Hacettepe University Institute of Social Sciences

Department of International Relations

THE EUROPEAN UNION AND "ASYLUM SHOPPING": A COMPARATIVE ANALYSIS

Vildan TAŞTEMEL

Master's Thesis

Ankara, 2019

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YAYIMLAMA VE FİKRİ MÜLKİYET HAKLARI BEYANI

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ETİK BEYAN

Bu çalışmadaki bütün bilgi ve belgeleri akademik kurallar çerçevesinde elde ettiğimi, görsel, işitsel ve yazılı tüm bilgi ve sonuçları bilimsel ahlak kurallarına uygun olarak sunduğumu, kullandığım verilerde herhangi bir tahrifat yapmadığımı, yararlandığım kaynaklara bilimsel normlara uygun olarak atıfta bulunduğumu, tezimin kaynak gösterilen durumlar dışında özgün olduğunu, Doç. Dr. Mine Pınar GÖZEN ERCAN danışmanlığında tarafımdan üretildiğini ve Hacettepe Üniversitesi Sosyal Bilimler Enstitüsü Tez Yazım Yönergesine göre yazıldığını beyan ederim.

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To my dear son, Tuna

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ABSTRACT

Throughout history, people have moved from one place to another either individually or in groups due to various reasons, making migration movements common and widespread. Among migrants, refugees—who are defined as forced migrants uprooted by fear of persecution, conflicts and violence—have a particular place since refugee protection is a multi-faceted issue affecting countries and regions. Europe, and the European Union (EU) in particular, had previously encountered mass migration movements. Nevertheless, the ongoing refugee protection crisis—which started in 2011 following the turmoil in the Middle East and North African countries and peaked in 2015—has turned into an unprecedented humanitarian crisis. Although the EU tried to respond to the protection needs of asylum seekers reaching its territory under the framework of the Common European Asylum System (CEAS), it has failed to properly manage the crisis. As a result of this, the inherent deficiencies of the CEAS have also become apparent. In this vein, the main objective of this thesis is to analyse the issue of asylum shopping—a significant problem of the EU in the field of asylum and migration—and to determine its extent and underlying reasons with a focus on the recent refugee protection crisis. To this end, four EU Member States—namely Greece, Germany, Hungary and Sweden—are selected as representative cases, and their asylum policies and practices are compared and contrasted. Based on such analysis, this thesis concludes that there are vast differences among the asylum policies and practices of the EU Member States, and due to the failure of the EU in ensuring complete harmonisation, asylum shopping problem has continued during the recent crisis.

Key words: Asylum shopping, European Union, Common European Asylum System (CEAS), refugee, asylum seeker.

ÖZET

Tarih boyunca insanlar, çeşitli sebeplerle bireysel olarak veya gruplar halinde bir yerden bir yere göç etmiştir ve bu nedenle göç, her zaman yerde görülebilen yaygın bir olgu olmuştur. Göç eden gruplar arasında zulüm korkusu, çatışma ve şiddet gibi sebeplerle yerlerinden edilen insanlar olarak tanımlanan mülteciler, mültecilerin korunmasının kendine has dinamikleri olan çok yönlü bir konu olması nedeniyle özel bir yere sahiptirler. Avrupa ve özellikle Avrupa Birliği (AB) tarihinde birçok kez kitlesel göç hareketleriyle karşılaşmıştır. Ancak 2011 yılında Orta Doğu ve Kuzey Afrika ülkelerini etkisi altına alan çalkantılarla başlayıp 2015 yılında zirveye ulaşan ve halen devam etmekte olan mülteci koruma krizi, AB için benzeri görülmemiş bir insani krize dönüşmüştür. AB, topraklarına ulaşan sığınmacıların korunma ihtiyaçlarına Avrupa Ortak Sığınma Sistemi (AOSS) çerçevesinde yanıt vermeye çalışsa da bu krizi yönetmeyi başaramamıştır. Bunun sonucunda ise AOSS'nin temel eksiklikleri ortaya çıkmıştır. Bu bağlamda bu tezin amacı, sığınma ve göç alanlarında AB için ciddi bir sorun teşkil eden mükerrer iltica talepleri sorununun incelenmesi ve son dönemde yaşanan mülteci koruma krizi odağında bu sorunun boyutu ve sebeplerinin belirlenmesidir. Bu amaçla dört AB Üye Ülkesi—Yunanistan, Almanya, Macaristan ve İsveç—örnek ülkeler olarak seçilmiş ve sığınma alanındaki politika ve uygulamaları karşılaştırmalı olarak analiz edilmiştir. Bu analizden yola çıkarak bu çalışmada AB Üye Ülkelerinin sığınma politika ve uygulamaları arasında ciddi farklılıklar olduğu ve AB'nin tam uyumlaştırma konusundaki başarısızlığı nedeniyle mükerrer iltica talepleri sorununun son yıllarda yaşanan mülteci koruma krizi esnasında da devam ettiği sonucuna varılmıştır.

Anahtar kelimeler: Mükerrer iltica talepleri, Avrupa Birliği, Avrupa Ortak Sığınma Sistemi (AOSS), mülteci, sığınmacı.

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ABBREVIATIONS

AFSJ	Area of Freedom, Security and Justice
BAMF	Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees)
CEAS	Common European Asylum System
CoE	Council of Europe
CFSP	Common Foreign and Security Policy
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ECRE	European Council on Refugees and Exiles
EU	European Union
EURODAC	European Asylum Dactyloscopy Database
eu-LISA	European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice
Frontex	European Agency for the Management of Operational Cooperation at the External Borders
GDP	Gross Domestic Product
IAO	Immigration and Asylum Office
IDP	Internally Displaced Persons
JHA	Justice and Home Affairs
MENA	Middle East and North Africa

TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
WWII	World War II

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INTRODUCTION

Throughout history people have moved from one place to another, either individually or in groups, due to varying considerations concerning climate, socio-economic conditions, politics, security, etc. In the modern state system, while responsibilities of a state towards its citizens had already been established, the inability or unwillingness of the state to provide minimum conditions in terms of peoples' safety and welfare have resulted in refugee movements in various parts of the world.

In modern history, the first group of people accepted as refugees were the French Protestants, who left France due to religious oppression and fear of death in 1685 and sought refuge in neighbouring countries (Barnett, 2002: 239). However, it was by the twentieth century that the international community began to realize the protection needs of the people who were forced to abandon their home countries. Earliest international initiatives were taken under the auspices of the League of Nations, and Fridtjof Nansen served as the first High Commissioner for Refugees between 1920 and 1930.

The event which placed refugees at the top of the agenda of the international community was the Second World War. Unprecedented violence caused by the war led to forced displacement of millions in Europe. In the wake of this crisis, which was too severe to be handled by states individually, the first concrete initiatives were introduced for refugee protection. One of the cardinal steps was the establishment of the Office of the United Nations High Commissioner for Refugees (UNHCR) in 1950. Although the Office of the UNHCR was initially established for a renewable period of three years, it became a permanent office of the United Nations (UN) in 2003 (Feller, 2001a). Such development suggests the continued relevance and importance of refugee protection for the international community.

In the legal realm, the Convention relating to the Status of Refugees was adopted in 1951 in Geneva. This Convention is still the main international document regulating the issue of the protection of refugees. Adopted right after the Second World War, the Convention originally reflected the circumstances of the period by attributing "refugee status" only to the Europeans affected by the war. In 1967, the Protocol relating to the

Status of Refugees was adopted, and the scope of the 1951 Convention was expanded to cover refugees from other regions too (Goodwin-Gill, 2008). Currently, the 1951 Convention and the 1967 Protocol provide the basic tenets of international refugee protection regime.

Wars, conflicts, violence and human suffering continued in many parts of the world, and millions of people were displaced, and/or became refugees or stateless as a result of such incidents in the following decades. In the 1950s and 1960s, Europeans fleeing the Communist rule constituted the main group of refugees while the international community witnessed refugee influxes from Cambodia, Laos and Vietnam in the 1970s. After the Cold War, incidents of political and ethnic violence resulted in mass refugee movements throughout the world (Barnett, 2002: 248).

According to the UNHCR—which is the sole global organisation responsible for the management of refugee protection—there are 70.8 million displaced people including 25.4 million refugees, 41.3 million IDPs and 3.5 million asylum seekers all over the world as of June 2019 (UNHCR, 2019b). While the Syrian conflict continues to be the single biggest source of displacement, humanitarian crises in other countries (including but not limited to) Iraq, Yemen, South Sudan and the Democratic Republic of the Congo cannot be underestimated (Kasamani, 2017). While violence and conflicts continue to uproot people in many parts of the world, there are certain destination regions that asylum seekers generally head towards. Among these regions the European continent has a special place, and thus, deserves special attention. Europe has always been at the core of the refugee protection issue since either the events that led to huge numbers of refugees occurred on this continent, or the continent itself has been a target destination for asylum seekers and/or refugees due to its political and economic appeal. Similarly, in the recent humanitarian crisis in Syria, the European Union (EU) Member States have been preferred as main destination countries by refugees. Considering the importance of the European continent in refugee protection and the severity of the current situation, this thesis aims to address the implications of the current refugee protection crisis on the EU through a comparative analysis on the policies of select EU Member States. To this end, it specifically focuses on the aspect of "asylum shopping"—which is defined as "the phenomenon where a third-country national

applies for international protection in more than one EU Member State with or without having already received international protection in one of those EU Member States" ("Asylum Shopping", 2019).

Currently, the EU Member States are parties to both the 1951 Geneva Convention and the 1967 Protocol ("States Parties to the 1951 Convention", n.d.). Meanwhile, European countries have become more integrated within the EU in the second half of the twentieth century, and specific policies have been developed with respect to refugee protection and asylum with the aim of developing a common system. Based on the main principles of the 1951 Convention and its 1967 Protocol, as well as other regional documents such as the European Convention on Human Rights and the Charter of the Fundamental Rights of the European Union, the EU has been developing the Common European Asylum System (CEAS) since 1999. Although the main aim of the CEAS was to harmonize the policies and practices of the Member States in migration and asylum issues, the recent refugee protection crisis has proven that the extent of harmonisation and integration is highly controversial. The discrepancies between the policies of the Member States have led to a major problem for the EU, which is referred to as "asylum shopping". The severity of the asylum shopping problem has recently become more evident as the number of asylum seekers has gradually increased over the last couple of years.

Refugee protection is an issue having political, social, humanitarian and economic dimensions. Widely affecting people, societies, countries and the international society, eventually it occupies a significant place in scholarly debates too, and substantial literature has emerged over the course of time. To begin with, there are influential scholars who have produced seminal works on international refugee law and refugee protection regime. Guy S. Goodwin-Gill works extensively on this issue from a legal perspective with a focus on human rights issues and non-refoulement. Addressing the evolution of the international refugee protection regime, he assesses the past, present and future of the current system. He argues that the current regime that is based on the 1951 Convention and the 1967 Protocol is successful and effective despite having constraints, the most important being the lack of a mechanism to identify the state to be charged with the processing of an asylum claim (Goodwin-Gill, 2017: 6). Betts and

Collier (2017: 9) discuss the existing refugee protection system in the light of the 2015 European refugee protection crisis and state that the system needs a new approach. They argue that refuge is not only a humanitarian issue but also has a development aspect that should not be ignored, i.e., education and employment. Also, they claim that "there is no one-size-fits-all solution; different models will be effective for different countries".

Concerning the interrelation between refugee protection and world politics, Betts and Loescher (2011: 1) argue that "…refugees are more than simply a human rights issue. Refugee movements are also an inherent part of international politics". Moreover, Betts et al. (2012: 103) address the role of politics in refugee protection with a focus on the UNHCR. They argue that although the UNHCR is a non-political agency, it operates in an extensively political context. Politics is a challenge for the UNHCR since it needs to strike a balance between the changing politics of the states and the moral protection needs of the refugees.

As for the issues of refugee protection and asylum in Europe, a vast literature addressing the European integration and policies from different angles has accumulated since 1999 when the initiative for the CEAS began. The main debate about the CEAS is related to the intentions of the Member States and possible future direction of the common system, that is, whether more restrictive or more liberal policies would be generated at the EU level. Guiraudon (2000) initiated this discussion by arguing that the Member States aimed at increasing migration controls with an integrated approach under the EU since they had started to confront obstacles in their national systems. Levy (2005) argues that although the Treaty of Amsterdam envisaged the establishment of a common area of freedom, security and justice, the 9/11 attacks started a process of securitization in the asylum policy of the EU, which could undermine key liberal values and lead to a higher level of restriction. On the other hand, Kaunert (2009) states that the EU has remained loyal to the Geneva Convention and its international obligations with the CEAS despite the securitization trend following the war on terror discourse, and the first phase of the CEAS has proven to be progressive and liberal rather than restrictive. Kaunert and Leonard (2012a: 1409) argue that the shift in policy making about refugees from states to the EU has resulted in the development of more generous and liberal policies. Also, Thielemann and El-Enany (2010) argue against the "Fortress

Europe" thesis[1] and posit that the efforts for the CEAS have strengthened the protection of refugees in Europe.

The year 2011 turned out to be a decisive moment for the EU as the number of migrants reaching the borders of the Union has increased since then. While turmoil broke out in some of the North African and Middle Eastern (MENA) countries such as Libya and Syria, the circumstances that the EU Member States have confronted in dealing with refugees and asylum seekers have changed drastically. These crises became a test for the newly developing CEAS and the Dublin system in particular. Thus, the debates on the most recent refugee protection crisis in Europe and its implications on the EU are noteworthy.

Tsourdi and De Bruyker (2015) argue that in spite of being an advanced protection framework, the CEAS, as proven in the recent Syrian crisis, fails to ensure a fair burden sharing among the Member States, and external border measures of the EU in the absence of opportunities for legal entry decrease the prospects of protection for those in need of protection. Orchard and Miller (2014) discuss refugee protection provided in Europe during the recent crisis and compare the responses of three border states—Bulgaria, Greece and Italy—as well as three leading protection providers—Germany, Sweden, Norway—for Syrian asylum seekers. They argue that the overall response of the EU to the crisis was insufficient, and despite individual efforts by Member States like Germany, greater solidarity is needed to improve the response of the EU to the recent crisis.

In the wake of the recent crisis, the EU embarked on a reform process in the CEAS. Hence, there is another major debate that revolves around the future of asylum and refugee protection in the EU. Goodwin-Gill (2016) has argued on several occasions that the EU needs a special institution, a European Migration and Protection Agency, in order to improve its refugee protection regime with greater solidarity among the Member States. Guild (2016) addresses the argument of Goodwin-Gill by evaluating the

[1] According to the "Fortress Europe" thesis, policies and practices of the EU related to the asylum and migration issues have become increasingly more restrictive. The proponents of this approach posit that migration should be managed at the external borders of the Union, and asylum seekers and migrants should be prevented from entering into the EU (Lehne, 2016).

performance of the CEAS over the last fifteen years. She argues that the EU has largely failed in providing international protection to those in need with the CEAS, and the proposal of Goodwin-Gill for a new European agency is among the best solution alternatives. However, she notes that there will be numerous issues to be resolved even in the case of the establishment of a new agency, such as ensuring independence from interference and the ability/authority to adopt binding decisions for all Member States.

The recent refugee protection crisis has also raised questions about the Dublin system, which is an essential component of the CEAS. Trauner (2016) argues that, despite efforts by the EU for harmonizing the asylum policies of the Member States under the CEAS, there are still considerable differences, and this prevents the Dublin system from functioning well. Similarly, Fratzke (2015) observes that the Dublin system has failed to fulfil its two main objectives, namely, assisting those in need of protection to have easier access to protection and preventing secondary movements of asylum seekers.

On the other hand, asylum shopping constitutes a major problem for the EU Member States in the current asylum system. Nevertheless, despite the severity of the current crisis and the gravity of the asylum shopping problem, the existing literature on asylum shopping and different policies/practices of the Member States has been limited. In her study where she examines the effectiveness of the Dublin system, Fratzke (2015) mentions asylum shopping as an indicator of the ineffectiveness of the current system and states that it continues to be a major problem for the EU. In their comprehensive work on onward migration and Dublin Regulation, Takle and Seeberg (2015) aim to determine the characteristics of the people engaging in secondary movements within the EU, as well as the role of the Dublin Regulation in prompting these people for onward migration. Brekke (2015: 145) addresses the role of national differences in reception conditions on secondary movements of asylum seekers by taking the movements of Eritrean asylum seekers from Italy to Norway as a case study. Kuschminder and Waidler (2019) discuss the decision making factors of migrants in onward migration from Turkey and Greece and state that circumstances in the transit countries are influential in the decisions of the migrants.

In their study on the common European refugee policy, Bordignon and Moriconi (2017) argue that different national responses of Member States became obvious in the recent refugee protection crisis. They briefly compare the reasons and consequences of these differences and conclude that further attempts are needed for better burden sharing, the form of which can be seeking consensus for revising the Dublin system, providing financial support to Member States under excessive stress, or asking compensation from uncompromising Member States.

In the past eight years, the world has witnessed a humanitarian plight with the escalation of conflict and violence in Syria. While this crisis breaking out in Syria has had drastic impact on Syrian people, neighbouring countries, as well as the international community, it has also turned into a test case particularly for the EU. So far, the EU has failed to pursue a holistic approach to the refugees arriving at the borders of the Union. Meanwhile, the vast differences among the asylum policies and practices of the Member States have become more apparent, bringing the asylum shopping problem to the forefront. However, as the review of the literature suggests, there is a gap in the existing International Relations scholarship in terms of the analysis of the asylum shopping problem of the EU by comparing the differences among the asylum policies and practices of the Member States. In this regard, with its primary focus placed on issue of asylum shopping, this thesis aims to contribute to the growing literature with a comparative analysis of the select EU Member States.

Accordingly, it examines the extent and underlying reasons of the asylum shopping problem during the recent refugee protection crisis by answering its main question: why does the EU face the problem of asylum shopping? In addition to this main question, answers are also sought to the following two sub-questions to complement the analysis: Based on the implementations of the EU Member States in the recent crisis, does the CEAS function properly in practice; and what are the implications of the recent refugee protection crisis for the EU?

To this end, this thesis conducts a qualitative analysis with also some descriptive parts in which both primary and secondary data sources are used. In interpreting data and building the main argument, the methods of content analysis and document review are

used in addition to representative statistical data to support evaluations based on the needs of each chapter. Accordingly, this thesis is structured under three main chapters besides the introduction and the conclusion. In the first chapter, the CEAS is addressed in detail. The main instruments and programmes related to the CEAS are explained to depict the development process of the CEAS with the aim to detail the sequence of significant steps and events leading to the creation of the CEAS, while content analysis is used in the analysis of official documents of the EU.

The second chapter addresses asylum shopping as a concept. Asylum shopping is roughly related to the number of applications lodged by a single asylum seeker across the EU where relevant figures are recorded in the central system of Eurodac. Thus, Eurodac provides the main data to determine whether the CEAS and related efforts of the EU have been able to prevent asylum shopping in the EU. In this chapter, a descriptive statistical analysis is carried out on the basis of the publicly available data and statistics. Furthermore, on the basis of such analysis, country selection method for case studies is explained before moving on to the cases of select Member States in the third chapter.

The third chapter is devoted to the comparison of the four select EU Member States. Since currently there are 28 Member States and examining the policies and practices of all these countries is not an achievable objective, for the purposes of this thesis, a limitation is imposed by using the most relevant statistics. To this end, statistics concerning the total asylum applications across the EU; shares of Syrians among all asylum applicants in the Member States; and recognition rates of the Member States for the citizens of extra-EU28 countries and Syrian nationals are used. Based on the analyses of these data, Germany, Greece, Hungary and Sweden are selected as case countries to be compared in terms of their policies and practices related to asylum and protection of refugees. Finally, after comparing and contrasting the cases of the two groups of countries, the last chapter concludes that vast divergences exist among the select Member States and these constitute the main underlying reason of the continuation of the asylum shopping problem across the EU during the recent refugee protection crisis.

CHAPTER 1

COMMON EUROPEAN ASYLUM SYSTEM

The concept of asylum has been addressed as a human right in numerous international and regional documents. Mainly as a result of an increasing awareness concerning the protection needs of the people fleeing persecution following the Second World War, it was first recognized by the 1948 Universal Declaration of Human Rights (UDHR) on a global scale. Article 14(1) thereof stipulates that "Everyone has the right to seek and to enjoy in other countries asylum from persecution" (UNGA, 1948). As the wording of the Article shows, the Declaration does not recognize a right of asylum directly, but rather the right of a person to seek for and enjoy protection in other countries is acknowledged. While asylum was mentioned in only one article of the Declaration, in 1951, the Geneva Convention relating to the Status of Refugees became the main international legal document regulating refugee protection.

Currently, the provisions of the 1951 Geneva Convention together with the Protocol relating to the Status of Refugees, which was adopted in 1967 to widen the scope of international refugee protection regime, constitute the basis for the universal refugee protection regime. As stated by Feller (2001b: 582), the "1951 Convention has legal, political and ethical significance that goes beyond its specific terms". Most importantly, it not only provides a universally accepted refugee definition, which is still a primary reference, but also prescribes the principle of non-refoulement as the backbone of protection.

When it comes to the European continent, the 1950 European Convention on Human Rights (ECHR) concluded by the members of the Council of Europe (CoE) was the first regional document drafted concerning human rights following the UDHR. Although the ECHR aimed to guarantee that the rights contained in the UDHR are accepted and fulfilled in the region and that they are implemented effectively through the jurisdiction of the European Court of Human Rights (ECtHR), it did not have a specific provision on asylum similar to Article 14 of the Declaration (Mole, 2000: 6). However, Article 3 of the Convention stipulates that "No one shall be subjected to torture or to inhuman or

degrading treatment or punishment" (CoE, 1950). This provision has given rise to a special way of interpretation for the ECtHR on the asylum cases known as "protection *par ricochet*". The Court used it to indirectly interpret that the people at risk of being exposed to human rights violations in case of expulsion to a country should not be returned to this country, and thus, prohibited the expulsion of asylum seekers and refugees under the ECHR (Cherubini, 2015: 103). While Article 3 is the most important provision having impact on the issue of asylum, Article 5 concerning the right to liberty and security has implications on the detention of asylum seekers. It is noteworthy that although all EU Member States are bound by the Convention and the decisions taken by the ECtHR, the EU as a legal entity has not acceded to the Convention yet and is still outside the scrutiny of the Court in terms of the breaches of human rights (Lavrysen, 2012: 220, 226).

Apart from the arrangements concerning human rights under the Council of Europe, the EU has created a separate system for the management of asylum. It can be argued that asylum and refugee protection in the EU are of unique nature due to the distinctive characteristics of the Union itself. As stated by Peterson and Shackleton (cited in Sielonen, 2016), "it is neither a state nor an international organization in the traditional sense. Instead, it comprises of unique institutions that do not fully match any other bodies at national or international level".

All the 28 Member States of the EU[2] are parties both to the UDHR and the 1951 Convention as individual countries. Hence, each Member State acknowledges the right to seek and enjoy asylum as well as the principle of non-refoulement. At the EU level, absolute commitment of the Union to the 1951 Convention and its Protocol dated 1967 has been reiterated on many occasions. The Charter of Fundamental Rights of the European Union adopted in 2000 is a clear example of this commitment. Article 18 of the Charter envisages that "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community" (EU, 2000).

[2] At the time of writing, the United Kingdom continues to be a full member of the EU, and thus, the total number of the Member States is stated as 28.

Despite the commitment of both Member States and the EU to the universally accepted right to asylum as well as the basic tenets of the Geneva Convention, at the beginning, there was not an integrated system for asylum and migration issues. Until the end of the 1990s, each Member State had continued to develop its own policies on migration and asylum. However, beginning with the Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Issues, the need for cooperation and solidarity among Member States in these sensitive issues started to become more prominent (Arditis et al., 2005: 11). According to this Communication, deepening integration requires solidarity and cooperation in dealing with such challenges, and it refers to a European Immigration and Asylum Policy which might be developed as a general framework (Commission of the European Communities, 1994). Thus, it can be argued that a harmonized approach to asylum and migration has been an integral part of a deeper and closer Union. In the following part, the evolution of the CEAS as the main attempt of the EU for harmonisation is addressed. To this end, key arrangements of the EU having significant impact on the issue of asylum such as the Dublin Convention, Treaty on the European Union, Treaty of Amsterdam and Treaty of Lisbon are discussed briefly. Also, the main instruments constituting the CEAS, Dublin and Eurodac Regulations, as well as the Qualification, Asylum Procedures and Reception Conditions Directives, are addressed within the scope of the broader multi-annual programmes.

1.1. DUBLIN CONVENTION

"Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities", namely the Dublin Convention, was the first step of the Dublin system constituting the backbone of the CEAS. It was signed in 1990 to solve questions regarding the allocation of responsibility among Member States for processing an asylum claim made by a third country national who has the freedom of movement among the Member States following the Schengen arrangements (Fratzke, 2015: 4). Its ultimate objective was to contribute to the free movement of persons by preventing two common phenomena. One of them is "asylum shopping", which refers to multiple asylum applications across

the Community, while the other one is “refugees in orbit”, which refers to cases where none of the Member States assumes responsibility for processing an asylum application (Hurwitz, 1999: 648).

The Convention was based on two main principles: only one Member State is held responsible for processing an asylum application, and the determined Member State must complete the examination of the asylum application (EU, 1990a). To fulfil its objectives on the basis of these principles, the Dublin Convention set out the criteria to be used in hierarchical order for determining the responsible Member States in asylum applications. However, the Schengen Convention already included criteria for determining the state responsible. Thus, in order to avoid potential conflicts between the two documents, it was decided that the Dublin Convention would replace the criteria of the Schengen Convention related to asylum (Marinho & Heinonen, 1998).

Article 3(2) of the Dublin Convention clearly states that each asylum application “shall be examined by a single Member State, which shall be determined in accordance with the criteria defined in this Convention. The criteria set out in Articles 4 to 8 shall apply in the order in which they appear”. These criteria can be summarized as follows. The first is the existence of a family member having refugee status in a Member State. However, this criterion is restricted only to the spouse and unmarried children under eighteen years old or parents for the asylum seekers aged below eighteen years old. Thus, extended family members are not taken into consideration. The second is possession of a valid visa or residence permit. The third is illegal entrance. When it is proven that an asylum seeker has entered the borders of the Community illegally via a Member State, that Member State is held responsible for processing the asylum claim. On the other hand, the fourth concerns legal entrance. Member State responsible for controlling the entrance of the asylum seeker into the Community is also responsible for handling the application. Finally, the fifth is the country of application. When the above four criteria do not apply to an asylum seeker, the Member State where the asylum seeker lodges the application is held responsible for processing the application.

Apart from these criteria, pursuant to Article 3(4), generally known as the opt-out clause, any Member State may wish to examine a specific asylum application if the

applicant agrees as well. Also, a Member State, which does not have responsibility for an asylum claim based on these criteria, may voluntarily process it on humanitarian grounds related to family issues or cultural factors on condition that the applicant agrees (Marinho & Heinonen, 1998: 3).

With respect to the Dublin Convention, it must be noted that the Member States are obliged to examine asylum applications on the basis of their national legislation with due regard to international obligations. When it was concluded, the Convention raised questions concerning the expulsion of refugees. As a natural consequence of the main purpose of the Convention, when the responsible state is determined, the applicant is expelled and sent to the responsible state. Furthermore, Article 3(5) of the Convention allows for the Member States to send an applicant to any third country considered to be safe under national law in accordance with international obligations. Nevertheless, these provisions are not compatible with the protection needs of asylum seekers (Achermann & Gattiker, 1995: 22).

While concepts such as host third country or safe third country were crucial in the transfers made in line with the Dublin Convention, the Member States were aware of the major differences between their practices. Thus, the “Ministers of the Member States of the European Communities responsible for Immigration” met in London between 30 November and 1 December 1992 with the aim of harmonizing approaches with respect to the concept of host third countries in particular, and the London Resolutions were adopted. However, as Özcan (2005: 74-75) argues, since they were non-binding instruments, the London Resolutions did not yield the expected outcomes for harmonization and further reinforced the Fortress Europe by keeping the protection responsibility outside the Community borders.

Seven years after its signature, the Dublin Convention entered into force in 1997 upon its ratification by all signatory parties. The Dublin system based on this Convention currently covers 32 countries—all EU Member States as well as Norway, Iceland, Switzerland and Liechtenstein (Fratzke, 2015: 3). Since its adoption, the Dublin Convention has served as the backbone of the European asylum system. As much as it is important for the CEAS, the Dublin Convention has been controversial. The

applicability of its criteria has been heavily criticized within the EU. Thus, since its entry into force in 1997, it has been subject to revision twice. These changes in the Dublin Convention, namely Dublin II and Dublin III, are addressed in the subsequent sections of this Chapter.

1.2. TREATY ON EUROPEAN UNION

Under the pressure of major changes affecting the European continent such as the collapse of the Communist Bloc and the unification of Germany in the 1990s, which were accompanied by vast numbers of refugees, the Community needed more powerful institutions (Lavenex, 2009). Thus, the heads of Member States convening in Maastricht in December 1991 concluded the Treaty on European Union, aka the Maastricht Treaty, with the aim of “marking a new stage in the process of European integration” as stated in the preamble of the treaty (EU, 1992). Entering into force in 1993, the Maastricht Treaty “created a European Union based on three pillars: the European Communities, the common foreign and security policy (CFSP) and cooperation in the field of justice and home affairs (JHA)” (Sokolska, 2018a).

With respect to asylum, the Maastricht Treaty formalized the existing intergovernmental cooperation under the third pillar by listing asylum and immigration issues among the “matters of common interest” of the Member States in Article K.1. In conjunction with asylum and migration, the only matters to be addressed at the European level were the formation of a list of the countries of the nationals that need visas to enter the Union and a common visa format (Bunyan & Webber, 1995: 6). As stated by Bunyan and Webber (1995: 31, 32), the structure created by the Maastricht Treaty for the asylum and migration issues was heavily based on the intergovernmental cooperation without the oversight of either the European Parliament or the European Court of Justice, and thus, the emerging policies were rather restrictive. However, acknowledging the deficiencies of the structure created by the Maastricht Treaty, Guild (2006: 640) argues that it provided an opportunity for the discussion of these issues by the relevant officials of the Member States and thus was promising.

1.3. TREATY OF AMSTERDAM

The period following the Maastricht Treaty's taking effect was turbulent in Europe due to the dissolution of the Yugoslav Republic, and a dramatic increase was recorded in the number of people seeking protection in other European countries. In the face of this challenge, various attempts were made at the EU level on certain issues such as visa arrangements, determination of minimum standards for asylum procedures, harmonization of the refugee definition and temporary protection and burden sharing among Member States, but they could not yield the expected result (Özcan, 2005: 109). According to Kaunert and Leonard (2012b: 8), the reasons of the inefficiency of these attempts were the dominance of the Member States and limited roles of the Commission and the Parliament in the asylum and migration issues, the lack of control by the European Court of Justice and the non-binding nature of the measures which were adopted as recommendations or resolutions. However, this relative failure of the EU in the asylum and migration fields paved the way for a new understanding by separating the asylum and migration issues from the debates related to internal market and free movement of persons (Özcan, 2005).

The Maastricht Treaty had opened the discussion on the reform of the treaties establishing the Union and, under Article 48, required the convening of an intergovernmental conference to discuss the proposals of the Member States. In the second half of 1996, a draft document including the revision proposals for the treaties was submitted. The most important provision of the draft was the "proposed creation of an 'area of freedom, security and justice' free of internal border controls, accompanied by common immigration, asylum and visa rules to safeguard external borders" (Fella, 1999).

Based on the preparatory works of the previous years, the intergovernmental conference held in Amsterdam in June 1997 adopted the "Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts". Although the three-pillar structure was preserved, the key amendment was the transfer of policies related to migration and asylum to the Community pillar (Esther, 2004: 139). While the aim of creating an area of freedom,

security and justice was reiterated in the Treaty of Amsterdam, Article 73(k) thereof required the Council to adopt measures in a variety of areas including asylum, refugees and displaced persons, immigration policy, and rights and conditions of legally residing third country nationals (Council of the European Union, 1997). With respect to asylum and refugees, the Council was called upon to adopt measures, inter alia, in the following significant areas in a five-year period: (1) criteria and mechanisms necessary for determining the Member State responsible for processing an asylum application; (2) minimum standards on the reception of asylum seekers; (3) minimum standards for the qualification of persons as refugees; (4) minimum standards for asylum procedures; (5) minimum standards for temporary protection; (6) a balanced burden-sharing among Member States in receiving and dealing with the consequences of the reception of refugees and asylum seekers. UNHCR defines the Amsterdam Treaty as a milestone with respect to the development of an EU asylum policy (2000: 169), and this milestone would be further enhanced by the EU Tampere Summit.

1.4. THE TAMPERE PROGRAMME

The year 1999 was important in the development of a common asylum policy in the EU. The Treaty of Amsterdam took effect in May 1999, while the European Council meeting held in Tampere, Finland, in October 1999 resulted in a concrete road map for the fulfilment of requirements for creating an area of freedom, security and justice (Ardittis et al., 2005: 12-13). Specifically dedicated to the discussion of justice and home affairs, the Tampere meeting is considered as the first step towards a common asylum system (ECRE, 2001: 8). The desire for establishing the CEAS is expressed in the Conclusions as follows:

> The European Council reaffirms the importance the Union and Member States attach to absolute respect of the right to seek asylum. It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement (Council of the European Union, 1999).

Besides the development of the CEAS, other areas for action included partnership with the countries of origin, fair treatment of third country nationals and management of

migration flows. The real contribution of the Tampere Summit is that the humanitarian aspect of asylum and the rights of asylum seekers stemming from international law constituted the basis of the desired common asylum system (Özcan, 2005; Lavenex, 2009). Also, the Tampere Summit initiated the five-year programmes in the area of freedom, security and justice in the field of Justice and Home Affairs.

Being the first of the three multi-annual work programmes adopted by the European Council with the aim of determining the political direction of the asylum and migration issues through initiatives, legislative instruments and strategic objectives, and reframing these issues as "European" by providing political impetus to cooperation at the EU level (Sperl, 2009: 10), the Tampere Programme covered the five-year period between 2000 and 2005 and is considered as the first stage of the CEAS. During this period, the principal instruments of the CEAS were adopted on the basis of the measures required by the Treaty of Amsterdam (Kaunert & Leonard, 2012b: 10). During the Tampere Programme, the main instruments adopted were Temporary Protection Directive, Dublin Regulation, Eurodac Regulation, Reception Conditions Directive and Qualification Directive. The instruments adopted within the scope of this Programme are explained below.

1.4.1. Temporary Protection Directive

International refugee law is based on the protection needs and rights of individuals fleeing persecution, but mass movements of people fleeing conflicts has been more common and challenging for many countries including the EU Member States. In the 1990s, in particular, the European countries confronted mass influxes mainly from the former Yugoslav Republics, the last of which was Kosovo. Thus, the concept of temporary protection for masses escaping the conflicts already started to occupy the agenda of the EU in this decade (Beirens et al., 2016). However, a policy instrument on this issue could be adopted by the EU Council years later owing to the impetus given by the Treaty of Amsterdam and the Temporary Protection Directive was adopted in 2001. As clearly expressed in Article 1 thereof, the aim of the Directive is as follows: "… to establish minimum standards for giving temporary protection in the event of a mass

influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons" (Council of the European Union, 2001).

Article 2 (d) defines mass influx as "arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme". As per the Directive, temporary protection is provided for a maximum period of one year, which can automatically be extended for one more year if the Directive is not deactivated for that specific case. Also, the duration of temporary protection can be extended by the Council for another one year on condition that the circumstances requiring the activation of the Directive continue. Most notably, Article 3(1) thereof prescribes that "temporary protection shall not prejudge recognition of refugee status under the Geneva Convention" while respect for human rights and fundamental freedoms and compliance with international obligations are emphasized. Lastly, Article 5 thereof, presents the details of the way for the temporary protection mechanism being activated, and accordingly, "[t]he existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council".

Such an activation mechanism means that the Directive is "not self-executing" but requires a lengthy process to be fulfilled by the organs of the EU (Akkaya, 2015). It has been sixteen years since the Directive was introduced as a legislative instrument designed for dealing with refugee protection crises caused by large numbers of displaced persons arriving in a short while as in the case of Kosovo. However, despite requests by Greece, Italy and Malta for the use of the mechanism stipulated in the Directive in the face of inflow of migrants from Iraq, Syria and North Africa, it has not been activated yet. As argued by Ineli-Ciger (2015), the failure of the EU to activate the mechanism even in such potential cases can be attributed to the difficulty of achieving a qualified majority in the Council especially when a situation affects only several Member States, and to the assumption that activating the Directive would eventually

cause higher numbers of people to try to arrive in the EU. No matter why the EU refrains from activating the Directive, the failure of the EU to implement such a significant instrument even at times of severe crises continues to be widely criticized.

1.4.2. Dublin Regulation

In accordance with the Treaty of Amsterdam, measures to be adopted by the Council in five years included the criteria and mechanisms necessary for determining the Member State responsible for processing an asylum application as well. This actually meant that the previously adopted Dublin Convention would be replaced by community legislation (Özcan, 2005: 187). To this end, the European Commission prepared a working paper evaluating the weaknesses and strengths of the system established by the Dublin Convention in 2000 based on the experience of two years long implementation. While the Commission found the system successful mainly in preventing the problem of refugees in orbit, it listed the main weaknesses as the slow operation of the system, difficulty of obtaining evidence necessary for the functioning of the system and differences in the policies and practices of the Member States (Commission of the European Communities, 2000). Although the Commission's evaluation clearly presented the deficiencies of the system, the Council of the European Union adopted the Dublin Regulation, i.e. Dublin II, in February 2003 without making significant changes to the existing one.

The hierarchy of the criteria to be applied in accordance with Dublin II followed the same lines with the Dublin Convention: family unity, possession of visa or residence permit, illegal entrance, legal entrance and country of first application (Council of the European Union, 2003a). Thus, as Da Lomba (cited in Lavrysen, 2012: 239) points out, "with the exception of the criteria related to family reunification, the Dublin system is thus designed to allocate responsibility to that Member State which has played the most important part in the entry of the asylum seeker concerned". Lenart (2012: 5) argues that the resulting Regulation could not establish the principle of solidarity in the implementation of the Dublin system but rather, maintains the burden shifting to the

border states in the south or in the east. Thus, with its inherent deficiencies, the Dublin system would be revisited in the years to come.

1.4.3. Eurodac Regulation

Since the very beginning, one of the main challenges of the Dublin system has been the difficulty of obtaining the necessary evidence for determining the responsible state, and the Member States had to rely on the available travel and identity papers of the asylum seekers in order to track the country of entry or transit. However, as Alonso (cited in Desimpelaere, 2015: 18) states, while most asylum seekers do not have travel or identity papers, those possessing such papers tend to destroy them with the aim of hiding their points of entry or transit. In order to overcome the challenges arising from the loopholes in the system, the EU Council adopted the Eurodac Regulation in 2000 and introduced the European Automated Fingerprint Recognition System. As the Regulation would take effect after all necessary technical arrangements were completed by the European Commission and the Member States as per Article 27 thereof, it took effect in 2003 when the Dublin II was also adopted.

According to Article 1 of the Regulation, the purpose of the database is to "assist in determining which Member State is to be responsible pursuant to the Dublin Convention for examining an application for asylum lodged in a Member State" (Council of the European Union, 2000a). It consists of a Central Unit, a computerized central database, as well as means to transfer data between the Member States and the Central Unit. For the purpose of the Regulation, all Member States are obliged to take the fingerprints of all persons seeking protection and those found illegally crossing through an external border while it is optional for the Member States to take the fingerprints of the third country nationals who are illegally present in a Member State. The main condition for all categories is that the person whose fingerprints are taken should be aged 14 and older. All fingerprints taken by the Member States are immediately transferred to the Central Unit for comparison. Although this system is a significant step for the proper functioning of the Dublin system, it still relies on the cooperation among the Member States as well as the consent of the asylum seekers. The

failure of some Member States to take the fingerprints of all asylum seekers due to the heavy burden, and reluctance of asylum seekers to cooperate with the national authorities for fingerprinting procedures are the main challenges of the system (Orav, 2015).

Eurodac, along with the Dublin Regulation, constitutes the Dublin system, and its proper functioning is vital for a sound asylum management in the EU. Thus, just like the Dublin Regulation, the Eurodac Regulation would be revisited by the EU to eliminate the existing deficiencies of the system.

1.4.4. Reception Conditions Directive

Reception Conditions Directive, which was adopted by the EU in 2003, is a significant instrument contributing to the harmonization of asylum policies of Member States for the development of the CEAS and sets minimum standards for the reception of asylum seekers across the EU. Based on the preamble of the Directive, it can be argued that the reception conditions directive has two aims, namely a moral and a practical one. Through the determination and adoption of minimum standards across the Union, the Directive primarily strives to ensure respect for human dignity and fundamental rights, as well as the observation of international obligations. Practically, the Directive is expected to be helpful in the struggle of the Union against secondary movements of asylum seekers by harmonizing reception conditions and thus, eliminating a major cause of such movements (Council of the European Union, 2003b).

The Directive mainly sets minimum standards concerning certain rights of the asylum seekers including the right to information, the right to receive documents revealing the status of the asylum seeker, the right to freely move within the Member State or a specific area determined in accordance with national law, the right to enjoy family unity as far as possible, the right to education for minors, the right to have access to employment opportunities, and the right to have access to healthcare services (Council of the European Union, 2003b). Although the significance of such an initiative cannot be denied, it has been criticized in certain respects. As stated by Gilbert (2004: 974),

Article 4 allows the Member States to apply provisions more favourable than the Reception Conditions Directive, and this is clearly in contradiction with the aim to prevent secondary movements. Furthermore, the Directive leaves a lot of discretion to the Member States in the implementation of the provisions. As argued by Hailbronner (2007: 167), asylum detention is delicate and highly controversial. As per the Reception Conditions Directive, detention means confining a person to a particular place by depriving the person of his/her freedom of movement, and it can only be used when deemed necessary on legal grounds or concerns related to public order. However, due to the lack of clear criteria on the length and acceptable grounds of the use of detention in dealing with asylum seekers, the Member States continue using detention as a measure, and vast differences exist among their detention practices.

1.4.5. Qualification Directive

One of the areas where the Treaty of Amsterdam required measures for harmonization among Member States was the qualification of refugees and those seeking other forms of protection across the Union. Thus, the Directive generally known as the Qualification Directive was adopted by the Council of the EU in 2004. The aim of the Directive is to ensure the adoption of common standards for the recognition of refugee and subsidiary protection status so as to reduce onward migration of asylum seekers among the Member States. For the refugee status, the Directive refers to Article 1 of the Geneva Convention, which defines a refugee as someone:

> owing to well-founded fear of being persecuted 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 (UNGA, 1951).

Since the key element of the refugee status is persecution on the basis of the above-given definition, the Directive strives to clarify core aspects of persecution such as possible forms of persecution, perpetrators of persecution and reasons of persecution. Criteria for granting and ending the refugee status are also determined in the Directive.

As for subsidiary protection, it is defined as a form of protection granted to people who are not eligible for the refugee status but need international protection on reasonable grounds indicating that they will face serious harm in the country of origin. The grounds of subsidiary protection are listed in Article 15 as (1) death penalty or execution; or (2) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (3) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict (Council of the European Union, 2004).

However, Gil-Bazo (2006: 11) argues that the Member States tended to keep the scope of subsidiary protection narrow by limiting it to the above-given instances. In this respect, the Directive prescribes a narrower scope of protection when compared to international obligations of the Member States and thus, is disappointing. Another criticism directed at the Directive is its limitation of the refugee and subsidiary protection status to third country nationals and stateless persons, which keeps the EU citizens out of the scope of the Directive by derogating from the Geneva Convention (Gilbert, 2004: 975).

1.5. THE HAGUE PROGRAMME

After the Tampere Programme laid the foundation of the system to a large extent in the first five years, the second five-year programme referred to as the Hague Programme was adopted by the European Council in 2005 with the aim of strengthening the established system. Accordingly, the Programme emphasizes the necessity of solidarity and fair responsibility sharing among Member States in the second phase of the initiatives related to asylum, migration and border control in financial matters, as well as practical issues in the form of technical assistance, training, information sharing, etc. Furthermore, the purpose of the CEAS at the second phase is expressed as the:

> establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection. It will be based on the full and inclusive application of the Geneva Convention on Refugees and other relevant Treaties, and be built on a thorough and complete evaluation of the legal

> instruments that have been adopted in the first phase (Council of the European Union, 2005a).

Of the legislative instruments envisaged for the first phase, only the Asylum Procedures Directive could not be finalized and adopted in the first phase. Thus, the Council urged the Member States to adopt the Asylum Procedures Directive and implement the whole legislation as soon as possible.

The policy areas that the Hague Programme has introduced are the integration of third country nationals and legal migration despite the latter lacks details (van Selm, 2005). Within the framework of the Programme, external dimension of asylum and migration is also considered, while partnership with third countries and a return and readmission policy for the Union are emphasized. In particular, return and readmission policy is given priority, and the Council requires the adoption of a directive setting the minimum standards for the return procedures as well as a European Return Fund. Lastly, during the Programme, the Council envisages the establishment of the European Asylum Support Office; European Refugee Fund for 2005-2010; and European Agency for the Management of Operational Cooperation at the External Borders (Frontex).

Van Selm (2005) argues that the Hague Programme does not present a clear roadmap for the future of the asylum system in the EU and shows that the EU still lacks the political will necessary for genuine improvement in the protection provided to the asylum seekers and refugees. Likewise, Rees (2008) states that the Hague Programme was affected by the tensions and differences among the Member States pertaining to security due to the increased concerns regarding terrorism in the period. Thus, it failed to provide a road map that was as ambitious as its predecessor, the Tampere Programme. The Asylum Procedures Directive, an essential element of the CEAS adopted during the Hague Program, is explained below.

1.5.1. Asylum Procedures Directive

Another area that the EU needed harmonization was the procedures followed by the Member States at all steps—from lodging of applications by the asylum seekers to the

processing of applications by the national authorities. As required by the EU Council in the Hague Programme, the Asylum Procedures Directive was adopted, but only by 2005, as it took time for the Member States to reach an agreement on the provisions of the instrument.

According to Article 1 of the Directive, the purpose "is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status" (Council of the European Union, 2005b). The Directive determines the rights that an asylum seeker should enjoy such as access to information, legal assistance and communication with the UNHCR, as well as the basic requirements of an application process such as personal interviews and legal assistance.

This Directive has been heavily criticized due to its provisions related to the concepts of safe country of origin and safe third country, in particular. The concept of safe country of origin has occupied a place in the agenda of the EU since the beginning of the 1990s, and the London Resolutions set out certain criteria for the determination of safe countries of origin. Although these resolutions were not binding, some of the Member States started to adopt national lists of safe countries of origin following the resolutions. The Asylum Procedures Directive allows the Member States to resort to the safe country of origin concept while examining asylum applications and Member States are authorized to adopt and develop national safe countries of origin lists. According to the Directive, absence of persecution as meant by the Geneva Convention, as well as torture or inhuman or degrading treatment or punishment is adequate for considering a country safe. In case that a country is accepted as a safe country of origin, the Member State may accelerate the evaluation of the application of a person coming from that country.

As for the concept of safe third country, it means that "an applicant for international protection could have obtained it in another country and therefore the receiving State is entitled to reject responsibility for the protection claim" (ECRE, 2017b). For designating a third country safe, the Member State should be satisfied with the fulfilment of the following conditions: (1) There will be no threat to the life and freedom of the individual on the basis of race, religion, nationality, membership of a social group of political opinion; (2) Principle of non-refoulement will be respected; (3)

There will be no exposure to torture and cruel, inhuman or degrading treatment; (4) The country provides the individual in question with the opportunity to request refugee status.

However, this concept is heavily criticized by many agencies including the UNHCR. They mainly argue that a country, which is considered to be safe in general terms, may not be safe for an individual on reasonable grounds. Another aspect criticized about these concepts is the attempts made at the EU level for the adoption of common lists of safe countries of origin and safe third countries. Such lists facilitate the return of the asylum seekers to third countries under ambiguous conditions, and eventually reduce the prospects of protection offered to those in need (EuroMed Rights, 2016).

Since these concepts may lead to situations contradicting with the very essence of the refugee protection, namely the principle of non-refoulement, and may prevent asylum seekers from enjoying their internationally guaranteed right, they need to be addressed more cautiously and should not be implemented in a manner undermining the obligations of the EU Member States under the EU law and international law.

1.6. TREATY OF LISBON

The Treaty of Lisbon, which was signed in 2007 and entered into force in 2009, amended the main treaties of the EU, namely, the Treaty on European Union and the Treaty Establishing the European Community. The latter was renamed as the "Treaty on the Functioning of the European Union" (TFEU). In relation to asylum, the Treaty of Lisbon altered the dominant discourse related to the CEAS by identifying the objective of the EU as creating a common system rather than establishing minimum standards (European Parliament, 2017c: 3).

According to Article 63 of the Treaty, the CEAS would consist of (1) a uniform asylum status; (2) a uniform status for subsidiary protection for those in need of international protection; (3) a common temporary protection system for cases of mass influxes; (4) common procedures for the granting and withdrawal of statuses; (5) criteria and mechanisms for determining the responsible Member State for each application; (6)

standardized reception conditions; and (7) cooperation with the third countries for managing and responding to mass influxes (EU, 2007).

As argued by Kaunert and Leonard (2012b: 15), the Treaty has affected the EU asylum policy from three aspects. It gave the EU new competences for the purpose of uniformity as explained above; brought the co-decision procedure—wherein the Parliament becomes an equal co-legislator together with the Council—to the asylum policy; and expanded the judicial control of the European Court of Justice. Also, the Charter of the Fundamental Rights, which contains the right to asylum, was granted the value of treaty and made legally binding for all Member States.

Treaty of Lisbon also has importance in terms of the amendments it made on the founding treaties of the EU. Following its entry into force, the legal framework for the management of the area of freedom, security and justice was based on Article 78 of the TFEU, the first paragraph of which reads as follows:

> 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. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties (EU, 2012).

Also, Article 80 of the TFEU stresses the principles of solidarity and fair responsibility sharing in the implementation of the policies to be adopted by the EU.

1.7. STOCKHOLM PROGRAMME

As in the previous programmes, the asylum and migration issues are addressed as key policy areas in the Stockholm Programme, which is the last one of the three multi-annual JHA programmes of the EU. It was adopted in 2009 and set the road map for the period between 2010 and 2014. In this programme, the European Council reiterates the objective of the EU to establish the common asylum system and recalls that the CEAS should be completed by 2012. While drawing attention to solidarity, responsibility and partnership in these sensitive issues under Section 6, the necessity of striking a balance

between high protection standards and prevention of abuse is emphasized under Section 6.2.1 (Council of the European Union, 2009). In particular, responsibility sharing and solidarity with the Member States under pressure due to irregular migration flows are mentioned, and voluntary and coordinated mechanisms are presented as requirements for ensuring a fair burden sharing between Member States. However, concrete and compulsory mechanisms are not proposed. The Council envisages that the European Asylum Support Office (EASO) will play a key role in the coordination of measures to be adopted to this end (Kaunert & Leonard, 2012b: 18). The key developments taking place in the EU with respect to the management of asylum and migration issues in the period covered by the Stockholm Programme are the establishment of the European Asylum Support Office (EASO) and the adoption of the recast versions of the main instruments of the CEAS, further information on the latter is given below.

1.7.1. Recast Qualification Directive

With the impetus that the Hague Programme provided, the Commission conducted an evaluation on the Qualification Directive adopted in 2004. In its proposal, the Commission concludes that the minimum standards adopted are not clear enough, and presents amendments with the aim of making the decision-making procedures simpler, improving the efficiency of the asylum procedure and ensuring compliance with the rulings of the European Court of Justice and European Court of Human Rights (Commission of the European Communities, 2009). On the basis of this evaluation, the recast Qualification Directive was adopted in 2011.

One of the key differences in the recast Directive is the use of “beneficiaries of international protection” instead of refugee and subsidiary protection status. According to the UNCHR, this is a positive change since it ensures uniformity in the rights of both groups under one category (UNHCR, 2010). However, the European Council on Refugees and Exiles (ECRE) criticises the Directive for still excluding the EU nationals from the definition of refugee. The recast Directive also provides an extension for the family members clause by including the father, mother or any other adult responsible for a minor into the definition and removing the dependency condition for minors.

However, for unmarried couples, the Directive retains the condition that the Member State in question should legally recognise unmarried couples like married couples (ECRE, 2016).

Another improvement welcomed by the UNHCR is the addition of "sexual orientation and gender-related aspects" into the provision related to membership of a particular social group, although it is argued that further clarification is needed for this specific concept (UNHCR, 2010). Other amendments of the recast Directive include, but are not limited to, clarification concerning protection and actors of protection, an exception to cessation of the refugee status in case of the existence of compelling reasons related to the previous persecution, approximation of the rights of refugees and subsidiary protection beneficiaries in general except for the duration of residence permits and social welfare benefits, and improvements related to access to training and counselling, as well as recognition of qualifications (European Parliament and Council of the EU, 2011). Although the recast Directive is considered as a further step in improving the conditions of the international protection beneficiaries, the ways the Member States interpret and implement it may still cause discrepancies among the Member States (ECRE, 2016a).

1.7.2. Recast Asylum Procedures Directive

Within a broader project for revising the existing asylum legislation of the EU, the Commission presented a proposal in 2009 for the directive on procedures, but due to lack of agreement among the EU bodies, it could not be amended. Thus, the Commission presented the amended proposal in 2011 with the aim of achieving the goal of the EU to complete the CEAS by 2012. According to the Commission, the proposed system would be efficient, protective, cost-effective and flexible enough (European Commission, 2011a). Based on the second proposal, the recast Asylum Procedures Directive was adopted by the European Parliament and the Council of the EU in 2013. The purpose of the recast Directive is expressed in Article 1 thereof as establishing common procedures rather than minimum standards on procedures (European Parliament and the Council of EU, 2013a).

According to ECRE, the recast Directive is promising, and improvements were made in several topics including a more limited scope for omitting personal interviews, urging Member States to have better trained staff in the asylum examination centres, and better appeal procedures ("ECRE publishes recommendations", 2015). However, the original Directive has been criticised mainly with respect to the concepts of safe country of origin and safe third country. The recast Directive retains these concepts and adds the concept of European safe third country. Under the recast Directive, in the case that a country, which is not an EU Member State, is considered first country of asylum, or a safe third country, the application is found inadmissible. Also, under Article 33, subsequent applications lacking new elements or findings are considered inadmissible. As for the concept of safe country of origin, although the original Directive had accepted this concept as a reason for inadmissibility, the recast Directive allows Member States to follow accelerated procedures for people coming from designated safe countries of origin (Roman et al., 2016). Lastly, the recast Directive allows for the adoption of national lists for safe countries of origin.

1.7.3. Recast Reception Conditions Directive

Within the framework of the recast of the CEAS, main institutions of the EU, namely the Council, the Parliament and the Commission held intensive discussions on the Reception Conditions Directive (UNHCR, 2012a: 1). As in other Directives, the Commission prepared proposals based on its evaluation of the 2003 Reception Conditions Directive, as well as its consultations with the Member States and the UNHCR as well as other relevant non-governmental organisations (NGOs). The final proposal of the Commission mainly aims for further clarification and flexibility so that the standards can be incorporated into the national systems more easily. Specifically, the amendment targets ensuring ease of implementation through clarified legal concepts, simplified standards and more adaptable rules, raising standards with respect to the use of detention as a means, improving access to employment and relevant conditions for ensuring dignified standards of living for asylum seekers (European Commission, 2011b).

In the Recast Directive adopted in 2013, the scope is expanded so as to include the beneficiaries of subsidiary protection along with asylum seekers, and Recital 8 states that "this Directive should apply during all stages and types of procedures concerning applications for international protection, in all locations and facilities hosting applicants" (European Parliament and Council of the EU, 2013b). Although the definition of family members is extended, it is still limited to the families existing in the country where the asylum seekers came from.

The provisions of the Recast Directive concerning the detention and material reception conditions provided to the beneficiaries of international protection are particularly important. Article 8 of the Recast Directive regulates the limited use of detention and allows detention only when necessary on the basis of individual assessments. Also, it imposes guarantees and conditions of detention. It can be argued that the Recast Reception Conditions Directive has the most detailed clauses on detention in the EU asylum legislation by listing the special conditions for the detention of vulnerable groups like minors under Article 11.

Concerning employment, Article 15 thereof states that, "Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged…". The original Directive did not have such an obligation. However, the Recast Directive does not improve conditions pertaining to the healthcare services to be provided to the applicants by retaining the existing clause limiting healthcare to emergency care. Lastly, the Recast Directive enables an appeal process for all decisions for the granting, withdrawal or reduction of benefits, as well as provision of free legal aid as per Article 26. This is a major improvement when compared to the provisions of Article 21 of the 2003 Reception Conditions Directive that limited the appeal process to rejection of benefits and left the issue of legal assistance to the national law of the relevant Member State.

1.7.4. Dublin III Regulation

As the key instrument of the CEAS, the Dublin II Regulation was criticized mainly due to the inefficiency of the system to provide effective protection to those in need, as well as unfair distribution of the asylum applications among the Member States. Thus, it was generally claimed that the system could not achieve its declared objectives (UNHCR, 2009: 1-2).

The Recast Dublin II, or the Dublin III Regulation, was adopted by the European Parliament and the Council in 2013 with the aim of confirming the underlying principles of the system as well as improving it by eliminating the existing deficiencies as expressed in Recital 9 (European Parliament and Council of the EU, 2013c). The Dublin III Regulation extends the scope of the system to all applications for international protection by including stateless persons in accordance with the change in the Qualifications Directive. Also, the transit zones are added to the responsibility areas of the Member States under Article 3(1). Moreover, the Regulation replaced the sovereignty and humanitarian clauses by a sole discretionary clause with Article 17, which is believed to provide greater flexibility to the Member States (UNHCR, 2009: 3, 9). The other areas where the Dublin III Regulation made improvements include but not limited to the introduction of the right to information, personal interview, provisions referring to the best interests of minors and an early warning mechanism for constant surveillance of the systems in Member States (ECRE, 2015a).

The Dublin system is mainly devoted to the determination of the Member State responsible for processing an application for international protection, and Dublin II had presented the hierarchy of criteria to be applied in the determination of the responsible Member State. Thus, the amendments in these criteria are particularly important. In the Dublin III Regulation, although the family members still come first in the hierarchy, Article 8 related to the minors is more comprehensive, and is extended to include relatives and other family relations. The hierarchy of the criteria follows as the issuance of residence permits or visas, irregular entry or stay and visa waived entry. The highly controversial provision of the Dublin system, namely the irregular entrance through the borders of a Member State makes that Member State responsible for the processing of

the application, is retained. Thus, it can be argued that the very essence of the system remains untouched while minor amendments are made. However, in the face of the pressure caused by the recent refugee crisis, the Commission once more started discussions on the revision of Dublin III in 2016 as part of a larger project for the recast of the CEAS (Hruschka, 2016).

1.7.5. Eurodac II Regulation

Since Eurodac fingerprint database is an essential component of the Dublin system, the revision of the Eurodac Regulation was essential for the EU's recast project on the asylum acquis. With the aim of eliminating the deficiencies experienced in the implementation of the system, the Parliament and the Council adopted in 2013 the Recast Eurodac Regulation, and the amendments took effect in 2015.

The Recast Regulation brings about several changes in the implementation of the Eurodac system and accordingly, Member States are expected to take and transfer the fingerprints of the applicants within 72 hours following the asylum application at the latest under Article 9. The new Article 35 prohibits the transmission of the data that the national authorities or Europol have access to, to any third country, international organisation or private entity. Lastly, the recast Regulation requires Member States to collect and store additional information such as the operator user ID and dates related to the transfer of an applicant subject to the Dublin system (Jones, 2014: 3).

Most importantly and controversially, while the original Regulation points out to the necessity of the information stored in the database for the identification of the applicants in the Dublin system, the Recital 8 of the Recast Regulation states that the information stored in the database are also essential for the prevention and investigation of terrorist actions and other serious criminal acts. Accordingly, Article 1(2) of the amended Regulation approves the access of designated national authorities and Europol to the Eurodac data (European Parliament and Council of the EU, 2013d). This is the most important change brought by the Recast Regulation. However, this amendment was criticized by many parties including the UNHCR on grounds of the risks associated with

privacy, data protection and human rights (Roots, 2015: 124). In particular, it is argued that this amendment increases the risk of stigmatisation of the asylum seekers and beneficiaries of subsidiary protection as potential criminals, which is contradictory to the principles of asylum and refugee protection (Peers, 2013).

1.8. THE POST-STOCKHOLM PROGRAMME ERA

With the end of the Stockholm Programme, it can be argued that the multiannual programming, which had started with the Tampere Programme, has come to an end in the Area of Freedom, Safety and Justice (AFSJ) in the EU. As posited by Carrera and Guild (2012: 15), the EU now needs to "ensure more effective implementation and follow-up of existing policy programmes and policy/legislative AFSJ instruments by EU member states". As part of the discussions on how the EU will frame its direction in AFSJ in the upcoming five years, the Commission issues a Communication addressed to all EU bodies in 2014 and states that the Stockholm Programme brought many achievements to the EU including inter alia completion of the CEAS, improvement of standards and a reinforced Schengen but still, there are works to be done. With respect to asylum, in particular, the Commission emphasizes that transposition of the asylum legislation adopted in the previous programmes is crucial. It must be noted that this Communication was issued after the numbers of asylum seekers reaching the EU borders started to increase but had not peaked yet. However, it is apparent from the following statement that the Commission foresees a possible crisis:

> … the EU may face major challenges concerning international protection. Complex and mixed flows of migrants place pressure on the response capacities of Member States with regard to processing asylum claims, reception and responding to the needs of vulnerable groups as well as integration of those recognised as being in need of international protection (European Commission, 2014).

In the face of such challenges, the Commission puts stress on four issues, which are transposition and implementation of the CEAS by Member States; more balanced responsibility sharing and higher solidary among Member States; mechanisms for preventing and managing crises including amendments on temporary protection system and addressing root causes; and improving legal ways of access to asylum in the EU.

While the Stockholm Programme was not succeeded by a new five-year programme, the EU Council adopted strategic guidelines consisting of key priorities related to the AFSJ for the following five years, 2015-2019. This agenda, however, only reiterated the points emphasized in the Communication of the Commission, and as argued by Leonard and Kaunert (2016: 144, 145), the so-called strategic guidelines lacked a strategic vision and did not bring any added value to the existing AFSJ framework, including migration and asylum.

As rightly predicted by the European Commission, the refugee protection crisis broke out in 2015 as numbers of asylum seekers increased and people could not enjoy effective protection in the EU. As the situation in the Mediterranean and external border states of the EU was deteriorating, the EU adopted the European Agenda on Migration in May 2015. The wording of this policy document points to the EU's realization of the humanitarian plight evolving at its shores and the clear emphasis on the duty of the EU to protect those in need. According to this Agenda, the EU has to maximise its efforts to save lives lost at the Mediterranean Sea through rescue efforts and continue its fight against smugglers; answer to the protection needs of those in need through its relocation and resettlement programs; cooperate with third countries for managing influxes of migrants; and increase its assistance to border states through the Hotspot approach and allocation of funds (European Commission, 2015).

1.9. THE CURRENT STATE OF AFFAIRS: THE CEAS

The EU has been attempting to develop a common asylum system since the Tampere Summit in 1999, and this system is based on the harmonisation of the policies and practices of the Member States in the field of asylum. To this end, the Dublin and Eurodac Regulations and three directives on asylum procedures, qualification and reception conditions were adopted at the first phase of the CEAS.

When the EU adopted the first-phase asylum package, the focus was on establishing minimum standards rather than a complete harmonization. In this attempt, one of the ultimate aims of the EU was to prevent the phenomenon of asylum shopping, which is a

critical problem that the EU faces in the field of asylum. However, it was realized in a relatively short time that the established system had deficiencies and had to be revisited in order to eliminate these deficiencies. Thus, the whole asylum package was revisited, and the emerging legislation is referred to as the second phase of the CEAS. Moreover, this coincided with the most severe crisis related to asylum that the EU has confronted in its history. Since 2011, the EU has been under the pressure of a refugee protection crisis as the number of people arriving at the borders of the EU has exceeded millions. It can be claimed that the CEAS, which started to fall short of meeting the needs of the EU in the field of asylum even before this crisis, came to the point of collapse in the last years.

In the current situation, the issue of asylum is governed by the second-phase legislative package of the CEAS. However, since only minor amendments were made in the whole of the legislation, the CEAS is still far from meeting the expectations. First, the existing system cannot satisfy the protection needs of asylum seekers and refugees, and does not serve human rights, fundamental values and international obligations of the EU. Secondly, it fails to serve the purpose of the EU to prevent multiple applications and secondary movements. Since vast discrepancies among the policies and practices of the Member States could not be eliminated, asylum shopping remains an inevitable problem for the EU.

This being the case, asylum and migration continue occupying the agenda of the EU politics. The EU is, once again, discussing a revision of the Dublin III Regulation and adoption of regulations instead of directives on asylum procedures and qualification (“Legislative Train”, 2019). At the time of writing, there has been no progress on the recasting of the existing legislation. In this respect, Bozkurt (2018: 146) argues that, despite the continuing relevance of asylum and migration matters for the EU, the current cumbersome structure of the EU is not feasible for solving the problems in these areas, which are highly dynamic, both at the political and legal levels.

Having overviewed the general framework of EU legislation on asylum in this first chapter, this thesis continues with an examination of the phenomenon of asylum shopping in the context of the EU in the second chapter. To this end, statistical data

from relevant EU bodies like Eurostat and eu-LISA[3] are used to analyse secondary movements or multiple applications across the Union during the recent refugee protection crisis.

[3] eu-LISA stands for the European Agency for the Operational Management of large-scale IT Systems in the Area of Freedom, Security and Justice, including Eurodac, Schengen Information System II and Visa Information System.

CHAPTER 2

ASYLUM SHOPPING IN THE EU

This chapter aims to address the phenomenon of asylum shopping within the specific context of the EU and to show the extent of secondary movements across the Union during the recent refugee protection crisis. Although asylum shopping is not a new phenomenon for the Union, it has come to prominence as a major problem in recent years when large numbers of people arriving at the borders of the EU strained the main principles and procedures of the CEAS. As the number of asylum seekers has been increasing on an annual basis, inherent differences among the member states regarding asylum and refugee protection have become more apparent. This chapter focuses on the recent refugee protection crisis of the EU, and its analysis is limited to the period between 2013 and 2017, namely to when the crisis has peaked.

Europe has always been a popular destination for those seeking better economic conditions or fleeing from a war/conflict in their home countries. Voluntary movements of people who may be referred to as economic migrants are continuous and relatively manageable. However, when a conflict or war uprooting people is in question, the number of people seeking protection in safe countries may reach unprecedented levels, and the management of these flows definitely requires different procedures and policies. For the EU, after World War II (WWII), the number of asylum seekers peaked to a 'crisis' level for the first time in the 1990s following the dissolution of Yugoslavia. In 1992, when the conflict in the Former Yugoslav territory intensified, the total number of people fleeing the Balkans and seeking refuge in the EU exceeded 672,000. This was the highest number recorded in the history of the EU and remained so until the present crisis (Asylum statistics, 2019).

Current mass movements towards Europe have constituted the second migration crisis that the continent has faced since WWII. However, unlike the previous crisis wherein European countries managed to handle the situation with relative success albeit difficulties and deficiencies, this time the situation has evolved into a large-scale humanitarian crisis. There are certain factors that have made the handling of the present

crisis difficult and complicated. As Betts and Collier (2017: 2) state, unlike the previous crisis wherein the displaced persons were from the Balkan Peninsula, asylum seekers are coming from outside the European continent. When the origin of asylum seekers is examined, it is seen that Syria has been at the top of the list since 2014, and is followed by Iraq, Afghanistan, Nigeria and Pakistan, where violence and conflict have forced people to flee ("Migration to Europe", 2018). Also, the EU has faced a mixed migration during this crisis. As pointed out by Roman (2015: 315), migration can be, and generally is, triggered by a combination of several motivations, and especially if millions or thousands of people are on the move, it is rather challenging to distinguish between forced migrants and economic migrants. The current refugee protection crisis has been no exception in this respect. The majority of the migrants[4] are Syrians and those coming from other war– or conflict–torn countries that need to be directly treated as "refugees" by the EU under international law. However, the presence of economic migrants among them creates a mixed group of economic and forced migrants. These features complicate the management of recent mass movements for the EU policy-makers. Before elaborating on what asylum shopping is and how it has affected the EU, a brief description of the evolution of the present crisis is needed.

The refugee protection crisis—which hit the EU as well as neighbourhood countries such as Turkey and Lebanon—is rooted in the political and social turmoil that has been affecting many countries in the Middle East and North Africa (MENA) as of December 2010. The demonstrations triggered by the self-immolation of a street vendor in Tunisia in December 2010 caused a domino effect, and popular protests quickly spread to other countries. These uprisings have come to be known as the "Arab Spring" or "Arab Uprisings". While long-time authoritarian rulers of Tunisia, Egypt and Libya were overthrown by the end of 2011 ("Arab Spring", 2011), the other countries affected by the uprisings since then include but are not limited to Yemen, Syria, Bahrain and Morocco. While most of the countries in the MENA region have been affected by the Arab Uprisings at varying degrees, the two countries where chaos and turmoil still continue are Yemen and Syria. In particular in Syria, the brutal response of the regime

[4] In this thesis, the term migrant is used as a general term for people who are on the move regardless of the motivation underlying the movement. However, when necessitated by the context, one of the terms of "refugees", "asylum seekers" and "forced migrants" or "economic migrants" will be preferred.

led by Bashar al-Assad to the popular protests led to the outbreak of the most violent civil war in the region since the beginning of the protests ("The 'Arab Spring'", n.d.). The conflict in Syria first turned into a civil war, and then, evolved into an international proxy war. The ongoing conflict in the country further destabilised the region by facilitating the rise of terrorist groups such as Islamic State and causing the most severe refugee crisis since WWII (Viney, 2017).

Since 2011, the Syrian war has uprooted about 13 million people, which is estimated to be more than half of the pre-war Syrian population. While half of the displaced Syrians chose to remain in the country, the rest fled either to other countries in the region or to other parts of the world to seek protection (Barbash, 2014). According to the latest data (UNHCR, 2019c), the number of the Syrians who took refuge in the neighbouring developing countries has exceeded 5.5 million as of June 2019. With about 3,600,000 registered Syrian refugees, Turkey hosts the largest Syrian population and is followed by Lebanon, Jordan, Iraq and Egypt in the region. Also, more than one million Syrians have reached Europe to seek protection while around 100,000 displaced Syrians have been resettled in other developed countries, mainly in the United States (US) and Canada (Connor, 2018).

When figures concerning asylum applications lodged in the Union between 2011 and 2017 are examined, it can be observed that the impact of the current crisis has gradually increased for the EU. In 2011, when the conflict in Syria started, the total number of asylum applications in the EU was 309,040. While relatively moderate increases were observed until 2015, sharp increases were recorded in 2015 and 2016. In these years, the number of those crossing the external borders of the EU to seek protection exceeded one million, amounting to 1,322,845 and 1,260,910 respectively. Thus, 2015 is accepted as the starting year of the refugee protection crisis, which is alternatively referred to also as the "migrant crisis", "migration crisis", "European refugee crisis", "asylum crisis", etc. In the face of so many asylum seekers reaching the Union mainly through illegal ways by crossing dangerous routes in the Mediterranean Sea, the EU signed a deal with Turkey in March 2016. Mainly as a result of this deal, the total number of asylum applications in the EU fell nearly by half in 2017 and was recorded as 712,235 (Asylum Statistics, 2019).

As the number of people reaching the EU to seek protection has increased in an unprecedented manner, secondary movements of migrants have increased as well. In the following part preceding the elaboration on the asylum shopping phenomenon, a brief description of the Dublin system is provided in order to present how the current system paves the way for or fails to prevent secondary movements and multiple applications.

2.1. THE DUBLIN SYSTEM

For the EU, the development of the CEAS has been a lengthy process and now, it consists of the main regulations and directives related to asylum, regarding which the EU institutions and Member States are still discussing reforms. While these regulations and directives form a system, the effectiveness of the system inevitably depends on the extent to which they are implemented by individual Member States. In this respect, the place of these instruments in the EU law is of paramount importance.

The EU law consists of primary and secondary legislation. While primary legislation is composed of treaties, general principles of EU law and international agreements, secondary legislation includes regulations, directives, decisions, recommendations and opinions adopted by the EU (Bux, 2018). This means that the implementation of the system and the framework for protection to be provided to the asylum seekers within the EU have been determined by secondary legislation in the form of regulations and directives. This has a direct impact on the implementation of the system throughout the Union since there are differences between these instruments, most notably, between a regulation and a directive. Regulations are powerful tools of the EU law since they directly bind all state parties without the need for transposition into national law. Furthermore, the provisions of relevant national laws that are inconsistent with a regulation are considered null and void once the latter takes effect. On the other hand, the directives of the EU lack the binding nature and supremacy. As stated by Bux (2018: 3), directives do not have direct applicability and become binding only after the necessary transposition procedures are completed by national authorities that enjoy discretion in the manner and methods to be adopted with respect to the directive. In this respect, Dublin and Eurodac Regulations, which are collectively known as the Dublin

system, play a decisive role in the field of asylum in the EU as binding legal instruments while the directives on key issues related to asylum such as qualification, reception conditions, asylum procedures etc. come after these two regulations in terms of the desired impact since they need to be transposed by the Member States.

When people in need of protection want to take refuge in the countries covered by the Dublin system, they mainly need to resort to illegal ways since legal ways prescribed by the EU for these people are highly limited. This situation is one of the main criticisms directed at the EU and the CEAS. Member States close their diplomatic missions in the countries affected by conflict or war, leaving no choice to the people who need protection and asylum (FRA, 2015). Resettlement—which is a significant legal way for providing protection to those in need—is applied in a highly restricted manner in the EU.

Although the recent crisis started in 2011, the Union managed to adopt an EU resettlement scheme in 2015. Since then, about 22,500 people have been resettled (European Commission, 2017). Under these circumstances, thousands of migrants have resorted to illegal ways to cross the EU borders. As the current crisis has shown, this deficiency in the CEAS has resulted with people using smuggling networks and worsened the humanitarian aspect of the crisis as the number of people risking their lives by attempting to cross the Mediterranean Sea has increased on a daily basis. In 2015 and 2016, the total number of migrants, who lost their lives on their journeys to Europe, exceeded 3500 and 5000 respectively ("Migrant crisis", 2016).

In theory, the dual-purpose Dublin system aims to facilitate the access of asylum seekers to the asylum system in one Member State and to prevent the abuse of asylum systems with multiple applications (Rizcallah, 2017). To this end, as it is vital to determine a single Member State as the responsible state for the examination of an asylum application, the Dublin and Eurodac Regulations are used. Accordingly, once a person is within the borders of an EU Member State, the authorities are expected to take the fingerprints of the person and send them to the central database for comparison along with the other required data. In case the fingerprints taken from an asylum seeker

match with any other record in the database, this shows that the person in question has been to or travelled through another Dublin country.

According to the information leaflet distributed by the EU authorities to the asylum seekers, there are two applicable scenarios. If there is no previous application of the asylum seeker in another country but the receiving Member State has determined that another Dublin country should be responsible for processing that asylum application based on the Dublin criteria, the latter is requested to take charge of the asylum seeker. However, if it has been determined that an asylum seeker has previously filed an application in another Dublin country, the first country where the application was made is requested to take the asylum seeker back. These procedures are called as transfers in the Dublin system. A transfer decision can be taken as long as there is evidence or reason for a Dublin country to believe that an asylum seeker has been to or travelled through another Dublin country, and in case of the existence of a previous application, the current status of the application—ongoing, withdrawn or rejected—does not prevent a transfer decision ("Dublin Procedure", n.d.). The Dublin Regulation provides certain deadlines concerning these transfers, and all Dublin countries are required to stick to the deadlines. The lack of a timely response from a Dublin country to a request of transfer is accepted as approval. On the other hand, asylum seekers have the right to object to a decision of transfer taken by a Dublin country. According to the appeal or review procedure of the Dublin Regulation, the asylum seekers should file an appeal against the decision within 21 days as of the notification date of the official transfer decision.

The Dublin system has been subject to criticisms since the very beginning due to certain inherent deficiencies of the system. The main criticism directed at the system is the frequent use of the first entry and documentation criteria by the Member States in the determination of the responsible Member State, which leads to unfair burden sharing to the detriment of the southern Member States like Greece and Italy. As Thildéus (2015: 29) points out, despite its emphasis on solidarity and mutual trust, the Dublin Regulation fails in this respect and functions simply as a tool for allocating responsibility, wherein the responsibility is allocated in an unfair manner. Moreover, as stated by Peers and Rogers (2006: 230), the association of responsibility with border crossings undermines the universally accepted right to seek asylum since it tempts

Member States to prevent people in need of international protection from crossing their borders. Another setback of the Dublin system is that it is costly in both financial and humanitarian terms. On top of the additional financial burden as well as the extended asylum procedures, the overall system is considered to be ineffective. As Williams (2015: 11) argues, "Dublin not only fails to prevent irregular secondary movement, but actively encourages asylum seekers to remain irregular and 'invisible' to authorities; some have taken extreme measures, such as burning their fingerprints so as to avoid detection by Eurodac and being returned to the Member State where they entered irregularly". The failure of the system is addressed in the following section, with a focus on the asylum shopping problem, which is explained on the basis of the Eurodac statistics.

2.2. THE ASYLUM SHOPPING PROBLEM

The EU has unique features which require large scale arrangements for an effective management of asylum across the Union. Although the development of the CEAS is a remarkable step, the lack of a complete harmonization among the Member States results in major problems, asylum shopping[5] being the most significant one. Asylum shopping results from secondary movements of asylum seekers, and according to the generally accepted definition by the EU, it is "… the phenomenon where a third-country national applies for international protection in more than one EU Member State with or without having already received international protection in one of those EU Member States". Although there is no legal definition in the EU context, it is frequently used in the documents related to immigration and asylum in an informal manner. Also, it is used with negative connotations, implying an abuse of the system through multiple applications ("Asylum Shopping", 2019).

Crawley (2010: 13) defines the concept of asylum shopping as "the idea that asylum seekers choose one country over another on the basis of a higher standard of reception conditions or social security assistance" while Kaunert and Leonard (2012b: 11) define it simply as the phenomenon of "multiple applications for asylum across the EU by the

[5] Although asylum shopping has also been discussed in the literature in the US-Canada context, for the purposes of this thesis its analysis is restricted only to the EU context.

same person". According to Mouzorurakis (2014: 20), asylum shopping refers to "an applicant's tactic of lodging multiple applications in an effort to seek asylum in the country offering the most attractive regime of protection".

In brief, in the EU context, multiple applications by the same asylum seeker in more than one Member State irrespective of the varying motivations behind the applications are accepted as asylum shopping. In other words, a secondary movement with the aim of lodging another asylum application is considered as an asylum shopping attempt in the EU system.

As these similar definitions indicate, the concept of asylum shopping implies a choice on the part of the asylum seeker. It is assumed that asylum seekers generally pass through safe countries[6] but do not lodge asylum applications until they reach their destination countries. This assumption is naturally at odds with the conviction that asylum seekers leave home countries due to a threat to life or fear of persecution and their movements are based solely on needs. Thus, the concept of choice, or asylum by choice, does not fit into the context of migration of asylum seekers (Middleton, 2005; Crawley, 2010). The Dublin system, in essence, is based on this premise and attempts to prevent asylum by choice, i.e. asylum shopping. Although asylum seekers are assumed to choose one Member State over another mainly based on economic factors, there are objections to this limited understanding of the motivations of the asylum seekers. Other factors that should be taken into consideration include, inter alia, historical and colonial ties, presence of social networks, support communities or diasporas, affinity to the language of a certain country, role of agents and knowledge concerning asylum policy and practice (Mouzourakis, 2014; Middleton, 2005; Crawley, 2010; James and Mayblin, 2016). Moreover, Middleton (2005) draws attention to the differences existing among the asylum policies and practices of the EU Member States as a factor contributing to this situation.

Acknowledging the severity of this problem, the EU has been struggling to eliminate asylum shopping for years. In this struggle, as explained above, Eurodac plays a key

[6]As per the provisions of the Dublin Regulation, all EU Member States are mutually accepted as safe countries.

role and serves the purpose of detecting the first countries of entrance to prevent further movements of the asylum seekers. Thus, data and statistics based on the Eurodac system can be used primarily to evaluate the success or failure of the Union in this respect. Pursuant to Article 8 of the Eurodac Regulation, eu-LISA is liable to produce quarterly statistics on the work of the system, and these statistics are to be compiled in an annual report, which is made publicly available at the end of each year (Takle & Seeberg, 2015: 92). These statistics and reports are valuable sources for analysing the EU-level data for the asylum shopping issue.

Eurodac Regulation obliges the EU Member States to:

> … promptly take the fingerprints of all fingers of every applicant for international protection of at least 14 years of age and shall, as soon as possible and no later than 72 hours after the lodging of his or her application for international protection, as defined by Article 20(2) of Regulation (EU) No 604/2013, transmit them together with the data referred to in Article 11(b) to (g) of this Regulation to the Central System. (European Parliament and Council of the EU, 2013d).

As the second category, under Chapter III of the Eurodac Regulation, Member States are requested to take the fingerprints of all third country nationals or stateless persons seized in connection with irregular border crossing into the EU via land, sea or air. Abovementioned requirements related to maximum time of transfer of the fingerprints and minimum age of asylum seekers apply to this category as well. For the third category, Member States may send the fingerprints taken from any asylum seeker found to be illegally staying within their territories solely with the purpose of comparison to determine whether that asylum seeker has made an application for international protection in another Member State. Fingerprints taken within the scope of the third category are not stored in the system. There are two other categories of transaction processed in the Central System. While Category 4 includes the transactions of search made by the designated authorities of Member States in line with Article 20, Category 5 transactions are those carried out by Europol against data stored in Eurodac database (eu-LISA, 2018). These transactions are related to the controversial provision of the recast Eurodac Regulation concerning the access of designated authorities and Europol to the Eurodac data for comparison.

Figures for Category 1 (Cat 1), Category 2 (Cat 2) and Category 3 (Cat 3) provide information about the total numbers of transactions processed by each Member State as well as overall traffic of transactions at the EU level. However, for the purpose of detecting secondary movements and multiple applications, "hits" produced in the central database for these categories of transactions need to be considered. According to the definition in the Eurodac Regulation: "hit means the existence of a match or matches established by the Central System by comparison between fingerprint data recorded in the computerised central database and those transmitted by a Member State with regard to a person" (European Parliament and Council of the EU, 2013d). The following are the three main types of hits generated in the system:

Category 1 against Category 1 Hits (Cat 1/Cat 1 Hits): This hit shows that there is a match between the fingerprints of the new asylum applicant and those of an asylum applicant already recognized in the system, meaning that the same person has made more than one application in the same or in another Member State. While local hits show the subsequent applications in the same Member State, foreign hits refer to the multiple applications in more than one Member State.

Category 1 against Category 2 Hits (Cat 1/Cat 2 Hits): The fingerprint data of all asylum seekers processed in the central database are checked against any match with Category 2 data, which are related to the aliens apprehended in a Member State for irregularly crossing borders before applying for asylum. Thus, this type of hit indicates the routes taken by the international protection seekers entering the Union in an irregular manner.

Category 3 against Category 1 Hits (Cat 3/Cat 1 Hits): This hit reveals the matches for the people who are found staying illegally in an EU Member State after having lodged an asylum application in the same (local hit) or another Member State (foreign hit). These hits inform about the secondary movements of those who are illegally present in the EU (eu-LISA, 2018: 14-15; Jones, 2014: 14).

Primary data and statistics derived from the annual reports published by eu-Lisa for the period between 2013 and 2017 covered within this study are as follows:

	2013	**2014**	**2015**	**2016**	**2017**
Cat 1 Transactions	354,276	505,221	1,198,111	1,018,074	633,324
Cat 2 Transactions	48,276	106,980	422,825	370,418	160,816
Cat 3 Transactions	106,013	144,167	294,807	252,559	217,661
Total Transactions	**508,565**	**756,368**	**1,915,838**	**1,641,377**	**1,012,465**
Cat 1/Cat 1 Foreign Hits	124,943	137,737	273,701	307,421	257,163
Cat 1/Cat 2 Foreign Hits	26,145	52,391	293,581	324,816	99,032
Cat 3/Cat 1 Foreign Hits	43,900	52,607	92,611	124,588	129,433
Total Foreign Hits	**194,988**	**242,735**	**659,893**	**756,825**	**485,628**
Cat 1/Cat 1 Foreign Hits + Cat 1/Cat 2 Foreign Hits	**151,088**	**190,128**	**567,282**	**632,237**	**356,195**

Table 1. Data related to Cat 1, Cat 2 and Cat 3 transactions and Eurodac hits from 2013 to 2017 (Data source: *eu*-Lisa).

Data obtained from the annual reports prepared to evaluate the work of the Eurodac Central Database illustrate many aspects of asylum in the EU. Primarily, total numbers of transactions consisting of all types of fingerprint categories recorded in the system demonstrate the overall traffic of the Eurodac system and implicate how the crisis has evolved throughout the Union. It can be concluded that the numbers have increased in proportion to the intensification of the crisis in the EU. As it is presented in Table 1, the number of total transactions was around 508,565 in 2013 when the crisis had just started to affect the EU. In 2015, it peaked with almost two million transactions, and then dropped by half in 2017 with 1,012,465 transactions. However, even after this significant decrease, the total number of the transactions processed by the Eurodac database doubled only in five years.

Out of the hits generated in the transactions processed in the Central System, only foreign hits are considered in this thesis since they represent movements from one Member State to another. Cat1/Cat 1 hits refer to multiple applications in more than one

Member State in the EU, and as it is clearly seen in Table 1, significant increases were registered in the foreign hits of this category in the period examined. Reaching the highest level in 2016 with 307,421 hits, it is observed that Cat 1/Cat 1 foreign hits doubled in 2017 when compared to 2013. Cat 1/Cat 2 hits include data related to the people who irregularly enter the Union and apply for asylum in a Member State different from that of entrance. Thus, it is assumed that people recorded under this category engage in secondary movements with the aim of lodging an application in a preferred Member State.

As it can be seen in Table 1, foreign hits of this category have substantially increased from 2013 to 2017, peaking in 2016. While the number of Cat 1/Cat 2 foreign hits was only 26,145 in 2013, it peaked in 2016 with 324,816 hits in total. Despite a relative decrease in 2017 with 99,032 hits, the total of foreign hits remained considerably high when compared to that of 2013. Finally, Cat 3/Cat 1 hits are related to the irregular migrants who are found to be present in a Member State other than the one where the migrant first made the asylum application. In the period examined, similar to other categories, increases were registered in this category as well. In particular, foreign hits increased from 43,900 in 2013 to 129,433 in 2017. Lastly, when total numbers of foreign hits of all categories are examined, in the period between 2013 and 2017, it is seen that total number of foreign hits increased from 194,988 to 485,628.

While all of these data are important to evaluate the overall asylum situation in the EU, certain statistics need closer attention to analyse the asylum shopping issue. As per the definition accepted for the concept of asylum shopping in this thesis, there needs to be more than one asylum application in two different Member States. Thus, the data to be considered for the evaluation of asylum shopping are restricted to the Cat 1/Cat 1 foreign hits and Cat 1/Cat 2 foreign hits. Local hits are excluded since they refer to cases where an asylum seeker makes an asylum application in the same country. Thus, it is assumed that these applications do not lead to asylum shopping. Also, Cat 3/Cat 1 foreign hits are not considered since it is assumed that the movements of the people recorded under this category fail to satisfy the definition accepted for the concept of asylum shopping. While they engage in secondary movements, there is only one asylum application and as long as they do not file another application in the Member State

where they are found to be illegally present, their movements cannot be classified as asylum shopping. As a consequence, the total of the Cat 1/Cat 1 foreign hits and Cat 1/Cat 2 foreign hits stands out as the main data revealing the extent of the asylum shopping problem in the EU. As seen in the last row of the Table, while the total number of foreign hits—i.e. multiple applications in more than one Member State—was 151,088 in 2013, it increased almost four times in 2015 and 2016 with 567,282 hits and 632,237 hits respectively. Although total number of foreign hits dropped almost by half in 2017 in comparison to 2016 with 356,195 hits, it has more than doubled when compared to 2013.

It is noteworthy that the data presented above are those provided by eu-LISA in connection with the work of Eurodac Central System and are different from those produced by Eurostat—that is the main agency responsible for the statistics of the EU. The main reason for this difference is that the Eurodac data are restricted to the people aged 14 and above while Eurostat asylum data covers people of all ages (eu-LISA, 2014: 13). Despite this limitation, however, Eurodac data best serve the purposes of this thesis focusing on asylum shopping by elaborating on secondary movements and multiple applications of the international protection seekers. Based on this limitation, it can be concluded that the extent of asylum shopping would be even greater if the multiple applications of those younger than 14 years were included in the above-given figures.

All in all, statistics reveal that asylum shopping problem of the EU shows continuity in the period examined in this thesis. Although the declared objective of the Dublin system has been to prevent asylum shopping, the EU has failed in fulfilling this objective. An important implication of this finding is that international protection seekers prefer applying for asylum in certain Member States despite the existence of the CEAS. Thus, an assessment of the reasons why certain Member States have been preferred by the asylum seekers as destination is important for the purposes of this thesis. However, since the EU currently has 28 members and examining the practices and policies of all Member States goes beyond the scope of this thesis, four Member States are selected and compared in the subsequent chapter. Before going into the details of the case studies, the method employed for the determination of the case countries is explained.

2.3. METHOD OF COUNTRY SELECTION

There are officially declared goals and values of the EU and one of them is enhancing solidarity among its Member States ("The EU in brief", 2018). While Article 222 or the solidarity clause incorporated into the TFEU by the Treaty of Lisbon emphasizes the spirit of solidarity among Member States against any kind of threat as a general rule, Article 80 refers to the principles of solidarity and fair responsibility sharing specifically in the fields of migration and asylum. However, the recent years have shown that the EU Member States have failed to act in solidarity and share responsibilities fairly with respect to asylum and migration. As Roots (2017: 10) argues, the Dublin system is essentially the reason why Member States bear uneven burdens, and by sticking to this system the EU has not been able to progress towards a fairer responsibility-sharing among its members in years. The current refugee protection crisis has made the deficiencies of the system with respect to burden-sharing, or more preferably responsibility-sharing[7] more apparent.

According to Eurostat statistics, the number of total asylum applications in the EU-28 between 2013 and 2017—the peak years of the recent crisis—is 4,354,040. However, when the breakdown of the asylum applications by countries is examined, it is seen that Germany received the highest number of applications with about 1,773,575 applications while Estonia received only 845 applications. Although this can be an expected result when Germany and Estonia are compared in terms of socio-economic conditions, size and/or population, a comparison between Germany and France is also striking. Although the two founding members of the EU have similar characteristics, with 390,340 applications France is not even close to Germany in terms of the number of total asylum applications. Based on these data, the first group of statistics used to evaluate the differences among the EU Member States is the number of total asylum applications received in the period examined. According to Eurostat data, the first ten countries having the highest asylum applications received about four million applications, which show that the shares of the remaining countries are relatively small

[7] Due to negative connotations of the term of burden-sharing, the term responsibility has recently been preferred more by the NGOs such as ECRE (European Parliament, 2010: 26).

in the overall burden-sharing of asylum seekers.[8] Thus, while the first ten countries are retained, the remaining 18 countries are excluded from the scope of this study. Total asylum applications in the EU and the list of ten countries having the highest total asylum applications are as shown in Table 2:

	2013	**2014**	**2015**	**2016**	**2017**	**Total**
EU	431,095	626,965	1,322,845	1,260,920	712,215	4,354,040
Germany	126,705	202,645	476,510	745,155	222,560	1,773,575
Italy	26,620	64.625	83,540	122,960	128,850	426,595
France	66,265	64,310	76,165	84,270	99,330	390,340
Sweden	54,270	81,180	162,450	28,790	26,325	353,015
Hungary	18,895	42,775	177,135	29,430	3,390	271,625
Austria	17,500	28,035	88,160	42,255	24,715	200,665
UK	30,585	32,785	40,160	39,735	34,780	178,045
Greece	8,225	9,430	13,205	51,110	58,650	140,620
Belgium	21,030	22,710	44,660	18,280	18,340	125,020
Netherlands	13,060	24,495	44,970	20,945	18,210	121,680

Table 2. Total numbers of asylum applicants in the EU and top ten Member States (Data source: Eurostat).[9]

As can be observed from the statistics, Germany leads the countries dealing with excessive numbers of asylum claims across the Union and is followed by Italy, France, Sweden, Hungary, Austria, the UK, Greece, Belgium and the Netherlands. The Netherlands put aside, which is at the bottom of the table, the difference between Germany and Italy is very striking since the total number of asylum applications in Germany in the period examined is almost four times higher than that of Italy.

Since this thesis examines the period between 2013 and 2017, during which the refugee protection crisis of the EU peaked and Syrians constituted the majority of those arriving the EU, the second group of statistics used in the selection of the case countries is the

[8] These data are related to the citizens of extra-EU28 countries. The complete table including the numbers of asylum applicants in all EU Member States is available in Appendix 2.
[9] Eurostat provides data in two categories: asylum applicants and first-time applicants. In this thesis, data related to the asylum applicants are taken into consideration unless otherwise specified.

percentage of the Syrian asylum seekers vis-à-vis all asylum seekers. Data concerning asylum applications lodged by Syrians, and the percentage of these applications in all asylum applications received by the ten EU Member States are as follows:[10]

	2013	2014	2015	2016	2017	Total
EU	49,980	122,065	368,350	339,245	105,035	984,675
Germany	12,855	41,100	162,495	268,795	50,410	535,655
Italy	635	505	500	980	1,480	4,100
France	1,315	2,845	4,640	4,725	4,710	18,235
Sweden	16,540	30,750	51,310	5,455	5,450	109,505
Hungary	975	6,855	64,585	4,980	575	77,970
Austria	2,005	7,730	25,015	8,775	7,355	50,880
UK	2,030	2,355	2,800	1,575	790	9,550
Greece	485	785	3,500	26,700	16,395	47,865
Belgium	1,135	2,705	10,415	2,390	2,780	19,425
Netherlands	2,265	8,790	18,690	2,910	3,010	35,665

Table 3. Numbers of Syrian asylum applicants in the EU and top ten Member States (Data source: Eurostat).

Based on the comparison of all asylum applications and applications lodged by Syrians in the ten countries examined, it is seen that percentages range from 31.0% in Sweden to 1,0% in Italy while the EU average is 22,6% (see Figure 1). These data show that percentages of Syrians among all asylum seekers are small in Italy, France and the UK, where the origins of asylum seekers vary.

Being the destination country of the migrants taking the Central Mediterranean route, Italy receives migrants mainly from the African continent, and the top three countries in all years examined include Nigeria, Somalia, Mali and Gambia. Similarly, France stands out as a popular destination country for the Africans as well as Europeans while top countries of origin include Congo, Sudan, Albania and Kosovo. As for the UK, the top country of origin was Pakistan both in 2013 and 2014 while Eritreans, Iranians and

[10] Data concerning the applications lodged by the Syrians in 28 EU Member States can be found in Appendices 3 and 4.

Iraqis have constituted the majority of asylum seekers in the ensuing years.[11] Due to the small percentages of Syrians among all asylum seekers, Italy, France and the UK are excluded from the scope of this thesis.

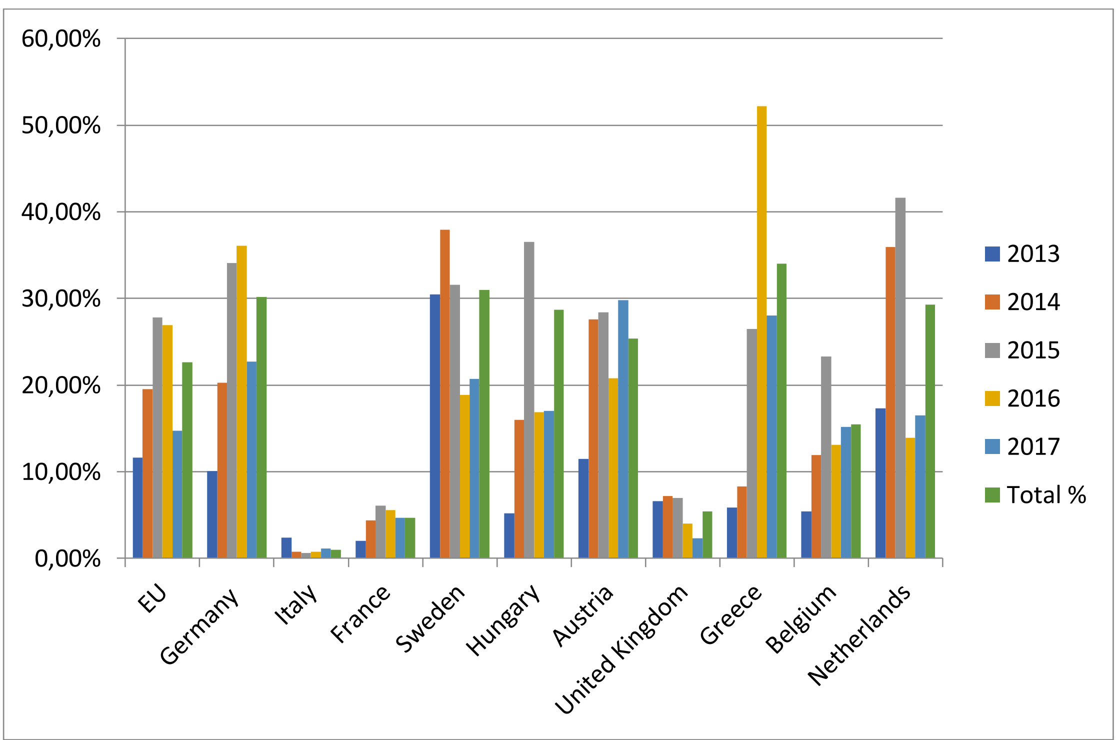

Figure 1. Percentages of Syrian asylum applicants in all asylum applicants in the EU and top ten Member States (Data source: Eurostat).

Finally, recognition rates were obtained for the remaining seven countries by calculating the share of positive decisions in all first instance decisions taken by each country in the five years examined. Two types of recognition rate, one for citizens of all countries apart from the 28 Member States of the EU (extra-EU28) and one for the citizens of Syria, were extracted from the Eurostat database. Rates for both types of recognition sorted in a descending order for the remaining seven countries as well as the EU are presented below:

[11] Table containing the data related to the top three countries of origin in all EU Member States in the years examined can be found in Appendix 5.

Country	Recognition Rate for Extra-EU28
Netherlands	66%
Sweden	64%
Austria	61%
Germany	57%
EU	**51%**
Belgium	48%
Greece	27%
Hungary	13%

Table 4. Recognition rates of the Member States for extra-EU28 citizens (Data source: Eurostat).

Country	Recognition Rate for Syrians
Austria	99%
Germany	98%
Sweden	97%
EU	**97%**
Belgium	96%
Netherlands	94%
Greece	78%
Hungary	35%

Table 5. Recognition rates of the Member States for Syrian citizens (Data source: Eurostat).

As can be observed from Tables 4 and 5, overall recognition rates of the remaining seven EU Member States range from 66% in the Netherlands to 13% in Hungary while the recognition rates for Syrians range from 99% in Austria to 35% in Hungary. Based on these data, two Member States having rates above the EU and two Member States having rates below the EU average are selected for the comparison of the policies and practices related to asylum. Thus, the first group consists of Greece and Hungary, which have the lowest recognition rates in both groups of asylum seekers, and their policies and practices are analysed in Chapter 3. For the second group of Member States, first the Netherlands is excluded from the scope of this thesis since it remains below the EU average in the second table. Out of the three countries—Austria, Germany, Sweden—common to both tables, Germany and Sweden, which have recently shined out as the

main destination countries, are selected for the second group, and their policies and practices are analysed in Chapter 3.

Accordingly, in order to analyse how divergent or convergent their policies and practices are, the subsequent chapter aims to assess and compare asylum practices and policies[12] of the four select EU Member States—namely Greece, Hungary, Germany and Sweden—on the basis of ten parameters selected under three main areas. First, under the broader framework of asylum procedures, access to asylum and protection, legal aid, right to an effective remedy and safe third country concept are analysed. Secondly, recognition rates and the main form of protection status granted are examined within the scope of qualification. Finally, with respect to reception conditions; material reception conditions, access to education and access to labour market are taken as the main parameters used for comparison. It should be noted that asylum procedures, as well as qualification and reception conditions are the areas where the EU has tried to achieve harmonization through non-binding directives. Hence, these directives[13] are referred to when needed in the following chapter.

[12] It is noteworthy that asylum seekers and recognized refugees as well as beneficiaries of other forms of protection are two separate groups, and thus are subject to different rights and procedures. In this thesis, the focus is on the asylum seekers unless otherwise specified.

[13] As explained in Chapter 1, all directives constituting the CEAS were recast at the second phase of the CEAS, superseding the original versions. Thus, hereinafter, any reference to any EU directive should be understood as the recast version of the Directive unless otherwise specified.

CHAPTER 3

ANALYSIS OF CASE COUNTRIES

This chapter aims to compare the policies and practices of the four select EU Member States concerning asylum with a focus on the recent refugee protection crisis. Accordingly, while Greece and Hungary comprise the first group of Member States to be analysed, Germany and Sweden constitute the second group since the general trend of the movements of asylum seekers is from transit/border states to destination countries.

Since it is not feasible to analyse all policies and practices related to asylum and refugee protection, this comparison is limited to the key parameters affecting chance of protection, living conditions and future prospects of asylum seekers in individual Member States. These parameters are access to asylum and protection, legal aid, right to effective remedy, safe third country concept, recognition rate, main form of protection status granted, material reception conditions, access to education and access to labour market. Before elaborating on the policies and practices, country profiles of the select Member States are briefly explained.

3.1. COUNTRY PROFILES

Greece and Hungary, two of the external border states of the EU, are located over the irregular migration routes to Europe, respectively the Eastern Mediterranean route and the Western Balkans route. Thus, both countries have become transit countries for migrants to reach the destination countries during the recent refugee protection crisis. With respect to asylum and migration, they have two important common characteristics. First, they had little experience for the reception and integration of migrants since they generally had been source countries rather than receiving countries. Thus, as the numbers of people reaching their borders increased, they had to create the whole asylum system from scratch. In general, both countries have focused their efforts on reception instead of integration by being aware of the fact that asylum seekers want to continue their journeys towards the main destination countries. Secondly, both Greece and

Hungary have poor socio-economic conditions when compared to wealthier EU Member States. Particularly in Greece, the financial crisis affecting the country for a decade between 2008 and 2018 had significant impact on the socio-economic conditions. Hence, Greece had to rely on the support from the EU and international organisations in handling the refugee protection crisis (European Parliament, 2017a).

Furthermore, asylum seekers have occupied a significant place in the media and political agenda of both Greece and Hungary, and the public opinion is reported to be negative towards refugees or Muslim minorities (Wike et al., 2016). While negative attitudes are more salient among residents of Eastern Aegean Islands in Greece, Hungary has stood out as the staunchest opponent against refugees and asylum seekers under the leadership of Victor Orban. Taking an opposite stance against the German Chancellor Angela Merkel, who supported more tolerant policies towards migrants across the EU, Hungarian Prime Minister has handled the crisis in the most restrictive manner. He described the migrants as a threat against Christianity, and referred to them as "Muslim invaders", further fuelling anti-Muslim and xenophobic attitudes among the public (Traynor, 2015; Rankin, 2019; Schultheis, 2018). In September 2015, in the face of excessive numbers of migrants arriving in Hungary, the Government introduced a quasi-state of exception described as "state of crisis due to mass migration". As of June 2019, this state of emergency is still valid upon the last decision taken to extend it until March 2019 (Kafkadesk, 2018).

In terms of legal obligations, like the other Member States of the EU, Greece and Hungary are parties to the 1951 Geneva Convention and the 1967 Protocol. Greece ratified the Geneva Convention in 1960 and the 1967 Protocol in 1968 while Hungary acceded to both on 14 March 1989 ("States Parties", n.d.). Under the EU legal framework, in addition to the Regulations and other primary sources of law directly applicable to the Member States, Member States are expected to transpose directives into their national systems. The degree of transposition, thus, directly influences national policies and practices. Greece transposed the Qualification Directive in 2013 in full and on time; Asylum Procedures Directive with certain missing articles and with delay; and Reception Conditions Directive in full but with delay (ECRE, 2019c). On the other hand, Hungary transposed all articles of the Qualification Directive despite

missing the deadline while the Asylum Procedures Directive and Reception Conditions Directive were transposed only partially (ECRE, 2019d).

As for Germany and Sweden, they have certain common and different characteristics as Member States of the EU. Being one of the founding members of the EU, Germany arguably stands out as the locomotive, and even the *de facto* leader of the Union (Tucker, 2017). Being the most powerful economy of the Union is a significant factor in its leading role in the EU. Sweden, on the other hand, is a medium size state with less influence on the EU politics vis-à-vis Germany (Frisell & Sundberg, 2017). Concerning asylum and migration, the two countries have two important common features. First, both countries have considerable experience from the past, as well as established and well-functioning reception and integration systems. Second, partly due to the first feature, they have been the main destination countries during the recent refugee protection crisis (European Parliament, 2017b).

During the recent crisis, the two countries adopted a welcoming attitude towards migrants and refugees to a large extent. In Germany, Chancellor Angela Merkel decided to follow an open-door policy for the people coming from conflict zones in 2015 and since then, has admitted more than one million asylum seekers to the country. This open-door policy has been a milestone for both Germany and the EU. Although the overall liberal trend has started to become more restrictive under political pressure, it can be argued that German attitude towards Syrians and other people in need of protection remains noteworthy (Ngo, 2018). As for Sweden, which has been known for its generous and liberal asylum policies for years, increasing numbers of asylum seekers has put a heavy burden on the system, as well. As in the case of Germany, the government has had to take certain restrictive measures under political pressure. In the face of unprecedented inflow of asylum seekers and political pressure from far-right parties, Sweden had to lower its policies to the level of the EU standards. Also, it is noteworthy that Sweden remains the only EU Member State still perceiving migrants from outside the EU positively (European Parliament, 2017b).

Furthermore, the two countries are parties to the main international instruments related to refugee protection, the Geneva Convention and the 1967 Protocol. Germany ratified

the Geneva Convention in 1953 and the 1967 Protocol in 1969 while Sweden ratified the two respectively in 1954 and in 1967 ("States Parties", n.d.). At the EU level, apart from the treaties and regulations on asylum, which are directly binding, the Member States are required to transpose the directives on asylum procedures, qualification and reception conditions into their national legislations until respective deadlines. In Germany, while the recast Qualification Directive was transposed into national law by the deadline, the recast Asylum Procedures and Reception Conditions Directives were only partially transposed into national legislation (ECRE, 2019a). On the other hand, in Sweden, recast Qualification Directive and recast Asylum Procedures Directive were transposed into the national legislation, whereas recast Reception Conditions Directive was not transposed since the Swedish system for reception was thought to be consistent with the recast Directive (ECRE, 2019b).

When the four Member States are compared, we see that they have varying characteristics in general and in terms of asylum. Their socio-economic conditions and experiences in relation to asylum and migration are considerably different. While Germany has the most powerful economy of the Union, Greece has recently experienced the most dramatic financial crisis amongst the Member States. While Sweden has long been known for its generous and tolerant policies towards migrants, Hungary has displayed the most restrictive attitude towards newcomers during the recent crisis. Based on this brief comparison presenting the general situation in the select Member States, details of their policies and practices related to asylum are explained in the subsequent sections.

3.2. ACCESS TO ASYLUM SYSTEM AND PROTECTION

As stated above, Greece is an external border state and thus, is one of the main entry points to the Union for refugees and migrants. Since border management has been tightened in Greece under the leadership of the EU, irregular migrants have to make dangerous journeys in the Mediterranean Sea to reach Greece (UNHCR, 2014: 6). Once asylum seekers are within the Greek borders, they are required to resort to the Asylum Service in person. However, due to the large numbers of new arrivals, a pre-registration

procedure has been in effect in Greece since 2014. Asylum seekers need to book an appointment through Skype for lodging an application. However, Skype lines are available for specific languages, and hours of access to these lines are limited. Also, even if asylum seekers manage to book an appointment for registration, average time for registration is 81 days. Thus, access to asylum procedures is challenging in Greece. Unlike Sweden and Germany, Greece does not have a long past as an asylum country. In 2011, the system called the “first reception service” was introduced by Law no. 3907. However, due to the pressure caused by the masses arriving at the Greek borders after 2013, the “Hotspots” approach was adopted by the EU as a policy framework aimed at providing operational support to the strained Member State like Greece and Italy. To this end, five hotpots—i.e. first reception centres in legal terms—were created in the Greek Islands of Lesvos, Chios, Samos, Leros and Kos. Another wave of significant changes to the Greek asylum system took place throughout 2016 (ECRE, 2018c).

The EU-Turkey Statement signed in 2016 changed the situation in the hotspots. They were transformed into closed detention centres, and those arriving in the Greek Islands after the entry into force of the statement were *de facto* detained in the premises. In line with the Statement, these migrants and refugees are returned to Turkey if they do not lodge asylum application or their applications are rejected mainly on the basis of the safe third country concept. Only if they are granted any form of protection, they are allowed to move to the mainland. Due to criticism and reaction from national and international actors, these closed detention centres were replaced by an imposition of geographical restriction. In practice, however, the situation did not change for the asylum seekers since they had to remain in the overcrowded facilities under poor conditions (ECRE, 2018c). Although Greek authorities started to implement the Statement without delay, national legislation lacked a clear basis for these practices. Thus, the Greek government enacted a new law in order to incorporate the new practices arising from the Statement to the national legislation such as the concept of safe third country. This new law also replaced first reception service with reception and identification service (Dimitriadi, 2016).

As in the case of Greece, Hungary became one of the main entry points for irregular migrants trying to reach the EU during the recent refugee crisis. Located at the heart of

the Western Balkans route, Hungary received the highest number of asylum seekers per 100.000 residents in 2015 among the EU-28 countries (Connor, 2016). In response to this flow of migrants, Hungary declared a state of emergency due to mass migration and erected barbed wire fences along its borders with Serbia and Croatia in 2015. Along the border zone with Serbia, two transit zones were established for the processing of asylum claims. People wait at the temporary reception centres established in Serbia, and lists including the names of those who want to enter the transit zones are prepared and handed to the Hungarian authorities through an asylum seeker called the “community leader”. Based on these lists, Hungarian authorities allow people to enter the transit zones to register their claims. However, it is reported that only one person per day has been accepted into the transit zones as of January 2018 (ECRE, 2018d). On the other hand, irregular entry is an offence under Hungarian legislation and those who attempt to enter Hungary irregularly through border fences can be subjected to imprisonment up to ten years or expulsion. This clearly breaches Article 31 of the Geneva Convention as well as the relevant EU legislation (Amnesty International, 2017). As per the amendments made in the legislation in 2016, Hungarian police automatically pushes back asylum seekers without registering their data. Furthermore, cases of violence perpetrated against asylum seekers are reported. Although it can be claimed that Hungarian authorities deliberately attempt to discourage asylum seekers with almost no access to the territory and asylum system, Hungary is still the fourth biggest entry point to Europe (ECRE, 2018d).

In Germany, identity checks and controls were reintroduced at the borders with Austria and Denmark in 2015 and have been extended so far (“Germany extends”, 2018). Entry to territory can be denied at the borders in the case of lack of necessary of documents on the grounds that the asylum seeker has travelled through safe third countries. An agreement reached by the newly formed coalition government has made the returns of asylum seekers at the land borders, mainly the German-Austrian border, possible. While these returns are based on readmission agreements between the Member States, only 11 cases of return have been reported. Only BAMF is entitled to register an asylum application. Although no time is prescribed by law for asylum applicants to lodge their applications, they are expected to apply without delay. In the German asylum system, a

distribution system is applied to determine the reception centre and BAMF branch to be responsible for each applicant depending on certain factors such as capacity of the centre, size and economic power of the Federal State and origin country of asylum seeker. Once an asylum seeker arrives in the designated initial reception centre, an arrival certificate is issued (ECRE, 2019a).

As in the case of Germany, Sweden passed a law for the introduction of identity checks at the borders due to threat to public policy and internal security, and border controls starting with the border with Denmark have been expanded to many other ports and airports since then ("Sweden Extends Border Controls", 2018). Since asylum seekers can apply for asylum at the borders, the reintroduced border checks do not mean the refusal of the right to seek protection. It mainly aims at controlling irregular migration (Parusel, 2016). Migration Agency is the only authority for registering an asylum application and thus, asylum seekers seeking protection at the Swedish ports and airports are referred to the Migration Agency. There is no time limit prescribed in law for asylum seekers to make a claim, but any delay may lead to credibility questions. In general, there are no reported problems with respect to access to territory and asylum in Sweden (ECRE, 2018b).

In the light of this information, it can be argued that access to asylum system and protection is highly problematic in Greece especially after the EU-Turkey Statement, and effective access to asylum and protection has been almost out of question in Hungary under the new legal arrangements adopted due to the declaration of state of emergency in 2015. On the other hand, access to asylum and protection runs relatively more smoothly in Germany and Sweden. Although controls and identity checks were reinstituted along the borders to monitor irregular entrance after the current crisis, these changes have not amounted to systematic prevention of asylum seekers from seeking asylum and protection in the Member States.

3.3. RIGHT TO AN EFFECTIVE REMEDY

Asylum Procedures Directive is the main instrument governing the rights and guarantees of asylum seekers in the CEAS. Under Article 12 thereof, it refers to certain procedural guarantees for applicants such as the provision of information in a language that the applicant understands, interpretation services and communication with UNHCR or other organizations providing counselling. Member States are required to provide equivalent guarantees to all applicants (EASO, 2018). The Directive also stipulates certain key rights—i.e. personal interview, legal assistance, appeal—that all asylum applicants should enjoy in the common asylum procedure envisaged in the Directive.

Asylum Procedures Directive dedicates a whole chapter to the appeals procedures, and under Article 46, the right to an effective remedy is established. Accordingly, Member States are required to provide the applicants of international protection with the opportunity to seek effective remedy against all decisions taken on their applications before competent courts or tribunals. Time limits are left to the discretion of the Member States with the condition that they are reasonable and do not impede the exercise of this right.

In Greece, the appeals procedures have undergone significant changes in the recent years and there is a highly complicated system for the asylum seekers to appeal negative decisions. As per last amendments taking place in 2016, Independent Appeals Committees, which consist of two administrative judges and one expert of the field, are established (Tsiliou, 2018). To begin with, the composition of the committees, which include judges as an administrative body, has raised questions. Furthermore, another amendment introduced in 2017 stipulated that these committees can be assisted by the rapporteurs of EASO in the event that excessive numbers of appeals are lodged. By 2018, there are 20 Independent Appeals Committees that are assisted by 11 rapporteurs. In 2018, these committees took 6178 decisions by examining the substances of the cases, 5625 of which resulted in rejection. Also, while the independent appeals committees are responsible for handling applications filed after the amendment made on the formation of the committees in July 2016, the rest of the applications are examined by other committees called “Backlog Committees”. Since the latter is no longer

operational with only pending applications, the main procedure takes place under the independent appeals committees. In this procedure, which is a written one in principle, the time limit for an asylum seeker to file an appeal is 30 days, and the appeal application has suspensive effect. The appeals authority has three months to take a decision on the appeal application. Also, in case of the rejection of the appeal application of an asylum seeker, a further appeal is possible under the Administrative Court of Appeals in 60 days. Since this level of appeal does not automatically grant suspension, a separate application for suspension should be filed. These applications can only be filed by lawyers, which can be interpreted as an obstacle to the right to an effective remedy (ECRE, 2019c; “Appealing your asylum”, n.d.).

In Hungary, there is a single level appeal procedure in force and accordingly, the decisions of the Immigration and Asylum Office (IAO) can be appealed before the regional Public Administrative and Labour Courts. Since 2013, the time limit for an appeal application to be filed is 8 days. The appeal has direct suspensive effect. Although the courts are required by law to take decision on the appeal within two months, the procedure can last up to three months and more in practice (ECRE, 2019d). However, an important amendment taking effect in 2018 severely restricted the right to effective remedy in the country. Following this amendment, which is a part of the controversial Stop Soros Law[14]; asylum seekers whose claims are declared to be inadmissible on the basis of safe third country concept can be removed from the country even if they have a pending appeal application (Dumont, 2018). Considering that rejecting asylum claims on the notion of safe third country is rather common in Hungary, it can be claimed that almost all asylum seekers will be returned to the allegedly safe country without examination on the merits of their cases.

In the German system, there are three levels of appeal for asylum seekers, namely, first appeal at the Administrative Court, second appeal at the High Administrative Court, and third appeal at the Federal Administrative Court. Time limit for the lodging of appeal at one of the 51 administrative courts is two weeks. Moreover, the appeal application has

[14] The package of legislative amendments passed in 2018 with the aim of further restricting policies related to asylum, the most important of which is criminalizing any help to illegal immigration. The package is named after the Hungarian-born US philanthropist George Saros with the aim of criticizing him and pro-immigration NGOS.

suspensive effect. For the cases rejected for being manifestly unfounded, this time limit is one week while the application has no suspensive effect. It is reported that these deadlines are too short for the asylum seekers to meet. It is noteworthy that while the average time for processing the appeal applications at this stage was 7.8 months in 2017, it increased to 12.5 months in 2018 (ECRE, 2019a).

The second stage of appeal before the High Administrative Court is possible only when the following three criteria are met as envisaged in the German Asylum Act: (1) the case should be of fundamental importance; (2) there should be a conflict between the decision of the Administrative Court and a decision of a higher court; (3) the decision should be in breach of the basic principles of law. Thus, it can be claimed that access to the second stage of appeal is difficult.

As the third level of appeal, a procedure called “revision” by the Federal Administrative Court is possible. However, this stage is also restricted to the cases meeting similar conditions stated above. Apart from these administrative procedures, in cases of violations of fundamental constitutional rights, applicants of international protection can file a complaint before the Federal Constitutional Court. Nevertheless, since requirements for filing a complaint at this stage are difficult to meet, the number of asylum cases accepted by this Court is few. Also, asylum seekers need a legal representative as of the second stage of appeal (ECRE, 2019a).

In the Swedish system, there are two levels of appeal. The first level of appeal is lodged before one of the four Migration Courts in Stockholm, Lulea, Malmö and Gothenburg. The time limit is three weeks, and the application has suspensive effect in the regular procedure. The application is addressed to the Migration Court but sent to the Migration Agency. At this stage, the Migration Agency is obliged to review its decision based on the new evidence presented by the applicant. It is possible for the Migration Court to change its decision. Otherwise, it forwards the application to the Migration Court for a decision on the appeal. As the second stage of appeal, asylum cases might be brought before the Migration Court of Appeal. However, permission is granted for filing an appeal at this stage only if the case has importance to form a precedent, or significant procedural mistakes by the Migration Agency or Migration Court are in question. At

this stage, the application should also be filed in three weeks. Decisions taken by the Migration Court of Appeal are not open to further appeal (ECRE, 2019b).

The right to appeal a negative decision is a significant element of asylum procedures since it determines the chance of success of an asylum application. The brief comparison made above clearly shows that asylum seekers in the select Member States are subject to varying conditions in terms of the use of this important right. Most importantly, the time limits imposed for the filing of an appeal against a negative decision at the first instance range from eight days in Hungary, two weeks in Germany, three weeks in Sweden and 30 days in Greece. While the first-instance appeal application has suspensive effect in all Member States, a recent amendment in Hungary allows for the return of asylum seekers with pending appeal applications to other countries on the basis of the safe third country concept.

3.4. LEGAL ASSISTANCE

The right to legal assistance is central to many procedural guarantees and safeguards in asylum applications, and access to legal assistance increases efficiency of the asylum system (ECRE, 2017a: 2). Thus, relevant provisions of the Asylum Procedures Directive are of paramount importance for applicants of international protection in the EU. Article 22 of the Directive stipulates that the applicants of international protection shall have the opportunity to consult a legal adviser or counsellor at their own expense at all stages of procedures. As per Article 20, free legal assistance and representation is granted upon request at the appeal stage while it is left to the discretion of the Member State for the procedures at the first instance. Only those applicants who lack resources on their own are entitled to free legal aid while this aid can be provided only by the legal advisers and counsellors designated by national law. NGOs may be allowed to provide free legal aid to the applicants at the first instance and appeals procedures. Considering that asylum seekers generally lack the necessary financial sources and information on how to access to legal aid and counselling, free legal assistance provided by states is of paramount importance. Thus, the relevant policies and practices of the select Member States need to be considered.

In Greece, there is no general right to free legal aid during the asylum procedure, but NGOs can provide legal counselling and assistance. Under law, free legal aid is compulsory only for the second stage of the asylum procedures, that is during appeal procedures. For the first time in Greece, a legal assistance scheme funded by the state was introduced in 2017. However, considering the high number of asylum seekers in Greece, this scheme remains highly limited (ECRE, 2019c).

In Hungary, Asylum Act stipulates that asylum seekers who are in need should benefit from free legal assistance during administrative procedures. However, this assistance does not cover representation by the legal representative. Also, it is possible for asylum seekers to benefit from free legal aid during appeal procedures. However, despite the existence of a state-run legal aid system in Hungary, access to this system is highly problematic. To begin with, asylum seekers generally are not aware of this free legal aid at all. Also, other expenses related to legal assistance, such as interpretation costs, are not covered under this system. Most importantly, NGOs experience problems in having access to the transit zones where asylum seekers are held (ECRE, 2018d). To deteriorate the already problematic situation, Hungarian parliament criminalized any help provided by NGOs to irregular migrants in 2018. According to this Law, NGO representatives providing assistance to asylum seekers might be sentenced to jail for the offence of "facilitating illegal migration" ("Hungary passes", 2018). When such challenges are considered as a whole, it becomes almost impossible to talk about an effective legal assistance for asylum seekers in Hungary. In this respect, figures clearly exhibit the problematic situation. The numbers of cases wherein free legal aid was granted were 114 at the administrative stage and 73 at the judicial stage in 2016; and 1058 at the administrative stage and 63 at the judicial stage in 2017 (ECRE, 2018d). In 2018, 380 cases received free legal aid during the administrative procedures while only 7 cases were granted aid for the appeal procedure (ECRE, 2019d).

In Germany, legal assistance is not provided to all applicants of international protection in a systematic manner. Although some NGOs and welfare organizations offer assistance to applicants, this assistance is restricted to basic legal assistance and changes from one centre to the other. Also, these organizations cannot represent their clients in asylum procedures. Applicants can be represented by a lawyer at the first instance

procedures at their own cost. For the appeals stage, they can ask for financial aid to cover their expenses related to legal assistance. However, it is granted only after the examination of the merits of the case. At the first stage of the appeal, it is possible to file an application without representation by a lawyer, but legal presentation is mandatory for the onward appeal stage (ECRE, 2018a). In Sweden, on the other hand, it is possible for applicants to benefit from free legal aid in the regular procedure at all stages, and expenses are covered from the state budget. In Dublin cases and manifestly unfounded cases, free legal aid is not provided at the first instance but can be requested at the second instance. The lawyer can make a preparatory meeting with the applicant before the start of the procedures. The Migration Agency has a list of legal counsels and appoints these counsels to cases depending on their availability. There is no requirement for knowledge on migration and asylum, etc. NGOs can provide help and advice to asylum seekers, as well (ECRE, 2018b).

In terms of the success of the asylum application, access to free legal aid is of paramount importance. When the practices of the select Member States are examined, it is seen that differences among them continue also in this respect. While an asylum applicant in Sweden has direct access to free legal aid, it is almost impossible to mention an effective access to free legal aid in Greece, Hungary and Germany.

3.5. SAFE THIRD COUNTRY CONCEPT

Safe country concepts entered into the EU legislation with the Asylum Procedures Directive dated 2005 and were retained in the recast version. There are three separate concepts: (1) first country of asylum, (2) safe country of origin, and (3) safe third country. These concepts have significant legal and practical implications for asylum seekers since the concept of "safe third country" and "first country of asylum" may lead to an application to be declared inadmissible while the concept of "safe country of origin" may result in accelerated examination of the application (Cortinovis, 2018). Asylum Procedures Directive stipulates the specific criteria that a country should meet for being considered safe for asylum seekers in each concept. These criteria are particularly demanding since the application of these concepts directly influences the

assessment on the protection needs of the asylum seekers (AEDH & EuroMed Rights & FIDH, 2016).

The safety concept in relation to asylum is controversial in essence and has been criticised by many NGOs and organizations for undermining the rights and guarantees of refugees provided by international law. However, individual Member States continue applying these concepts in their asylum systems and even the EU has proposed the adoption of common EU lists for safe countries with the aim of harmonizing the use of concepts throughout the Union (ECRE, 2015b). So far, common lists have not been adopted by the EU, and there are significant differences between the Member States with regards to these concepts, as well. For instance, by 2015, 12 Member States had national lists for safe countries of origin, and no single country was common in all of 12 lists (AEDH & EuroMed Rights & FIDH, 2016). Out of these concepts, the safe third country concept has come to prominence and played a key role during the recent refugee protection crisis across the Union. Thus, this current of the analysis focuses on the use of the safe third country concept by the select Member States.

In Greece, a country meeting all the criteria listed for assessment of safety for asylum seekers can be listed as a safe third country and once a country is accepted as a safe third country, applications made by those coming from this country is deemed inadmissible. The relevant criteria include observance of the principle of non-refoulement as per the Geneva Convention, opportunity of seeking asylum and receiving protection, absence of threat to life and freedom as well as risk of serious harm and finally reasonable connection between the country and the applicant. Greece does not have a list for safe third countries while the concept is mainly used within the framework of the controversial EU-Turkey deal. Accordingly, this deal is based on the assumption that Turkey is a safe country and those arriving in the Eastern Greek Islands after the enforcement of the deal are handled under the admissibility procedure (ECRE, 2018c). Furthermore, the Independent Appeals Committees, whose formation was changed with an amendment following the conclusion of the EU-Turkey deal, confirmed the inadmissibility decisions. However, this deal and the application of safe third country concept to Turkey have attracted a great deal of criticism (Ulusoy, 2016; Rodrigues, 2016; Peers & Roman; 2016; Roman et al., 2016). Turkey is a state party to

the Geneva Convention and the 1967 Protocol, but it is among the countries retaining the geographical limitation in practice. Accordingly, only people from the member states of the Council of Europe can be accepted as refugees in Turkey. Thus, Syrians, Afghans or Iraqis cannot benefit from the refugee status as envisaged in the Geneva Convention. Particularly, millions of Syrians who have come to Turkey during the recent conflict are under temporary protection in Turkey. Thus, contrary to the practice in Greece and judgments of the EU and Greek authorities, it is argued that Turkey does not fulfil all the criteria stipulated in the Asylum Procedures Directive and thus, should not be considered as a safe third country (AEDH, 2017; Roman et al., 2016: 20).

In Hungary, there are criteria envisaged in law for designating a country safe for asylum seekers. These criteria include absence of threat to life or freedom as well as absence of serious harm; observance of the principle of non-refoulement and the availability of the opportunity for seeking asylum and receiving protection in that country. Accordingly, a country, which meets the above-given criteria and has reasonable connection with an asylum seeker, can be accepted as safe third country. The concept of safe third country results in an inadmissibility decision in the Hungarian system (ECRE, 2018d). Although this concept was introduced into legislation in 2010 and was envisaged to be applied on an individual basis instead of a national list, the practice changed in the course of time and Hungary adopted a national list of safe third countries in 2015. This list includes "all EU Member States, all EU Candidate Countries, all Member States of the European Economic Area, Bosnia and Herzegovina, Kosovo, Switzerland, Australia, New Zealand, Canada and 'those States of the United States of America that do not apply the death penalty'" (UNHCR, 2016: 14). Since the introduction of the concept, the main focus of its application has been on Serbia. Designating Serbia as a safe third country, which is a transit country for almost all asylum seekers reaching its territory, Hungary aims to deport all those passing through Serbia ("Hungary adopts", 2015). This is an alarming situation since Serbia lacks a functioning asylum system, and asylum seekers cannot benefit from protection as well as basic rights and guarantees related to reception, integration etc. (Bakonyi et al., 2011: 18; UNHCR, 2012b: 22). Thus, designation of Serbia as a safe third country is a highly problematic and criticized aspect of the Hungarian asylum system.

In Germany, the safe third country concept is addressed in the Asylum Act. Accordingly, only the countries implementing the 1951 Geneva Convention and the ECHR can be considered as safe third countries. The current list of safe third countries includes all EU Member States as well as Norway and Switzerland. Based on this concept, entry of asylum seekers can be refused, and they can be returned to the safe third country that they have travelled before coming to Germany. Thus, this concept mainly affects the procedures at the land borders. In the current practice that was introduced in 2018, returns are possible at the German-Austrian border based on the readmission agreements of Germany with Spain and Greece, which are grounded on the safe third country concept. So far, the number of returns taking place in this respect is eleven.

In the Swedish asylum system, the safe third country concept is cited as a ground for inadmissibility, and it is permissible by law that an asylum seeker is returned to a country where he or she will be safe from, inter alia, persecution, torture, maltreatment; the principle of non-refoulement will be observed; and he or she will have the chance to seek protection and apply for asylum. However, there is not a national list of safe third countries.

In the light of this analysis, it is seen that the concept of safe third country is used as a ground for declaring cases inadmissible in all Member States examined while its practical implications are different for each. While the use of the concept affects processing of the majority of the applications lodged in Greece and Hungary, it has almost no impact in the German and Swedish asylum systems.

3.6. RECOGNITION AND QUALIFICATION

This section of the analysis focuses on the conditions of the select Member States concerning qualification and recognition. First, recognition rates are compared to demonstrate the chance of protection that asylum applicants have in each select Member State. In the EU context, data related to asylum are provided by Eurostat, according to which asylum recognition rate refers to "the share of positive decisions in the total

number of asylum decisions for each stage of the asylum procedure, i.e. first instance and final on appeal" ("Glossary", 2019a). Similarly, rejection rate refers to the share of negative decisions in all asylum decisions taken in a Member State in a specific period of time. It must be noted that, in this thesis, the data concerning the first instance decisions taken on the asylum applications are taken into consideration and recognition and rejection rates are calculated for two separate groups of asylum seekers: citizens of extra-EU28 countries and Syrian nationals. The recognition and rejection rates of the Member States for the citizens of the extra-EU28 countries are as follows:

	Greece	**Hungary**	**Germany**	**Sweden**
Total first instance decisions	71,990	22,600	1,577,990	281,260
Total positive decisions	19,670	3,015	897,120	180,385
Total negative decisions	52,320	19,585	680,870	100,870
Recognition rate	27%	13%	57%	64%
Rejection rate	73%	87%	43%	36%

Table 6. Recognition and rejection rates of the select Member States for citizens of Extra-EU28 countries (Data source: Eurostat).

Data presented in Table 6 are highly striking and point out to clear differences among the select Member States. As the figures show, both Greece and Hungary have higher negative decisions than positive decisions. Accordingly, while recognition rates are significantly low for this category of asylum seekers, rejection rates are as high as 73% and 87%. Based on these data, it can be claimed that asylum applicants from extra-EU28 countries have considerably low chances for recognition in Greece and Hungary. This finding implies that the two Member States adopt stricter policies in granting protection to the applicants for international protection. In Germany and Sweden, however, figures show a considerably different situation. When the rates of positive and negative decisions among the total first instance decisions are considered, it is seen that Germany and Sweden have moderate recognition rates, 57% and 64%, respectively. Based on these rates, it can be argued that the chance of protection is considerably higher for asylum seekers in Germany and Sweden when compared to Greece and Hungary.

Each asylum decision is expected to be taken on the merits of an asylum claim. Thus, as noted by Burmann and Valeyatheepillay (2017), the variance in the recognition rates might result from the difference in the origins of the asylum applicants in each country (see Appendix 5). While people coming from certain countries affected by war or conflict such as Syria, Afghanistan and Iraq generally have higher chances of getting protection across the EU, asylum seekers from countries such as Kosovo or Albania are more likely to be denied protection. Thus, an origin-specific comparison of the recognition and rejection rates of the select Member States might give more accurate and valid results. In this respect, the case of the Syrian asylum seekers in Europe provide the best example since Syrians are one of the communities whose protection needs are universally accepted as per the UN Geneva Convention. In this respect, a comparison of recognition and rejection rates for Syrian asylum seekers serves the purposes of the analysis. The relevant data are as follows:

	Greece	**Hungary**	**Germany**	**Sweden**
Total first instance decisions	12,775	2,625	525,170	100,390
Total positive decisions	10,005	910	514,060	97,185
Total negative decisions	2,775	1,720	11,100	3,200
Recognition rates	78%	35%	98%	97%
Rejection rates	22%	65%	2%	3%

Table 7. Recognition and rejection rates of the select Member States for Syrian nationals (Data source: Eurostat).

As presented in Table 7, recognition rate for the Syrian applicants ranges from 35% in Hungary to 98% in Germany, which is a dramatic difference. To start with, Greece has a relatively moderate recognition rate for Syrians. Considering that Greece has a low overall recognition rate, the recognition rate recorded for the Syrian asylum seekers might be interpreted as a positive development for the country. However, it must be admitted that this rate is considerably low in comparison to the EU average for Syrian nationals, which is 97%.[15] As for Hungary, it is striking that its rejection rate for Syrians

[15] The table including the recognition rates for the citizens of extra-EU28 countries and Syrian nationals in the EU and all Member States are available in Appendix 6.

is higher than the recognition rate, namely, 65% to 35%. The recognition rate of Hungary for Syrians is dramatically lower than those of the other Member States examined in this study as well as the EU average. On the other hand, in Germany and Sweden, recognition rates are as high as 98% and 97%, respectively. This means that almost all Syrian asylum seekers applying for asylum in Germany and Sweden are granted a form of protection.

After asylum seekers receive protection in an EU Member State, it is the type of protection status granted by the Member State that matters. As mentioned in Section 1.4.5, the 1951 Geneva Convention provides the definition of the "refugee status", the single universal form of recognition in Article 1 thereof, and prescribes the criteria for the determination of this status as well as the general rights to be granted to the refugees. However, over the course of time, states have adopted different mechanisms and formulated other forms of recognition for the people who do not fall into the scope of this refugee definition but still need protection (UNCHR, 2001: 1).

Therefore, qualification has become one of the areas where the EU has attempted to reach harmonization. First adopted in 2004 with the aim of determining minimum standards for qualification, the Qualification Directive was recast in 2011. It aims to harmonize the criteria used by the Member States in determining who qualifies as refugee or beneficiary of subsidiary protection. The overall objective of the Directive is to ensure that all asylum seekers should enjoy the same level of protection irrespective of the country where the asylum is claimed (UNHCR & ECRE, n.d.). Within the scope of CEAS, there are four main types of protection, which are refugee status, subsidiary protection status, humanitarian status and temporary protection status.

In the EU asylum system, which is based on the broader international refugee protection regime, Geneva Convention status is the main and most comprehensive form of protection, as well. This status is defined in Article 2 of the Qualification Directive on the basis of the definition given in the Geneva Convention. The main complementary form of protection under EU Law, which comes second after the Geneva Convention status both in terms of scope and frequency, is subsidiary protection status. This status

is defined in Article 2 of the Qualification Directive, as well. Accordingly, subsidiary protection is granted 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 his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country (European Parliament and Council of the EU, 2011).

In the Qualification Directive, EU uses the term of "beneficiary of international protection" for people granted refugee and subsidiary protection statuses collectively. Apart from these two statuses, the EU Member States may grant protection also for humanitarian reasons. If asylum seekers, who are not eligible for refugee or subsidiary protection status as per the current asylum legislation, cannot be removed from the territory of a Member State due to certain concerns, the Member State in question may allow these asylum seekers to stay on humanitarian grounds under its national law (Bacaian, 2011: 20). People in bad health or unaccompanied minors may fall into this category, and the beneficiaries of this status are not covered by the Qualification Directive. Lastly, temporary protection status is available in the EU system, and it is granted to the people in need of protection at a time of mass influx as envisaged in the Temporary Protection Directive dated 2001 ("Glossary", 2019b).

As for the differences between these types of recognition enshrined in the EU law, although the Qualification Directive does not distinguish between refugee status and subsidiary protection status in general, the main difference is related to the duration of residence permits. While the Directive obliges Member States to issue residence permits valid for at least three years to the refugees, the minimum duration of residence permits to be issued to the beneficiaries of subsidiary protection shall be one year.

Accordingly, the breakdown of the four main types of protection status granted to the citizens of extra-EU28 countries and Syrian nationals in the select Member States is as follows:

	Greece	Hungary	Germany	Sweden
Total positive decisions	19,670	3,015	897,120	180,385
Geneva convention status	***17,080***	820	***561,385***	59,940
Humanitarian status	195	110	70,085	7,610
Subsidiary protection status	2,400	***2.090***	265,645	***112,840***
Temporary protection status	0	0	0	0

Table 8. Breakdown of positive decisions by type of status granted to Extra-EU28 citizens in the select Member States (Data source: Eurostat).

	Syrians			
	Greece	**Hungary**	**Germany**	**Sweden**
Total positive decisions	10,005	910	514,060	97,185
Geneva convention status	***9,770***	230	**325,940**	*9,120*
Humanitarian status	0	0	1,760	85
Subsidiary protection status	230	***680***	186,355	**87,970**
Temporary protection status	0	0	0	0

Table 9. Breakdown of positive decisions by type of status granted to Syrians in the select Member States (Data source: Eurostat).

When Tables 8 and 9 are examined, it is seen that Greece and Germany grant Geneva Convention status to a great majority of asylum applicants in both categories. For the case of Syrians, while almost all positive decisions result in Geneva Convention status with only 230 decisions for subsidiary protection in Greece, Germany grants subsidiary protection status to a considerable number of Syrians, as well. In Hungary and Sweden, on the other hand, the numbers of beneficiaries of subsidiary protection status are higher than those of the Geneva Convention status holders. Since refugee status and subsidiary protection, as two main forms of protection status granted in the EU asylum system, may result in different rights and guarantees for beneficiaries in the national asylum systems of the Member States, these data are important. In Greece, the duration of residence permits issued for both statuses are the same, that is 3 years. However, there are two main differences. First, beneficiaries of subsidiary protection can apply for citizenship after 7 years while recognized refugees can apply for citizenship after 3 years. Secondly, only refugees have the right to apply for family unification (ECRE,

2019c). In this respect, the fact that Greece grants refugee status in the majority of the cases is of benefit to asylum seekers. In Hungary, on the other hand, both beneficiaries of refugee and subsidiary protection statuses are granted ID cards valid for 3 years. The main differences between the two statuses are related to naturalisation and family unification. While refugees can apply for citizenship after 3 years, this duration is 8 years for beneficiaries of subsidiary protection. Also, in practice, only recognized refugees are entitled to family reunification (ECRE, 2019d).

In the German system, durations of residence permits issued for applicants are three years, whereas it is one year for the beneficiaries of refugee status and subsidiary protection, respectively. All third-country nationals have to reside in Germany for eight years without interruption irrespective of their legal statuses. Furthermore, only recognized refugees are entitled to family reunification (ECRE, 2019a). Finally, in the Swedish system, a temporary law applicable until 2021 has brought major differences between refugee status and subsidiary protection in favour of the former. Durations of residence permits issued for the applicants are three years and thirteen months for beneficiaries of refugee status and subsidiary protection, respectively. As for naturalisation, recognized refugees can apply for citizenship after living in Sweden for four years while this period is five years for the rest of the aliens including those granted subsidiary protection. Finally, only refugees are entitled to the right to family reunification (ECRE, 2019b).

As for humanitarian status, in both Greece and Hungary, it is used for a few cases in the applications lodged by the citizens of extra-EU28 countries while none of the Syrian claims results in protection on humanitarian grounds. In Germany and Sweden, the shares of humanitarian status in both categories are relatively small. Lastly, as seen in the table, temporary protection status is not used by the select Member States at all. Temporary protection is a mechanism that can be activated by the EU institutions at a time of mass influx, and it has not been activated so far during the recent refugee protection crisis. Thus, it can be assumed that this status could not be granted to the asylum applicants in any one of the Member States.

Recognition rates are important indicators of this analysis since they show the chance of protection for asylum seekers in individual Member States. As explained above, while different recognition rates for the citizens of extra-EU28 countries might be explained by certain factors such as differences in origins of applicants, the comparison of the recognition rates for the same group of asylum seekers, namely Syrians in this study, presents more accurate results. Based on the analysis of the select Member States, it is clearly seen that Greece and Hungary have considerably low recognition rates for the Syrian nationals while the chances of Syrians to enjoy protection in Germany and Sweden is close to 100%. The differences in the recognition rates of the select Member States for Syrians and low recognition rates in Greece and Hungary, in particular, are striking and problematic.

People who left Syria and reached Europe in the period examined in this thesis are accepted to be in clear need of protection and should enjoy their right to seek asylum wherever they are. This argument is supported by the following assessment of the UNHCR (2017) concerning the situation in Syria and Syrian asylum seekers: “UNHCR continues to characterize the flight of civilians from Syria as a refugee movement, with the vast majority of Syrian asylum-seekers continuing to be in need of international refugee protection, fulfilling the requirements of the refugee definition contained in Article 1A(2) of the 1951 Convention”. Based on this assessment, Syrian asylum seekers should have higher chances of getting protection in the signatory states of the Geneva Convention. Thus, it can be claimed that the above-mentioned low recognition rates for the Syrians in Greece, and in particular, in Hungary are against the obligations of these countries arising from international and EU law.

Apart from recognition rates, the breakdown of positive decisions is also important to assess the asylum policies and practices of the Member States. As it is clear in Tables 8 and 9, the select Member States implement divergent policies and practices with respect to qualification. As the decisions taken on the claims filed by the Syrians show, different forms of protection status are granted even to the same group of asylum seekers who are expected to have common features in general.

While Greece and Germany prefer granting Geneva Convention status to the majority of asylum seekers in both groups, the Hungarian and Swedish authorities give weight to the subsidiary protection status even in the cases of Syrians who clearly meet the criteria of refugee status as described in the Geneva Convention and Qualification Directive. All in all, findings show that there are vast differences among the policies and practices of the select Member States related to recognition and qualification.

3.7. MATERIAL RECEPTION CONDITIONS

Reception conditions mainly encompass material reception conditions such as daily allowance and housing, freedom of movement and access to health care, employment and education (Slingenberg, 2016:11). With the recast Directive, the EU aimed at harmonizing the rights and benefits provided by the Member States to the applicants of international protection with the aim of preventing secondary movements. It is argued that the divergences in the reception conditions are one of the main reasons behind secondary movements and uneven distribution of asylum seekers across the Union. Thus, it is important for Member States to have comparable reception conditions so that reception conditions do not emerge as pull factors (Becker & Hagn, 2016: 22).

To elaborate on this aspect, the select Member States are compared in terms of the material reception conditions, access to education and access to labour market to present the existing divergences and convergences in the national reception conditions of the countries. Where necessary, the Reception Conditions Directive is referred to as the main instrument adopted by the Union in this field.

Reception conditions refer to the whole set of measures taken by the Member States in the reception of the asylum seekers while material reception conditions are defined as “reception conditions that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily allowance” in Article 2(g) of the Reception Conditions Directive (European Parliament and Council of the EU, 2013b). The Directive stipulates that the material reception conditions should be adequate to ensure a standard of living under the circumstances of

the country. It can be claimed that, other than this general rule, material reception conditions are left to the discretion of the Member States to a large extent.

In Greece, asylum seekers are entitled to receive material reception conditions only if it is determined that they lack sufficient sources, which is determined on the basis of the national social welfare framework. Material reception benefits include daily allowance and accommodation. However, the accommodation system in Greece has been criticised since the beginning of the crisis. Despite some progress has been made, the system still has shortcomings, and destitution is a risk for asylum seekers in Greece. In practice, the main forms of housing used in the Greek reception system are temporary reception centres or camps in the mainland, an accommodation scheme launched by UNHCR in 2015 and the open reception centres in the islands. There are 27 camps in the mainland in total. While only three of these camps have legal status, the majority of them were established without a legal basis in order to meet emergency accommodation needs of asylum seekers. In general, reception conditions are poor and far from providing an adequate life standard for their residents (ECRE, 2019c). The accommodation scheme led by UNHCR as part of the ESTIA program has provided accommodation for 51,462 asylum seekers in total. Mainly vulnerable groups, children or families benefit from these housing units ("Greece Accommodation, 2018). In the islands, accommodation is provided in the reception and identification centres, which were first turned into closed detention centres after the EU-Turkey statement but are currently used as open reception centres. The main problem in these centres is absolute overcrowding experienced due to the restriction of movement imposed on the asylum seekers following the EU-Turkey Statement. By the end of 2018, the number of residents in the centres in the Eastern Greek Islands was 11,683 against the total capacity of 6,438. In the islands, thousands of asylum seekers, including vulnerable persons such as children and pregnant women, live under dire conditions without access even to basic needs such as shelter and hygiene products. In order to alleviate the overcrowding in the islands, Greek authorities and UNHCR attempt to transfer the eligible persons to the mainland (UNHCR, 2018). However, it can be argued that the reception conditions in Greece and in the islands are far from ensuring human dignity and an adequate standard of living.

In Hungary, accommodation is provided in three separate forms in general. The first one is open reception centres. While there were three operating open reception centres in 2017, two centres were in operation by the end of 2018 since the one in Kiskunhalas was closed in July 2018. In these centres, residents get three meals a day, regular cleaning is provided and conditions are not problematic in general. However, only several asylum seekers stay in these centres (ECRE, 2019d). Thus, going into the details of reception conditions in these centres, which are not operational in practice, is not meaningful. Since 2017, almost all asylum seekers are obliged to stay in the transit zones located at Rötzke and Tompa along the Serbian border during the whole asylum procedure (HHC, 2017). The only exception to this practice is the accommodation of children under the age of 14, who are accommodated in Fot, a separate place of accommodation (ECRE, 2018d). Despite being heavily criticised for creating de facto detention places for asylum seekers, Hungary has maintained this unlawful practice since then. Therefore, reception conditions in these centres are of paramount importance.

The transit zones consist of containers, and separate containers are available for different groups such as families, single men, unaccompanied children etc. In each container, there are five beds. In addition to these containers, containers are allocated for purposes such as dining, religious practices and showers. The area where the containers are located is surrounded by a fence and police officers patrol around the area. In the transit zones, three meals are provided for adults while five meals are provided for children on a daily basis (ECRE, 2019d). However, following another amendment in 2018, Hungarian authorities started to reject even the supply of food to some asylum seekers due to a new ground of inadmissibility. These asylum seekers were provided food only after the interim measures adopted by the ECtHR (HHC, 2019). In response to non-compliance of such acts with the EU legislation, European Commission initiated an infringement procedure against Hungary, and the Commission mentions, inter alia, the unlawful accommodation of asylum seekers in transit zones as a ground for infringement as such: "… indefinite detention of asylum seekers in transit zones without respecting the applicable procedural guarantees is in breach of EU rules as set out in the Reception Conditions Directive" (European Commission, 2018).

In Germany, asylum seekers are entitled to basic benefits and they are supposed to meet their miscellaneous needs such as food, accommodation and heating with this aid. For accommodation, three forms of housing are available for the asylum seekers—namely initial reception centres, collective accommodation centres and decentralised centres. Once they lodge their applications, asylum seekers are obliged to stay in the initial reception centres, which are established and managed by the Federal States, for up to six months. Following the end of the period of obligatory stay in the initial reception centres, asylum seekers are to be transferred to the collective accommodation centres. However, there are divergent practices among the Federal States in this respect. Due to the inefficiency of centralised accommodation, most of the Federal States prefer decentralised accommodation centres. Also, emergency shelters established in gyms, containers or tents were used to temporarily accommodate excessive number of newcomers during the recent crisis. As to the living conditions in the initial reception centres and the other forms of shelter used after the initial reception phase, there is no common standard applicable to all of these centres. It is reported that the overall living conditions change depending on several parameters including the Federal State providing the housing facility, and/or the type of housing, etc. (ECRE, 2018a).

In Sweden, on the other hand, the "whole of Sweden" approach is used for the accommodation of asylum seekers. As of 2016, all municipalities are obliged to accommodate asylum seekers living in accommodation provided by Migration Agency. In general, two types of housing are available. Asylum seekers are accommodated either in apartments rented by the Migration Agency or settled in a reception centre (ECRE, 2018b).

Apart from accommodation, financial allowance plays a key role in ensuring proper and standardized living conditions for asylum seekers. In Greece, asylum seekers are not entitled to receive financial allowance form the government. However, some of them may receive monthly financial allowance provided by UNHCR within the scope of the ESTIA program supported by the European Commission. According to this program, eligible asylum seekers, determined on the basis of date of entrance into the country, legal status and place of residence, receive allowances deposited into their cards. The amounts of allowance range from 90€ per single adult living in accommodation with

food to 550€ for a family of seven members in accommodation without food (UNHCR, 2019a).

In Hungary, following the amendments taking effect in March 2017, the government does not grant financial assistance to asylum seekers residing in the open reception centres (ECRE, 2018d). Furthermore, the existing provisions related to material reception conditions concern only the residents of open reception centres. Thus, provision of financial allowance or pocket money has never been in question for those staying in the transit zones since the introduction of the new system.

In Germany, asylum seekers are also entitled to receive a monthly allowance, the amount of which is determined according to the type of housing, marital status etc. As of January 2018, a single adult living in accommodation centre provided by the BAMF, where food and other needs are expected to be met, receives 135€ per month while a single adult living outside the accommodation centres is entitled to receive 354€. The form of aid, cash or non-cash, is determined by the responsible Federal State (ECRE, 2018a).

Likewise, in Sweden, applicants for international protection receive a daily allowance deposited by the Migration Agency into a bank account on a monthly basis. As of December 2017, the amount of allowance is 24 SEK/2.36€ (about 70€ per month) per day for a single person living in accommodation where food is provided and 71 SEK/6.99 (around 209€ per month) per day for a single person in other accommodation facilities without food. When they have extra needs, asylum seekers can also apply for a special allowance (ECRE, 2018b). Finally, decisions of the Migration Agency about financial support are appealable before courts within three weeks as of the notification of the decision ("Financial Support", 2018). However, considering that a single Swedish adult in need of social assistance receives around 390€ per month, it can be claimed that the financial aid provided to asylum seekers living under similar conditions with Swedish nationals is relatively low (ECRE, 2018b).

When the select Member States are compared with respect to accommodation, it is seen that accommodation is highly problematic, and conditions in accommodation places are

poor in Greece and Hungary. In Germany and Sweden, on the other hand, accommodation is provided to all asylum seekers, and this service is managed in a decentralized manner. This is both advantageous and disadvantageous. While this practice ensures a distribution of burden among states or municipalities, it is not possible to mention uniform reception conditions across the country. The comparison of the select Member States in terms of financial assistance presents a similar picture. In Hungary, there is no state aid to asylum seekers in practice while only eligible asylum seekers can receive financial assistance under a UNHCR-funded program in Greece. On the other hand, Germany and Sweden give financial aid to all asylum seekers depending on their personal conditions such as marital status, number of children, etc. However, the amount of financial assistance varies while a single adult living in accommodation where food is provided receives 135€ and about 70€ in Germany and Sweden, respectively.

3.8. ACCESS TO EDUCATION

Access to education is a fundamental human right and is of paramount importance among the reception conditions of asylum seekers. Coomans (2018) states that "International human rights law guarantees an education for all, without discrimination. This principle of non-discrimination extends to all persons of school-going age residing in the territory of a state, including non-nationals, irrespective of their legal status". The right to education is enshrined in a variety of documents ranging from the Universal Declaration of Human Rights and the 1951 Convention on the Status of Refugees to the Convention on the Rights of the Child and the European Convention on Human Rights. Apart from being a fundamental human right, access to education plays a key role in promoting access to labour market and overall integration of asylum seekers.

Article 14 of the Reception Conditions Directive regulates the right to education and access of minors to schooling. Accordingly, minor asylum seekers or minor children of asylum seekers should have access to education just like the nationals of the host country, and access to education for these people should start no later than three months

following the application. Also, reaching the age of maturity should not prevent the continuation of secondary education.

In Greece, as per legislation, all asylum-seeking children shall be provided with access to education under the same conditions with the Greek nationals. It is necessary that children are enrolled in a school in no more than three months or one year if they are requested to take special language courses. Finally, reaching the age of maturity alone does not serve a basis for prevention of access to secondary education. Despite these favourable conditions, the attendance rate is not high as the number of those enrolled in schools in Greece was 11,700 out of around 27,000 minor asylum seekers as of January 2019 (ECRE, 2019c). Furthermore, in 2016, Greece adopted a special program for the introduction of preparatory classes in public schools around the camps or other accommodation centres in the mainland for facilitating the integration of asylum seekers. This program is a highly welcome development for the integration of asylum seekers despite its shortcomings in practice (Ziomas et al., 2017). The main problem in Greece with respect to access to education concerns the Eastern Greek Islands. It is reported that children living in the overcrowded camps in the islands are not provided access to public schools on grounds that they will eventually be returned to Turkey. However, children can stay for months in the islands without access to formal education. It must be noted that although children can benefit from non-formal education provided by NGOs to some extent, the scope of this education is limited and inadequate (Human Rights Watch, 2018).

In Hungary, national legislation prescribes that children of asylum seekers and minor asylum seekers are covered by compulsory education under the same conditions with Hungarian children. Despite this provision, it was only in 2018 when the children accommodated in Fot started attending school. Also, children having access to public schools generally take lessons in preparatory classes separate from Hungarian children. It is reported that there is a clear intolerance and reluctance on the part of Hungarian citizens towards inclusion of foreign children in the classes. This is highly problematic in terms of integration. For adults, no education, vocational training or language courses are provided. In the transit zones, most importantly, education opportunities were not available until September 2017. Although education programs were initiated then, the

effectiveness of these programs is doubtful. It is reported that programs are not suitable for the level of the children and teachers are not able to effectively communicate with children because of language barriers. Thus, it can be argued that the education opportunity provided for asylum seeking children in the transit zones cannot go beyond an activity for children in terms of effectiveness (ECRE, 2019d).

In Germany, all children living in the country irrespective of their statuses are entitled to the right of education in principle. However, practices vary from one Federal State to another, and problems are reported with respect to the access of minors to the education system (ECRE, 2018a). The increasing number of asylum seekers coming to Germany in recent years has put considerable strain on German education system since minors have a significant share among these asylum seekers. In some Federal States, children can have access to schooling as soon as they are registered while some minors have to wait for months to enjoy the same right. There is no right to compulsory education for those aged above 18 (Höppner, 2017). Germany is particularly praised for its vocational training policy. Since asylum seekers are granted residence permits valid for six months and training contracts are generally made for up to three years, there were problems in practice previously. To overcome this shortcoming, Germany introduced the 3+2 rule, and accordingly, asylum seekers and persons with tolerated stay, who start to receive vocational training, are allowed to remain in Germany for the duration of existing contracts up to five years. This is one of the newly adopted initiatives by Germany within the scope of a wider integration program (Degler et al., 2017).

In Sweden, although minor asylum seekers are not covered by the obligation to attend school applicable to the Swedish nationals, they are entitled to the right of education. All children within the borders of Sweden including even the children of asylum seekers with deportation order can enjoy this fundamental right in the country. Those aged above 18 when they enter Sweden do not have the right to attend secondary education. Also, children can take lessons in their native languages on condition that there are five students using the same language in the district (ECRE, 2018b). An important element of the Swedish system, asylum seeking children are not taught in isolated classrooms but receive education in regular classrooms along with Swedish children ("How Sweden's Education System", 2019). Following an amendment in law, which took

effect in 2018, it is now possible for the asylum seekers aged between 17 and 24 to be granted residence permits for upper secondary studies. In Sweden, it is the responsibility of the municipality where an asylum seeker resides to ensure children's access to schooling ("Education", 2018).

As for the comparison of the select Member States in terms of access to education, it is clear that asylum seeking minors and minor children of asylum seekers cannot enjoy the fundamental right to education in Greece and Hungary while Germany and Sweden have considerably more favourable conditions in this respect despite some shortcomings and problems. This shows that asylum seekers in the second group of Member States have better chances of adaptation and integration.

3.9. ACCESS TO EMPLOYMENT

Along with access to education, another significant element of integration of asylum seekers in a country is access to employment and labour market. Thus, the conditions of Member States with respect to access to labour market determine the future prospects of asylum seekers. As per the Reception Conditions Directive, Member States are requested to allow applicants for international protection to have access to labour market no later than nine months following the lodging of the application. It might be assumed that this right, which is closely related to the economic conditions of a country, might be more problematic in such countries as Greece and Hungary, which have lower shares in the total gross domestic product (GDP) of the EU (Eurostat, 2018).

In Greece, according to national legislation, all asylum seekers can have access to labour market once they lodge their applications. This means that applicants cannot work at the phase of pre-registration. This constitutes a challenge for applicants since it might take months and even years for full registration to take place in Greece (ECRE, 2019c). Apart from this, other challenges are also reported with respect to access to employment in Greece. Most importantly, the economic crisis, which Greece has undergone over the last decade, has had a huge impact on labour integration of asylum seekers due to high competition and unemployment among Greek nationals. Other

challenges include language and communication barriers, location of accommodation centres far away from cities and procedural challenges such as refusal of banks to open accounts for asylum applicants (EEPO, 2016: 11; Generation 2.0; 2019).

Hungary, on the other hand, maintained its strict and restrictive approach related to asylum in labour integration of asylum seekers, as well. According to previous legal provisions, applicants for international protection were entitled to the right to work in the accommodation centres and after nine months, could work outside these centres under the conditions envisaged for foreigners. However, following the infamous amendments in 2017, asylum seekers can no longer work in Hungary. As pointed out by Zetter and Ruaudel (2018), "the right to work and access to labour markets are prerequisites for allowing them to secure sustainable livelihoods, thereby reducing vulnerability, enhancing resilience and enabling a dignified life". Furthermore, by ignoring this right of asylum seekers, Hungary clearly acts against Article 15 of the EU Reception Conditions Directive.

In Germany, time limit for access to employment was previously nine months but decreased to three months in 2014. Accordingly, asylum seekers have access to employment in a relatively short period of time in principle. However, asylum seekers staying in the initial reception centres are deprived of the right to employment. Thus, in practice, access to labour market may severely be restricted for periods up to 24 months. In procedural terms, asylum seekers need to obtain an employment permit for being employed in a job. Also, it is not permissible for asylum seekers to work in their own jobs since self-employment requires a regular residence permit (ECRE, 2018a; OECD, 2017: 44). Despite certain shortcomings, German integration program stands out and is described as the most extensive program in the EU (Hübschmann, 2015: 2). Acknowledging the importance of early integration, Germany embarked on initiatives to integrate the asylum seekers who have higher chances of being granted a protection status in Germany as early as possible (Degler et al., 2017: 6). One of these initiatives, the Integration Courses—which was introduced in 2005 and covers both language and orientation courses—is key to facilitate the integration of newcomers in Germany (BAMF, 2007).

In Sweden, asylum seekers do not need to wait for a specific period of time and they directly have access to labour market upon arrival if they meet certain conditions. Asylum seekers must be able to prove their identity and Sweden should be responsible for their applications. Cases of applicants with denial of entrance to Sweden, the Dublin cases and manifestly unfounded cases are deprived of access to employment. Generally, asylum seekers are restricted to employment in unskilled jobs due to language barriers or competitiveness in skilled labour areas (ECRE, 2018b). Due to the recent crisis, the integration into the labour market in Sweden has been strained and in response to this pressure, certain initiatives were undertaken by Swedish authorities. Following a transfer of responsibility from Migration Agency to the municipalities, county authorities now arrange integration programs covering language and orientation courses for asylum seekers. Also, NGOs are involved in providing integration courses for asylum seekers (Fratzke, 2017: 17). Finally, it is noteworthy that an asylum seeker having the desired skills for the labour market is permitted to become a labour migrant in the Swedish system (ECRE, 2019b).

Finally, the comparison of the select Member States with respect to access to employment reveals considerable differences. While an asylum seeker faces problems in accessing labour mainly due to high competition and unemployment among Greek citizens and overall financial distress of the country, Hungary deliberately refrains from providing this right to asylum seekers, and legal amendments have been made to this end. On the other hand, in Germany and Sweden asylum seekers have more favourable conditions. While Germany is particularly praised for its early integration efforts, Sweden particularly stands out with its policy allowing direct access to employment for applicants of international protection.

3.10. AN OVERALL COMPARISON

A comparison of the select Member States reveals a striking picture of the current situation of applicants for international protection in the EU. As the above analysis shows, there is a clear lack of uniformity among the policies and practices of the Member States with respect to the parameters used for comparison in this study.

Before elaborating on the conclusions of this thesis, the divergences among the select Member States in the key areas examined here need to be emphasized (see, Table 10). Asylum seekers have challenges in reaching the asylum system in Greece, especially after the EU-Turkey Statement, while the Hungarian government has deliberately adopted restrictive policies to prevent asylum seekers from entering and seeking protection in Hungary. On the other hand, access to asylum systems in Germany and Sweden runs more smoothly despite identity checks and border controls were introduced during the recent refugee protection crisis. As a crucial part of the asylum procedures, appeal is highly important and plays a key role in the results of asylum applications. Member States also have divergent policies in this respect. While appeal has suspensive effect in all countries, the time limits for appealing a negative decision at the first stage are different—eight days in Hungary, two weeks in Germany, three weeks in Sweden and 30 days in Greece. It must be noted that time limits concerning the appeal procedures are left to the discretion of the Member States in the Asylum Procedures Directive. In terms of legal assistance, while asylum applicants in Sweden can benefit from free legal aid in all procedures at all stages, free legal assistance is not provided in a systematic manner or is problematic in practice in the other three Member States. The safe third country concept has a potential to affect the processing of asylum applications in the EU. However, its application differs among Member States. As the analysis has shown, the safe third country concept does not influence the asylum practices in Germany and Sweden. On the other hand, it directly affects the majority of cases in Hungary and Greece, as they apply the safe third country concept in relation to Serbia and Turkey in a highly controversial manner.

When it comes to recognition and qualification, we observe that divergences among the select Member States continue. Recognition rates vary considerably among the four Member States. For instance, a Syrian national has a chance close to 100% in Germany and Sweden, while the rates of recognition for him/her in Greece and Hungary are 35%, 78% respectively. Once again, Syrians are generally granted refugee status in Germany and Greece but receive subsidiary protection in Sweden and Hungary. The form of status is important since it determines the legal status of the asylum seeker along with the rights and guarantees to be granted.

	Greece	Hungary	Germany	Sweden
Access to asylum and protection	Challenges in access; EU-Turkey Statement	Systematic prevention of access; State of emergency	Identity checks and border controls; No systematic prevention of access	Identity checks and border controls; No systematic prevention of access
Appeal–limit: limit for filing an appeal at the first stage of appeal	30 days – suspensive	8 days – suspensive	2 weeks – suspensive	3 weeks- suspensive
Availability of free legal aid	Compulsory for appeal procedures; first state-run aid scheme launched in 2017 but limited in practice	Law prescribes free legal aid but in practice, no access to free legal aid	No systematic free legal assistance; NGOs can provide assistance	Free legal aid in all procedures at all stages
Safe third country concept	Ground for inadmissibility; problematic use of the concept in relation to Turkey	Ground for inadmissibility; long list of safe third countries; problematic use of the concept in relation to Serbia	Ground for inadmissibility; list includes EU Member States, Norway, Switzerland	Ground for inadmissibility; no national list of safe third countries
Extra-EU28 recognition rate	27%	13%	57%	64%
Recognition rate for Syrians	78%	35%	98%	97%
Main form of protection status granted to majority of asylum seekers	Geneva Convention status	Subsidiary protection status	Geneva Convention status	Subsidiary protection status
Accommodation	Inadequate accommodation; destitution; poor reception conditions especially in the islands	Transit zones under dire conditions	Decentralized accommodation; varying conditions in the accommodation centres	Decentralized accommodation; more favourable conditions
Financial assistance (single adult per month)	Limited scope; only eligible ones; 90€	No financial assistance	135€	70€
Access to education	Access to education in 3 months or 1 year at the latest; but problems exist in practice mainly in the islands	No effective access to education; negative attitudes towards the asylum seeking minors	Equal rights with the German children; varying conditions among Federal States; favourable conditions for vocational training with the aim of integration	Equal rights with the Swedish children; education in the regular classrooms; no isolation for foreign children; native language courses
Access to labour market	Favourable conditions; practical obstacles such as high competition and unemployment	No access to employment since 2017	3 months, no-self employment	Direct access, unskilled jobs

Table 10. A summary of the comparison of the select Member States on the key parameters used in this study.

Under the broader framework of reception conditions; material reception conditions, access to education and access to employment are addressed since they play key roles in the living conditions and futures prospects of asylum seekers in the Member States. While asylum seekers in Greece are likely to have problems in terms of accommodation, destitution being a major problem for them, Hungary keeps almost all asylum seekers in the transit zones along the border with Serbia under dire conditions. In Germany and Sweden, accommodation of asylum seekers are managed in a decentralized manner and conditions in the accommodation centres are certainly more favourable than Greece and Hungary. In terms of financial allowance, applicants for international protection can receive a certain amount of assistance in Sweden and Germany, but only eligible ones can receive financial assistance under an international program in Greece and such an opportunity does not exist in Hungary at all. Education is a fundamental right for all human beings including the school-age asylum seekers. However, divergences exist among the Member States even with respect to this fundamental right. In Greece, it is prescribed in law that asylum seeking minors have to attend school in three months or one year at the latest but problems exist in practice in the Eastern Greek Islands, in particular. In Hungary, there is no effective access to education for minors. In Germany and Sweden, conditions concerning access to education are more favourable. While Germany is praised particularly for its vocational training opportunities aimed at the integration of the asylum seekers, Sweden provides asylum seekers with opportunities such as education in the regular classrooms with Swedish children and native language courses. Finally, with respect to access to employment, an asylum seeker in Germany has to wait three months or even more to access the labour market, but the same person can have direct access to employment in Sweden. On the other hand, access to employment is out of question for asylum seekers in Greece due to already difficult economic conditions and high unemployment amongst Greek nationals, and in Hungary as a result of the strict policies of the government.

The results of this analysis reveal two different scenarios for asylum seekers in the EU. On the one hand, there are Member States where people in need of protection have higher chances for enjoying protection are better treated and can benefit from more favourable reception conditions. Germany and Sweden are good examples for such

Member States. The analysis of Germany and Sweden also shows that there have been shortcomings in practice despite their favourable provisions in legislation and restrictive measures have been adopted during the recent crisis. However, such practical problems may be inevitable at times of crises when unprecedented numbers of newcomers strain existing systems. Hence, it must be emphasized that both Germany and Sweden have well-established and functioning asylum systems.

On the other hand, there are Member States where the chances of protection are low, asylum seekers are ill-treated and forced to live under poor and/or even dire conditions. Greece and particularly Hungary[16] are the Member States where asylum seekers experience this scenario. During the recent refugee protection crisis, Greece and Hungary have come to fore with their problematic asylum and protection frameworks while Hungary has also gone beyond restrictive policies and acted against its regional and international obligations.

All in all, this chapter has revealed that vast divergences exist among the select Member States in terms of asylum and refugee protection. Thus, these divergences have become even more apparent and have led to secondary movements of asylum seekers during the recent refugee protection crisis.

[16] It is noteworthy that Hungary is not alone in adopting restrictive and anti-immigrant policies and attitudes in the EU as similar positions have been adopted by other Member States such as the other countries in the Visegrad 4—in particular, Czechia, Slovakia and Poland—during the recent crisis. Hence, Hungary is a representative case for a certain group of EU Member States, which could not be studied in this thesis due to space constraints.

CONCLUSION

This thesis has examined the asylum shopping problem of the EU from a comparative perspective. To this end, policies and practices of the four select EU Member States in relation to asylum were analysed and compared. The selection of Greece and Hungary as Member States located along the external borders of the EU, as well as Germany and Sweden as Member States standing out as the main destination countries during the recent refugee protection crisis has allowed this thesis to explain the onward movements of asylum seekers. By elaborating on the asylum policies and practices of these Member States, this thesis sought to determine the extent and underlying reasons of the asylum shopping problem during the peak years of the recent refugee protection crisis—roughly from 2013 to 2017. Moreover, it asked whether or not the CEAS functions properly in practice, and what are the implications of the recent refugee protection crisis for the EU?

The EU has been attempting to develop a common system for the management of the significant issue of asylum under its broader migration framework for years. These efforts have resulted in the CEAS, which mainly consist of the Dublin Regulation, Eurodac Regulation, Asylum Procedures Directive, Reception Conditions Directive and the Qualification Directive. In the first chapter, the development of CEAS was analysed, and it was concluded that the EU has yet to achieve full harmonisation in the field of asylum, which was the initial aim of the CEAS. Furthermore, the recent refugee protection crisis has made more evident the deficiencies of the CEAS, in general, and the Dublin system, in particular. Thus, the EU is still discussing how to improve the existing system to find a solution for the management of mass movements of migrants.

In the second chapter, the asylum shopping problem was addressed, and it was investigated whether or not this problem continued during the period covered in this thesis. Based on statistical data, it was concluded that the secondary movements of asylum seekers continued in the period examined, and hence, the asylum shopping problem persisted. Acknowledging that there must be certain factors pushing asylum seekers away from certain Member States and pulling them towards others; Germany, Greece, Hungary and Sweden were selected for comparison on the basis of a limitation

made by using statistics related to the total number of asylum seekers received by individual Member States, shares of Syrian asylum applicants among all asylum seekers and recognition and rejection rates.

In the third chapter, the four select Member States were compared and contrasted with regard to their policies and practices related to asylum procedures, recognition and qualification and reception conditions. Since it was not feasible to go into the details of all policies and practices, the parameters selected for comparison included access to asylum and protection; right to an effective remedy; free legal aid, safe third country concept, recognition and qualification, material reception conditions, access to education and access to employment. The comparison of the select Member States on these parameters revealed that both Germany and Sweden have well-established and functioning asylum systems with favourable conditions meeting, and even above, the standards envisaged by the EU, while asylum seekers cannot enjoy effective protection, and reception and integration conditions are considerably poor in Greece and Hungary. Based on this comparison, it was concluded that vast divergences exist among the select Member States and these constitute the main underlying reason of the continuation of the asylum shopping problem across the EU during the recent refugee protection crisis.

In conclusion, the findings of this thesis demonstrate that there are different scenarios for asylum seekers in the EU, and various aspects of life may change for asylum seekers depending on which Member State they are present. Although the EU has been attempting to develop the CEAS since 1999, the “common” part of the asylum system arguably only exists in principle as it does not function properly in practice. Despite the emphasis of the EU on the harmonisation of asylum systems, this thesis finds that there are vast discrepancies among the policies and practices of the Member States. These discrepancies mainly result from the non-binding nature of the arrangements made at the EU level and the vast discretion left to the Member States. It can be stated that such inherent shortcomings of the CEAS allow Member States—particularly those with less developed and failing asylum systems—to restrict the rights and guarantees of asylum seekers.

Under these circumstances, the EU is arguably doomed to fail in managing mass movements of people and preventing asylum shopping problem across the Union. In the presence of considerable differences among Member States, asylum seekers will continue to move in order to reach Member States that provide conditions compatible with and even higher than regional and international standards. It is reasonable for asylum seekers to seek asylum in countries that ensure human dignity, higher standards of living and better future prospects for themselves as well as their families. However, it is not logical for the EU to attempt to eliminate the problem of asylum shopping without accomplishing full harmonisation in the field of asylum. The continuation of asylum shopping means unfair sharing of the burden and the responsibility among Member States, which in turn results in an erosion of trust in the EU structure and mechanisms as a whole. Thus, it is the duty of the EU and Member States to ensure complete harmonisation in order to eliminate asylum shopping from external border states to the main destination countries. To this end, the EU needs a more powerful legislative basis for the CEAS and should go beyond making minor amendments in the existing legislative instruments.

Furthermore, asylum shopping is not the only problem that the EU is expected to have as a consequence of its failure in managing movements of migrants and asylum seekers. This failure can have broader consequences, and hence, requires ultimate attention from both the EU and its Member States. Asylum and refugee protection are intertwined with fundamental values and norms, which are not only accepted to be European but also universal. Therefore, non-compliance with the relevant regional and international arrangements and unlawful actions with respect to refugee protection have the potential to damage these fundamental norms and values on which the EU is based, and this can lead to questions on the very existence as well as the standing of the EU. The EU is already divided over the solution of the recent crisis, and unless it comes up with decisive and durable solutions for such crises which have both political and moral aspects, in the near future the existing divisions may deepen and even shake the foundations of the EU. Since the scope of the analysis carried out in this study was limited to four Member States and only certain parameters could be addressed for the purpose of analysis, considering the importance of asylum and refugee protection

issues, further research is certainly needed to further analyse the situation in the EU and other Member States.

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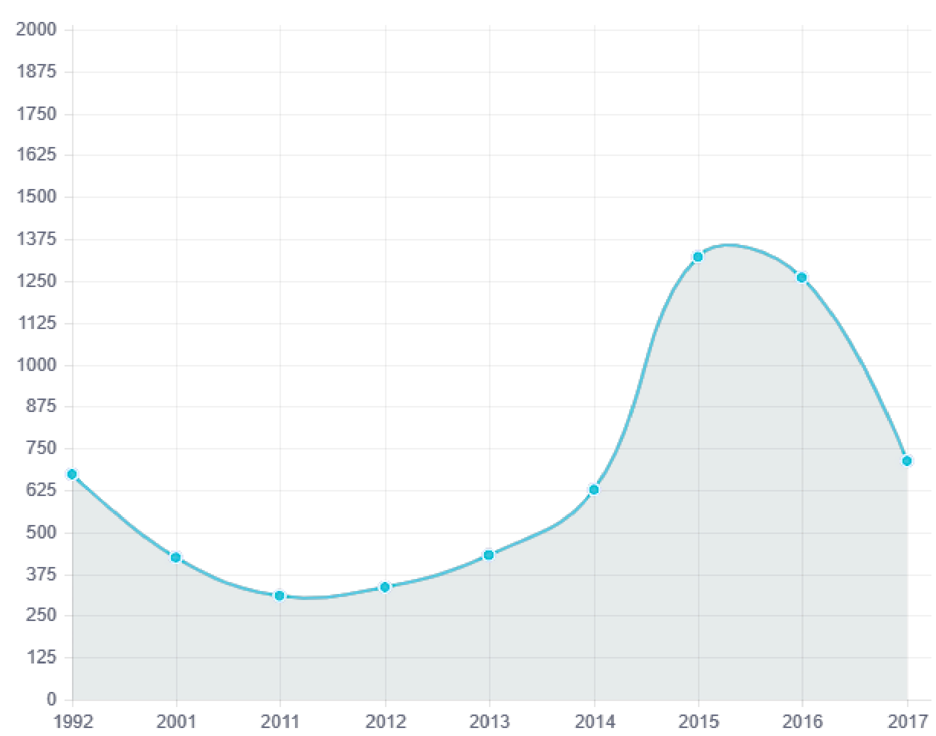
APPENDICES

APPENDIX 1. TOTAL NUMBERS OF ASYLUM APPLICATIONS IN THE EU BY YEARS



APPENDIX 2. NUMBERS OF EXTRA-EU28 ASYLUM APPLICANTS BY COUNTRY AND YEAR[17]

	2013	2014	2015	2016	2017	Total
EU	431.095	626.960	1.322.845	1.260.910	712.235	4.354.040
Germany	126.705	202.645	476.510	745.155	222.560	1.773.575
Italy	26.620	64.625	83.540	122.960	128.850	426.595
France	66.265	64.310	76.165	84.270	99.330	390.340
Sweden	54.270	81.180	162.450	28.790	26.325	353.015
Hungary	18.895	42.775	177.135	29.430	3.390	271.625
Austria	17.500	28.035	88.160	42.255	24.715	200.665
UK	30.585	32.785	40.160	39.735	34.780	178.045
Greece	8.225	9.430	13.205	51.110	58.650	140.620
Belgium	21.030	22.710	44.660	18.280	18.340	125.020
Netherlands	13.060	24.495	44.970	20.945	18.210	121.680
Spain	4.485	5.615	14.780	15.755	36.605	77.240
Bulgaria	7.145	11.080	20.390	19.420	3.695	61.730
Poland	15.240	8.020	12.190	12.305	5.045	52.800
Denmark	7.170	14.680	20.935	6.180	3.220	52.185
Finland	3.210	3.620	32.345	5.605	4.990	49.770
Cyprus	1.255	1.745	2.265	2.940	4.600	12.805
Romania	1.495	1.545	1.260	1.880	4.815	10.995
Ireland	945	1.450	3.275	2.245	2.930	10.845
Luxembourg	1.070	1.150	2.505	2.160	2.430	9.315
Malta	2.250	1.350	1.845	1.930	1.840	9.215
Czechia	695	1.145	1.515	1.475	1.445	6.275
Portugal	500	440	895	1.460	1.750	5.045
Croatia	1.080	450	210	2.225	975	4.940
Slovenia	270	385	275	1.310	1.475	3.715
Lithuania	400	440	315	430	545	2.130
Latvia	195	375	330	350	355	1.605
Slovakia	440	330	330	145	160	1.405
Estonia	95	155	230	175	190	845

[17] Source of data: Eurostat, 2019a.

APPENDIX 3. NUMBERS OF SYRIAN ASYLUM APPLICANTS BY COUNTRY AND YEAR[18]

	2013	2014	2015	2016	2017	Total
EU	49.980	122.065	368.355	339.245	105.035	984.685
Germany	12.855	41.100	162.495	268.795	50.410	535.655
Italy	635	505	500	980	1.480	4.100
France	1.315	2.845	4.640	4.725	4.710	18.235
Sweden	16.540	30.750	51.310	5.455	5.450	109.505
Hungary	975	6.855	64.585	4.980	575	77.970
Austria	2.005	7.730	25.015	8.775	7.355	50.880
UK	2.030	2.355	2.800	1.575	790	9.550
Greece	485	785	3.500	26.700	16.395	47.865
Belgium	1.135	2.705	10.415	2.390	2.780	19.425
Netherlands	2.265	8.790	18.690	2.910	3.010	35.665
Spain	725	1.510	5.725	2.975	4.195	15.130
Bulgaria	4.510	6.245	5.985	2.640	965	20.345
Poland	255	115	300	45	45	760
Denmark	1.685	7.210	8.585	1.265	775	19.520
Finland	150	150	875	600	740	2.515
Cyprus	570	995	1.020	1.215	1.810	5.610
Romania	1.010	615	550	815	950	3.940
Ireland	40	25	75	245	545	930
Luxembourg	25	95	635	335	405	1.495
Malta	250	305	415	330	495	1.795
Czechia	70	110	135	80	75	470
Portugal	145	20	20	425	425	1.035
Croatia	195	65	25	335	155	775
Slovenia	60	90	15	280	95	540
Lithuania	10	15	10	165	175	375
Latvia	15	35	5	150	140	345
Slovakia	10	40	10	15	10	85
Estonia	15	5	15	45	80	160

[18] Source of data: Eurostat, 2019a.

APPENDIX 4. PERCENTAGE OF SYRIANS IN TOTAL ASYLUM APPLICATIONS[19]

	2013	2014	2015	2016	2017	Total
EU	11,6%	19,5%	27,8%	26,9%	14,7%	22,6%
Germany	10,1%	20,3%	34,1%	36,1%	22,7%	30,2%
Italy	2,4%	0,8%	0,6%	0,8%	1,1%	1,0%
France	2,0%	4,4%	6,1%	5,6%	4,7%	4,7%
Sweden	30,5%	37,9%	31,6%	18,9%	20,7%	31,0%
Hungary	5,2%	16,0%	36,5%	16,9%	17,0%	28,7%
Austria	11,5%	27,6%	28,4%	20,8%	29,8%	25,4%
UK	6,6%	7,2%	7,0%	4,0%	2,3%	5,4%
Greece	5,9%	8,3%	26,5%	52,2%	28,0%	34,0%
Belgium	5,4%	11,9%	23,3%	13,1%	15,2%	15,5%
Netherlands	17,3%	35,9%	41,6%	13,9%	16,5%	29,3%
Spain	16,2%	26,9%	38,7%	18,9%	11,5%	19,6%
Bulgaria	63,1%	56,4%	29,4%	13,6%	26,1%	33,0%
Poland	1,7%	1,4%	2,5%	0,4%	0,9%	1,4%
Denmark	23,5%	49,1%	41,0%	20,5%	24,1%	37,4%
Finland	4,7%	4,1%	2,7%	10,7%	14,8%	5,1%
Cyprus	45,4%	57,0%	45,0%	41,3%	39,3%	43,8%
Romania	67,6%	39,8%	43,7%	43,4%	19,7%	35,8%
Ireland	4,2%	1,7%	2,3%	10,9%	18,6%	8,6%
Luxembourg	2,3%	8,3%	25,3%	15,5%	16,7%	16,0%
Malta	11,1%	22,6%	22,5%	17,1%	26,9%	19,5%
Czechia	10,1%	9,6%	8,9%	5,4%	5,2%	7,5%
Portugal	29,0%	4,5%	2,2%	29,1%	24,3%	20,5%
Croatia	18,1%	14,4%	11,9%	15,1%	15,9%	15,7%
Slovenia	22,2%	23,4%	5,5%	21,4%	6,4%	14,5%
Lithuania	2,5%	3,4%	3,2%	38,4%	32,1%	17,6%
Latvia	7,7%	9,3%	1,5%	42,9%	39,4%	21,5%
Slovakia	2,3%	12,1%	3,0%	10,3%	6,3%	6,0%
Estonia	15,8%	3,2%	6,5%	25,7%	42,1%	18,9%

[19] Source of data: Eurostat, 2019a.

APPENDIX 5. TOP THREE COUNTRIES OF ORIGIN IN EACH EU MEMBER STATE[20]

Country	2013	2014	2015	2016	2017
EU	Syria Russia Afghanistan	Syria Eritrea Afghanistan	Syria Afghanistan Iraq	Syria Afghanistan Iraq	Syria Iraq Afghanistan
Germany	Serbia Russia Syria	Syria Serbia Eritrea	Syria Albania Kosovo	Syria Afghanistan Iraq	Syria Iraq Afghanistan
Italy	Nigeria Pakistan Somalia	Nigeria Mali Gambia	Nigeria Pakistan Gambia	Nigeria Pakistan Gambia	Nigeria Bangladesh Pakistan
France	Congo Kosovo Russia	Congo Russia Bangladesh	Sudan Syria Kosovo	Albania Sudan Afghanistan	Albania Afghanistan Haiti
Sweden	Syria Stateless Eritrea	Syria Eritrea Stateless	Syria Afghanistan Iraq	Syria Afghanistan Iraq	Syria Iraq Eritrea
Hungary	Kosovo Pakistan Afghanistan	Kosovo Afghanistan Syria	Syria Afghanistan Kosovo	Afghanistan Syria Pakistan	Afghanistan Iraq Syria
Austria	Russia Afghanistan Syria	Syria Afghanistan Russia	Afghanistan Syria Iraq	Afghanistan Syria Iraq	Syria Afghanistan Pakistan
UK	Pakistan Iran Sri Lanka	Pakistan Eritrea Iran	Eritrea Iran Pakistan	Iran Pakistan Iraq	Iraq Pakistan Iran
Greece	Pakistan Afghanistan Bangladesh	Afghanistan Pakistan Syria	Syria Pakistan Afghanistan	Syria Iraq Pakistan	Syria Pakistan Iraq
Belgium	Russia Afghanistan Guinea	Syria Afghanistan Russia	Syria Iraq Afghanistan	Afghanistan Syria Iraq	Syria Afghanistan Iraq
Netherlands	Syria Afghanistan Somalia	Syria Eritrea Stateless	Syria Eritrea Iraq	Syria Eritrea Albania	Syria Eritrea Iraq
Spain	Mali Syria Algeria	Syria Ukraine Mali	Syria Ukraine Palestine	Venezuela Syria Ukraine	Venezuela Syria Colombia
Bulgaria	Syria Stateless Algeria	Syria Afghanistan Iraq	Iraq Afghanistan Syria	Afghanistan Iraq Syria	Afghanistan Iraq Syria
Poland	Russia Georgia	Russia Ukraine	Russia Ukraine	Russia Ukraine	Russia Ukraine

[20] Source of data: Migration Policy Institute, n.d.

	Syria	Georgia	Tajikistan	Tajikistan	Tajikistan
Denmark	Syria Russia Somalia	Syria Eritrea Stateless	Syria Iran Afghanistan	Syria Afghanistan Stateless	Syria Eritrea Morocco
Finland	Iraq Russia Somalia	Iraq Somalia Ukraine	Iraq Afghanistan Somalia	Iraq Afghanistan Syria	Iraq Syria Eritrea
Cyprus	Syria Egypt Bangladesh	Syria Ukraine Egypt	Syria Palestine Vietnam	Syria Somalia Pakistan	Syria India Vietnam
Romania	Syria Iraq Afghanistan	Syria Afghanistan Iraq	Syria Iraq Afghanistan	Syria Iraq Pakistan	Iraq Syria Afghanistan
Ireland	Nigeria Pakistan Congo	Pakistan Nigeria Albania	Pakistan Bangladesh Albania	Syria Pakistan Albania	Syria Georgia Albania
Luxembourg	Kosovo Bosnia and Herzegovina Montenegro	Bosnia and Herzegovina Montenegro Kosovo	Syria Iraq Kosovo	Syria Albania Kosovo	Syria Eritrea Morocco
Malta	Somalia Eritrea Syria	Libya Syria Somalia	Libya Syria Eritrea	Libya Syria Eritrea	Syria Libya Somalia
Czechia	Ukraine Syria Russia	Ukraine Syria Vietnam	Ukraine Syria Cuba	Ukraine Iraq Cuba	Ukraine Armenia Georgia
Portugal	Syria Guinea Nigeria	Ukraine Morocco Pakistan	Ukraine Mali China	Syria Eritrea Ukraine	Syria Iraq Congo
Croatia	Syria Afghanistan Somalia	Algeria Syria Pakistan	Algeria Syria N/A	Afghanistan Syria Iraq	Afghanistan Syria Pakistan
Slovenia	Syria Kosovo Afghanistan	Syria Afghanistan Pakistan	Afghanistan Iraq Iran	Afghanistan Syria Iraq	Afghanistan Algeria Pakistan
Lithuania	Georgia Afghanistan Russia	Georgia Afghanistan Ukraine	Ukraine Georgia Russia	Syria Russia Iraq	Syria Russia Tajikistan
Latvia	Georgia N/A N/A	Georgia Ukraine Syria	Iraq Vietnam Ukraine	Syria Afghanistan Russia	Syria Vietnam Russia
Slovakia	Afghanistan Somalia Georgia	Afghanistan Syria Ukraine	Iraq Afghanistan Ukraine	Ukraine N/A N/A	Afghanistan Vietnam N/A
Estonia	Vietnam N/A N/A	Ukraine Russia Sudan	Ukraine N/A N/A	Syria Iraq N/A	Syria N/A N/A

APPENDIX 6. TOTAL RECOGNITION RATES[21] FOR EXTRA-EU28 CITIZENS AND SYRIANS BY COUNTRY[22]

Country	Total Recognition Rates	
	Extra-EU28	Syrians
EU 28	51%	97%
Germany	57%	98%
Italy	44%	78%
France	26%	96%
Sweden	64%	97%
Hungary	13%	35%
Austria	61%	99%
UK	35%	86%
Greece	27%	78%
Belgium	48%	96%
Netherlands	66%	94%
Spain	45%	97%
Bulgaria	75%	98%
Poland	20%	100%
Denmark	62%	96%
Finland	41%	98%
Cyprus	62%	98%
Romania	54%	85%
Ireland	36%	100%
Luxembourg	40%	97%
Malta	79%	93%
Czechia	31%	88%
Portugal	51%	97%
Croatia	25%	69%
Slovenia	48%	96%
Lithuania	58%	100%
Latvia	48%	100%
Slovakia	63%	67%
Estonia	53%	86%

[21] Total recognition rate refers to the percentage of total numbers of positive decisions among the total numbers of decisions taken on asylum applications in the five years examined in this thesis.
[22] Source of data: Eurostat, 2019b.

APPENDIX 7. ETHICS BOARD WAIVER FORM

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4. Is not based on observational and descriptive research (survey, interview, measures/scales, data scanning, system-model development).

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ADVISER COMMENTS AND APPROVAL

Approved.

Assoc. Prof. Dr. Mine Pınar GÖZEN ERCAN

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Assoc. Prof. Dr. Mine Pınar Gözen Ercan

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