

The Common European Asylum System: Four key considerations for the reform of the EU's immigration and asylum policy

Summary

This is the second of two comprehensive reports on the review of the Common European Asylum System (CEAS). Last year's paper provided an overview of CEAS history and policies to outline the system's shortcomings and weaknesses. It was concluded that some provisions were faultier than others, but the lack of consistent application together with uneven integration proved to be a fatal combination. This was evidenced by the varying Member State responses to the 2015 migration crisis. Some countries (i.e.: Germany, Sweden) decided to adopt an 'open border policy', while countries in the east (i.e.: Poland, Hungary) opted for the opposite and shut their borders. In terms of reforming the Union's immigration and asylum policy, the divide in approach between Member States present in 2015 has remained in place, unchanged. One of the most difficult tasks of the new European Commission will be to seek an in-depth, harmonised, yet meaningful reform of the CEAS. The new administration has no choice but to reform, because Europe's future depends on it.

Introduction¹

Migration has taken center stage in politics and public opinion, becoming the hot topic of the 21st century. This is no surprise, as the European continent alone houses about 40 million migrants from all over the world, a number which accumulated through many years.² In the period between 2015 and 2019 the European continent saw the arrival of 3 million migrants, a sharp rise in numbers, most of it received by the EU. As it often is with controversial topics, there was no consensus on the issue of migration between Member States, thus allowing the topic to become divisive and a tool for political campaign. In this increasingly polarised climate, the European Commission seeks to achieve meaningful reform of EU policy.

This paper will outline four key considerations for drafting the CEAS reform proposal. These considerations build on lessons and practices from global immigration trends but are specifically tailored to the European context and the Union's needs. It is the firm view of the

¹ International Organisation for Migration (IOM), *World Migration Report 2020* (published by the United Nations, 2020)

² *ibid* 85.

author that unless the Commission's reform proposal reflects these considerations, the right balance will not be struck between the competing interests of Member States.

There will be 4 sections to this paper, each outlining one key consideration. The first section will discuss effective external border management, where the lessons of the past two decades have shown that a unified common approach is a necessity. The second section will outline the need to deepen cooperation with countries of origin and transit. The roots of immigration stem from global trends, therefore the solution must contain global elements too. The third section will address 'Union particular' humanitarian concerns identified during the migration crisis and outline the importance of their reform. For any policy to be deemed acceptable, a large proportion of the electorate must support it, hence the fourth section will discuss public perceptions and their importance in creating a sustainable system. The final section of the paper will conclude with a summary of the findings.

1. Effective external border management

The Schengen Agreement concluded in 1986 was the starting point of EU border cooperation. Since its adoption, the level of cooperation on the topic of border management has developed greatly, with central information systems increasing the data available to Member States about



***Picture 1:
Map of the Schengen Area***

people entering the EU's territory.³ Nevertheless, the migration crisis has highlighted that despite increased cooperation, the EU's external border management still has shortcomings. The past five years have showcased that current border management cooperation is unable to handle a high influx of incoming migrants. This section describes policies which outline a harmonised system of external border management to create a better structured and safer Union.⁴ These policies can be adapted to the current CEAS but are also compatible with its reformed version in the future.⁵

³ European Commission, 'Schengen Agreement & Convention' (European Commission website) <https://ec.europa.eu/home-affairs/e-library/glossary/schengen-agreement-convention_en> accessed 20 February 2021

⁴ IOM (n 1) 94.

⁵ Picture 1: 'Schengen Area' (Wikipedia, 24 March 2021) <https://en.wikipedia.org/wiki/Schengen_Area> accessed 25 March 2021

In the past, Member States on the border were individually responsible for border control duties as well as adhering to the administrative procedures laid down by the CEAS.⁶ The disparity in Member State border management policies is evidenced by how differently the high influx of migrants in 2015 was handled. Countries such as Bulgaria and Hungary erected fences to stop migrants from entering their territory, while Austria introduced border controls between itself and some other Member States to control the inflow of migrants. On the other hand, Member States with lengthy borders on the coast of the Mediterranean Sea were absent the luxury of closing their borders. These states have had to continue their battle with migration, without meaningful joint EU support. Although the EU created the European Border and Coast Guard (EBCG) to complement the efforts of local authorities, Member States remain in a better position to know their borders so they must continue to play an active role in border management.

It is submitted that Member States should create a so-called ‘emergency border management mechanism’, a system designed to control a high influx of migrants. Upon activation of the mechanism, border management centres would be created, which comprise of infrastructure such as border checkpoints and asylum application centers. Rather than expensive permanent infrastructure, Member States would install mobile border controls when the plan is activated. The reformed CEAS would lay down administrative requirements to be met, ensuring that the centres are adopted uniformly throughout the EU. The system would be triggered above a certain number of incoming migrants to a particular Member State, at a point when support is needed to ensure that newcomers can be processed, and order is maintained.

Besides laying down the administrative conditions for the border management centres, the EU would mandate the abovementioned EBCG to coordinate the newly erected border centres together with national authorities. The EBCG was created in 2016 as an international organisation operating under the ambit of the EU and saw its mandate widened in 2019.⁷ A pledge was made to increase the number of border guards to 10,000 by 2024.⁸ It currently

⁶ Petra Bendel, ‘The Common European Asylum System: Achievements, Failures, Outlooks and Policy Learning for the EU and Canada’ [2014] CETA 1-2

⁷ Council Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 [2019] OJ L295/1

⁸ Jean-Claude Juncker, ‘State of the Union 2018’ (European Parliament, Brussels, 12 September 2018) <https://ec.europa.eu/info/sites/info/files/soteu2018-speech_en_0.pdf> accessed 20 March 2021

carries out operations in 4 areas of high migratory pressure, i.e. Spain, Greece, Italy and the Western Balkans. As a result of its widened mandate and increased number of personnel, it is well placed to ease the operational burden on Member States and is a logical step towards deeper border management cooperation.

Nevertheless, in the event of a large migratory influx in multiple Member States at the same time, even the EBCG's increased number of personnel would be spread thin. Currently, there are roughly fourteen Member States on the eastern and southern borders of the EU and despite the decreasing number of incoming migrants, some southern Member States are still under an enormous amount of pressure.⁹ To prevent the EBCG from failing, it is submitted that a reserve corps of border guards is created. The reserve corps would be called into action when, upon careful assessment, the number of active EBCG personnel is deemed too few to effectively fulfil their mandate. This system would mean that no Member State in need is refused help from the EU, creating a more responsive and ready Union.

There is an important financial aspect to the new mechanism, keeping in mind that the effective control of borders is in the interest of all Member States.¹⁰ Allowing individual Member States to bear the financial burden of border management on their own would create an uneven Union, especially as pressure depends on geographical location.¹¹ Financial solidarity among EU Member States is key for the above mechanisms to work, hence, the burden of the border mechanism, should be borne by the EU as a whole.¹² It is proposed that the EU creates a fund specifically for border management expenditure, to which Member States can make yearly contributions based on their GDP and population. This way, Member States without external borders would be required to contribute towards the effort of protecting the safety of the EU and its citizens, introducing a much-needed element of fairness into border management expenditure.

⁹ IOM (n 1) 50. – Number of asylum applications in Germany has seen a significant drop between 2016 and 2018.

¹⁰ Mercator Dialogue on Asylum and Migration (MEDAM), *Rethinking EU migration and asylum policies: Managing immigration jointly with countries of origin and transit*, (published by the Kiel Institute for the World Economy, 2019)

¹¹ Commission, '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, 2

¹² Marco Scipioni, 'Failing forward in EU migration policy? EU integration after the 2015 asylum and immigration crisis' [2018] J.E.P.P. 1357, 1365

The past five years have shown what the EU without coordinated effective external border management looks like. As the number of people moving around the world increases, large migration fluxes similar to 2015 are likely to happen again. It is the task of Member States and the EU to make sure that the Union, as a unit, is prepared for these future events. Although great progress has been made, Italy, Greece and Spain are still receiving tens of thousands of migrants every year.¹³ Ensuring a well-oiled system of border management is essential, if not a prerequisite of CEAS reform, so it must be at the forefront of policy makers minds. The new and well-structured system will help to ensure the safety and wellbeing of Europe and its citizens.

2. Deeper engagement with third countries

Although recently the EU has been at the epicentre of migration related discussion, migration reaches far beyond the borders of the EU. There are several countries in Africa, the Near East and the Western Balkans who still host hundreds of thousands of refugees on their territory.¹⁴ Cooperating with these countries is a key policy consideration for the EU to keep the flow of migrants managed and maintainable. To deepen engagement with third countries, the paper outlines a policy proposal for a warning mechanism to be created between the EU and countries in neighbouring regions. This proposal would allow the EU to better predict the size of migratory movements and when those might occur. Furthermore, it describes a financial support system which would increase the aid available to third countries for migrant integration and as compensation for operating the warning mechanism. This new system of cooperation has to be flexible, as migratory trends are constantly changing, meaning new countries to engage with.¹⁵

However, it would be remiss of the report to say that the EU has not cooperated with non-EU countries on the issue of migration.¹⁶ At the height of the migration crisis in late 2015, the Valetta Summit on Migration was held between European states, the EU and mainly African states. In the concluding Final Declaration and Action Plan, a pledge was made for cooperation between the EU and African nations for the procurement of control of the major African

¹³ Andrew Geddes, 'The Politics of European Union Migration Governance' [2018] JCMS 120, 122 – Between January 2016 and March 2018 more than 400,000 migrants arrived on the shores of Italy.

¹⁴ *ibid.* 121 – In 2017, the number of Syrian refugees alone counted 5 million in Lebanon, Jordan and Turkey.

¹⁵ IOM (n 1) 2. – The number and proportion of international migrants has already surpassed some of the 2050 projections.

¹⁶ United Nations High Commissioner for Refugees (UNHCR), *Better Protecting Refugees in the EU and Globally* (published by the UNHCR, 2016) 17 and MEDAM (n 10) 28

migration routes to Europe.¹⁷ This was shortly followed by an agreement between the EU and Turkey in early 2016 on the return of irregular Syrian migrants arriving on the Greek islands.¹⁸ For every Syrian returned from the islands, a Member State would take one Syrian refugee.¹⁹ The conclusion of this deal has led to a significant decrease in the number of migrants arriving to Greece each year, but has been the subject of sharp criticism because of humanitarian concerns.²⁰ Nevertheless, despite existing partnerships, calls for closer cooperation and more aid have been constant.

The aim of the warning mechanism is to create a new level of cooperation between the EU and its neighbouring regions. It would keep track of migrant flow, trends and directions ultimately compiling and using the statistics to make assumptions about the number of migrants travelling to the EU and over what time period. It would also use the statistics to track the change in migratory patterns and migration routes, allowing the Union to prepare for changes in migration. At an EU level, the data would be used to deliver more direct policy solutions to migration related issues, as well as complement the border management mechanism outlined in the above section. With accurate information at the EU's disposal, resources would be directed at Member States with the most acute need to control large inflows of migrants. The introduction of the warning mechanism would give CEAS reform an important statistical backing and ensure the conscious expenditure of available resources.

Increasing financial aid to third countries is the second element of closer cooperation. This is partly to compensate third countries for the warning mechanism, but also to support migrant integration. In itself, financial support is not alien to the EU's asylum and immigration policy. The EU-Turkey deal alone pledged 3 billion euros to support Syrian refugees in Turkey.²¹ Since most refugees in the world are hosted by low- and middle income countries, it is pertinent that the EU continues to provide financial aid.²² This is especially true if the reformed CEAS has the desired effect of tightened asylum and immigration regulation, which would make

¹⁷ Azuolas Bagdonas, 'The EU Immigration Crisis and the Baltic Security' [2015] *Journal on Baltic Security* 7, 17

¹⁸ Olivia Long, 'The EU-Turkey Deal: Explained' (*Choose Love*, 5 April 2018)

¹⁹ <https://helprefugees.org/news/eu-turkey-deal-explained/> accessed 30 December 2020

²⁰ *ibid.*

²¹ MEDAM (n 10) 27

²² European Commission, 'EU Facility for Refugees in Turkey: The Commission proposes to mobilise additional funds for Syrian refugees' (*European Commission*, 14 March 2018)

https://ec.europa.eu/commission/presscorner/detail/en/IP_18_1723 accessed 20 December 2020

²³ MEDAM (n 10) 28

Europe a less attractive destination. Financial assistance would come to the countries cooperating with the EU in two separate forms: (i) increased humanitarian assistance and (ii) financial aid to facilitate the social and economic integration of migrants into host countries.

The topic of humanitarian assistance will be discussed in detail in the next section; however, it is worth saying a few words here on finances and funding. Besides the warning mechanism's primary aim outlined above, the cooperation with third countries is an opportunity to get a better picture of each country's specific humanitarian needs. History teaches that humanitarian missions are either underfunded, or the funding is misused as a result of large scale corruption in receiving countries.²³ The specific information acquired on the ground in countries participating in the warning mechanism would be used to coordinate the EU and other high-income countries to meet the specific funding needs in the particular third country.²⁴ More direct expenditure of aid is an important step away from reckless spending, which would have the effect of increased availability of funds relative to previous years.

Beyond general humanitarian assistance, the EU should strive to increase aid to help the social and economic integration of migrants in transit countries. Let us remind ourselves why the reform of the CEAS is on the table in the first place. Its aim, as this report has outlined, is to create a sustainable, coherent system able to handle large numbers of incoming migrants. While this is a necessary initiative, if the Union provided direct funding for countries to integrate migrants into their own societies and economies, the chance of overburdening Member States would decrease significantly. Such programmes supported by the EU to integrate migrants have been successful in Jordan and in Ethiopia.²⁵ Where geographical location and country size forbids the possibility of large-scale integration, organising relocation schemes to the EU or other third countries remains on the table. The purpose of engaging in further cooperation between the EU and third countries is to ensure that the burden is split equally between all parties. This can be achieved by either providing financial help, organising integration programmes or coordinating relocation schemes.

This section has outlined why cooperation with third countries is an important consideration for CEAS reform. Countries with a large number of migrants on their territory are in a very

²³ *ibid.* 37

²⁴ *ibid.* 28

²⁵ *ibid.* 27

similar position to the EU, that is why cooperation serves a deeper purpose than mere financial assistance. The reason why this consideration was included in this paper was to stress that reforming the CEAS should extend further than changing asylum and immigration legislation at the EU level. The policy suggestions outlined attempted to showcase that deeper cooperation is both manageable and possible, something the EU should strive for. Achieving the aims outlined in this section is in the interest of all parties; the migrants, third countries and the EU.

3. Humanitarian concerns

Most people's perception of migration is one of people travelling thousands of miles, sleeping in rough conditions, unsure of what the future holds or where they will end up. The photos of Budapest's *Keleti pályaudvar* (Keleti Railway Station), where asylum seekers were sleeping in rough conditions on concrete floors during the 2015 migration crisis has only acted to strengthen people's perceptions. The existing body of international humanitarian law offers a framework to protect people in the situations described above. Its aim is to ensure that all people around the world possess certain basic and unassailable rights. This is especially pressing in unprecedented situations, such as large-scale migration, where basic rights are threatened the most. Nevertheless, the CEAS legal framework has struggled to meet humanitarian standards and offer adequate protection to the vulnerable.



Pictures 2 &3: Migrants camping at Budapest's Eastern railway station in 2015²⁶

After providing a brief outline of international humanitarian law, this section will discuss the points of humanitarian concern within the CEAS framework. The migration crisis has highlighted the shortcomings of the CEAS in the area of humanitarian protection, and the

²⁶ Pictures 2& 3: https://hu.wikipedia.org/wiki/Európai_migrációs_válság#/media/Fájl:2015.09.02.-Menekültek-a-Keletinél-03.jpg

system's reform offers an opportunity to revisit this. The issues at hand are split into internal and external considerations. The former will entail discussion of humanitarian protection offered by the CEAS and Member States' individual legal systems and how this creates a gap in protection. On the other hand, the latter will take on the topic of external considerations and outline the prevailing issues around the concept of safe third countries and how the CEAS reform is an opportunity to settle this debate for good.

The 20th century has seen significant cooperation made in the area of international humanitarian law, although decision making has largely remained at state level, with spots and areas of international cooperation.²⁷ We can identify one internationally successful, widely ratified and legally binding convention dealing with refugees.²⁸ The 1951 Convention relating to the Status of Refugees (Geneva Convention), to date, has been ratified by 146 states around the world.²⁹ The Convention offers basic level protection to refugees and sets out state's obligations towards refugees when dealing with them. The Geneva Convention's significance comes from the principle of non-refoulement, which has become a central tenet of international humanitarian law. The principle offers protection to refugees and asylum seekers from being returned a country where they face threats to their life or freedom.³⁰ Certain elements of the CEAS build on this principle even today, which is why the question of safe third countries is such a crucial one.

After the dawn of the new millennium, for the first time since the Geneva Convention, the international community offered new international legal instruments on migration.³¹ First, the Global Compact on Migration was created – endorsed by the UN General Assembly – and set out 23 objectives to offer a “comprehensive approach to international migration”.³² Second, the 2016 New York Declaration on Refugees and Migrants was developed into the Global Compact on Refugees which attempts to solve issues relating to refugees specifically.³³ However, it is important to note that these are not treatise and remain non-binding under international law, only to be followed at the will of individual countries. Acceptance of the

²⁷ IOM (n 1) 291

²⁸ *ibid.*

²⁹ UNHCR, 'The 1951 Refugee Convention' (published by the UNHCR) <<https://www.unhcr.org/1951-refugee-convention.html>> accessed 30 December 2020

³⁰ *ibid.*

³¹ IOM (n 1) 291

³² *ibid.*

³³ *ibid.* 302

Compact on Migration in the western world has not been without criticism, as the United States along with 8 EU Member States either abstained or voted against the UN General Assembly resolution, which remains a cause for concern.³⁴ Nevertheless, from the EU's point of view, the Compacts offer a good template for a Union level framework that meets humanitarian standards.

Turning to the EU's internal humanitarian concerns, the CEAS framework intertwines two separate, but pressing, structural flaws. On the one hand, the lack of harmonisation of procedural rules does not offer up to standard humanitarian protection to migrants. At the EU level, the Asylum Procedures Directive (APD), the Reception Conditions Directive (RCD) and the Dublin III Regulation are directly responsible for laying down the procedures to welcoming and expelling migrants from the Union.³⁵ However, these pieces of legislation (together with the rest of the CEAS legislation) aim to *partially harmonise and complement* Member States' own rules regulating migration.³⁶ Evidently, in the area of humanitarian protection, this means that EU legislation relies on the general protection offered within Member States' own legal system and the overarching safeguards of the EU Charter of Fundamental Rights. Ultimately, although the general EU framework is the same, the specific protection offered to migrants differs from Member State to Member State as a result of only partial harmonisation. Despite being a pressing issue since 2015, the EU has not addressed this, and the two Global Compacts are evidence that the Union is lagging behind internationally when it comes to humanitarian protection.

Yet the EU's partial harmonisation is only partly to blame, because some Member States have no firm, but only a mild grip on humanitarian protection, especially when migrants are concerned. As outlined in the introduction to this paper, some reluctant countries have erected fences on their borders to control the inflow of migrants. Hungary for example has done just that, and also created detention centres where incoming migrants would be kept while their application to enter was under consideration. Both the fence and the detention centres were

³⁴ 'Global Compact for Migration' (*Wikipedia*, 2 January 2021) <https://en.wikipedia.org/wiki/Global_Compact_for_Migration#/media/File:Global_Compact_for_Migration_UN_Assembly_vote_on_19_December_2018.svg> accessed 15 March 2021

³⁵ Peter Vojnits, 'The Common European Asylum System: A patchwork of harmonisation responsible for our future?' (Laidlaw Research Report, Durham University 2019) 10-11.

³⁶ Maarten den Heijer, Jorrit Rijpma and Thomas Spijkerboer, 'Coercion, Prohibition, and Great Expectations: The continuing failure of the Common European Asylum System' [2016] CML Rev 607, 609-610

cause for serious humanitarian concern, so it comes as no surprise that a case came before the European Court of Justice (ECJ).

The ECJ handed down a judgment stating that the arbitrary detention of asylum seekers in Hungarian detention centres on the border was illegal.³⁷ However, the ECJ judgment only comes three years after the first detention centres were opened, after many have had to endure the uncertainties of illegal detention. Other detainees were held in captivity-like conditions for at least 3 months before being allowed to continue their journey.³⁸ For the purposes of this report, the case acts as evidence to the fact that the humanitarian protection offered by some Member States' legal systems is far from adequate. This, together with the effects of partial harmonisation creates a wide gap in the humanitarian protection for migrants coming to or residing in the EU.

As for the external causes for humanitarian concern, the continued debate around safe third countries and the long-standing principle of non-refoulement have to be addressed. Article 38 of the APD attempts to provide the concept of safe third countries with a broad definition and makes reference to the principle of non-refoulement in subparagraph (c).³⁹ Furthermore, in Article 39, EU lawmakers have introduced the new concept of European safe third country. This contains the added requirement of the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) to qualify as a safe country in Europe.⁴⁰ Nevertheless, even when Articles 38 and 39 are read together, the APD falls far short of providing a sophisticated framework to determine which countries migrants may be safely returned to.

The EU-Turkey deal concluded in 2016 highlighted the extent of the uncertainty around the safe third country concept. Whether Turkey qualifies as a safe country according to the wording of Articles 38 or 39 continues to be the subject of persistent debate and undermines the credibility of the EU as maintaining a high standard of human rights protection.⁴¹ Despite the

³⁷ C-924/19 and C-925/19 joint cases

³⁸ Joób Sándor, 'Felszámolja a kormány a tranzitónákat' (*index.hu*, 21 May 2020)

https://index.hu/belfold/2020/05/21/tranzitzona_megszuntetes_emberi_jogok_europai_unio_birosaga_strasbourg_birosag/ accessed 15 November 2020

³⁹ Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) [2013] OJ L180/60, art. 38(c)

⁴⁰ *ibid.* art 39.

⁴¹ Heijer, Rijpma, Spijkerboer, 'Coercion, Prohibition, and Great Expectations: The continuing failure of the Common European Asylum System' (n 36), 614

continued protest from humanitarian agencies, both the EU and Turkey have continued to enforce the deal, with no regard to the potential breach of international humanitarian law. With the reform of the CEAS underway and the increase in migratory movements around the world, the time is right for the introduction of a new comprehensive mechanism to determine which countries qualify as safe third countries. This will act to raise the level of protection to migrants by eliminating the possibility of returns to unsafe countries.

The gaps in the Union's humanitarian protection system can be perceived as one of the most significant failures the migration crisis has identified. Even if we accept the fact that migration entails a certain level of constant concern, the EU framework is still a leaky ship, both at the Member State and the Union level. This section has outlined some of the main reasons for the shortfall of humanitarian protection within the Union, for which Member States and the EU share equal blame. However, in a sense, the migration crisis offers a chain of events on the basis of which policy makers can develop a well-functioning system. The reform of the CEAS is an opportunity to put policies in place to guarantee migrants receive adequate humanitarian protection as well as to establish a clear mechanism to identify safe third countries. It remains the important task of EU policy makers to find the right balance between an efficient CEAS and the protection of migrants.

4. Public attitudes in creating a sustainable system

The previous sections have tackled substantive legal, economic and humanitarian discussions vital for CEAS reform. This section turns to a topic that is better defined as the abstract political dimension of migration, rather than a normative consideration with well-defined edges. Our 21st century reality is that legal and economic decisions are decided on the basis of political discussions which are in turn influenced by public opinion and discourse. Hence, the perception of the public towards migration is fundamentally important when discussing the reform of migration policy. However, as a result of the maze-like nature of European politics, especially concerning the widely controversial topic of migration, there is only so much this paper can cover. Therefore, this section will outline why public perception is important consideration for CEAS reform, the increase in polarisation and changes to public attitude towards migration since 2015, as well as discuss the positive effects of migration in the European context.

The political systems around the EU have at their core a democratic institutional framework, where those representing the people at government and parliament level are elected by the people. Although no two political systems in the EU Member States are identical, it is submitted that an important common denominator is the perception of the public as a heavily influencing factor.⁴² The importance of public attitudes comes to the forefront when it is coupled with the need for public support for enacted political agendas thereby legitimising government action. The element of public attitudes is even more crucial for European level policies, which affect citizens of all 27 Member States. This statement is supported by the MEDAM report released in 2019, which highlighted the importance of strong democratic decision making in controversial policy areas such as migration.⁴³ This is more crucial than ever, as discussion of migration and related policy considerations have become increasingly polarised since 2015.⁴⁴ Take the example of Hungary, where the number of respondents who believe migrants make a country worse to live in doubled from 7% to 14% between 2014/15 and 2016/17.⁴⁵ Therefore, as result of the widely differing opinions in the area of migration policy making, public perception has taken to center stage as a significant consideration to ensure the continued well-functioning of democracies around Europe.

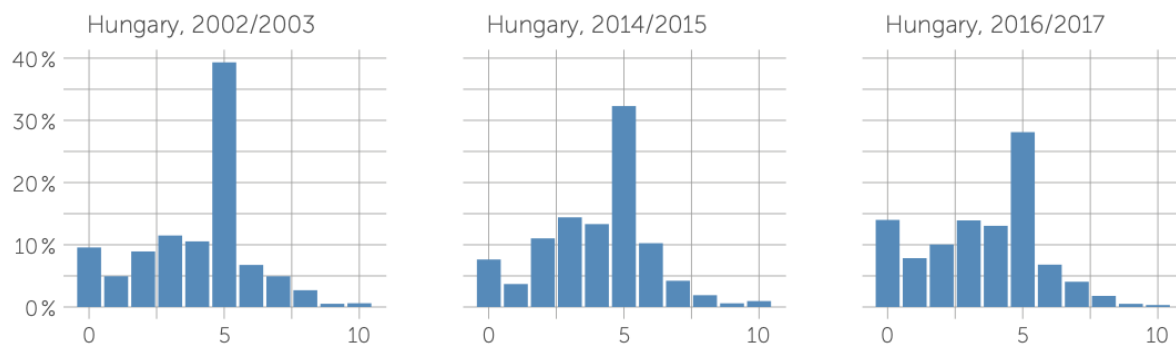


Figure 1: Polarisation of public opinion over time – Hungary⁴⁶

⁴² Cathrine E. De Vries, 'Rethinking Electoral Democracy in Europe' in Olaf Cramme and Sara B Hobolt (eds), *Democratic Politics in a European Union Under Stress* (OUP, 2015) 2017-2018

⁴³ MEDAM (n 10) 16.

⁴⁴ Esther Ademmer and Tobias Stöhr, 'Europeans are more accepting of immigrants today than 15 years ago' (Policy Brief, MEDAM, October 2018) 6

⁴⁵ *ibid.*

⁴⁶ Figure 1: *ibid.*

Besides the importance of public attitudes for a democratic system as a whole, it is perhaps more important in the sustainability of policies enacted in the area of migration. As a result of the sudden growth in interest in the topic of migration, as seen from its rapid entry into public discourse following 2015, policy sustainability has become a central question.⁴⁷ The below graph showing the number of social media comments under newspaper articles written on the topic of migration in Germany acts as an example.⁴⁸ Figure 2 shows that the average number of unique comments have increased from around 5 to about 20 in the space of 4 years,

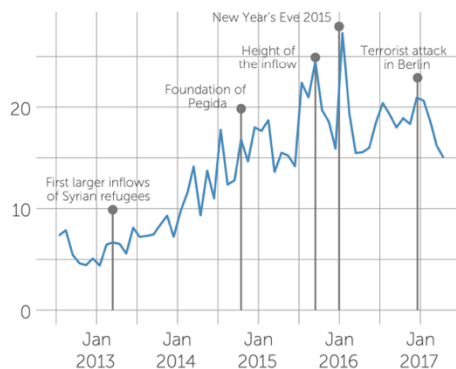


Figure 2: The number of unique commenters under articles on migration and asylum posted by German newspapers on Facebook

amounting to a significant increase.⁴⁹ Taken together with the data from Figure 3 on the polarisation of public attitudes towards migration in Germany as a result of differing opinions, the importance of public attitudes becomes evident.⁵⁰ In the context of EU level policy making, this presents the European Commission with a very difficult task for CEAS reform. Whatever approach the new CEAS might take to migration, the key will be to gain the support of the European electorate, and that will mean making hard concessions with reluctant Member States.⁵¹

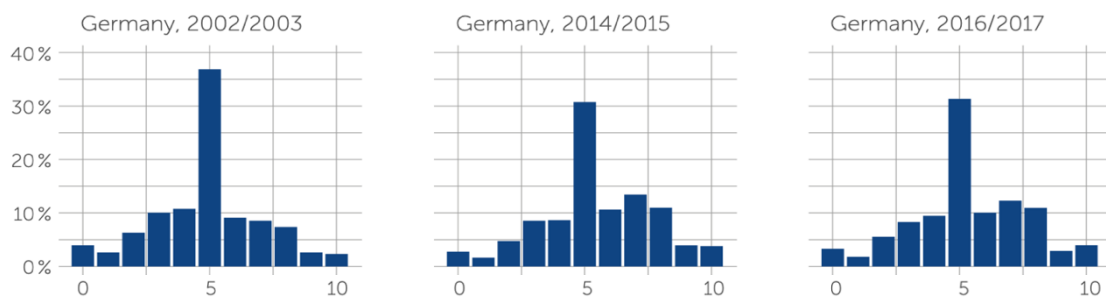


Figure 3: Polarisation of public opinion over time – Germany⁵²

⁴⁷ MEDAM (n 10) 16

⁴⁸ Esther Ademmer and Tobia Stöhr, 'The Impact of Security-Related Event on Attitudes towards Migration' in 2018 MEDAM Assessment Report on Asylum and Migration Policies in Europe (MEDAM, 2018) 19

⁴⁹ *ibid.*

⁵⁰ Ademmer and Stöhr, 'Europeans are more accepting of immigrants today than 15 years ago' (n 44) 6

⁵¹ Figure 2: Ademmer and Stöhr, 'The Impact of Security-Related Event on Attitudes towards Migration' (n 48) 19

⁵² Figure 3: Ademmer and Stöhr, 'Europeans are more accepting of immigrants today than 15 years ago' (n 44) 6

Despite the increased polarisation of public opinion, data from the European Social Survey shows that public attitudes towards migration have remained relatively stable even following the large inflow of migrants in 2015.⁵³ Nevertheless, this has not resulted in a wide mandate for the European Commission to enact CEAS reform as Member States remain deeply divided on what reform should entail and how it should be achieved.⁵⁴ In order to create a sustainable reformed system, the European Commission must strive to overcome the cultural differences in public attitudes towards migration, which will pave the way for a common system of rules that enjoy the support of the European electorate.

Having outlined the importance of public attitude for democracy and the sustainability of enacted policies, this paper turns to the contributions of migrants in their host country. This is crucial, as although migration poses many challenges, migrants' contributions to society, as highlighted in the World Migration Report 2020, are numerous but overlooked.⁵⁵ This is most acute in the 21st century, where disruption and disinformation have become the power tools of anti-migration political groups, resulting in disproportionately shaped public perception.⁵⁶ Outlining migrants' contributions offers the opportunity to provide the electorate with clear information about the real effects of migration, as well as grounds for the European Commission to justify their policy proposals. Effectively, this could pave the way towards a much needed EU-wide support for CEAS reform. Therefore, in the subsequent paragraphs, this report will outline two main areas of contribution – sociocultural and economic – in the context of the EU.

The notion of migrants' sociocultural contributions is not a foreign phenomenon within the borders of the EU. As a result of the deep integration between Member States, materialising in free movement of persons for example, the EU has experienced the export of traditions from Member State to Member State. It should come as no surprise that migrants coming from outside the EU also contribute in this way.⁵⁷ An evidence of this is the so-called 'Salah effect' which is attributed to Mo Salah, a muslim professional football player at Liverpool FC in the United Kingdom.⁵⁸ As a result of Salah's success at the club and him familiarising fans with

⁵³ *ibid.*

⁵⁴ MEDAM (n 10) 17

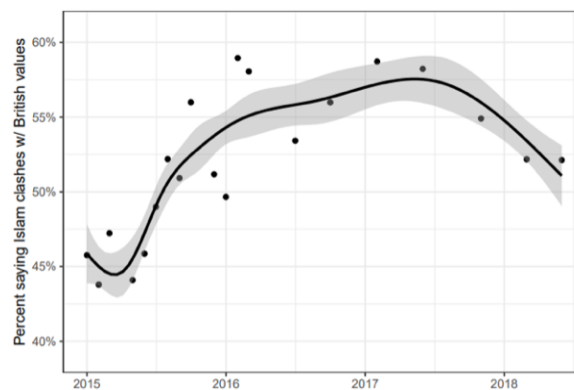
⁵⁵ IOM (n 1) 162

⁵⁶ IOM (n 1) 161

⁵⁷ IOM (n 1) 166

⁵⁸ IOM (n 1) 167

the notion of islam, hate crimes and islamophobia have significantly decreased in the Merseyside area in the North East of England.⁵⁹ This example shows that sociocultural contributions can lead to a decrease in the polarisation of public attitudes and to more acceptance of foreigners and their traditions. Highlighting these types of contributions to society could aid the European Commission to unite the European electorate behind its CEAS reform plan.⁶⁰



**Figure 4: The Salah effect based on a
The YouGov-Cambridge Survey**

In terms of migrants' economic contributions, it is suggested that this could be a possible solution to the significant labour shortage the European – specifically the Eastern European – region has been experiencing.⁶¹ Evidence shows that migrants have entered all layers of the workforce but are overrepresented in some, such as the construction and agriculture industries.⁶² In turn, this allows the native workforce in high-skill sectors to further specialise in their chosen field as well as create new opportunities for women. A study outlined in the World Migration Report 2020, conduct in Italy, concluded that as migrants fill jobs in childcare and housekeeping women have been able to return to work sooner after childbirth and focus on their career aspirations.⁶³ Although it is an increasing trend around Europe for migrants to occupy jobs considered unattractive by native citizens, some Member States remain adamant in maintaining their anti-migration position. For example, Hungary is committed to increasing

⁵⁹ Mei-Lan Steimle, 'The Salah Effect' (*Stanford Magazine*, September 2019) <https://stanfordmag.org/contents/the-salah-effect> accessed 24 March 2021

⁶⁰ Figure 4: Kate Whiting, 'How Mo Salah may have reduced Islamophobia in Liverpool' (*World Economic Forum*, 12 June 2019) <https://www.weforum.org/agenda/2019/06/how-mo-salah-might-have-reduced-islamophobia-in-liverpool/> accessed 24 March 2021

⁶¹ IOM (n 1) 92

⁶² IOM (n 1) 176

⁶³ Guglielmo Barone and Sauro Mocetti, 'With a little help from abroad: The effect of low-skilled immigration on the female labour supply' [2010] *Labour Economics* 664, 670

birth rates by introducing significant loan and tax benefits for families, while Poland has turned to neighbouring Ukraine to rectify its labour shortages.⁶⁴

Nevertheless, the key notion is that policies aimed at boosting low birth rate and allowing migrants to rectify – at least partially – declining labour force are not mutually exclusive. Therefore, in this matter, the European Commission has two tasks ahead of itself; one at European electorate level, the other at Member State level. First, the Commission must duly outline and inform European citizens of the benefits their society has received as a result of migrant contributions. It is submitted that this gives the native population an opportunity to see migrants as the efficient, hard-working members of society they can be. Second, for Member States who maintain their anti-migration stance, the Commission must concentrate on migration's positive effects on the labour market, a significant concern for the coming decade for Europe. The Commission must strive to achieve some unity in this area in order to bring Europe onto the same page regarding CEAS reform.

Conclusion

Based on the analysis of the CEAS's history and policies in last year's report, this paper has outlined four key considerations essential to rectifying the system's shortcomings. The identified considerations – effective external border management, deeper engagement with third countries, humanitarian concerns and public attitudes – as outlined in this paper, have at their heart the same common goal: the creation of a sustainable system within the EU framework that is ready for the future. The notion of sustainability has been touched upon in section 4 during the discussion of the importance of public attitudes in maintaining support for enacted migratory policies. However, migratory trends around the world and the analysis of the four considerations show that sustainability has far reaching implications that go beyond its relevance to public attitude and consider the future flexibility of the CEAS as a whole.

In essence, the emergency border mechanism outlined in section 1 of this paper attempts to outline a system that is smooth and flexible to deploy to any Member State in need. It compiles the dichotomy of Member State autonomy and harmonisation, as it entails a European framework but is triggered upon Member State request. More importantly, it creates a flexible system that can be used anywhere in the EU, avoiding the rigidity of large scale permanent

⁶⁴ IOM (n 1) 92-93

border controls which would be unaffordable were migratory routes to change. The efforts of the emergency border mechanism are complemented by the warning mechanism created in cooperation with countries outside the EU, as outlined section 2. By providing financial assistance to third countries, the Union achieves the dual goal of operating the warning mechanism as well as increasing migrant integration into countries of transfer. This system relies on how extensive it is, as the more countries it is present in, the more accurate the received data which can be used to map migratory flows and trends. Effectively, this allows the EU to be ready for a large influx of migrants from any area of the world ensuring the events of 2015 will not be repeated.

As for humanitarian concerns, section 3 of this paper indicates that the time has come for the European Commission to get a grip on the Union's enforcement of humanitarian protection. In terms of creating a CEAS that is ready for the future, it is necessary to tackle the problem posed by the EU-Turkey deal as well as to create a system for identifying safe third countries. Conversely, the EU-Turkey deal is less disconcerting than it might seem at first. Most of the arguments for the deal will be moot once the working border management and warning mechanism system outlined are operational. Furthermore, the system to clearly identify safe third countries provides the EU with an essential resource in terms of migration governance. The identification of all safe countries in the world offers the Union significant flexibility in choosing countries to return migrants to in line with the principle of non-refoulement. Thereby, having eliminated the main causes for humanitarian concern, the CEAS will be a system that ensures a high level of protection to migrants.

With public attitude towards migration more polarised than ever and Member States divided over how CEAS reform should be achieved, the European Commission has a difficult road ahead. Following the events of 2015, the need for reform has become a surety, especially as large migratory influxes are forecast to happen again. However, the extent and substance of reform – to which this paper is contributing to – remains in the hands of law makers and negotiators. Finding the right balance between meaningful reform and the differing interests of 27 Member States will be a difficult task, but abandoning the negotiating table is not an option. The Commission must identify and build on common denominators between Member States to fulfil its mandate and deliver on the promise of a reformed CEAS that settles the shortcomings of the previous system.

Bibliography

European Union primary sources

Treaty of Maastricht [1992] OJ C325/5

Treaty of Amsterdam [1997] OJ C340/54

Treaty on the Functioning of the European Union [2008] OJ C115/01

Dublin Convention [1990] OJ C254/01

Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) OJ L180/36 29 June 2013

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 or a stateless person, OJ L50, 25 February 2003

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) OJ L180/60, 26 June 2013

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, OJ L/2012/12, 20 July 2001

Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) OJ L337/9, 13 December 2011

Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) OJ L180/96, 26 June 2013

Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), OJ L180/1, 29 June 2013

Council Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 [2019] OJ L295/1

Council Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) [2013] OJ L180/60

C-924/19 and C-925/19 *FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*

European Union secondary sources

European Asylum Support Office, 'An Introduction to the Common European Asylum System for Courts and Tribunals' (International Association of Refugee Law Judges European Chapter, 2016) <https://www.easo.europa.eu/sites/default/files/public/BZ0216138ENN.PDF>, accessed 27 September 2019

European Council on Refugees and Exiles, 'Comments on Regulation (EU) No 604/2013 of the European parliament and the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)' (ECRE, March 2015)

European Council on Refugees and Exiles, 'Summary Report on the Application of the Dublin II Regulation in Europe' (European Legal Network on Asylum, March 2006)

Directorate General for Internal Policies, 'Setting up a Common European Asylum System: Report on the application of existing instruments and proposals for the new system' (European Parliament, 2010)

European Council, Presidency Conclusions, Tampere European Council [1999] SN200/99

European Commission, 'Proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)' (Commission Proposal, Dublin IV Proposal, 2016) COM(2016) 270 final, 2016/0133 (COD), Brussels, 4.5.2016.

Commission, '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

Academic Sources

Peers S, *EU Justice and Home Affairs Law* (2nd edn., OUP 2008)

- Hailbronner K, *Immigration and Asylum Law and Policy of the European Union* (Kluwer Law International 2000)
- van Krieken P J, *The Consolidated Asylum and Migration Acquis* (The Hague, 2004)
- *The Asylum Aquis Handbook* (The Hague, 2000)
- Baldaccini A, Guild E, Toner H, *Whose Freedom, Security and Justice* (Hart Publishing, 2007)
- Boswell C and Geddes A, *Migration and Mobility in the European Union* (Palgrave Macmillan, 2011)
- Armstrong C E, 'The Limits of Communitarisation and the Legacy of Intergovernmentalism: EU Asylum Governance and the Evolution of the Dublin System' (PhD thesis, London School of Economics 2016)
- Bendel P, 'The Common European Asylum System: Achievements, Failures, Outlooks and Policy Learning for the EU and Canada' [2014] CETA
- Fratzke S, 'Not adding up: The fading promise of Europe's Dublin system' (EU Asylum: Towards 2020 Project, Migration Policy Institute Europe, 2015)
- den Heijer M, Rijpma J and Spijkerboer T, 'Coercion, Prohibition, and Great Expectations: The continuing failure of the Common European Asylum System' [2016] CML Rev 607
- Bagdonas A, 'The EU Immigration Crisis and the Baltic Security' [2015] Journal on Baltic Security 7
- Roos C, 'How to Overcome Deadlock in EU Immigration Politics' [2013] International Migration 67
- Maiani F, 'The reform of the Dublin system and the dystopia of 'sharing people'' [2017] MJ 622
- Hungarian Academy of Sciences, 'Az Európába irányuló és 2015-től felgyorsult migráció tényezői, irányai és kilátásai' (Migration Working Group, HAS, 2015)
- Toth P P, 'Az Európai Menekültválság' [2016] Szociálpolitikai Szemle 54
- Scipioni M, 'Failing forward in EU migration policy? EU integration after the 2015 asylum and immigration crisis' [2018] J.E.P.P. 1357
- Vojnits P, 'The Common European Asylum System: A patchwork of harmonisation responsible for our future?' (Laidlaw Research Report, Durham University 2019)
- De Vries E. C, 'Rethinking Electoral Democracy in Europe' in Olaf Cramme and Sara B Hobolt (eds), *Democratic Politics in a European Union Under Stress* (OUP, 2015)
- Barone G and Mocetti S, 'With a little help from abroad: The effect of low-skilled immigration on the female labour supply' [2010] *Labour Economics* 664

Other secondary sources

International Organisation for Migration (IOM), *World Migration Report 2020* (published by the United Nations, 2020)

Mercator Dialogue on Asylum and Migration (MEDAM), *Rethinking EU migration and asylum policies: Managing immigration jointly with countries of origin and transit*, (published by the Kiel Institute for the World Economy, 2019)

United Nations High Commissioner for Refugees (UNHCR), *Better Protecting Refugees in the EU and Globally* (published by the UNHCR, 2016)

Ademmer E and Stöhr T, 'Europeans are more accepting of immigrants today than 15 years ago' (Policy Brief, MEDAM, October 2018)

--'The Impact of Security-Related Event on Attitudes towards Migration' in *2018 MEDAM Assessment Report on Asylum and Migration Policies in Europe* (MEDAM, 2018)

Websites

European Commission, 'Schengen Agreement & Convention' (European Commission website) <https://ec.europa.eu/home-affairs/e-library/glossary/schengen-agreement-convention_en> accessed 20 February 2021

'Schengen Area' (Wikipedia, 24 March 2021) <https://en.wikipedia.org/wiki/Schengen_Area> accessed 25 March 2021

Jean-Claude Juncker, 'State of the Union 2018' (European Parliament, Brussels, 12 September 2018) <https://ec.europa.eu/info/sites/info/files/soteu2018-speech_en_0.pdf> accessed 20 March 2021

Olivia Long, 'The EU-Turkey Deal: Explained' (*Choose Love*, 5 April 2018) <<https://helprefugees.org/news/eu-turkey-deal-explained/>> accessed 30 December 2020

European Commission, 'EU Facility for Refugees in Turkey: The Commission proposes to mobilise additional funds for Syrian refugees' (*European Commission*, 14 March 2018) <https://ec.europa.eu/commission/presscorner/detail/en/IP_18_1723> accessed 20 December 2020

https://hu.wikipedia.org/wiki/Európai_migrációs_válság#/media/Fájl:2015.09.02.-Menekültek-a-Keletinél-03.jpg

UNHCR, 'The 1951 Refugee Convention' (published by the UNHCR) <<https://www.unhcr.org/1951-refugee-convention.html>> accessed 30 December 2020

'Global Compact for Migration' (Wikipedia, 2 January 2021) <https://en.wikipedia.org/wiki/Global_Compact_for_Migration#/media/File:Global_Compact_for_Migration_UN_Assembly_vote_on_19_December_2018.svg> accessed 15 March 2021

Joób Sándor, ' Felszámolja a kormány a tranzitónákat' (*index.hu*, 21 May 2020) <https://index.hu/belfold/2020/05/21/tranzitzona_megszuntetes_emberi_jogok_europa_i_unio_birosaga_strasbourgi_birosag/> accessed 15 November 2020

Mei-Lan Steimle, 'The Salah Effect' (*Stanford Magazine*, September 2019) <<https://stanfordmag.org/contents/the-salah-effect>> accessed 24 March 2021

Kate Whiting, 'How Mo Salah may have reduced Islamophobia in Liverpool' (*World Economic Forum*, 12 June 2019) <<https://www.weforum.org/agenda/2019/06/how-mo-salah-might-have-reduced-islamophobia-in-liverpool/>> accessed 24 March 2021