

The Common European Asylum System: A patchwork of harmonisation responsible for our future?

Introduction

The 1990 Schengen Implementation Convention and the 1992 Treaty of Amsterdam established the legal basis for the harmonisation of the Member States' asylum laws. Although in the past 30 years, since these two agreements came to effect, the EU has been through radical reform, it has seen its members double and a straining financial crisis, the harmonisation of its asylum laws is still a patchwork of supranational action plans and contradicting Member State decisions. The 'yellow brick road' of asylum policy laid down in the international instruments mentioned above, which should have acted as a clear path for legislators to establish a common European asylum policy, has tested the limits of communitarisation and been deformed by a factious Union.

This paper will discuss in detail the Common European Asylum System (CEAS). The CEAS, is a legislative framework established by the EU to harmonise asylum laws and procedures within the Union.¹ Essentially, it is a number of regulations and directives which complement and reinforce each other. The paper will provide a brief overview of the components of the CEAS, and its constant development throughout the 21st century. A recurring example throughout the paper will be the 2015 migration crisis.² The events of the summer of 2015 and the subdued but continuous flow of migrants towards Europe since then have highlighted the practical and functional flaws of the CEAS.

This paper will be made up of 3 sections. The first section will outline the history of the CEAS focusing on the milestones of progress and key developments. The second section will go into deeper analysis of the development of the Dublin system, which constitutes the backbone of harmonised common asylum policy. The Dublin regulation is one of the main legal provisions whose function and purpose within the EU asylum aquis has been questioned since the 2015 crisis. The last section will outline the components of the CEAS. These are the directives and regulations which complement and assist the workings of the Dublin system. Finally, the paper will conclude with a summary of the findings and an outline of the contents

¹ EASO, '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, 13

² Henceforth 'the 2015 crisis' or 'crisis'

of the next report, which is to come in a year's time on the topic of the changes needed to ensure a working asylum system for the EU.

1. A brief overview of the history of the CEAS

The asylum system looks back on a history of 30 years, dotted with disagreements and controversy. The aim of the CEAS is to harmonise the interpretation and application of asylum law among Member States.³ The justification behind the communitarisation of immigration and asylum law was the realisation that in an area without internal borders, asylum needed to be harmonised on an EU level.⁴ This section will set out a brief history of the CEAS by discussing the key dates and the milestone of progress. Furthermore, the following sections will attempt to provide an insight into the components of the CEAS. Section 2 will provide a detailed analysis of the Dublin system, while section 3 will outline the other components (directives and regulations) of the CEAS.

After the end of the Cold War and the collapse of communism, Europe was confronted with a wave of refugees from the newly independent countries of the ex-communist bloc.⁵ This mass influx of refugees revealed that the prevailing asylum procedures of adjudicating claims on a case-by-case basis were inadequate for both practical and financial reasons.⁶ The 1992 Maastricht Treaty was responsible for the rudimentary harmonisation of asylum laws within the Union. In Title VI, the Maastricht Treaty set out the provisions for cooperation in the fields of Justice and Home Affairs.⁷ It specifically stated that Member States shall regard the areas (among others) of asylum policy, immigration policy and policy regarding the nationals of third countries as “matters of common interest”.⁸ In a practical sense, hardly anything came of these provisions during the 20th century. Despite the specific provisions, no legislative instruments were passed to further the harmonisation of asylum laws, besides the Dublin Convention, which was unique in this sense.⁹ More likely, the Maastricht Treaty was a sign that intergovernmental cooperation regarding immigration and asylum law will be enhanced in the future.

³ EASO (n1)

⁴ Ibid.

⁵ Kay Hailbronner, *Immigration and Asylum Law and Policy of the European Union*, (Kluwer Law International, 2000) 356

⁶ Ibid.

⁷ Treaty of Maastricht [1992] OJ C325/5

⁸ Ibid., 131-132

⁹ The specifics of the Dublin Convention will be discussed in section 2

In the 1999 Treaty of Amsterdam the intergovernmental cooperation of Maastricht was taken a step further. Asylum and immigration policy issues were brought into the framework of the EU Treatise, thereby making it an area of supranational EU competence and peremptorily establishing the foundations of the CEAS.¹⁰ This Treaty was an important development in the history of the CEAS for two main reasons. First, now that asylum and immigration were a supranational competence it identified specific goals for the Council of Ministers (Council) and set a timeframe which these goals should be reached in. The Council was tasked with adopting specific measures on asylum, refugees and displaced persons in accordance with the 1951 Refugee Convention within 5 years of the Treaty coming to effect.¹¹ Second, it recognised the existence of an international agreement (the Geneva Convention) which it could use as the cornerstone of its own future asylum system. It provided future legislators with a foundation-stone, a common wavelength between the Members States and Union lawmakers. The Treaty of Amsterdam was a cry to the world by EU law makers and Members States that they have recognised that uniform standards for the admission of refugees and asylum seekers must be adopted to ensure equal chances of an alien seeking protection.¹²

Despite not having been a Treaty or a legislative instrument enacting essential far-reaching change to the asylum policy framework of the EU itself, the Tampere Conclusions are considered a milestone in the development of the CEAS. So much so, that the term ‘Common European Asylum System’ was first used in the Conclusions themselves.¹³ Essentially, the Conclusions laid down 4 main fields of asylum and immigration policy which are to be regulated by the CEAS framework. They defined the aim of the CEAS as to “regulate all facets of asylum” within the EU.¹⁴ These 4 fields are:

1. Determining the Member State responsible for the examination of an asylum claim. (This is what the Dublin system was designed to fulfil)¹⁵
2. The field of establishing common standards for an asylum procedure.¹⁶
3. Establishing the common minimum conditions of reception of asylum seekers.¹⁷
4. Defining the rules in the recognition of a refugee status within the Union.¹⁸

¹⁰ EASO (n1)

¹¹ Treaty of Amsterdam [1997] OJ C340/54, Article 63

¹² Kay Hailbronner (n5), 357

¹³ European Council, Presidency Conclusions, Tampere European Council [1999] SN200/99, [13]

¹⁴ EASO (n1), 14

¹⁵ European Council (n13), [14]

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

The Tampere Conclusions thus “paved the path for the first phase of the CEAS”.¹⁹ Practically, this meant that secondary EU legislation was enacted on the basis of the 4 fields of the Conclusion at the beginning of the 21st century.

Not long after the first phase of harmonisation had finished, a second phase followed with the aim of deepening the harmonisation of asylum procedures. The starting point of this was the European Pact on Asylum in 2008.²⁰ Its objective was to establish a common area of protection adhering to higher standards of protection.²¹ With the Lisbon Treaty now in effect since 2009, the legal basis for the second phase of harmonisation was provided by Article 78 TFEU. In practice, this ‘deepening’ of harmonisation meant that the first phase EU legislation was renegotiated in light of setting higher standards of protection. The finished product of the second phase is the CEAS that applies today. Furthermore, the European Asylum Support Office (EASO) was created in 2010 to facilitate practical cooperation and support between Member States on asylum.²² It is this CEAS, with the EASO coordinating asylum procedure cooperation between Member States that was unable to handle the mass influx of migrants in the 2015 crisis.

While the Treaty of Amsterdam set up the legislative framework needed for the harmonisation of Member States’ asylum laws and made asylum policy a supranational EU competence, it has been the subject of criticism. The competency of the Union to make decisions regarding the harmonisation of asylum policy is a power to ‘set minimum standards’ only.²³ Subsequently, this means that Union legislation in this field will always leave Member States to set higher standards if they wished to do so.²⁴ Peers argues that the practical application of this principle means that the EU cannot then create a CEAS that fully harmonises the asylum policies of Member States as it lacks full competence over the subject.²⁵ Therefore, even though the Treaty introduces asylum and immigration to the list of EU competencies, the definition of the width of that competence does not allow for the EU to have full control of setting asylum and immigration procedures. Nonetheless, such level of competence still allows for some level of harmonisation, especially since it was the aim of the Union in the second developmental phase to set higher standards for refugee protection themselves.²⁶ The issue around competency

¹⁹ EASO (n1), 15

²⁰ Ibid., 16

²¹ European Council, The Stockholm Programme [2009] OJ C115/1, Section 6.2

²² EASO (n1), 18

²³ Steve Peers, *EU Justice and Home Affairs Law*, (OUP, 2008) 305

²⁴ Ibid.

²⁵ Ibid., 306

²⁶ Petra Bendel, ‘The Common European Asylum System: Achievements, Failures, Outlooks and Policy Learning for the EU and Canada’ [2014] CETA 13

is important to note as one of the later contributors to the instability of the system and the possible causes of the 2015 crisis.

2. Breakdown of the Dublin system – The backbone of the CEAS

As outlined above, the idea of harmonising the immigration and asylum laws of the Member States was a necessary by-product of internal free movement within the Union introduced in the Schengen Agreement.²⁷ Besides providing a short overview of the workings and aim of the Dublin system, this section will put the Dublin system in context within the historical development of the Union and analyse the current position of the Dublin system within the CEAS. Despite its long history and constant reform, the Dublin system has been the subject of extensive criticism. The aim of this section will also be to reveal these flaws and the status quo inherent within the Dublin system. The first version of the system was laid down in the 1990 Dublin Convention. The need for renegotiation came early as the accession of the former communist bloc countries was upon the Union. The result of this was the Dublin II Regulation 2003. This effectively achieved the accession of the Dublin system to the EU asylum aquis. Last, within the second phase of harmonisation of the CEAS, to achieve higher levels of protection, the regulation was recast resulting in the Dublin III Regulation 2013. The ‘crown jewel’ of harmonisation, the Dublin system, is responsible for determining the Member State responsible for the examining of an asylum application upon entry to the territory of the Union.²⁸

The Dublin system consists of the rules and procedures laid down in the Dublin III Regulation, the most recent recast of the original Dublin Convention in force. It is a system that was created with a dual purpose; to prevent asylum seekers from ‘orbiting’ from one state to another, without protection while also streamlining the asylum procedures of Member States and reducing their cost by deterring asylum seekers from submitting multiple applications (called ‘asylum shopping’).²⁹ In essence, the Dublin system has established a framework by which Member States can decide who is responsible for processing the asylum claim.³⁰ This framework consists of a hierarchical allocation criteria, upon which the processing of the

²⁷ EASO (n1), 13

²⁸ Ibid., 34

²⁹ Susan Fratzke, ‘Not adding up: The fading promise of Europe’s Dublin system’ (EU Asylum: Towards 2020 Project, Migration Policy Institute Europe, 2015)

³⁰ Andrew Nicol QC, ‘From Dublin Convention to Dublin Regulation: A Progressive Move?’ in Anneliese Baldaccini, Elspeth Guild and Helen Toner (eds), *Whose Freedom, Security and Justice?* (Hart Publishing, 2007) 265

asylum claims depend.³¹³² In practice, a Member State issues a ‘take charge’ or ‘take back’ request to the Member State responsible for the processing of the asylum claim. Theoretically, the asylum seekers are then transported back to the adequate Member State based on the specific allocation criteria that applies.³³ The subsequent recasts of the Dublin Convention have been responsible for refining the original system to achieve higher standards of protection, further the practical implementation of the system to achieve its aims and streamlining its practical everyday use so it would be utilised more by the Member States. The following sections will discuss the problems and controversies around the Dublin system in detail.

2.1 The historical development of the Dublin system in context

The Dublin Convention came to effect in 1990. The specific timing of the negotiation had lasting effects on the outcome of the Convention negotiations itself, and the later negotiations when the regulation was recast. The Convention was negotiated in close proximity with the 1985 Schengen Agreement and the 1990 Schengen Implementation Convention (SIC). The agenda setters for both of these intergovernmental agreements were the same five states, namely; Germany, France, Belgium, the Netherlands and Luxembourg (Schengen-five). Therefore, it was inherent from their involvement in the previous agreements that they set the agenda for the Dublin Convention.³⁴ This meant that the Dublin Convention did not reflect the views of other Member States, only those of the Schengen-five. This is significant to note for two reasons. First, by placing the authorisation principle at the heart of the Dublin Convention, the Schengen-five effectively gained control of setting the agenda in all further negotiations. Second, it set the foundation for the false and detached illusion that all Member States are essentially the same in the eyes of any asylum seeker.

At the centre of the system established by the Dublin Convention is the authorisation principle. This principle holds that the Member State responsible for the examination of the asylum application is the one who ‘authorised’ their entry, whether legally or illegally, to the

³¹ Council Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection (recast) [2013] OJ L180/31

³² These criteria are such as (i) family reunification in the best interest of the child, (ii) family reunification in cases of recognised refugee status or (vii) first country the application was lodged in. (non-exhaustive list)

³³ Susan Fratzke (n31), 7

³⁴ Carolyn Elizabeth Armstrong, ‘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) 114

Schengen area.³⁵ The argument put forward by the Schengen-five in favour of this principle was that it would prevent the existing problems of ‘asylum shopping’ and ‘asylum seekers in orbit’.³⁶ Although there is some truth to this, the underlying aim of the Schengen-five (all being countries deep within the continent) was to use their superior negotiating position to put a mechanism in place that would minimise their responsibilities by shifting the burden to Member States of first entry (today countries such as Greece, Italy, Hungary). This has had detrimental effects on the functioning of the Dublin system ever since. It has placed the practical burden of border control and the examination of the majority of asylum applications on the EU states who lack the financial stability and professional expertise to fulfil this role. The Schengen-five themselves acknowledged that “this principle would likely pose problems with regards to proving transit and potentially overloading external border countries”.³⁷ Now nearly 30 years later, in the most recent recast of the Dublin system the 2013 Dublin III Regulation, the influence of the Schengen-five states is still strong and the system is still centred around the authorisation principle.

As outlined above, the reason why this flawed principle is still at the centre of the Dublin system is the continued strong influence of the Schengen-five (and now other Northern) states throughout the recast Dublin regulation negotiations.³⁸ The Council has seen such strong opposition from the Schengen-five that it has been forced to drop all proposed changes.³⁹ The relatively new Member States on the border (Hungary, Romania) and the administratively burdened Italy and Greece had existing objections to the proposed enhanced level of human rights protection (which would have resulted in increased costs) which resulted in their gaze shifting from pushing for the reassessment of the authorisation principle.⁴⁰ Together with their already weak negotiating positions and their overwhelming gain from free movement they had a slim chance of standing up to the Member States in favour of keeping the status quo.⁴¹ At the end of the day, all of the Member States were looking out for their own best interest, it’s just that some succeeded more than others. Thus, in some sense, the 2015 crisis was a wakeup call for all Member States that a system that is flawed in theory, is in fact unable to achieve its aims practically.

³⁵ Ibid., 81-82

³⁶ Ibid.

³⁷ Ibid., 116

³⁸ Ibid., 207

³⁹ Ibid.

⁴⁰ Ibid., 216

⁴¹ Ibid., 139

Another significant problem with the Dublin system is that it fails to take account of the most important factor when it comes to examining asylum claims; the human factor. The system refuses to acknowledge the historical differences between the countries, by building on a false premise of a level playing field between the Member States.⁴² It is not the specific historical differences that matter per se, but rather the developmental disparities arising from these historical differences. A fitting example is the significant level of developmental differences between Western Member States and the Member States from the ex-communist bloc of Europe. The Dublin system was created under the false illusion that asylum seekers view all EU Member States and that all Member States view asylum seekers equal. Thus asylum seekers do not care where they end up.⁴³ Heijler et al argue that this has the effect of coercive actions being taken by Member States against asylum seekers to subject them to the Dublin system procedures, which is a serious breach of the asylum seekers' human rights.⁴⁴ Furthermore, this design of the Dublin system and the CEAS also encourages disobedient behaviour from the Member States.⁴⁵ Instead of forcing coercive actions on the asylum seekers the less developed Member States wave the asylum seekers rather than registering them. This results in two positive and a negative outcome. The positive outcomes are that the asylum seeker is practically 'free' to proceed to the Member State of their desire and that the less developed Member States on the border are not burdened with the examination of an excess amount of asylum claims. The negative outcome is that Western European Member States receive an excess amount of asylum claims which they are unable to transport under Dublin, as the system was evaded. Thus, due to historical reasons the Dublin system is occasionally tricked and thrown aside by the opposing Member States and the asylum seekers as well.

2.2. Current position of the Dublin system within the CEAS

The integrity of the Dublin system has been questioned since the 2015 crisis which has revealed its practical flaws when it failed to provide adequate guidelines on procedure and cooperation during a mass influx of refugees. In fact, it put these flaws of the system under the microscope and revealed the incomplete nature of the CEAS's integration process of which the

⁴² 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, 610

⁴³ Ibid.

⁴⁴ Ibid., 610-611

⁴⁵ Ibid., 612

Dublin system is a great example.⁴⁶ Arguably, the issue identified as the cause of the lack of integration is connected with the competency issues discussed in section 1. The determination of the asylum procedures (in essence; the entire CEAS structure) that the Member States should use are an EU competence, whereas the application of these individual procedures is left to the Member States themselves.⁴⁷ The result is a patchwork of diverse asylum systems, of which some parts are harmonised and some parts are not. Connected to the asylum system is the protection of the Schengen external borders which is a great example of this half-integration. The Union created an area of free movement but left the responsibility in relation to the external borders to the Member States on the border, thereby disproportionately burdening them.⁴⁸ The same phenomenon is present in the Dublin system. It has created a framework by which Member States can decide who is responsible for the examination of a particular asylum claim. It then fails to regulate the exact procedure to be followed on how the asylum seeker should be relocated, making the practical utilisation of the system effectively impossible.⁴⁹ Thus, since the Dublin system constitutes the backbone of the CEAS, its adverse flaws undermine the entire framework.

Even prior to the 2015 crisis one of the reasons for the continued reforms of the Dublin system was its lack of use. This was one of the main incentives for both the renegotiation of the Dublin Convention and Dublin II.⁵⁰ The same can be observed in the Dublin IV Proposal released by the Commission in 2016. A considerable low of 13% of asylum applications lodged in 2014 had been subject to requests under the Dublin system.⁵¹ Furthermore, only two-thirds of applications were successful of which only a quarter were actually transferred. This translates roughly to just above a mere 2% of total asylum applications lodged within the Union being subject to transfers.⁵² These statistics illustrate the ineffectiveness of the Dublin system. The lack of use can also be viewed as the manifestation of the extensive flaws of the Dublin system. It is safe to say, that had an actual well-functioning harmonised system been developed, it would have been utilised by the Member States. Thus, as the Dublin system is the most essential part of the CEAS, it has the ability to determine its fate. Currently, it is a system dotted with points

⁴⁶ Azuolas Bagdonas, 'The EU Immigration Crisis and the Baltic Security' [2015] *Journal on Baltic Security* 7, 13

⁴⁷ *Ibid.*, 14

⁴⁸ Maarten den Heijer et al. (n42), 615

⁴⁹ Azuolas Bagdonas (n46), 14

⁵⁰ Carolyn Elizabeth Armstrong (n34), 192

⁵¹ 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 (recast)' COM(2016) 270 final, 10

⁵² *Ibid.*

of deep harmonisation, while Member States are left in the dark in relation to some other matters of asylum policy, especially when it comes to practical utilisation.

3. Towards deeper harmonisation: The supplementary provisions of the CEAS

Besides the Dublin Regulation, the CEAS is made up of secondary legislative provisions which are intended to provide a common system for dealing with asylum applications.⁵³ These provisions are either aimed at facilitating the application of the Dublin system, or to harmonise certain other aspects of asylum procedures. The following five legislative instruments are the supplementary provisions of the CEAS; the Asylum Procedures Directive (APD), the Qualifications Directive (QD), the Reception Conditions Directive (RCD), the EURODAC Regulation and the Temporary Protection Directive (TPD).

The first three secondary legislative instruments (the APD, QD and RCD) are all legislation recast in the second phase of the development of the CEAS. These three instruments lay down the procedures and mechanisms used in practice when an asylum claim is being processed. Their aim is to complement the Dublin system by working towards the same goal, to harmonise asylum procedures and reduce the secondary movement of asylum seekers. Essentially, the objective of the Commission and the Council with these directives was to introduce a harmonised system of procedure, so asylum claims would be processed as similarly as possible in all Member States.

The EURODAC Regulation “aims to facilitate the application of the Dublin III Regulation”.⁵⁴ It is a central fingerprint database that is utilised by all Member States throughout the Union. It is the information scheme the Dublin system fundamentally relies on. Arguably, this is the most essential supplementary CEAS provision which aids the Dublin system, as it is the main source of information about the asylum seekers. The fingerprints submitted to the EURODAC system are used to identify asylum seekers throughout the entire EU. It is responsible for processing information such as pinpointing the first point of entry or identifying potential relatives already residing in the EU. At the same time, this essentiality makes the whole Dublin system open to systematic abuse.⁵⁵ The bypassing of the EURODAC system results in a reduction of responsibility and costs for the Member States. Overburdened Member States therefore can reduce the pressure on themselves. Letting asylum seekers pass

⁵³ EASO (n1), 34

⁵⁴ EASO (n1), 41

⁵⁵ Susan Fratzke (n29), 15

through without registration means that the Member State will never be identified as the first point of entry, therefore escaping responsibility under the Dublin system. Furthermore, this practice also results in a reduction of costs. The asylum procedure of an asylum applicant that is half-done, or not done at all will unequivocally cost less than if all procedural guidelines were appropriately followed. Thus, the EURODAC system is an important complementor of the Dublin III Regulation, while at the same time a liability for the CEAS as a whole.

The TPD adopted in 2001, during the first development phase of the CEAS, was created as a mechanism of relief for cases of emergency.⁵⁶ The provisions of the directive establish the minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries.⁵⁷ In theory, the aim of this directive is to grant immediate short-term protection status to large groups of refugees without the need for the individual assessment of their claims. In case of emergency, this directive could be activated by the collective decision of the Council, but not by individual Member States.⁵⁸ The mere fact that this directive has never been used, not even in the 2015 crisis, suggests that it contains significant flaws that would make it impossible to achieve its aim. Peers suggests that the reason behind the lack of application of this directive is the inherent conflict between it and the Geneva Convention.⁵⁹ The directive offers a considerably lower standard of protection to those it is applied to; thus its application could potentially mean the breach of international law.⁶⁰ Hence why the authorisation of its application lies with the Council and not the Member States, who would willingly reduce their costs and burdens by flanking the Dublin system and utilising the TPD instead. Subsequently, the existing mechanism available under the TPD is unlikely to be used, as it creates more problems than it fixes.

The APD, QD and RCD are all successful at fulfilling their aims within the CEAS framework. Yet, both the EURODAC regulation and the TPD have some significant deficiencies, which effect the CEAS as a whole. On the one hand, the occasional bypassing of the EURODAC system is specifically shameful, since it is the Member States themselves who are holding up the system from functioning properly, yet they do not take the necessary steps to induce meaningful change. On the other hand, the unusable TPD is a missed opportunity by the EU to introduce an emergency mechanism into the CEAS framework. It would have been

⁵⁶ Martin den Heijer et al (n42), 613

⁵⁷ Council Directive (EC) 2001/55/EC of 7 August 2001 on minimum standards for giving temporary protection [2001] OJ L212/12

⁵⁸ EASO (n1), 55

⁵⁹ Steve Peers (n23), 344

⁶⁰ Ibid.

reasonable to revisit the TPD in the second phase of CEAS development. Nonetheless, today, it is with these semi-functional supplementary provisions that the Dublin III Regulation is complemented with to harmonise the asylum laws and procedures of the Member States.

Conclusion: Summary and looking ahead

This paper has looked at the development of the CEAS in the context of European history to uncover and analyse its flaws. At the centre of the analysis was the Dublin III Regulation responsible for establishing the Dublin system currently in effect. The reason why its analysis was so essential was due to its important place within the CEAS framework. It is what the entire asylum system's working rests on. Throughout its development, one of the main causes for recasting the Dublin Regulation was its lack of use. Throughout section 2, the developmental process and its implication were analysed in detail and have revealed that the cause and effect of the reasons for renegotiation have been mixed up. The system's lack of use is in fact an effect of the continued renegotiation process. The historical setting which regulation was recast in, the authorisation principle at the centre of the system all contributed to the development of the status quo. It is this status quo that led to the 2015 crisis to be handled in the way that it was.

Nonetheless, it is not the Dublin system alone that failed to operate well within the CEAS framework. It seems that besides that the CEAS's integration process is generally incomplete. The EURODAC regulation and the TPD specifically were both created to further harmonisation and complement the Dublin system. Whether they have been able to achieve this is highly questionable. The EURODAC system is easily bypassed by Member States, making the identification of asylum seekers virtually impossible. Whereas the TPD, an instrument that was designed to be implemented in cases of emergency, when all other existing procedures seem to be inappropriate, is actually incapable of fulfilling what it was designed to do.

Essentially, it is impossible to blame one specific provisions within the asylum system of the EU for the 2015 crisis or for the responsibility of the CEAS's failures. It seems that minute problems exist in virtually all provision of the CEAS, which led to a half-integrated system not functioning in sync. Furthermore, it seems that both the Member States and EU law makers were aware of these flaws yet were unable or unwilling to take action. The CEAS was tested during the summer of 2015 and has subsequently failed that test. The 2015 crisis has acted as a catalyst for reorganisation, which will hopefully reach the roots of the Dublin system. It is the evaluation of these proposals of reorganisation and recast regulations, along with the analysis of Member States' negotiation positions that will be the topic of next year's research period.

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