A Study on the Implementation and Effect of the Common European Asylum System in the European Union
The aim of this study is to investigate the development of the Common European Asylum System which was called for at the Tampere European Council in 1999. The intention was to harmonize the legal standards of asylum seekers and refugees and coordinating the policies. Thus, with this study I want to give an account as to what has happened so far and what effect this might have had on asylum seekers in the Member States of the European Union. This is done through an interdisciplinary approach by looking at the developments in the legal section as to what laws have been passed and implemented so far but also with a questionnaire sent to organizations working in connection to European Council for Refugees and Exiles aiming to understand their perception of the harmonization process. Further, I present statistics and diagrams taken from statistic publications of the United Nations High Commissioner for Refugees in order to illustrate patterns in the history of migration as to trends and patterns.

The main idea of the harmonization process is that all Member States should treat asylum applications in a similar way. However at present there still seems to be major differences in the numbers of applications, the recognition rates and what status granted between the Member States of the European Union. The Dublin Regulation is perceived as an unjust tool against the asylum seekers since states have differences in the recognition and statuses. The Member States of the European Union still have a very long way to go in this harmonization process to claim equal treatment of asylum seekers.
“Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

Art. 14 (1) Universal Declaration of Human Rights
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/ Victoria
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List of Abbreviations

CEAS- Common European Asylum System  
EC- European Community  
ECRE- European Council for Refugees and Exiles  
EMU- European Monetary Union  
EU- European Union  
NGO- Non-Governmental Organization  
UN- United Nations  
UNHCR- United Nations High Commissioner for Refugees  
WW2- World War 2
1. Introduction

The European Union (EU) is constantly working to improve the legal rights for its citizens and people residing within the Union territory and with the Amsterdam Treaty of 1997 the decision came to make it an area of freedom, justice and security. The latest move is a common plan to tackle the issue of the rights of asylum seekers in a Common European Asylum System (CEAS), which was called for in the Amsterdam Treaty and further developed into concrete measures at the Tampere European Council in 1999. The long-term goal of the system is to harmonize the legal standards of asylum seekers and refugees and to coordinate the policies between the Member States of the EU. The Common Asylum Procedures Directive is seen as a first step towards the harmonization of asylum policies in the EU.

The Council Directive of 2003 by the European Council established that minimum standards should be implemented by the EU Members States in regards to the reception of asylum seekers. This Directive will ensure that all procedures, within the EU, are subject to the same minimum standards. This does not mean that the Member States have to adapt uniform standards, only that they all have minimum standards in common.

The CEAS has its base in the 1951 Geneva Convention and the importance of respecting human rights is stressed. I will attempt to outline the concept of CEAS what it is, what the long term-goal is for it by giving an account of what has happened so far. Furthermore, this will also be seen from the perspective of how this will affect the asylum seekers and refugees that manage to enter the EU territory. The focus and the reason of the CEAS, and especially the minimum standards, existence are to ensure that the rights of the asylum seeker are uniform throughout the EU Member States and to increase the burden sharing throughout the Union. Thus, these steps are made in the best interest of the asylum seekers and refugees; however, the backlash of it may not always turn to the best even if it is done with the best
intention. In this study I want to see if and how the implementation of the directives passed are different in the countries within the Union by comparing the legal steps with the practical work throughout the Member States by investigating how people working with asylum seekers and refugees perceive the CEAS. I realize that these questions are enormous and can be difficult to answer; however, I will make an attempt to be as specific and through as possible.

1.1 Outline of the Paper

In the continuance of the first chapter I will present the research questions that will be treated in this paper; this section also contains the methods used in the pursuit to answer these questions.

The second chapter is describing the decisive organs and the legislative system of the EU in order to explain how the EU works when passing new legislations.

The third chapter is outlining the CEAS itself as to what it is, what new legislation have been proposed and decided on, what have happened so far and what will happen in the future.

In the fourth chapter I look into the role of the UNHCR. I try to explain their experiences and views of the CEAS and how they have worked in order to make it more compatible to the standards of the 1951 Geneva Convention.

The fifth chapter is treating the concept of asylum through a historic view. I try to analyse the discussions of different scholars and their opinions of the development since WW2 to the situation of the contemporary asylum seekers.

Chapter six deals with the perception of the refugee as regards to the nation-state and the law and what effects the legal system can have on refugee flows.
The seventh chapter will treat the outcome of the survey conducted. I will try to analyse and discuss the answers received and how the different participants show similarities or dissimilarities in their perception of the CEAS and how asylum seekers are affected in their respective countries.

Chapter eight is an attempt look into the individual countries of the Member States by looking at the numbers of asylum applicants and the outcome of those applications. This is done by a number of diagrams on the years 1999 and 2004 to try to see if there are any visible patterns in the acceptance rate during the years.

The ninth chapter will contain a discussion in where I look at the different material that I have collected throughout the paper. I will look at it from different views and perspectives in order to get to the conclusion that is the tenth and final chapter of this paper. Here I will see where the investigations of the study have left me.

1.2 Aim and Research Questions

The aim of this paper is to investigate CEAS from the situation of asylum seekers and refugees today in the EU Member States, how is the CEAS developed and how the implementation of it affects asylum seekers who seek asylum and refuge on EU territory. The aim is also to find out how the implementation of it is practiced and experienced by people working within the field of asylum in the Member States of the EU. By investigating the Member States I hope to see if there are any major differences between the States procedures and how this might affect asylum seekers and refugees.

- What are the minimum standards of the Common European Asylum Procedure?
• How will pursuit of a Common European Asylum System affect the legal rights and the situation of the asylum seeker?

• Since states have different recognition rates and differences in the acceptance forms, what are the major differences in the states?

1.3 Method

For the purpose of this study I have chosen to use an interdisciplinary approach when comparing the legal steps of the EU legislation with the practical implementation of these policies in the Member States. This is done by mapping out the legislative background and by comparing it with the practical reality or more precisely how it is perceived and practiced. To find out why and how the creation of CEAS is pursued I use public material available on the Internet and in existing literature. I have used the EURLex, an on-line database consisting of the laws, treaties, legislations and regulations within the EU, to interpret the legal system and to see what steps have been taken so far in the creation of the CEAS. Furthermore, I use the UNHCR on-line for articles on their perception on the CEAS, in order to find out if they see any negative or positive aspects of it. I will in this paper also view the theories and analyses of scholars active within the field of migration in comparison to the development and of the legislations of the EU and its contemporary asylum politics. This is done by an examination, comparison and presentation of the existing literature and theories on these matters.

One part of this study lies in finding out how the implementation of the new directives are practiced and perceived thus, in order to get the answers I needed in order to see any differences and the practical impact of the harmonization I designed a questionnaire. The questionnaire consists of five questions focused on how the CEAS is perceived by people
active in asylum issues in the different Member States and what impact it may have on the asylum seekers and refugees on a national level.

In order to receive somewhat valid representatives for my purpose with a wide enough spread I chose to send the questionnaire in an e-mail to organizations connected to European Council for Refugees and Exiles (ECRE) for my empirical analysis. They had the option to either respond through a replying e-mail or a telephone interview. The selection of organizations connected to ECRE is mainly since they are working with asylum issues and are represented and active in most EU Member States.

When claiming validity or more accurate reliability I mean that the organizations working these issues hopefully knows what they are talking about due to the contents of their work, however, I cannot rule out that their answers will not be biased towards the situation of the asylum seekers and refugees.

1.4 Delimitations

The pursuits for making the EU an area of free movement and harmonized procedures can be traced all the way back to the Treaty of Rome of 1957¹, which has been further developed by the Single European Act of 1986² and the Treaty of Maastricht of 1992³. The so-called London Resolutions of 1992⁴ and the Common Position of 1996⁵ were further attempts to develop an inner market of free movement within the EU.

¹ Free movement of persons, services and capital, the Treaty states that citizens of the Union have the right to move freely and reside in the Union
² A move towards cooperation on the entry, movement and residence of nationals of third countries in order to promote free movement for citizens of the Union
³ The abolition of borders within the EU to create an inner market of free movements which was further developed in the Schengen Agreement of 1995
⁴ Refer among other things, to the so-called Safe Origin Countries, and the Safe Third Countries
⁵ Member States agreeing on a joint position on the definition of the term "refugee" within the meaning of the Geneva Convention of 1951
The Council meeting at Laeken\(^6\) where additional attempts to reaffirm the commitment to the Tampere Council; I therefore find it unnecessary to include the outcome of it in this study. Furthermore, I have in this study chosen to limit the descriptions of this development by beginning at the Treaty of Amsterdam of 1997 due to the fact that, in my opinion, it is where the more concrete measures to a harmonization began. I have also chosen to limit the study to Europe and the developments of what happens to asylum seekers and refugees when entering European soil, thus, I have not included any bilateral agreements of finding the root causes of asylum flows or readmission agreements made between the Member States and any refugee-producing country.

I am also aware that Protocols in the EC Treaty give the UK, Ireland and Denmark the possibility to “opt out” which means that if they choose to “opt-out” adopted measures in the area of common asylum, immigration and visa does not apply to them.

\(^6\) European Council Meeting in Laeken 14\(^{th}\) & 15\(^{th}\) of December 2001
2. The Decisive Procedure in the EU

In this section I will try to outline the process of the legislative procedure within the EU, by mapping out the structure of the decisive body and the path from proposal to decision.

The EU is based on three pillars on which a Parliament, a Council and a Commission are working on decisive matters and a Court of Justice is monitoring that what is decided in these institutions is withheld in the Member States.

-The Pillars

EU is based on three pillars with varying decisive power of the Member States. The first pillar is supranational and it constitutes the core of EU cooperation, the decisions taken at this level is set by the representatives and cannot be argued by any State. Examples of issues that lie under the first pillar are the inner market of the EU, agriculture, employment, trade policies, environmental policies, the European Monetary Union (EMU) and policies concerning asylum and migration etc. The second pillar is dealing with the external politics and the common security issues within EU territory. The third pillar deals with legal and judicial matters it is connected with the issues dealt with in the first pillar but here it is mainly concentrated on the legal matters and the order and control of the territory. Decisions taken in both the second and the third pillar are similar to the Directives taken in the first pillar; however, they do not carry the same applicability or validity in the Member States. It is this difference that under the 1997 Amsterdam Treaty the asylum and refugee issue was moved from the third to the first pillar. This way it will be easier to pass and implement new and uniform legislations regarding these matters.

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7 The information in this chapter is taken from EU:s Politiska System by Tallberg, J.
-The Decisive Bodies and the Procedures

- The European Parliament (the Parliament) consists of representatives from all the Member States and they are chosen through national elections that are held every five years.
- The Council of the European Union (the Council), which consists of one minister from every State who are appointed by his/her Member State. The Council is the central decision making body within the EU.
- The European Commission (the Commission) consists of one representative from each Member State; the President is decided on unanimity nomination of the Member States, which will have to be approved by the Parliament. The President and the Member States must then agree on common accord on the other members of the Commission.
- The Court of Justice of the European Communities (the Court of Justice) consists of one judge from each Member State who is elected on a six-year basis on a common accord of the Member States without the role of either the Parliament or the Commission.

-How to Pass New Legislations

It is this decisive body outlined above that makes proposals for new legislations and in doing so they have the option of five different principles to use. Firstly the Treaties and Regulations, which are binding in the sense that every Member State, authority, company and citizen must respect it. Second, the Directives, they too are binding but they can be directed to certain Member States and usually demand a national legislation which means that the States usually have some time after the passing of the Directive before they have to have taken the appropriate measures. Thirdly, the Decisions that are only biding to the state directed at. Fourth and fifth are the Recommendations and Communications either by the Council or the Commission but which are not binding and have no legal effect. Which principle to use is usually depending on the goal intended with the decision.
Within the first pillar it is the Commission's sole responsibility to lay down proposals to new legislative matters, which are then treated by the Parliament and the Council. They will in turn take the decision to pass or reject either together or the Council makes the decision on its own. When passing a new law the responsibility to implement it lies on each Member State while monitored by the Commission and the Court of Justice.

There are three main legislative procedures that can be used as interplay between the different organs of the decisive units of the EU.

- The Assent procedure- the Parliament has the influence to accept or reject, but not hinder, the Council's proposal to be approved.
- The Co-decision procedure- the Parliament has the power to adopt instruments jointly to the Council.
- The Consultation procedure- this limits the role of the Parliament, the Parliament have the right to express themselves but the Council only have to consult but not take it into account when voting. It is usually used in politically sensitive matters when the influence of the Parliament wants to be limited by the Member States.

The Parliament uses two different decisive principles. Firstly, simple majority is where half of the members of parliament that are present at the time have to support the proposal. Absolute majority, where the proposal have to be supported by all the members of parliament including those not present, this is usually used when voting in legislative matters.

In the Council there are two different decisive principles to use; unanimous voting which mans that every Member State have one vote and if one or more votes against the decision it will be rejected, the other is qualified majority voting where the amount of votes are calculated on the population of each Member State and more than 70% is needed for an approval.
The Commission pass all their decisions unanimously, which means that when a decision is made all the Commissioners are supporting it. These decisions are usually made without any voting but if there is a need for one it will a voting based on absolute majority which is decided by the amount of Commissioners.
3. Towards a Common European Asylum System

The goal of the European Community is to make the European territory an area of freedom, security and justice by protecting the fundamental rights within the EU and with that a harmonized asylum policy for all the Member States with its base in a fair and efficient asylum procedure. It is the pursuit of a single asylum policy throughout the Member States that is the core of the CEAS.

In order to understand the move towards the CEAS a look into the work that has been accomplished so far is necessary. Therefore, I will in this section attempt to give an account as to what has happened in the area relating to asylum and refugees within the EU since the Amsterdam Treaty of 1997 and forward. As stated previously the pursuit for harmonization started earlier than with the Amsterdam Treaty but my reasons for starting here are due to limitations only.

3.1 The Base of the CEAS

The CEAS has its base in the full inclusion of the 1951 Geneva Convention, thus before I go any further the concept of this Convention should be explained. The Convention was adopted by a conference of the United Nations on the 28th July 1951 and entered into force on the 21st April 1951.

According to the Geneva Convention, Article 1A (2), a refugee is any person who:

As a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that

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8 The 1951 Convention Relating to the Status of Refugees
country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Furthermore, in the same Convention Article 33(1) states that:

No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

The Geneva Convention was based on the refugees produced by WW2 prior to the adoption in 1951; it therefore contained a geographical limitation to refugee flows that occurred after the signing, this limitation was abolished by the signing of the 1967 New York Protocol.9

The Protocol states in Article 1(2) and (3) that:

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this Article, mean any person within the definition of Article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and . . . "and the words". . . a result of such events", in Article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation . . .

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9 The 1967 Protocol Relating to the Status of Refugees
3.2 The Amsterdam Treaty

The Amsterdam Treaty of 1997 established that the European Council should, within a period of five years of the Treaties enforcement, according to the 1951 Geneva Convention and the Protocol of 1967 relating to the status of refugees and other relevant treaties; adopt measures within the following areas:

(a) Criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,

(b) minimum standards on the reception of asylum seekers in Member States,

(c) minimum standards with respect to the qualification of nationals of third countries as refugees,

(d) minimum standards on procedures in Member States for granting or withdrawing refugee status;

(2) measures on refugees and displaced persons within the following areas:

(a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection,

(b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;

(3) measures on immigration policy within the following areas:

(a) conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits, including those for the purpose of family reunion,

(b) illegal immigration and illegal residence, including repatriation of illegal residents;
(4) measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.\textsuperscript{10}

\textbf{3.3 The Tampere Council}

The Amsterdam Treaty was further developed at the Tampere European Council in 1999 which called for a Common European Asylum System in a more concentrated form and that a common asylum policy should be implemented by May 2004. The long term-goal of the CEAS is that Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum, which will be valid throughout the EU. In order to reach the CEAS the Council decided that in the short term the Member States must set up harmonized rules on the recognition of refugees and in the long run the rules on the common asylum application procedure and a uniform status for persons granted asylum.

In Tampere the Council called for several issues to be considered in order for the harmonization becoming possible in the future and the years following the meeting more concrete measures have been taken and implemented:

1) The establishment of a financial reserve for the implementation of emergency measures to provide temporary protection in the event of a mass influx of refugees or displaced persons.

\textit{-The European Refugee Fund}

A Council Decision made the establishment of the European Refugee Fund and this was set up in January 2000 to December 2004; a proposal for the following five-year period has recently been adopted. The Fund is operating as a financial instrument on the basis of the principles of solidarity that underlies the CEAS. Furthermore, its main principle is to support

\textsuperscript{10} Article 63 (ex Article 73k) of The Treaty of Amsterdam, EurLex
and encourage the efforts of the Member States in receiving and bearing the consequences of receiving refugees and displaced persons. And supporting the efforts made by the Member States in regards of appropriate reception conditions which includes a fair and effective procedure by protecting the rights of a person in need of international protection. The target groups of the Decision are Convention refugees, third-country nationals or stateless persons enjoying international protection, third-country nationals or stateless persons who have filed an application of asylum and persons being examined for the right to temporary protection. The Fund supports the actions of the Member States in relation to their condition of reception, integration and repatriation. It is funded out of EU’s annual budget and can, in the event of mass influx of refugees or displaced persons, be used to finance emergency measures in a maximum of six months. The funding in case of a mass influx shall be distributed in a burden-sharing manner. Each Member State is responsible for the implementation of the appropriate actions that are supported by the Fund and they have to appoint an authority responsible for the communication with the Commission.11

2) Measures of determining the identity of an asylum seeker or anyone who unlawfully crosses an external border and which Member State is responsible for an asylum application in order of the Dublin Convention of 1990.

- The Eurodac Regulation

This regulation came into force on the 15th of December 2002. The Eurodac is a central Database, which consists of fingerprints of asylum seekers within the Member States of the EU. It was developed for the purpose to establish the identity of an asylum applicant, thus being able to make use of the Dublin Convention’s ‘first country rule’. The responsibility lies on the Member States to take the finger prints on every asylum seeker and any person over

the age of 14 who illegally crosses the border and to send that data to the Central Unit where it will be compared to existing data and stored. This data will be stored for a maximum of ten years since the date of collecting the fingerprints it will then be erased. Any person acquiring citizenship in a Member State will be erased from the database.\(^{12}\)

3) The need to reach an agreement to on the issue of temporary protection for displaced persons on the basis of solidarity between the Member States.

- **The Directive on Minimum Standards for Temporary Protection**

The deadline on the implementation of this Directive was set to the 31\(^{st}\) of December 2002. The events that took place in the EU following the refugee crisis in Kosovo in the 90’s constitute the grounds for the development of the Temporary Protection Directive. The intention is to prevent the asylum systems in the Member States being overwhelmed if a similar crisis would occur in the future. To take action to keep the balance between the Member States intake of refugees and thus, preventing the possibility of secondary movement within the EU territory.

The Member States may introduce greater provision but not less than what is provided for in the Directive as a matter of national law. This should be done with the 1951 Geneva Convention in mind and if in the event of a mass influx of refugees the United Nations High Commissioner of Refugees (UNHCR) or another internationally relevant organization should be consulted. The Directive further states that the duration should be of limited duration of one year with the possibility to extension of six moths, but no longer that a year. A Council Directive should establish an eventual mass influx.\(^{13}\)

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\(^{12}\) 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, EurLex

\(^{13}\) Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, EurLex
4) The work towards the CEAS in respect of the 1951 Convention and the 1967 Protocol of the non-refoulement. The progress for a clear and workable method that determines which Member State is responsible for the examination of the asylum application.

-The Dublin Regulation (Dublin II)

This Regulation came into force on the 16<sup>th</sup> of March 2003 and is replacing the Dublin Convention of 1990. This Regulation is supposed to work with the use of the Eurodac database in order to make a quicker determination and laying the criteria of which State is responsible for the asylum application of a third-country national. The Member States have an obligation to examine all claims for asylum made at their border of a third-country national. This Regulation establishes that the central database containing the fingerprints of asylum-seekers and illegal immigrants facilitates and quickens the application of the ‘first country rule’. 14

5) The refugee’s right to family reunification

- Directive on the Right to Family Reunification

This Directive came into force on the 22<sup>nd</sup> of September 2003

According to the Directive refugees recognized by the Member States have the right to family reunification providing that their family relationship predates their entry.

It further states that special attention ought to be given to the situation of refugees on account reasons which obliged them to flee their country of origin and which prevented them from leading a normal family life there. Therefore, more favourable conditions should be laid down for their right to family reunification. Family reunification should apply in any case to members of the nuclear family; the spouse and the minor children, first-degree relatives in the

14 Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, EurLex
direct ascending line, legal guardian or any other member of the family, where the refugee has no relatives in the direct ascending line or such relatives cannot be traced. If a refugee cannot provide official documentary evidence of the family relationship, the Member States will take into account other evidence, to be assessed in accordance with national law, of the existence of such relationship. The refugee should not be required by the Member State to have resided in their territory for a certain period of time, before being entitled to family reunification.

The Member States should grant the family members a first residence permit with the duration of at least one year and the residence permit should be renewable.\textsuperscript{15}

6) The approximation of rules on the recognition of refugees and the content of refugee status and that the rules regarding refugee status should be complemented by measures on subsidiary forms of protection by offering an appropriate status to persons in need of such protection.

- \textit{The so-called Qualification Directive - The Directive on the Definition and Status of Refugees and persons in need of Subsidiary Protection}

This Directive came into force on the 20\textsuperscript{th} of October 2004. The main objective of the Directive is to ensure that the Member States apply common criteria when determining the status of refugees and persons in need of subsidiary protection. The individual Member States may introduce more favourable determinants as qualifications. It is the duty of each Member State to assess the relevant elements of an application. The best interest of the child should always be taken into consideration and ensure that family members can be united. The principle of non-refoulement should be respected according to their international obligations.

When refugee status has been recognized the Member State must issue a residence permit valid for a minimum of three years and which can be renewable. In case of subsidiary protection status the residence permit should be valid for a year and renewable.\textsuperscript{16}

7) The establishment of minimum standards with regards to the reception of asylum seekers.

\textit{-The Minimum Standards of Reception Directive}

The implementation of this Directive is set to a deadline of the 6\textsuperscript{th} of February 2005.

The Directive is intended to harmonize the minimum standards in the Member States in order to decrease the possibility of ‘asylum shopping’ by secondary movement within the EU territory which is largely due to the varying reception conditions between the Member States. The minimum standards will be set to a dignified standard of living and comparable living standard in all the Member States. These are only minimum requirements, if a Member State wishes to implement more favourable provisions they are free to do so. The Member State has an obligation to ensure that: the asylum applicant acquires relevant information in a language understood to him/her, acquires the relevant documents of his/her status and travel documents if necessary. Member States may decide free movement or assign areas of movement for asylum applicants, in exceptional cases the State have the possibility to detain an asylum seeker. Access to the educational system is to be granted for minors on the same grounds as nationals. The Member State decides on the period of time that has to pass before the applicant gets access to the labour market.\textsuperscript{17}

\textsuperscript{16} Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, EurLex

8) A common approach to the processing of asylum applications in the EU, minimum procedural standards to limit the ‘asylum shopping’ in the Member States by granting and withdrawing refugee status.

-The Asylum Procedures Directive

This Directive has not yet been formally adopted by the Council and will come into force 20 days after its publication in the Official Journal of the European Communities. This Directive will set out to ensure that all first instance procedures within the EU have somewhat the same minimum standards. Furthermore, it seeks to harmonise national measures to speed up the examination of asylum applications. A negative decision on an asylum application has the possibility of judicial scrutiny. The Member States of the EU have also agreed on the concept of a list of safe countries of origin, which will be considered safe unless the applicant can prove that they would not be safe to return there.

An asylum applicant arriving from a country on the list of safe countries of origin will have their application processed through a fast track procedure. The list of these countries are not finished yet but will be issued in a near future.

The EU Member States must ensure that asylum applications are not rejected nor excluded from examination on the sole ground that they have not been made on first arrival. A person may not be held in detention for the sole reason that they are an asylum seeker. If and where an asylum seeker is held in detention the possibility of a speedy judicial review must be ensured by the Member State concerned. The asylum seekers are through this Directive ensured the right to present and pursue their case through all procedural stages in addition to the right to stay in the Member State where they made their application.18

3.4 The 2nd Phase of the Harmonization Development

The adoption of a Programme for the continuing development and process to make the EU and area of freedom, security and justice covering the years 2005-2009.

- *The Hague Programme*

This Programme was adopted by the Council on the 5th of November 2004. The Member States are urged by the Council to without delay fully implement the first phase of the CEAS. In addition, the Commission is urged to adopt the Asylum Procedures Directive as soon as possible where the year 2007 is set for an evaluation of the first-phase legal instruments and to submit the second-phase legal instruments to the Council and the Parliament, further, 2010 is set as the target for the full adoption of the Common European Asylum System.

The Council will together with the Commission in 2005 make the establishment of appropriate structures that involves the national asylum services of the Member States with a view to facilitate practical and collaborative cooperation among Member States on asylum. When a common asylum procedure has been established, on the basis of an evaluation, these structures will be transformed into a ‘European support office’ for all forms of cooperation between the Member States in the field of the CEAS.¹⁹

¹⁹Council Document 14292/04 of Presidency Conclusions- The Hague Programme
4. The Role of the UNHCR

As an organ of the United Nations (UN) the United Nations High Commissioner for Refugees (UNHCR) protects the rights of the refugees to enjoy the right to seek asylum and finding a place to seek refuge in another state. The UNHCR have closely monitored and brought forward opinions during the development of a harmonized European system. In this section there will be a description of the UNHCR’s perspective and their opinion on the process and development of the CEAS.

The UNHCR have a key role when EU develops policies and legislative decisions on refugee matters, according to Declaration 17 of the Amsterdam Treaty, the UNHCR have to be consulted. Furthermore, Member States are obliged to take into consideration the 1951 Geneva Convention when adopting laws on asylum.

On the 15th of February 2005 the EU and UNHCR signed an agreement dealing with refugees within the borders of the EU. This agreement is a continuant to a previous agreement which was set up on the first phase of the harmonization process. The first phase of five years dealt with in the Tampere Council ended in May 2004 and, as stated, the 2004 Hague Programme is the continuing plan on asylum issues for the coming five years. It deals with facilitating the greater cooperation on asylum and refugee protection issues based on the new plan of the Hague Programme. It further encourages a close cooperation and a similar asylum service throughout the Union it also involves the monitoring and analysing of national law and the practice on asylum.20

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20 “UNHCR signs cooperation agreements with European Commission”
4.1 The Perception of UNHCR on the CEAS Policies

The overall opinion of the UNHCR seems to be positive as they generally support the harmonization process of the EU arguing that it is better with a harmonized system than different standards of the individual Member States. However, in some respects they feel that the Directives and Regulations fall short of international standards and thus drift towards the lowest common denominator.

The Directive on minimum standards on temporary protection is welcomed by the UNHCR due to the fact that it is set within the framework of the 1951 Convention and that there will be a consultation of the UNHCR on the establishment, implementation and termination of the regime. With the conflict in Former Yugoslavia in mind where most of the European Member States acted independently of each other to provide temporary protection for the arriving masses of refugees this Directive can only be positive. The result of States acting independently resulted in different and unequal levels of protection that further resulted in secondary movements throughout Europe. The negative aspects brought forward by the UNHCR are that an extension has been added that states that Member States can implement the Directive in the event of an immanent mass influx. Thus this defeats the objective of the Directive if Member States predict and restrict the entry for asylum seekers. The free movement, within the host Member State and the EU, of those under temporary protection can be restricted due to that it is left to the discretion of the individual Member State. UNHCR is assured to have a consultative role in the establishment, implementation and termination of the Directive, although at this point in time the Directive still remains to be tested.

The Directive on minimum standards of reception is an asset since countries with limited reception facilities will be forced to adapt appropriate facilities and conditions. Negative aspects of the Directive are some of the exceptions that it contains since, in the opinion of

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21 The information in this chapter is taken from UNHCR Toolboxes 1 & 2, and Druke, L. “The Emerging European Refugee Policy and the Standards of the Geneva Convention”
UNHCR, this can limit the rights of asylum seekers by denying them access to reception facilities as for example if an application for asylum is not issued quick enough after arrival.

The Qualification Directive is positive in the sense that it recognizes persecution by non-state agents and gender base persecution on both groups and individuals. Furthermore, subsidiary protection covers the need to recognize persons in need of protection even though they fall outside the scope of the 1951 Convention. However, UNHCR feels motioned to stress the importance of ensuring that no higher burden of proof should be put on the individual asylum seeker in cases of generalized violence. In addition, the Directive could be interpreted to exclude individuals entitled to subsidiary protection fleeing from generalized violence that is not internationally recognized as an armed conflict.

However, it is the Asylum Procedures Directive that seems to trouble the UNHCR the most. The concept of ‘safe third country’ can accelerate asylum procedures and with it the denial of the possibility to an appeal and this raises the concern and first instance procedures might lead to indirect or direct cases of refoulement contradicting the obligations signed under the 1951 Convention. Moreover, as of this time this Directive has not yet been formally adopted and the list of ‘safe third countries’ are still being negotiated by the Member States of the EU, these developments are being closely monitored by the UNHCR as will the future implementation of the Directive.

The Dublin II Regulation proves positive in the sense that it enables a more humanitarian approach, which takes into account the personal situation of the asylum seeker who was at times discriminated by the replaced Dublin Convention. Although, it raises concerns for the project of burden sharing throughout the Union. UNHCR feels that the distribution of asylum seekers will with this Regulation redistribute the already uneven burden to a less favourable. The Dublin II together with the Eurodac will help identify the country of first entry; however, this will usually be the countries with borders on the outside of the Union and most likely new
Member States of the Union that have not got the resources nor the capacity to handle large
numbers of asylum claims. The prediction of UNHCR on this situation is that if the pressure
on these States will increase too much the result will be that these countries use restrictive
measures to decrease the possibilities of asylum seekers gaining access to both their territory
and the asylum procedures. In addition the EU need not only harmonize legislation and
policies but also the practice of it. This situation makes the UNHCR opt for a truly common
asylum system where standards, responsibility and burdens are shared instead of the current
developing harmonization. Such a system is argued to not only be an improved situation on
the behalf of the asylum seeker but also have the best interest of the State.
5. The Events and Developments of European Asylum

The development of contemporary asylum policies has its base in what have happened in the world in regards to migration movements since WW2; an era that has been called ‘the age of migration’ (Castles & Miller, 2003). In this chapter I will outline the events and process that has occurred since the end of WW2 in the area of migration and asylum procedures within Europe and how this has been perceived by different scholars.

WW2 created masses of refugee flows both during the war and in the aftermath of it. There was a need for recognizing the rights of the refugees therefore; the creation of the Geneva Convention of 1951 was made. The Convention or the added New York Protocol of 1967 has been signed by most states. The term ‘refugee’ is based on the refugees at that time and it is centred on state and membership of a state, anyone who was stateless was a potential refugee in need of protection and relocation (Joly, 1999).

The industrialization in Europe created opportunities for labour migration which was kept up until the oil crisis in 1973 after which the only possibility to enter legally into the European countries was either through family reunification or through the system of asylum, this labour migration was usually organized by governments and employers. The events that took place after the oil crisis changed the perspective for the immigrant and asylum seeker as that from an asset to a burden; once working and adding to the national treasure to where they are seen as a cost and a threat to the welfare system of the host country. Although, what many governments have failed to see was that many of the labour migrants that arrived in the 60’s and 70’s were “refugees in disguise” that due to generous immigration policies allowed them to enter without claiming refugee status (Joly, 1992).

The countries of Europe are trying to narrow the scope of who is a refugee and who is not, van der Klaauw (1994) expresses his concerns that other western states might follow in this development to control migration whilst the developing states of Africa and Latin America
has widened their scope on the definition of refugees. Now with the increasing power and the realization of the necessity of a harmonization in several areas of the EU the decision has been made of a common way to tackle migration and asylum issues within the EU. Historically states have had to rely on protecting their own borders, for the countries within the EU the ‘Single Market’ have made them take a keen interest in their neighbour’s immigration policies since the free internal market makes the states vulnerable for the policies of the other countries in the Union (Brochmann, 1996). This makes the harmonization of policies a desirable option for the Member States of the EU. The abolition of individual border controls created campaigning for ‘compensatory measures’ to control the European territory from unwanted entries.

One of the problems is that in the 90’s the debates concerning immigration and state security was that immigrants and refugees were rarely separated as two different groups (Joly, 1992). European countries have additionally to the immigration legislations taken further measures to restrict and reduce the numbers of asylum seekers by imposing visa requirements on certain nationalities (Joly, 1992). Furthermore, the carrier sanctions imposed on the airline companies have increased the difficulty for prospective asylum seekers to travel.

Thus, the measurements that governments claim to restrict unwanted labour migrants and clandestine asylum seekers in reality it seems that the people in need, the asylum seekers, are the ones that are mostly affected by it since in many cases it is more difficult for them to obtain a valid visa and travel documents. This endangers the situation for the asylum seeker since it may be impossible or life threatening for him/her to obtain the valid papers from his/her government and then to further obtain the relevant visa from a foreign consulate alerting the authorities of his/her intention to escape the country (Joly, 1992).

With the door to asylum slowly narrowing the possibility to enter legally is increasingly making it difficult for the people in need of asylum. In the late 80’s and the 90’s there were a
noticeable change in the perception of asylum seekers and refugees both in governments, the media and the public opinion (Joly, 1992). Joly further describes this phenomenon as governments in their pursuit to exclude ‘bogus’ asylum seekers more stringent laws are passed. Furthermore, the situation of asylum seekers and immigrants in general was exploited in the media that in turn created negative opinions and violent attacks against asylum seekers and immigrants by the public in many European countries. Coverage by the media together with the aggressive campaigning of extreme right parties has helped develop more restrictive measures for asylum seekers to enter European soil. These together with other factors helped in the process of putting asylum issues in juxtaposition in political matters and the initiative to develop measures to control migration.

The official recognized numbers of refugees has fallen worldwide since 1995; however, this is not due to any improvement in human rights but rather to increasingly restrictive measures taken by governments to decrease the numbers (Castles & Miller 2003).

The ‘country of first asylum’ has increased the number of deportations since its implementation; furthermore, these deportations have also been put to effect in cases of refugees recognized under the 1951 Geneva Convention (Joly, 1998).

The dilemma of the European states is to “respect their obligations under the 1951 Geneva Convention while simultaneously attempting to manage an increasing flow of immigrants and asylum seekers” (van der Klaauw, 1994, 19).

The non-refoulement is a problem since even though refugees have had their application rejected they cannot be rejected if their country of origin is unsafe. However, van der Klaauw (1994) claims that by making a ‘list of safe countries’ produces the intention of being able to separate genuine asylum claims to ‘bogus’ ones, hence, many applications will not get the relevant and thorough examination, this, in order to keep the asylum seeking number at a low within the EU Member States.
The interpretation of the Geneva Convention has become more liberal since immigration started to be seen as a problem to the European welfare states. Geddes (2003) argues that the move towards restriction since the 70’s have increasingly created escalating numbers of people that are categorized by state policies as ‘bogus’ and/or unwanted. Recently the reception of asylum seekers seems more to revolve around trust and mistrust. Before when the applicant was considered a potential refugee until otherwise proven, today they are looked upon as ‘bogus’ already upon arrival (Joly, 1999).

Contemporary policies concerning refugees do not hold the best interest of the refugees but the best interest for the states; even though the states are claiming to have a humanitarian approach the policies and statistics involving refugees give a different indication, this seems like the governments have a self interest of protecting themselves from a mass influx of refugees (Aleinikoff, 1995).

The reason for the EU Member States trying to come up with a harmonized solution for migration control is the escalation of asylum seekers and the unpredictability of the flows (Brochmann, 1996). Furthermore, she also claims that the Member States of the EU will eventually end up with a more restrictive line of immigration due to the fear of the ‘magnet effect’ i.e. the country with the most restrictive policy will set the tone for the rest of the countries. She further suggests that the metaphor of ‘Fortress Europe’ is reflecting the likely scenario of how the harmonization will develop in the EU.

Graver (2002) states that a ‘top down’ approach would privilege the asylum seeker, however, the European regime stems from the ‘bottom up’; from the public that criminalizes the asylum seekers and refugees by pointing to them as ‘bogus’ and taking advantage of the welfare system. His main criticisms of the harmonizing policy are; it will be set on the lowest common denominator, and that it will criminalize the right of asylum.
The Governments of Europe have gone from a ‘top down’ approach to a ‘bottom up’ approach in policy making. van den Klaauw (1994) addresses this issue of concern at the ‘bottom up approach’, when it comes to the policy making the possibility to the Member States to ‘opt-out’ and thereby block proposals they feel are not compatible with their national law, he argues, may eventually lead to Member States lowering their national standards. The EU policy does not include how to harmonize the administrative actions of different policies within each Member State thus Geddes (2003) argues that the ‘Europeanization of institutions’ are most likely to be uneven between the Member States since policies will have different effects in the different states due to differentiation in the interpretation of the actual policy.
6. The Refugee, the Nation-State and the Law

In this chapter I want use the arguments of different scholars to portray the refugee in the eyes of the nation-state and in the formation of legislations concerning asylum seekers and refugees.

Aleinkoff (1995) argues that the system we have today of the world consisting of nation-states makes it clear that there is no room for stateless people. Clearly something is wrong when refugees exist; their existence represents a failure to the whole system of nation-states. Since the obligation should lie on every state to take care and protect its own members, the system becomes unstable when this task is put on other states. Further, this system is marginalizing people since it is based on inclusion and exclusion. If you are not a member of a state you cannot belong to somewhere and are therefore excluded, thus a citizenship is the ticket to be included in a nation-state. The state poses as a problem when it fails to protect or recognize its own citizens or uses violence against its citizens to suppress them. Each state is responsible for its citizens and the membership of them.

Refugees can be seen as involuntary migrants from a sociological perspective whereas from the legal perspective refugees are related to the state, state sovereignty and membership. The Geneva Convention fails at one point when the states, although signed the Convention, they have control of their territory and can thus refuse entry.

There is no harmonized procedure and no international body to take the decision of granting refugee status it is thus up to the authorities in the individual state to take that decision.

Thielemann (2004) argues that it is the relative restrictiveness of a countries asylum policy that is a factor that influences the distribution of asylum burdens. A harmonization with a more restrictive policy, he argues, will work against the perspective of burden sharing. The belief of the unequal distribution of asylum applications in the EU has its base in the relative restrictiveness of the state’s policies have resulted in two policy responses. First, it is the race
towards the bottom where states take part in an international competition to increase the restrictiveness of their policies. Secondly, is the current effort to harmonize the national asylum legislation in order to prevent this race against the bottom.

His findings suggest that there is little proof that countries with stricter policies receive a smaller burden than those countries with more generous asylum policies. Further, the evidence shows that there are even some countries that have imposed stricter regimes against asylum seekers and these are some of the countries with the highest relative asylum burdens. He thus makes the conclusion that these deterrence measures have proven their inefficiency in the burden sharing strategy in Europe.

Hence, to assume that a more generous asylum system in a country will lead to an increased influx of asylum seekers is according to Thielemann exaggerated if not completely unfounded. The success in the harmonization of more restrictive policies would not prove positive for burden sharing since it is the structural pull factors of each individual country that creates the imbalances of asylum numbers in Europe.

Brinkmann (2004) argues that when negotiating their way through the EU community the Member States they do so with their own national interest in mind. The final goal is to get the Community legislation to mirror their own national law in order to get a minimal change when implementing it into national legislation. The initial ideas of the Tampere summit have been ‘watered down’ in the Commissions negotiations along the way. He further argues that the directives should have contained a stand still clause concerning already existing and more favourable national legislation should not be replaced by those in the directive. This would have prevented any ‘watering down’ of existing systems. The progressions of the harmonization have been extremely fast even though the minimum standards are at a quite low level. The argument for this is that one reason for this remarkable speed might have been the forthcoming of the ten new countries to the EU. Since after their
entry, the new accession countries will be participating in negotiations as equals to the rest of
the Member States and this will make negotiations more demanding and to get unanimity
voting a more difficult task.

In the absence of a harmonization, the individual countries’ solution to handle the existing
and increasing asylum pressure was to increase the restriction on the asylum legislation
(Hatton 2004). Asylum policies are dependant on public opinion, people are reluctant to
accept the “bogus” asylum seeker but seem to have a genuine interest in helping “real”
refugees in need. This scenario points towards that the biggest objection against a more liberal
asylum policy seems to be the public and political opinion.

An increase in the asylum applications or the raise of the costs involving asylum will make an
individual country tighten its policies. The argument her is that people care about refugees
both in their own country as well as in other countries. The result of a tightened policy in one
or more countries can have two outcomes. Caring people might want more liberal policies in
their countries to make up for tightened policies in other countries. The other scenario is an
overall tightening of policies as a chain reaction.

He further argues that there is a link between policy development and asylum flows as both
the cause and effect according to a formula called the policy reaction function.

Hatton also argues that will be an overall gain in the co-operation of a joint asylum policy
because more asylum seekers will be admitted and evenly spread out.

Although, Hatton does have some concerns about a harmonization. First, common policies
might prove too tough for some countries and not tough enough for others since there might
be a difference of preferences of refugees or number of applicants. Second, burden sharing
might be difficult since there are costs involved and there will always be countries that will
loose on this arrangement. Third, countries might act in a strategic way without a supra-
national authority to supervise.
Tuitt (1996) argues that the actual costs of refugees are divided into two categories: internal and external costs. Internal costs deal with the aid at the source, and the external cost is the actual cost of the host state when asylum seekers enter their territory. This cost is not only calculated in money but also as a loss to the sovereign power of the state since asylum numbers have the potential to change the cultural dimensions of the state.

Furthermore, lengthy asylum procedures are costly; the recent measures of accelerated procedures inadmissibility procedures will lower the cost for the state.

The identification of the refugee is one of the most essential functions of refugee law; however, this identification can vary between regions. There are two conditions that must be met in the formation of this identity. The first is that there must exist a dominant refugee identity. Secondly, this identity has to be relatively narrow and inflexible. Everyone that falls outside of this identity are perceived at best as in need of humanitarian aid or as worst considered ‘bogus’. Tuitt further argues that this second function of refugee law, by narrowing down the identification of the refugee, will only apply to a tiny portion of asylum seekers and thereby also lower the external cost of the state. By problematizing the refugee, the states efficiently justify their exclusion.

The emphasis on race in asylum issues is clear in both the media and the political debate. Large numbers of non-white asylum seekers are seen as a potential threat to internal race relations in Western Europe. Tuitt argues that the general legislation is generated to target these asylum seekers by selecting the country of origin as a visa country. This is done for the sole purpose of that the country in question produces asylum seekers.

Instead of using the concept of burden sharing Tuitt refers to this as ‘burden shifting’. The main argument here is that safe country concept is a loophole for Western states to lower their external costs by sending asylum seekers back to non-Western states.
The legal solutions to solve the problems of refugees are state-centred. Instead of looking at the individual refugee, the problem is now even more state-centred. The basic problem with the state-centred model is that the development of it has been made by states, for states and lawyers and this places the refugee in a limbo in a helpless state.

By constantly implementing new policies states have found a solution to control the refugee flows and protecting themselves “Refugee law have become immigration law, emphasizing protection of borders instead of people” (Aleinkoff, 1995; 263).
7. The Perception of the CEAS by Organizations Affiliated with ECRE in the Different Member States.

The initial intention of this essay was to make a comparison in the standards of reception between the different Member States. However, as the work progressed I soon realized the impossibility in this task. This is due to the actualization of the harmonization and the steady progress of it. The only information I managed to find was from 2003 which for the purpose of this essay proved outdated since too much might have changed as time progress.

The difficulties in receiving any answers to my questionnaire were a disappointment. I started by sending 21 mails of which I received 3 answers and two weeks later I sent a reminder of which I received 4 answers. I made a new list and sent out 12 e-mails of which I received 3 answers and the reminder resulted in 0 answers. The total amount of received answers resulted in 10. Three answered the questionnaire by e-mail and two were telephone interviews, 5 answered that they did not have time to answer the questionnaire, and the rest never answered. As stated in the chapter presenting the answers there were differences in quality in the answers received. Where some gave really good and relevant answers and others seemed to have pasted irrelevant articles and texts right into the reply.

ECRE is functioning as an umbrella organization that consists of refugee assisting non-governmental organizations (NGO’s) in European countries that are working for fair and humane policies in the treatments of asylum seekers and refugees in Europe. They are currently 76 refugee-assisting agencies in 30 different countries. Their work consists in promoting the protection and integration of refugees in Europe with the basis of their work in human rights. The aim of their work is in favour of more generous asylum policies in Europe, creating a strong network of refugee assisting NGO’s in Europe and the development of the institutional capacity of refugee-assisting NGO’s in Europe. It is due to this work on

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22 Source: European Council on Refugees and Exiles
concentrating on asylum seekers and refugees and their human rights the organizations in affiliation with ECRE have been chosen for the purpose of this study.

I sent the questionnaire by e-mail to these organizations in where they had the choice either to respond by e-mail or agree to a telephone interview.

The answers I did receive varied greatly in quality. This could depend on many different factors such as lack of time, lack of interest, delegating the assignment to someone less familiar with the subject. However the outcome of the few answers I did receive still showed a red thread where several of the answers where heading the same way.

The general perception of these organizations is that there seems to be no alternative to the harmonization since the Member States of the EU are increasingly restricting their access to their territory and thereby their national asylum processes. However, at the same time the measurements taken at EU level could prove to be too strict since the negotiations leading up to them have been in the best interest of the individual Member State. Furthermore, the worry also concerns the new Member States and their adoption to the standards of the older Member States. Some aspects of the harmonization are seen as very positive, especially if the Member State in question have per se a very strict interpretation of the Geneva Convention, then the transposition of the Definitions Directive into national legislation could actually improve the recognition rates of refugees. Another opinion is that it takes too long for the Member States to transpose the directives into their respective national legislations.

One problem with the directives passed so far in the first phase of the harmonization process is argued to be the quality of the directives. They are perceived to be a ‘bricollage’ of different national legislations where loads of different opinions have tried to meet halfway. The Member States have during the negotiations in the creation of the directives tried to influence the outcome of the directives to be as similar to their own national legislation as possible. This is done in order to not having to change too much when transposing the
directive in question into national legislation. The worry is that alongside the development of the CEAS there will be a competition between the Member States to ‘water down’ their systems in order not to attract asylum seekers. This would create a negative cycle where countries start to lower their standard not to have the better standards and this is all done with the legal means of the EU. Furthermore, the main objection to this is that the lowest common denominator seems to have become the norm in the creation of these directives, this seems to be especially clear in the Procedures Directive, which is perceived as being very difficult and complicated and the standards appear to be really low.

The main theory here is that because of the low standards in the Procedures Directive some Member States might feel that the right is on their side to lower their standards. Even if the harmonization has moved to the second phase, the perception is that there is still a very long way to go before we can call it a common European asylum system.

There is also the issue of the concept of ‘safe third country’ as stipulated in the Asylum procedures Directive. The accelerated procedures along with inadmissibility procedures might deny the asylum seeker a proper investigation into the claim for asylum. ECRE is currently advocating for a total removal of the ‘safe third country concept’ since it carries with it an increased number of accelerated procedures throughout the Member States of the EU.

In the view of ECRE, all asylum seekers should have the right to freely choose their country of destination. However, at present they do realize the difficulty in this option.

The Dublin II seems to be the crucial issue in the answers received. It is perceived as an unfair system that does not take into consideration any circumstances that might be relevant for an asylum claim to a specific country thus, an asylum seeker could have a valid reason why to apply for asylum in one country and not another one. Further, this puts a lot of strain on the countries of the external border of the EU since they will have to take the greater number of Dublin cases returned by the rest of the EU.
Imposing the Dublin II will mean that other Member States will start sending increasing numbers of asylum seekers back to these countries. Some of the new Member States are perceived as ‘traffic countries’ and some are expressing a growing concern of this phenomenon since it involves sending asylum seekers back according to the Dublin II. The argument is that the new Member States have asylum systems, laws and some sort of reception system but its at this point underdeveloped compared some of the older Member States. The argument as the Dublin II as unjust is that asylum seeker might have a tie in a particular country other than the now accepted nucleus family. It is here the asylum system is faulty according to ECRE, instead of gaining access to an already existing connection the asylum seeker is rejected as a Dublin case and he/she will find him/herself in a country without connections and thus making integration more difficult.

The concern lies not only in the standards of the harmonization directives but also in the restriction of access to the EU territory which have become increasingly stricter.

The figures at this point of Dublin cases are quite low if you look to the total numbers of asylum seekers in the EU.

Since the Member States still differ enormously in their procedures and standards imposing the Dublin II is not fair towards the asylum seeker. The asylum claims stated in the application might prove valid in one Member State while it might be rejected in another Member State. As long as the system works this different the Dublin II works against the intended increased protection for asylum seekers in the EU. One result of the use of Eurodac is that the asylum seekers mutilate themselves in order to not be able to give prints.

There is also the problem with people who have been travelling for some time through many different European countries, especially children. Many of these people are in a poor psychological state and might not fall under the Geneva Convention definition or even Subsidiary form of protection. In this situation humanitarian reasons should be looked on as
an alternative and taken into consideration since at this point a return might further worsen the psychological problems.

The solutions seems to be that the EU would harmonize on better standards and with that have a harmonized standard on the equal treatment of asylum seekers and refugees.

In the end the main concern seems to be in the reliability of the system, if asylum seekers feel that they cannot rely on the asylum system they might choose to not apply for asylum. This would result in that they would rather choose to live illegally and rely on the black market that to put their trust in the system.

The EU Member States are still perceived as individual states with great differences in their policies, procedures, definitions and reception systems. However, there is still faith that these issues will be harmonized in the future.
8. Asylum Seekers in Numbers in the Individual Member States

In this chapter I will attempt to do an analysis on the amounts of refugees that arrive to the EU Member States. I will do this by presenting the total amounts of applications lodged in each individual Member State in order to see what statuses are granted and how many rejections are made from the applications. This will be done by comparing the differences between two years; 1999 and 2004. I have used and re-worked statistical data from the UNHCR. This has in turn been further developed into diagrams. The diagrams are meant to illustrate in a more comprehensive manner the history, the patterns and trends of what is happening in the EU Member States as regards to asylum seekers and refugees. I am aware of that the usage of statistics and the diagrams may be misleading since the applications lodged can never be precisely accepted or rejected in the actual year that it was submitted. However, these statistics and diagrams are more to show what is happening in the Member States in regards to accepting or rejecting asylum seekers.

Since the harmonization is created to equalize procedures in the Member States I find it necessary to look into how the different countries deal with asylum seekers on an individual lever once entered the territory. Furthermore, the history of immigration, the unequal amount in the influx of asylum seekers and the differences between long established welfare states and countries with a more recent secure economy might be perceived in the ways to handle asylum seekers.

There is a full statistical overview of all the Member States available in the Appendix.

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23 The information for the diagrams in this section is taken from UNHCR’s Statistical Yearbooks 1999 and 2004
9.1 Austria

Figure 1 is showing an overview of the asylum applications in the year 1999 and the same figures are then illustrated in figure 2 but for the year 2004.

This situation could be further illustrated by making a diagram of the decisions taken to the asylum applications of the years. Figure 3 illustrates 1999 where the total numbers of applications were 25 600 with a total of 18 250 decisions. Figure 4 illustrates 2004 where the total number of applications were 58 200 with a total of 26 670 decisions.
9.2 Belgium*

Figure 5 shows the overview of the asylum applications in the year 1999 and the same figures are then illustrated in figure 6 but for the year 2004.

The further illustration shows as follows. Figure 7 illustrates 1999 where the total numbers of applications were 35,780 with a total of 4,750 decisions. Figure 8 illustrates 2004 where the total number of applications were 42,980 with a total of 10,970 decisions.
9.3 Denmark

Figure 9 shows the overview of the asylum applications in the year 1999 and the same figures are then illustrated in figure 10 but for the year 2004.

The further illustration shows as follows. Figure 11 illustrates 1999 where the total numbers of applications were 6,470 with a total of 7,250 decisions. Figure 8 illustrates 2004 where the total number of applications were 5,270 with a total of 4,110 decisions.
Figure 13 illustrates 1999 where the total numbers of applications were 4,500 with a total of 2,730 decisions. Figure 16 illustrates 2004 where the total number of applications were 3,860 with a total of 2,080 decisions.
9.5 France*

Figure 17 shows the overview of the asylum applications in the year 1999 and the same figures are then illustrated in figure 18 but for the year 2004.

The further illustration shows as follows. Figure 19 illustrates 1999 where the total numbers of applications were 30,910 with a total of 24,150 decisions. Figure 20 illustrates 2004 where the total number of applications were 140,220 with a total of 110,120 decisions.
9.6 Germany

Figure 21 shows the overview of the asylum applications in the year 1999 and the same figures are then illustrated in figure 22 but for the year 2004.

The further illustration shows as follows. Figure 23 illustrates 1999 where the total numbers of applications were 131,140 with a total of 135,500 decisions. Figure 24 illustrates 2004 where the total number of applications were 178,240 with a total of 61,960 decisions.
9.7 Ireland

Figure 25 shows the overview of the asylum applications in the year 1999 and the same figures are then illustrated in figure 26 but for the year 2004.

The further illustration shows as follows. Figure 27 illustrates 1999 where the total numbers of applications were 20 200 with a total of 5 990 decisions. Figure 28 illustrates 2004 where the total number of applications were 17 250 with a total of 13 560 decisions.
9.8 Italy

Figure 29 shows the overview of the asylum applications in the year 1999 and the same figures are then illustrated in figure 30 but for the year 2004.

The further illustration shows as follows. Figure 31 illustrates 1999 where the total numbers of applications were 33,360 with a total of 8,330 decisions. Figure 32 illustrates 2004 where the total number of applications were 7,370 with a total of 8,970 decisions.
9.9 Netherlands

Figure 33 shows the overview of the asylum applications in the year 1999 and the same figures are then illustrated in figure 34 but for the year 2004.

The further illustration shows as follows. Figure 35 illustrates 1999 where the total numbers of applications were 39,300 with a total of 60,910 decisions. Figure 36 illustrates 2004 where the total number of applications were 54,450 with a total of 20,360 decisions.
9.10 Portugal*

Figure 37 shows the overview of the asylum applications in the year 1999 and the same figures are then illustrated in figure 38 but for the year 2004.

The further illustration shows as follows. Figure 39 illustrates 1999 where the total numbers of applications were 270 with a total of 450 decisions. Figure 40 illustrates 2004 where the total numbers of applications were 110 with a total of 100 decisions.
9.11 Spain

Figure 41 shows the overview of the asylum applications in the year 1999 and the same figures are then illustrated in figure 42 but for the year 2004.

The further illustration shows as follows. Figure 43 illustrates 1999 where the total numbers of applications were 8 410 with a total of 6 890 decisions. Figure 44 illustrates 2004 where the total number of applications were 5 540 with a total of 6 670 decisions.
9.12 Sweden

Figure 45 shows the overview of the asylum applications in the year 1999 and the same figures are then illustrated in figure 46 but for the year 2004.

The further illustration shows as follows. Figure 48 illustrates 1999 where the total numbers of applications were 11,230 with a total of 9,310 decisions. Figure 48 illustrates 2004 where the total number of applications were 58,540 with a total of 51,090 decisions.
(1)

Pending cases are cases left from the previous year not all countries have data available in this column.

New applications are applications submitted from the 1st of January in the year in question.

Refugee Status refers to cases both from new application and pending cases decided on the year in question.

Other are cases both from new application and pending cases, Humanitarian and other forms of protection statuses decided on the year in question.

Rejections are the total number of rejected cases during the year in question.

Closed are cases that were closed/rejected for other than substantive reasons.

Total is the total number of decisions taken the year in question.

Some countries have more than one instance and these have been added together here so the one application could have been Counted more than once in these numbers.

All the numbers in the statistics have been rounded of to the nearest even number unless the numbers below 30.
9. 13 Analysing the Diagrams

There are difficulties in looking at and comparing statistics and diagrams when the countries are that different as the Member States of the EU still are at this point. However, this could also help to highlight those exact differences and thus the problems involved in the process of the harmonization.

In most of the countries presented there has been a decrease in new applications of asylum however, there are some exceptions Austria, France, Finland and Sweden have all had an increase in their applications between the two years. There are, however, some countries that show a substantial decrease in applications in 2004 contra 1999. Denmark, Italy, the Netherlands, Germany and Portugal all show a remarkable decrease in new applications.

Many of the countries that have submitted information on pending applications show a large number of these contra new applications. This could indicate a restriction in access to asylum application but also there appears to be a decrease in the decisions taken for some of the countries compared to the relative numbers of applications which could also be a reason for the higher numbers of pending applications.

The uneven numbers of asylum seekers testify on that the idea of burden sharing seems not to be working since some of the Member States have managed to decrease their asylum applications while other Member States have had an increase of applications.

It is quite clear at a first glance that the rate of recognition has decreased in all the countries except Finland, the Netherlands and Portugal.

The narrow definition of the refugee according to the Geneva Convention can also be perceived since the recognition of refugee status has gone down in all the countries or has at best been kept at the same percentage in both years. The issue that the harmonization could help reduce the strictness in the interpretation of the Geneva Convention in some countries seems not to be the case since the figures for 2004 appears to rather indicate the opposite.
Some states do not show any numbers for other forms of recognition, however this could be due to that no data is available or that they do not have an alternative form of recognition. In most of the countries the recognition rate of other forms of protection has dropped. Only Finland, Italy, the Netherlands and Portugal show an increase in this column.

The closed cases show remarkable differences throughout all the countries with Spain as the most concerning going from 4 percent in 1999 to a staggering 70 percent in 2004. The cases in this column are closed and rejected for various reasons so this could mean that they are Dublin cases, safe third country rejections or that the asylum applicants have just disappeared. One issue of concern addressed by both scholars and the persons working in connection with ECRE is the Dublin cases. However, these rejections are not possible to detect in the statistics from the UNHCR. I will therefore take a closer look into this in the next section.
9. 14 Cases in the Member States Relating to the Dublin II in 2003

The Dublin II was created to stop the asylum shopping. It is thus important to look into if the asylum shopping is posing as a problem for the Member States. As stated, Dublin rejections are not possible to detect in the UNHCR statistics since there is a possibility that they have been included in the ‘closed’ column, the rejected column or not included at all.

In order to find out where the Dublin cases might be I sent them an inquiring e-mail. The reply was that since UNHCR collects their material from the respective countries and since the Member States are not harmonized in their procedures the statistics might contain Dublin cases for some of the Member States but not for others, thus, the Dublin cases are not necessarily included in the statistics. Furthermore, the UNHCR do not at this point have any specific statistics on Dublin cases alone.

The next step was ECRE and they had some statistics of Dublin cases for the year 2003.

Since here too Member States differ in presenting their statistics the easiest way is to make it into the statistical model of the figure below.\(^{24}\)

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Compared to the relative numbers of applications in the respective states these numbers are perceived percentage wise as quite small.

\(^{24}\) Source: ECRE

(*) Decisions

(**) These data consists of both requests made by and to other Member State
Since the information on Dublin cases proved difficult to attain I decided to concentrate on Sweden and thus, sent another e-mail to the Swedish Migration board with an inquiry of statistics on Dublin cases. I did get a reply for the years 2000-2004 which are presented below first in the statistics and also in the form of a diagram in order to give a more illustrative point of view.

9.15 Dublin Rejections in Sweden from 2000-2004

The statistics below is representing Sweden and Dublin rejections during five years shows an escalating increase in rejections.

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This can be further illustrated by a diagram where it is easier to see the portion of Dublin rejections in relations to the total amount of new asylum applications submitted in Sweden to the respective year.

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25 Source: Migrationsverket
As the diagram shows there has been an increase in the Dublin rejections during the five years in question with the exception of 2001 where there is a slight decrease. However, looking at the wider picture of the relative amount of asylum applications lodged in Sweden for the respective year the numbers appear small. Since I have no data for the other Member States the results cannot be compared to see if there is a similar development in other countries. Further, the statistics did not indicate to what countries the Dublin cases were rejected to, hence, there is no possibility to see how this might affect the new Member States and the countries on the fringes of the Community.
9. Discussion

There seem to be major differences in accepting and rejecting asylum applicants between the Member States. Some states are more generous in accepting asylum seekers according to the Geneva Convention and others are more reserved towards the Convention status thus, accepting asylum seekers on other grounds. This phenomenon has been illustrated in the diagrams in chapter 9. They show differences in both the acceptance rate as well as which status granted in the Member States. The differences in historical background of the Member States of the EU might be the reason as to why there are great differences in the recognition of Convention refugees or granting asylum on humanitarian or an alternative ground. This appears to have different causes in the Member States in the public and political opinion towards refugees and asylum seekers. This is also perceived in the creation of policies in this area where the general perception seems to be that there has been a criminalization of the refugee in the last decades where the ‘true’ identity of the refugee fits a very exclusive group and the ones who fall outside it are perceived as clandestine.

The Convention was constructed with the best interest of the refugee but, as stated, for the refugees affected by WW2 and its aftermaths. Recent asylum seekers fall outside the narrow definition of the Convention definition and are therefore subjected to exclusion. It is quite odd then that the EU chooses to base the CEAS on the full inclusion of the Geneva Convention when most asylum seekers seem to fail to meet up to the standards of that very Convention. I have pointed at scholars that argue that stricter policies are useless in trying to regulate the asylum flows which seem to be correct if looking at the numbers of asylum seekers distributed in the EU. The pursuit of burden sharing within the EU appears to be lost when looking at the great differences in the number of applications lodged in the different Member States.
One of the major obstacles perceived in the harmonization process appears to be the Dublin II Regulation. Although finding material on rejection cases relating to it proved quite difficult hence, I chose to concentrate on Sweden as an example. However, presenting the Swedish statistics offered to me by the Migration Board it showed that actual Dublin cases where numbers of little importance to the relative flow of asylum seekers.

The so-called asylum shopping does not appear to be as widespread as feared by states and policy makers. Thus, the creation and implementation of both the Dublin Convention and the Regulation is questionable since it above all helps in the creation of criminalizing the asylum seeker. As long as all the countries of the EU do not have the same reasons for granting asylum, the same rate of recognition and the same granting of statuses the Dublin Regulation will continue to do more damage than good.

The construction of refugee law seems to testify the appearance of a state-centred line where the narrow definition of the Convention refugee calls for the formation alternative measures of protection. This scenario projects the image that refugee law are absolutely exclusive and more in favour of protecting the state than the refugee for which it was constructed for in the first place. Furthermore, if the countries on the fringes of the EU have experienced greater numbers of applicants, then it is here it would be interesting having statistics of Dublin rejections to see if there is an increased return rate to these states as well as to the new Member States.

In the end the CEAS seems, at this point in time, represent just what its main idea was “minimum standards” neither more nor less and the asylum seekers are the ultimate losers.
10. Conclusion

The workings of the CEAS are still in progress thus it is difficult to see where it is going to end. Stricter policies cannot be the answer since the illegal migration and traffickers will increase. The perception of asylum workers are that if there is a continued path towards stricter policies and a continued criminalization of the asylum seeker, the option to live illegally in a country seems more appealing then to try to apply for asylum. This would result in greater numbers of illegal subjects where they would have to rely on the black market and might get exploited by less scrupulous persons. Clearly, the system is failing when refugees have lost faith in the system built to protect him/her.

The issue here in the creation of the harmonized procedures was to increase the protection of asylum seekers and refugees by ensuring a harmonized standard throughout the EU. However, the outcome of it at this point seems to have become the protection of the states. The decrease in asylum applications lodged in the EU Member States illustrated in the diagrams does not necessarily indicate a better and safer world but might also be the result of successfully restricting the access to the EU territory.

The differences in accepting asylum seekers on different grounds can be perceived as extremely unjust both to the asylum seeker as such but especially to those rejected to other countries through the Dublin II. Since the numbers presented are relatively small they further add to the perception of Dublin rejections as extremely unnecessary. An expansion of family ties and reasons for applying in a particular state should be taken into consideration when assessing an application.

Judging from the statistics and the diagrams together with the views of different scholars it appears that the measures taken so far are not nearly enough and that some of them are downright disastrous for asylum seekers.
Only the future can tell us where the harmonization process will end, if it will be a truly reliable instrument, protecting the rights of those seeking refuge in the EU or if we will finally close the doors to ‘Fortress Europe’ by increasing the restrictions to entrance and recognition. Since the CEAS is still in progress and is not by far finished I feel that a more detailed and prolonged investigation is needed to get a more substantial conclusion to whether the CEAS really is successful or not.
References


“Amsterdam Treaty of 1997”, EURLex


“Common Position 1996”


“London Resolutions 1992”


“Single European Act 1996”


“Treaty of Maastricht 1992”

“Treaty of Rome 1957”


“Universal Declaration of Human Rights”

“UNHCR signs cooperation agreements with European Commission”

### Appendix

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Applications refers to both pending applications from the previous year and applications submitted from the 1st of January the year in question.

Refugee Status refers to cases both from new application and pending cases decided on the year in question.

Other are cases both from new application and pending cases, Humanitarian and other forms of protection statuses decided on the year in question.

Rejections are the total number of rejected cases during the year in question.

Closed are cases that were closed/rejected for other than substantive reasons.

Total is the total number of decisions taken the year in question.

(-) indicates either no data available or zero that year.

All the numbers in the statistics have been rounded to the nearest even number unless the numbers below 30.