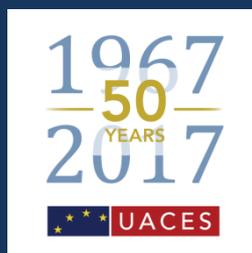


# Looking Backwards to Go Forwards? Europe at a Crossroads

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# **The structural asymmetry of the Common European Asylum System**

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## Introduction

The EU asylum policy has come under the spotlight recently. The controversial management of 2015 migrant or refugee crisis on the European level prompted both decision-makers and researchers to examine the possible remedies for the shortcomings of the Common European Asylum System. The proposal by the European Commission released in July 2016 boldly called for the policy's centralization, although not with any significant success yet. Member state support is obviously lacking as a more federalised common system would definitely curb the national government possibilities to form their individual asylum and migration policies.

The now existing Common European Asylum System is, nevertheless, certainly struggling to achieve its main goal: providing a fair and equal access to international protection in Europe, applying the humanitarian standards of the ECtHR and disregarding which member state is responsible for the examination of the individual application. Although a common legal framework is clearly binding on the member states, national implementation still depends on the respective states. Every member state pursues their own national interests in the policy area which depend on each country's geopolitical location, migration preferences and financial resources. As a result, reception conditions and recognition rates of asylum-seekers differ significantly within the EU, while solidarity and burden-sharing among member states is minimal.

The structural asymmetry caused by the lack of centralisation in the Common European Asylum System can be viewed in multiple ways: as a lack of solidarity, as the manifestation of the European societies' public will or as the contemporary functioning of the European integration. This paper assumes that the structural asymmetry of the CEAS is necessary and by examining the main elements of the CEAS with qualitative methods argues that despite its flaws, the European asylum policy<sup>1</sup> is able to achieve their basic objectives.

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<sup>1</sup> In the paper the Common European Asylum System and the European asylum policy terms are used as synonyms, despite the broader scope of the latter.

# 1. The nature of the structural asymmetry

## 1.1 The brief development of the CEAS

The Common European Asylum System was born as a direct consequence of the abolishment of internal borders in the European Union. The development of the Schengen Area which was in line with the creation of the single market required the cooperation of the member states in the field of asylum as well. Being part of the intergovernmental third pillar of Maastricht, asylum policy was communitized as a shared competence by the Treaty of Amsterdam making the formation of CEAS possible.<sup>2</sup>

The aim of CEAS was to harmonize the different national asylum systems via common legislation achieving a centralized system on the long run only. The European Council's Tampere Programme from 1999 already set the main priorities: „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”.<sup>3</sup> Thus, CEAS was formed by the fundamental European legislation addressing these issues: the Dublin Regulation (which replaced the intergovernmental Dublin Convention), the Asylum Procedures Directive, the Reception Conditions Directive and the Qualification Directive. The legislation was in accordance with the European refugee law, originated from the case-law of the European Court of Human Rights and providing much higher level of protection for asylum-seekers reaching European territory than the original 1951 Geneva Convention.<sup>4</sup>

The first generation of the mentioned EU-legislation was accepted between 2003 and 2004, followed by member state implementation.<sup>5</sup> By the end of 2006, CEAS was theoretically functional as asylum-seekers arriving to European territory had to be treated by member states according to the common legal framework. Foreign nationals applying for international protection were registered on arrival to be attached to the responsible member state and their

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<sup>2</sup> Monar, Jörg: Justice and Home Affairs. In Erik Jones – Anand Menon – Stephen Weatherhill (eds): The Oxford Handbook of the European Union. Oxford University Press, Bodmin, 2012, pp. 615-620.

<sup>3</sup> TAMPERE EUROPEAN COUNCIL 15 AND 16 OCTOBER 1999 PRESIDENCY CONCLUSIONS.

Source: [http://www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm),

<sup>4</sup> Whilst the original Geneva Convention provides protection only for „traditional refugees” fleeing from persecution because of race, religion, nationality, membership of a particular social group or political opinion, the European refugee law grant international protection for people facing execution or inhuman treatment. Non-refoulement is an absolute norm in the ECtHR case-law, applied even to perpetrators of serious crimes.

<sup>5</sup> Peers, Steve – Rogers, Nicola (eds.): EU Immigration and Asylum Law. Nijhoff, Leiden, 2006, pp. 3-17

application was examined by the common minimum standards and guarantees. Despite the achievements, the further development of the European asylum policy remained on the agenda. The European Council's next five-years plans (Stockholm, Hague) aimed to deepen the system's cohesion by bringing the national practices even more closer to each other.<sup>6</sup> Eventually, all the main three directives and also the Dublin Regulation were recast. The Lisbon Treaty came to force in 2009, introducing Article 80 TFEU which set out the principle of solidarity and fair sharing of responsibility to govern the policy area, albeit without any concrete obligation for member states.<sup>7</sup> The Common European Asylum System until this day remained predominantly a scheme of common procedures and standards, while the responsibility of their execution and financing stayed in the hands of the member states.<sup>8</sup> As a result every member state is still able to pursue their own asylum policy according to their priorities, while the competencies on the European level are restrained.

## **1.2. The full demonstration of the asymmetry: the European Migrant crisis**

Until the European Migrant or Refugee crisis of 2015, the Common European Asylum System seemed to fulfil its role. In average, 200.000-300.000 asylum-seekers reached the European Union per year in between 2000 and 2010, most of them arriving at the integration's southern borders, in Italy and Greece.<sup>9</sup> Thanks to the common legal framework, asylum-seekers' status was uniform throughout the EU, while member states mutually trusted the national asylum related practices of the others. Although the European Court of Justice and the European Court of Human Rights regularly sentenced member states for non-compliance, the CEAS on the surface was succeeding: the EU provided international protection for the lion's share of the refugees among the first world countries, maintaining the highest humanitarian standards and guaranties.

However, the regulating nature of the European asylum policy could not deal with the structural asymmetry which was caused by itself. Due to the Dublin Regulation, the asylum burdens of individual member states hugely differed. As the majority of the asylum-seekers applied for protection in a few member states at the Southeastern borders of the Schengen

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<sup>6</sup> Lambert, Helen: Transnational law, judges and refugees in the European Union. In: Guy S. Goodwin-Gill-Hélène Lambert (eds.): *The Limits Of Transnational Law - Refugee Law, Policy Harmonization and Judicial Dialogue in the European Union*, Cambridge University Press, New York, 2010, pp. 5-6.

<sup>7</sup> O'Nions, Helen: *Asylum – A Right Denied A Critical Analysis of European Asylum Policy*. Ashgate, 2014, pp. 102

<sup>8</sup> Basilien-Gainche, Marie-Laure: The EU immigration and asylum policy in the post-Lisbon institutional context. In: Martin Trynus – Luca Rubini (eds.): *The Treaty of Lisbon and the Future of European Law and Policy*. Edward Elgar, 2012, p. 377.

<sup>9</sup> [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics), (downloaded 2017-03-16)

area (Italy, Greece, later Hungary), according to Dublin's main rule these countries became responsible for most of the cases.<sup>10</sup> The affected member states' primary answer – as they could not rely on serious financial support from the EU's own resources – was the shifting of their burdens to other member states by allowing the secondary movements of asylum-seekers to richer, lesser stressed countries, which were their preferred destinations as well.<sup>11</sup> Greece, the most overburdened member state was even considered not safe for an asylum-seeker by ECtHR in 2011, because of the existing conditions of the countries asylum-system violated Article 3 of the Convention.<sup>12</sup> The number of asylum-seekers arriving in Southern Europe gradually increased from 2011 as a result of the destabilizing effects of the Arab Spring and the following civil wars, further weakening the main receiving countries capacities. The Recast Dublin Regulation accepted in 2013 had to acknowledge that applicants cannot be transferred back to member states where “systemic flaws” of asylum procedures and reception conditions are present.<sup>13</sup> Although the principle of solidarity and responsibility-sharing set by Article 80 TFEU was designed to solve such problems, its non-enforceable nature on member states made its application impossible.<sup>14</sup> By the outbreak of the migrant crisis, the Common European Asylum System was already heavily imbalanced.

In that condition reached Europe in 2015 the huge wave of asylum-seekers, originating mostly from Syria, Iraq and Afghanistan. Throughout the year, more than 1,2 million people applied for international protection in the EU.<sup>15</sup> During the crisis, the shifting of burdens reached a new level: the Dublin Regulation was practically suspended and member states pursued basically independent asylum policies. Not just the lack of solidarity was demonstrated, but the hugely different levels of member state reception conditions and recognition rates as well: despite the existing European asylum law and the CEAS, most of the asylum seekers hoped to reach Germany or Sweden, because their chances of starting a new and satisfying life there as a recognised refugee were more likely.<sup>16</sup>

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<sup>10</sup> REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013, Article 7.

<sup>11</sup> O'Nions, p.128

<sup>12</sup> MSS v Belgium and Greece App 30696/09 26 January 2011, para 263.

<sup>13</sup> REGULATION (EU) No 604/2013, Article 3 (2).

<sup>14</sup> Goldner Lang, Iris: Is There Solidarity on Asylum And Migration in the EU? Croatian Yearbook of European Law and Policy, Vol 9 (2013), pp 13-14.

<sup>15</sup> <http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/790eba01-381c-4163-bcd2-a54959b99ed6>, accessed at [June 18 2017]

<sup>16</sup> Heijer, Maarten den – Rijpma, Jorrit – Spijkerboer, Thomas: Coercion, Prohibition, and Great Expectations The continuing failure of the Common European Asylum System. Common Market Law Review, 53 (2016), pp. 609-612.

Although attempts were made for the enforcement of solidarity and burden-sharing by the Council, only a moderate compromise was achieved on a temporary relocation scheme of 160 000 asylum seekers aiming to relieve Italy and Greece. Even this practically symbolic move caused significant opposition from certain member states and its implementation remains still unsatisfactory.<sup>17</sup> The migrant crisis was eventually stopped with the help of a political deal between EU member states and Turkey and not due to the crisis management of the Common European Asylum System. The serious asymmetry of the CEAS urged for the total reorganization of the European asylum policy.

### **1.3. Plans for the complete reform of the CEAS and their failure**

The European Commission already presented a proposal in 2015 May for the reform of the Common European Asylum System, the European Agenda on Migration. It aimed to prepare the integration for the expected surge of asylum-seekers which arrived in the summer indeed. The Commission's communication suggested immediate actions for crisis management which included already a temporary relocation scheme.<sup>18</sup> In 2016 April after the asylum situation calmed down, the Commission released its detailed plan on the long-term reorganisation of the policy area. The plan proposed a common asylum procedure with fully harmonised rules for member states, an EU common list of safe countries of origin, the amendment of the Dublin Regulation with a permanent relocation scheme, further standardized reception conditions, the strengthening of the at the moment insignificant European Asylum Support Office's operative capabilities and the creation of the European Border and Coast Guard.<sup>19</sup>

All these main objectives focused on eradicating the structural asymmetry of the CEAS by curtailing member-state leeways and strengthening the policy's federal elements. A uniformed asylum procedure would result that every application for international protection were examined on fully harmonized conditions with the same deadlines. In that way the differences between the national asylum systems would greatly diminish, ensuring similar recognition

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<sup>17</sup> As of 15 June 2017, of the 160 000, only 21. 313 recognized asylum-seekers were relocated. Some member states openly refuse to participate (Hungary and Slovakia attacked the decision at the ECJ), while others accept only a few dozen from their quotas. Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state\\_of\\_play\\_-\\_relocation\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf), [accessed at June 16 2017]

<sup>18</sup> A European Agenda on Migration. Brussels, 13.5.2015 COM(2015) 240 final, pp. 4.

<sup>19</sup> Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe. Brussels, 6.4.2016 COM(2016) 197 final, pp. 2-6.

rates in every member state. The reforms, however, require the modification of the current legislation with a qualified majority in the Council which have not materialized.<sup>20</sup>

The common control of the EU's external borders have been a long time on the Commission's agenda, however, it always seemed only as a possibility on the long-run.<sup>21</sup> A limited project, the upgrading of the FRONTEX into the European Border and Coast Guard Agency, however, eventually succeeded. A new EU regulation was accepted in 2016 September, which increased the personnel and budget of the agency, but the institution is still not able to constrain the member states of the sole jurisdiction of their borders.<sup>22</sup>

The Commission's most well-known and heatedly debated notion is the amendment of the Dublin Regulation with a permanent relocation scheme. The refugee quota system would enforce the materialization of the principle of solidarity and responsibility sharing, balancing the uneven burdens on member states. However, the scheme at the same time would delegate the sharing of asylum-seekers within the integration to the European level, which member states could no longer decide alone. The proposal curtailed member state sovereignty to such extent that in the current state of the European Union its adoption was impossible. The relocation scheme was taken off the table after the European Council's Bratislava Summit in 16 September 2016.<sup>23</sup>

As of June 2017, the deep reorganisation of the Common European Asylum System seems highly unlikely. Even the implementation of the temporary relocation scheme is failing and many Eastern member states, especially the members of the Visegrád Group are vehemently against any further harmonisation or burden-sharing.<sup>24</sup> Although the number of arriving asylum-seekers stabilized on a lower level, problems of integrating the already arrived thousands and recurring terror attacks have created a fatigue in the societies of the more open member states as well.

The structural asymmetry of the European asylum policy is, thus, here to stay as the political reality of Europe simply requires the member states' wide-ranged competences which can

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<sup>20</sup> Heijer, p. 622.

<sup>21</sup> Ibid, p. 627.

<sup>22</sup> Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016.

<sup>23</sup> The Bratislava Declaration and Roadmap.

Source:[file:///C:/Users/G%C3%A1bor/Downloads/160916%20Bratislava%20declaration%20and%20roadmap.en16%20\(1\).pdf](file:///C:/Users/G%C3%A1bor/Downloads/160916%20Bratislava%20declaration%20and%20roadmap.en16%20(1).pdf), (accessed at June 11)

<sup>24</sup> <http://www.economist.com/news/special-report/21719191-they-are-less-keen-refugees-outside-most-eu-countries-are-happy-welcome-other>, [accessed at June 11 2017]]

exist only with the necessary flaws of the common system. But is the structural asymmetry inherently a harmful phenomenon? In order to judge the long-term sustainability and functionality of the current state of the CEAS, the asymmetry's interpretation is necessary from different aspects. In the next chapter, the policy's structural asymmetry is revisited from the viewpoints of European Union's general functioning, the pursuit of national interest based on the articulation of the European societies' differing public opinions and the lack of solidarity.

## 2. The structural asymmetry's interpretations

### 2.1 The result of the European Union's general state

The most traditional way to explain the structural asymmetry of the CEAS is by deriving it from the European integration's general condition and current functioning. Various integration theories exist which could be all applied to the European Union's asylum policy. However, here only the multi-level governance (MLG) approach is put into use, because it centers around the contemporary decision-making of the EU and not its development.

The core concept of MLG is that decision-making in the European Union takes place on different levels (subnational, national, supranational). While member states are still the most important actors in the process, their power is no longer unlimited as other independent actors emerged during the integration's development. On the supranational European level the Commission, the European Parliament and the European Court of Justice gained their own agencies and wield significant powers.<sup>25</sup> The Commission act as an agenda-setter, the European Parliament as a democratically elected Europe-wide institution can represent the will of the European citizens and the ECJ is able to sanction non-complying member states. Thus, the EU can be regarded as a limited federal entity, where the significance of the European level is different in each policy area.

Applying multi-level governance to the EU's asylum policy which is a shared competence, it is certain that member states on the national level are still the dominant actors: they keep their own asylum systems and practices controlling their external borders, maintaining their reception infrastructure and examining the individual applications for international protection. These powers are firmly attributed to the nation-state and not expected to be delegated in the near future. On the other hand, each actor on the European level can only play a very limited role as the Treaties do not provide them powerful leeways: the EU can only establish the common minimum rules of international protection and the determination of member state responsibility under TFEU 79. The Commission and the Parliament on the European level are able take part in the decision-making in these areas, but that will not change the lack of centralization which is the will of the member states.

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<sup>25</sup> Hooge, Lisbet – Marks, Gary: Multi-Level Governance and European Integration. Rowman, 2001, pp. 3-29.

The current Common European Asylum System was designed to harmonize and coordinate national asylum policies, but nothing more. As a result, the European asylum policy's asymmetry can be regarded as a natural consequence of the EU's functioning.

## 2.1. The result of colliding national interests

The asymmetry can be also interpreted from the member states' point of view. Just like in other policy areas, national governments pursue their own interests regarding asylum as well. These interests are based on the democratic will of each member state's society, which, however, can be substantially different.

Although international refugee law based on the 1951 Geneva Convention is an indisputable obligation for every member state in the European Union, the exact nature of a state's actual participation and commitment is less self-evident. The question of asylum is a hotly debated topic in many member states' domestic politics as it is not unconditionally seen as only a humanitarian commitment but an issue of migration policy.

Let us just mention some examples of national attitudes: Sweden, despite having no external Schengen borders received 81 000 asylum-seekers in 2014 and 163 000 in 2015. As a traditionally welcoming country for asylum-seekers, Sweden maintains a generous national asylum system with reception conditions and recognition rates high above the European average and the minimum standards set in CEAS.<sup>26</sup> In contrast, Hungary as member state facing the pressure of asylum-seekers at her external borders, turned to every possible non-entrée policy to reduce their numbers. The country erected a fence on her external borders, penalizing irregular entries. Submitting applications for asylum is only possible in special „transit zones” at the borders which function with limited capacities.<sup>27</sup>

Some member states of the former EU-15 in addition, reserved the possibility of opt-out from the participation in the AFSJ, which opportunity they have taken in the field of asylum as well. Denmark, the United Kingdom and Ireland – the latter two being part of the Schengen Area – take part in the CEAS on a voluntary basis.<sup>28</sup> For instance, the United Kingdom

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<sup>26</sup> Parusel, Bernd: Sweden's Asylum Procedures. Bertelsmann Stiftung, Gütersloh, 2016.

<sup>27</sup> UN High Commissioner for Refugees (UNHCR), Hungary as a country of asylum. Observations on restrictive legal measures and subsequent practice implemented between July 2015 and March 2016, May 2016, available at: <http://www.refworld.org/docid/57319d514.html> [accessed at 16 June 2017]

<sup>28</sup> More precisely, Denmark, in accordance with Protocol No 22 to the TEU and to the TFEU, fully opted-out of the Area of Freedom, Security and Justice and can apply its aquis only by making it a national law. On the other hand, The United Kingdom and Ireland, in accordance with Protocol No 21 to the TEU and to the TFEU, can opt-in any decision in the AFSJ

applies only the first generation of its legal framework, with the notable exception of the Recast Dublin Regulation.<sup>29</sup> In that way, the country hoped to curtail her obligations toward asylum-seekers, greatly reducing their opportunities for international protection or family reunification.<sup>30</sup> At the same time, non-EU countries like Switzerland and the EEA member Iceland, Norway and Liechtenstein are voluntarily participating to some extent in the Common European Asylum System.<sup>31</sup>

The mentioned examples certainly prove, that despite the existing European asylum policy, each member state has a different stance on asylum. This is the consequence of various distinct historical, geopolitical, cultural and economic factors which are all influencing the individual European country's public opinions differently. Since the crisis of 2015, many see a major rift between the EU-15 Western and the post-socialist Eastern member states, not without any empirical basis.<sup>32</sup> According to the 2016 Spring survey of the PEW Research Center, while 76% of Hungarians and 71% of Poles think that refugees will increase domestic terrorism, only 52% and 46% of the British and French citizens agree with the statement.<sup>33</sup> In an other survey, 26% of the British stated that they would accept refugees into their own homes, while the percentage among Poles was only 3%.<sup>34</sup>

The structural asymmetry of the European Union, thus can be interpreted as the proof of democracy. As there is no clear consensus in Europe on the appropriate handling of the overall refugee question in the 21. century (apart from not sending people back to persecution), member states have the obligation to represent their societies own opinion.

### **2.3. The result of the lack of solidarity**

According to the Merriam-Webster online dictionary, the definition of solidarity is the following: „unity (as of a group or class) that produces or is based on community of interests,

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<sup>29</sup> Costello, Cathryn: The UK and the CEAS – A Leaving Matter? COMPAS Breakfast Briefing 45, June 2016.

<sup>30</sup> Wright, Leila – Larsen, Christine: EMN “Family reunification” report, small scale study IV.; O’Nions, p.128.

<sup>31</sup> Ibid, p. 4.

<sup>32</sup> La Fondation Robert Schuman - Le Centre de recherches et d'études sur l'Europe. Refugee crisis: a further East-West rift in Europe? European Interview n°88, 2015. Available at: <http://www.robert-schuman.eu/en/european-interviews/0088-refugee-crisis-a-further-east-west-rift-in-europe>, [accessed 14 June 2017]

<sup>33</sup> <http://www.pewresearch.org/fact-tank/2016/09/16/european-opinions-of-the-refugee-crisis-in-5-charts/>, [accessed 16 June 2017] The research was carried out months after the November 15 Paris attacks.

<sup>34</sup> Refugees Welcome Survey 2016. Available at: <https://www.amnesty.org/en/latest/news/2016/05/refugees-welcome-survey-results-2016/>, [accessed at 14 June 2017]

objectives, and standards.”<sup>35</sup> This definition can mean that solidarity exists among people sharing common norms, goals and interests and who are willing to mutually assist the other. However, solidarity is not a conspicuous concept as it has various philosophical, religious, political and personal interpretations. The greatest challenge of the notion is, nevertheless, its application in practice: what kind of commitment is expected from a person in solidarity with someone else and is it enforceable? Can the structural asymmetry of the Common European Asylum System be regarded as simply the consequence of the lack of solidarity?

Solidarity as a principle is to a high degree present in the law of the European Union as well. The Preamble of the Treaty on European Union desires to deepen the solidarity between the peoples of the High Contracting Parties, while respecting their history, their culture and their traditions. Although Article 2 TEU not names solidarity between the founding values of the EU, but mentions it right after as a prevailing concept in European societies.<sup>36</sup> Article 3 TEU states that the EU “shall promote economic, social and territorial cohesion, and solidarity among Member States”.

The most well-known application of solidarity is the “Solidarity Clause” which is set in Article 222 TFEU. The clause states that if a member state is the object of a terrorist attack or affected by a natural or man-made disaster, the Union and the other member states shall provide assistance to resolve the threat. The clause has never been invoked, so its exact implementation remains enigmatic.<sup>37</sup> Solidarity is also referred to in the EU’s economic, energy and asylum policy.<sup>38</sup> Article 80 TFEU states that the implementation of the ASFJ policies (including asylum) “shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.”

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<sup>35</sup> The word „solidarity” developed from the French word *solidaire*, which derives from the Latin *solidus* (Proto-Indo-European *\*solh<sub>2</sub>idʰos*) meaning whole, true, and massive. The word’s first known use was in 1841. Source: <https://www.merriam-webster.com/dictionary/solidarity>, accessed at [15 June 2017]

<sup>36</sup> The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

<sup>37</sup> Nevertheless, the Declaration on Article 222 of the Treaty on the Functioning of the European Union reserves the right for the member state to choose the most appropriate measure in fulfilling her own solidarity obligation.

<sup>38</sup> McDonnell, Alison: *Solidarity, Flexibility, and the Euro-Crisis: Where Do Principles Fit In?* In: Rossi, Lucia Serena - Casolari, Federico (eds.): *The EU after Lisbon - Amending or Coping with the Existing Treaties?* Springer, 2014, pp. 60-63.

Despite its widespread presence in the European Union's primary law, the application of solidarity is not clear as the principle not at any time creates alone binding obligations for member states or the Union itself. During the refugee crisis of 2015 – as it was already mentioned – the symbolic temporary relocation scheme accepted by the Council intended to demonstrate the principle's manifestation, but certainly achieved a limited success. The majority of the EU member states aims to reduce or at least control the number of asylum-seekers entering their territory and the Common European Asylum System still provides them the possibility to do so. In this situation, greater solidarity in the field of asylum among member states is unlikely.

However, the non-applicable principle of solidarity and responsibility sharing in the field of asylum is not the invention of the EU, as it already appeared in the 1969 Organisation of African Unity (OAU) Refugee Convention, in various UNHCR documents and academic suggestions.<sup>39</sup> For example, a 1981 UNHCR legally non-binding recommendation proposed the application of solidarity and burden-sharing on an international scale to resolve large-scale influxes of asylum-seekers. The recommendation urged UN members the assist overburdened countries with resettlement possibilities and financial help, on a voluntary basis.<sup>40</sup>

The question arises, why cannot be the contemporary serious refugee situations managed on the world-wide scale. According to UNHCR, there were 21.3 million refugees (of whom 5,2 million are Palestinian refugees) and 40.8 million internally displaced persons in the world with a total population of 7.4 billion.<sup>41</sup> Theoretically, if every country would take part in the mitigation of their plight more proportionally, the asylum-related burdens falling on the European countries were much lower.

In reality, however, the world's refugee problem is much more complex. While the vast majority of the refugees remains in the developing countries neighbouring their abandoned homes, many of the asylum-seekers arriving in advanced economies cannot be evidently regarded as genuine refugees. For national governments asylum is not only a humanitarian

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<sup>39</sup> Mouzourakis, Minos: 'We Need to Talk about Dublin' Responsibility under the Dublin System as a blockage to asylum burden-sharing in the European Union. Refugee Studies Centre, working paper series no. 105, 2014, p. 6.

<sup>40</sup> Protection of Asylum-Seekers in Situations of Large-Scale Influx Protection of Asylum-Seekers in Situations of Large-Scale Influx No. 22 (XXXII) – 1981.

<sup>41</sup> <http://www.unhcr.org/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html>, accessed at [June 12 2017]

question, but a problem of uncontrolled migration.<sup>42</sup> As the public view is mixed regarding the irregular migrants arriving to Europe and other regions, the application of solidarity towards them is restricted.

It is certain that the lack of solidarity clearly contributes to the asymmetry of the European asylum policy. However, the extent of solidarity in refugee situations was always depended on the actual political situation throughout history.<sup>43</sup> The very realist aim of the Geneva Convention was not to force solidarity on the world's countries, but to provide the most basic conditions for the protection of refugees fleeing from persecution. The member states of the European Union certainly comply with that obligation.

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<sup>42</sup> Hathaway, James C.: *The Rights Of Refugees under International Law*. Cambridge University Press, 2005, p. 999.

<sup>43</sup> The management of the Hungarian refugee situation of 1956 by the Western world is often regarded as exemplary for future crises. However, the reception and resettlement of 200 000 Hungarians also can be interpreted as a symbolic political demonstration of the Free World, where the participants took rather limited asylum-burdens. Gémes, Adreas: *Deconstruction of a Myth? Austria and the Hungarian Refugees of 1956-57* IWM Junior Visiting Fellows' Conferences, Vol. XXV, 2009.

## **Concluding remarks: the structural asymmetry as a viable trait of the CEAS**

Asylum policy is a shared competency in the EU, where according to the principles of subsidiarity and proportionality, both member states and the Union are capable of legislation. The Common European Asylum System - developed from an originally intergovernmental cooperation – still functions only as a tool for harmonization and limited cooperation between member states.

The paper described the CEAS's structural asymmetry and interpreted it from three viewpoints. The asymmetry can be regarded as the consequence of the EU's current functioning, the differing attitudes of European societies regarding asylum and the narrowness of the application of solidarity. These interpretations all repeat the outcome that the lack of unity in the European Union causes its asylum policy's shortcomings.

However, the lack of unity is not necessary at all costs. Some member states maintain very favourable conditions for asylum-seekers, while others only intend to provide the most minimal standards. The centralization of the European asylum policy would definitely take away the member states' democratically legitimate approaches. It is true that the Dublin Regulation inherently causes unequal asylum burdens on certain member states, but in practice, they are rebalanced. Greater solidarity among member states would be definitely preferable, but its application should not be enforceable. As long as the European Union does not materialize as a genuine federal state, the asymmetry of the CEAS will remain.

The Common European Asylum System was certainly not designed for the scale of migration flows that characterized the crisis of 2015. The sustainability and functionality of the EU's asylum policy are depending of the drastically changing external factors. However, the European Union's external actions can find appropriate solutions for the multifaceted migration challenges.

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