

Study Guide
for
the Council of the European Union (JHA)

Topic Area: Reforming the Common European Asylum System

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1. Greetings of the Board

Distinguished Ministers of Justice and Home Affairs,

*It is our utmost honor to welcome you to Rhodes Model Regional Cooperation (RhodesMRC) 2023 and specifically to the Council of the European Union. This year's topic, "**Further Reforming the European Common Asylum System**", is a priority in the current EU agenda, a topic that has kept the European Union on the edge of its seat for years-especially after the 2015 migration crisis. As the Board of the Council of the European Union (CoEU), we hope that this document will guide you throughout your studying and preparation for this year's RhodesMRC., will prove to be a useful tool in your effort to deepen your knowledge on the topic under discussion and will motivate you to conduct your own further research.*

The Council of the European Union constitutes the only simulated European institution with experienced participants, who are involved every year to get acquainted with its functioning and its substantial role in the European Union. This October, we are waiting for each and every one of you to transform yourselves into a Minister of Justice and Home Affairs of one of the 27 EU Member States, actively participate in our heated debates, collaborate, and reach productive conclusions.

We wish that the committee proceedings will be full of excitement, heated debates, and professionalism. Last but not least, should you have any inquiries feel free to contact us. We are really looking forward to meeting you all this October, in this year's edition of RhodesMRC. Get ready for an amazing experience!

Kind Regards,

The Board of the Council of the European Union,

Alexios Vasileios Tsanos, President

Margarita Adamopoulou, Commissioner

2. Introducing the Council of the European Union

The Council of the European Union was established in 1958 and it is one of the seven Institutions of the European Union as per the Treaty on the European Union. It is also informally known as the Council of Ministers, as the Ministers of each Member state partake on the discussions and the sessions. It is one of the two legislative bodies of the EU along with the European Parliament, meaning that it is responsible for amending, approving or vetoing the proposals presented by the European Commission.

Furthermore, along with the European Council, the Council of the European Union is one of the only intergovernmental EU institutions that member states executives represent their Member State positions.

The primary Role of the Council is to be the voice of EU member governments, to adopt EU laws or amend previously existing ones and to coordinate EU policies.

The Council can hold meetings in 10 different configurations, which dictate the Ministers that are going to be present at the discussions. For example in Rhodes MRC 2023 the Configuration of the Council is going to be **Justice and Home Affairs (JHA)**, thus the topic, meaning that all participants are called to act as the Ministers of Justice and Home Affairs of their respective Member States.

The presidency of the Council held by a Member State and Rotates every six months. At the time of the Conference the Presidency will be held by **Spain**. The president is responsible for ensuring the smooth running of the committee and the agenda under discussion.

The final document of the Council of the European Union is called a Decision and its usually made by qualified majority voting in most areas or unanimity in others and it usually follows the ordinary legislative procedure, which means that it shares legislative and budgetary power with the European Parliament, having to have them both agree for a proposal to pass.¹

¹The Council of the European Union- Consilium Available at: <https://www.consilium.europa.eu/en/council-eu/>

However there are certain areas that operate the **special legislative procedure**², one of them being **Justice and Home Affairs**, along with budget and taxation and specific aspects of other policy areas, like the fiscal aspect of the environmental configuration.

The special legislative procedure means that the Council is the only legislator, instead of being co-legislator with the European Parliament, thus any referendums towards the European Parliament in the debate are not necessary for the decision to be correct.

3. Introduction to the Topic

The European Union is an area of protection for human rights and, especially, for people fleeing their country of origin because of persecution or trying to escape serious harm as per the 1951 Geneva Convention on the Protection of Refugees which recognized asylum as one of the fundamental rights of people. In the EU, an area of open borders and freedom of movement, member countries share the same fundamental values and joint approach to guaranteeing high standards of protection for refugees.

Considering the ongoing conflicts all over the world, particularly the Russo-Ukrainian war, as well as the numerous humanitarian crises (e.g. Belarus–European Union border crisis) that force people to travel in any way they can to other states —particularly in the EU—, there has been a rapid increase in the number of immigration and refugee waves.

People have been arriving in Europe in unprecedented numbers in recent years, fleeing violence, terror, and persecution in their own countries. In May 2023, approximately 87,000 applications for asylum were submitted, an increase of 24% compared to May 2022². In these terms, the EU is reforming the Common European Asylum System to ensure that all EU countries share responsibility for asylum management and contribute equally to the management of the aforementioned crises, aiming at a more balanced allocation of responsibilities among member-states, with an emphasis being given to the countries that face the crisis much more directly and acutely.

² *Special legislative procedure EUR*. Available at: <https://eur-lex.europa.eu/EN/legal-content/glossary/special-legislative-procedure.html>

The Dublin Regulation (no. 604/2013) determines the procedure for seeking refugee status and, also, which EU member-state is responsible for examining asylum applications submitted – the general rule being that it is the first country of entry – by persons seeking international protection. However, given the deficiencies of the current Common European Asylum System and the inability of the regulations in effect to tackle the deteriorating situation, the EU has to further reform the system and improve the situation.

4. Key Terms³

Asylum seeker: An individual who is seeking international protection. In countries with individualized procedures, an asylum seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum seeker will ultimately be recognized as a refugee, but every recognized refugee is initially an asylum seeker.

Immigrant: From the perspective of the country of arrival, a person who moves into a country other than that of his or her nationality or usual residence, so that the country of destination effectively becomes his or her new country of usual residence.

Irregular migration: Movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination.

Note: Although a universally accepted definition of irregular migration does not exist, the term is generally used to identify persons moving outside regular migration channels. The fact that they migrate irregularly does not relieve States from the obligation to protect their rights. Moreover, categories of migrants who may not have any other choice but to use irregular migration channels can also include refugees, victims of trafficking, or unaccompanied migrant children. The fact that they use irregular migration pathways does not imply that States are not, in some circumstances, obliged to provide

³ *Key migration terms International Organization for Migration*. Available at: <https://www.iom.int/key-migration-terms>

them with some forms of protection under international law, including access to international protection for asylum seekers fleeing persecution, conflicts or generalized violence. In addition, refugees are protected under international law against being penalized for unauthorized entry or stay if they have travelled from a place where they were at risk

Migrant: An umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. The term includes a number of well-defined legal categories of people, such as migrant workers; persons whose particular types of movements are legally-defined, such as smuggled migrants; as well as those whose status or means of movement are not specifically defined under international law, such as international students.

Note: At the international level, no universally accepted definition for “migrant” exists. The present definition was developed by IOM for its own purposes and it is not meant to imply or create any new legal category.

Non-refoulement (principle of): The prohibition for States to extradite, deport, expel or otherwise return a person to a country where his or her life or freedom would be threatened, or where there are substantial grounds for believing that he or she would risk being subjected to torture or other cruel, inhuman and degrading treatment or punishment, or would be in danger of being subjected to enforced disappearance, or of suffering another irreparable harm.

Note: The principle of non-refoulement is a fundamental principle of international law. It has its origins in international refugee law as found in Article 33 of the Convention relating to the Status of Refugees ((adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137), which stipulates: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. The principle was then developed further in Article 3 of the Convention against

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ((adopted

10 December 1984, entered into force 26 June 1987) 1465 UNTS 85), which prohibits States Parties to: “expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”. The same Article also specifies that: “For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. The principle is also enshrined in the Article 16 of the International

Convention for the Protection of All Persons against Enforced Disappearances ((adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3).

Other human rights bodies have then interpreted the prohibition of torture and inhuman and degrading treatment as entailing an obligation for States parties to the relevant conventions (notably, at the universal level, the International Covenant on Civil and Political Rights ((adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171) not to send persons back to a country where there is a real risk that they are submitted to the proscribed ill-treatments. The reference to “irreparable harm” in the definition has been added to take into consideration the jurisprudence of the Human Rights Committee (Human Rights Committee, General Comment No. 31: The Nature of General Legal Obligation Imposed on States Parties to the Covenant (26 May 2004) UN Doc. CCPR/C/21/Rev.1/Add. 13, para. 12).

Permit: In the migration context, documentation, such as a residence or work permit, which is usually issued by a government authority and which evidences the permission a person has to reside and/ or carry out a remunerated activity.

Refugee (1951 Convention): A person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Note: Under international refugee law, recognition as a refugee is declaratory and not constitutive.

Smuggling of migrants: The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the irregular entry of a person into a State Party of which the person is not a national or a permanent resident.

Visa: An endorsement by the competent authorities of a State in a passport or a certificate of identity of a non-national who wishes to enter, leave, or transit through the territory of the State that indicates that the authority, at the time of issuance, considers the holder to fall within a category of non-nationals who can enter, leave or transit through the State under the State's laws. A visa establishes the criteria of admission into, transit through or exit from a State.

5. Introduction to the Common European Asylum System

EU member-states have agreed to welcome asylum seekers, ensuring through cooperation and a statutory framework that they are treated fairly and decently and their applications are thoroughly examined following uniform standards. The main goal is to make sure that irrespective of the state where the asylum seeker applies, the procedure will be the same throughout the EU and as effective as possible, guaranteeing a just result, which will not be susceptible to any arbitrariness.

However, asylum flows are not constant, nor are they evenly distributed across the EU. They have, for example, varied from over 1.8 million in 2015 to around 142,000 in 2019, a decrease of 92%, while in 2023, 5.858.000 Ukrainian refugees have been recorded in Europe since the Russian invasion in Ukraine.

Therefore, taking into account the perennial nature of the problem, the unpredictability of the events that may cause new refugee flows and the large fluctuations in the numbers of refugees and the corresponding asylum applications, the EU has established since 1990 a **Common European Asylum System (CEAS)**⁴.

⁴ *Common European asylum system*, Migration and Home Affairs. Available at: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en

The CEAS is a framework of agreed rules which establish common procedures for **international protection** and a uniform status for those who are granted **refugee status** or **subsidiary protection** based on the full and inclusive application of the **Geneva Refugee Convention and Protocol**⁵ and which aims to ensure fair and humane treatment of **applicants for international protection**, to harmonize asylum systems in the EU and reduce the differences between Member States on the basis of binding legislation, as well as to strengthen practical cooperation between national asylum administrations and the external dimension of asylum.

When speaking about *international protection*, we must clarify that, inside the EU, it includes the protection that encompasses **refugee status** and **subsidiary protection status**. The latter refers to the protection given to a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of origin – or in the case of a stateless person to their country of former habitual residence – would face a real risk of suffering serious harm as defined in Art. 15 of Directive 2011/95/EU (*Recast Qualification Directive*).

In 2020, the European Commission proposed to reform the system through a comprehensive approach to migration and asylum policy based on three main pillars:

- efficient asylum and return procedures,
- solidarity and fair share of responsibility and
- strengthened partnerships with third countries.¹

Nevertheless, the system as it was previously enforced provided only a primary stage of the conditions for the management of the asylum seeker and, thus, the EU has revisited it in 2023.

The reform of the common European asylum system aims to:

⁵ *The 1951 refugee convention* (no date) UNHCR. Available at:

<https://www.unhcr.org/about-unhcr/who-we-are/1951-refugee-convention>

- establish a common framework that deals with all aspects of asylum and migration management
- make the system **more efficient** and **more resistant** to migratory pressure
- eliminate **pull factors** as well as **secondary movements**
- **fight abuse** and support the **most affected member states** better.⁶

The currently applicable Dublin system⁷ was first established in 1990 and was further updated in 2003 and 2013. Its purpose, as aforementioned, is to identify a single EU member state responsible for processing an asylum application. The procedure is based on several criteria, including the *first-country-of-entry criteria*. In practice, this means that a small number of member states have been responsible for processing the majority of asylum claims. The migratory crisis has highlighted the limits of the current system, which creates a burden for frontline member states⁶.

6. Historical Background

Migration in the 21st century in the European region has been characterized by increased movement of people, driven by various factors such as economic, political, environmental, and social factors. These movements have led to complex and diverse migration patterns, including forced displacement, irregular migration, and labor migration. The political upheaval and wars in the Middle East and North Africa since the early 2000s have led to significant displacement and migration of people within the region and beyond. Millions of people have been forced to flee their homes due to conflicts in countries such as Syria, Iraq, and Libya. Many have sought refuge in neighboring countries such as Turkey,

⁶ Civil Liberties, Justice and Home Affairs-LIBE, Reform of the Common European Asylum System, Available at:

[https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-reform-of-the-common-european-asylum-system-\(ceas\)](https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-reform-of-the-common-european-asylum-system-(ceas))

⁷ *Country responsible for asylum application (Dublin Regulation) Migration and Home Affairs.*

Available at: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en

Lebanon, and Jordan, while others have migrated to Europe, often making the perilous journey across the Mediterranean Sea.⁸

The migrant crisis in the Mediterranean, which began in the mid-2010s, has become a major issue for the European Union and the international community. The number of people attempting to cross the sea has increased significantly, with many taking dangerous journeys on overcrowded and unsafe boats. The vast majority of these migrants are from sub-Saharan Africa and the Middle East, fleeing conflict, poverty, and persecution. Many also face human rights abuses and exploitation along the way, including trafficking and forced labor.

The rise of globalization and increased economic integration has also led to the growth of labor migration towards Europe. Many countries in the region have become destinations for labor migrants, including highly skilled professionals and low-skilled workers.

Environmental factors such as climate change, desertification, and land degradation have also contributed to migration in the Mediterranean region. The degradation of natural resources and the increasing frequency and intensity of natural disasters have led to displacement and migration of people, particularly in North Africa and the Middle East.

The European Union (EU) faced one of its most significant challenges in recent history with the migration crisis of 2015. This crisis brought to the forefront the need for a comprehensive and cohesive European asylum system. The migration crisis of 2015 was a result of various interconnected factors. The ongoing conflicts in Syria, Iraq, and Afghanistan, coupled with political instability in several North African countries, created a significant push factor for individuals seeking refuge. The economic disparities between the European Union and neighboring regions also acted as a pull factor. Additionally, the increased ease of travel and communication through technology facilitated mass movements of people.

⁸ David Coleman, Migration and its consequences in 21st century Europe, 2009, Available at:

<https://www.jstor.org/stable/23025521>

The migration crisis⁹ had profound consequences for both the European Union and the individuals seeking asylum. Social, economic, and political challenges arose as member states struggled to cope with the influx of migrants. Local communities faced strain on resources and infrastructure, leading to social tensions. Furthermore, the crisis exposed gaps and inconsistencies in the asylum systems of different member states, leading to disparities in the treatment of refugees. This highlighted the urgent need for a unified approach to asylum in the European Union.

The CEAS was established through a series of legal instruments and directives with the objective of harmonizing asylum policies across EU member states. It aimed to ensure fair and efficient asylum procedures, uphold fundamental rights, and provide protection to those in need. The system consists of several key components, including the Dublin Regulation, the Qualification Directive, and the Reception Conditions Directive.

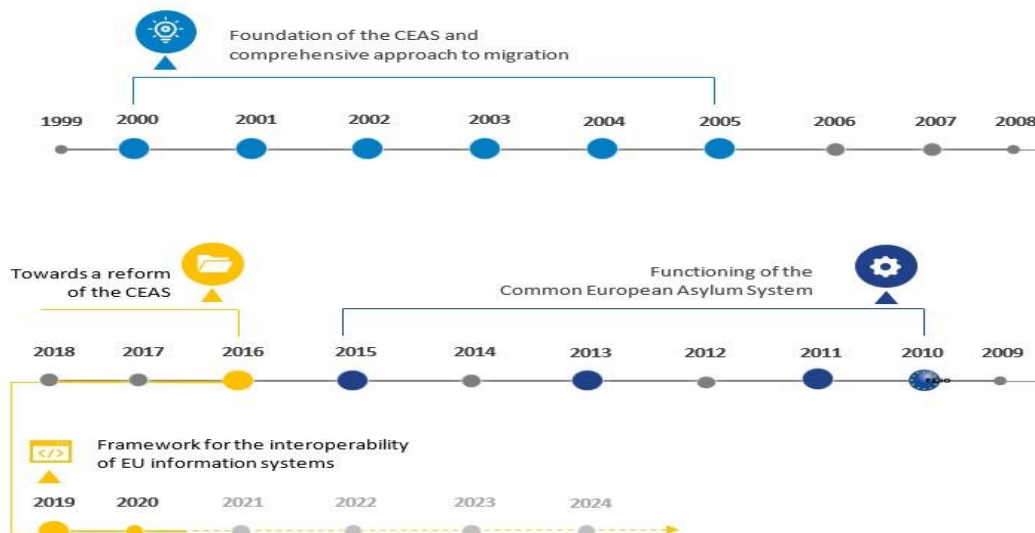
One of the main strengths of the CEAS is the principle of shared responsibility. It promotes burden-sharing among member states, distributing the responsibility of processing asylum claims more equitably. The system also provides a common set of standards for reception conditions and asylum procedures, ensuring a consistent level of protection across the Union. Moreover, the CEAS incorporates the principle of non-refoulement, guaranteeing that individuals will not be returned to a country where they face persecution.

Despite its strengths, the CEAS has faced significant challenges and criticisms. One of the main weaknesses is the lack of uniform implementation across member states. Different interpretations and varying levels of commitment have resulted in disparities in the treatment of refugees and asylum seekers. The Dublin Regulation, which assigns responsibility for processing asylum claims, has been heavily criticized for placing a disproportionate burden on frontline countries. Additionally, the system has struggled to address the issue of secondary movements, where individuals move between member states in search of better conditions or family reunification.

⁹ Publications Office of the European Union, The EU and the migration crisis, 2017 Available at: <https://op.europa.eu/en/publication-detail/-/publication/e9465e4f-b2e4-11e7-837e-01aa75ed71a1>

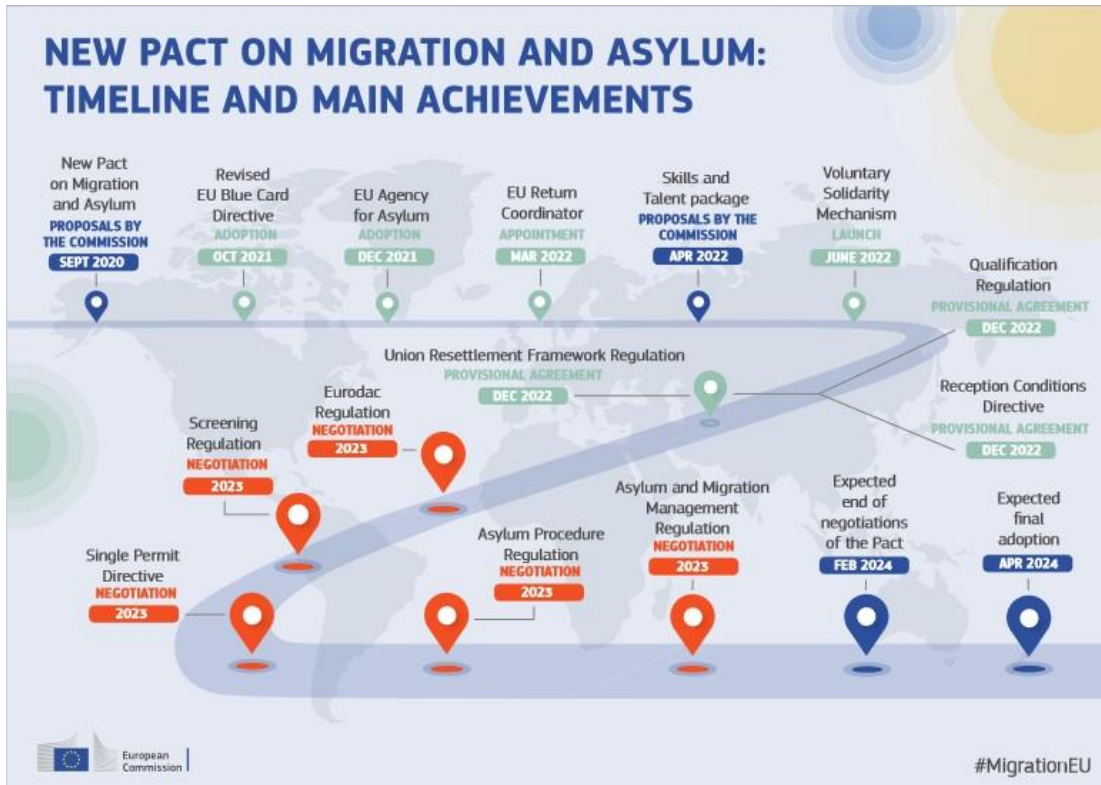
The migration crisis of 2015 was a wake-up call for the European Union, highlighting the need for a comprehensive and cohesive response to asylum. The Common European Asylum System, while not without its weaknesses, represents an important step towards a unified approach. By addressing the disparities and shortcomings within the system, the EU can create a fair and efficient asylum process that upholds its fundamental values and protects those in need. Through continued research, analysis, and dialogue, the EU can navigate future challenges and ensure a more sustainable and equitable asylum system.

7. Timeline



“Timeline of Common European Asylum System Reforms”

Source: <https://euaa.europa.eu/asylum-report-2020/21-common-european-asylum-system-and-current-issues>



Source: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/new-pact-migration-and- asylum_en

8. Legal Background

1. 1951 *Geneva Convention* (Geneva Refugee Convention and the 1967 Protocol)⁵

In July 1951, a diplomatic conference in Geneva adopted the **Convention Relating to the Status of Refugees**. It has since been subject to only one amendment in the form of the 1967 Protocol.

The 1951 Convention provides the internationally recognized **definition of a refugee** and outlines the legal protection, rights and assistance a refugee is entitled to receive. The core principle of the 1951 Convention is the **non-refoulement principle**, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom.

The convention outlines the basic **minimum standards for the treatment of refugees**, including the right to housing, work and education while displaced so they can lead a

dignified and independent life. It also defines a refugee's obligations to host countries and specifies certain categories of people, such as war criminals, who do not qualify for refugee status.

Initially, the 1951 Convention was essentially limited to protecting European refugees in the aftermath of the Second World War: The document contains the words "events occurring before 1 January 1951" which are widely understood to mean "events occurring in Europe" prior to that date.

The **1967 Protocol**, adopted 4 October 1967, removes these geographic and time-based limitations, expanding the Convention to apply universally and protect all persons fleeing conflict and persecution.

2. Article 78 of *Treaty of the Functioning of the European Union*¹⁰

According to Article 78, par. 1 of the TFEU, *the Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the **principle of non-refoulement**.*

Under international human rights law, the **principle of non-refoulement**¹¹ guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status.

The principle of non-refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill-treatment or other serious human rights violations.

¹⁰ Lex -12008E078- en - EUR-Lex (no date) EUR. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E078>

¹¹ OHCHR *The principle of non-refoulement under international human* . Available at:

<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

The prohibition of refoulement under international human rights law applies to any form of removal or transfer of persons, regardless of their status, where there are substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of torture, ill-treatment or other serious breaches of human rights obligations. As an inherent element of the prohibition of torture and other forms of ill-treatment, the principle of non-refoulement is characterized by its absolute nature without any exception. In this respect, the scope of this principle under relevant human rights law treaties is broader than that contained in international refugee law. The prohibition applies to all persons, irrespective of their citizenship, nationality, statelessness, or migration status, and it applies wherever a State exercises jurisdiction or effective control, even when outside of that State's territory.

3. The *Dublin Regulation*¹²

The **Dublin Regulation** (Regulation No. 604/2013; sometimes the **Dublin III**

Regulation; previously the Dublin II Regulation and Dublin Convention) is a European Union (EU) law that determines which EU Member State is responsible for the examination of an application for asylum, submitted by persons seeking international protection under the Geneva Convention and the EU Qualification Directive, within the European Union. It is the cornerstone of the Dublin System, which consists of the Dublin Regulation and the EURODAC Regulation, which establishes a Europe-wide fingerprinting database for unauthorized entrants to the EU. To be more specific: Eurodac contains the fingerprints of all asylum applicants from each Member State and prints from persons apprehended in an irregular border crossing⁹. The Dublin Regulation aims to "determine rapidly the Member State responsible [for an asylum claim]" and provides for the transfer of an asylum seeker to that Member State.

The objective of the *Dublin III Regulation* is to ensure quick access to the asylum procedures and the examination of an application on the merits by a single, clearly

¹² *Country responsible for asylum application (Dublin Regulation) Migration and Home Affairs.*

Available at: https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en

determined EU country. The Regulation establishes the Member State responsible for the examination of the asylum application.

The criteria for establishing responsibility are, in hierarchical order:

- family considerations,
- recent possession of visa or residence permit in a Member State and
- whether the applicant has entered EU irregularly, or regularly.

The Dublin III Regulation entered into force in July 2013. It contains sound procedures for the protection of asylum applicants and improves the system's efficiency through:

- an **early warning, preparedness and crisis management** mechanism, geared to addressing the root dysfunctional causes of national asylum systems or problems stemming from particular pressures,
- a series of **provisions on protection of applicants**, such as compulsory personal interview, guarantees for minors (including a detailed description of the factors that should lay at the basis of assessing a child's best interests) and extended possibilities of reunifying them with their relatives,
- the **possibility for appeals** to suspend the execution of the transfer for the period when the appeal is pending, together with the guarantee of the right for a person to remain on the territory pending the decision of a court on the suspension of the transfer pending the appeal,
- an obligation to ensure **legal assistance free of charge** upon request,
- a single ground for **detention** in case of risk of absconding; strict limitation of the duration of detention,
- the **possibility** for asylum seekers that could in some cases be considered irregular migrants and returned under the **Return Directive**, to be treated **under the Dublin procedure** - thus giving these persons more protection than the Return Directive,
- an obligation to **guarantee the right to appeal a transfer decision** before a court or tribunal and

- greater **legal clarity** of procedures between Member States - e.g. exhaustive and clearer deadlines.

The entire Dublin procedure cannot last longer than 11 months to take charge of a person, or 9 months to take him/her back (except for absconding, or where the person is imprisoned).

The large-scale, uncontrolled arrival of migrants and asylum seekers in 2015 put a strain not only on many Member States' asylum systems, but also on the Common European Asylum System as a whole. The volume and concentration of arrivals exposed in particular the weaknesses of the Dublin System, which establishes the Member State responsible for examining an asylum application based primarily on the first point of irregular entry¹⁰.

4. Articles 15 and 17 of *Directive 2011/95/EU* (Recast Qualification Directive)¹³

Article 15 of this Directive provides the definition of “**serious harm**”, a necessary term for the definition of both the **refugee status** and the **non-refoulement principle**. According to the article, serious harm consists of:

- the death penalty or execution; or
- torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Additionally, paragraphs 1 and 2 of Article 17 refer to the **exceptions** made from the provision of **subsidiary protection**. More specifically, the cases where the exclusion from the eligibility for this kind of protection is provided are when:

- he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

¹³ Lex - 32011L0095 - en - EUR-lex EUR. Available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0095>

- he or she has committed a serious crime;
- he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
- he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.

These exceptions also extend, according to the second paragraph, to the persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

9. Discussion- Key Issues:

1. Weaknesses of the Common European Asylum System¹⁴

The Common European Asylum System (CEAS) was created with high intentions, as mentioned before, to provide a uniform approach to asylum in the European Union (EU), assuring equitable treatment and protection for refugees and asylum seekers. However, some flaws in the system have emerged over time, limiting its ability to adequately address the problems provided by the shifting migration scenario. This essay will go into the CEAS's flaws, highlighting its limitations and emphasizing the critical need for improvements.

A. Disparities in Asylum Acceptance Rates

The large differences in asylum recognition rates among EU member states are one of the CEAS's major flaws. Asylum seekers frequently receive varied outcomes for comparable cases according on the nation in which they apply. This contradicts the system's essential principle of harmony and equality. Such disparities can arise from

¹⁴Beirens, H. (2018) *Cracked foundation, uncertain future: Structural weaknesses in the Common European Asylum System*, *migrationpolicy.org*. Available at: <https://www.migrationpolicy.org/research/structural-weaknesses-common-european-asylum-system> (Accessed: 18 August 2023).

differing interpretations of the grounds for providing international protection as well as the evaluation of the veracity of applicants' claims.

B. Disparities in Asylum Recognition Rates: Dublin Regulation Flaws

The Dublin Regulation, which was designed to establish which member state would be responsible for processing an asylum application, has been heavily criticized. The legislation imposes an enormous strain on frontline nations like Greece and Italy, which are frequently the first entrance ports for many migrants. This has created considerable difficulties in providing suitable reception conditions and processing asylum requests in a timely manner. The system also encourages secondary movements, in which asylum seekers travel to other EU nations seen to have better conditions, resulting in a lack of responsibility-sharing among member states.

C. Backlogs and inefficiency

Inefficiencies and backlogs in the processing of asylum claims plague the CEAS. The sheer amount of applications, along with the differing capacities of member states' asylum procedures, contributes to case examination delays. Prolonged waiting periods generate uncertainty for candidates and raise burdens to host communities. Delays can also stymie the integration process for recognized refugees, as they are unable to obtain the rights and benefits to which they are entitled on time.

D. Access to Legal Assistance is Limited

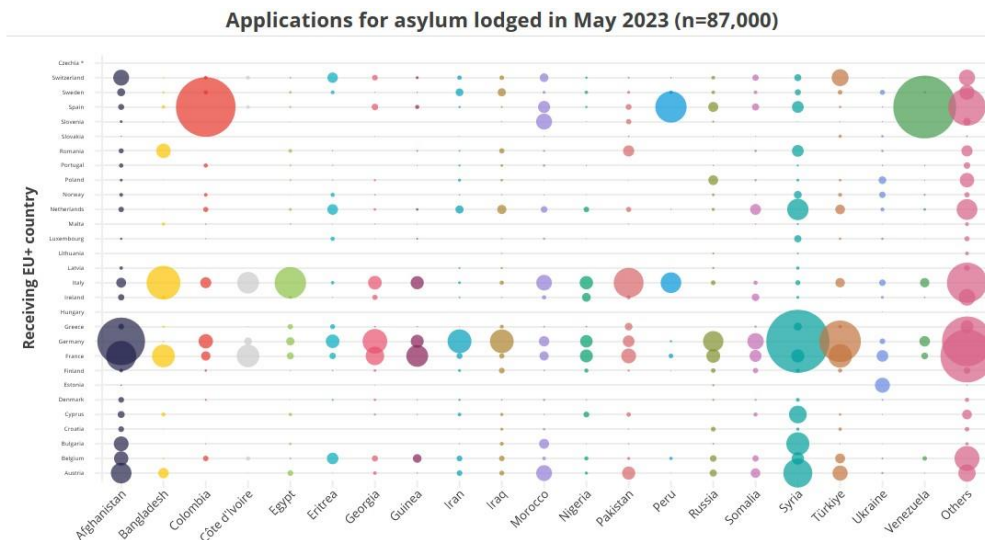
During the asylum procedure, asylum applicants frequently confront difficulties in obtaining legal advice and representation. Legal aid is critical for ensuring that applicants understand their rights and can successfully present their case. However, the availability and quality of legal aid services varies widely across member states, with some asylum seekers unable to obtain adequate legal assistance.

E. Inadequate cooperation with third countries

The CEAS has not adequately tapped into third-country collaboration to address migration concerns and core causes. Creating safe and legal channels for asylum seekers and minimizing irregular migration requires developing cooperation with countries of origin and transit. However, the EU's efforts in this area have been limited and fragmented, hindering its ability to regulate migratory flows efficiently.

F. Failure to Implement a Comprehensive Integration Strategy

While the CEAS stresses reception conditions for asylum seekers, adequate integration measures for refugees granted protection are sometimes lacking. For refugees to reconstruct their lives and become active members of their host cultures, successful integration is critical. However, the lack of a comprehensive approach to integration may impede their socioeconomic engagement and exacerbate social conflicts.



Source: <https://www.schengenvisainfo.com/news/euaa-87000-asylum-applications-surge-amidst-syria-n-afghan-turkish-influx/>

2. Reforming the Common European Asylum System

The Common European Asylum System (CEAS) has been a cornerstone of the European Union's attempts to handle migration and asylum concerns. The CEAS, which was created in response to the 2015 migration crisis, intended to integrate asylum policies and create a fair and efficient process for giving refuge to people in need. While it is a huge step forward, the system has been met with criticism and obstacles during its deployment. Reforming the CEAS is critical to ensuring a more cohesive and compassionate approach to asylum.

Since the CEAS's founding, the migration landscape has changed. New concerns, such as climate-induced displacements and ongoing conflicts in diverse locations, necessitate an adaptable and responsive system.

Furthermore, the unequal distribution of duty among member states has resulted in discrepancies in the treatment of asylum seekers, as well as an unequal burden on frontline nations. The necessity for reform stems from the recognition of these flaws and the commitment to protecting fundamental human rights.

The burden-sharing system of the Dublin Regulation is one of the key concerns that the reform must solve. The existing system throws disproportionate responsibility on countries of first admission, resulting in congestion and a burden on those countries' resources. The EU may develop a more equitable asylum process by establishing a more equitable distribution of responsibility, relieving strain on frontline states and fostering a sense of solidarity among member states.

In addition, CEAS reform should prioritize streamlining asylum procedures in order to ensure a more efficient and speedy process. Long waiting times might heighten the uncertainty and vulnerability that asylum seekers face. The EU can cut processing timeframes and establish a more transparent and fair asylum process by adopting shared rules for processing applications and exchanging best practices.

Moreover, secondary movements of asylum seekers across member states have put a pressure on the CEAS and resulted in inconsistent treatment. To properly control these migrations, a comprehensive system for sharing information and coordinating operations among member nations is required. This will keep asylum seekers out of detention and improve the system's overall efficiency.

Finally, reform should concentrate not just on the asylum application process, but also on the successful integration of refugees and asylum seekers. The EU can empower individuals to contribute positively to their host communities by investing in language training, education, and career possibilities, encouraging a sense of belonging and social cohesion.¹⁵

¹⁵European University Institute, Failure to reform the EU migration and asylum rules : explaining divergent member state decisions on the CEAS reform,2022 Available at:

<https://cadmus.eui.eu/handle/1814/75354>

3. Inability towards Crisis Response

External refugee crises, particularly those resulting from conflicts in countries such as Syria and Libya, have created considerable obstacles to the European Union's (EU) reaction and administration. Several important variables have influenced the EU's response to these crises.

To begin with, the scope and complexity of refugee crises in places like Syria, Libya and Ukraine have put enormous strain on humanitarian aid organizations and the EU's ability to properly coordinate relief efforts. The sheer number of displaced people, as well as the need for housing, food, healthcare, and other necessities, has strained resources to breaking point. Providing timely and coordinated help to affected communities has been a constant difficulty, with logistical and political difficulties impeding access to specific places.

Furthermore, refugees escaping turmoil in those regions frequently choose perilous and irregular travel routes to reach refuge in Europe. With scant chances for ordinary migration and resettlement, the EU's capacity to provide safe and legal avenues for these persons to seek refuge has been limited. Due to a lack of legal options, irregular migration has increased, as have the hazards for asylum seekers on their journeys, such as exploitation and human trafficking.

The EU has struggled to address the underlying causes of migration and displacement. Political unrest, violent wars, and human rights violations have all been major motivations of migration from these areas. Given the intricacies of the conflicts and the involvement of different regional and international parties, the EU's capacity to alter these fundamental variables has been restricted, thus leading to questionable temporary actions to relief incoming pressure.

For example, in 2016, in response to the Syrian refugee crisis, the EU reached an agreement with Turkey to reduce irregular migration. The agreement called for the return of asylum seekers from Greece to Turkey as well as financial help to refugees in Turkey. While the deal reduced the number of irregular arrivals in Greece, it was criticized for raising concerns about refugee rights protection and externalizing migration control to third nations.

Last but not least, the inflow of asylum seekers from migration crises has created difficulties in processing applications and dividing the burden of hosting and helping migrants across EU member states. Frontline nations, such as Greece and Italy, have been subjected to enormous strains, making it impossible to provide suitable reception conditions and fast processing of asylum applications. Member-state disagreements over burden-sharing have contributed to strains in EU solidarity and collaboration.

Hence EU's response to external refugee crises, such as those in Syria , Libya and Ukraine, has been fraught with difficulties in organizing humanitarian relief, ensuring safe and legal channels, and tackling the underlying reasons of migration. The complexity and scale of these crises, together with diverging national interests and competencies inside the EU, have made a coordinated and comprehensive response impossible to achieve. Addressing the suffering of refugees and migrants from conflict-affected regions remains a complicated and continuous responsibility for the EU, requiring sustained collaboration, coordination, and adherence to humanitarian standards and international law.

10. Key Actions and Existing Regulation by the EU

A. The **Asylum Procedures Directive**¹⁶ aims at setting out the conditions for fair, quick and quality asylum decisions. Asylum seekers with special needs receive the necessary support to explain their claim and in particular protection of unaccompanied minors and victims of torture is ensured. This Directive creates a coherent system to ensure that decisions on applications for international protection are taken efficiently and fairly, by:

- setting clear rules for registering and lodging applications, making sure that everyone who wishes to request international protection can do so quickly and effectively

¹⁶ *Asylum procedures Migration and Home Affairs*. Available at:

https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/asylum-procedures_en

- setting a time-limit for the examination of applications (in principle six months at the administrative stage), while providing for the possibility to accelerate for applications that are likely to be unfounded or were made in bad faith
- allowing for border procedures and safe country concepts
- training decision makers and ensuring access to legal assistance
- providing adequate support to those in need of special guarantees – for example because of their age, disability, illness – including by ensuring that they are granted sufficient time to participate effectively in the procedure
- providing rules on the right to stay and appeals in front of courts or tribunals.

The Commission presented in July 2016 a proposal for a new Asylum Procedure Regulation, aiming at establishing a truly common procedure for international protection which is fair and efficient, while removing incentives for secondary movements between Member States. As the co-legislators did not reach an agreement on the proposed text, the Commission tabled a new amended proposal along with the Pact on Migration and Asylum, in September 2020.

B. The **Reception Conditions Directive**¹⁷ ensures that common standards for reception conditions (such as housing, food and clothing and access to health care, education or employment under certain conditions) are provided for asylum seekers across the EU to ensure a dignified standard of living in accordance with the Charter of fundamental rights. The Directive:

- ensures that applicants have access to housing, food, clothing, health care, education for minors and access to employment (within a maximum period of 9 months)
- provides particular attention to vulnerable persons, especially unaccompanied minors and victims of torture. EU countries must conduct an individual assessment to identify the special reception needs of vulnerable persons and to ensure that vulnerable asylum seekers can access medical and psychological support.

¹⁷ Lex - 32013L0033 - en - EUR-lex (no date) EUR. Available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>

- includes rules regarding detention of asylum seekers and consider alternatives of detention in full respect of the fundamental rights. The migratory crisis has exposed the need to ensure **greater consistency in reception conditions across the EU** and the need to be better prepared to deal with large migration influxes. The Commission, therefore, presented in 2016 a proposal to revise the Reception Conditions Directive to further harmonise reception conditions throughout the EU and to reduce the incentives for secondary movements. In September 2016, the European Asylum Support Office (EASO), now the European Union Agency for Asylum (EUAA), released the EASO guidance on reception conditions: operational standards and indicators. The guidance describes specific common standards which are applicable to national reception systems across all EU Member States and the indicators with which such standards should be measured against. The standards included in the document reflect already existing practice in EU Member States.

C. The **Qualification Directive**¹⁸ clarifies the grounds for granting international protection and therefore making asylum decisions more robust. It also provides access to rights and integration measures for beneficiaries of international protection. The **Qualification Directive** sets out criteria for applicants to qualify for refugee status or subsidiary protection status and sets out the rights afforded to persons who have been granted one of those statuses. They include the right to a residence permit, travel document, access to employment, access to education, social welfare, healthcare, access to accommodation, access to integration facilities, as well as specific provisions for children and vulnerable persons. More specifically, it:

- clarifies the grounds for granting and withdrawing international protection
- regulates exclusion and cessation grounds

¹⁸ Lex - 32011L0095 - en - EUR-lex EUR. Available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0095>

- improves the access of beneficiaries of international protection to rights and integration measures
- takes into account the specific practical difficulties faced by beneficiaries of international protection
- ensures that the best interest of the child and gender-related aspects are taken into account in the assessment of asylum applications, as well as in the implementation of the rules on the content of international protection.

o In order to further streamline the standards for the recognition and protection offered at EU level, the Commission proposed, in 2016, a proposal for a Qualification Regulation. The 2016 proposal for a new Qualification Regulation aims at:

- further harmonising common criteria for qualifying for international protection, thus ensuring further convergence of asylum decisions across the EU
- codifying the relevant case law of the Court of Justice of the European Union in this field
- ensuring that protection is granted only for as long as the grounds for persecution or serious harm persist, without affecting the person's integration prospects
- addressing secondary movements of beneficiaries of international protection
- further clarifying and harmonising the rights that beneficiaries of international protection are entitled to.

The Commission supports a quick adoption of the text of the political compromise agreed upon by the European Parliament and the Council in 2018.

- D. The **EURODAC Regulation**¹⁹ supports the determination of the Member State responsible under the Dublin Regulation and allows law enforcement authorities access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious

¹⁹ Lex – 32013R0603 - en - EUR-lex (no date) EUR. Available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32013R0603>

crimes, such as murder, and terrorism. The Eurodac system enables the **comparison of fingerprints** of asylum applicants and persons apprehended in connection to an irregular or illegal border crossing in 32

States.

E. The **European Union Agency for Asylum**²⁰ contributes to improving the functioning and implementation of the Common European Asylum System. It provides operational and technical assistance to Member States in the assessment of applications for international protection across Europe. The EUAA offers a wide range of operational and technical support to EU countries. With the aim of bringing greater convergence to asylum and reception practices across the EU, in line with the high standards of the Common European Asylum System (CEAS), the Agency can:

- o **quickly deploy operational assistance** to EU countries facing migratory pressure
- o draw on a **permanent Asylum Reserve Pool of 500 national officials** who are available to the Agency and can be **quickly deployed** anywhere across the EU
- o build a **broad asylum training curriculum** for national officials, to achieve its aim of becoming the EU's accreditation body for international protection matters
- o **protect the fundamental rights of asylum seekers** by:
 - appointing a 'Fundamental Rights Officer'
 - establishing a complaints mechanism
 - strengthening the role of civil society organisation and NGOs
- o **improve coordination** with countries of origin and transit by:
 - appointing liaison officers in non-EU countries
 - working with authorities in non-EU countries to help build asylum and reception capacity that is in line with international law. As of 31 December 2023, the Agency will begin monitoring how EU countries implement EU law on asylum and

²⁰ *European Union Agency for asylum* (no date) *European Union*. Available at:

https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-union-agency-asylum-euaa_en

reception practices. The drawing up of recommendations to remedy shortcomings will begin on the day that the Dublin Regulation is replaced or otherwise updated.

F. In September 2020, the Commission adopted a **New Pact on Migration and Asylum**²¹, containing a number of solutions through new legislative proposals and amendments to pending proposals to put in place a system that is both humane and effective, representing an important step forward in the way the Union manages migration. In September 2022, the European Parliament and the five rotating Presidencies of the Council signed a joint declaration on the timeline for the organisation, coordination and adoption of proposals under the Common European Asylum System (CEAS) and the New Pact by the end of this legislative period, with the view to conclude negotiations by February 2024. The Council on the 8th of June 2023 took a decisive step towards the adoption of the New Pact.

11. Bloc Positions

Because of their various geopolitical, economic, and social settings, the positions of different EU country blocs on migration and asylum changes differed greatly.

A. Visegrad Countries

The Visegrad Group, made up of four Central European countries, has frequently advocated a more restricted approach to migration and refugee issues. These countries have stressed the necessity of controlling external borders, lowering the number of asylum seekers entering the EU, and preserving national sovereignty over migration policies. They have been sceptical of the EU's proposed obligatory relocation programs, which they claim encroach on their national autonomy in dealing with migration concerns. The Visegrad countries have also been more public in their support for assisting refugees in their home countries rather than relocating them within the EU.

²¹ *New pact on migration and asylum Migration and Home Affairs*. Available at:

https://home-affairs.ec.europa.eu/policies/migration-and-asylum/new-pact-migration-and-asylum_en

B. Nordic/Scandinavian Countries

In general, Nordic countries have backed a more humanitarian attitude to migration and asylum. They have been willing to welcome a large number of asylum seekers and refugees and have advocated for the construction of an equitable and efficient EU asylum system. These countries recognize the significance of burden-sharing across EU member states, with a particular emphasis on aiding frontline countries suffering increased migrant and refugee influxes. They frequently support systems that promote EU solidarity and provide sufficient reception and integrating measures for asylum seekers.

C. Balkan Countries

Because of their geographical location as transit sites for many migrants and refugees, Balkan countries have faced unique challenges in regulating migratory flows. Their views on migration and asylum reform have varied according on the circumstances of each country. Greece, in particular, has been at the forefront of dealing with a significant number of irregular entries, while nations such as Croatia have faced pressures to secure their borders and successfully conduct asylum processes.

D. Central and Western EU Countries :

Positions on migration and asylum changes in Central and Western EU members have been more variable. Some countries, like Germany, have taken a more friendly stance toward refugees, arguing for burden-sharing and the creation of a more coherent EU asylum system. However, there have been differences within this bloc on matters like as obligatory relocation quotas and border controls. Some countries have been more active in calling for tougher border restrictions and a reduction in illegal migration, whereas others have emphasized a more inclusive and humanitarian approach.

E. Southern EU Countries

Southern EU nations have frequently been on the frontlines of illegal migratory routes, posing considerable management issues. These countries have asked the EU for additional solidarity and assistance in dealing with the entry and processing of asylum seekers. They have also emphasized the importance of burden-sharing and the development of effective systems for more evenly dispersing asylum seekers across the

EU. Domestic politics and regional dynamics, like those of other blocs, have influenced their attitudes on migration and asylum reforms.

To Conclude, different EU nation blocs' perspectives on migration and asylum policies have been diverse and sometimes contentious. Balancing national interests, regional realities, and solidarity and humanitarian values has long been a difficulty for the EU. As migration dynamics change, obtaining a complete and cohesive agreement on migration and asylum changes remains a difficult undertaking.

12. Conclusion

The common European Asylum System has made significant progress in encouraging cooperation among EU member states and establishing certain uniform standards for asylum processes. However, its flaws, such as discrepancies in recognition rates, overburdening of frontline countries, insufficient receiving conditions, and procedural inefficiencies, pose substantial obstacles. To address these flaws, a thorough and coordinated effort is required to improve the system's impartiality, efficiency, and protection of asylum seekers and refugees. The EU may work towards a better and more effective asylum system that preserves its fundamental values by learning from past mistakes and taking a more cohesive and human-rights-oriented approach.

13. Points to be Addressed

1. What Legal Reforms to the Common European Asylum System can be done to improve its overall competence?
2. What measures can the EU adopt to be able to better respond to large-scale Migration Crises and how new ones can be prevented?
3. What measures and Mechanisms can EU member states adopt to ensure safe passage and reduction of human rights violations in migration routes towards the Union?
4. How can EU Member states combat disparities in Asylum Acceptance and streamline the process of granting Asylum?

5. Can the EU provide Legal Assistance to a full extent to migrants arriving at its borders?
6. How can Solidarity, Common Response and Burden-sharing be ensured for future migration distribution?
7. Can EU Member States initiate discussions on the creation of a possible Common European Asylum and Migration Policy?
8. How can the EU achieve cooperation with external entities, countries and organizations to be able to better respond to incoming migration?
9. In which ways can the EU address and combat the underlying causes of migration?
10. How can EU's Asylum procedures, Secondary Movements and Reception Condition be improved?

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