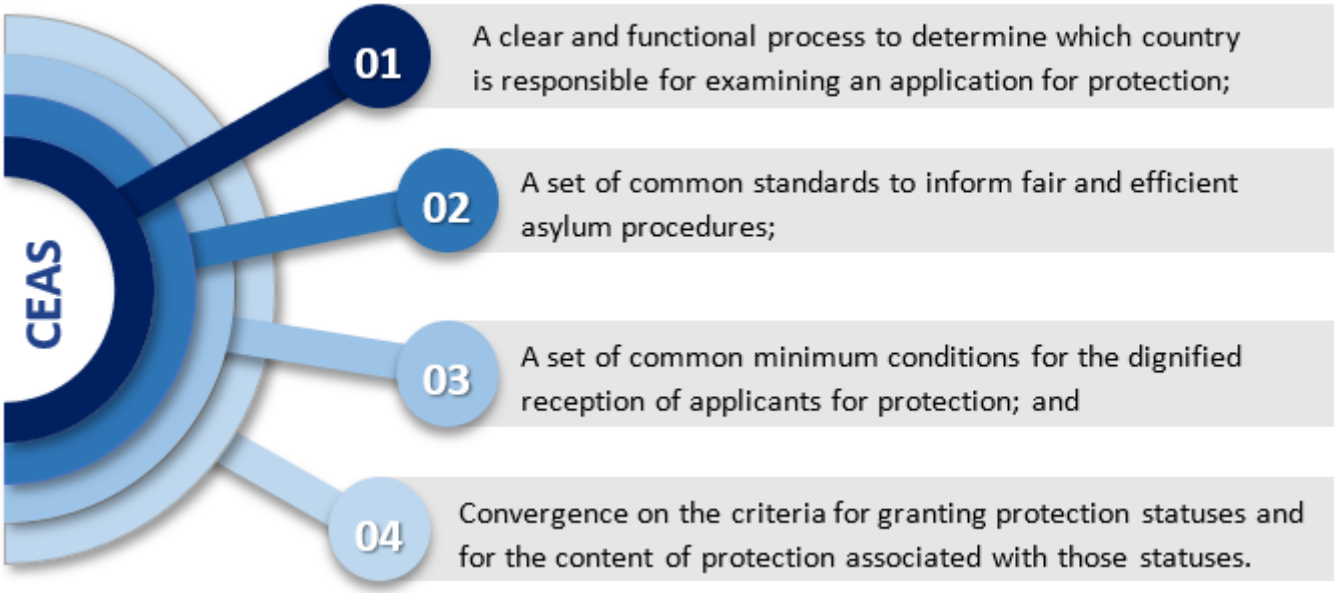
Please cite as: EUAA, '2.1 The Common European Asylum System and current issues' in *Asylum Report 2020*, janvier 2022.

2.1 The Common European Asylum System and current issues

Background

The Common European Asylum System (CEAS) is a legal and policy framework developed to guarantee harmonised and uniform standards for people seeking international protection in the EU. It is based on an understanding that the EU, an area of open borders and freedom of movement where countries share the same fundamental values, needs to have a common approach to implement transparent, effective and equitable procedures.[65] CEAS emphasises a shared responsibility to process applicants for international protection in a dignified manner, ensuring fair treatment and similar procedures in examining cases, irrelevant of the country where the application is lodged.[66] At its core, CEAS aims to achieve:



Within the context of CEAS, the Tampere Declaration set out the foundation for a comprehensive approach to migration by addressing political, human rights and developmental issues in countries and regions of origin and transit.[68] Through this agreement with governments, legislative and policy measures were adopted at the EU level to set a framework to manage high influxes of displaced persons by accommodating persons in need of protection while supporting Member States experiencing pressure on their asylum systems.[69]

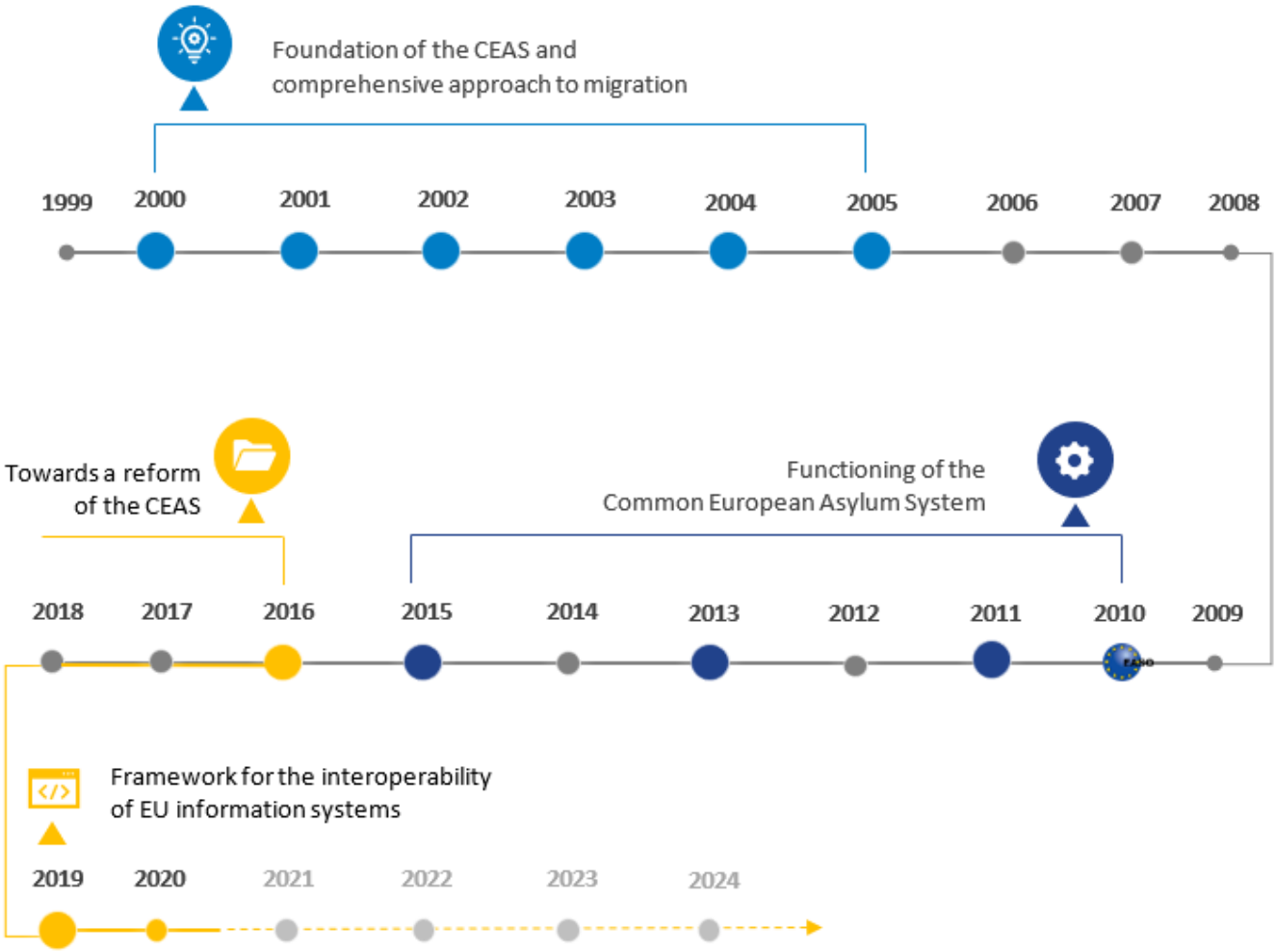
After the first phase (from 1999 to 2005), Member States reflected on the functioning of CEAS and implemented improvements to the five legislations that govern the minimum standards of

the European asylum system:[70]

> Recast Asylum Procedures Directive;[71]
> Recast Reception Conditions Directive;[72]
> Recast Qualification Directive;[73]
> Recast Dublin III Regulation;[74] and
> Recast Eurodac Regulation.[75]

The increased – and often uneven – pressure that national asylum and reception systems in EU+ countries faced since 2015 presented both a challenge and an opportunity for EU+ countries to take bold steps toward systemic and commonly-agreed solutions for further harmonisation, on the basis of solidarity and responsibility-sharing. Above all, it underlined the importance of the very existence of CEAS and a common migration policy – to have an EU-wide framework to manage mixed migratory flows,[iv] including border management, international protection and the return of rejected applicants. In the EU context, mixed migratory flows are defined as "complex migratory population movements, including refugees, asylum seekers, economic migrants and other types of migrants as opposed to migratory population movements that consist entirely of one category of migrants".

Towards the reform of the Common European Asylum System



Source: EASO.

To further refine CEAS, in 2016 the EU Commission published a report, *Communication Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe,*[76] where five priority areas were defined:

> Establishing a sustainable and fair system for determining the Member State responsible for asylum seekers;
> Achieving greater convergence in the EU asylum system;
> Reinforcing the Eurodac system, an EU asylum fingerprint database which makes it easier for EU Member States to determine the state responsible for examining an asylum application;
> Preventing secondary movements within the EU;[v] and
> Establishing a new mandate for the EU's Asylum Agency.

Subsequently, in May and July 2016, the European Commission presented two packages of reform proposals for the core components of the CEAS. These included:

> A reform of the Dublin system to better balance responsibility and solidarity for asylum applications among EU+ countries;[78]
> Steps toward reinforcing the Eurodac regulation, including increasing the efficiency of the EU database on fingerprints for asylum applicants;[79]
> Strengthening the mandate of EASO toward a fully-fledged agency for asylum;[80]
> Replacing the Asylum Procedures Directive with a regulation directly applicable in national asylum systems to harmonise asylum procedures across EU+ countries and achieve convergence in recognition rates;[81]
> Replacing the Qualification Directive with a regulation directly applicable in national asylum systems to further harmonise protection standards and rights for beneficiaries of international protection;[82] and
> Reforming the Reception Conditions Directive to ensure that applicants for international protection benefit from harmonised and dignified reception standards and prevent secondary movements and abuse.[83], [84]

For a detailed description of the proposals, see the EASO Annual Report on the Situation of Asylum in the European Union 2017. Finally, as part of the initiatives on reforming the CEAS, the Commission put forth a proposal to establish a permanent Union Resettlement Framework, which aims to replace existing ad hoc schemes and:

> Provide legal and safe pathways to the EU and reduce the risk of massive irregular arrivals in the long term;
> Provide common rules for resettlement and humanitarian admission;
> Contribute to global resettlement and humanitarian admission initiatives; and
> Support third countries which host many persons in need of international protection.[85]

Recent developments

Since the new proposals were set forth *(see Table 2.1)*, significant progress has been made, in particular concerning the EU Asylum Agency, the Eurodac Regulation, the Union Resettlement Framework Regulation, the Qualification Regulation and the Reception Conditions Directive.[86] However, due to fundamental political differences among EU Member States, agreement on the proposals for a reformed Dublin system and an Asylum Procedures Regulation could not be reached.[87] In addition, the majority of Member States expressed reservations in adopting one or more of the proposals separately before all were ready for adoption. With 2019 being a year of

elections for the European Parliament, the negotiations for the reform package were referred to the next parliamentary term. Accordingly, in 2019 no major legislative progress was noted regarding the adoption of the CEAS reform package.[vi]

Given the deadlock in negotiations on the CEAS package, in a policy note published in October 2019, the European Council on Refugees and Exiles (ECRE) identified key priorities and provided recommendations to enhance the functionality of CEAS. ECRE's position is that the focus should be on compliance, not reform, with two exceptions: a) while the proposal for Dublin IV Regulation should be withdrawn, a legislative reform of the Dublin system is ultimately needed; and b) a new legal base for the transformation of EASO into the EU Asylum Agency remains necessary.[88]

Detailed information on the specifics of the procedure and progress made to date concerning each of the proposals may be found on the EUR-Lex webpage, as follows:

At the legislative level, progress was made in areas directly related to asylum. In May 2019, the Council of the EU adopted two regulations establishing a framework for the interoperability of EU information systems in the area of justice and home affairs, which include:

> A European search portal through which competent authorities will be able to perform searches across multiple information systems using biographical and biometric data;
> A shared biometric matching service to compare biometric data (fingerprints and facial images across several system);
> A common identity repository of biographical and biometric data of third country nationals available in EU information systems; and
> A multiple identity detector to check whether biographical identity data exist in other systems, which would enable the detection of multiple identities linked to the same set of biometric data.[89]

This information-sharing enables more efficient checks at the external borders of the EU, facilitates the detection of multiple identities and assists in maintaining the integrity of asylum systems.[90] It also is of crucial importance to the work of EASO as under Article 39 there is a potential to extract non-personal statistics from each of the large-scale EU IT systems to create the first cross-system comprehensive overview of asylum and migration to and within the European Union. Such a system would allow linked data to be extracted which count individuals rather than procedures. This would enable analysts to deliver much-needed evidence to policy-makers in Member States and the EU and EASO could design effective operational responses to support Member States under disproportional pressure. But there are prerequisites to such a system: it must be legal, the data must be extracted in the correct format and appropriate agencies need to have access.

In addition, in June 2019, the Council adopted its partial common position on the recast Return Directive which was proposed by the Commission in September 2018. The overall aim of the proposed new rules is to render return procedures less time-consuming, prevent absconding and secondary movements, and increase the rate of implemented returns. It is still essential, however, to respect the fundamental rights of migrants and the principle of non-refoulement so that an asylum seeker is not expelled from a territory without due process to file an application

for international protection .

The topic of asylum remained high on the EU political agenda in 2019 and considerable work was accomplished in policy implementation and practical cooperation among Member States. In a number of meetings of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), it was underlined that, pending legislative negotiations, much could be achieved through practical cooperation. Moreover, both presidencies of the Council of the European Union in 2019 set migration and asylum among their key priorities. The Romanian Presidency of the first semester listed among its main aims to:

> Seek consensus on the CEAS reform package;
> Advance interoperability and the implementation of IT systems developed at the EU level and support the adoption of the interoperability package as soon as possible;
> Enhance the external dimension of migration policy by strengthening cooperation with countries of origin and transit;
> Facilitate the discussion on the proposal to strengthen the operational capacity of the European Border and Coast Guard Agency (Frontex);
> Support a more effective return policy at the European level through a sustainable approach, with full regard for migrant rights; and
> Discuss visa liberalisation in parallel with the signing of readmission agreements.[91]

Offering its recommendations to the Romanian Presidency, UNHCR called for a number of priority areas to be addressed: for the EU to actively contribute to the implementation of the Global Compact on Refugees both inside and outside the EU; to engage outside of the EU to expand protection globally; to support the development of a fair, effective and well-managed EU asylum system; and to promote integration and access to equal opportunities for refugees to foster social cohesion.[92]

With regard to issues of migration and asylum, the programme of the Finnish Presidency, in the second semester of 2019, noted that, despite strong efforts, adopting the CEAS reform as a package proved, until then, unachievable. The programme, therefore, proposed to adopt individually the proposals on which consensus was reached. It also placed emphasis on resettlement and the establishment of the Union Resettlement Framework as an effective mechanism to assist those in the most vulnerable positions, while creating a more controlled way to ease migration pressures and to demonstrate solidarity towards countries receiving large numbers of displaced persons.

The Finnish EU Presidency programme further suggested to establish a temporary relocation mechanism for migrants rescued at sea. In terms of returning applicants to countries of origin, the Programme noted that the EU must use all means at its disposal – including positive and negative incentives in trade, development and visa policy – to make policy on returned applicants effective and sustainable. With regard to border management, the programme underlined that strengthening Frontex would help Member States to better control their borders and make the return of illegal immigrants more effective.[93]

In its recommendations, UNHCR called on the Finnish Presidency to improve the protection of refugees through enhanced responsibility-sharing in the EU and globally, in line with the Global Compact on Refugees; foster the development of fair, effective and well-managed asylum

systems, including by reforming CEAS; and promote pledges by EU Member States ahead of the 2019 High-Level Segment on Statelessness.[94]

The EU's Strategic Agenda for 2019-2024, which was adopted by the European Council in June 2019, set the main priorities for the next institutional cycle. In regards to migration and asylum, the agenda refers to external border management based on the principles and values of the EU; the need to strengthen cooperation with countries of origin and transit; and the need to achieve consensus on the reform of the Dublin system to achieve a balance of responsibility and solidarity, taking into account persons disembarked after search and rescue operations.[95]

The new European Commission, which took office in December 2019, acknowledged in its priorities for 2019-2024 that migration and border security are common challenges that are best addressed jointly by EU Member States. The five policy priorities in these area focus on: saving lives while preventing irregular migration flows; protecting borders with Frontex, which will have its own standing force and equipment to respond to emergencies swiftly; providing safe and legal pathways to people in need of protection through resettlement; and overhauling the EU's asylum rules.[96]

In January 2020, the European Commission published its new work programme. The Commission plans to launch a new Pact on Migration and Asylum which will acknowledge the interconnectedness of internal and external aspects of migration and build more resilient, more humane and more effective migration and asylum systems.[97] This proposal for a new pact was included in the political guidelines that the President of the European Commission, Ursula von der Leyen, presented during her candidacy. She also stressed relaunching the reform of the Dublin system; reinforcement of Frontex; overall modernisation of CEAS based on stable external borders and solidarity with Member States facing increased pressure; and stronger cooperation with countries of origin and transit countries through, for example, development initiatives to improve the conditions of young women and men in their countries of origin.[98] In her speech at the European Parliament Plenary Session in November 2019, the President of the Commission reiterated her commitment to ensure that the EU will always provide shelter to those who are in need of protection, while ensuring that those who do not have the right to stay are returned to their country of origin.[99]

In January 2020, UNHCR presented a set of recommendations on the Commission's pact on how the EU can achieve a functional approach to manage asylum-related movements by: a) engaging beyond its borders; b) offering protection through a well-managed common asylum system; and c) welcoming and integrating refugees.[100] Similarly, in February 2020, various NGOs issued a joint statement on the new pact, seeing it as an opportunity to promote rights-based asylum and migration policies but cautioning against a disproportionate emphasis on border management and its negative implications on the rights of persons seeking protection in the EU.[101]

[iv] Definition provided in the EMN Glossary: https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/mixed-migration-flow_en

[v] The term 'secondary movements' refers to the movement of migrants, including refugees and asylum seekers, who for different reasons move elsewhere from the country in which they first arrived to seek protection or permanent resettlement. Definition provided in the EMN Glossary: https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/secondary-movement-migrants_en

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