



EASO Reloaded: Can The New EU Asylum Agency Guarantee A Standardised System of Protection?

SVR's Research Unit: To The Point 2018-1

At a glance

- It's the middle of 2018, and the European Parliament and the Member States are still struggling to reach a compromise on the reform of the CEAS. Thus far, they have agreed only on one thing – the European Asylum Support Office (EASO) will be transformed into a 'fully fledged' asylum agency.
- The new European Union Agency for Asylum (EUAA) will have new tasks, more flexibility and increased resources at its disposal, but will not infringe upon the executive powers of Member States.
- Whether or not the CEAS succeeds in creating a standardised system of protection depends on the Member States. They must be consistent in implementing its requirements, cooperate with each other and include the Agency in their work as a supporting actor.
- This reform is a further step on the way to creating an integrated EU asylum system. In the future it is possible that Member States may transfer all executive power in asylum procedures to the EU.

Following the collapse of the Common European Asylum System (CEAS) as a result of an unprecedented influx of people seeking protection in 2015 and 2016 in particular, the European Union and its Member States put several measures in place. These included emergency decisions on the part of the Council to help relieve the pressure on individual Member States; a major increase in support and funding for Frontex, the European Border and Coast Guard Agency; and agreements on migration control with third countries. As a long-term strategy for addressing the situation, the EU Commission also proposed another reform of the central legal provisions of the CEAS (SVR 2017: 29–59).

The reform proposals put forward in May and July 2016 were intended to address **structural weaknesses in the EU's common asylum policy** of which the EU had long been aware. Not least amongst these deficiencies has been a **lack of solidarity and responsibility-sharing** between Member States vis-à-vis asylum seekers in the wake of the Dublin Regulation. The proposals were also intended to help diminish the sometimes dramatic differences in the treatment of asylum seekers, especially in terms of asylum procedures and recognition (SVR Research Unit 2017).

Two years later, **not a single one out of a total seven legislative proposals has yet been finalised**



by the European Parliament and the Council of the European Union.¹ There is particular difficulty in coming to an agreement on the proposed reform of the Dublin Regulation and the new Asylum Procedures Regulation, and so far no conciliation procedures have commenced. Regarding the planned Qualification Regulation, the amendments to the Reception Conditions Directive and the Eurodac Regulation, and the Resettlement Framework Directive, the European Parliament and Council are currently negotiating with the Commission in what is known as the trilogue process. They face considerable pressure; **if there is no outcome from the conciliation procedure in 2018, the proposed CEAS reform may fail entirely**, as elections for a new European Parliament take place in May 2019 and the mandate of the current Commission expires in October the same year.

So far, the only ground for optimism is that the European Parliament and Council agreed as far back as June 2017 to establish a new agency as the central body for EU asylum policy. Expectations for the agency are high; it is hoped that it will not only resolve the functional weaknesses that characterise the CEAS but above all, that it will contribute to a uniform application of the *acquis* in relation to asylum policies. The new European Union Agency for Asylum (in the following EUAA or 'Agency') will replace the current European Asylum Support Office (EASO or 'Office'), set up in 2010, and have a broader mandate. Its goal is the 'Europeanisation', and hence harmonisation, of asylum policy in the implementation across EU Member States. Success in that respect could effectively address the prevailing scepticism about the possibility of reform and counteract the current trend observable in some Member States towards a renationalisation of asylum policies.

This *To The Point* by SVR Research Unit explores the opportunities represented by this new agency for the CEAS, while also considering its limitations.²

The EASO – a broad portfolio, but no interventional powers

When the EU set up the EASO in 2010 as a 'European centre of expertise on asylum', the Office had a mandate to facilitate, coordinate and strengthen practical cooperation among Member States. However, it had no 'powers in relation to the taking of decisions by Member States' asylum authorities'.³ The EASO provides practical and technical support to national asylum authorities and offers training and development for their staff. It gathers and analyses examples of best practice and country of origin information (COI) relevant for asylum decisionmakers. Its most wide-reaching area of activity, however, lies in the provision of operational support to Member States whose asylum and reception systems are experiencing particular pressure, in some cases through deploying special asylum support teams made up of experts from other Member States (whereby the Member States can make autonomous decisions as to whether or not to deploy their experts). So far, Bulgaria, Greece, Italy, Luxemburg, Sweden and Cyprus have taken advantage of this offer, although to very different extents. The Office also contributes to the implementation of CEAS legislation through gathering and exchanging information and issuing a yearly report on the asylum situation in the EU. In terms of its activities reaching beyond EU borders, the EASO helps to coordinate EU resettlement measures, and can also work together with third countries to create more capacity in their asylum and reception systems; so far it has worked in this context, and in some cases is

1 For an overview, see Council of the European Union, Note from the Presidency to the Permanent Representatives Committee/Council, Reform of the Common European Asylum System and Resettlement, 06.12.2017, No. 15057/1/17 REV 1 (<http://data.consilium.europa.eu/doc/document/ST-15057-2017-REV-1/en/pdf>); Thym 2016: 1560f.

2 This *To the Point* was supervised by Prof. Petra Bendel and Prof. Daniel Thym, members of the Expert Council of German Foundations on Integration and Migration (SVR). The Expert Council's Research Unit is responsible for this publication. Arguments and conclusions do not necessarily reflect the opinion of the SVR. The publication is based on the following legal documents: Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, Official Journal of the European Union No. L 132/11 of 29 May 2010; proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 (COM(2016)0271 (final)); approved report of the European Parliament of 21.12.2016 on the proposal, A8-0392/2016; Council positions (Notes from the Presidency to Permanent Representatives Committee) of 19.12.2016 (15576/16), 29.05.2017 (9563/17) and 02.06.2017 (9781/17); and a provisional agreement arising from the trilogue negotiations in an unpublished Council document of 27 June 2017.

3 Regulation (EU) No 439/2010 (as at fn. 2), Article 2 and recitals 13 and 14.



Box Rapid growth – the structure and development of the EASO

The Hague Programme, launched by the European Council in 2004 to strengthen freedom, security and justice in the European Union, foresaw the establishment of a European Asylum Support Office. In 2010, a Regulation to this effect came into force (Regulation (EU) No 439/2010), and the EASO finally commenced its work in 2011. Based in Valletta (Malta), the Office is governed by a Management Board which includes representatives of all Member States and the European Commission, with representatives of the United Nations High Commissioner for Refugees (UNHCR) in a consulting role. The Management Board appoints an Executive Director for a five-year term of office, who is in charge of the day-to-day management of the EASO. At the beginning of 2017, the Office employed over 150 staff, with staff numbers almost doubling between 2015 and 2016. Its budget, too, has undergone a dramatic increase, from around EUR 8 million in 2011 to around EUR 15.5 million in 2014 and 2015. The EU funding for 2016, originally set at EUR 19.4 million, was increased to around EUR 53 million, with much of this new funding coming from the Asylum, Migration and Integration Fund (AMIF). Similarly, the budget for 2017 was increased several times to an eventual total of over EUR 79 million, while the Office's current budget stands at around EUR 92 million.

For the four-year period 2017–2020, the EU has set aside around EUR 364 million to finance the new EU Agency for Asylum, with plans to increase its staff numbers to 500 by 2020.⁴ The administrative structure of the new EUAA will remain more or less the same as that of the EASO.

continuing to work, with the Western Balkan states, Turkey, Jordan, Tunisia and Morocco.

Since the huge increase in people seeking protection in 2015 and 2016, and the resulting increase in resources to deal with this, the EASO's operational and steering activities have grown significantly through its participation in special supportive measures. These have included the joint setting up and operating of 'hotspots', the organisation of emergency relocation for persons in need of international protection arriving in Italy and Greece (on the legal basis of Council Decisions taken in September 2015) and in implementing the 'EU-Turkey deal'. In this way, the Office has held an increasingly broad portfolio. But its role is entirely limited to coordinating activities and offering services; it has no authority to influence asylum authorities, and has no decision-making or executive powers in its own right.

A 'fully-fledged' asylum agency – an independent centre of expertise and a broader mandate

The EUAA has been on the starting blocks since the summer of 2017. On 28 June of that year, the European Parliament and the Council came to an agreement on the central provisions of the EUAA Regulation. But formal ratification has still not been achieved. This is mainly because Council and European Parliament (particularly the latter) are looking for a package solution that would integrate not-yet-agreed legal provisions relating to the CEAS.⁵

The agreement of June 2017 foresees the transformation of the EASO into a 'fully-fledged agency'.⁶ This demonstrates on the one hand the intention of the reform to significantly expand the agency's current coordinating and operational mandate, and on the other hand reflects that the new agency will have

4 These numbers are based on COM (2016) 271 final (as at fn. 2): 80ff; EASO Statement of Revenues and Expenditures 2017, Amendment 2 of 15.09.17; EASO Statement of Revenues and Expenditures 2018.

5 Text proposals were still outstanding only for certain recitals and Articles directly linked to provisions being negotiated in parallel, where the Council had not yet agreed on its negotiating mandate.

6 This is somewhat misleading insofar as that in its current legal form, the EASO already fulfils all the criteria for an EU agency. It is an independent organisation that falls outside the administrative structures of the EU and its organs, and as such is a legal person, with a legal basis in EU secondary law, and is professionally independent (cf. Kietz/von Ondarza 2016, Tsourdi 2016). The phrase 'fully-fledged' is misleading in another respect; the aspiration inherent in the term could give the impression that the eventual goal is complete federalisation with independent EU executive powers, which would be illegal under EU primary law (cf. Thym 2016: 1559).



new or expanded powers increasing its authority and influence, also in relation to Member States. Formally, however, the executive federalism established under the EU Treaties remains untouched. **Member States continue to be entirely responsible for decisions in the area of asylum management, and all measures to be taken by the agency are intended to support the Member States and improve the way in which the CEAS operates.** This means that these measures are ‘tools of a non-binding nature’ and are ‘in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union’.⁷

The fundamental changes set out in the EUAA Regulation, compared to the EASO Regulation, have two goals. On the one hand, they are intended to guarantee an efficient and uniform application of EU asylum law, primarily in relation to the desired convergence of asylum procedures and protection rates. On the other, they considerably broaden the agency’s operational mandate and its remit to assist in implementing structural measures, for example in managing migration at hotspots, or in terms of how the EU cooperates with third countries.

- The EUAA will observe and monitor the asylum situation in Member States intensively by carrying out regular inspections and putting liaison officers in place. It can also propose harmonisation measures.
- Information about the countries of origin of people making applications for asylum will be systematically gathered and enhanced with guidelines relating to the qualification criteria for protection, so that the Member States can take account of these recommendations during asylum procedures.
- Where Member States are under particular pressure, the EUAA will provide operational and technical support in carrying out national asylum procedures. If a Member State requests it, the Agency can even accept and assess applications for international protection submitted in the hotspots.

Promoting practical cooperation, development and training

The EUAA Regulation is intended to promote the practical cooperation of Member States both with each other and with the Agency. In theory, the Member States shall have an obligation ‘to cooperate in good faith and exchange information’. In practice, this comes down to a guideline rather than an obligation, as there are no sanctions for non-compliance. If a Member State does not fulfil its duty to share information with the Agency, the latter will report this to the EUAA Management Board and the Commission.

The Agency itself is conceived, in relation to the implementation of the CEAS, as a central interface and has a duty to ensure that information can flow freely in all directions, using, for example, databases and web portals alongside its comprehensive reporting obligations. It is planned that the Agency’s liaison officers will be deployed both in Member States and third countries. They will play a pivotal role as communicators and intermediaries, for example in information-gathering, monitoring, and applying the CEAS.

The main focus in the Regulation’s chapter on practical cooperation and information on asylum is the **Agency’s function as a kind of ‘asylum academy’**. The Agency will offer training not only for its own staff but also for the staff of Member State authorities (e.g. on fundamental rights, vulnerable groups, qualification for asylum, or resettlement questions). At the same time, the Agency will establish a European curriculum for asylum issues, to be used by Member States in developing appropriate training for their staff.

Country information, shared analysis and guidance notes

A key function of the new EUAA will be the systematic gathering of information about ‘relevant third countries’, a somewhat less precise term than that originally proposed by the Commission (‘countries of origin’). The intention is that Member States’ asylum authorities should be able to access this information

⁷ Comparing the respective positions of the Commission, the European Parliament and the Council (as at fn. 2) it becomes evident that the Commission and Parliament originally wanted to give the EUAA significantly more powers in certain areas, to the point where it would have had the authority to set binding guidelines in regard to Member States. In the Council negotiations, however, the Member States insisted on maintaining the principles of non-binding guidance and sovereignty (Ripoll Servent 2018: 90–93).



through European networks, in which national authorities collaborate to generate and employ information about third countries. The proposed way to access this information will be through internet portals, some of which will be open-access while others will only be accessible to Member States' authorities.

If Member States wish to develop shared analyses and guidance notes regarding the situation in specific third countries, in order to help with screening applications for protection from the countries concerned, then it will be the task of the Agency to coordinate this work. It is probably hoped that this will lead to a move towards more convergence in terms of decision-making in the Member States. Up to now, each Member State has been responsible for collating its own information about the countries where applicants for protection have come from, and the corresponding qualification conditions. If, in the future, all this information were to come from the same source, then it seems likely that as a consequence, decision-making practices would also align. The EUAA Regulation urges Member States to use ('shall take into account') such guidance notes when assessing applications for asylum.

In addition, the Agency will support the Commission in creating and verifying a shared list of safe countries of origin. However, a relevant Regulation article taking into account the still pending Asylum Procedure Regulation has not yet been formulated.⁸

Compliance monitoring and evaluation

The EUAA Regulation foresees a structured inspection process for national asylum systems. It sets out a complex system for monitoring Member States to identify any shortcomings that might jeopardise the functioning of the CEAS. Each Member State will be subject to regular monitoring in relation to how it applies the CEAS, and is obliged on request to furnish the EUAA

with proof that it has sufficient tools to deal with any disproportionate pressures on its asylum system ('contingency planning'). The corresponding operational standards, indicators, guidelines and good practice procedures will be developed in advance. The Agency, after consultation with the Commission, will decide when each Member State is to be inspected, but inspections should take place at least once every five years. To complete the process, the EUAA can evaluate aspects of the asylum and reception systems of all the Member States. **The Agency will provide specific recommendations for action and will set deadlines for remedying any shortcomings**, taking into account any comments of the Member State concerned.

If the recommendations are not implemented, and the continuing shortcomings are jeopardising the functioning of the CEAS, the Agency will then request assistance from the Commission (the first stage of escalation). The Commission can then set out its own (more binding) recommendations and carry out on-site visits at short notice. If the Member State fails to comply with the new recommendations, the second stage of escalation foresees the involvement of the Council. The Commission can submit a proposal to the Council for an immediate Council decision by means of an implementing act. Although no significant sanctions apply under the new Regulation, this still means that the pressure on the Member State to comply with common provisions is greatly increased.⁹

Local operational and technical support

The Agency's expanded remit to provide local operational support is at the heart of the reform. Member States will be able to turn to the Agency for help in a number of different situations. If the asylum and reception system of a particular Member State is experiencing disproportionate pressure, then the Agency can also become active on its own initiative, although

⁸ Existing lists of safe third countries, which generally result in a much faster assessment and restricted procedural rights for asylum seekers coming from these countries, vary considerably for each Member State. This contributes to the impression that an asylum seeker's chances of recognition depend on the country where he or she submits their application. In the draft of a new Asylum Procedures Regulation (COM(2016)467), under parallel negotiation, the Commission proposes a joint list that, if agreed, will replace the national lists within five years at the latest.

⁹ In its report, the EU Parliament proposed, as possible sanctions, that non-compliant Member States should be subject to the temporary introduction of internal border controls in accordance with the Schengen Borders Code and the temporary interruption or suspension of payments under Union funds (Amendment 17, Recital 15 b (new), A8-0392/2016, as at fn. 2). For a summary of how agreement on the control mechanism was reached, see Ripoll Servent 2018: 93.



only with the consent of the Member State concerned. The Agency can help Member States:

- To identify and register third country nationals and accept applications for asylum;
- To set up joint initiatives with multiple Member States for the purpose of processing asylum applications;
- To establish or coordinate reception facilities;
- To protect fundamental rights and children's rights, especially the rights of unaccompanied minors, and to care for those seeking protection who are in particular need.

On the basis of a needs analysis, and providing that a binding operational plan has been signed off by the Agency's Executive Director and the respective Member State within ten days, asylum support teams (made up of experts from the Agency, experts from Member States and experts already seconded to the Agency by Member States) can be deployed within seven working days after the operational plan has been agreed. The Member States must provide experts who match specified profiles, their numbers to be negotiated annually between the Agency and the respective Member States. The Agency will also provide translators and interpreters. **It is foreseen that the Agency should always be able to fall back on a reserve asylum intervention pool of 500 experts from the Member States** from which it can directly deploy staff. The Member State deploying an expert can decide the duration of their deployment, guaranteeing a minimum engagement of 45 days. In practice, transnational cooperation faces extensive challenges, not least in terms of language barriers, and it is not yet usual for 'alien' authorities to exercise state authority on a Member State territory.

A separate article in the EUAA Regulation facilitates the deployment of teams who support the migration authorities in managing the hotspots as

foreseen in the Frontex Regulation. According to this provision, a Member State which is experiencing disproportionate pressure at specific locations on its external borders because of a large influx of migrants and refugees can ask for technical and operational support in the form of teams sent to assist the migration authorities.¹⁰ **Experts from the asylum intervention pool sent to hotspots have a broader mandate than that of the experts in the regular asylum support teams, and can carry out even more of those duties which would normally be carried out by the national authorities.** These are:

- Assisting with the screening of third country nationals, including verifying their identity, their registration and (if requested by the Member State) taking their fingerprints;
 - Providing information and advice to those seeking asylum and referring them to the appropriate national authorities;
 - Registering and (if requested by the Member State) assessing applications for international protection;¹¹
 - Providing information on asylum procedures and the criteria for reception, providing information about resettlement and providing support for applicants or potential applicants who could be subject to relocation.
- Finally, the EUAA Regulation also expands the Agency's powers in relation to cooperation with third countries and can support the Member States with the planned joint resettlement framework, national resettlement programmes and intra-EU relocation. In third countries that are defined as countries of origin or transit for asylum-related migration, the aim is to provide liaison officers to monitor whether fundamental and human rights are being respected and to establish contact with the third country authorities and other actors. The Agency itself will be provided with a Fundamental Rights Officer with wide-reaching powers, a position brought into the negotiation by refugee

10 Art. 18 (1) of the Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC.

11 Lilian Tsourdi (2016) points out that this part of the EUAA merely provides the legal basis for a practice that is already common in Greek hotspots under the current EASO mandate. She interprets this as exceeding the legal limits of the Regulation, even if it formally complies with the basic premise that responsibility for decisions on individual applications for international protection on the part of asylum authorities rests with the Member States: 'de jure the Regulation raises no issues; even if deployed experts have examined an application, it will, at the very least, be rubberstamped by 'a' national authority. This construct is becoming increasingly artificial, when de facto the reality would be that the merits of the case would have been assessed by EU staff or EU-coordinated deployed national experts' (Tsourdi 2016: 1029).



support organisations and the European Parliament.¹² The relevant Regulation articles also cover the current participation of the EASO in EU activities relating to the ‘EU-Turkey Deal’.

A decisive step towards a uniform protection system?

The new Agency for Asylum will have a stronger mandate, along with a significantly increased budget and many more employees (see Box). For the public, this is the clearest way of signalling its new importance. But the EUAA will also be faced with higher expectations and will take on more tasks. The Agency is expected to assume more significance as a centre of expertise and support, but it is also expected to help bring about more convergence within the CEAS, not least in assessing the vulnerability of applicants and the related recognition quotas in the Member States. Up to now, its predecessor, the EASO, has had no quantifiable success in this area; recognition quotas are still hugely divergent (cf. SVR Research Unit 2017).

That the EU should expand the EASO to become an agency with extended powers therefore seems a necessary institutional step on the way to greater ‘Europeanisation’. It is clear that better integration cannot be achieved by ‘legal supranationalism’ alone, that is, by simply creating new legal requirements. The protection of refugees is a public good, and as such it is far more important to achieve an overlapping consensus on this point, and on a new legal basis for a common asylum policy, amongst citizens, politicians and administrators (cf. Thym 2016: 1567). A reformed Agency can contribute to such a consensus as long as its function as a centre of expertise for Member States is binding and it is able to take on tasks proactively.

Jointly developed analyses of third countries, to be taken account of by Member States when deciding the outcomes of applications for asylum, could help reduce the ‘protection lottery’ problem (see SVR 2017, 83). In addition, the Agency for Asylum will be able to assist Member States at their request with screening asylum applications, which means they will participate (in a preparatory function) in the executive duties of (national) authorities – which in itself is like-

ly to encourage convergence. On this point, the EUAA Regulation provides a legal basis for forms of cooperation which already exist to some extent via informal administrative agreements (cf. Ripoll Servent 2018). The Agency’s monitoring and interventional mandate could also help to identify shortcomings in the CEAS faster and more accurately and to take targeted steps to remedy these. Here, however, the Regulation still lacks precise definitions, for example, of the point at which there would be ‘serious doubts as to functionality’ regarding a Member State’s asylum or reception system which would then trigger an inspection procedure on the part of the Agency.

What’s missing in the reform proposals?

It would have been possible to harmonise the application of the CEAS in ways that had stronger impact even without amending the EU Treaties. Viewed in this light, **the agreement between Parliament and Council is not quite the bold achievement it might seem.**

First, in terms of what is permissible under current EU law and jurisprudence, the new Regulation does not go nearly as far as it could in increasing the Agency’s executive powers and authority to intervene in an emergency. The EUAA Regulation ‘is still entirely rooted in the assumption that the Union is only indirectly responsible for implementing legislation, in that Union-based intervention is designed to be merely an intensified form of support’ (Lehner 2018: 209, authors’ translation).

Second, some provisions originally set out in the Regulation drafted by the Commission and in the Report of the European Parliament – provisions which would have enforced certain behaviour upon the Member States – fell victim to Council negotiations. Among these were, for example, an obligation for Member States’ asylum authorities to apply the EUAA’s country of origin information; the possibility of on-site visits and random audits without prior notice; and an option to intervene in a Member State’s asylum system without its consent.

Third, there are ways in which current practices (say, in the area of asylum decisions) could be more closely aligned in the middle term, but this has not been attempted, or if it has, then only in a half-hearted

12 Cf. ECRE 2017; Amendment 86, A8-0392/2016, as at fn. 2.



manner. The EUAA will have hardly any ‘fire-fighting’ powers which would allow it, for example, to identify, analyse and actively de-escalate situations where national protection quotas for specific third countries diverge too greatly (SVR Research Unit 2017: 5). The European Parliament put forward an initial proposal to this effect in its report, but it does not appear in the final draft of the Regulation.¹³

Nevertheless, the EUAA Regulation is a significant step in the right direction. The reform of the Agency should be completed in the course of the ongoing legislative processes regarding the CEAS, although the Parliament and Council are still hoping to create a ‘package deal’ that covers all proposals. The agreement that has now been achieved may act as both an incentive and a form of pressure to reach a compromise on the highly controversial Asylum Procedures Regulation and ‘Dublin IV Regulation’. However, if by the end of 2018 it becomes clear that a package deal is impossible, then the actors in Brussels and Strasbourg should consider ‘opening the package’ and formally ratifying the legislation that *has* been agreed before the Parliament’s legislative period ends in Spring 2019. A failure to ratify legislation in the current legislative period would incur a very real risk of delaying important institutional progress in implementing the CEAS.

To restore trust in its political agency and its policy-making, the EU urgently needs to send a clear signal that it is capable of acting collectively on refugee issues. In ratifying the EUAA Regulation, the European Parliament and Council can achieve this while simultaneously showing that the CEAS is not entirely dysfunctional; the EASO’s work in the hotspots, backed up by meaningful resources, and its ongoing deployment in Bulgaria (since 2013), Greece (since 2011) and Italy (since 2013) shows how much the Office is already contributing to the stability of the system. These activities, which involve intensive cooperation between the EASO and other actors and the development of mutually agreed standards, will continue to be urgently needed. The EUAA Regulation provides the necessary

legal basis for these activities, which may be seen as important testing grounds for an integrated asylum administration, even if there is a long way to go before the overall realisation of this goal.

‘Full harmonisation’ – the ultimate goal?

The agreement of the EU legislators on the new EUAA Regulation was a necessary step in the right direction, but it is still not enough. The EUAA, it is promised, will result in increased control and greater coherence; but at best, this will take a little time to achieve in practice. Such a promise also assumes that the Member States will be willing to implement the CEAS not only in law, but also in fact. The main responsibility for receiving asylum seekers and processing their applications still rests with Member States. The obligations of the latter in assisting with the implementation of the new Regulation, which is implicit in much of its wording, and the more substantial nature of the Agency’s tasks in comparison to the EASO, mark important steps in promoting a standardised implementation of the CEAS, even if much of the new Regulation builds on activities and tasks that are already in place.

The expansion of the EASO to an Asylum Agency shows how in the long term, a ‘full harmonisation’ of the European asylum system could become institutionally possible. In this sense, the reform is an interim measure, but falls short of creating the ‘EU Office for Migration and Refugees’ that has been proposed by some (cf. Bendel 2017, Dörig and Langenfeld 2016, SVR 2017). Such proposals suggest that the asylum system, including its administration, should be completely europeanised, with asylum procedures carried out exclusively by EU processing centres and asylum applications screened by a European asylum authority. This would ensure a ‘standardised executive based on the rule of law’ (Dörig and Langenfeld 2016: 4),¹⁴ which at present cannot be guaranteed either by the EASO or by the 28 Member States. But

13 Amendment 50 (4a), new, A8-0392/2016, as at fn. 2: ‘If the Agency finds the differences [in the recognition rates recorded by Member States regarding applications for international protection from applicants of a given country of origin] to be substantial, the Executive Director shall notify the Commission and the European Parliament of such differences and possible reasons therefor. The Commission shall then take any follow-up steps, as appropriate’.

14 This long-term scenario has also been outlined by the European Commission in an April 2016 communication: ‘consideration could be given to the possibility of transferring responsibility for the processing of asylum claims from the national to the EU level [...], and establishing an EU-level appeal structure’; Communication from the Commission to the European Parliament and the Council Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues To Europe, COM(2016) 197 final: 8/9.



its realisation would face a number of challenges, such as maintaining sufficient staff numbers, overcoming language barriers, creating a European Court of Asylum (to ensure a legal recourse for appeals against decisions of the EU authority), and allocating people whom the EU authority determines as qualifying for protection (Lehner 2018: 211; Thym 2016: 1560).

But the greatest challenge would doubtless lie in amending the EU Treaties to allow the complete supranationalisation of the asylum law executive. This is not realistic in an era when scepticism in relation to the EU is rife and populist movements against refugee migration enjoy support across nearly the whole of the Union. Until this changes, the first priority is to ratify the legal basis for the new EU Asylum Agency, so that this can be tested, evaluated and perhaps developed further. From today's perspective, we may allow ourselves to hope that a gradual increase in cooperation, shared practices and a mutual understanding of assessment standards across all asylum authorities, could be at least an initial basis for harmonisation.

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About the Expert Council's Research Unit

The Expert Council's Research Unit conducts independent, practice-oriented research projects in the field of integration and migration. The project-based studies are dedicated to emerging trends and issues and focus mainly on the fields of education and refugees/asylum. The Research Unit complements the work of the Expert Council. The core funding is provided by Stiftung Mercator.

The Expert Council of German Foundations on Integration and Migration is based on an initiative of Stiftung Mercator and the Volkswagen Foundation. The initiative further includes: Bertelsmann Stiftung, Freudenberg Foundation, Robert Bosch Stiftung, Stifterverband and Vodafone Foundation Germany. The Expert Council is an independent nonprofit, monitoring, evaluating and advisory committee on integration and migration policy issues that provides action-oriented policy recommendations.

For additional information, please visit: www.svr-migration.de/en/research-unit