation of the 2016 Action Plan on the integration of third-country nationals has been key to providing a global framework. This was intended to support the efforts of member states in the developing, structuring and strengthening of measures in the pre-departure and arrival phase related to education, employment and professional training, access to basic services, active participation, and social inclusion. However, when dealing with integration, the plan exclusively referred to immigrants and refugees from third countries who legally reside in the European Union, thus avoiding "the challenge of integration and inclusion," which was "especially relevant for the migrants, not just newcomers (refugees) but third-country nationals who…are EU citizens" in the post-reception phase (European Commission, 2016b).

### *3.2. The Promotion of "Social Resilient" Integration in the 2021–2027 Action Plan: A Dystopian Expectation*

Consistent with the new Pact on Migration and Asylum published in 2020, a highly qualified, resilient and intersectoral integration model was adopted as part of a bottom-up strategy. It is maintained by cooperation between local and regional authorities, in partnership with civil society. The development scheme is a new Action Plan (2021-2027) aimed at ensuring "inclusion in a broad sense," taking into account "vulnerable or disadvantaged groups" with specific individual characteristics (gender, racial origin, ethnicity, beliefs, sexual orientation, and/or disability). It offers support to member states through cross-funding, guidance on different EU initiatives and strategies, and promotion of stakeholder associations. However, although it covers the most important sectors in which support for integration is essential, it has several weaknesses (Brandl, 2021). It lacks a structured and coordinated approach, with integration measures for some vulnerable categories of refugees based on their characteristics; there is no differentiation of rights to be granted and some additional, merely voluntary measures are provided to support integration. For example, it fails to establish how member states under greater migratory pressure can confront those challenges, or how to address the protection needs of children, especially unaccompanied minors. Likewise, the Action Plan only introduces the vague notions of a "European way of life and inclusive societies in general" but does not mention the possible negative consequences of this neo-colonial conceptualisation of integration measures (Schinkel, 2018, p. 2); nor does it define their alignment with the European constitutional tradition or the rights of the CFR. The Action Plan remains a utopian and ambitious list of actions, reinforcement stimuli, and measures to be applied by the Commission.

Beyond its desirability, the plan calls for the application of a "resilient model" of integration for the refugee population as a real transformative tool for change, focused on increasing the self-sufficiency of asylum seekers (including people of immigrant descent) through early access to work. This notion of resilience is linked to relational autonomy and the general "ability to respond effectively to and cope with adversity, setback, failure, or hardship" (Lotz, 2016, p. 50). In line with Preston et al.'s (2021) criticism and comparison of the social-ecological and social-resilience approaches in Canada, "a resilience approach holds individuals and communities responsible for their own well-being without examining and addressing the inequalities that create vulnerabilities and limit adaptability" (Fainstein, 2018, p. 1270). Access to social rights and needs to guarantee satisfactory integration depends not only on resilience but also on the opportunities for social integration, actors' coordination, responsibilities, participation in the host society, and the degree to which the latter can reduce the abuse of precarity. Precarity represents an "induced political condition of maximised vulnerability and an exposure suffered by populations that are arbitrarily subjected…that are not state-induced but against which states do not provide adequate protection" (Butler, 2009, p. 3).

Therefore, it seems logical that the host civil society should be involved in integration processes through community sponsorship schemes that go beyond resettlement under the aegis of the social resilience model. The European Union supports member states that are willing to establish community or private sponsorship schemes through funding, capacity building, and knowledge sharing, in cooperation with civil society to deliver better long-term integration outcomes (Fratzke et al., 2019). Although there is still no substantial difference between the two sponsorship types in terms of sharing responsibilities between civil society and state (Tan, 2021), there are still risks and negative connotations associated with the privatisation of public functions or state obligations for the admission and/or integration of refugees. In fact, pursuing a resilient model founded on community sponsorship could be dystopian because it is only justified by the argument that the increased involvement of civil society is beneficial to the "protection of refugees." There seems to be a confusing link between the quantitative control of refugee arrivals and the release of state responsibility as a qualitative benefit for the "integration" of refugees. According to Tan (2021, p. 7), community sponsorship is often assumed to provide better integration for refugees than traditional institutional programmes, but there is a need to prove that this efficiency in enhancing integration exists in Europe, and to define how it positively influences refugees' integration (access to employment, language skills, and social capital) as Canadian literature has done (Fratzke et al., 2019; Solano & Savazzi, 2019, p. 6).

Looking at the sponsorship model as a utopian ideal explicitly advocated in the New Pact, in line with

the Canadian literature by Labman (2016), van Selm (2020), Labman and Pearlman (2018), and the conclusions reached by Bond (2020), some doubts and discussions arise about the viability and policy transfer strategy involved in this model in Europe (Tan, 2021).

There is a wealth of Canadian scholarship on the risks and opportunities posed by the private-public nature of community sponsorship, and the challenges of the principle of additionality or complementarity, among other issues (Hyndman et al., 2021; Lenard, 2020). Admittedly, there is a weak assumption that a sponsorship programme ensures greater access of refugees to the host community, solidarity, hospitality, justice, and social cohesion, given the direct contact with sponsors at the time of arrival. In practice, the contradicting results in Canadian empirical research on integration outcomes and sponsorship experiences have failed to not show the positive role that private actors can potentially have in refugees' lives. To date, there is a paucity of findings concerning better health status, employment status and economic advantages in the short term compared to government-assisted refugee programmes (Hynie et al., 2019; Kaida et al., 2020).

Additionally, the few studies that have been conducted seem to support sponsorship programmes due to the proximity of the destination society in the integration process. However, they have somewhat hastily concluded that this model is qualitatively easier, faster, and more beneficial. Furthermore, due to the existing failures or controversies surrounding the practical functioning of current sponsorships (Solano & Savazzi, 2019, p. 8), some hidden controlling dystopias may have been underestimated. These include the bureaucratic delay resulting from the approval of applications for sponsorship, discrimination, and the lack of a common selection approach (Krivenko, 2012, p. 595); the short-term approach of one-to-one support (Solano & Savazzi, 2019, p. 10); and the tension between governmental interests and those of the sponsorship agents, which subdues the individuality of the applicants. Moreover, the lack of the right to appeal against refused applications, poor transparency, and the failure to monitor the complementarity of the different systems can turn sponsorship into a cost-saving strategy (Lenard, 2020). Basically, they enable the state to delegate responsibility or agency capacity to the groups involved (Labman & Pearlman, 2018, p. 445), to the extent that the sponsorship scheme is practically used as a channel for extended family reunification rather than for widespread resettlement of refugees (Hyndman et al., 2021).

Consequently, there is a continuous risk that sponsorship programmes will ultimately collapse due to weak commitment and orbiting conflicts of interest (Labman, 2016; Labman & Pearlman, 2018, pp. 443–447). This is caused by the excessive dependence that they generate and by the fact that the implementation of international obligations is left to fluctuating goodwill, compassion, or paternalism. This mechanism could be conducive to a reduction of states' accountability for refugee protection based on strategical preferences, decontextualising the causes of displacement, and promoting the self-accountability of entrepreneurial societies. In other words, by disconnecting integration from states' rights and obligations, these alternatives by themselves could be ineffective in counterbalancing the existing structural discrimination in the short and long term.

## 4. Concluding Remarks

The difficult balance between reception needs and reception capacity, and the practical implementation of minimum reception and integration conditions in each member state have caused shortfalls in the CEAS to date. These regulatory deficiencies can be seen in the challenging configuration of the common European reception system and have (direct and indirect) implications in the application of the European integration paradigm.

The desirable strategy of seeking transformative and positive changes in the European reception and integration agenda cannot exist if the current system remains fundamentally unaltered. Moreover, some of the reform proposals may be seen as utopian in the pejorative sense and even accelerate an uncontrolled dystopia for different reasons.

Despite the articulation of a new roadmap, the change in reception trends marked by the legislative reforms initiated in 2016 and continued by the New European Pact on Immigration and Asylum have indefinitely postponed addressing the challenges of the reception system and the inclusion policies, particularly in terms of their implementation problems at the national level. Moreover, paradoxically, the European Union claims to prevent a high volume of secondary movements by making reception control a priority before and after the pandemic impasse. Basically, the disruptive conditions and sophisticated mechanisms of discrimination prevail in the asylum system both on arrival and beyond first destination. Not surprisingly, interpreting these reforms as a utopian advancement shows how improvements are strongly marked by the questionable viability of decreasing incentives for secondary movements in the future. It also indicates that the impact of certain regulatory criteria leads to a dystopia of punitive control, and to a lesser extent, solves the imperative need to ensure adequate standards of reception and integration across the board.

Similarly, despite the expectations that the measures proposed in both plans will promote effective two-way integration, their practical implementation will remain insufficient unless non-discrimination strategies are prioritised in the asylum process. These should address unemployment, lack of educational opportunities and training, and lack of social interaction, with a view to guaranteeing a smooth and real transition to an independent, autonomous life once international protection has been granted to applicants. Meanwhile, a resilient or

sponsorship model conducive to the direct participation and co-responsibility of society has gained momentum due to its advantages and versatility. The decisive question is whether there is political will to promote refugee integration within this model. Integration is still intuitive and a long way from being empirically confirmed, because this does not only depend on the sponsorship structure and the role of the receiving society. The risk of uncertainties and contingencies in post-reception phases does not preclude the dangers posed by a state control mechanism both for the host society and for refugees upon arrival.

In the midst of the dark shadow of utopia and dystopia, the European Union must surely pursue a "progress-based" change from state interests to human rights, and look for different and better alternatives of refugee integration.

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**Conflict of Interests**

The author declares no conflict of interest.

**References**

Acosta, D. (2012). "En attendant Godot" or the EU law limits to integration conditions. In Y. Pascouau & T. Strik (Eds.), *Which integration policies for migrants? Interaction between the EU and its member states* (pp. 153–170). Wolf Legal Publishers.

Abubacarr Jawo v. Germany, C-163/17, ECLI:EU:C:2019:218 (2017).

Agamben, G. (1998). *Homo Sacer: Sovereign power and bare life*. Stanford University Press.

Babicka, K. (2020, June 29). The covid-19 measures impact of the rights of migrants and refugees in the EU. *OpinioJuris*. http://opiniojuris.org/2020/06/29/the-covid-19-measures-impact-on-the-rights-of-migrants-and-refugees-in-the-eu-access-to-the-right-to-seek-asylum-and-reception-and-living-conditions

Bauböck, R. (2019). Mare nostrum: The political ethics of migration in the Mediterranean. *Comparative Migration Studies*, *7*(4), 1–15. https://doi.org/10.1186/s40878-019-0116-8

Bauder, H. (2018, June 14–15). *Open borders: A utopian narrative?* [Paper presentation]. Conference "Border deaths and migration policies: State and non-state approaches," Vrije Universiteit Amsterdam, The Netherlands.

Best, U. (2003). The EU and the utopia and anti-utopia of migration: A response to Harald Bauder. *ACME: An International Journal for Critical Geographies*, *2*(2), 194–200. https://acme-journal.org/index.php/acme/article/view/696

Betts, A. (2021). Migration governance 2050. Utopia, dystopia and heterotopia. In T. H. Weiss & R. Rikilson (Eds.), *Global governance futures* (pp. 133–150). Routledge.

Bond, J. (2020). The power of politics: Exploring the true potential of community sponsorship programmes. In C. Dauvergne (Ed.), *Research handbook on the law and politics of migration* (pp. 155–170). Edward-Elgar.

Brandl, U. (2016). Family unity and family reunification in the Dublin system: Still utopia or already reality? In V. Chetail, P. de Bruycker, & F. Maiani (Eds.), *Reforming the common European asylum system: The new European refugee law* (pp. 43–158). Brill; Nijhoff.

Brandl, U. (2021, March 26). Integration in the New Pact: A difficult compromise between the lack of competence and the importance of integration for a successful migration policy. *EU Migration Law Blog*. https://eumigrationlawblog.eu/integration-in-the-new-pact-a-difficult-compromise-between-the-lack-of-competence-and-the-importance-of-integration-for-a-successful-migration-policy

Butler, J. (2009). Performativity, precarity and sexual politics. *AIBR: Revista de Antropología Iberoamericana*, *4*(3), 1–13.

Carens, J. H. (1996). Realistic and idealist approaches to the ethics of migration. *International Migration Review*, *30*(1), 156–170.

Carrera, S., & Vankova, Z. (2019). *Human rights aspects of immigrant and refugee integration policies: A comparative assessment in selected council of European member states*. COE.

Cimade y Groupe d'information et soutien des immigrés v. France, C-179/11 (2012), ECLI:EU:C:2012:594

C.K. H. F., A. S. v. Slovenia, C-578/16 PPU (2016) ECLI:EU:C: 2017:127

Dijstelbloem, H., Horn, C., & Jarvis, C. (2020). Moving forward: Between utopian and dystopian visions of migration politics. In P. Cuttitta & T. Last (Eds.), *Border deaths: Causes, dynamics and consequences of migration-related mortality* (pp. 146–162). Amsterdam University Press.

Duff, A., Farmer, L., Marshall, S. E., Renzo, M., & Tadros, V. (2014). *Criminalization: The political morality of the criminal law*. Oxford University Press.

European Asylum Support Office. (2020). *Judicial analysis: Reception of applicants for international protection. Reception Conditions Directive 2013/33/EU. Judicial analysis—Legal standards for the reception of applicants for international protection* (Reception Conditions Directive 2013/33/EU).

European Commission. (2016a). *Proposal for a Directive of the European Parliament and of the Council establishing standards for the reception of applicants for international protection (recast)* (COM(2016) 465 final, 13 July 2016).

European Commission. (2016b). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions, Action Plan on the integration of third country nationals* (COM(2016) 377 final, 7 June 2016).

European Commission. (2020a). *Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817* (COM/2020/612 final).

European Commission. (2020b). Communication on Covid-19 guidelines on the application of relevant EU provisions on asylum and return procedures and resettlement. *Official Journal of the European Union*, C 126.

European Parliament and Council Directive 2013/33/EU of 26 June 2013, laying down standards for the reception of applicants for international protection (recast). (2013). *Official Journal of the European Union*, L 180.

European Parliament and Council. (2019). *Proposal for a Directive establishing standards for the reception of applicants for international protection (recast): State of play and guidance for future work* (Council Document 10009/18, 18 June 2018 and 5458/19 of 21 January 2019).

European Union Agency for Human Rights. (2019). *Integrating of young refugees in the EU: Good practices and challenges*. https://fra.europa.eu/en/publication/2019/integration-young-refugees-eu-good-practices-and-challenges

EU Charter of Fundamental Rights, 2000, C364/1, 2000

Fainstein, S. (2018). Resilience and justice: Planning for New York City. *Urban Geography*, *39*(8), 1268–1275.

Fratzke, S., Kainz, K., Beirens, H., Dorst, E., & Bolter, J. (2019). *Refugee sponsorship programmes: A global state of play and opportunities for investment*. Migration Policy Institute.

Garcés-Mascareñas, B., & López-Sala, A. (2021). Immobile, stranded, and excluded: The effects of Covid-19 on the international asylum system. *Revista CIDOB d'Afers Internacionals*, *129*, 7–28.

García-Juan, L. (2020). Integration measures within the reform of the common European asylum system: The unsolved limbo of asylum seekers. *Migration Letters*, *4*, 5597–5608.

Glorius, B., Desch, L., Nienaber, B., & Doomernik, J. (2019). Refugee reception within a common European asylum system: Looking at convergences and divergences through a local-to-local comparison. *ERSJUNDE*, *73*(1), 19–29.

Haqbin v. Belgium, C-233/18 (2018),ECLI:EU:C:2019:956 (2019).

Heir, A. (2017). Utopian "in the right sense": The responsibility to protect and the logical necessity of reform. *Ethics & International Affairs*, *31*(3), 335–355.

Hyndman, J., Reynolds, J., Yousuf, B., Purkey, A., Demoz, D., & Sherrell, K. (2021). Sustaining the private sponsorship of resettlement refugees in Canada. *Frontiers in Human Dynamics*, *3*, 1–13.

Hynie, M., McGrath, S., Bridekirk, J., Oda Anna, I., Hyndman, J., Arya Neil, B., Shakya Yogendra, H., McKenzie, J., & Kwame, L. S. (2019). What role does type of sponsorship play in early integration outcomes? Syrian refugees resettled in six Canadian cities. *Refuge*, *35*(2), 36–53.

International Commission of Jurists. (2020). *The impact of Covid-19 related measures on human rights of migrants and refugees in the EU* (Briefing Paper). https://www.icj.org/wp-content/uploads/2020/06/Covid19-impact-migrans-Europe-Brief-2020-ENG.pdf

Kaida, L., Hou, F., & Stick, M. (2020). The long-term economic integration of resettled refugees in Canada: A comparison of privately sponsored refugees and government assisted refugees. *Journal of Ethnic and Migration Studies*, *46*(9), 1687–1708.

Klarenbeek, L. M. (2021). Reconceptualising "integration as a two-way process." *Migration Studies*, *9*(3), 902–921.

Krivenko, Y. (2012). Hospitality and sovereignty: What can we learn from the Canadian sponsorship of refugees program? *International Journal of Refugee Law*, *24*(3), 579–602.

Labman, S. (2016). Private sponsorship: Complementary or conflicting interests. *Refuge*, *32*(2), 67–80.

Labman, S., & Pearlman, M. (2018). Blending, bargaining and Burden-sharing: Canada's resettlement programs. *International Migration and Integration*, *19*, 439–449.

La Spina, E. (2021a). Especially vulnerable subjects and categories in the context of European migration: Theoretical regulatory challenges. *Migration Letters*, *18*(5), 533–549.

La Spina, E. (2021b). El sistema europeo de acogida y sus condiciones en tiempos de Covid-19: Gatopardismo y efecto placebo [The European reception system and its conditions in times of Covid-19: *Gatopardismo* and the placebo effect]. *Revista CIDOB d'Afers Internacionals*, *129*, 155–177.

Lenard, P. (2020). The ethics of citizen selection of refugees for admission and resettlement. *Journal of Applied Philosophy*, *37*(5), 731–745. https://doi.org/10.1111/japp.12412

Levitas, R. (1990). *The concept of utopia*. Syracuse University Press.

Lotz, M. (2016). Vulnerability and resilience: A critical nexus. *Theoretical Medicine and Bioethics*, *37*, 45–59.

Maiani, F. (2017). The reform of the Dublin system and the dystopia of "sharing people." *Maastricht Journal of European and Comparative Law*, *24*(5), 622–645.

Mannheim, K. (1991). *Ideology and utopia*. Routledge.

Martorell Campos, F. (2020). Nueve tesis introducidas sobre la distopía [Introducing nine theses on dystopia]. *Quaderns de Filosofia*, *7*, 11–33.

Mujahid Chak, F. (2018). Europe's dystopia: The exploitation of unaccompanied and separated child refugee. *Policy Perspectives*, *15*(3), 7–28.

Ongaro, E. (2020). *Philosophy and public administration: An introduction*. Elgar Online.

Preston, V., Shields, J., & Akbar, M. (2021). Migration and resilience in urban Canada: Why social resilience, why now? *Journal of International Migration and Integration*, *22*, 1–21.

Saciri and Others v. Belgium, Case C-79/13, ECLI:EU:C:2014:103 (2013).

Sassen, S. (1996). *Losing control? Sovereignty in the age of globalization*. Columbia University Press.

Schinkel, W. (2018). Against "immigrant integration": For an end to neocolonial knowledge production. *Comparative Migration Studies*, *6*(1), 1–17. https://doi.org/10.1186/s40878-018-0095-1

Semprebon, M. (2021). Towards a parallel exceptional welfare system: The scaling down and out of forced migrants' reception in Italy. *Urban Geography*, *42*(7), 915–936.

Slingenberg, L. (2021). Political compromise on recast asylum reception conditions directive. Dignity without autonomy? *EU Migration Law Blog.* https://eumigrationlawblog.eu/political-compromise-on-a-recast-asylum-reception-conditions-directive-dignity-without-autonomy

Solano, G., & Savazzi, V. (2019). *Private sponsorship programmes and humanitarian visas: A viable policy framework for Integration?* Migration Policy Institute.

Tan, N. F. (2021). Community sponsorship in Europe: Taking stock, policy transfer and what the future might hold. *Frontiers in Human Dynamics*, *3*, 1–8.

Tsourdi, L. (2020). Covid-19, asylum in the EU and the great expectations of solidarity. *International Journal of Refugee Law*, *32*(2), 374–380.

van Selm, J. (2020). Complementary pathways to protection: Promoting the integration and inclusion of refugees in Europe? *Annals of the American Academy of Political and Social Science*, *690*(1), 136–152.

Velutti, S. (2016). The revised Reception Conditions Directive and adequate and dignified material reception conditions for those seeking international protection. *International Journal of Migration and Border Studies*, *2*(3), 1–20.

Wolf, M., & Ossewaarde, M. (2018). The political vision of Europe during the "refugee crisis": Missing common ground for integration. *Journal of European Integration*, *40*(1), 33–50.

Wolffhardt, A., & Conte, C. (2020). *The European benchmark for refugee integration: A comparative analysis of the National Integration. Evaluation mechanism in 14 EU countries* (Evaluation Summary Report). NIEM.

Wright, E. O. (2007). Guidelines for envisioning real utopias. *Soundings*, *36*, 26–39.

Zapata-Barrero, R. (2013). Utopian political theory and migration without borders. *International Journal of Social Science Studies*, *1*(1), 173–183.

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Article

# When European Policies Meet German Federalism: A Study on the Implementation of the EU Reception Conditions Directive

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**Abstract**
Article 21 of the recast Reception Conditions Directive 2013/33/EU (RCD) stipulates that member states shall consider the special needs of asylum seekers with, inter alia, mental illnesses. Similar to other member states, Germany failed to transpose the RCD into national law within the two years prescribed. Due to the inactivity of the federal legislator, the Directive became directly applicable. In the German system of cooperative federalism, this means that the application of the RCD moved downstream to the responsibility of the German *Länder* (states), which have since found themselves with vague responsibilities, lacking a clear regulation cascade from the federal level. How do *Länder* implement the RCD and how is its implementation in Germany affected by the federal institutional setting? The objective of this article is to analyse and systematise the patterns of the RCD's implementation on the subnational level in Germany. On the one hand, the findings suggest that the open formulation of the RCD and the federal government's inactivity allow for a higher degree of liberty in applying the Directive on the subnational level. On the other hand, most measures taken hitherto have been rather small and ad-hoc and some *Länder* have even failed to adopt any significant changes at all. The RCD's implementation in Germany has consisted of a "tinkering" process, generating an incoherent patchwork of policy outputs. The resulting unequal standards in the reception of asylum seekers displaying mental illnesses present far-reaching consequences for the people affected.

**Keywords**
asylum policy; German federalism; implementation; *Länder*; psychological care

**Issue**
This article is a part of the issue "A Common European Asylum System: Utopian or Dystopian Expectations?" edited by Birgit Glorius (Chemnitz University of Technology) and Jeroen Doomernik (University of Amsterdam).



## 1. Introduction

Poor implementation constitutes an important issue in EU policy-making as it indicates non-compliance with EU law and potential reservations of member states against European integration. A particularly interesting case for scholars of the implementation of EU law and public policies is Germany. In Germany, implementation might not only be hampered by a lack of political will of the federal decision-makers to comply with European regulations but also due to the federally fragmented state structure (Börzel, 2001; Treib, 2003).

In the German model of federalism, referred to as "cooperative federalism" (Gunlicks, 2003; Lanceiro, 2018), the competency of law-making is distributed in different ways between the federal level and the state level, depending on the issue at stake. In asylum law, concurrent legislation applies, meaning that the *Länder* (states) can only legislate if and insofar that the federal level has not adopted legislation. Since the federal legislator has made extensive use of its rights in asylum law, there is very little left for the *Länder* to legislate (Federal Republic of Germany, 1949, paras. 72 and 74). However, whereas the asylum procedures are executed by the rare

case of a federal agency with offices in all *Länder* (Riedel & Schneider, 2017), all other elements of federal asylum law are implemented by the *Länder* (Reiter & Töller, 2019). In the EU context, this distribution of competencies goes hand in hand with the federal level, fulfilling a coordinative and harmonising function by framing the *Länder*'s implementing action with a federal transposition law.

Asylum seekers with mental illnesses are particularly vulnerable as their right to adequate psychiatric-psychological healthcare has constantly been neglected in Germany as well as in other EU member states (BAfF, 2020; Norredam et al., 2006). For this group, correct/full implementation of the Reception Conditions Directive 2013/33/EU (RCD) would mean an effective increase in their rights. On the contrary, poor implementation can have major consequences, particularly for the persons affected. Vulnerability among asylum seekers is particularly high, as their capacities to fight for their rights e.g., by taking their case to the court, are structurally limited due to lack of resources and information, insecure residence status, etc. (Baumgärtel, 2020). In the case of EU asylum policy, this seems even more dramatic given the fact that the EU asylum system—as bundled in the Common European Asylum System (CEAS)—has defined relatively high standards, e.g., concerning the asylum procedure or the conditions of reception of asylum seekers in the member countries (Kaunert & Léonard, 2012; Trauner, 2016). Against this background, this article takes an interest in the implementation of EU asylum policy in the German federal system. We focus on the particular case of the recast RCD and its stipulations on the rights of asylum seekers with mental illnesses to get access to adequate psychiatric-psychotherapeutic healthcare (Directive of the European Parliament and of the Council of 26 June 2013, 2013, Arts. 21, 22, 25). Issued in 2013 as the successor regulation to the European Council Directive 2003/9/EC, the purpose of the RCD is to "lay down standards for the reception of applicants for international protection in member states" (Directive of the European Parliament and of the Council of 26 June 2013, 2013, Art. 1). More precisely, the RCD stipulates that member states should consider the specific situation of "persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence" (Directive of the European Parliament and of the Council of 26 June 2013, 2013, Art. 21).

In principle, the Directive—as opposed to regulations—needs to be transposed into national law to become effective. However, the RCD contains a safeguard measure against inadequate translation into national law. It contains a clause stipulating its direct applicability in the member states after the expiration of its transposition deadline in July 2015 (Directive of the European Parliament and of the Council of 26 June 2013, 2013, Art. 32). Similar to other member states, Germany failed to transpose the RCD into federal law in due time with the consequence—in the particular German case—that the federal legal framing of the *Länder*'s implementation action is now missing.

This article analyses how the *Länder* deal with this regulatory vacuum. It compares the application of the RCD's stipulations on the rights of asylum seekers with mental illnesses in five German *Länder* and asks what—in terms of the protection of asylum seekers with mental illnesses or disorders—is the result of the lack of federal legislation transposing the Directive in federal law. We will show that the different *Länder* have oriented implementation to the focal interests of their own asylum political agendas, which, in some cases, meant that the RCD's stipulations were taken quite seriously leading to a more "permissive" implementation strategy, whereas, in other cases, they were not taken seriously, leading to a more "restrictive" course of implementation action. The federal institutional structure thus worked as an intensifier of subnational asylum policies and their diversity, sometimes with serious consequences for both the affected asylum seekers and the unity of law in the European Union.

This article draws on the results of a multi-annual research project on the access of refugees to psychiatric-psychotherapeutic care in Germany. It is subdivided as followed: The following section deals with the state of the art of implementation research and elaborates on the role of institutional settings in the transposition of European law into national law. The methodology applied is introduced in the subsequent section, which is then followed by the presentation of the empirical findings on the RCD implementation in Germany, as well as the outline of the case study of the selected five states. Findings are discussed and then concluded in the conclusion.

## 2. State of the Art and Conceptional Framework

The role of the subnational level in the implementation of EU directives in Germany and the variance in implementation performance across the *Länder* have been the subject of scientific research in federalism scholarship, migration studies, political and administration studies, comparative policy analysis, and EU implementation studies (Bogumil et al., 2018; Münch, 2017; Reiter & Töller, 2019; Thomann & Sager, 2017; Treib, 2014). Especially comparative policy analysis has conducted research on the variance of policies in the *Länder* since the 1980s (Heinelt, 1996; Sack & Töller, 2018). Research in migration studies has highlighted the ambiguous relationship between the development of common EU migration law targeting a European harmonisation of asylum and migration policy on the one side and highly divergent asylum and migration policies of the EU member states on the other (Reiter & Töller, 2019; van Riemsdijk, 2012). Typically, divergent migration policies at the level of the EU member states have been predominantly explained by theories of institutionalism

(Broschek, 2011; Lehmbruch, 2012), partisan politics, misfit (Treib, 2003), or a lack of effective monitoring and control institutions at the EU level of governance (Scipioni, 2018; Trauner, 2016). Yet, only a few studies have examined the implementation of EU asylum and migration policies and specifically, the implementation of the RCD (Bianchini, 2013) with its particular stipulations regarding the special needs and rights of particularly vulnerable asylum seekers with special needs (e.g., due to mental illnesses).

When it comes to the implementation of European legislation into national law, the institutional setting in the EU member states plays an important role. Although implementation in Unitarian EU member states with a hierarchical administrative system does not necessarily lead to more effective outcomes, when compared with federal institutional settings, implementation in Unitarian states occurs more uniformly. In the particular case of Germany, the specific model of "cooperative federalism" is assumed to have a harmonising effect. This harmonising effect is also valid in such cases where federal level institutions fail to take action or give formal requirements, since the principle of "federal fidelity" to cooperation and common interests applies (Halberstam, 2001, pp. 36–37; Lanceiro, 2018, pp. 90–91). On the other hand, the institutional theory presumes that institutional structure does have an impact but does not fully determine what actors do (Scharpf, 1998) and therefore suggests that the impact of institutions must be empirically identified in each case.

In the case of RCD implementation in Germany, the harmonising framework of federal law to transpose the Directive into national law is absent. The non-transposition by the federal government has led instead to the direct applicability of the Directive by the *Länder*. The European asylum policy and the standards, e.g., for the reception of asylum seekers present a particularly conflicted policy field. The contents of asylum policy, as well as the overarching question of the conception of protection and care standards for asylum seekers, are not only disputed between the member states (Kaunert & Léonard, 2012; Scipioni, 2018; Trauner, 2016) but also within the member states—e.g., in Germany, the *Länder* pursue different asylum policy strategies (Münch, 2017; Reiter & Töller, 2019; Thränhardt, 2001). Experts agree that in this conflict especially, the special protection obligations for particularly vulnerable groups have not been guaranteed in many cases so far (BAfF, 2016, 2020; Norredam et al., 2006). It, therefore, makes sense to deviate from the dominant focus of multilevel implementation research on compliance (Thomann & Sager, 2017) and to directly investigate and compare implementation activities at the subnational level in different countries.

The implementation of the RCD pertains to European, national, regional, and local scales (Dörrenbächer, 2017). Such multilevel contexts add complexity to interactions between different governance levels when studying practical implementation (Knill & Tosun, 2010; Thomann & Sager, 2017). Multilevel implementation research, with its strong top-down focus on compliance, emphasises conformance and regards the EU as the main driver when it comes to domestic change (Thomann & Sager, 2017, p. 3). Because this approach falls short in capturing actual performance, as well as possible implications in the member countries, it is important to go beyond legal compliance and top-down approaches. Therefore, this comparative public policy case study employs a combined approach focusing on actors and actions from the middle level of implementation, the German *Länder*. By linking a top-down and a bottom-up approach, the article aims to accurately and empirically grasp the interactions within a multilevel implementation of the RCD.

## 3. Methodology

The research for the present case study was conducted within the framework of a multi-annual (2018–2022) research project funded by the Federal Ministry of Education and Research investigating the access of refugees to psychiatric-psychotherapeutic care in Germany. Focusing on five selected *Länder*, we resorted to qualitative research methods and content analysis of primary and secondary data and conducted an extensive qualitative case study on the implementation of the requirements formulated in Articles 21, 22, and 25 of the RDC in Germany between 2015 and 2020. In a first step, official governmental documents were collected such as coalition contracts, parliamentary enquiries, and ministerial and other official proclamations from the German federal government and all sixteen *Länder*. Other relevant official documents of non-governmental organisations, foundations, and scientific institutes (such as reports and position papers) were compiled. These documents also served in preparation for the interviews.

Based on the information gathered in the first step, we identified distinguishing features related to the implementation of the Directive and assigned the 16 *Länder* to four implementation types on this basis: (a) full implementing *Länder*; (b) partly implementing *Länder*, showing openness to address and take future actions to take care of special needs of asylum seekers; (c) non-implementing *Länder* with a positive evaluation of the RCD (in official states documents); and (d) non-implementing *Länder* without an evaluation of the Directive, including *Länder* which did not communicate any public information as to the implementation degree of the RCD.

This categorisation considers the degree of action each *Land* had undertaken up until the starting point of our research on the implementation of the RCD in the German *Länder* in the summer of 2020. To examine the implementation structures in each of the four implementation types in greater detail, we decided to conduct interviews, selecting one *Land* within each group (see Table 1). For better representation, due to the large

**Table 1.** Categorisation prior to selection of five *Länder*, based on official data.

| Implementing *Länder* | Partially implementing *Länder* (and openness to further implementation) | Non-implementing *Länder* with positive evaluation of the RCD | Non-implementing *Länder*/Scarce available information |
|---|---|---|---|
| Berlin | Baden-Württemberg | **Mecklenburg-Western Pomerania** | **Bavaria** |
| **Brandenburg** | Bremen | Saarland | Saxony |
| Lower Saxony | Hamburg | Saxony-Anhalt | Schleswig Holstein |
| | Hesse | Thuringia | |
| | **North Rhine-Westphalia** | | |
| | **Rhineland Palatina** | | |

Note: Selected *Länder* for the case study are highlighted in bold.

conglomeration of *Länder* in the second category (b), we decided to pick a second *Land* from this group. In total, our case study consisted of five *Länder* cases: Bavaria, Brandenburg, North Rhine-Westphalia, Mecklenburg-West Pomerania, and Rhineland-Palatinate. For an adequate representation of Germany in general, the five *Länder* were selected across axes of the population (densely populated vs. sparsely populated), region (East vs. West), and partisanship (left-wing vs. right-wing parties in government). This selection was furthermore based on the availability of official data on the Directive's application provided by each *Land* since data availability differed significantly between the *Länder*. Finally, we opted for expert interviews because they are the most suitable for policy research and especially implementation analysis (Bogner et al., 2014).

During autumn 2020, we conducted twelve expert interviews with government representatives of the respective *Länder* and representatives of non-governmental organisations, either involved in the Directive implementation or acting as advocators for migration rights. Regarding the former, as ministries represent the highest state authority involved in the execution of laws and policy implementation (Bogumil & Jann, 2009), we conducted interviews with representatives of the respective ministry responsible for the Directive implementation (in German states, asylum affairs and thus the implementation of the Directive is the task of the Ministry of Interior, in most cases, or the Ministry of Integration/Ministry of Social Affairs. Another option is the combined task of the two ministries.). Regarding NGOs, we talked with experts active in the Refugee Councils of the respective *Länder*, as well as associates of welfare organisations and other NGOs working in initial reception facilities (where the vulnerability assessment will usually/is supposed to take place). The interviews were semi-structured and left room for our respondents to give personal evaluations and perspectives (Flick, 2014). The complete material was analysed based on a five-stage evaluation concept as elaborated by Gläser and Laudel (2010) and Mayring (2010). This concept comprises the selection of interview material according to the respective research question, the development of a categories system, the systematic information extraction, and data preparation for the final evaluation.

## 4. Procedures for the Assessment of Special Needs of Asylum Seekers With Mental Disorders in Germany

In the most general sense, procedures for the assessment of special needs of protection of asylum seekers are similar in the different German *Länder*. The federal legislator has established uniform regulations in the Asylum Act that provide the framework for the initial reception and thus the space where the assessment of the special needs of protection will usually/is supposed to take place. Accordingly, the assessment of such needs, including the needs of traumatised persons and persons with mental illnesses, is often defined as part of the initial reception of asylum seekers in the course of the opening of their asylum procedure. During this phase, asylum seekers are accommodated in initial reception facilities in the different *Länder*.

As per 1992 German Asylum Law, in the initial reception facility, asylum seekers are registered, have to undergo a compulsory medical examination, start the application proceedings, and complete further reception activities. The medical examination primarily aims to assess infectious diseases. It is not conceptualized to detect possible mental illnesses and traumas requiring adequate psychotherapeutic healthcare and will do so only marginally. Upon the start of their asylum procedure, asylum seekers are questioned in detail about their asylum application by the staff of the Federal Office for Migration and Refugees (BAMF) responsible for conducting the procedure; according to the BAMF (2021), in cases of special protection needs the staff conducting the interviews is additionally trained or has special knowledge for the matter. However, even if asylum seekers do not (or cannot) formulate special needs during their initial reception interview, the determination of such needs should be possible during their living in the initial reception facility. This is because in most cases the diverse staff working in the facilities is expected by the *Länder* to observe whether such needs exist. In addition to administrative staff, personnel for the basic care of people and

security personnel, social workers, and medical staff are employed in the facilities, as well as volunteers from civil society organisations in some cases. This administrative and care structure which is present in each initial reception facility irrespective of the *Land* where it is located is expected to form a basis for identifying the vulnerability and special needs of asylum seekers.

Based on this general structure, according to our viewed material and interviews, the specific procedure to assess special needs is generally expected by the *Länder* to run as follows: At least one aforementioned facility staff is meant to be qualified, trained, or (at least) instructed to identify and initiate necessary proceedings. The personnel (with or without specific qualification, training, or instruction to identify special needs) is in most cases expected to observe indications of mental disorders and inform a commissioned psychologist or general practitioner inside the initial reception facility, or, if applicable, communicate this observation to contacts outside the facility, such as psychosocial centres (PSCs) or other medical supply centres. Regarding potential ties to medical care institutions, our findings show that psychiatric clinics or PSCs are sometimes engaged in the local assessment procedure, depending on the commitment (or network legacies) of involved actors (according to our interviews 2 and 7, NGOs, in 2020). However, the regular involvement of medical institutions is rather seldom, since, among other reasons, initial reception facilities are often built-in remote places, lacking infrastructural connections to hospitals or other clinics (interview 2). As their services are in high demand, usually PSCs are rarely capable of participating in the assessment of vulnerability.

Even before the 2013 Directive recast and the subsequent rising numbers of asylum applications throughout Europe in 2015, some projects for the assessment of mental disorders or trauma during the asylum procedure were developed in some of the *Länder*. Among others, projects such as the Friedländer Model (developed in 2012 together with the Lower Saxony Network for Refugees to assess the need for treatment of asylum seekers in the initial reception facility at an early stage; see BAfF, 2016, pp. 5–6) or the psychiatric diagnostic/psychotherapeutic project by Refugio and Doctors of the World in Bavaria (BAfF, 2016, pp. 11–12) introduced systematic screening among asylum seekers accommodated in the initial reception facilities (between 2018 and 2019, a pilot project for psychiatric-psychotherapeutic primary care offering psychiatric consultations twice a month at selected locations in the *Land* of Bavaria was run by Refugio and Doctors of the World; however, as per our interviews 2 and 3, 2020, both actors withdrew due to the difficult conditions and in protest of not wanting to become "system stabilizers" and do the government's job).

Most of the projects were initiated by non-governmental welfare organisations and were marked by coordinating efforts to connect with medical care institutions. Despite positive responses and measurable success in assessing special protection needs, most of the projects were terminated after asylum applications decreased, but also due to shortages of resources, work overload, interest conflicts, or other reasons (interviews 2, 3, and 7, 2020). Therefore, these models cannot be considered as part of an institutionalised vulnerability assessment, but rather as ad-hoc solutions to fulfil the tasks of the RCD (Töller et al., 2020).

In summary, the analysis of primary and secondary data revealed that all German *Länder* had docked the assessment procedures to the existing structures of initial reception facilities. It is precisely this approach that opens up the scope for procedural arrangements: In some *Länder* a screening questionnaire is used in the initial reception facilities, in others, special accommodation for vulnerable groups is offered. Some *Länder* provide temporarily or permanently employed psychological-/psychiatric personnel in the initial reception facilities (full-time or part-time employment, different numbers and patient ratios), others have established additional supporting structures outside the initial reception facility, such as cooperation with PSCs or with regular medical care suppliers. Some *Länder* provide adequate training for staff members, others do not. All these measures are optionally applied and/or partly combined with other measures. A study of BAfF (2020) found that only three out of sixteen German *Länder* apply a structured special needs assessment procedure, while five had no method at all to assess vulnerability and special needs, and the remaining *Länder* apply single measures which are not part of a structured assessment procedure.

## 5. Concepts to Assess Special Needs in Five German *Länder*

This section focuses on actions undertaken and concepts to assess special needs in five selected *Länder*: Bavaria, Brandenburg, North Rhine-Westphalia, Mecklenburg-West Pomerania, and Rhineland-Palatinate. The findings discern a clear delineation between the *Länder*, in agreement with the findings from the previous section on implementation throughout Germany.

Bavaria, Mecklenburg-Western Pomerania, and North Rhine-Westphalia lack a concept for the assessment of special needs of asylum seekers and only provide informal assessment procedures (NGO interviews 2, 3, 5, and 7, and state institution interviews 1, 4, and 6, 2020). In these *Länder*, the responsibility to implement this formal requirement of the RCD concerning the special needs of asylum seekers with mental illnesses lies either with the management of the initial reception facilities or with the facilities' violence protection coordinator. Concerning the latter, upon a nationwide initiative in 2016 offering guidelines for minimum standards for the protection of asylum seekers, with the central involvement of NGOs most *Länder* have since developed

accommodation-specific concepts to protect lesbian, gay, bisexual, transsexual, transgender, and intersexual refugees, refugees with disabilities, and refugees with trauma disorders (Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, 2021). Both the manager of the initial reception facility and the violence protection coordinator are usually employed by and directly subordinated to the responsible ministry of the *Land* (in Bavaria this is the Ministry of internal affairs; in Mecklenburg-Western-Pomerania, the Ministry of internal affairs; in North-Rhine-Westphalia, the Ministry of Integration).

Common to all three *Länder* is the absence of psychological services in the initial reception facilities. Here, the determination of vulnerability and special needs of different groups of persons, including persons with mental illnesses or traumatised persons, lies in the hands of the facilities' staff. Should the need for particular protection be identified, the affected person is referred to PSCs or other care providers outside the facilities by facility workers. Depending on the location of the facility, ties to regular care facilities or PSCs might exist. In most cases, however, these health services are difficult to find or reach due to bad infrastructural connectivity (in comparison to the Bavaria and Mecklenburg-Western-Pomerania *Länder*, in North Rhine-Westphalia there is a relatively expanded network of PSCs; interview 7, 2020; see also BAfF, 2020). Despite the informal nature of the process, the transfer of a person with a special need to a suitable accommodation is usually formally recorded and regulated once such a need has been identified. Both Bavaria and North Rhine-Westphalia have adopted violence protection concepts laid down according to regulations. The *Land* of Mecklenburg-Western Pomerania, in turn, does not have a territory-wide violence protection concept. Instead, the Land expects the management of the respective initial reception facility to come up with a facility-specific concept. Yet, none of the reception facilities in Mecklenburg-Western Pomerania had formalised a violence protection concept up until that point in time (interviews 4 and 5, 2020).

More specifically, in Bavaria, no official government or administration document stipulated the necessity to identify special needs until September 2020. Initiated by the opposition (Green Party) in the *Land*'s parliament, the Bavarian council of refugees and advocators of immigrant and refugee health held a parliamentary expert hearing in 2019. After the hearing, Bavaria recognised for the first time the need to identify mental diseases in their violence protection concept (interviews 2 and 3, 2020). In the case of North Rhine-Westphalia, a concept for special needs assessment was developed and completed during the parliamentary term of 2012–2017 (interview 7, 2020). In addition, a model project for initial psychosocial care in the initial reception facilities was designed and tested. According to our interview 7 (2020), after the change in government in 2017 to a centre-right-wing coalition government, however, both the concept and the model project were no longer followed up.

In contrast, Brandenburg and Rhineland-Palatinate have both established formalised procedures for the assessment of vulnerability and special needs (state institution interviews 8 and 12, and NGO interview 11, 2020). The initially informal procedure has been formalised in Rhineland-Palatinate through several steps based on the *Land*'s violence protection concept drawn up in 2017. Although there is no systematic screening procedure for identifying special protection needs, the binding guidelines of the violence protection concept have improved the processes. According to our interviews, the guidelines have improved communication between the actors working in the initial reception facilities as well as the documentation of the assessment findings. In addition to the formalisation of communication and documentation, a psychosocial service has been set up in each initial reception centre to provide advice as well as to carry out the assessment procedure. After the identification of special needs, the respective person is transferred to housing suited for people with special protection needs.

In 2016 and after the decision not to transpose the Directive into national law, Brandenburg, as one of few *Länder*, passed its own *Land* Reception Act (§1LAufnG). This stipulates that it is the task of the regional authorities (equivalent to municipalities) to take into account the special needs of asylum seekers, thus declining any legal requirements from part of the *Land* to fulfil this task. Since then, specialised counselling services have been set up in the municipalities, based on this Act (according to our interviews 11 and 12, the newfound counselling services specialise in different domains, with the majority of them offering social counselling and not including a psychological or psychiatric specialist).

The number of facilities offering such counselling services has risen sharply from five to fifty-three. According to our interviews, this development became possible due to the initiative of the Left Party, the governing party in Brandenburg and also the party of the ministry responsible (Ministry of Social Affairs) for the implementation of the RCD (interviews 11 and 12, 2020). Regarding the assessment procedure in the initial reception facilities, a concept has been developed and applied by the subordinated authority (the Central Immigration Office) of the responsible ministry, although it has not been officially published. Particularly, the assessment procedure stipulates a screening procedure with the help of a questionnaire starting on the second day of reception. If an asylum seeker marks in this initial questionnaire that they have a "mental disorder," a 20-minute interview with the psychosocial service takes place 1–4 weeks later. In case special needs are identified, the psychologists prepare a medical statement based on which the affected person is referred to psychiatric consultation in the central reception facility of the state as well as to housing suited for special needs (interviews 11 and 12, 2020).

## 6. Discussion

Even though there is a lack of a federal transposition law as a formal basis for the harmonisation of these European directives' stipulations, the federal regulation of the asylum procedure and the initial accommodation of asylum seekers provide the German *Länder* with a uniform institutional basis for the implementation of RCD's special needs assessment requirement. In all *Länder*, the assessment procedures take primarily place within the framework of the initial reception of asylum seekers residing in initial reception facilities during the first months of their stay in Germany. This allows for few institutional adjustments and can minimise adaptation costs. However, without further measures, such as material and administrative changes, an effective implementation was not possible. Our data show that the amount and type of measures taken and the timing of the measures vary significantly from *Land* to *Land*. While some *Länder* have hitherto failed in taking any regulatory measures, others have advanced rather small and ad-hoc solutions and only a few *Länder* have enabled conditions for a systematic assessment of special needs. During this process, some *Länder* have made progress while others have even had backslides in their procedure's development (e.g., in the case of North Rhine-Westphalia). Yet, besides the similar framework of regulatory structures of the initial reception, every state runs a distinctive special needs assessment procedure, with different types and numbers of measures and in particular with different results as to the protection of refugees with special protection needs.

Vague policy formulations usually result from the need to facilitate agreement among heterogeneous interests and high consensus requirements (Knill & Tosun, 2010, pp. 121–122; Treib, 2014, p. 23). In this light, the European governance emphasises general frameworks instead of authorising detailed regulations (Knill & Tosun, 2010), a tendency that produces fuzzy legal concepts that can lead to national legislators failing to transpose EU law, either in regard to substantial compliance or deadlines (Dörrenbächer, 2017, p. 1329; Treib, 2014, p. 31). In our case study, the national legislator failed to fulfil the task of transposing the RCD in German national law. Notwithstanding, the particular German model of cooperative federalism should, in principle, unfold a harmonising effect on the implementation of European law on the level of the *Länder* even in the absence of a formal transposition with potentially harmonising effects—because European law applies to all territorial levels. However, cooperative federalism does not in any case facilitate a coherent implementation of European law ideally coherent to the stipulations of this law. As our comparative case study of the implementation of the RCD's clauses on the specific rights of asylum seekers with mental disorders has shown, the German *Länder* acted quite differently. In this, the five *Länder* under examination here followed their political agendas, path dependencies, and partisan preferences as already known from the implementation of national asylum law beforehand; some of the *Länder*, like Bavaria, followed a more "restrictive" orientation, whereas others, like Brandenburg or Rhineland-Palatinate, followed a more "permissive" path. These are patterns which have been identified before in other fields of the application of the federal asylum act (Reiter & Töller, 2019).

What is more, in a broader perspective on the CEAS of which the RCD is part, scholarship has recognised that the CEAS has rendered asylum policy increasingly liberal when it comes to implementation in the member states (Ripoll Servant & Trauner, 2014; Zaun, 2016). Putting this conclusion into a wider context, it shows that the abovementioned limitations could allow for a higher degree of autonomy, favouring ad-hoc innovative solutions and leaving room for individual approaches of the implementing units. Whereas this tends to lead to a patchwork of implementation modes, this does not necessarily foster a uniform race to the bottom, as empirically demonstrated by the cases above. Both Rhineland-Palatinate and Brandenburg seized the opportunity to formalise the assessment procedure by taking specific individual measures. Especially the latter, based on the *Land* Reception Act, transferred the task to implement the RCD to the municipalities, which, in turn, established a plethora of specialised counselling services, offering alternative supporting structures for asylum seekers with special needs. This measure goes thus beyond the infrastructural setting of the initial reception and the uniform regulations of refugee accommodation and asylum procedure of the Asylum Act and even has the potential to bring forward innovation in overall asylum policy.

What is more, further negative impacts on the mental health care of refugees can occur in connection with the status of "direct applicability" of the RCD. Provided that member states would set higher standards for asylum seekers through the application of European law, when the specific status of the RCD is not transposed in due time, this results in a delay of implementation and consequently in a bar of actions/positive impacts on the mental health care of the people affected. The negative consequences associated with the delay of acting can happen regardless of the institutional system of the member state—whether federal or Unitarian.

## 7. Conclusion

The European governance's tendency to emphasise procedural regulation instead of policy specifications (Knill & Tosun, 2010, p. 121) leads to fuzzy legal concepts. National governments transpose directives only with long delays or substantive flaws and frequently fail to transpose them (Börzel, 2001). A case in point is the RCD, which shall ensure that asylum seekers are equally offered medical and psychological care in all member states. The objective of this article was to analyse and systematise the patterns of implementation of the RCD in

the German *Länder* amid a lack of federal transposition. The empirical findings show that the federal institutional setting leads to significant variance between the *Länder* regarding the amount and type of measures taken, and the timing of the measures. Despite a uniform institutional framework, every *Land* runs a distinctive special needs assessment procedure with different types and numbers of measures. This, however, does not lead to a uniform race to the bottom. Yet, the implementation process in the RCD generates an incoherent patchwork of policy outputs with significant flaws—most measures taken hitherto by the states have been rather small and ad-hoc and some *Länder* have even failed to take up any regulatory tasks at all whereas some others try new and innovative approaches. Since asylum seekers cannot choose the *Land* where they reside but are assigned to a *Land* according to the federal distribution system—the so-called *Königsteiner Schlüssel*—the provision of mental health care to vulnerable groups becomes a matter of luck. The arbitrariness of the place of residence underlines the negative consequences of a deficient directive's implementation and the overall inequality in the asylum reception process. The resulting unequal standards in the asylum procedures present thus far-reaching consequences for the asylum seekers as well as implications on their long-term integration. Our results furthermore demonstrate that the direct effect of directives (if they entail individual rights but have not been transposed on the national level) is a blunt instrument if those entitled to these rights live in conditions in which taking legal action is the least likely thing to do.

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**Conflict of Interests**

The authors declare no conflict of interests.

**References**

BAfF. (2016). *Frühfeststellung und Versorgung traumatisierter Flüchtlinge. Konzepte und Modelle zur Umsetzung der EU-Richtlinien für besonders schutzbedürftige Asylsuchende* [Identification and care of traumatized refugees. Concepts and models for the implementation of EU directives for asylum seekers with special needs]. https://www.aerztenetz-grafschaft.de/download/Modelle-zur-Fruehfeststellung-besonders-Schutzbeduerftiger-01-02.pdf

BAfF. (2020). *Identifizierung besonderer Schutzbedürftigkeit am Beispiel von Personen mit Traumafolgestörungen. Status quo in den Bundesländern, Modelle und Herausforderungen* [Identification of special protection needs using the example of persons with trauma sequelae disorders. Status quo in the federal states, models, and challenges]. http://www.baff-zentren.org/wp-content/uploads/2020/11/BAfF_Reader_Identifizierung.pdf

Baumgärtel, M. (2020). Facing the challenge of migratory vulnerability in the European Court of Human Rights. *Netherlands Quarterly of Human Rights*, *38*(1), 12–29.

Bianchini, K. (2013). The United Kingdom's implementation of the EU asylum seekers' Reception Directive. In S. Morano-Foadi & M. Malena (Eds.), *Integration for third-country nationals in the European Union: The equality challenge* (pp. 91–107). Edward Elgar.

Bogner, A., Littig, B., & Menz, W. (2014). *Experteninterviews: Eine Einführung in Theorie und Praxis einer Forschung-smethode* [Expert interviews: An introduction to the theory and practice of a research method]. Springer.

Bogumil, J., Burgi, M., Kuhlmann, S., Hafner, J., Heuberger, M., & Krönke, C. (2018). *Bessere Verwaltung in der Migrations- und Integrationspolitik. Handlungsempfehlungen für Verwaltungen und Gesetzgebung im föderalen System* [Better governance in migration and integration policy. Recommendations for action for administrations and legislation in the federal system]. Nomos.

Bogumil, J., & Jann, W. (2009). *Verwaltung und Verwaltungswissenschaft in Deutschland. Einführung in die Verwaltungswissenschaft* [Administration and administrative science in Germany. Introduction to administrative science] (2nd ed.). Springer.

Börzel, T. A. (2001). Non-compliance in the European Union: Pathology or statistical artefact? *Journal of European Public Policy*, *8*(5), 803–824.

Broschek, J. (2011). Historischer Institutionalismus und Vergleichende Föderalismusforschung: Fragestellungen und Analyseperspektiven [Historical institutionalism and comparative federalism: Issues and perspectives of analysis]. *Swiss Political Science Review*, *17*(1), 27–50.

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast). (2013). *Official Journal of the European Union*, L 180/96. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0033

Dörrenbächer, N. (2017). Europe at the frontline: Analysing street-level motivations for the use of European Union migration law. *Journal of European Public Policy*, *24*(9), 1328–1347.

Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. (2021). *Schutz geflüchteter Menschen in Flüchtlings-unterkünften* [Refugee protection in refugee accommodations]. https://www.bmfsfj.de/bmfsfj/themen/engagement-und-gesellschaft/fluechtlingspolitik-und-integration/schutzkonzepte-fluechtlingsunterkuenfte

Federal Office for Migration and Refugees. (2021) *Durchführung des Asylverfahrens* [Implementation of the asylum procedure]. https://www.bamf.de/DE/Behoerde/Aufgaben/Asylverfahren/asylverfahren-node.html

Federal Republic of Germany. (1949). *Basic Law for the Federal Republic of Germany*. https://www.btg-bestellservice.de/pdf/80201000.pdf

Flick, U. (2014). *An introduction to qualitative research* (5th ed.). SAGE.

Gläser, J., & Laudel, G. (2010). *Experteninterviews und qualitative Inhaltsanalyse als Instrumente rekonstruierender Untersuchungen* [Expert interviews and qualitative content analysis as instruments of reconstructive studies] (4th ed.). Springer.

Gunlicks, A. B. (2003). *The* Länder *and the German federalism*. Manchester University Press.

Halberstam, D. (2001). The Foreign Affairs of federal systems: A national perspective on the benefits of state participation. *Villanova. Law Review*, *46*(5), 1015–1068.

Heinelt, H. (1996). Länderspezifische Varianzen im Mehrebenengefüge der Strukturfondsförderung. In H. Heinelt (Ed.), *Politiknetzwerke und europäische Strukturfondsförderung* (pp. 277–297). Springer.

Kaunert, C., & Léonard, S. (2012). The development of the EU asylum policy: Venue-shopping in perspective. *Journal of European Public Policy*, *19*(9), 1396–1413.

Knill, C., & Tosun, J. (2010). *Politikgestaltung in der Europäischen Union. Die Entstehung und Umsetzung der Dienstleistungsrichtlinie* [Policy-making in the European Union. The emergence and implementation of the services directive] (1st ed.). Nomos.

Lanceiro, R. T. (2018). The implementation of EU law by national administrations: Executive federalism and the principle of sincere cooperation. *Perspectives on Federalism*, *10*(1), 71–102.

Lehmbruch, G. (2012). Die Entwicklung der vergleichenden Politikforschung und die Entdeckung der Konkordanzdemokratie—Eine historisch-institutionelle Perspektive [The Development of comparative politics and the discovery of concordance democracy—An historical-institutional perspective]. In S. Köppl & U. Kranenpohl (Eds.), *Konkordanzdemokratie* (pp. 33–50). Nomos.

Mayring, P. (2010). *Qualitative Inhaltsanalyse: Grundlagen und Techniken. Neuausgabe* [Qualitative content analysis: Fundamentals and techniques. New edition]. Beltz Verlagsgruppe.

Münch, U. (2017). Föderale Aspekte bundesdeutscher Flüchtlingspolitik. Jahrbuch des Föderalismus 2017. Föderalismus, Subsidiarität und Regionen in Europa [Federal aspects of German refugee policy. Yearbook of federalism 2017: Federalism, subsidiarity and regions in Europe.]. In EZFF (Eds.), *Europäisches Zentrum für Föderalismus-Forschung Tübingen* [European Center for Federalism Research Tübingen]. (pp. 252–264). Nomos.

Norredam, M., Mygind, A., & Krasnik, A. (2006). Access to health care for asylum seekers in the European Union—A comparative study of country policies. *European Journal of Public Health*, *16*, 285–289.

Reiter, R., & Töller, A. E. (2019). Permissive und restriktive Muster in den Asylpolitiken der Bundesländer [Permissive and restrictive patterns in federal states' asylum policies]. *dms*, *12*, 194–220.

Riedel, L., & Schneider, G. (2017). Dezentraler Asylvollzug diskriminiert: Anerkennungsquoten von Flüchtlingen im bundesdeutschen Vergleich, 2010–2015 [Decentralized asylum enforcement discriminates: Recognition rates of refugees in a German comparison, 2010–2015]. *Politische Vierteljahresschrift*, *58*(1), 23–50.

Ripoll Servent, A., & Trauner, F. (2014). Do supranational EU institutions make a difference? EU asylum law before and after "communitarization." *Journal of European Public Policy*, *21*(8), 1142–1162.

Sack, D., & Töller, A. E. (2018). Einleitung: Policies in den deutschen Ländern [Introduction: Policies in the German *Länder*]. *Zeitschrift für Vergleichende Wissenschaft*, *12*, 603–619.

Scharpf, F. W. (1998). Demokratische Politik in der internationalisierten Ökonomie [Democratic politics in the internationalized economy]. In M. T. Greven (Ed.), *Demokratie—Eine Kultur des Westens?* [Democracy—A culture of the West?] (Vol. 47, pp. 81–103). Springer.

Scipioni, M. (2018). Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis. *Journal of European Public Policy*, *25*(9), 1357–1375.

Thomann, E., & Sager, F. (2017). Moving beyond legal compliance: Innovative approaches to EU multilevel implementation. *Journal of European Public Policy*, *24*(9), 1253–1268.

Thränhardt, D. (2001). Zuwanderungs- und Integrationspolitik in föderalistischen Systemen [Immigration and integration policy in federal systems]. In L. Akgün & D. Thränhardt (Eds.), *Integrationspolitik in föderalistischen Systemen* [Integration policy in federal systems] (pp. 15–34). LIT.

Töller, A. E., Reiter, R., Günther, W., & Walter, L. (2020). Rechtliche, organisatorische und politische Rahmenbedingungen der psychiatrisch-psychotherapeutischen Versorgung von Geflüch-

teten in Deutschland: Identifikation von Problembereichen und Lösungsansätzen [Legal, organizational, and political frameworks of psychiatric-psychotherapeutic care for refugees in Germany: Identification of problem areas and approaches to solutions]. *Z'Flucht*, *4*(1), 37–67.

Trauner, F. (2016). Asylum policy: the EU's "crises" and the looming policy regime failure. *Journal of European Integration*, *38*(3), 311–325.

Treib, O. (2003). Die Umsetzung von EU-Richtlinien im Zeichen der Parteipolitik: Eine akteurszentrierte Antwort auf die Misfit-These [The Implementation of EU directives under the sign of party politics: An actor-centered response to the misfit thesis]. *Politische Vierteljahresschrift*, *44*(4), 506–528.

Treib, O. (2014). Implementing and complying with EU governance outputs. *Living Reviews European Governance*, *9*(1), 5–47.

van Riemsdijk, M. (2012). (Re)scaling governance of skilled migration in Europe: Divergence, harmonisation, and contestation. *Population, Space Place*, *18*(3), 344–358.

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Article

# EU Asylum Governance and E(xc)lusive Solidarity: Insights From Germany

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**Abstract**
The response to the so-called refugee crisis of 2015 in the European Union was haphazard and inconsistent with the stated mission of solidarity. This article situates the EU's response and its Common European Asylum System (CEAS) as defensive integration producing the lowest common denominator policies. It argues that the rise of right-wing populism redefines solidarity in narrow and exclusionary terms, in contrast to the inclusive and global solidarity espoused by the EU. Drawing on Germany as a case study of how domestic populist pressures also rise to the European level, the article juxtaposes the demise of the EU's temporary relocation system (an attempt at internal inclusive solidarity) and the success of the EU–Turkey deal (an attempt at externalization and risk avoidance), both initiatives led by Germany. Solidarity efforts championed by Germany were quickly stymied by (Central Eastern European) member states that not only rejected efforts at temporary solutions but blocked efforts to develop permanent mechanisms and a substantive CEAS reform.

**Keywords**
asylum; European Union; Germany; populism; solidarity

**Issue**
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## 1. Introduction

"Member states' expected loyalty in implementing EU policy appears not to be sufficient," opined the European Parliament in 2011, adding: "If solidarity is needed, then Union action may be required" (European Parliament, 2011). These words foreshadowed what was to come soon. Until the start of the war in Ukraine, 2015 witnessed the highest influx of people seeking protection in Europe since the end of World War II. In 2016, European Commission President Jean-Claude Juncker observed that:

> At the end of 2015, the EU could look back on a year when European solidarity withstood what may have been the greatest trials it has faced since the end of World War II. European solidarity will prevail in 2016 as well, so long as member states' leaders follow through on meeting their commitments. (Juncker, 2016)

This was, at best, a rather charitable depiction of developments in the European Union.

2015 no doubt presented very serious logistical and governance challenges for receiving countries as well as the EU as a whole. Individuals attempting to reach the EU, while not a recent phenomenon, demanded urgent policy responses. Opinions differed on the best course of action, underscoring difficulties that plague EU-wide governance of migration, especially during times of multiple crises. In addition to Brexit, the financial, and the so-called refugee crises, governance was additionally rendered difficult with the rise of populism, which fanned the flames of domestic anti-immigration sentiments and percolated up to the European level. Later, the pandemic would further add to these woes. Building on the literature on European migration governance, work on populist right-wing parties, and juxtaposing the success of the EU–Turkey deal, the nonuse of the Temporary Protection Directive (TPD), and the demise of the temporary relocation scheme using process tracing methods, this article begins to explore the 2015–2016 episode

as a recasting of solidarity, putatively a principle of the EU's Area of Freedom Security and Justice and therefore also of the Common European Asylum System (CEAS). It weaves together two concurrent stories with Germany at the center. The first is the domestic politics of the summer of 2015 and its aftermath in Germany, a country that received a significant portion of the arrivals. The second is the EU's failed solidarity-based response, despite Germany's leadership efforts, especially when it came to sharing risk and responsibility. The article thus seeks to connect the national and European levels and does so against the backdrop of the EU's CEAS, now in its third phase and an example of defensive integration in Europe. The German and EU cases solidly point to a solidarity deficit: Internally, risk and responsibility are distributed unevenly and inequitably across EU member states; externally, efforts center on avoiding or limiting exposure and therefore responsibility. The domestic and regional rise of populism recasts solidarity and shifts it towards exclusion.

## 2. The Common European Asylum System as Defensive Integration

The birth and governance difficulties in EU's CEAS is well-documented in the literature. Established in 1999 to formulate common standards between member states in receiving and processing asylum seekers and their claims (Comte, 2020; Lott, 2022; Paoli, 2016; Uçarer, 2022), CEAS legislation crystallized around the Asylum Procedures Directive determining the procedural rules governing asylum applications, the Reception Conditions Directive setting standards on the living conditions of asylum seekers upon arrival, the Qualification Directive defining who can lay claim to refugee status, the Dublin Regulation allocating member state responsibility for processing an asylum claim, and the EURODAC Regulation assisting the Dublin Regulation by setting up a fingerprinting system, also resulting in the launching of the European Asylum Support Office to support the implementation of CEAS in member states. The first wave of CEAS instruments was adopted between 2003–2005, and the second wave, in 2010–2013, delivered revisions to existing documents. CEAS currently finds itself in its (stalled) third phase (Guild, 2021).

The CEAS portfolio has typically yielded lowest common denominator instruments because decisions initially needed unanimity. Unanimity afforded a veto for each member state, and the decision-making environment constrained the European Commission and the European Parliament (Uçarer, 2022). Even after the EU moved towards the Ordinary Legislative Procedure and normalized the role of the Commission and the Parliament after the Amsterdam Treaty, policy output maintained the defensive and restrictive tenor of earlier days (Ripoll Servent & Trauner, 2014). As the EU expanded to Central and Eastern Europe, these new members also started playing a role in buttressing restrictive trends. Consequently, whereas the EU's rhetoric proclaimed its commitment to the protection of human rights, the right to seek asylum included, its institutional setup favored restictionist policy outcomes (Lavenex, 2018). Furthermore, while the EU legislation was calibrated to limit access to EU territory, the protection of the asylum seekers' human rights was largely delegated to member states whose implementation policies, despite minimum thresholds imagined by the EU, remained disparate. The second phase of the CEAS reflects the continuation of this defensive core rather than rethinking exclusionary measures through the lens of human rights (Trauner & Lavenex, 2015).

The third phase of the CEAS was stalled between 2013 and 2016. In 2016, with the 2015 crisis providing an opportunity to restart negotiations, the European Commission proposed a package of six pieces of legislation to reform the CEAS. In 2017, the European Parliament and the Council reached a broad agreement on all but two of these instruments: the reform of the Dublin system and the Asylum Procedure Regulation. The Dublin system to assign responsibility for asylum applications needs revision because it distorts responsibility towards members at the external borders of the EU. As such, it is an instrument that fundamentally undermines solidarity with frontline states, as evident in the 2015 episode. That the EU members continue to be stalled on its rehabilitation is telling.

In short, the 2015 events were not a significant catalyst for change for the CEAS, instead underscoring fragmentation between member states, reintroducing border controls, and aiming to pass the buck. The crisis did not end EU cooperation in the CEAS, but brought on an episode of "defensive integration" (Kriesi et al., 2021, p. 331): Member states engaged simultaneously in internal re-bordering (through temporarily suspending Schengen) and external re-bordering by attempting to shore up external borders (Schimmelfennig, 2021), for example through a robust European border and coast guard. The CEAS thus has a policy heritage that has produced minimum protection standards, if that, for the EU (Niemann & Zaun, 2018), and its inability to adequately address the 2015 fallout points to ongoing tendencies hardened by newer challenges, dissonant with EU's stated commitment to solidarity.

## 3. The European Union and the Quest for Inclusive Solidarity

Solidarity, though not new nor explicitly defined, is one of the EU's foundational principles, reflected in the preamble to the 1951 European Coal and Steel Community Treaty. At its core, solidarity is a willingness to share risk and responsibility. In most contexts, it also requires acceptance and support of the "other" (Kymlicka, 2015), especially in times of need. Both the EU and its member states are large and differentiated societies relying on robust systems of division of labor

and mutual dependence, and therefore emblematic of a shift from Durkheim's mechanical to organic solidarity. Banting and Kymlicka (2017, pp. 4–5) identify three types of solidarity: civic solidarity (tolerance and absence of prejudice), democratic solidarity (support for equality, human rights, due process, and the rule of law), and redistributive solidarity (transfer of resources towards the poor and vulnerable). The internal solidarity towards (fellow) member states envisioned by the EU aspires to all three and applies to a community conceived broadly as a group of states with shared goals and commitments. Practical applications of solidarity are therefore the basis of redistributive EU policies in social and regional policy which assist poorer members from EU coffers. While redistributive solidarity typically involves financial and material support, in the field of refugees and asylum seekers, it can additionally require redistributive relocation of people from areas that are highly impacted by influx to areas of lower density. The literature generally considers redistributive solidarity to be more challenging than civic or democratic solidarity (Banting & Kymlicka, 2017).

Article 80 of the 2007 Treaty on the Functioning of the European Union envisions "solidarity and fair sharing of responsibility including its financial implications, between the member states" (European Union, 2012). The Court of Justice of the European Union (CJEU) has repeatedly affirmed (internal) solidarity "based on mutual trust between the member states, as a general principle inferred from the nature of the Communities and the principle of loyal cooperation between the EC institutions and the member states" (European Parliament, 2011, p. 6). In addition to the trust and loyalty referenced here, Goldner Lang (2013) adds fairness towards the over-burdened and necessity to ensure stability in the EU as relevant markers. The EU frequently linked solidarity to responsibility during the refugee crisis, calling for managing the refuge challenge "by working together, in a spirit of solidarity and responsibility" (European Council, 2015a). There is, however, less agreement on whether solidarity extends to the relocation of people (European Parliament, 2011, pp. 31–36). Inclusive internal solidarity is implicit in the EU and imagined to extend to all members.

EU's commitments under international law also have an external element beyond the EU as they obligate recipient states to process asylum applications regardless of origin, thus extending human rights protections to those in flight. The global regime also expects solidarity through burden-sharing with countries experiencing large influxes. The refugee regime therefore also hinges on *external* solidarity with third countries as well as persons seeking protection, "others" from a national or EU standpoint. The EU is embedded in this system of external obligations to solidarity. The 2015 episode highlights shortfalls in both internal and external dimensions.

## 4. Populist Right-Wing Radical Parties and Exclusive Solidarity

Populism, on the rise in Europe since the 1990s, stands in stark contrast to inclusive and global solidarity. Populists juxtapose the "pure" people and the "corrupt" elite, privileging "the will of the people" (Mudde & Rovira Kaltwasser, 2017; Müller, 2016). While there are examples of populism on the left, it manifests mostly on the right. Crises provide fertile ground for its activation. Typically, these parties are nativist, maintaining that "nonnative elements (persons or ideas) are fundamentally threatening to the homogeneous nation-state" (Rooduijn, 2018). In addition to expansively imagining the "other," and therefore leaning exclusionary, they also tend to be authoritarian, anti-pluralist, frequently Eurosceptic, lay exclusive claim to representing "the people," and consider all others to be illegitimate outsiders (Müller, 2016). Mudde and Rovira Kaltwasser (2013) show the prevalence of exclusionary populism in Europe in material (exclusion from resources), political (exclusion from participation), and symbolic ways.

Populist right-wing radical (PRR) parties mobilize and leverage immigration as a wedge and nativism as a strategy for electoral success (Dostal, 2017; Ivarsflaten, 2008, p. 14; Mudde, 2017). Nativism goes hand in hand with what Triandafyllidou (2020, p. 801) terms "neo-tribal nationalism" premised on a rejection of "diversity from within or from outside" and is thus closed and exclusionary. These stances have political and policy consequences, resulting in welfare chauvinism and activating, as Schmidt and Spies (2014, p. 521) observe, "natives' racial prejudices to undermine redistributive policies" to preserve welfare benefits for "legitimate" citizens, all elements of material exclusion (see also Kymlicka, 2015; Marx & Naumann, 2018). Since EU rules offer a variety of protections for European citizens as quasi-insiders in member states, welfare chauvinism is most successfully directed at non-European "others" (such as refugees or non-Christians) and is a proxy for opposition to redistributive solidarity at the EU level. Cultural protectionism, a defense of the national community against " 'intruders' both from within (immigrants) and outside (supranational political institutions such as the European Union or the United Nations)" is also prevalent (Oesch, 2008). Nativism, whether presenting as welfare chauvinism or cultural protectionism, thus limits the "us" and expands the "other" and, while it insists on solidarity, such solidarity is narrow, highly exclusionary, and meant for the in-group.

The so-called refugee crisis contributed to a marked increase in welfare chauvinistic attitudes which, at least in the case of Germany, was present among supporters of all parties, though not of the same intensity (Marx & Naumann, 2018). PRR parties and their calls for material and political exclusion of the "other" cause political ripples beyond elections by forcing shifts in mainstream parties' immigration stances when they seek to preserve

votes by accommodating the populist right (Kymlicka, 2015; van Spanje, 2010) allowing them to influence policy from outside the government (Kallis, 2018, p. 67; König, 2017). PRRs, therefore, present migration governance with challenges both domestically and (directly or indirectly) in the EU, especially during times of crisis. The exclusionary thrust of PRR populism thus manifests itself as exclusionary solidarity at the national level and, from there, also threatens—or at least complicates—inclusive solidarity at the European level. Informed by this literature, what follows is a discussion of the failure of solidarity-inspired governance efforts in Europe, illustrated by how the domestic politics of populism might have militated against inclusive solidarity at both the national and European level, further enabling the defensive integration strategies of sealing off external borders while reinstituting internal ones. Germany's attempts to lead Europe out of the 2015 crisis, and where it failed and succeeded, provide an initial glimpse into these dynamics.

## 5. Between Alternative für Deutschland and a Hard Place: The Solidarity of German Right-Wing Populism

Alternative für Deutschland (AfD) was founded in 2013 by Eurosceptic economists and intellectuals disillusioned by Germany's center-right, just six months before the federal elections. It was a single-issue party that strongly rejected the Euro and the Eurozone bailout packages (Franzmann, 2016; Schmitt-Beck, 2017). Comprising also nationalist conservatives, AfD first entered elections in 2013 when, while below the 5% necessary to gain seats in the *Bundestag*, it garnered 4.7% of the national vote, a remarkable showing for a first-time party conjured at the last minute. In just five years, it was chairing the budget committee in the *Bundestag*. Within a year of its launch, AfD also performed well in the 2014 European Parliament elections and garnered 7.1% of the German national share, securing seven of the 96 German seats. Starting with the *Landtag* elections in 2014 (Saxony, Brandenburg, Thuringia), it began entering state legislatures with 9.7–12.2% of the vote. 2015 saw it expand into Western Germany with an even bigger electoral success after the summer of 2015, entering Saxony-Anhalt, Baden-Wuerttemberg, and Rheinland-Pfalz legislatures.

After an internal leadership change that saw the nationalist and anti-immigration wing prevail, Frauke Petry, known for her anti-Islamist views and her calls for firing on people if necessary to prevent illegal border crossings, took the reins and the party pivoted sharply towards anti-immigration, nativist and nationalist rhetoric. Enjoying particular success in Eastern Germany, AfD launched into a strident critique of Angela Merkel's emphasis on Germany's *Willkommenskultur* ("welcome culture") through its *Herbstoffensive 2015* ("fall offensive 2015"). The crisis framing was purposeful as populists frequently need to maintain an air of permanent (if manufactured) crisis to agitate (Müller, 2016). Dubbing the summer of 2015 as *Asylchaos* ("asylum chaos"), AfD's new leaders Petry and Jörg Meuthen accused the government of inviting uncontrolled immigration and framing the issue as "the people's will vs. government/elite mismanagement" (Geiges, 2018; Schmitt-Beck, 2017).

AfD politicians clearly saw mobilization potential in the events of the summer of 2015. Alexander Gauland, a long-time nationalist conservative CDU member of the *Bundestag* who later became the co-leader of AfD, thought the influx and the government's handling thereof was "a gift" for AfD; Björn Höcke, leading the right wing of the AfD, implored: "Asylum is a topic where the AfD can and must score points now" (as cited in Geiges, 2018, p. 52, author's translation). The emergent themes were uncontrolled mass migration causing a crisis and draining resources from citizens (Petry, as cited in Geiges, 2018, p. 60, asked: "How social is Germany really *to its own citizens*?") and an emphasis on being overrun at home and in the region (Petry, as cited in Geiges, 2018, p. 57, said: "The simple fact is that neither Germany nor other European countries have an unlimited capacity to receive"). She also clearly securitized the issue: "In 2015, it seems completely unproblematic that a million, maybe more, people migrate to Germany, people we don't know and whose intentions in Germany are unclear" (as cited in Geiges, 2018, p. 58). Speaking to European ramifications, Höcke maintained that Europe would suffer because of a "welcome party that got out of hand" (as cited in Geiges, 2018, p. 58). AfD's rallies dubbed Chancellor Merkel the *Weltflüchtlingskanzlerin* ("world refugee Chancellor"), allowing the AfD to lay claim to the issue while mainstream parties were trying hard not to politicize.

By this point, migration had become the single most important issue for the German population during the elections (Dostal, 2017) and AfD scored important electoral gains in the *Landtag* elections in 2016. In February 2016, CDU scrambled to contain the damage during the federal election season, while positioning themselves as the mainstream address for the national conservative right (as opposed to the AfD), an attempt they would repeat in 2018, with equally limited success. AfD's electoral success continued with the federal election of 2017, when it achieved 12.6% of the vote and became the third-largest party in the *Bundestag* and the main opposition after the CDU/CSU/SPD coalition. Gauland and the economist Alice Weidel who led the party at the *Bundestag*, both displayed significant anti-immigrant tendencies: The former cast the refugee issue as a watering down of German identity, and the latter framed it as an economic burden. Both positions are consistent with situating solidarity with its "rightful" beneficiaries, namely (a narrowly-defined) German people. Both display elements of material and political exclusion.

In January 2018, AfD's first federal legislative proposal was an attempt at hindering family reunification (material exclusion) to avoid "the continued arrival

of millions of relatives and the *threat to the welfare state*, society, domestic peace, and constitutional order" (Knight, 2018, emphasis added). In April 2018, AfD even went to the *Verfassungsgericht* (German Constitutional Court) with three complaints that the 2015 actions of Chancellor Merkel's government had infringed on the rights of the *Bundestag*, as well as violated the separation of powers. While AfD's complaints were unanimously rejected by the *Verfassungsgericht* in December 2018, the move was a personal attack against Chancellor Merkel and kept the "crisis" in the headlines by portraying the German people as the victims of irresponsible government/elite actions. Migrants themselves were also not spared. In a recent parliamentary debate on the budget, Weidel said: "Burkas, girls with headscarves, men with knives, and other ne'er do wells will not secure our prosperity, our economic growth and, above all, *our welfare state*" (Frankfurter Allgemeine Zeitung, 2018, author's translation, emphasis added). In both cases, Germany and German people are depicted as the victim, first at the hands of the migrant "other" and then at the hands of the irresponsible government. Rösel and Samartzidis (2018, p. 10) show that AfD succeeds in places where the electorate already feels that government policies do not demonstrate sufficient solidarity with the disenchanted voters. Recasting solidarity as a responsibility towards only "deserving Germans" is therefore both a response to this disenchantment and a successful electoral strategy (Weiland, 2018).

This strategy continued to pay off in the *Landtag* elections in Saxony and Brandenburg in September 2019, where AfD garnered 27.5% and 23.5% of the vote respectively. In October 2019, it received 22% of the vote in Thuringia, a state that was formerly run by a left coalition. In the 2021 federal elections, AfD maintained its strength in the east but suffered losses elsewhere in Germany, possibly due to pandemic concerns outweighing immigration. Domestically, it is plausible to maintain that the ascendance of the populist stance of the AfD has caused a shift in attitudes towards asylum seekers from mainstream parties. This is quite evident in the coalition agreements between CDU and the SPD, partners in the "grand coalitions" of 2013 and 2017. While the former agreement casts migration as an opportunity, the latter (post-2015 and post-AfD) cautions that the carrying capacity of the country must not be strained any further (Rasche, 2018). Public opinion likewise swayed: In 2017, 56% of Germans supported a quantitative limit for refugees living in Germany, and 26% considered refugees to be Germany's main foreign policy issue (ahead of all issues polled; see Erlanger, 2017, p. 8).

AfD was clearly able to capitalize on the wedge issue of migration and frame the German response as irresponsible inclusiveness that rendered the German people victims of elite largesse. It insisted that German loyalties should lie with Germans, not with dangerous others. The souring of the initially welcoming public opinion also helped. The November 15 Paris attacks, followed in short succession by the 2015 New Year's Eve sexual violence in Cologne and Hamburg and the 2016 Islamist terror attack that targeted a Berlin Christmas market caused a significant shift in public opinion, played into AfD's hands, and reignited debates about German asylum policies (Dostal, 2017, p. 592). These developments almost resulted in the collapse of the German government in 2018 and, if nothing else, hastened the end of Chancellor Merkel's remarkable reign in German politics. In short, populist politics by AfD and the mainstream efforts to retain votes reframed solidarity towards narrower and exclusionary ends both materially and in political terms.

## 6. The EU Level: Solidarity's Unfulfilled Promise

Our gaze now shifts to the European level. The EU, through CEAS, had been attempting to govern asylum for several decades before 2015. Some instruments of solidarity were already in place before the summer of 2015. Importantly, the TPD (2001/55/EC) was devised in 2001 as a response to the displacement from the dissolution of Yugoslavia and was designed to respond to situations of mass influx from third countries. Article 1 of the TPD lays out its dual purpose: providing protection (for up to three years) to those fleeing conflict in large numbers and doing so in a manner that displays burden-sharing among member states. It is therefore an instrument that has potential for both external solidarity (with those fleeing) and internal solidarity (with members most affected). This solidarity would be inclusive (influx from any origin would be considered) and could assist countries such as Germany, Sweden, and Greece, which bore the main brunt of the influx. It needed to be activated by a qualified majority decision at the suggestion of the European Commission and the request of a member state. Curiously, this instrument was never activated, although Italy attempted, unsuccessfully, in 2011 in response to the increase in arrivals after the Arab Spring (Gluns & Wessels, 2017). Given the disproportionate impact of this mass influx in Germany, it was the most likely country to seek to activate this instrument in 2015. But it didn't.

This can be attributed to various factors. First, what constitutes a mass influx is vague and it is unclear whether the mass influx should be generally experienced in Europe or in a particular country. Second, the TPD does not have a system for redistributing the arrivals and hinges on the willingness of both the receiving country and the fleeing individual for relocation to occur, making redistributive solidarity through relocation complicated. Third, the deep divisions between member states on how to respond and the relatively small perceived benefits would have prevented an affirmative vote. While Germany could initially count on the support of its coalition of the willing (Austria, Belgium, Luxembourg, Sweden, Finland, Slovenia, Portugal, France, and Greece), this coalition became increasingly tenuous. Merkel eventually even lost the firm support of Austria and France.

The coalition of the unwilling, on the other hand, included Hungary, Poland, Czechia, Slovakia, and the UK (von Schmickler & Börnsen, 2016), making German efforts risky in political terms. And finally, Germany would incur significant financial costs to implement the TPD if approved while receiving little in return from the EU (Gluns & Wessels, 2017).

With this (relatively weak) solidarity instrument untapped, Chancellor Merkel was forced to consider other paths to stem the flow and address inequity. Germany's initial efforts were congruent with inclusive solidarity at home and in Europe. However, when the dust settled, the policies that were adopted were solidarity-deficient. Internal inclusive solidarity within the EU involves protections against racism and xenophobia and promotion of diversity in the civic realm, protection of equality, due process, and access to courts in the democratic realm, and welfare and social services for protection seekers, and burden-sharing and assistance to member states in the redistributive realm. External inclusive solidarity with those outside the EU involves equal application of international law, nondiscrimination based on national origin and religion, and resisting deflective policies that restrict access. The EU could also uphold human rights protections, and redistribute risk and responsibility by supporting resettlement into its territory. EU's efforts at external and redistributive solidarity in particular fell well short of this potential.

EU's efforts to restrict and deflect asylum-seeking in its territory predate 2015 and is well-documented (Lavenex, 2018; Zaun, 2018) and have been attributed to its dysfunctional institutional dynamics (Lehmann, 2018), identity politics (Börzel & Risse, 2017), and power politics between refugee receiving countries and others (Zaun, 2018). EU's internal responsibility sharing resolve, not particularly strong to begin with, contributed to the challenges it is currently facing. In some ways, Schengen's asylum provisions, solidified with Dublin, were redistributive mechanisms driven by the notion of responsibility (nominally amounting to relocation) but unencumbered by significant solidarity (Goldner Lang, 2013; Lott, 2022; Paoli, 2016; Wagner et al., 2018).

In addition to the TPD discussed above, the EU also has some internal redistributive solidarity instruments. Financial instruments, such as the European Refugee Fund, seek to assist with financial burden-sharing (primarily for member states). Its redistributive efforts to share people are much less robust and exacerbate geographic vulnerabilities in perimeter countries. Member states' commitment to displaying external solidarity has fared even worse, with the undesirable costs of refugee protection typically driving political decisions. These serious institutional shortcomings, coupled with a weak will, and an unusually pronounced refugee influx on the heels of the financial crisis hampered the EU's ability to respond effectively to the current crisis. Pleas for solidarity, whether from Germany or EU institutions, largely remained in the realm of the rhetorical.

The events of 2015 laid bare the weaknesses of the EU's capacity to equitably manage this influx as well as the limits of the promise of internal and external solidarity. This period was marked by a sharp increase in arrivals in Europe and their problematically uneven distribution. Importantly, the percentage of asylum seekers was very small compared to the EU population (0.22%) but masked the variance between member states: while Slovakia and Poland had 0% asylum seekers by percentage of population, Germany had 0.69% (more than three times the EU average), Austria had 0.97%, and Sweden 1.33% (roughly six times the EU average). Meanwhile, the numbers of UNHCR's populations of concern were dramatically higher in other places closer to the Syrian conflict: 3.77% for Turkey, 9.31% in Jordan, 12.61% for Iraq, and 17.6% in Lebanon (data compiled from UNHCR, 2017). Such variance should have triggered both internal and external solidarity mechanisms in CEAS. Instead, it yielded ad hoc restrictive responses by many EU members, Chancellor Merkel's calls notwithstanding, and implementation of policies intended to pass on, rather than share, responsibility to other states within and outside the EU. Despite requests from frontline countries such as Greece and Italy, no substantial internal solidarity was forthcoming.

External solidarity with asylum seekers and non-EU states struggling with the developments was also in short supply, leaving many highly exposed and vulnerable. Unlawful push-backs and collective expulsions, especially in Central and Eastern Europe, were coupled with detention of arrivals, highly problematic under international law, and raising questions under the European Convention on Human Rights (Amnesty International, 2015, p. 11). The internal mechanisms of assigning responsibility for asylum seekers based mainly on point of arrival (the Dublin system) was already dysfunctional from a solidarity standpoint, placing undue burden on perimeter member states, especially those in the geographic vicinity of the flows. Dublin had been the target of various legal challenges at the European Court of Human Rights and the CJEU even before 2015. This system had additional adverse consequences for the receiving countries and asylum seekers, a dual failure in internal and external solidarity. It was under these circumstances that Germany, which was about to start feeling the impact of AfD's ascent, attempted to lead the EU towards a collective solution as AfD and its populist agenda were also beginning to make inroads in the EU.

## 7. Germany's Leadership and the Elusiveness of Solidarity: The Temporary Relocation System and the EU–Turkey Deal

In 2015, Germany needed to assert leadership, championing two remaining paths. The first was to put in place a mechanism at the EU level to relocate arrived asylum seekers who were distributed very unevenly. This, the temporary EU relocation system, was an intra-EU

redistributive solidarity mechanism. The second, the EU deal with Turkey, was not a solidarity instrument but was rather designed to shift responsibility away from the EU and its member states. Germany played a key role in both schemes. Only the latter non-solidarity scheme was successful.

The temporary EU relocation system, a relatively strong instrument of redistributive/material solidarity proposed by the European Commission, was championed by Germany. In two stages, the Commission rolled out a plan to redistribute 160,000 persons throughout the EU territory in an attempt at solidarity through sharing of people. The decision overrode opposition from the V4 countries (Czech Republic, Hungary, Poland, and Slovakia). In December 2015, Hungary and Slovakia challenged the decision by filing lawsuits with the CJEU to annul this decision (https://curia.europa.eu). While the CJEU ultimately found against them, their efforts to scupper solidarity based on a permanent quota system was ultimately successful (Kirchner, 2020). The temporary relocation system actually produced very modest actual transfers of people. By April 2017, only 16,340 of the initial 160,000 were transferred, a tiny portion of the target five months before it expired on 27 September 2017 (European Commission, 2017). The acceptance of relocated individuals also remained uneven, with Germany and France taking the lead in absolute numbers and only Malta and Finland meeting their quota. Hungary and Poland did not participate, the Czech Republic did not relocate anyone after May 2016 and Bulgaria, Croatia, and Slovakia met only 2% of their relocation targets. The fact that only 16,000 could be relocated in more than 18 months surely was not the high mark of internal solidarity (ECRE, 2017).

Subsequent efforts focused on developing a permanent quota-based system to redistribute persons. Italy had been asking for "obligatory burden-sharing" since 2009. Germany, which had its own federal quota mechanism, was also in favor but was unable to lead the EU on this, sidelined by countries with strong populist politics at home, including Italy, Austria, Hungary, Poland, and Slovakia. Negotiations at the EU level became mired in further discord. The analysis of an anonymous EU official is apt: "Unless countries can escape their domestic political agendas, [the relocation system], which is already wholly inadequate," would fail (Henley, 2016). Currently, the preference is for efforts at solidarity to be on a voluntary basis as opposed to binding quotas, despite the obvious weaknesses of such a system. At a December 2017 EU meeting, by which point AfD had already become the main opposition party in the *Bundestag* by vilifying her welcoming policies, Chancellor Merkel insisted that "there can't be selective solidarity" only to be successfully rebuked by the V4 (Nielsen et al., 2017). Redistributive solidarity thus remains elusive.

The EU–Turkey deal, by contrast, an exercise in avoiding responsibility, was struck with remarkable ease. In December 2013, Cecilia Malmström, then Home Affairs Commissioner of the European Commission, signed a readmission agreement with then Turkish Prime Minister Davutoğlu. This agreement obligated Turkey to readmit third-country nationals entering the EU illegally while in transit through Turkey. In return, the EU promised Turkey help in bolstering its borders and put visa-free travel for Turks on the table. At the time of the agreement, there were already a significant number of Syrian refugees in the country, roughly one million, but this would swell to three million in the next three years. In April 2015, when some of these displaced persons started to enter EU territory, a special European Council resolved to "step up cooperation with Turkey" and also reinforced political cooperation with Africa to tackle illegal migration, smuggling, and trafficking (European Council, 2015b). In May 2015, EU High Representative Mogherini, and Neighborhood and Enlargement Commissioner Hahn met their counterparts in Turkey. An EU press release read:

> In particular, we focused on the migration challenge, which has been brought so sharply into focus by the recent tragedies in the Mediterranean Sea. We agreed to ask our services to prepare a plan to enhance our cooperation…on preventing illegal migration flows. (European Commission, 2015)

After the summer of 2015, and the bruising domestic political developments in Germany, Chancellor Merkel finally brokered a deal with Turkey to stem the influx In September 2015, an informal meeting of EU heads of state resolved to reinforce dialogue with Turkey. In a follow-up meeting in October, the European Council adopted a Joint Action Plan to stem the flow of refugees ("European Union: EU–Turkey joint action," 2015). Soon thereafter, Chancellor Merkel visited Ankara, to shop this deal, dubbed the Merkel Plan (European Stability Initiative, 2015), and displayed a willingness to negotiate with Turkey despite its autocratic turn. She proposed a new agreement. Individuals who arrived in Greece without papers would be returned to Turkey. Turkey, in turn, would receive aid to help with the costs associated with the refugee influx. To sweeten the deal, visa-free travel for Turks was put on the table. In November 2015, when the Turkey Refugee Facility designated EUR 3 billion in assistance, European Council President Donald Tusk acknowledged Turkey's position as a transit country, stressing the expected role of Turkey in stemming these flows (Seufert, 2016). The 2015 negotiations yielded the 2016 EU–Turkey deal. The EU, and Germany in particular, were increasingly vulnerable to a second record-breaking summer of arrivals in 2016 and needed this agreement, despite the illiberal domestic behavior of their partner. It looked like "the 28 EU heads of state forged the March 18 deal with Turkey with their backs seemingly against the wall, and in an atmosphere of palpable panic" (Collett, 2016). This deal was highly effective in stemming the flows and externalizing responsibility. In the

month after its conclusion, arrivals decreased by 90% ("Number of migrants," 2016). In early 2017, the EU predicted a 98% reduction over the previous year (European Council, 2017).

These two episodes, both led by a Germany reeling from the effects of the 2015 arrivals and its domestic politics, underscore the limits of solidarity in the EU and the shortfalls of EU's asylum governance embodied in CEAS. The difficulty of securing internal solidarity through the relocation system, temporary or permanent, stands in sharp contrast with the ease of engineering the EU–Turkey deal, allowing the EU to eschew external solidarity. Interestingly, while the refugee influx subsided thanks to the EU–Turkey deal, the populist politics surrounding it would persist and even consolidate at the European level.

### *7.1. Populism at the European Level: Alternative für Deutschland and the European Parliament Elections*

Germany's AfD is strongly Eurosceptic. This is reflected in its party program, which calls for power to be restored to nation-states: It maintains that, with the Lisbon treaty, "political elites have taken steps to permanently transform the EU into a centralised state" despite popular opposition. Here, we encounter the popular will vs. elite imposition argument once again (AfD, 2017, p. 16). AfD also opposes the 2016 Global Compact for Migration, an instrument that has elements of global solidarity, arguing that, just like Germany's, the EU's migration policies are misguided:

> We also want to prevent the looming risk of social and religious turmoil and the creeping extinction of European cultures…we advocate the complete closure of external EU borders….The AfD firmly opposes the introduction of a *solidarity tax* for the benefit of refugees. (AfD, 2017, pp. 58, 63)

It also maintains that "Africa cannot be saved in Europe" (AfD, 2017). Here, AfD is rejecting solidarity internally with fellow EU members, and externally with third countries. The solidarity that AfD champions is exclusive and boundedly national.

AfD campaigned for European Parliament elections in 2019 along these lines and captured 11% of the vote (up from 7.3% in 2014), still making hay of the by-then subsided refugee crisis. The AfD European Parliament elections manifesto in 2019 calls for a return to a "Europe of nations," upholding of national sovereignty in asylum and immigration policies, a complete rethinking of the EU's humanitarian programs, an end to regional burdens for Germany, return migration instead of immigration, securing borders, rollbacks on freedom of movement privileges, "Dexit" if the EU did not undertake sufficient reforms, and the ironic call for the abolishing of the European Parliament. AfD maintained that the EU's current course on immigration and asylum, pushed by the EU elite, would "put European civilization in existential danger….All migration to Europe should be limited and guided in such a way that the identity and culture of European nations would be preserved under all circumstances" (AfD, 2019a, p. 37, author's translation). Its election posters reflected this position (see Figure 1). There are clear elements of material exclusion in these calls, but also the potential of political exclusion (excluding Germany from the EU and also excluding migrants from decision making).


**Figure 1.** AfD European Parliament election posters, May 2019. Text on the left reads: "Can you manage Brussels? Secure the borders!" (photo by the author). Text on the right reads: "One thing is certain [*sicher*, "safe"]: It's not the border! Out of love for Germany. Freedom, not Brussels" (AfD, 2019b).

In this, AfD counted on support from—and actively campaigned with—its European partners in Italy (Salvini's Lega Nord) and Austria (Strache's beleaguered Austrian Freedom Party [FPÖ]) and beyond ("AfD demands," 2019). In fact, in April 2019, AfD's *Spitzenkandidat* Meuthen, sitting next to Salvini, the Danish People's Party and a representative of the populist Finns, endorsed the campaign slogan "Towards a Common Sense Europe! Peoples Rise Up" ("Matteo Salvini tries to unite Europe's nationalists," 2019). Just five days ahead of the European Parliament elections, additional leaders of the main Euroskeptic populist parties (Wilders of the Dutch Party for Freedom and Marine Le Pen of France's National Rally) attended a rally in Milan where organizer Salvini proclaimed: "Here you won't find the far-right, but the politics of good sense. The extremists are those who have governed Europe for the past 20 years" (Kirby, 2019). Populist parties did well in the 2019 European Parliament elections, but perhaps not as well as they would have hoped. Nonetheless, the contagion hypothesis tells us that PRR parties do not need to be in power to have weight.

Pushback at the EU level can partially be traced to domestic developments in Germany. After the 2015 Cologne attacks attributed to men of non-European origin, the Slovakian Prime Minister Fico, supported by the Czech prime minister, called the EU to an emergency summit, chiding his colleagues for trivializing "the security risks associated with unregulated and uncontrolled migration within the EU….We don't want something like what happened in Germany taking place in Slovakia" ("After Cologne," 2016). These developments have buoyed AfD and xenophobic tendencies in the populace, also allowing populist elements in other countries to point to Germany as an example of what to avoid. AfD's rise thus had domestic and EU consequences, especially when considered in the broader context of PRR developments in other EU member states.

## 8. Conclusion

What are the prospects for the future of the CEAS and what role can rising populism play in the governance of immigration and asylum in the EU? Reviewing the so-called refugee crisis from the vantage point of Germany starts to give us some clues. As an EU member state receiving a disproportionate number of asylum seekers and embodying a series of rather serious logistical and political challenges, Germany, and in particular Chancellor Merkel, had a moral, political, and legal base and incentive for evoking EU-wide solidarity (Zaun, 2018). A long-time driver of the European integration project, it also had, at least in theory, the requisite power with which to wield leadership and influence. There were significant constraints for this, however.

At the domestic level, anti-immigrant sentiment mobilized by the AfD precipitated strains within Chancellor Merkel's Christian Democrats, and created incentives for centrist parties to track to the right to stop bleeding votes to AfD. Meanwhile, AfD pivoted its party platform towards a nativist stance, used migration as a wedge issue, and reframed solidarity in narrow and exclusionary terms, both domestically and during the EP elections. The politicization of the issue forced Merkel away from Germany's initial liberal position and left her vulnerable to attack from AfD and others. At the European level, Germany's pleas for EU-wide solidarity within the EU remained unfulfilled as several member states, most loudly in Central and Eastern Europe, balked at the internal solidarity targeted by redistribution within the EU. Squeezed at home from both her own party and facing AfD contagion, Chancellor Merkel was unable to move the solidarity needle at the European level. It is hard to disagree with Bulmer (2018, p. 21), who observes that the domestic struggles in Germany "displayed how electoral concerns about the AfD…can have ramifications all the way up to the European Council, weakening Merkel's negotiating position." The 2015 episode thus demonstrates a failure of both inclusive internal solidarity and, to an even larger extent, external and global solidarity. In Germany, AfD was able to redefine solidarity in narrower nativist and nationalist terms and cause political shifts to the right through contagion effects.

At the EU level, the internal redistributive solidarity logic of the relocation plan was rejected in favor of an approach that would instead externalize responsibility to third parties. Meanwhile, populist politics and exclusionary approaches in material and political terms are now embedded in national politics and the EU through the Council and the Parliament. The CEAS thus carries forward the restrictionist tendencies of European integration in asylum matters. Its various reforms are stalled and have not bucked this trend. The 2015 episode clearly points to current developments as defensive integration. The Commission's September 2020 New Pact for Migration and Asylum attempts to break the stalemate but fundamentally retains approaches that rely on externalization, deterrence, containment, and return, pointing to continuity rather than change. Meanwhile, EU's response to the 2022 influx occasioned by the war in Ukraine is markedly different from the 2015 episode. Since the onset of the Russian invasion on 24 February 2022, over 6.5 million have fled to neighboring countries as of June 2022, with more than 7 million displaced internally. The vast majority of these individuals are in Poland (1,143.000), Germany (780,000), Czech Republic (360,000), Italy (125,000), Spain (109,500), Romania (85,000), Slovakia (80,000), and a number of other EU members in smaller numbers (UNHCR, 2022).These are numbers that exceed the 2015 influx. Unlike the 2015 episode, over 90% of these are women and children. And, unlike in 2015, the EU triggered, for the first time ever, the TPD unanimously on 4 March 2022, a mere ten days after the Russian invasion. TPD provides residence permits and access to the labor market in the EU for Ukrainians and third country citizens residing in Ukraine,

conditions more generous than was available in 2015. The activation of the TPD moves the needle towards internal and external material solidarity if not also providing a potential for redistributive solidarity. Interestingly, populist politics are alive and well in a number of countries most affected by arrivals and yet there is no comparable populist resistance. It appears that Ukrainians are not othered in Central and Eastern European countries and elsewhere as the 2015 arrivals were. This puzzle calls for further research and attention.

## Conflict of Interests

The author declares no conflict of interest.

## References


AfD demands radical EU reforms to avoid Germany's "Dexit." (2019, January 18). *Deutsche Welle*. https://www.dw.com/en/afd-demands-radical-eu-reforms-to-avoid-germanys-dexit/a-47066983

After Cologne, Slovakian PM Fico seeks emergency EU summit. (2016, January 8). *Deutsche Welle*. https://www.dw.com/en/after-cologne-slovakian-pm-fico-seeks-emergency-eu-summit/a-18968266

Alternative für Deutschland. (2017). *Manifesto for Germany*.

Alternative für Deutschland. (2019a). *Europawahlprogramm* [European election program].

Alternative für Deutschland. (2019b). *Werben für ein Europa der Freiheit* [Campaigning for a Europe of freedom]. https://www.afd.de/___werbematerial_alt

Amnesty International. (2015). *Refugee crisis: Balkans border blocks leave thousands stranded.* https://www.amnesty.org/en/latest/news/2015/11/refugee-crisis-balkans-border-blocks-leave-thousands-segregated-and-stranded-in-greece

Banting, K., & Kymlicka, W. (2017). Introduction: The political sources of solidarity in diverse societies. In K. Banting & W. Kymlicka (Eds.), *The strains of commitment: The political sources of solidarity in diverse societies* (pp. 1–58). Oxford University Press.

Börzel, T. A., & Risse, T. (2017). From the euro to the Schengen crises: European integration theories, politicization, and identity politics. *Journal of European Public Policy*, *25*(1), 83–108. https://doi.org/10.1080/13501763.2017.1310281

Bulmer, S. (2018). Germany and the European Union: Post-Brexit hegemon? *Insight Turkey*, *20*(3), 11–28.

Collett, E. (2016). *The paradox of the EU–Turkey refugee deal*. http://www.migrationpolicy.org/news/paradox-eu-turkey-refugee-deal

Comte, E. (2020). *The European asylum system: A necessary case of differentiation*. EUIDEA.

Dostal, J. M. (2017). The German federal election of 2017: How the wedge issue of refugees and migration took the shine off chancellor Merkel and transformed the party system. *Political Quarterly*, *88*(4), 589–602.

ECRE. (2017). *Commission report reveals downscaled ambition on relocation*. http://www.ecre.org/commission-report-reveals-downscaled-ambition-on-relocation

Erlanger, S. (2017). Between ambition and ambiguity. *Berlin Pulse*: *German Foreign Policy in Perspective*, *2017*, 7–10. https://koerber-stiftung.de/site/assets/files/18624/koerber_theberlinpulse_web.pdf

European Commission. (2015). *Joint statement following a working dinner with Turkish ministers Cavusoglu and Bozkir*.

European Commission. (2017). *Report from the commission to the European Parliament, the European Council and the Council: Eleventh report of relocation and resettlement* (COM(2017) 212 final).

European Council. (2015a, September 23). *Informal meeting of EU heads of state or government on migration, 23 September 2015—Statement* [Press Release]. https://www.consilium.europa.eu/en/press/press-releases/2015/09/23/statement-informal-meeting

European Council. (2015b, April 23). *Special meeting of the European Council, 23 April 2015—Statement* [Press Release]. http://www.consilium.europa.eu/en/press/press-releases/2015/04/23-special-euco-statement

European Council. (2017, February 3). *Malta declaration by the members of the European Council on the external aspects of migration: Addressing the central Mediterranean route*. https://www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration

European Parliament. (2011). *The Implementation of Article 80 TFEU—On the principle of solidarity and fair sharing of responsibility, including its financial implications, between the member states in the field of border checks, asylum and immigration*. https://www.europarl.europa.eu/thinktank/en/document/IPOL-LIBE_ET(2011)453167

European Stability Initiative. (2015). *The Merkel plan: Restoring control; retaining compassion—A proposal for the Syrian refugee crisis*. ESI.

European Union. (2012). Consolidated versions of the treaty on European Union and the Treaty on the Functioning of the European Union. *Official Journal of the European Union*, C 326.

European Union: EU–Turkey joint action plan (2015, October 23). *Asia News Monitor*. https://search.proquest.com/docview/1725048092

Frankfurter Allgemeine Zeitung. (2018, May 16). *AfD-chefin Weidel löst Tumulte aus: "Burkas, Kopftuchmädchen und sonstige Taugenichtse"* [AfD Chef Weidel causes uproar: "Burkas, girls with headscarves and other ne'er do wells"] [Video]. https://www.youtube.com/watch?v=tIXZ7LZWShE

Franzmann, S. T. (2016). Calling the ghost of populism: The AfD's strategic and tactical agendas until the EP election 2014. *German Politics*, *25*(4), 457–479.

Geiges, L. (2018). Wie die AfD im Kontext der "Flüchtlingskrise" mobilisierte. Eine empirisch-qualitative Untersuchung der "Herbstoffensive 2015" [How the AfD mobilized in the context of the "refugee crisis"]. *Zeitschrift für Politikwissenschaft*, *28*(1), 49–69. https://doi.org/10.1007/s41358-018-0126-3

Gluns, D., & Wessels, J. (2017). Waste of paper or useful tool? The potential of the temporary protection directive in the current "refugee crisis." *Refugee Survey Quarterly*, *36*(2), 57–83. https://doi.org/10.1093/rsq/hdx001

Goldner Lang, I. (2013). Is there solidarity on asylum and migration in the EU? *Croatian Yearbook of European Law & Policy*, *9*(9), 1–14. https://doi.org/10.3935/cyelp. 09.2013.172

Guild, E. (2021). Promoting the European way of life: Migration and asylum in the EU. *European Law Journal*, *26*(5/6). https://doi.org/10.1111/eulj.12410

Henley, J. (2016, March 4). EU refugee relocation scheme is inadequate and will continue to fail. *The Guardian*. https://www.theguardian.com/world/2016/mar/04/eu-refugee-relocation-scheme-inadequate-will-continue-to-fail

Ivarsflaten, E. (2008). What unites right-wing populists in western Europe? *Comparative Political Studies*, *41*(1), 3–23. https://doi.org/10.1177/0010414006294168

Juncker, J. C. (2016). *European solidarity in a world of crises.* Project Syndicate. https://www.project-syndicate.org/onpoint/european-solidarity-greek-crisis-refugees-by-jean-claude-juncker-2016-01?barrier=accessreg

Kallis, A. (2018, July 1). The European Union and the mainstreaming of the radical right. *Insight*, *20*, 61–76.

Kirby, J. (2019, May 22). This week's European Parliament elections will test the strength of far-right populism. *Vox*. https://www.vox.com/2019/5/22/18526967/european-parliament-elections-2019-salvini-le-pen

Kirchner, T. (2020, April 2). Solidarität geht nur freiwillig [Solidarity works only voluntarily]. *Süddeutsche Zeitung*. https://www.sueddeutsche.de/politik/eugh-fluechtlinge-kommentar-1.4865595

Knight, B. (2018, January 18). Germany's far-right AfD targets refugees in first bill before parliament. *Deutsche Welle.* https://www.dw.com/en/germanys-far-right-afd-targets-refugees-in-first-bill-before-parliament/a-42206338

König, P. D. (2017). Intra-party dissent as a constraint in policy competition: Mapping and analysing the positioning of political parties in the German refugee debate from august to November 2015. *German Politics*, *26*(3), 337–359.

Kriesi, H., Altiparmakis, A., Bojar, A., & Oana, I. (2021). Debordering and re-bordering in the refugee crisis: A case of "defensive integration." *Journal of European Public Policy*, *28*(3). https://doi.org/10.1080/13501763.2021.1882540

Kymlicka, W. (2015). Solidarity in diverse societies: Beyond neoliberal multiculturalism and welfare chauvinism. *Comparative Migration Studies*, *3*(1), 1–19. https://doi.org/10.1186/s40878-015-0017-4

Lavenex, S. (2018). "Failing forward" towards which Europe? Organized hypocrisy in the Common European Asylum System. *Journal of Common Market Studies*, *56*(5), 1195–1212. https://doi.org/10.1111/jcms.12739

Lehmann, K. E. (2018). The crisis of the European Union as a complex adaptive system. *JCMS: Journal of Common Market Studies*, *56*(4), 971–988.

Lott, G. (2022). *The Dublin convention and the introduction of the "first entry rule" in the allocation of asylum seekers in Europe.* Cambridge University Press. https://doi.org/10.1017/s0960777321000746

Marx, P., & Naumann, E. (2018). Do right-wing parties foster welfare chauvinistic attitudes? A longitudinal study of the 2015 "refugee crisis" in Germany. *Electoral Studies, 52*, 111–116.

Matteo Salvini tries to unite Europe's nationalists. (2019, April 8). *Economist*. https://www.economist.com/europe/2019/04/08/matteo-salvini-tries-to-unite-europes-nationalists

Mudde, C. (2017). Introduction to the populist radical right. In C. Mudde (Ed.), *The populist radical right* (pp. 1–10). Routledge.

Mudde, C., & Rovira Kaltwasser, C. (2013). Exclusionary vs. inclusionary populism: Comparing contemporary Europe and Latin America. *Government and Opposition*, *48*(2), 147–174. https://doi.org/10.1017/gov.2012.11

Mudde, C., & Rovira Kaltwasser, C. (2017). *Populism: A very short introduction*. Oxford University Press.

Müller, J. (2016). *What is populism?* University of Pennsylvania Press.

Nielsen, N., Maurice, E., & Teffer, P. (2017, December 15). EU asylum debate reopens old wounds. *EU Observer*. https://euobserver.com/migration/140300

Niemann, A., & Zaun, N. (2018). EU refugee policies and politics in times of crisis: Theoretical and empirical perspectives. *Journal of Common Market Studies*, *56*(1), 3–22. https://doi.org/10.1111/jcms.12650

Number of migrants arriving in Greece dropped 90% in April. (2016, May 13). *Frontex*. https://reliefweb.int/report/greece/frontex-number-migrants-arriving-greece-dropped-90-april

Oesch, D. (2008). Explaining workers' support for right-wing populist parties in western Europe: Evidence from Austria, Belgium, France, Norway, and Switzerland. *International Political Science Review*, *29*(3), 349–373. https://doi.org/10.1177/0192512107088390

Paoli, S. (2016). Migration in European integration: Themes and debates. *Journal of European Integration History*, *22*(2), 279–296. https://doi.org/10.5771/0947-9511-2016-2-279

Rasche, L. (2018). *Change and continuity in Germany's migration policy*. Jacques Delors Institut.

Ripoll Servent, A., & Trauner, F. (2014). Do supranational EU institutions make a difference? EU asylum law before and after "communitarization." *Journal of European Public Policy*, *21*(8), 1142–1162.

Rooduijn, M. (2018, November 20). Why is populism suddenly all the rage? *The Guardian*. https://www.theguardian.com/world/political-science/2018/nov/20/why-is-populism-suddenly-so-sexy-the-reasons-are-many

Rösel, F., & Samartzidis, L. (2018). Wert- statt Geldmangel [Values, not monetary, deficiency]. *Ifo Dresden berichtet*, *25*(3), 9–13.

Schimmelfennig, F. (2021). Rebordering Europe: External boundaries and integration in the European Union. *Journal of European Public Policy*, *28*(3), 311–330. https://doi.org/10.1080/13501763.2021.1881589

Schmidt, A. W., & Spies, D. C. (2014). Do parties "playing the race card" undermine natives' support for redistribution? Evidence from Europe. *Comparative Political Studies*, *47*(4), 519–549. https://doi.org/10.1177/0010414013488542

Schmitt-Beck, R. (2017). The 'Alternative für Deutschland in the electorate': Between single-issue and right-wing populist party. *German Politics, 26*(1), 124–148.

Seufert, G. (2016). *Turkey as partner of the EU in the refugee crisis*. Stiftung Wissenschaft und Politik.

Trauner, F., & Lavenex, S. (2015). A comparative view: Understanding and explaining policy change in the area of freedom, security and justice. In F. Trauner & A. Ripoll Servent (Eds.), *Policy change in the area of freedom, security, and justice: How EU institutions matter* (pp. 219–240). Routledge.

Triandafyllidou, A. (2020). Nationalism in the 21st century: Neo-tribal or plural? *Nations and Nationalism*, *26*(4), 792–806. https://doi.org/10.1111/nana.12650

Uçarer, E. M. (2022). Area of freedom, security and justice. In M. Cini & N. Perez-Solorzano Borragan (Eds.), *European Union politics* (pp. 308–323). Oxford University Press.

UNHCR. (2017). *UNHCR statistical yearbook 2015*.

UNHCR. (2022). *Ukraine refugee situation.* https://data.unhcr.org/en/situations/ukraine

van Spanje, J. (2010). Contagious parties: Anti-immigration parties and their impact on other parties' immigration stances in contemporary western Europe. *Party Politics*, *16*(5), 563–586. https://doi.org/ 10.1177/1354068809346002

von Schmickler, B., & Börnsen, W. (2016, February 18). Die willigen und die unwilligen [The willing and the unwilling]. *Tageschau*. https://www.tagesschau.de/ausland/fluechtlinge-eu-faq-101.html

Wagner, M., Kraler, A., & Baumgartner, P. (2018). *Solidarity—An integral and basic concept of the common European asylum system?* CEASEVAL.

Weiland, S. (2018, July 17). Wie die AfD bei SPD und linken fischt [How the AfD goes fishing among the SPD and Linke]. *Spiegel Online.* https://www.spiegel.de/politik/deutschland/afd-bjoern-hoecke-will-bei-spd-und-linken-wildern-a-1217871.html

Zaun, N. (2018). States as gatekeepers in EU asylum politics: Explaining the non-adoption of a refugee quota system. *Journal of Common Market Studies*, *56*(1), 44–62. https://doi.org/10.1111/jcms.12663

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Article

# The Never-Ending Road Towards the CEAS: Utopia, Teleology, and Depoliticisation in EU Asylum Policies

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**Abstract**
This article explores the temporal dimension of the Common European Asylum System (CEAS) by exposing its teleological character and the effects of the latter on the governance of asylum in the European Union. Drawing on EU policy documents, the article shows how the CEAS has been presented since its inception as a teleology, that is, a process that is inexorably unfolding towards a specific outcome to be reached in an indefinite time in the future. The outcome consists in the establishment of a common area of protection constituted by a level playing field in which asylum seekers and beneficiaries of international protection will be treated alike regardless of the place of residence. Such a teleological narrative informing the CEAS paves the way to overly optimistic expectations on the possibilities of implementation, which in turn result in an overestimation of the potential of harmonisation. By discussing the limitations of harmonisation in relation to the reception of asylum seekers, this article calls into question the possibility of a homogeneous area of protection where equivalent conditions are offered to all asylum seekers across the EU. Such a homogeneous space is utopian because harmonisation does not aim to eradicate differences but rather to mitigate them, thus tolerating diverse arrangements. The article, therefore, argues that the level playing field projected by the CEAS constitutes a promise that has two key effects: First, it depoliticises the CEAS itself by framing problems as technical issues, requiring technical solutions; second, it paves the way to further EU intervention in this field.

**Keywords**
common European asylum system; depoliticisation; harmonisation; implementation; reception conditions; teleology; utopia

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## 1. Introduction

> The CEAS *will* provide better access to the asylum procedure for those who seek protection; *will* lead to fairer, quicker and better quality asylum decisions; *will* ensure that people in fear of persecution will not be returned to danger; and *will* provide dignified and decent conditions both for those who apply for asylum and those who are granted international protection within the EU. We have travelled *a tough road* to get here. But *our achievement is not yet fully complete*. We now need to put in a great effort to *implement* our legislation and ensure this common system *will* function well and uniformly. (European Commission, 2014a, p. 2, emphasis added)

With these words, included in a promotional leaflet published by the European Commission in 2014, the then European Union's Commissioner for Home Affairs, Cecilia Malmström, celebrated the establishment of the Common European Asylum System (CEAS). The CEAS had been launched fifteen years earlier at the European Council meeting in Tampere, where the leaders of EU member states had agreed on the development of a common asylum policy "based on the full and inclusive application of the Geneva Convention" (European Council,

1999, p. 4). A process of harmonisation of member states' asylum policies followed the meeting in Tampere, covering aspects like asylum procedures, contents of protection, reception conditions, and determination of member states' responsibility for asylum applications. This process was divided into two phases. In the first one, between 1999 and 2004, the first core legal instruments of the CEAS were adopted, including the reception conditions directive, the asylum procedure directive, the qualification directive, the Dublin II regulation, and the Eurodac regulation. The second phase lasted longer because of the difficulties that characterised the negotiations of the new legislative documents. Initially scheduled to end in 2009, it was only completed in 2013 when all the recast directives and regulations were adopted.

The quote above by former Commissioner Malmström constitutes a perfect starting point from which to examine the temporal dimension of the CEAS. This article intends to do so by focusing on the conflicting temporalities characterising two pillars of the CEAS: the harmonisation of asylum policies and the Dublin system that defines the criteria for determining the state responsible for an asylum application. On the one hand, harmonisation is a future-oriented process that will eventually create "a level playing field…where all asylum seekers will be treated in the same way, with the same high-standard guarantees and procedures, wherever in the EU they make their asylum claim" (Commission of the European Communities, 2008, p. 11). On the other hand, the Dublin system has an immediate effect and allocates asylum seekers to different member states as if such a homogenous space of protection was already existing. This temporal discrepancy, it is argued, transforms the CEAS into a teleology—a process that is travelling along a well-defined path, the end of which is clear and to some extent taken for granted. It also leads to overly optimistic expectations of harmonisation, whereas the objective of the latter is not complete uniformity, but rather the alignment of differences within pre-defined common standards.

The teleological character of the CEAS is particularly evident in Malmström's words, which look like a declaration of objectives as opposed to the celebration of something that has just been created. Far from praising what the CEAS has brought about, Malmström focuses on its future outcomes and presents once again the objectives of better procedures, decisions and reception conditions as targets to be met in the future. By doing so, she defers the completion of the CEAS to a later stage, thus framing it as a process and a future-oriented endeavour. The CEAS is even equated with a road, which the EU and its member states are encouraged to travel further to finally reap the benefits of this common effort.

This article investigates the effects of the teleological discourse informing the CEAS on the overall governance of asylum policies in the EU. Two effects are discussed. The first is an effect of depoliticisation according to which the problems of the CEAS are framed as technical issues that require technical solutions, whereas the overall policy framework is never called into question. The second effect concerns the legitimation of a greater involvement of EU institutions and agencies in asylum matters, which is produced precisely by the depoliticisation of the workings of the CEAS. The article, therefore, contributes to the literature on the CEAS by drawing attention to the relevance of its temporal dimension. This aspect has been quite neglected by studies of the CEAS, which often replicate the teleological narrative informing the EU institutional discourse on this issue. In addition, the analysis of the temporal governance of the CEAS constitutes a unique contribution to debates on harmonisation. While the latter has primarily focused on the spatial dimensions of harmonisation, this article describes harmonisation as a temporal project that constitutes Europe as a space to be governed, not only through space but also through time.

The article is organised into five sections, including this introduction. The following section illustrates the conflicting temporal processes at stake in EU asylum policies, while also situating the analysis within the literature of the CEAS. The third section shows how the teleological character of the CEAS places excessive confidence on the potential of implementation and how this in turn leads to an overestimation of the scope of harmonisation. The fourth section discusses depoliticisation and the intensification of EU intervention as key effects of the teleological discourse informing the CEAS. In the conclusion, the main contributions of the article are summarised.

## 2. The Temporal Governance of the Common European Asylum System

The teleological character of the CEAS stems from a temporal discrepancy that concerns its very foundations. It is a discrepancy between the temporality of the process of harmonisation of asylum policies and the temporality of the Dublin system. These two temporalities conflict and the clash between them obliges the CEAS to be constantly forward-looking and running after its expected outcomes. On the one hand, harmonisation is a process whose outcomes are situated in an indefinite future. In October 1999, when the CEAS was launched at the European Council meeting of Tampere, the leaders of EU member states inaugurated a process of harmonisation of reception conditions, asylum procedures, and contents of protection that was expected to establish a common area of protection where similar cases are treated alike. This process was clearly future-oriented, as it is demonstrated by the opening sentence of the paragraph introducing the CEAS: "The European Council…has agreed to work towards establishing a CEAS" (European Council, 1999, p. 4).

The extended temporal horizon of the CEAS is also confirmed by the objectives included in the Conclusions, which are divided into short-term and long-term ones:

> This system should include, *in the short term*, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status….*In the longer term*, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union. (European Council, 1999, p. 4, emphasis added)

On the other hand, the temporality of the Dublin system is immediate. The Dublin III regulation, which identifies the first country of entry as the member state that is responsible for an asylum application, has an immediate effect. Yet, the Dublin system presupposes that the harmonised space, in which asylum seekers should receive similar treatment when it comes to reception, procedures, and contents of protection, already exists. This is the temporal paradox of the CEAS. The country of destination is imposed on asylum seekers based on the assumption that similar conditions are provided across the EU and the place of reception does not make any difference because reception conditions, procedural standards and chances of being granted asylum are equivalent. This is clearly not the case, both concerning standards and outcomes, as extensive academic and non-academic literature has shown (AIDA, 2018, 2019; Beirens, 2018; Caponio et al., 2019; Gill & Good, 2018a). For instance, scholars have highlighted that recognition rates for asylum seekers belonging to the same nationality vary significantly across member states (Gill & Good, 2018b). Others have discussed the heterogeneity characterising the types of reception facilities and the quality of services provided to asylum seekers between and even within member states (Vianelli, 2017).

From a logical and practical standpoint, the harmonisation of domestic legislation and the approximation of national standards should have predated the identification and top-down imposition of the destination on asylum seekers. However, EU member states "proceeded backwards…prompted by their political will of excluding asylum-seekers from free movement within the EU territory" (Chetail, 2016, p. 7). The harmonised, homogenous space of the common area of protection has thus become a condition and an objective of the CEAS. As a result, the latter has lagged since its beginning, constantly expected to catch up with those very conditions that should have constituted its premise (i.e., harmonised, equivalent conditions for all asylum seekers across the EU). The whole harmonisation project has therefore existed in a continuous deferral that is exemplified by the use of the future tense in several institutional documents and communications, as showed by Malmström's quote at the beginning of this article.

The conflicting temporalities at the heart of the CEAS have been neglected by academic scholarship on asylum policy and law in the EU (see Schweitzer et al., 2018). This literature has primarily scrutinised the progress and weaknesses of the CEAS by examining the harmonisation and transposition of legislative instruments (Chetail et al., 2016; Velluti, 2014). Several scholars have focused on the flaws of the Dublin system (Den Heijer et al., 2016; Fratzke, 2015; Maiani, 2017), and how it undermines fair sharing between member states (Bauböck, 2018; Thielemann, 2018). The problems produced by the lack of an effective responsibility-sharing mechanism have also gathered much attention, alongside calls for a more equitable distribution of asylum applicants between member states (Baumgartner & Wagner, 2018; Maiani, 2017; Thym & Tsourdi, 2017; Tsourdi, 2017). Future scenarios for the CEAS and alternatives ways forward have also been explored (Gomes & Doomernik, 2019a, 2019b).

In some cases, the lack of interest in the temporal dimension of the CEAS has resulted in a substantial replication of the teleological discourse that informs EU policy documents on this matter. This is evident when metaphors like "road" and "steps" are used, thereby echoing the image of the "tough road" presented by Malmström in the opening of this article. For instance, in their attempt to "assess how far the EU asylum policy has travelled on the *road* to supranational governance," Kaunert and Léonard (2012, p. 4, emphasis added) acknowledged that "significant *steps* have been taken towards establishing a 'Common Area of Protection' " (p. 20). Chetail (2016, p. 35, emphasis added) instead observed that "while the harmonisation process has been reinforced and consolidated by the recast directives and regulations, there is still a *long road* for a genuine CEAS to be achieved." Notwithstanding, he emphasised that second phase legislative instruments "constitute an important *step* towards a Common European Asylum System, which is rather a *work in progress* than a legal reality" (p. 35).

In this regard, the construction of the CEAS encapsulates well the overall governance of the EU, which, as Walters (2004, p. 161) argued, "is something always in progress." From a temporal point of view, the harmonisation of asylum policies shares characteristics of the broader process of European integration, which is similarly imbued with metaphors of progression, development and expansion (Walker, 2000). These features of the integration process have been emphasised by theories of neofunctionalism, according to which European integration is a cumulative process, evolving over time and resulting from mechanisms of spillover through which cooperation in some policy areas produces demand for further cooperation in other areas (see Niemann & Schmitter, 2009; Tranholm-Mikkelsen, 1991).

The CEAS offers an interesting case study for neofunctionalist theories not only because of the graduality informing its establishment but also because its very

existence can be interpreted as a spillover effect of the creation of the common market. In fact, a possible explanation for the harmonisation of asylum policies can be found in the attempt to securitise the Schengen area in the wake of the abolition of internal border controls that was necessary to realise the common market. However, despite similarities with integration processes in other fields, the CEAS is somehow unique precisely because of the temporal discrepancy that was emphasised above. Whilst in the creation of the common market, graduality was achieved by organising the process into stages, the progression through which was made conditional upon the achievement of specific objectives (Walters & Haahr, 2005, p. 52), this has not been the case of the CEAS. Here, one key aspect of asylum policies—the determination of member states' responsibility through the Dublin system—has escaped any sort of graduality. The Dublin system was introduced even though the level playing field that was supposed to constitute its preliminary condition had not been created yet, thus resulting in differential treatments of asylum seekers across member states.

Although neofunctionalism captures some dynamics at stake in the process of harmonisation of asylum policies, it needs to be stressed that this theory is not just descriptive of integration processes, but also prescriptive (Niemann & Schmitter, 2009, p. 46). Neofunctionalism has been critiqued for "its investment in the teleological discourse of *modernization*, the way in which it imagines political change in Europe as an almost inexorable, linear process from old to new" (Walters, 2004, p. 160). One of the risks that are implicit in this approach is to assume a greater role of EU institutions as an inevitably positive thing, as if more EU would necessarily translate into more progressive decisions and better conditions for asylum seekers. This is what emerges from the conclusion drawn by Kaunert and Léonard (2012, p. 20), who admit that "there is still a considerable way to go" as "asylum matters are not governed supranationally yet." As Chamlian (2016, p. 394) highlighted, such an approach "fosters the idea that a world without the EU is unthinkable and naturalises the view that the latter is not part of the problem but part of the solution to contemporaneous challenges."

The approach adopted by this article is different and can be defined as Foucauldian insofar as it focuses on the discursive dimensions of European integration, the rationalities of government underpinning it and the practices through which Europe is constructed as an object of government (see Walters & Haahr, 2005). Far from accepting the teleological inevitability of integration and its expediency, this article focuses on the ways in which the harmonisation of asylum policies produces a particular way of governing Europe through space and time. Accordingly, the purpose of this investigation is not to provide legitimation for discourses of European integration and harmonisation of asylum policies, but rather to interrogate the assumptions underpinning them and explore their effects.

## 3. Relying on Implementation, Overestimating Harmonisation

The teleological discourse informing EU asylum policies not only results in an uncritical reading of European integration in this field, but also paves the way to overly optimistic expectations on the possibilities of implementation. Again, former Commissioner Malmström's words in the brochure celebrating the CEAS are indicative in this regard: "We now need to put in a great effort to implement our legislation and ensure this common system will function well and uniformly" (European Commission, 2014a, p. 2). Implementation is presented as the missing link between the plan and its actualisation. This confidence in implementation has been particularly evident since the end of the second phase of the CEAS, when the adoption of the recast legislative instruments set off the completion of the common system. Since then, EU institutions have reiterated calls for the effective transposition and implementation of the new legal instruments—the underlying idea being that the foundations of the CEAS had been laid and the goal had become the "full implementation and enforcement of existing instruments" (European Commission, 2014b, p. 2).

For instance, in a Communication published in 2014, the European Commission (2014b, p. 6) refers to the necessity to consolidate the CEAS by putting it "in practice." In the same year, the Council also confirmed that "the overall priority now is to consistently transpose, effectively implement and consolidate the legal instruments and policy measures in place" (European Council, 2014, p. 2). Even more recently, although the weaknesses of the CEAS were laid bare by the so-called "refugee crisis" in 2015–2016, which exposed the inability of the system to cope with significant migrant arrivals and asylum applications, implementation has featured prominently in EU documents in this field. The most recent example is the New Pact on Migration and Asylum, which is expected to "foster trust in EU policies by closing the existing implementation gap" (European Commission, 2020, p. 2), based on the acknowledgement that "common rules are essential, but they are not enough" (European Commission, 2020, p. 2).

The faith on implementation that is implicit in the metaphor of the 'implementation gap' results in the overestimation of the potential of harmonisation. Instead, as Barry (1994, p. 18) suggests, harmonisation is an "ambition," whose goal is not the achievement of complete uniformity. Harmonisation does not aim for "the complete eradication of difference" (Barry, 2001, p. 73); it rather seeks to align standards and reduce differences, thus leaving scope for diverse interpretations and practices. The harmonisation of provisions concerning the asylum procedure, the reception conditions, and the contents of international protection does not concern the operationalisation of these provisions in practice. This inevitably leads to divergences between states as national and sometimes even local legal frameworks,

traditions, and practices differ, thereby producing a situation in which the same rules are applied differently depending on the context.

The limits of harmonisation are particularly evident if one considers the reception of asylum seekers. Indeed, the latter presents what Vianelli (2017) defines as an "excessive character" that impedes the creation of a level playing field where asylum seekers can be treated alike regardless of the context of reception. The reasons for such an excessive character of reception are mainly three and concern people, places, and policymaking.

First, reception is lived and embodied. It takes shape through relations involving human beings with different values, characters, training and resources. Yet, the characteristics of social workers, reception officers, and other positions who work daily with asylum seekers are not specified by the reception conditions directive. Important aspects like skills, profile, and training of those assisting asylum seekers are not covered by the harmonisation of reception, although these aspects make a difference in asylum seekers' experiences of reception. The training provided by the European Union Agency for Asylum (EUAA) is certainly an important starting point in this regard, but it is far from targeting most reception officers and social workers on the ground as it primarily involves state officials in specific positions. The type of organisations that should oversee reception measures is also unspecified. In fact, the reception of asylum seekers is managed by extremely diverse actors across the EU, such as state agencies, non-governmental organisations, or even profit-making companies, thus leading to remarkable differences in the ways facilities are run and services provided (Vianelli, 2017).

Second, reception is not only embodied in human relations but it also depends on, and is shaped by, the context in which it takes place (see Glorius & Doomernik, 2020). The place of reception makes a difference in terms of proximity to services, opportunities and infrastructures. Asylum seekers who are accommodated in urban areas are more likely to have better access to language and training courses, transport, healthcare facilities, and social networks as compared to those who live in isolated reception centres (Vianelli et al., 2019). The harmonisation of reception conditions does not reach such micro practicalities of reception, which are nonetheless extremely relevant if one aims to provide equivalent conditions to all asylum seekers. Reception conditions are also influenced by factors such as levels of wealth, development and overall living standards characterising the area where facilities are situated. These factors are beyond the scope of harmonisation, but they might have implications for the quality of services provided to asylum seekers. For instance, housing standards, specialised healthcare services, and training opportunities differ between local contexts, even within the same member state. Moreover, in some countries, subnational levels of government (i.e., regional or municipal) have some autonomy in the ways reception policies are implemented (Caponio et al., 2019), thus leading to different local arrangements. Hence, contextual differences informing reception practices cut across states and therefore call into question the feasibility of the creation of an EU-wide level playing field.

Third, the reception of asylum seekers is strictly linked to other policy domains that are not harmonised at the EU level, such as healthcare, housing, social welfare, and education. This further limits the potential of harmonisation in the field of reception because asylum seekers' experiences are inevitably contingent upon member states' domestic policies in the abovementioned domains. For example, article 15 of the reception conditions directive entitles asylum seekers to work no later than nine months after they lodge their asylum application. However, besides the formal recognition of the right to work, how member states try to make asylum seekers' access to the labour market effective differ significantly because employment policies and job placement measures are designed at the national or even sub-national level. Similar examples can be given about access to healthcare services and education, as these policy domains are primarily under member states' responsibility and no attempt at harmonising national differences is made by EU institutions. By separating reception from other related policies that are left under member states' responsibility, it is the current architecture of the EU that impedes that asylum seekers be provided with equivalent conditions across national jurisdictions.

These brief examples concerning reception expose some structural, constitutive limitations of harmonisation in the field of asylum policies. These limitations reveal that heterogeneous forms of reception also exist at the national level because the people assisting asylum seekers, the places where reception is provided, and the policy frameworks in which it is embedded vary within countries, and not just between them. Similar limitations have also been explored in relation to other aspects of the CEAS, such as status determination (Gill & Good, 2018a). Drawing on a multi-sited qualitative study of asylum appeal hearings in several European countries, the ERC-funded project ASYFAIR has highlighted the remarkable diversity characterising adjudication procedures across Europe. In fact, although EU law provides for the right of appeal for asylum seekers who receive a negative first instance decision, what an appeal is and how it is practically implemented depends on member states' justice systems, which are not affected by the harmonisation of asylum procedures. Accordingly, differences exist across—and often within—countries concerning the use of in-person hearings as opposed to paper procedures, the publicness of asylum hearings, and the degree of centralisation of adjudication processes (Gill et al., 2020).

All these examples caution against overestimating the scope of harmonisation. On the one hand, harmonisation should not be considered as a linear process, moving from policy formulation to implementation on the ground, but rather as an open-ended and contested

endeavour that leads to heterogeneous practices. On the other hand, it needs to be reminded that harmonisation does not aim to erase differences at the national, regional, and local levels, but rather to provide a framework within which differences are tolerated. These features of harmonisation make it not possible to treat similar cases alike given the substantial extent of differences across as well as within states. Consequently, the level playing field that should underpin the CEAS is not achievable. It is utopian. And yet, asylum seekers are prevented from choosing where to present their asylum claims based on the assumption that they will be offered the same conditions across the EU.

## 4. The Performative Character of the Common European Asylum System

The image of the CEAS that emerges from the quote that opened this article is that of a promise. Only one day in the future, former Commissioner Malmström states, the CEAS *will* provide better access to the asylum procedure for those who seek protection, fairer, quicker, and solid asylum decisions, as well as dignified and decent conditions for asylum seekers and beneficiaries of international protection. Drawing on the work of the anthropologists Abram and Weszkalnys (2011), it is important to stress the performative character of promises and reflect on the effects of the promise of the CEAS. Abram and Weszkalnys (2011, p. 9) observed that "promises are not merely statements" as "they do more than describe: they express intention." "Promising is a performance," the authors continued, and as such, it has very concrete effects. Two possible effects of the promissory and performative character of the CEAS are particularly relevant and call for greater attention to its temporal dimension and its overly optimistic expectations of harmonisation.

The first effect is that of depoliticisation. Through the teleological discourse and the subsequent focus on implementation, the CEAS is presented in very prescriptive terms, as a process still in the making, whose outcomes are situated in an indefinite future. In this way, the CEAS is depoliticised through an endless deferral of the promise of its success. The attention is kept on the deficiencies of the system and the ways for improving it, whereas the overall rationale and policy framework are maintained. In this respect, the promise of the CEAS resembles the "promise of development" that has been discussed by Li (2007, p. 276) in relation to the "will to improve" informing the development apparatus. Drawing on the seminal work of Ferguson (1994), Li described the development apparatus as an "antipolitics machine," which presents a "prodigious capacity…to absorb critiques" and to keep "the attention of many critics focused on the deficiencies of such schemes and how to correct them" (Li, 2007, p. 276). "Although improvement seldom lives up to the billing," Li continued, "the will to improve persists" through the "endless deferral of the promise of development to the time when the ultimate strategy is devised and implementation perfected."

A similar mechanism is at play in the CEAS thanks to a teleological narrative that constantly defers the outcomes of the harmonisation of asylum policies in the future. The promissory character of the CEAS serves a twofold purpose. On the one hand, it frames problems as technical issues requiring technical solutions, such as better transposition of EU directives, more effective implementation, and increased practical cooperation. On the other hand, it diverts attention from the structural limitations of the CEAS and specifically from the fact that procedural and contextual differences between and within countries will not be wiped off by harmonisation. As a result, the overall framework of EU asylum policies is never interrogated, although it has failed to provide equivalent conditions to all asylum seekers regardless of the place of residence. Notably, the very possibility of treating similar cases alike and the legitimacy of imposing the country of destination on asylum seekers are never called into question. The wider effect of depoliticisation is precisely that of dismissing alternative approaches from the debate by maintaining the attention on the process of improvement. The failure of the system is thus turned into the engine for the constant renovation of its governing practices.

The second effect of the promise of the CEAS is that it prepares the ground for a greater intervention of the EU in the field of asylum, which is based precisely on the abovementioned process of depoliticisation and on the resulting framing of the EU intervention as apolitical. This occurs in two ways. First, it takes place through an increased role of EU agencies (Scipioni, 2018). For example, the call for more practical cooperation in asylum matters, which is often repeated in EU documents, has led to a significant expansion of the role, funding and mandate of the European Asylum Support Office (EASO). Since its establishment in 2012, when it started with 18 employees and EUR 10 million budget (EASO, 2013), EASO grew so much that in 2021 it had around 500 staff, EUR 142 million budget, as well as operations in Cyprus, Greece, Italy, Malta, and Spain (European Commission, 2021). In January 2022, EASO was transformed into a fully-fledged agency—the EUAA—and given a reinforced mandate, including monitoring, case preparation, and development of operational standards (European Commission, 2021).

However, EUAA is not the only EU agency that has experienced a growing involvement in member states' asylum matters in recent years. In fact, other EU agencies, such as the European Border and Coast Guard (former Frontex), Eurojust, and Europol, could step up their activities on the ground by deploying their staff in Greece and Italy following the introduction of the hotspot approach. The latter was introduced by the European Agenda on Migration to "swiftly identify, register and fingerprint" migrants arriving at the EU's external borders (European Commission, 2015a, p. 6). As clarified

by the European Commission (2015b, p. 2) itself, the hotspot approach provides "a platform for the agencies to intervene, rapidly and in an integrated manner in frontline [sic] Member States when there is a crisis due to specific and disproportionate migratory pressure at their external borders." In this respect, it is worth emphasising that the approach is still implemented and the abovementioned agencies are therefore currently operating in designated border areas in Greece and Italy, even though the current situation can hardly be described as characterised by "disproportionate migratory pressure." In fact, in 2021, the number of migrant arrivals by sea was 4,331 for Greece (UNHCR, 2022a) and 67,477 for Italy (UNHCR, 2022b), whereas in 2015, when the hotspot approach was introduced, sea arrivals were 856,723 in Greece (UNHCR, 2018) and 153,842 in Italy (UNHCR, 2017).

Second, the new legislative instruments that have been proposed by the European Commission after the completion of the second phase of the CEAS reveal an attempt to restrict member states' autonomy to enhance harmonisation. Both in the unsuccessful 2016 reform of the CEAS and the legislative proposals accompanying the more recent New Pact on Migration and Asylum, it is possible to identify the European Commission's tendency to replace directives with regulations. Being directly applicable in national legal systems, regulations leave less discretion to states compared to directives, as it is demonstrated by the 2016 proposals for the asylum procedure regulation and the qualification regulation.

For instance, in the former, the European Commission proposed mandatory rules on the maximum duration of the procedure, admissibility, use of border and accelerated procedures, and treatment of subsequent applications. Instead, the 2016 proposal for the qualification regulation sought to introduce a compulsory status review for those granted international protection prior to the renewal of their residence permits. These are all aspects in which member states currently have some degree of autonomy in the framework of the asylum procedure directive and the qualification directive. Furthermore, the 2016 proposal for the asylum procedure regulation established an EU common list of "safe countries of origin" in order to facilitate an accelerated processing of applications presented by people from these countries. The proposal also tackled specific procedural implications of the adoption of the concept of "safe country of origin" in order to "remove the current discretion regarding whether or not to use it" (European Commission, 2016, p. 10). The amended proposal for the asylum procedure regulation, presented alongside the New Pact on Migration and Asylum in 2020, maintained the approach of the 2016 proposal and even specified the cases in which member states should implement accelerated procedures (European Commission, 2020).

Although the process of reform of the CEAS is still open as the new legislative instruments have not been adopted yet, the proposals tabled by the European Commission show how more intrusive EU law-making is seen as a possible remedy against the weaknesses of the CEAS and for the invigoration of the process of harmonisation. While this approach by the European Commission might seem justified by the need to overcome disputes and disagreements between states, which are particularly marked in this field, it is important to stress how this is legitimised by the teleological discourse underpinning the CEAS.

## 5. Conclusions

This article has shown the importance of exploring the temporal aspects of the CEAS, while at the same time emphasising the teleological character informing EU asylum policies and the resulting effects in terms of depoliticisation and legitimation of further EU intervention. From a theoretical perspective, the analysis of the temporal governance of asylum in the EU opens the way for two key contributions: one concerning asylum and the other relating more broadly to the policy of harmonisation as a technique of government. With respect to the former, the focus on the teleological character of the CEAS invites one to call into question the possibility of the level playing field that underlies its whole architecture. By scaling down expectations on the possible outcomes of the harmonisation of asylum policies, the idea of the CEAS as a teleology makes clear that the homogenous space where asylum seekers can receive an equivalent treatment regardless of their place of residence is a myth. Significant differences are indeed destined to remain across and within states, notwithstanding the efforts in terms of legal harmonisation, policy implementation, and practical cooperation. Not only academic scholarship but policy reforms too should accept this irreducibility of differences within EU space to be more effective. This calls for rethinking the current architecture of EU asylum policies and most notably the principle according to which it is fair to impose the country of destination on asylum seekers because they are offered equivalent conditions across the EU.

Concerning the second contribution, the analysis of the temporal dimension of the CEAS offers an interesting opportunity to develop a theoretical reflection on harmonisation by taking it beyond the traditional attention to measures, standards, and technology, which has dominated this field of research (Barry, 1993, 1994, 2001). Notably, the study of harmonisation in the field of asylum policies shows how harmonisation is not only "a spatial and a political project" (Barry, 2001, p. 78), which constitutes "Europe as a governable entity" (Barry, 1993, p. 324), that can be "acted upon in a *European* way" (Barry, 1993, p. 322). The focus on asylum policies demonstrates that harmonisation is also a temporal project that consolidates the role of EU institutions and agencies through the endless deferral of the promise of its accomplishment. In this way, harmonisation allows the government of Europe through space as well as through time.

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**Conflict of Interests**

The author declares no conflict of interests.

**References**

Abram, S., & Weszkalnys, G. (2011). Introduction: Anthropologies of planning—Temporality, imagination, and ethnography. *Focaal—Journal of Global and Historical Anthropology*, *61*, 3–18.

AIDA. (2018). *Access to protection in Europe: The registration of asylum applications*. https://asylumineurope.org/wp-content/uploads/2020/11/aida_accessii_registration.pdf

AIDA. (2019). *Housing out of reach? The reception of refugees and asylum seekers in Europe*. https://asylumineurope.org/wp-content/uploads/2020/11/aida_housing_out_of_reach.pdf

Barry, A. (1993). The European community and European government: Harmonization, mobility and space. *Economy and Society*, *22*(3), 314–326.

Barry, A. (1994). Harmonization and the art of European government. In C. Rootes & H. Devis (Eds.), *Social change and political transformation* (pp. 39–54). UCL Press.

Barry, A. (2001). *Political machines: Governing a technological society*. Athlone.

Bauböck, R. (2018). Refugee protection and burden-sharing in the European Union. *Journal of Common Market Studies*, *56*, 141–156.

Baumgartner, P., & Wagner, M. (2018). *Sharing responsibilities in the Common European Asylum System* (CEASEVAL Research on the Common European Asylum System No. 4). CEASEVAL. http://ceaseval.eu/publications/04_BaumgartnerWagner_SharingResponsibilties.pdf

Beirens, H. (2018). *Cracked foundations, uncertain future: Structural weaknesses in the Common European Asylum System*. Migration Policy Institute Europe. https://www.migrationpolicy.org/sites/default/files/publications/CEAS-StructuralWeaknesses_Final.pdf

Caponio, T., Ponzo, I., & Giannetto, L. (2019). *Comparative report on the multilevel governance of the national asylum seekers' reception systems* (CEASEVAL Research on the Common European Asylum System No. 24). CEASEVAL. http://ceaseval.eu/publications/24_WP3_Comparative Report.pdf

Chamlian, L. (2016). The colonisation of the future: Power, knowledge and preparedness in CSDP. *Global Society*, *30*(3), 391–411.

Chetail, V. (2016). The Common European Asylum System: Bric-à-brac or system? In V. Chetail, P. De Bruycker, & F. Maiani (Eds.), *Reforming the Common European Asylum System: The new European refugee law* (pp. 3–38). Brill Nijhoff.

Chetail, V., De Bruycker, P., & Maiani, F. (Eds.). (2016). *Reforming the Common European Asylum System: The new European refugee law*. Brill Nijhoff.

Commission of the European Communities. (2008). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions. Policy plan on asylum: An integrated approach to protection across the EU.* https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0360:FIN:EN:PDF

Den Heijer, M., Rijpma, J., & Spijkerboer, T. (2016). Coercion, prohibition, and great expectations: The continuing failure of the Common European Asylum System. *Common Market Law Review*, *53*, 607–642.

EASO. (2013). *EASO annual activity report 2012—Part I*. https://www.easo.europa.eu/sites/default/files/public/EASO-Annual-Activity-Report-Part-1.pdf

EASO. (2021). *Consolidated annual activity report (CAAR) 2020*. https://www.easo.europa.eu/sites/default/files/CAAR_2020_3.pdf

European Commission. (2014a). *A Common European Asylum System*. http://ec.europa.eu/dgs/home-affairs/e-library/docs/ceas-factsheets/ceas_factsheet_en.pdf

European Commission. (2014b). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An open and secure Europe: Making it happen*. https://ec.europa.eu/home-affairs/sites/homeaffairs/files/elibrary/documents/basic-documents/docs/an_open_and_secure_europe_-_making_it_happen_en.pdf

European Commission. (2015a). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European agenda on migration*. https://ec.europa.eu/home-affairs/system/files/2020-09/communication_on_the_european_agenda_on_migration_en.pdf

European Commission. (2015b). *Explanatory note on the hotspot approach.* https://www.statewatch.org/media/documents/news/2015/jul/eu-com-hotsposts.pdf

European Commission. (2016). *Communication from the Commission to the European Parliament and the Council. Towards a reform of the Common Euro-*

*pean Asylum System and enhancing legal avenues to Europe.* https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0197

European Commission. (2020). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a new pact on migration and asylum*. https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF

European Commission. (2021, June 29). *New pact on migration and asylum: Agreement reached on the new European Union Agency for Asylum* [Press Release]. https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3241

European Council. (1999). *Presidency conclusions of the Tampere European Council*. http://www.europarl.europa.eu/summits/tam_en.htm

European Council. (2014). *European Council 26/27 June 2014. Conclusions*. https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/143478.pdf

Ferguson, J. (1994). *The anti-politics machine: "Development," depoliticization, and bureaucratic power in Lesotho*. University of Minnesota Press.

Fratzke, S. (2015). *Not adding up: The fading promises of Europe's Dublin system*. Migration Policy Institute Europe. https://www.migrationpolicy.org/sites/default/files/publications/MPIe-Asylum-DublinReg.pdf

Gill, N., Allsopp, J., Burridge, A., Fisher, D., Griffiths, M., Hambly, J., Hoellerer, N., Paszkiewicz, N., & Rotter, R. (2020). What's missing from legal geography and materialist studies of law? Absence and the assembling of asylum appeal hearings in Europe. *Transactions of the Institute of British Geographers*, *45*, 937–951.

Gill, N., & Good, A. (Eds.). (2018a). *Asylum determination in Europe. Ethnographic perspectives*. Palgrave Macmillan. https://link.springer.com/content/pdf/10.1007%2F978-3-319-94749-5.pdf

Gill, N., & Good, A. (2018b). Introduction. In N. Gill & A. Good (Eds.), *Asylum determination in Europe. Ethnographic perspectives* (pp. 1–26). Palgrave Macmillan. https://link.springer.com/content/pdf/10.1007%2F978-3-319-94749-5.pdf

Glorius, B., & Doomernik, J. (Eds.). (2020). *Geographies of asylum in Europe and the role of European localities*. Springer. https://link.springer.com/content/pdf/10.1007%2F978-3-030-25666-1.pdf

Gomes, V., & Doomernik, J. (2019a). *Report containing the detailed models for a sustainable CEAS* (CEASEVAL Research on the Common European Asylum System No. 40). CEASEVAL. https://ec.europa.eu/research/participants/documents/downloadPublic?documentIds=080166e5c7d71d7b&appId=PPGMS

Gomes, V., & Doomernik, J. (2019b). *Report on a variety of ideal-typical common European asylum systems* (CEASEVAL Research on the Common European Asylum System No. 38). CEASEVAL. https://ec.europa.eu/research/participants/documents/downloadPublic?documentIds=080166e5c4876c30&appId=PPGMS

Kaunert, C., & Léonard, S. (2012). The European Union asylum policy after the Treaty of Lisbon and the Stockholm Programme: Towards supranational governance in a common area of protection? *Refugee Survey Quarterly*, *31*(4), 1–20.

Li, T. M. (2007). *Will to improve: Governmentality, development, and the practice of politics*. Duke University Press.

Maiani, F. (2017). The reform of the Dublin system and the dystopia of "sharing people." *Maastricht Journal of European and Comparative Law*, *24*(5), 622–645.

Niemann, A., & Schmitter, P. C. (2009). Neofunctionalism. In A. Wiener & T. Diez (Eds.), *European integration theory* (pp. 45–66). Oxford University Press.

Schweitzer, R., Consterdine, E., & Collyer, M. (2018). *A review and analysis of the recent literature on the Common European Asylum System* (CEASEVAL Research on the Common European Asylum System No. 03). CEASEVAL. http://ceaseval.eu/publications/03_Schweitzer_et_al_review_and_analysis_of_the_recent_%2520literature.pdf

Scipioni, M. (2018). *De novo* bodies and EU integration: What is the story behind EU agencies' expansion. *Journal of Common Market Studies*, *56*(4), 768–784.

Thielemann, E. (2018). Why refugee burden-sharing initiatives fail: Public goods, free-riding and symbolic solidarity in the EU. *Journal of Common Market Studies*, *56*(1), 63–82.

Thym, D., & Tsourdi, E. L. (2017). Searching for solidarity in the EU asylum and border policies: Constitutional and operational dimensions. *Maastricht Journal of European and Comparative Law*, *24*(5), 605–621.

Tranholm-Mikkelsen, J. (1991). Neo-functionalism: Obstinate or obsolete? A reappraisal in the light of the new dynamism of the EU. *Millennium: Journal of International Studies*, *20*(1), 1–22.

Tsourdi, E. L. (2017). Solidarity at work? The prevalence of emergency-driven solidarity in the administrative governance of the Common European Asylum System. *Maastricht Journal of European and Comparative Law*, *24*(5), 667–686.

UNHCR. (2017). *Italy sea arrivals dashboard. January–December 2016*. https://data2.unhcr.org/en/documents/download/53356

UNHCR. (2018). *Greece sea arrivals dashboard. December 2017*. https://data2.unhcr.org/en/documents/download/61492

UNHCR. (2022a). *Greece sea arrivals dashboard. December 2021*. https://reliefweb.int/sites/reliefweb.int/files/resources/GRC_SeaArrivals_DashboardMonthly_2021231.pdf

UNHCR. (2022b). *Italy sea arrivals dashboard. January–*

*December 2021*. https://reliefweb.int/sites/reliefweb.int/files/resources/2021_12_Sea_Arrivals_Dashboard_December.pdf

Velluti, S. (2014). *Reforming the Common European Asylum System: Legislative developments and judicial activism of the European Courts*. Springer.

Vianelli, L. (2017). EUrope's uneven geographies of reception. Excess, differentiation, and struggles in the government of asylum seekers. *Etnografia e Ricerca Qualitativa*, *3*, 363–392.

Vianelli, L., Oesch, L., & Nienaber, B. (2019). *National report on the governance of the asylum reception system in Luxembourg* (CEASEVAL Research on the Common European Asylum System No. 22). CEASEVAL. http://ceaseval.eu/publications/WP3_Luxembourg.pdf

Walker, R. B. J. (2000). Europe is not where it is supposed to be. In M. Kelstrup & M. C. Williams (Eds.), *International relations theory and the politics of European integration* (pp. 14–32). Routledge.

Walters, W. (2004). The political rationality of European integration. In W. Larner & W. Walters (Eds.), *Global governmentality: Governing international spaces* (pp. 155–173). Routledge.

Walters, W., & Haahr, J. H. (2005). *Governing Europe: Discourse, governmentality and European integration*. Routledge.

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Article

# Finnish Civil Servants on Harmonization in the Asylum System: A Study in Horizontal Europeanization

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**Abstract**
This article presents a Finnish perspective on harmonization within the Common European Asylum System (CEAS). The article analyses results from a study of the judgments and experiences of Finnish civil servants concerning the harmonization of the CEAS. The year 2015 constitutes a shift in asylum policies in many European countries, and a key question is how this shift has influenced the process of harmonization of asylum policies and practices. Senior civil servants working in the state administration of asylum and migration issues in Finland were interviewed anonymously as part of a comparative European research project (CEASEVAL). The interviews indicate that EU-wide administrative cooperation has developed into a broad and diverse cooperation in recent years. The interviewees in Finland generally found harmonization of the asylum system to be necessary, which was connected to a need for greater predictability of the outcomes of the system. The results of the study suggest that Finnish asylum administration is developing toward harmonized practices involving transnational and supranational administrative cooperation in the field of asylum. The results support the conclusion of previous research that there is a process of horizontal Europeanization in which administrative practices develop organically within national asylum administration, independently of political disagreements at the EU level. This is relevant both to the framing of political issues and to research on Finnish migration and asylum policies, which need to take into account the ongoing European harmonization of policies and administrative practices.

**Keywords**
asylum policy; Common European Asylum System; Finland; horizontal Europeanization; public administration

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## 1. Introduction

National asylum policy changes and administrative arrangements in Finland have increasingly become intertwined with policy developments at the EU level. The Common European Asylum System (CEAS) constitutes a key development in the European harmonization of asylum policy and administration since the late 1990s. The CEAS has provided a common legal framework for the EU member states and the goal has been to establish a common asylum system for all EU member states (European Commission, 2022). However, the practical implementation of agreed common asylum policies has often faced challenges, which became obvious during the increase in the number of asylum seekers in 2015. Furthermore, the introduction of common asylum policies has encountered domestic political disagreement in many member states. In general, solidarity among the member states, as declared in the Treaties of the EU, has not been very evident in the area of asylum. There have been profound political disagreements and challenges among the member states in finding ways to share responsibilities among the states. The year 2015 constitutes a shift in asylum policies in many European countries, and a key question is how this shift has influenced the process of harmonization of asylum policies. Not surprisingly, much previous research and public debate on the CEAS has focused on the legal aspects and political

challenges of the CEAS. This focus readily conveys a picture of a crisis in the CEAS (e.g., Lavenex, 2018; Scipioni, 2018; Zaun, 2020). Less research has been done on the national administrative practices and bureaucracies that implement the common asylum system (e.g., Lahusen & Wacker, 2019). This article maintains that a research focus on public administration can provide significant information on the actual development of common asylum policies and practices. The article argues that there is a process of "horizontal Europeanization," whereby many asylum policies and practices become harmonized. The argument is based on results from a study of the judgments and experiences of Finnish civil servants concerning the harmonization of the CEAS. The article analyses anonymous interviews with seven civil servants who mostly held senior positions in the state administration of asylum and migration issues in Finland. The civil servants worked with asylum issues on a daily basis and had significant insights into the harmonization of Finnish asylum policies and practices. Thus, this study of the Finnish case contributes to a better understanding of the harmonization of asylum policies and practices after 2015.

## 2. Harmonization and the Common European Asylum System

In this study, the process of harmonization is understood as a broad process involving both legal and political aspects, but also practical and institutional changes (cf. Wagner et al., 2019). The CEAS provides a framework of agreed rules for the EU member states. The aim of the CEAS has been to establish common procedures for international protection, harmonize asylum systems in the EU, reduce the differences between member states on the basis of binding legislation, and strengthen practical cooperation between national asylum administrations and the external dimension of asylum (European Commission, 2022). The legal framework of the CEAS includes the Dublin Regulation, which determines which EU member state is responsible for the examination of an asylum application; the EURODAC Regulation, which set up a common fingerprints database; the Reception Conditions Directive, ensuring fundamental accommodation conditions for asylum seekers; the Asylum Procedures Directive, which sets minimum procedural guarantees during the asylum procedure; and the Qualification Directive, which sets out minimum standards for qualification as persons in need of international protection. The legal implementation of the CEAS has not been a political issue in Finland: The necessary changes to Finnish laws have been rapidly introduced and accepted by the Finnish Parliament (European Migration Network [EMN], 2015). In general, Finland has supported the harmonization of asylum policies, and Finnish national policies have largely followed EU migration policies (Tuominen & Välimäki, 2021; Wahlbeck, 2019b). In the aftermath of 2015, new and more restrictive asylum legislation came into force in Finland, which the government argued was introduced to clarify the system and bring Finnish legislation in line with EU legislation (Pirjatanniemi et al., 2021).

The practical implementation of the CEAS is, however, a more complicated issue than the legal aspects of the CEAS. Among the member states, the harmonization of policies and the implementation of the CEAS has been a long and still ongoing process. The different national administrative systems and legal traditions of the member states may create some divergence among the states in how the system works. However, there has clearly also been an ongoing harmonization of many reception practices (Caponio & Ponzo, 2022). Many observers have pointed out the danger of a "race to the bottom," in which states strive to avoid having a more favorable system than other states, and thus avoid "attracting" asylum seekers. However, the system has also improved the standards for asylum seekers in member states that previously did not have established systems (Zaun, 2017). The CEAS does not prescribe specific institutional or administrative arrangements at the national level, but the practical work that is expected has often led to a de facto harmonization in this respect as well. In the Finnish case, the establishment in 2008 of the Finnish Immigration Service (MIGRI), with broad responsibilities within the Ministry of the Interior, can be interpreted as a European harmonization of the Finnish migration and asylum administration. The responsibilities of this central state agency were broadened to include not only decision-making on residence permits and asylum applications, but also a general coordination of asylum reception and migration issues (Wahlbeck, 2019a). One of the stated reasons for this broadening of responsibilities was to follow the same structure as immigration state agencies in the other Nordic countries (Norrback, 2008). Since Finland has previously received relatively small numbers of asylum seekers, international cooperation in the area of asylum policy has often been considered valuable (Tuominen & Välimäki, 2021; Wahlbeck, 2019b).

In the EU, the ultimate test of the CEAS was the increase of asylum applicants in 2015, which clearly displayed fundamental weaknesses and, in some respects, a failure of the EU to advance a common policy (e.g., Lavenex, 2018; Zaun, 2020). It involved a partly uncontrolled arrival of migrants in the member states and a failure to find suitable ways of sharing the responsibility among the member states, involving fundamental disagreements concerning a relocation of asylum seekers. Furthermore, national electorates mobilized by right-wing populist parties significantly influenced the positions taken by governments at the EU level (Wahlbeck, 2019b; Zaun, 2018). This politicization has changed the debate concerning the CEAS and made it increasingly difficult for national governments to agree on a revision of the CEAS (Zaun, 2020). Furthermore, the developments of 2015—and later the Covid-19 pandemic—led to new border controls in the Schengen area. Rather than a Europeanization of policies, there has

been a "renationalization'' of migration policies in many European states (e.g., Brekke & Staver, 2018). Ultimately, the failure to find common policies on migration also challenges the Schengen area of free movement (Börzel & Risse, 2018; Nikolić & Pevcin, 2022). In Finland, the tenfold increase in the number of asylum seekers was considered a challenge for the reception system in 2015 (Wahlbeck, 2022). In Finnish media debates, other countries and the EU were blamed in various ways for not handling the migration flows properly. In newspaper reports and parliamentary debates, an often-repeated argument was that the asylum seekers should have been taken care of by somebody else before they reached the Finnish border (Pyrhönen & Wahlbeck, 2018). This argument related to the fact that most asylum seekers in Finland in 2015 had traveled through numerous EU member states before they arrived in northern Finland across the border with Sweden (e.g., Koikkalainen et al., 2020).

A key question this article addresses is whether the above-mentioned developments in Europe since 2015 have also had a negative effect on the harmonization of asylum policies and practices among the member states. The developments have somewhat obscured the fact that a de facto harmonization of asylum policies and practices may still take place irrespective of other challenges faced by the CEAS. In contrast to the research that focuses on the problems facing various legal and political aspects of the CEAS, this article maintains that a harmonization of asylum policies can continue in practice. This article argues that, despite the apparent problems facing the CEAS, the results from the Finnish case testify that there is an ongoing process of horizontal Europeanization whereby many of the aims of the CEAS are realized.

## 3. Harmonization and Horizontal Europeanization

As already indicated above, the analysis of harmonization in this article builds upon a broad understanding of harmonization, involving both the establishment of common standards and the practical implementation of the standards. Thus, in this study harmonization is not only a question of the implementation of common legal frameworks, but can be understood as connected to broader societal processes whereby national practices, discourses, and institutions become increasingly "Europeanized." In political science, the concept of Europeanization often refers to the interactions between the EU and its member states to describe how domestic policy areas become increasingly subject to European policymaking (Börzel, 1999, p. 574). Research has also differentiated between "soft" and "hard" mechanisms of Europeanization (e.g., Knill, 2001, pp. 214–225). Soft Europeanization is a slow process of institutional change, often supported by national politicians, while hard Europeanization, for example, a top-down implementation of regulations, is more likely to encounter criticism among national politicians. However, Europeanization is a broad term, which can describe processes including institutions, policies, discourses, and ideas (Faist & Ette, 2007; Featherstone & Radaelli, 2003; Knill, 2001; Lavenex, 2001; Vink & Bonjour, 2013). Thus, it is argued that Europeanization consists of:

> Processes of (a) construction (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, "ways of doing things" and shared beliefs and norms which are first defined and consolidated in the making of EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures and public policies. (Radaelli, 2002, p. 106)

This definition of Europeanization entails that it can be studied both in the vertical "uploading" of policy preferences by member states to the EU level and in the vertical "downloading" of EU regulations to the national level (Börzel, 2002; Featherstone & Radaelli, 2003). The latter "top-down" perspective can also address how EU policies more generally affect the domestic policies, politics, and polities of the member states (Börzel & Risse, 2003).

However, in addition to the vertical dimension of Europeanization, there is also a process of *horizontal* Europeanization (Heidenreich, 2019; Radaelli, 2002). The horizontal dimension involves processes of European integration that occur in the interaction between administrations, organizations, and individuals across member states. These horizontal mechanisms "look at Europeanization as a process where there is no pressure to conform to EU policy models. Instead, 'horizontal' mechanisms involve different forms of adjustment to Europe based on the market or on patterns of socialization" (Radaelli, 2002, p. 120). Thus, a horizontal Europeanization may occur independently of the vertical dimension of Europeanization. It is important to study the process of horizontal Europeanization since it reveals much about the practical judgments on and everyday experiences of European harmonization. A study of harmonization that only studies formal legal developments and their implementation will not be able to identify significant processes, including changes in institutions, discourses, and ideas, which can be grasped from the perspective of horizontal Europeanization.

Concerning asylum policy, a horizontal Europeanization refers to processes by which administrative practices and policies develop organically within national asylum administrations. One example of horizontal Europeanization comes from the administrative cooperation of the Dublin system. The Dublin Regulation has created a Europe-wide system for Dublin requests and transfers of asylum seekers, which relies on extensive cooperation and trust among the participating national asylum administrations. Thus, the Dublin system is today a well-established transnational bureaucratic field created in a process of horizontal Europeanization (Lahusen, 2016; Lahusen & Wacker, 2019). However,

much suggests that this horizontal Europeanization of asylum administration now has developed far beyond the Dublin system. The results from the Finnish case presented in this study provide evidence that European cooperation among civil servants is much broader and more far-reaching than the Dublin system alone.

Results from the major comparative European research project CEASEVAL, involving interviews with a large variety of stakeholders in ten EU countries, indicate that there is broad European cooperation in the field of asylum. For example, practices of responsibility sharing have increased significantly with the establishment of the European Asylum Support Office (EASO; see Baumgartner & Wagner, 2018; Perumadan & Wagner, 2019). There has been a clear strengthening of both the mandates and budgets of this EU agency, which in 2022 will transform into the European Agency for Asylum (EUAA). Similarly, the mandate and budget of Frontex, the European Border and Coast Guard Agency, have been strengthened. The support activities that EASO provides to member states have the explicit aim of strengthening the harmonization of national asylum practices and decision-making. As confirmed by the expert interviews for the CEASEVAL project, stakeholders acknowledged the powerful potential of EASO to facilitate the convergence of national practices in the field of asylum (Wagner et al., 2019, p. 26). In general, harmonization seems to receive broad support among the stakeholders interviewed in the CEASEVAL project, although the meaning and goals of harmonization were not always considered sufficiently clear (Wagner et al., 2019). This all suggests that there is reason to study the process of horizontal Europeanization of asylum administration more closely, since it seems to be the significant driver of harmonization of asylum policies and practices across Europe today. With this aim in mind, this article focuses on the asylum administration in Finland. As one of the smaller member states, geographically situated far from the core of the EU, but with a developed, professional, and extensive public administration, the case of Finland can reveal much about the extent of harmonization of asylum policies and practices in the post-2015 period.

## 4. Methods

The study aims to analyze the judgments and experiences of harmonization among civil servants in the asylum administration in Finland. These civil servants have been studied since they deal with issues that are covered by the CEAS in their daily work and can therefore be expected to have good insight into the harmonization of asylum policies and practices after 2015. The interviewees were asked to provide answers and reflect on the questions from the perspective of their work. Thus, the aim is to obtain knowledge of the interviewees' own judgments and experiences of harmonization from the perspective of their professional position in the asylum system. The study relies on interviews originally performed for the major European comparative research project CEASEVAL. This project produced broad and diverse data, and this article focuses on civil servants to study the process of horizontal Europeanization of the public administration. This article utilizes the interview results from Finland, since the country has a highly developed public administration, and the Finnish interviews that were conducted by the author provide rich data on the process of horizontal Europeanization. Thus, this article will analyze the Finnish interview data in greater depth than was possible in the CEASEVAL project.

The interviews utilized a questionnaire with both structured and open questions on the process of harmonization, with the aim of mapping the process of creating similar rules and approximating practices in the field of asylum. There were also open questions about the experiences and assessments of the interviewees concerning the various networks they participated in. Furthermore, separate questions were asked about their understanding of the concept of solidarity (Wagner et al., 2018). The interviews also discussed responsibility sharing and asked for concrete examples of the responsibility sharing that the interviewees were involved in. The specific objectives of this part of the project were to take stock of responsibilities to be shared in the intake, care, and procedures for asylum; to identify good practices on sharing of responsibility; and to analyze the lessons learned (Baumgartner & Wagner, 2018; Perumadan & Wagner, 2019; Wagner et al., 2019).

This article analyses interviews held with seven civil servants working in state agencies in Finland in 2018. Most of the seven interviewees were relatively senior, working in high-ranking positions in the public administration of national asylum issues. In Finland, this administration is a centralized state administration that involves the Ministry of the Interior and the Finnish Immigration Service, which is a state agency that operates under the Ministry of the Interior. The interviewees were all either employees of the Ministry of the Interior or the Finnish Immigration Service. The interviewees were found through direct contacts with senior civil servants. Ten civil servants were approached for an interview, but three of them never found time to participate. However, the seven interviewees cover all the main areas of activity of the migration and asylum state administration in Finland.

At the time of the interviews in 2018, asylum issues were widely debated issues in highly polarized and heated public debates. Therefore, anonymity was essential to gain access to the experiences of the interviewees. After receiving detailed information on the CEASEVAL project, all the seven interviewees gave their consent to be interviewed. Some of the interviewees also agreed to be identified by name, but to protect the anonymity of the remaining interviewees all participants must remain anonymous. The civil servants often explicitly emphasized that they were only allowed to provide information on asylum practices and not to provide political opinions, which I interpret as a reflection of the politically sensitive

nature of asylum issues in public discourse in Finland, and a wish to provide information that reflected their professional role rather than their personal opinions.

The interviews were based on semi-structured interview guidelines and were conducted face-to-face. The interviews were conducted in the Finnish language and the average length of the interviews was one hour and ten minutes. The quotations in this article have been translated from Finnish to English by the author. Thus, the empirical data used in this article consists of anonymous interviews with civil servants in the administration of asylum and migration issues in Finland. Together with an analysis of Finnish public documents and policy papers, these interviews provide detailed information on the Europeanization of the public administration of asylum issues and how the processes of harmonization are experienced in the daily work of civil servants.

## 5. The Harmonization of Asylum Practices

All interviewees were asked standardized questions concerning their experiences of the extent of harmonization in various areas of practice, but they were also provided an opportunity to give open answers to the questions and freely discuss harmonization from the perspective of their work. Regardless of their position and work tasks within the Finnish national administration, the interviewees felt harmonization of the asylum system was necessary in the EU. They felt this need for harmonization regarding asylum procedures, status determination, and reception practices. However, it was felt that harmonization in the EU had occurred mostly in asylum procedures and especially in the determination of responsibility (i.e., the Dublin system), while, in comparison, the interviewees found that status determination and reception practices displayed greater variation among the member states. Furthermore, the area of second instance asylum jurisprudence was found to be less harmonized, partly because of the independence of the courts of law. One of the interviewees explained the need for harmonization from a Finnish perspective in the following way:

> Harmonization is a large, fundamental, and very important question….Harmonization of asylum systems is necessary because of the free movement of people and the Schengen agreement. Large policy deviations among the member states cannot be part of the picture because of the common external border of the EU. In the case of Finland, we must follow Sweden in particular, since changes in asylum policy in one country will immediately be reflected in the other. Finland closely and continuously follows and reacts to changes in European asylum systems. Finland is part of the development. (WP26_uh_E002_P)

The need for harmonization was connected by the interviewees to a need for greater predictability in the outcomes of the system. For example, the interviewees expressed a need for predictability in terms of numbers of applicants and in the outcome of decisions on asylum applications. Finland had experienced a large fluctuation in the number of asylum seekers in 2015, when the number had increased tenfold compared to 2014. This increase in the number of asylum seekers, mainly arriving across the border with Sweden, had put a strain on the reception system, which was still fresh in the memories of all the interviewees. It was felt that Finnish public administration needed information on the number of people to be expected in the asylum system. Information sharing among European countries was seen as crucial for the ability to plan the measures to be taken in Finland. If the procedures and the outcome of the determination process were similar all over Europe, the effect of the migration flows on the Finnish reception system could be better predicted.

However, concerning the judgments on the extent of harmonization of *reception practices* in the EU, the answers provided were more mixed. Many judged the reception conditions in Finland as relatively good compared to those in other countries. Some even pointed out that, from the perspective of individual member states, it was not necessarily in the interest of the state to have a good reception system, or at least not a system that was better or more attractive than the system in other states. A couple of the interviewees expressed that Finland would need to avoid having "attractions" in its asylum system. Such answers reflect a tendency towards what has been called "a race to the bottom," in which states aim to have asylum systems that are not more generous than the systems in other states:

> Harmonization in the CEAS involves similar practices and regulations. We cannot have a situation of asylum shopping in which the attraction and the services provided to asylum seekers are different in different receiving countries. Of course, there will be variations in the attraction, and there are several things involved, but the application procedures must be the same and the practices similar. The Dublin system was needed to prevent applicants from traveling around Europe and making recurring applications. The human rights agreements state the right to apply for asylum, but there is a need to agree on how this is done in the EU. And it is efficient if applications are processed in one country and not processed several times. Thus, there are both matters of principles and practical issues that form the background of harmonization. The system presupposes a harmonization of asylum policies and will not work without a harmonization. The credibility of the whole system suffers if the processes are not harmonized….The development in my country has been in the direction of harmonization. This development has been going on since the 1990s. [Previously] it was thought that it did not matter if the regulations were more liberal in

> Finland, but the year 2015 was a wake-up call. After that, it has been felt even more strongly that the rights should not be better in Finland. Thus, gradually, harmonization has increased. This has also politically become a more important issue.
>
> ÖW: So, 2015 was a turning point?
>
> Gradually things have changed, but 2015 was a more decisive turning point. But these are of course also political questions, which I only follow from the side. (WP26_uh_E004_P)

As expressed in the interview quoted above, the civil servants expressed strong support for a European harmonization of asylum practices. This support was clearly expressed, despite the interviewees showing an unwillingness to comment on political issues. The experienced need for a harmonization of policies was especially evident in relation to the neighboring country of Sweden, which, as described below, constituted a key reference point for Finland in migration and asylum policy issues.

### 6. Cooperation and Contacts Among Member States

The interviewees were asked about their cooperation with international organizations in the field and their contacts involving other EU member states. A well-established contact for the civil servants is the UNHCR. The asylum administration in Finland is in this respect similar to stakeholders in other countries: In the CEASEVAL project, the vast majority of stakeholders mentioned having contact with the UN Refugee Agency (Wagner et al., 2019, p. 33). In the case of Finland, UNHCR was clearly important for the sharing of information. The interviewees emphasized the role of the UNHCR Nordic regional office in Stockholm: "UNHCR is a standard and well-established contact. This involves the UNHCR office for the Nordic countries in Stockholm" (WP26_uh_E006_P). In addition, the international contacts also involved other international agencies and organizations; the interviewees mentioned the EMN, EASO, the Nordic Council, the Intergovernmental Consultations on Migration, Asylum and Refugees (IGC), and the International Organization for Migration: "The IOM [Regional Office for the Baltic and Nordic States] is in Helsinki, so we meet a lot" (WP26_uh_E005_P). When asked about what the international cooperation entailed, information sharing was mentioned as the top priority:

> Information sharing is the most important. We need to get information about regulation and practices in other countries. Since the Dublin agreement defines the country in charge of the application, this also means that the outcome of this process should not vary depending on where the application is processed….Finland cannot have divergent policies and practices in comparison to other countries. To compare Finland with Sweden is especially important. (WP26_uh_E004_P)

Thus, the civil servants found the various contacts with networks outside of Finland to be very important in gaining information on policies and practices in other countries. This information was important since it was needed for the harmonization of Finnish policies and practices. The interviews revealed that Nordic regional cooperation was important for getting information on the neighboring countries: "The Nordic countries have old and well-established contacts in many various fora and contexts. There are plenty of meetings. [In terms of asylum policy] it is Sweden that we mostly follow" (WP26_uh_E006_P). The extensive Nordic cooperation involved both informal and formal cooperation and many of the contacts related to the neighboring country of Sweden. The formal cooperation involved information sharing within the framework of the Nordic Council and the Nordic Council of Ministers. The Nordic Council has a permanent committee for refugee and immigration issues in the Nordic passport-free area, the Nordiska utlänningsutskottet (Nordic Immigration Committee), which has existed since 1957. One of the interviewees (WP26_uh_E004_P) explained that, overall, Nordic cooperation is very practically oriented, involving information sharing and discussions of practical issues. In addition, there is Nordic political cooperation at a higher ministerial level, which the civil servants were not part of. This included the Nordiska samrådsgruppen på hög nivå för flyktingfrågor, often translated as the "Nordic Council for Refugee Affairs," where ministers and government representatives of the Nordic countries meet for regular consultations on matters of overall policy. The Nordic countries include Denmark, Finland, and Sweden, but also Iceland and Norway, which are not members of the EU. One of the interviewees was specifically asked about the EU member states that the interviewee had contacts with, in the framework of the work of the EU and the European Commission, and also mentioned Nordic cooperation in this context:

> Nordic cooperation is central for Finland. The countries we are in regular contact with vary, but the Nordic countries are the key partners and the countries we have most contacts with. Sweden of course, but all the Nordic countries. Norway and Iceland are of course not members of the EU, but it has to be remembered that they are members of agreements and cooperation in the EU, Schengen, Dublin. Thus, we have much in common with all the Nordic countries. There is strong Nordic cooperation which is related to our shared administrative traditions….This is a cooperation of the like-minded. Who you are in contact with depends on the issue. The country you are in contact with may vary. But it easily ends up with a Nordic cooperation. You prepare issues in smaller

> groups with like-minded countries, and this is usually a group of the Nordic countries. (WP26_uh_E002_P)

As described in the quotation above, the Nordic civil servants also seem to find common ground in the contacts within the EU framework, but the contacts within the EU have also extended the cooperation to new countries. In recent years, the Nordic cooperation has to some extent been replaced, or at least expanded, by cooperation at the EU level. In the case of Finland, this widening of the cooperation into a European rather than a Nordic cooperation is a significant change, which clearly testifies to the power of the ongoing horizontal Europeanization of the asylum administration. From the perspective of the interviewees, a key recent development has been European cooperation within the framework of EASO, which has played a growing role in recent years. In this new framework, the contacts of the civil servants are EU-wide. EASO provides frequent contacts for information sharing and has also been significant for staff training and other guidance:

> There are plenty of contacts in EASO and joint projects with other countries. In general, the countries in Western and Northern Europe are followed closely by Finland….The EASO is the key agency, it includes information sharing. This contact is very regular and active. EASO also provides training modules. (WP26_uh_E007_P)

> EASO is currently the cooperation that demands a lot of work from us, and much of our resources are used to support EASO. Despite the work involved, the cooperation is very beneficial….The EASO training modules are important and are utilized by us in all staff training. These have provided substantial benefits. Without the training modules, I do not know how we would have managed the training of new staff in the rapid expansion of staff after 2015. (WP26_uh_E004_P)

As outlined in the quotations above, European cooperation involving information sharing was considered important. The role of EASO seems to be especially significant in the work related to status determination, since EASO has provided both information and staff training relating to this work task. Furthermore, EASO has clearly had a large impact on the harmonization of products for "country of origin information" (COI). This harmonization undoubtedly creates a common discourse in the field of asylum, involving a similarity in vocabulary, points of view, and interpretations of information. In addition, the EU-wide EMN network has played a key role in information sharing through the information requests that are shared in the network:

> We work together and share work. There is an exchange of information. The COI researchers take part in EASO workshops and share information. We make requests for information and receive information, as well as get information from good sources. This has developed a lot in recent years. (WP26_uh_E005_P)

> EMN is very important. Information sharing is very important. There are other networks for policy and politics, but for [the agency of the interviewee] contacts for information sharing are the most important activity. Information sharing provides plenty of benefits, but sometimes demands quite a lot of work from us. (WP26_uh_E004_P)

## 7. Sharing of Responsibilities, Solidarity, and Good Practice

The interviews included questions concerning the interviewees' experiences of sharing responsibilities among EU member states, the meaning of solidarity in a European context, and examples of good practice in relation to their own work. The meaning of the concepts and the difference between the activities that these relate to, is, however, not clear cut, which was reflected in the answers provided. As one interviewee expressed: "I actually find it slightly difficult to distinguish responsibility sharing from solidarity; to share responsibilities is a way to show solidarity among the member states" (WP26_uh_E005_P).

The respondents found that the Finnish authorities were involved in many diverse activities that could be considered responsibility sharing. The examples mentioned included resettlement of refugees, relocation of asylum seekers, sharing of financial costs and EU resource allocation, the EASO asylum support teams, staff training cooperation (involving the EASO training modules), visits to other member state migration agencies, in addition to sharing of information (involving both COI and other types of information). The Dublin system was mentioned as a significant, well-established, and extensive cooperation. Furthermore, according to the interviewees, the EMN, EASO, and the Nordic sharing of information already worked extensively, and providing replies to requests for information was considered a sharing of responsibility. Three of the interviewees also explicitly mentioned the joint Frontex return flights, which Finnish authorities had also made use of (this was mentioned although the interviewees did not include the police force, which is the Finnish authority that carries out the return of foreign nationals after the decision has been made by other authorities). In summary, the activities of the Finnish civil servants included extensive and varied forms of administrative cooperation at both the regional (Nordic) and the EU level, which the interviewees considered to be examples of both responsibility sharing and good practice.

The interviews included questions on what the informants found to be the greatest obstacle to EU-wide

harmonization and solidarity. The answers provided reflected the fact that "member states cannot agree" (WP26_uh_E006_P). In other words, the interviewees found that national interests often turned out to play a larger role than European solidarity at the EU level. Thus, the interviewees also expressed an awareness of the lack of political agreement on solidarity and responsibility sharing among the member states. The challenges to harmonization and cooperation that were identified by the interviewees tended to be part of the intergovernmental political sphere of the EU, i.e., the EU level of decision making where national governments often found it difficult to find political agreement. On the contrary, the examples that the interviewees gave of good practice and their experiences of successful cooperation among EU countries tended to relate, either directly or indirectly, to administrative cooperation among national migration agencies, supranational features of the EU (e.g., EASO and Frontex), and agencies of the international governance of asylum (e.g., UNHCR).

These results indicate that the Finnish asylum administration is deeply embedded in various types of cooperation and international responsibility sharing. These activities may be small in scale, but they still constitute fundamental and necessary parts of the daily work of the civil servants. The cooperation in the Dublin system is well established, but the EU-wide administrative cooperation among civil servants in the national asylum administration is today much broader than in the Dublin system alone. The answers that the Finnish civil servants provided can be interpreted as reflections of the ongoing European development towards a common European asylum system, involving horizontal cooperation and practical responsibility sharing, but also supranational institutional arrangements at the EU level. This is an actual ongoing development, with, for example, the development of a larger role for the EU asylum agency EASO in the areas of asylum admission and information sharing.

## 8. Concluding Discussion

The results of the study suggest that Finnish asylum administration is following a general development in the EU towards harmonized practices and transnational or supranational cooperation in the field of asylum. The interviewees seemed to support this development because it provided greater predictability of the European asylum system, a predictability that the civil servants in this study found was of crucial importance for the functioning of the system and their daily work. Thus, there was broad support for harmonization since harmonization supported smooth cooperation among the countries involved and the easy sharing of information needed in the daily work of the civil servants. Likewise, to receive information from other countries was found to be of crucial importance since it was necessary for harmonizing Finnish policies and practices. Thus, the sharing of information and the process of harmonization supported each other.

In Finland, there is a long history of international cooperation, involving both the UNHCR and regional Nordic cooperation, in migration issues. This cooperation has now been complemented with EU-wide administrative cooperation in asylum issues. The Dublin system involves a well-established and extensive administrative cooperation, which forms a European field of public administration (Lahusen, 2016; Lahusen & Wacker, 2019). The Finnish civil servants are clearly part of this field. However, this study highlights the fact that the EU-wide administrative cooperation has now developed into a much broader and more diverse cooperation than has previously been the case. The work of EASO is a significant step towards transnational and supranational cooperation, but there are also other forms of European administrative cooperation, diverse projects, and extensive practical sharing of responsibilities that can be seen as part of an ongoing horizontal Europeanization. This development can be considered a broad process of Europeanization involving "formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things,' and shared beliefs and norms" (Radaelli, 2002, p. 106).

The results outlined in this article indicate that the harmonization of the CEAS, at least at the moment, seems primarily to be occurring as a "horizontal Europeanization" (Heidenreich, 2019; Radaelli, 2002), where common administrative practices and asylum policies develop organically within national asylum administration. This is in contrast to a hard Europeanization prescribed top-down (vertically) by the EU, which generally tends to face strong political opposition among the member states. Thus, the results of this study indicate that a de facto harmonization of asylum policies and administrative practices occurs, despite possible political disagreements concerning the future of the CEAS at the EU level. The research focusing on the—often problematic—legal and political aspects of the CEAS may somewhat obscure the significance of the process of horizontal Europeanization. This process is relevant to both the framing of political issues and research on European migration and asylum policies, which need to take into account these on-going developments at a horizontal level, rather than solely focusing on the national level or the EU level.

The results support the argument that the EU-wide developments of asylum administration involve the emergence of a new transnational bureaucratic field (Lahusen & Wacker, 2019). The interviews reveal that Finnish civil servants are broadly involved in both transnational networks and supranational cooperation at the EU level. This development of new bureaucratic fields has significant political and practical implications. A challenge is that, unlike centralized bureaucracies, an organically developed system driven by a process of horizontal Europeanization lacks clear centralized political control. Thus, a future challenge is the governance of

this new European bureaucratic field. How is it regulated and how can it be politically controlled, either by national governments or by the European Commission?

This article has outlined the experiences of the civil servants, who were asked to reflect on the issues from the perspective of their work. It must be noted, however, that this perspective is not the same as the perspective of the asylum seekers. The question that remains—and it must be answered by other research projects—is how the interest of asylum seekers relates to the ongoing developments of the European asylum system. A harmonization of asylum practices, a transnational horizontal Europeanization of asylum administration, and a supranational governance of asylum may or may not be in the interest of asylum seekers: The latter is the case especially if it involves similar restrictive policies in all EU member states. Thus, there is reason for research to follow these developments closely, since much suggests that national asylum systems will be increasingly embedded into a common European system in the future.

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**Conflict of Interests**

The author declares no conflict of interests.

**References**

Baumgartner, P., & Wagner, M. (2018). *Sharing responsibilities in the Common European Asylum System* (CEASEVAL Research on the Common European Asylum System No. 04). CEASEVAL. http://ceaseval.eu/publications/04_BaumgartnerWagner_SharingResponsibilties.pdf

Börzel, T. A. (1999). Towards convergence in Europe? Institutional adaptation to Europeanization in Germany and Spain. *Journal of Common Market Studies*, *39*(4), 573–596. https://doi.org/10.1111/1468-5965.00197

Börzel, T. A. (2002). Member state responses to Europeanization. *Journal of Common Market Studies*, *40*(2), 193–214. https://doi.org/10.1111/1468-5965.00351

Börzel, T. A., & Risse, T. (2003). Conceptualizing the domestic impact. In K. Featherstone & C. M. Radaelli (Eds.), *The politics of Europeanization* (pp. 57–78). Oxford University Press.

Börzel, T. A., & Risse, T. (2018). From the euro to the Schengen crises: European integration theories, politicization, and identity politics. *Journal of European Public Policy*, *25*(1), 83–108. https://doi.org/10.1080/13501763.2017.1310281

Brekke, J. P., & Staver, A. (2018). The renationalisation of migration policies in times of crisis: The case of Norway. *Journal of Ethnic and Migration Studies*, *44*(13), 2163–2181. https://doi.org/10.1080/1369183X.2018.1433026

Caponio, T., & Ponzo, I. (Eds.). (2022). *Coping with migrants and refugees: Multilevel governance across the EU*. Routledge.

European Commission. (2022). *Common European Asylum System* (CEAS). https://ec.europa.eu/home-affairs/pages/glossary/common-european-asylum-system-ceas_en

European Migration Network. (2015). *Annual report on migration and asylum policy: Finland 2014.* http://www.emn.fi/files/1227/EMN_Annual_report_ENG_final_low.pdf

Faist, T., & Ette, A. (Eds.). (2007). *The Europeanization of national policies and politics of immigration: Between autonomy and the European Union*. Palgrave Macmillan.

Featherstone, K., & Radaelli, C. M. (Eds.). (2003). *The politics of Europeanization*. Oxford University Press.

Heidenreich, M. (Ed.). (2019). *Horizontal Europeanisation: The transnationalisation of daily life and social fields in Europe*. Routledge.

Knill, C. (2001). *The Europeanisation of national administrations*. Cambridge University Press.

Koikkalainen, S., Kyle, D., & Nykänen, T. (2020). Imagination, hope and the migrant journey: Iraqi asylum seekers looking for a future in Europe. *International Migration*, *58*(4), 54–68. https://doi.org/10.1111/imig.12647

Lahusen, C. (2016). Auf dem Weg zu einem europäischen Verwaltungsfeld? Zur Soziologie der Bürokratisierung Europas am Beispiel des Gemeinsamen Europäischen Asylsystems [Towards a European administrative field? On the sociology of bureaucratization of Europe using the example of the Common European Asylum System]. *Berliner Journal für Soziologie*, *26*(1), 109–133. https://doi.org/10.1007/s11609-016-0304-4

Lahusen, C., & Wacker, M. (2019). A European field of public administration? Administrative cooperation of asylum agencies in the Dublin system. In M. Heidenreich (Ed.), *Horizontal Europeanisation: The transnationalisation of daily life and social fields in Europe* (pp. 153–174). Routledge.

Lavenex, S. (2001). *The Europeanisation of refugee policies: Between human rights and internal security*. Ashgate.

Lavenex, S. (2018). "Failing forward" towards which Europe? Organized hypocrisy in the Common European Asylum System. *Journal of Common Market Studies*, *56*(5), 1195–1212. https://doi.org/10.1111/jcms.12739

Nikolić, B., & Pevcin, P. (2022). How to improve sustainability of the Schengen agreement on open borders? *International Migration*, *60*(1), 244–257. https://doi.org/10.1111/imig.12850

Norrback, O. (2008). *Maahanmuuttohallinnon ja Maahanmuuttoviraston toiminnan kehittäminen* [The development of the activities of the immigration administration and the Finnish Immigration Service] (Publication of the Ministry of the Interior 15/2008). The Ministry of the Interior.

Perumadan, J., & Wagner, M. (2019). *The Common European Asylum System: Promising practices of responsibility sharing* (CEASEVAL Research on the Common European Asylum System No. 36). CEASEVAL. http://ceaseval.eu/publications/36_PromisingPracticesOfResponsibilitySharing.pdf

Pirjatanniemi, E., Lilja, I., Helminen, M., Vainio, K., Lepola, O., & Alvesalo-Kuusi, A. (2021). *Ulkomaalaislain ja sen soveltamiskäytännön muutosten yhteisvaikutukset kansainvälistä suojelua hakeneiden ja saaneiden asemaan* [The combined effects of the amendments to the Aliens Act and the practice of applying the Act with regard to the status of those requesting and receiving international protection]. Valtioneuvoston kanslia. http://urn.fi/URN:ISBN:978-952-383-009-7

Pyrhönen, N., & Wahlbeck, Ö. (2018). *The Finnish national report on the politicization of the "refugee crisis" in public debate* (CEASEVAL Research on the Common European Asylum System No. 09). CEASEVAL. http://ceaseval.eu/publications/09_PyrhonenWahlbeck_FinnishNationalReport_WP5.pdf

Radaelli, C. M. (2002). The domestic impact of European Union public policy: Notes on concepts, methods, and the challenge of empirical research. *Politique européenne*, *5*(1), 105–136. https://doi.org/10.3917/poeu.005.0105

Scipioni, M. (2018). Failing forward in EU migration policy? EU integration after the 2015 asylum and migration crisis. *Journal of European Public Policy*, *25*(9), 1357–1375. https://doi.org/10.1080/13501763.2017.1325920

Tuominen, H., & Välimäki, M. (2021). Suomi ja muuttoliikepolitiikan eurooppalaistuminen (1954–2020) [Finland and the Europeanization of migration policy (1954–2020)]. In K. Elo (Ed.), *Suomi 25 vuotta Euroopan unionissa* [Finland 25 years in the European Union] (pp. 203–248). Sigillum.

Vink, M., & Bonjour, S. (2013). When Europeanization backfires: The normalization of European migration policies. *Acta Politica*, *48*(4), 389–407. https://doi.org/10.1057/ap.2013.11

Wagner, M., Baumgartner, P., & Mouzourakis, M. (2019). *Harmonising asylum systems in Europe—A means or an end per se?* (CEASEVAL Research on the Common European Asylum System No. 25). CEASEVAL. http://ceaseval.eu/publications/25_WP2_HarmonisationWP.pdf

Wagner, M., Kraler, A., & Baumgartner, P. (2018). *Solidarity—An integral and basic concept of the Common European Asylum System* (CEASEVAL Research on the Common European Asylum System No. 05). CEASEVAL http://ceaseval.eu/publications/05_WagnerKralerBaumgartner_Solidarity.pdf

Wahlbeck, Ö. (2019a). *National report on the governance of the asylum reception system in Finland* (CEASEVAL Research on the Common European Asylum System No. 19). CEASEVAL. http://ceaseval.eu/publications/WP3_Finland.pdf

Wahlbeck, Ö. (2019b). To share or not to share responsibility? Finnish refugee policy and the hesitant support for a common European asylum system. *Journal of Immigrant and Refugee Studies*, *17*(3), 299–316. https://doi.org/10.1080/15562948.2018.1468048

Wahlbeck, Ö. (2022). The Finnish reception system and a local perspective on integration. In T. Caponio & I. Ponzo (Eds.), *Coping with migrants and refugees: Multilevel governance across the EU* (pp. 172–199). Routledge.

Zaun, N. (2017). *EU asylum policies: The power of strong regulating states.* Palgrave Macmillan.

Zaun, N. (2018). States as gatekeepers in EU asylum politics: Explaining the non-adoption of a refugee quota system. *Journal of Common Market Studies*, *56*(1), 44–62. https://doi.org/10.1111/jcms.12663

Zaun, N. (2020). Fence-sitters no more: Southern and Central Eastern European member states' role in the deadlock of the CEAS reform. *Journal of European Public Policy*, *29*(2), 196–217. https://doi.org/10.1080/13501763.2020.1837918

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Article

# Border Reconfiguration, Migration Governance, and Fundamental Rights: A Scoping Review of EURODAC as a Research Object

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**Abstract**
This article scrutinises the European Asylum Dactyloscopy Database (EURODAC) as a research object for social science. EURODAC serves as an important part of the Common European Asylum System (CEAS) infrastructure by registering digitalised fingerprints of asylum seekers, which facilitates the allocation of responsibility following the Dublin Regulation. In this article, we explore the role of EURODAC from its implementation in 2003 until April 2021 through a scoping review that maps and analyses existing social science research in the field. In total, 254 scholarly publications—identified in Scopus, Academic Search Complete, and Web of Science—were reviewed. The article seeks to answer three research questions: What is the accumulated knowledge within social science research on EURODAC? What gaps and trends exist in this research? What are the possible implications of this knowledge, gaps, and trends for other areas of the CEAS such as asylum evaluations and reception of asylum seekers? Based on a qualitative thematic analysis, our review shows that research on EURODAC can be divided into three broad categories: research that focuses on the reconfiguration of borders; research that focuses on migration governance and resistance; and research that emphasises fundamental rights and discrimination. In our final discussion, we highlight the lack of ethnographic studies, of gender and intersectional perspectives, and of in-depth studies on national legal frameworks including asylum evaluations and reception practices across the EU. The article concludes that social science needs to address the socio-political underpinnings of EURODAC and acknowledges its centrality to all areas of the CEAS.

**Keywords**
asylum; Common European Asylum System; EURODAC; interoperability; scoping review

**Issue**
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## 1. Introduction

With the Treaty of Amsterdam and the Tampere Agenda in 1999, the development of the supranational Common European Asylum System (CEAS) took its course, building upon previous policy efforts aiming to harmonise national policy framework and practice in the area of asylum, such as the Dublin Convention (1990–1997). The CEAS focuses on three areas: (a) efficient asylum and return procedures, (b) shared responsibility between member states, and (c) strengthened partnership with third countries. It includes several legal instruments that guide asylum and reception procedures in member states: The Asylum Procedures Directive aims to ensure quality and fairness in asylum decisions; the Reception Conditions Directive seeks to establish “a dignified standard of living”; and the Qualification Directive clarifies grounds for international protection. Two legal instruments concern specifically the allocation of responsibility between member states: the Dublin Regulation, which

declares, with some exceptions, that the state of "first arrival" is responsible for processing asylum applications, and the EURODAC Regulation, which primarily seeks to facilitate the Dublin Regulation by storing asylum seekers' fingerprints in the EU-wide EURODAC in order to trace the country of arrival in the EU (Council Regulation of 11 December 2000, 2000).

When founded, the initial ambition of the CEAS was to establish minimum protection and reception standards in all EU member states. In its second phase, its aim was to improve standards and adopt a more generous attitude towards asylum seekers. However, since the turn of the millennium, critics argue, the development of EU migration policy has become a "race to the bottom,'' with increasing restrictions and focus on returns (Hansen & Hager, 2012). The merging of migration and security has led to an increasing suspicion, criminalisation, and violence aimed at asylum seekers and their families (Guild, 2009). On a more concrete level, the CEAS has also failed in its ambition, as today EU member states still differ widely in both reception and asylum policy. Thus, some member states grant wide access to welfare institutions, whereas others rely solely upon civil society to accommodate basic needs among refugees (Beirens, 2018). Similarly, major differences in recognition rates between member states reveal that international protection is neither interpreted nor implemented in the same way across the EU (Parusel & Schneider, 2017).

In this article, we place one of CEAS's instruments, the EURODAC, in the limelight. EURODAC's main purpose is often described as primarily facilitating the application of the Dublin Regulation (Orav, 2021). However, following the claim of science and technology studies that technological facts and artefacts—such as a database of fingerprints—are never simply just tools of implementation, but always contingent on their utilisation, translation, and inscription (Callon, 1986), we presume EURODAC to be—and *do*—much more. To find out *what* it does is the main aim of our investigation. To pursue our endeavour, we chose to do a scoping review of existing research to map and analyse key themes in social science on EURODAC. More specifically, we set out to answer the following questions:

1. What is the accumulated knowledge within social science research on EURODAC?
2. What gaps and trends exist in this research?
3. What are the possible implications of this knowledge, gaps, and trends for other areas of the CEAS, such as asylum evaluations and reception of asylum seekers?

Before pursuing these matters, we provide a short exposé on the functionalities, technology, and history of the EURODAC, as well as our scoping review methodology.

## 2. The Development of EURODAC: Function Creep and Interoperability

The EURODAC regulation was adopted by the Council of the European Union in 2000 and came into force on 15 January 2003. The basic application is a combination of biometric identification technology and computerised data processing. The central unit, managed by the European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), contains an automatic fingerprint identification system that receives data and replies "hit–no hit'' to the member state's national authorities who are responsible for the quality of data and security of its transmission. The database contains information on three categories of persons who (a) seek asylum, (b) cross borders irregularly, or (c) are found to stay "illegally'' within EU territory. Collectable data includes fingerprints of all persons from the age of 14, the dates of collection, sex, place and date of the application for asylum or of the apprehension, reference number, date of transmission to the Central Unit, and user ID of the person who transmitted the data. Data on asylum seekers is compared against data in the database and stored for 10 years. Data on irregular border crossers is stored for 18 months. The fingerprints of the third category of individuals are checked against previous asylum applications but are not stored (eu-LISA, 2014, 2016).

In its initial phase, the EURODAC was primarily set out to be used as a tool to prevent "asylum shopping" (see eu-LISA, 2016; Moore, 2013, p. 350). It was also repeatedly stressed that the database should not be used for other purposes, such as criminal investigations against asylum seekers (Brouwer, 2002). However, a decade into its use, a recast regulation (Regulation 603/2013) was issued which opened for wider use and, in particular, an increasing interoperability between different EU IT systems in the fields of migration, border control, and law enforcement. The key organisation to further such development is eu-LISA. Other databases within this operation are the Visa Information System (VIS) and the Schengen Information System (SIS-II), which process information for the purpose of border protection and law enforcement.

eu-LISA is responsible for the operation of all EU IT databases but is also assigned the task to "think strategically and anticipate future developments and dynamics" (Tsianos & Kuster, 2016, p. 239). Before the 2015 "refugee crisis," there were still harsh restrictions for law enforcement wishing to search EURODAC. However, after the Brussels bombings in 2016, the Commission urged for a speedier development of inter-connecting databases that could "strengthen security," and, in 2019, Regulations 2019/817 and 2019/818 "established a framework for interoperability among EU-wide information systems for third-country nationals" (Vavoula, 2020a, p. 132). Additional substantial changes are in the pipeline, for instance, to lower the age of collecting

fingerprints from 14 to six and to include more categories of data, such as facial images (Orav, 2021; Vavoula, 2020a). Such modifications and enhanced interoperability are not only established through legal means, but also through technical possibilities of transmitting data across different systems and expanding its use, which, in the case of most EU databases, was a possibility built-in already from the beginning. This may lead to so-called function creep that enables IT systems to be applied differently than what was their original intent. To ensure the technical possibility for such an expansion, eu-LISA ensures data compatibility, including a matching algorithm (BMS matcher) that enables the linking of data entries across systems (Tsianos & Kuster, 2016). In addition, new centralised databases are underway, storing information on, for instance, the entry and exit of all third-country nationals admitted for a short stay in the Schengen area and criminal records and convictions.

## 3. Review Method and Thematic Analysis

This article is based on a scoping review and follows the PRISMA-ScR protocol (Tricco et al., 2018), which provides a checklist for the review process. The scoping review procedure is as rigorous and systematic as a systematic review in its approach to synthesising knowledge (Munn et al., 2018; Peters et al., 2021; Tricco et al., 2018). The methodology emphasises transparency and the possibility to replicate a study (Arksey & O'Malley, 2005), but whereas systematic reviews tend to answer specific questions and evaluate evidence, scoping reviews generally present a broader map of existing research and do not necessarily assess the quality of each study. Scoping reviews are also useful to "identify key characteristics or factors related to a concept" (Munn et al., 2018, pp. 3–4).

We identify the "main concepts, theories, sources, and knowledge gaps" (Tricco et al., 2018, p. 1) in social science research on EURODAC; "EURODAC" is, therefore, our only search term. The search was conducted in April 2021 in the following databases: Scopus (n = 43), Academic Search Complete (n = 223), and Web of Science (n = 27). In total, 43 + 223 + 27 = 293 database hits have composed the initial sample with no restrictions on dates, as we wanted to examine possible shifts over time. After eliminating duplicates, we ended up with a total of 254 publications, published between the years 1994 and 2020.

The review was pursued as a two-step process. In the first step, all three researchers read and evaluated each abstract independently and excluded (n = 68) hits when these were: written in a language other than English (n = 32); not involving original research, e.g., conference proceeding, policy brief, or book review (n = 31); not social science (n = 1); when there was a search term mismatch (n = 4).

In the second step, the researchers screened the remaining (n = 186) full-text publications. In this screening phase, we discovered and excluded additional titles due to "EURODAC" not being mentioned in the body text (n = 23). The remaining publications were grouped as category A (n = 38) or B (n = 125). The main distinction between categories A and B was that the argument on EURODAC in a category A publication was more in-depth and elaborated on than in a category B publication. For instance, in many of the category B publications, EURODAC was only referred to as part of the CEAS, or as a contextual background, whereas in most category A articles, EURODAC was the main focus of attention or part of a larger empirical or theoretical investigation. Category A is therefore considered to be key publications in this study. Reliability was ensured by discussion between the coders to reach a consensus regarding which articles should be included in each category. Since the scoping review methodology aims to explore and map a research field, we did not assess the quality or originality of the publications. The key publications, followingly, represent a wide variety of social science research from many genres with different conceptual and empirical focuses.

After these steps in the review process, research entered the process of coding and thematic analysis (Braun & Clark, 2006; Ryan & Bernard, 2003). Concerning the key publications, we inductively identified themes according to the different arguments made about EURODAC and coded main themes and sub-themes for each publication. The sub-themes often overlapped with the main themes, but they also allowed for a wider articulation with more nuances.

The analysis resulted in eleven main themes (see Table 1) which together capture how EURODAC is articulated in social science research. In addition to the main themes and sub-themes, we made notes on method and specific locations for all key articles (see Table 1). This allowed us to (a) get an overview, (b) assess whether particular member states feature more than others in the literature, and (c) observe gaps or trends in methodological approaches. The analysis below describes the themes in greater detail and pays attention to conceptual tensions within each theme. In the analysis, the themes are clustered into three sections: the reconfiguration of borders (summarising "border control," "digitisation," "biometrics," and "surveillance"); EU migration policy and multi-level governance (summarising "securitisation," "member state variation," "deportation," and "migrant agency"); and fundamental rights and discrimination (summarising "data protection," "fundamental rights," and "cross-border police cooperation"). All key publications are referenced in these sections.

Category B publications were coded in the form of a condensed statement that captures the premise for how EURODAC appeared in the publication. Some of the statements enabled us to identify gaps in key literature, which we will return to in the discussion. All statements are listed in the scoping review protocol (see Supplementary File) that provides detailed information about each publication included in our study.

**Table 1.** Themes and key publications.

| Themes | Author(s) | Year | Published in/by | Sub-themes | Location | Method |
|---|---|---|---|---|---|---|
| Border control | S. Fragapane and G. Minaldi | 2018 | *Journal of European Integration* | Strategy of the South; member state variation; implementation | Italy; Spain | Document analysis/ data analysis |
| | B. Kuster and V. S. Tsianos | 2016 | Springer | Digitization; securitization; data protection; EURODAC research | Greece; Germany | Ethnography |
| | M. König | 2016 | *Internet Policy Review* | Surveillance; discrimination; categorization of migrants | EU | Policy analysis |
| | Z. Dóczi | 2013 | *Hungarian Journal of Legal Studies* | Interoperability, efficiency, function creep, fundamental rights | EU | Policy analysis |
| | B. Ajana | 2013 | *Journal of Refugee Studies* | Function creep; state of exception; citizenship; biometrics | EU; UK | Theoretical analysis/ case study |
| | L. Schuster | 2011 | *Ethnic & Racial Studies* | Member state variation; migrant agency; migrant experiences; deportation; categorization of migrants | EU; France; Greece | Ethnography |
| | D. Broeders | 2007 | *International Sociology* | Interoperability; function creep; internal border control; fundamental rights | EU | Document/ policy analysis |
| | R. Thomas | 2005 | *European Journal of Migration & Law* | Function creep; interoperability; data protection; discrimination | EU | Document analysis |
| Digitisation | D. Broeders and J. Hampshire | 2013 | *Journal of Ethnic & Migration Studies* | Border control; effectiveness; securitisation; function creep | EU | Document/ policy analysis |
| | M. Besters and F. W. A. Brom | 2010 | *European Journal of Migration and Law* | Function creep; fundamental rights; data protection; effectiveness | EU | Policy/ document analysis |
| Biometrics | D. Lyon | 2008 | *Bioethics* | Categorization of migrants, the truth of the body, discrimination | EU; Canada; US | Conceptual/ historical analysis |
| Surveillance | N. Mirzoeff | 2020 | *AI and Society* | Race; capitalism | General focus | Theoretical analysis |
| | V. S. Tsianos and B. Kuster | 2016 | *Journal of Borderlands Studies* | Function creep; fundamental rights; interoperability | EU | Policy/ document analysis |
| | J. Pugliese | 2013 | *Griffith Law Review* | Securitization; interoperability; biometrics; embodiment of the border | EU; Australia | Discourse analysis |

**Table 1.** (Cont.) Themes and key publications.

| Themes | Author(s) | Year | Published in/by | Sub-themes | Location | Method |
|---|---|---|---|---|---|---|
| Securitization | E. L. Mészáros | 2018 | *Eurolimes* | Border security policy; Schengen-free movement | EU | Policy analysis |
| | E. L. Mészáros | 2017 | *Eurolimes* | Border control; interoperability | EU | Policy analysis |
| | M. Den Boer | 2015 | *Security & Human Rights* | Data protection; fundamental rights | EU | Policy/ document analysis |
| | M. Ferreira | 2010 | *Journal of Global Analysis* | Border control; biometrics | EU | Policy analysis |
| Member state variation | M. Fullerton | 2016 | *Harvard Human Rights Journal* | Asylum Law, Dublin Regulation, migrant agency, strategies of the South | Italy | Legal case study/ policy analysis |
| | M. J. Pedersen | 2015 | *European Security* | Legitimacy; effectiveness; fundamental rights | EU | Document analysis |
| | L. Schuster | 2011 | *Gender, Place and Culture* | Border control implementation; migrant agency; fundamental rights; strategy of the South | EU; France; Greece | Ethnography |
| | A. Hurwitz | 1999 | *International Journal of Refugee Law* | EU harmonisation; categorization of migrants | Belgium; France; Germany; The Netherlands; UK | Legal/ document analysis |
| Deportation | I. Soysüren and M. Nedelcu | 2020 | *Journal of Ethnic and Migration Studies* | Dublin implementation; member state variation; interoperability; governance level variation | Schweiz; France | Multi-sited ethnography |
| Migrant agency | E. Light, J. L. Bacas, D. Dragona, K. M. Kämpf, M. Peirano, V. Pelizzer, C. Rogers, F. Sprenger, J. Rowan, and A. L. Deng | 2017 | *Imaginations Journal* | Border control; care | EU | Theoretical analysis |
| | S. Scheel | 2013 | *Millennium: Journal of International Studies* | Biometrics; border control | EU | Theoretical analysis |

**Table 1.** (Cont.) Themes and key publications.

| Themes | Author(s) | Year | Published in/by | Sub-themes | Location | Method |
|---|---|---|---|---|---|---|
| Data protection | N. Vavoula | 2020 | *European Journal of Migration and Law* | Interoperability; fundamental rights; surveillance | General focus | Legal analysis |
| | N. Vavoula | 2020 | *European Public Law* | Interoperability; fundamental rights; surveillance | General focus | Policy analysis |
| | N. Vavoula | 2015 | Brill | Interoperability; securitization | EU | Legal/ document analysis |
| | F. Boehm | 2012 | Springer | Information sharing; fundamental rights; interoperability; efficiency | EU | Legal/ document analysis |
| | F. Boehm | 2012 | Springer | Information sharing; fundamental rights; interoperability; efficiency | EU | Legal/ document analysis |
| | F. Ippolito and S. Velluti | 2011 | *Refugee Survey Quarterly* | Asylum law, fundamental rights; interoperability; law enforcement; access to migration data | EU | Legal/ document studies |
| | E. R. Brouwer | 2002 | *European Journal of Migration and Law* | Fundamental rights; member state variation; function creep | EU | Policy analysis |
| Fundamental rights | M. Tazzioli | 2018 | *Journal of Ethnic & Migration Studies* | Strategy of the South; member state variation; implementation; migrant agency; border control | EU; Italy; Greece | Ethnography |
| | L. Roots | 2015 | *Baltic Journal of European Studies* | Securitization | EU | Policy/ document analysis; secondary data |
| | H. D. C. R. Abbing | 2011 | *European Journal of Health Law* | Medical best practice; medical age assessment | EU | Policy/ document analysis |
| | I. van der Ploeg | 1999 | *Ethics and Information Technology* | Biometrics; truth of the body; data protection | EU; The Netherlands | Document analysis |
| Cross-border police cooperation | V. Mitsilegas | 2008 | *Cambridge University Press* | Interoperability; data protection; surveillance | EU | Policy/ document analysis |
| | A. Baldaccini | 2008 | *European Journal of Migration & Law* | Data protection; interoperability; border control; deportation | EU | Document analysis; legal studies |

## 4. Analysis

In the following three sections, we synthesise the results from our thematic analysis of the key publications. Together, they present an illustrative picture of existing social science research on EURODAC. In the ensuing discussion, we highlight gaps and general trends in the literature and point to the implications of our findings for other areas of the CEAS, such as asylum evaluation and reception.

### *4.1. The Reconfiguration of Borders*

In the aftermath of 9/11, the EU began "re-engineering and rescaling" border management, introducing "smart border" technologies to deterritorialize "the external EU border and potentially extending it to the whole Schengen area" (Tsianos & Kuster, 2016, p. 236). This led to a transformation of the territorial border demarcating a sovereign state into a border stretching both outwards and inwards to remotely control migration and mobility flows, as well as internal migration control. EURODAC fits well into this scheme, and the changing practises of border control have also generated a "conceptual transformation of European borders" (Fragapane & Minaldi, 2018, p. 906) where exclusion also takes place through identification within the territorial borders.

One example is the concept of a "digital border.'' Broeders (2007, p. 89), for instance, argues that EURODAC together with VIS and SIS-II will eventually lead to "a new digital border that will survey the immigrant population, rather than the territorial border," and emphasises that the "digitisation" of borders implies an increasing interest in an internationally mobile population rather than a population within a specific territory. Indeed, in a co-authored article published six years later, Broeders and Hampshire (2013) argue that previous research has all too narrowly focused on the post-9/11 migration policy of "securitisation." The article describes how mobility and migration management are re-moulded in the face of possibilities offered by ICT social sorting mechanisms for "detecting" and "effecting" flows of people. Here, three modes are presented, which are either intended to hinder the entry of unwelcome persons, fast-track border passages for desired persons, or deeply scrutinise passengers who match specific risk indicators through data-mining and profiling.

Broeders and Hampshire (2013) also argue that commercial travel and the ICT industry contribute to increased digitisation. Besters and Brom (2010) take it one step further and claim that the digitisation of society is a self-driven process where information technology is inherently "greedy" and "elicits a dynamic of its own in which the political ends become to depend heavily on technical means" (Besters & Brom, 2010, p. 457). In their understanding, IT technology works as a machine that produces policy rather than the contrary, as function creep is part of the system. They rhetorically ask (Besters & Brom, 2010, p. 463): "Indeed, why would an information system be developed with a wide range of functions if only a few of these functions will be used in the end?" The gradual interconnectedness of EURODAC and law enforcement (Roots, 2015) relies upon a design that stores information that *could* be useful for crime prevention. The lack of democratic control of such a self-generating system is one of the main critiques that the authors highlight.

Another concept, launched by König (2016), is the "socio-digital border," which the author suggests captures how EURODAC functions as "social sorting," a concept developed by Lyon (2003). König (2016, p. 3) describes how "social sorting systems put the collected data into risk categories," profiled "according to race, gender, ethnic, national or religious criteria." The categories draw upon patterns extracted from big data including information stored in EURODAC. This social sorting leads to discrimination and exclusion. The socio-digital border shares similarities with "the biopolitical border" (see Walters, 2002) and "the biometric border" (see Amoore, 2006). The latter problematises the strong "truth claim" of biometrics—seen in migration policy as a reliable tool for establishing identity—and links it to the matter of digital technologies as one of the cultural means upon which our understanding of human beings is produced. Van der Ploeg (1999, p. 295) points to how biometrics generates a "readable" body. However, a readable body relies upon a notion of identities as pre-established, i.e., the system verifies who you *are*, and does not consider that any practice of identification concurrently is a practice of *establishing* identity (see also Lyon, 2008). Van der Ploeg emphasises the importance of analysing the context in which biometrics is used to understand its effects—the vulnerability of asylum seekers, for instance, makes the use of fingerprints in EURODAC different to other smart technologies designed to enable privileged travellers to move smoothly across borders.

Different definitions of the digital border thus highlight different aspects of the social effects of EURODAC. However, Kuster and Tsianos (2016) argue that the multitude of different definitions of digital borders risks "blackboxing" EURODAC's functions and reproducing the "success" of digitisation (Kuster & Tsianos, 2016, p. 48). Instead of addressing the border per se, four of the key texts analysed EURODAC as a surveillance technique. Pugliese (2013) discusses surveillance as a state's way of seeing through its laws and technologies, what he refers to as "statist regimes of visuality." Characteristics for the analysis of EURODAC as surveillance is how it is not understood in isolation but rather as an "interoperable surveillance grid" (Pugliese, 2013, p. 584). Statist surveillance through EURODAC, Pugliese (2013, p. 585) argues, is violent as it leads to the mutilation of fingers to escape identification. The intimate link between risk categories and longer histories of racial profiling is another example. According to Mirzoeff (2020), EURODAC should

be understood as a distributed form of racial surveillance capital that, in an automated approach, registers migrants as sets of biometric data. As such, it polices the "white space" and produces spaces of disappearance to which asylum seekers are expedited. Asylum seekers have thus lost the "right to have rights." By theorising biometric border control through Agamben's concept of biopolitics and "the management of life," Ajana (2013) illustrates how lives are at stake through the complex mechanisms of exclusion and inclusion that surveillance techniques give rise to. "In cases such as the EURODAC system," she argues, and in "the detention and even death of asylum seekers and irregular migrants we can clearly witness the actualization of biopolitical sovereignty and discipline" (Ajana, 2013, p. 592). Finally, Tsianos and Kuster (2016) employ a Deleuzian power perspective and see EURODAC as part of a "surveillance assemblage." In their view, the digital border lacks a multi-perspectival lens that considers both the making of borders—the de-making and re-making of borders—that are diffused to multiple sites, and the "technology work" where technology leads the way and "optimises communication and flow." From this perspective, the authors argue, EURODAC represents "a continuous space of 'smart' environments, i.e., the most secure and non-porous border—and the most dystopian at the same time" (Tsianos & Kuster, 2016, p. 293).

### *4.2. EU Migration Policy and Multi-Level Governance*

Rather than centring on the reconfiguration of borders, other publications analysed the development of EU migration policy including both multi-level governance and migrant agency. Almost all the included studies recognised, in some way, that EU migration policy had undergone a change in the past 20 years towards increasing "securitization" (Huysman, 2006), and that the development of biometric IT systems such as EURODAC enables the EU to "manage the flow" of migrants (see, e.g., Den Boer, 2015; Ferreira, 2010; Mészáros, 2017, 2018). In this discourse, migration has turned into "risk management," Besters and Brom (2010) argue. The logic is that "the more information, the better the profiling of risk groups," and that "absolute visibility of the migration flow implies complete control" (Besters & Brom, 2010, p. 460). If the above cluster has illustrated the effects of this development as border reconfiguration, this cluster of research puts migration policy development at the centre stage. This highlights how the EU-wide system appears "absolute," at first glance, but is in fact enacted differently in different member states and by different actors. Already before its inception, Hurwitz (1999) pointed to how national asylum structures will lead to different interpretations and practices of EU regulations. Soysüren and Nedelcu (2020) show this by focusing on the system of deportation within the EU. Even though EURODAC is considered "hard evidence" regarding the first country of entry, the system does not work as intended because of its complexity. Administrative bodies are, for instance, required to respect several deadlines, and migrants avoid deportation to countries with worse conditions (Soysüren & Nedelcu, 2020, p. 14; see also Fullerton, 2016). Another example of variation between member states is how some of the countries that serve as the main geographical entrance to the Union—in particular Greece and Italy—have developed strategies to avoid enrolling data in EURODAC. Fragapane and Minaldi (2018) discuss the non-compliance among some, primarily southern, countries in a more critical manner. Comparing Italy and Spain, the authors argue that national and EU immigration policies are important for how EURODAC is implemented, and they see it as a form of "communitarisation." These authors also describe how, in 2015, the EU agreed to relocate migrants, whilst concurrently implementing the new "hotspot approach." The hotspots led frontline member states to fulfil their responsibilities to identify and register fingerprints of incoming migrants as evidenced by a drastic increase of EURODAC registrations in southern countries in 2016 (Fragapane & Minaldi, 2018, p. 916). Tazzioli (2018, p. 2775) discusses the relation between EURODAC and the EU hotspot system as a response to the failure of the relocation scheme. Rather than being a systematic Europeanisation, she argues, however, that the hotspot system continued to establish a distinct North–South relationship with Italy and Greece as frontline states.

The differences in asylum systems between member-states are well known, and migrants navigate this knowledge about approval rates in their hopes to "move on" within Europe. Following the experiences of young men from Afghanistan who are in Paris, France, Schuster (2011b, p. 402) recognises that EURODAC and the Dublin Regulation are the "two elements that cause most difficulty to asylum seekers who arrive overland." Migrants whose fingerprints are registered in the "wrong country" experience difficulties. In Greece, Schuster writes, migrants are, for instance, afraid of police harassment and of being sent to Turkey. In Italy, they felt that racism against them was strong. Schuster's informants also witness that they find it hard to believe that their fingerprints will in fact follow them wherever they go in Europe (Schuster, 2011b, p. 409). In another article the author contends that EURODAC serves as a tool for states to abandon their legal responsibilities—e.g., ensuring the right to seek asylum—as well as punish asylum seekers that try to take control over their own life (Schuster, 2011a). Schuster (2011a) also states that the system transforms refugees into undocumented migrants.

Schuster's studies evince that migrants find ways of resisting even the most repressive systems. Some of her informants had, for instance, been deported several times, even all the way to Afghanistan, yet returned again and again to the EU. Many also kept away from authorities for the maximum 18 months that the Dublin Regulation is valid, to be able to seek asylum in the

country of choice. Light et al. (2017) notice how communities of asylum seekers and undocumented migrants develop "digital care" practices to find ways of helping themselves and others to avoid registration. The emphasis on migrants' agency is a core theme in the final two articles reviewed in this chapter, which both put forward the concept of autonomy of migration as a critique of the more system-oriented approach of securitisation. Tazzioli (2018) researches the EU hotspot approach, which seeks to contain asylum seekers by relocating and redistributing them across the member states. By refusing the spatial traps of the Relocation Scheme and the Dublin Regulation, migrants undermine the image of asylum seekers as subjects who need to accept protection under any condition by practising spatial disobedience (Tazzioli, 2018, p. 2765). Migrants, Tazzioli argues, claim freedom of choice regarding the place to stay and where to move. Scheel (2013), however, emphasises that, while migrants will always find ways to transgress boundaries, the present "ever-more pervasive and intrusive governmental technologies that seek to control and regulate migration" makes the central tenants of the autonomy of migration important to rethink. The digital data doubles that databases such as EURODAC create, which makes a person traceable based on the biometrics of the body, are part of a new playing field that significantly alters the conditions for the control of a person's migration history—one that cannot be compared to the passport burning practice, but rather one that affords fingertip mutilation. Scheel thus argues that while critics must not fall prey to the idea that all migrants are subjects of a totalising securitisation scheme, biometrics nevertheless challenge the idea of borders as a negotiation zone, and thus, Scheel argues, "autonomy" must be rethought as a relational concept.

### *4.3. Fundamental Rights and Discrimination*

By collecting and storing sensitive personal information, EURODAC is subjected to data protection laws, and the problems therein are addressed in the third chapter of this analysis. Already before its inception, Brouwer (2002, p. 231) asserted that EURODAC is special in that it would routinely collect sensitive personal information about a whole group regardless of their individual behaviour. This, Brouwer (2002, p. 243) argues, is problematic as "the governments seem to apply lower standards for respecting individuals' private life" when it comes to migrants and asylum seekers. The author also draws attention to the fact that while all persons have the right to be informed about each instance of recorded personal data, including how long it will be stored, and how it can be rectified, erased, or blocked, it is highly likely that many individual refugees or irregular migrants are not fully aware of their rights (see European Union Agency for Fundamental Rights, 2018). If one considers that biometrics are in general seen as reliable sources of knowledge, it is highly likely that mistakes are not resolved even if an asylum seeker would object. Yet, there are reasons for questioning the strong emphasis on reliability as not all fingerprints are easily recorded, for instance, those of children and the elderly (Besters & Brom, 2010; see also Vavoula, 2020b). Besters and Brom (2010) also point to the matter of migrants having little interest in a harmonised EU migration system unless the reasons for being rejected on their asylum application are harmonised as well. Thus, from a migrant's perspective, EU IT systems such as EURODAC do not serve their interests irrespective of data protection laws.

That data protection laws are insufficient for the categories of people subjected to EURODAC has been raised by several other authors. Van der Ploeg (1999) argues that, prior to its inception, several countries claimed EURODAC would violate national laws due to disproportionate and routine fingerprint gathering (see also Ajana, 2013). Adding irregular immigrants as a fingerprinting category was questioned in the early years. It was considered a separate matter and critics argued that it risked criminalising asylum seekers (Ajana, 2013, p. 583).

In the reviewed literature there are, however, some authors who suggest that data protection laws have been strengthened over the years, even if not enough to fully embrace the above-mentioned issues (e.g., Ippolito & Velluti, 2011). While most authors employed critical perspectives, a few leaned on the idea that, despite the lack of transparency, the digitalisation of border control also offers a certain measurability. In these publications, EURODAC is evaluated as a tool to implement the Dublin Regulation and can, as such, be both efficient and inefficient (Dóczi, 2013; Pedersen, 2015).

An adjacent question has been the function creep whereby the use of data stored in EURODAC is increasingly being employed in other fields. Interoperability with law enforcement is particularly sensitive. In 2005, Thomas (2005, p. 393) wrote that EURODAC did not develop legal protection against comparing EURODAC information with criminal databases since "access was limited for the sole purpose for which it was originally intended." However, as described in the background section, the recasting of EURODAC in 2013 and 2019 opened the doors for an increasing interoperability with both national law enforcement authorities and Europol. Vavoula (2015, 2020a, 2020b) has evaluated how such interoperability complies with respect for private life and the protection of data. Vavoula argues that the system is flawed, which threatens individual privacy when national and EU systems do not comply (see also Boehm, 2012a, 2012b). The permission to use EURODAC data for risk assessment (i.e., to combat terrorism) equally weakens the protection provided by law. EURODAC also contains information on minors, which represents another weak point in the legislation.

Finally, fundamental rights and data protection are also connected to the discrimination of migrants. For one, such discrimination concerns the fact that migrants are the "primary targets" of databases such as EURODAC

and thus by default become subjected to more surveillance than other groups (Baldaccini, 2008; Thomas, 2005). Similarly, Besters and Brom (2010) point to how asylum seekers and other categories of migrants have become a "test lab" for new security and surveillance technologies, and Vavoula (2020a) argues that more prosecutions and convictions "of third-country nationals may take place, merely because a pool of information exists, since no equivalent EU-wide catalogue of records on EU-citizens exists." In a discussion about the potentially invasive practices of medical age assessment, Abbing (2011) notes that regulations and databases with age limits for data registration, such as EURODAC, can affect the role of age determination beyond asylum cases. Another discriminatory aspect is that those subjected to fingerprinting may find this particularly difficult if they have fled coercive authorities as refugees. People may also experience fingerprinting as stigmatising, since it is associated with a practice for criminals (Thomas, 2005). As a consequence of increased interoperability with law enforcement, third-country nationals, including asylum seekers, are implicitly seen as potential criminals. Mitsilegas (2008) also points out that the way the commission defined interoperability as a primarily technical issue disguised its socio-political nature.

## 5. Discussion

Through this scoping review, our basic aim was to map social science research on EURODAC. The above analysis describes the accumulated knowledge that academic research has produced over the past 20 years, corresponding to our first research question (RQ 1). In addition to the main themes and sub-themes of each key publication in our study, we also made notes about locations studied in the publications and the method used for the analyses (Table 1). Drawing upon this information, together with our qualitative analysis, we seek to answer our second and third research questions below, which relate to gaps and trends in the literature (RQ 2) and to the wider implications for other areas of the CEAS (RQ 3).

It is noteworthy that many of the key questions that appeared on the agenda some ten years into its use, such as the consequences of function creep and increasing interoperability, were already identified in the literature published before EURODAC's inception (e.g., Brouwer, 2002; van der Ploeg, 1999). In parallel, a normalisation seems to have taken place where the application of sophisticated biometrics no longer is seen as a conspicuous act but as part of everyday reality. Some of the key questions that caused much debate in the literature from the late 1990s—such as the questionable ethics of storing fingerprints from people not subjected to a major criminal offence—appear in present scholarship as a point of departure rather than a future worst-case scenario. These results support Tsianos and Kuster (2016, p. 242) who, in addition, point to that, despite substantial criticism against the Dublin system, the operation of "the database system per se has paradoxically remained unaffected from these disputes."

We observed several research gaps that we believe could be researched in the future. One such gap concerned diversity in terms of methodology. As shown in Table 1, only five of the 38 key publications employed ethnographic methods. Ethnographic methods are particularly useful to capture lived experience and the complexities of everyday life. By extension, we argue, ethnographic methods could further problematise the de-politicisation of technology that portrays EURODAC as simply a means of Dublin Regulation implementation. Among the screened category B publications, some studies could guide the way, e.g., studies showing how failed registrations in a southern member state can open up windows for rights for the individual (Franck, 2017); how street-level bureaucrats navigate the system (Rozakou, 2017); and how EURODAC registrations make individuals both present and, at the same time, absent in society (Sigvardsdotter, 2013). There is also some new research, published after we performed our study, that employs ethnographic methods. These show how asylum seekers navigate fingerprinting (Metcalfe, 2022) and strive for transparency and accountability (Amelung, 2021). To continue along this line, we argue, is an important task also for critical research on EURODAC to affect public awareness.

Another gap identified in our study is the lack of gender and intersectional perspectives in the literature. While several studies emphasised that the sorting of different categories of migrants are intrinsic to EURODAC, distinguishing between, for instance, asylum seekers and irregular migrants, a broader take on heterogeneity was surprisingly absent in the literature. Age was identified in some category B publications, for instance one that observed how EURODAC affects older children in migration processes (Drywood, 2010). We believe that research that explored differences in terms of gender, able-bodiness, sexuality, class, race, ethnicity, and nationality would generate new and important knowledge to the field.

Moreover, while member state variation did receive some attention in the key publications—in particular the southern member states Italy, Greece, and Spain (see Table 1)—there were not many that provided in-depth studies of national legal frameworks. Vavoula's (2015) discussion about member states' different national automated fingerprinting identification systems affecting the local EURODAC practices is an important exception. Such approaches become even more important with the increasing interoperability with law enforcement. In a recent article, Amelung (2021, p. 153) points out how "asymmetric engagements of member states' data practices with EURODAC interacts with how migrants are made suspicious (of crime) in different ways," and we agree that this is an important area for further research. The temporal dimension of EURODAC could also be

developed further in future studies, for instance by focusing on interruptions caused by delayed registrations and missed asylum applications (Kuster & Tsianos, 2016).

In addition, we were also surprised that none of the key publications in our review addressed how EURODAC affects asylum cases in specific member states. Fundamental rights were discussed in relation to general data protection, but not in relation to asylum. This leads us to ask if studies on the asylum process in different member states neglect to explore the impact of EURODAC on individual cases. If so, we believe that this is an important area to address in social science, an area that also partly answers our third research question on possible wider implications of EURODAC for other areas of CEAS concerning, for instance, quality and fairness in asylum decisions and living conditions for asylum seekers across the EU. Aforementioned research on fundamental rights has shown how it is next to impossible for an asylum seeker (or an irregular migrant) to challenge information stored in EURODAC. The information stored in EURODAC may thus have significant consequences for the individual asylum seeker, affecting for instance their trustworthiness in court in cases where a person's flight route is under question. Minors who are mistakenly registered as adults in the database, a practice not too uncommon (European Union Agency for Fundamental Rights, 2018), also illustrate this point. Such registrations affect a person's life far beyond rulings in relation to the Dublin Regulation. Everything, from the asylum claim to social rights (housing, education, work) may become dependent upon that faulty piece of knowledge. With the increasing interoperability with law enforcement, information stored in EURODAC may have even vaster effects on a person's life (Amelung, 2021). Moreover, in the light of how CEAS has failed in its goal of harmonising the asylum system in the EU, the effects of having fingerprints registered in EURODAC may be a question of a liveable life or a life in despair. Exploring EURODAC is thus to open a Pandora's box, and far from being simply a technological tool that facilitates the Dublin Regulation, research needs to continue to unpack its socio-political underpinnings and its centrality to the CEAS.

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**Conflict of Interests**

The authors declare no conflict of interests.

**Supplementary Material**

Supplementary material for this article is available online in the format provided by the author (unedited).

**References**

Abbing, H. D. C. R. (2011). Age determination of unaccompanied asylum seeking minors in the European Union: A health law perspective. *European Journal of Health Law*, *18*(1), 11–25. https://doi.org/10.1163/157180911x546101

Ajana, B. (2013). Asylum, identity management and biometric control. *Journal of Refugee Studies*, *26*(4), 576–595. https://doi.org/10.1093/jrs/fet030

Amelung, N. (2021). "Crimmigration control" across borders: The convergence of migration and crime control through transnational biometric databases. *Historical Social Research*, *46*(3), 151–177. https://doi.org/10.12759/hsr.46.2021.3.151-177

Amoore, L. (2006). Biometric borders: Governing mobilities in the war on terror. *Political Geography*, *25*(3), 336–351.

Arksey, H., & O'Malley, L. (2005). Scoping studies: Towards a methodological framework. *International Journal of Social Research Methodology*, *8*(1), 19–32. https://doi.org/10.1080/1364557032000119616

Baldaccini, A. (2008). Counter-terrorism and the EU strategy for border security: Framing suspects with biometric documents and databases. *European Journal of Migration & Law*, *10*(1), 31–49. https://doi.org/10.1163/138836407X261308

Beirens, H. (2018). *Cracked foundation, uncertain future: Structural weaknesses in the common European asylum system*. Migration Policy Institute Europe.

Besters, M., & Brom, F. W. A. (2010). Greedy' information technology: The digitalization of the European migration policy. *European Journal of Migration and Law*, *12*(4), 455–470.

Boehm, F. (2012a). *Information sharing and data protection in the area of freedom, security and justice: Towards harmonised data protection principles for information exchange at EU-level*. Springer.

Boehm, F. (2012b). Information sharing in the area of freedom security and justice: Towards a common standard for data exchange between agencies and EU information systems. In S. Gutwirth, R. Leenes, P. de Hert, & Y. Poullet (Eds.), *European data protection: In good health?* (pp. 143–183). Springer.

Braun, V., & Clark, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, *3*, 77–101.

Broeders, D. (2007). The new digital borders of Europe—EU databases and the surveillance of irregular

migrants. *International Sociology*, *22*(1), 71–92. https://doi.org/10.1177%2F0268580907070126

Broeders, D., & Hampshire, J. (2013). Dreaming of seamless borders: ICTs and the pre-emptive governance of mobility in Europe. *Journal of Ethnic & Migration Studies*, *39*(8), 1201–1218. https://doi.org/10.1080/1369183X.2013.787512

Brouwer, E. R. (2002). EURODAC: Its limitations and temptations. *European Journal of Migration and Law*, *4*, 231–247.

Callon, M. (1986). Some elements of a sociology of translation: Domestication of the scallops and the fishermen of St. Brieuc Bay. In J. Law (Ed.), *Power, action and belief: A new sociology of knowledge* (pp. 196–223). Routledge. https://doi.org/10.1111%2Fj.1467-954X.1984.tb00113.x

Council Regulation (EC) No. 2725/2000 of 11 December 2000 concerning the establishment of EURODAC for the comparison of fingerprints for the effective application of the Dublin Convention (2000). *Official Journal of the European Union*, L 316.

Den Boer, M. (2015). Juggling the balance between preventive security and human rights in Europe. *Security & Human Rights*, *26*(2/4), 126–146.

Dóczi, Z. (2013). The development, the integration and the assessment of the existing large-scale IT systems in the area of freedom, security and justice. *Hungarian Journal of Legal Studies*, *54*(2), 164–183.

Drywood, E. (2010). Challenging concepts of the "child" in asylum and immigration law: The example of the EU. *Journal of Social Welfare & Family Law*, *32*(3), 309–323.

European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice. (2014). *eu-LISA: Helping to manage asylum applications*. Publications Office of the European Union. https://op.europa.eu/s/wgYH

European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice. (2016). *eu-LISA: Safeguarding the EU's internal security*. Publications Office of the European Union. https://data.europa.eu/doi/10.2857/55555

European Union Agency for Fundamental Rights. (2018). *Under watchful eyes: Biometrics, EU IT systems and fundamental rights*. Publications Office of the European Union.

Ferreira, M. (2010). Risk politicization strategies in EU migration and asylum policies. *Journal of Global Analysis*, *1*(2), 155–183.

Fragapane, S., & Minaldi, G. (2018). Migration policies and digital technologies in Europe: A comparison between Italy and Spain. *Journal of European Integration*, *40*(7), 905–921. https://doi.org/10.1080/07036337.2018.1482289

Franck, A. K. (2017). Im/mobility and deportability in transit: Lesvos Island, Greece, June 2015. *Journal of Economic & Social Geography*, *108*(6), 879–884.

Fullerton, M. (2016). Refugees and the primacy of European human rights law. *UCLA Journal of International Law & Foreign Affairs*, *21*(1), 45–69.

Guild, E. (2009). *Security and migration in the 21st century*. Polity.

Hansen, P., & Hager, S. B. (2012). *The politics of European citizenship*. Berghahn.

Hurwitz, A. (1999). The 1990 Dublin Convention: A comprehensive assessment. *International Journal of Refugee Law*, *11*(4), 646–676.

Huysman, J. (2006). *The politics of insecurity*. Routledge.

Ippolito, F., & Velluti, S. (2011). The recast process of the EU asylum system: A balancing act between efficiency and fairness. *Refugee Survey Quarterly*, *30*(3), 24–62.

König, M. (2016). "The borders, they are a-changin'" ! The emergence of socio-digital borders in the EU. *Internet Policy Review*, *5*(1), 1–14. https://doi.org/10.14763/2016.1.403

Kuster, B., & Tsianos, V. S. (2016). How to liquefy a body on the move: EURODAC and the making of the European digital border. In R. Bossong & H. Carrapico (Eds.), *EU borders and shifting internal security: Technology, externalization and accountability* (pp. 45–63). Springer.

Light, E., Bacas, J. L., Dragona, D., Kämpf, K. M., Peirano, M., Pelizzer, V., Rogers, C., Sprenger, F., Rowan, J., & Deng, A. L. (2017). Infractructures of dis-connection of drones, migration, and digital care. *Imaginations Journal*, *8*(2), 56–62.

Lyon, D. (2003). Surveillance as social sorting. Computer codes and mobile bodies. In D. Lyon (Ed.), *Surveillance as social sorting. Privacy, risk and digital discrimination* (pp. 13–30). Routledge.

Lyon, D. (2008). Biometrics, identification and surveillance. *Bioethics*, *22*(9), 499–508.

Mészáros, E. L. (2017). An assessment of the existent databases and instruments for registering and monitoring immigrants in the EU: The Schengen information system (SIS), the visa information system (VIS), EURODAC and the creation of Frontex. *Eurolimes*, *2017*(23/24), 67–92.

Mészáros, E. L. (2018). How the security dimension triggered the modifications of the European/EU borders and what were the subsequent consequences? An ex post 100 years perspective. *Eurolimes*, *26*, 25–44.

Metcalfe, P. (2022). Autonomy of migration and the radical imagination: Exploring alternative imaginaries within a biometric border. *Geopolitics*, *27*(1), 47–69.

Mirzoeff, N. (2020). Artificial vision, white space and racial surveillance capitalism. *AI and Society*, *36*, 1295–1305.

Mitsilegas, V. (2008). Databases in the area of freedom, security and justice: Lessons for the centralisation of records and their maximum exchange. In C. Stefanou & H. Xanthaki (Eds.), *Towards a European criminal record* (pp. 311–335). Cambridge University Press.

Moore, K. (2013). "Asylum shopping" in the neoliberal

social imaginary. *Media, Culture & Society*, *135*(3), 348–365.

Munn, Z., Peters, M. D. J., Stern, C., Tufanaru, C., McArthur, A., & Aromataris, E. (2018). Systematic review or scoping review? Guidance for authors when choosing between a systematic or scoping review approach. *BMC Medical Research Methodology*, *18*(1), 1–7. https://doi.org/10.1186/s12874-018-0611-x

Orav, A. (2021). *Recast EURODAC Regulation* (Report No. PE 589.808). European Parliamentary Research Service. https://www.europarl.europa.eu/RegData/etudes/BRIE/2016/589808/EPRS_BRI%282016%29589808_EN.pdf

Parusel, B., & Schneider, J. (2017). *Reforming the common European asylum system: Responsibility-sharing and the harmonization of asylum outcomes* (Report 2017:9). Delmi. https://www.delmi.se/en/publications/report-and-policy-brief-2017-9-reforming-the-common-european-asylum-system

Pedersen, M. J. (2015). The intimate relationship between security, effectiveness, and legitimacy: A new look at the Schengen compensatory measures. *European Security*, *24*(4), 541–559. https://doi.org/10.1080/09662839.2015.1014808

Peters, M. D. J., Marnie, C., Colquhoun, H., Garritty, C. M., Hempel, S., Horsley, T., Langlois, E. V., Lillie, E., O'Brien, K. K., Tunçalp, Ö., Wilson, M. G., Zarin, W., & Tricco, A. C. (2021). Scoping reviews: Reinforcing and advancing the methodology and application. *Systematic Reviews*, *10*(1), 1–6. https://doi.org/10.1186/s13643-021-01821-3

Pugliese, J. (2013). Technologies of extraterritorialisation, statist visuality and irregular migrants and refugees. *Griffith Law Review*, *22*(3), 571–597. https://doi.org/10.1080/10383441.2013.10877013

Roots, L. (2015). The new EURODAC regulation: Fingerprints as a source of informal discrimination. *Baltic Journal of European Studies*, *5*(2), 108–129. https://doi.org/10.1515/bjes-2015-0016

Rozakou, K. (2017). Nonrecording the "European refugee crisis" in Greece: Navigating through irregular bureaucracy. *Focaal*, *77*, 36–49.

Ryan, G. W., & Bernard, H. R. (2003). Techniques to identify themes. *Field Methods*, *15*(1), 85–109. https://doi.org/10.1177%2F1525822X02239569

Scheel, S. (2013). Autonomy of migration despite its securitisation? Facing the terms and conditions of biometric rebordering. *Millennium: Journal of International Studies*, *41*(3), 575–600. https://doi.org/10.1177%2F0305829813484186

Schuster, L. (2011a). Turning refugees into "illegal migrants": Afghan asylum seekers in Europe. *Ethnic & Racial Studies*, *34*(8), 1392–1407. https://doi.org/10.1080/01419870.2010.535550

Schuster, L. (2011b). Dublin II and EURODAC: Examining the (un)intended(?) consequences. *Gender, Place and Culture*, *18*(3), 401–416. https://doi.org/10.1080/0966369X.2011.566387

Sigvardsdotter, E. (2013). Presenting absent bodies: Undocumented persons coping and resisting in Sweden. *Cultural Geographies*, *20*(4), 523–539.

Soysüren, I., & Nedelcu, M. (2020). European instruments for the deportation of foreigners and their uses by France and Switzerland: The application of the Dublin III Regulation and EURODAC. *Journal of Ethnic and Migration Studies*. Advance online publication. https://doi.org/10.1080/1369183X.2020.1796278

Tazzioli, M. (2018). Containment through mobility: Migrants' spatial disobediences and the reshaping of control through the hotspot system. *Journal of Ethnic & Migration Studies*, *44*(16), 2764–2779. https://doi.org/10.1080/1369183X.2017.1401514

Thomas, R. (2005). Biometrics, international migrants and human rights. *European Journal of Migration & Law*, *7*(4), 377–411. https://doi.org/10.1163/157181605776293255

Tricco, A. C., Lillie, E., Zarin, W., O'Brien, K. K., Colquhoun, H., Levac, D., Moher, D., Peters, M. D. J., Horsley, T., Weeks, L., Hempel, S., Akl, E. A., Chang, C., McGowan, J., Stewart, L., Hartling, L., Aldcroft, A., Wilson, M. G., Garritty, C., . . . Straus, S. E. (2018). PRISMA extension for scoping reviews (PRISMA-ScR): Checklist and explanation. *Annals of Internal Medicine*, *169*(7), 467–473. https://doi.org/10.7326/M18-0850

Tsianos, V. S., & Kuster, B. (2016). EURODAC in times of bigness: The power of big data within the emerging European IT agency. *Journal of Borderlands Studies*, *31*(2), 235–249. https://doi.org/10.1080/08865655.2016.1174606

van der Ploeg, I. (1999). The illegal body: EURODAC and the politics of biometric identification. *Ethics and Information Technology*, *1*(4), 295–302. https://doi.org/10.1023/A:1010064613240

Vavoula, N. (2015). The recast EURODAC Regulation: Are asylum seekers treated as suspected criminals? In C. Bauloz, M. Ineli-Ciger, S. Singer, & V. Stoyanova (Eds.), *Seeking asylum in the European Union: Selected protection issues raised by the second phase of the common European asylum system* (pp. 247–273). Brill.

Vavoula, N. (2020a). Interoperability of EU information systems: The deathblow to the rights to privacy and personal data protection of third-country nationals? *European Public Law*, *26*(1), 131–156.

Vavoula, N. (2020b). Consultation of EU immigration databases for law enforcement purposes: A privacy and data protection assessment. *European Journal of Migration and Law*, *4*(2), 231–247. https://doi.org/10.1163/15718166-12340072

Walters, W. (2002). Mapping Schengenland: Denaturalizing the border. *Environment and Planning D*, *20*(5), 561–580.

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