

# Common European Asylum System

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ein Beitrag zur Tagung:

Dynamiken der Einwanderungsgesellschaft

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[http://downloads.akademie-rs.de/migration/20161112\\_vedsted-hansen\\_european-asylum.pdf](http://downloads.akademie-rs.de/migration/20161112_vedsted-hansen_european-asylum.pdf)

Version 3.0 of the  
Common European Asylum System  
– next step towards protection solutions  
or stop for asylum seekers?

**Netzwerk Migrationsrecht**

Hohenheim 11 November 2016

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# EU responses to the asylum crisis

- Brief account of recent CEAS developments
- External dimension
  - Non-arrival policies and practices
  - EU-Turkey arrangements
- Attempted measures of intra-EU relocation
- Intensified harmonization of legal standards

# CEAS developments

- Increasing strain on asylum systems in (certain) Member States
- Collapsing the Dublin system?
  - Lack of registration and fingerprinting: Eurodac dysfunctional
  - No transfers to specific Member States: Dublin suspended
- Incomplete harmonisation as regulatory (dis)incentives
  - Member States: non-compliance with CEAS standards
  - Asylum seekers: secondary movements

# Fundamental rights issues under the Dublin system

- The Greek protection tragedy
  - ECtHR 21.1.2011: M.S.S. v. Belgium and Greece
  - CJEU 21.12.2011: N.S. & M.E.
- CJEU on Dublin transfers
  - Observance of fundamental rights
  - Assumption of 'mutual trust' among Member States
    - Dublin Regulation: 'principle of mutual confidence'
    - Raison d'être of AFSJ and CEAS: 'mutual confidence' as presumption of compliance with fundamental rights
    - Presumption not conclusive: rebuttable, but
    - Not any fundamental rights infringement will affect operation of the Dublin system

# Limitations on the Dublin system

- Suspension of Dublin transfers
  - Systemic deficiencies in asylum procedures and reception conditions or
  - Real risk of ill-treatment
    - CJEU >< ECtHR?
    - ECtHR >< national courts?
- The Italian reception labyrinth
  - ECtHR 4.11.2014: Tarakhel v. Switzerland
    - Children 'extremely vulnerable'
    - Requirement of 'individual guarantees'
  - ECtHR post-Tarakhel: from 'guarantees' to 'earmarked' reception places
- Continuing deficiencies: Bulgaria, Malta, Hungary...

# The external dimension of EU asylum policy

- External border control mechanisms
  - Rejections and push-backs at (certain) external borders
  - Extraterritorial push-backs: modified by rescue operations
  - Limited inadmissibility possibilities: 'safe third country' criteria
- Closing of external EU borders
  - Restricting access to asylum
  - Raising fences: symbols or barriers?
  - Redefining 'safe third countries'
  - Preventing arrivals of asylum seekers

# Non-arrival and 'safe third countries'

- Non-arrival policies: containing asylum seekers in third countries
  - Operation 'Sophia': fortification of push-back?
  - 'Khartoum process': partnerships with third countries
  - The EU-Turkey 'agreement'
- Reinforcement of 'safe third country' policies
  - Greece-Turkey
  - Bulgaria-Turkey?
  - Other redefined 'safe third countries': Serbia, Russia...
- Risk of direct or indirect refoulement
- Legal challenges at domestic and European level

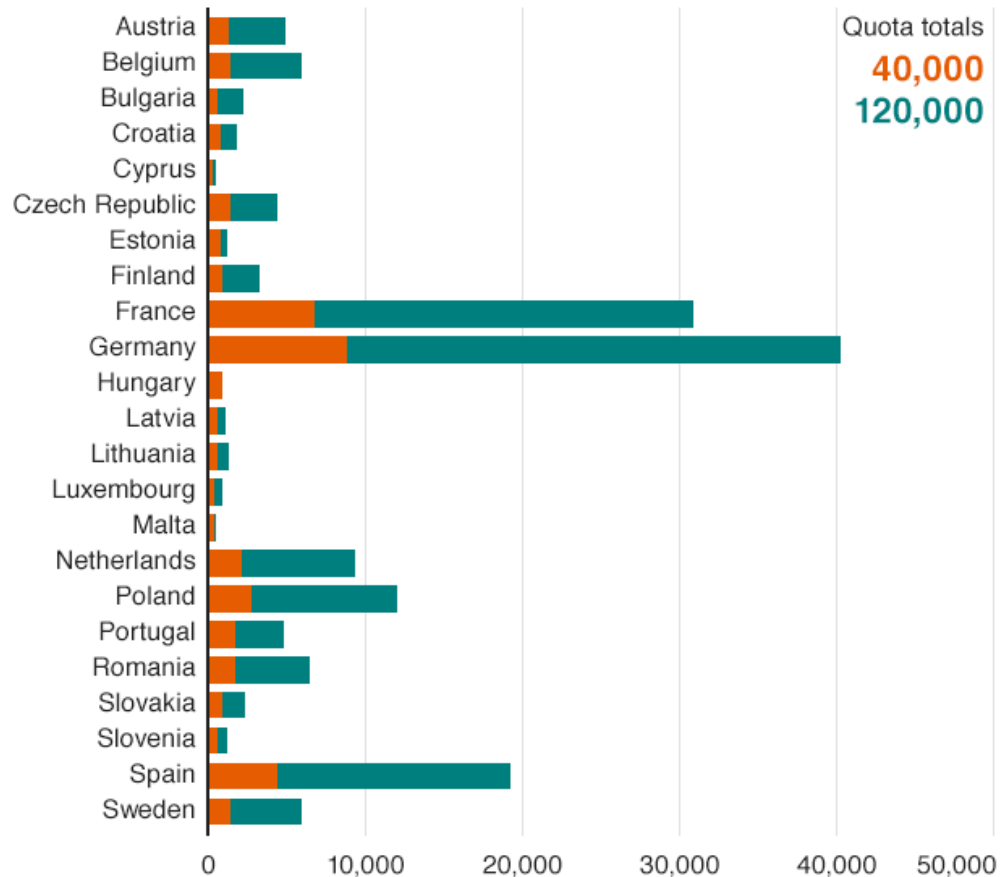


# Intra-EU relocation of asylum seekers

- Relocation quota decisions
  - July 2015: 40.000 asylum seekers from GR + IT > voluntary
  - September 2015: 120.000 asylum seekers from GR + IT + HU > mandatory
- Inefficient implementation
  - Relocation from GR: 63.302 dec. > 11.305 pledged > 5.376 persons
  - Relocation from IT: 34.953 dec. > 4.954 pledged > 1.549 persons  
(8 November 2016)
- Corrective Dublin mechanism?

## Number of migrants EU countries are being asked to take

- May 2015: Proposed quotas for relocating migrants from Greece and Italy
- Sept 2015: Proposed additional quotas for relocating migrants from Greece, Italy and Hungary



UK, Ireland and Denmark can choose whether to take part in the quota scheme

Source: European Commission/Reuters

BBC

# Intensified harmonization of legal standards

- European Agenda on Migration (13 May 2015)
- Communication on CEAS reform and legal avenues (6 April 2016)
- Reform package on Dublin + Eurodac + EASO/EAA (4 May 2016)
- Reform package on Qualification + Procedures + Reception Conditions + EU Resettlement Framework (13 July 2016)
  - Regulations on Qualification + Asylum Procedures > stronger harmonisation
  - Sanctions against secondary movements
  - Stricter rules to combat abuse
  - Harmonised rules on 'safe countries'

# Protection vs. restriction?

- Future prospects for the CEAS
  - Genuinely enhanced harmonisation or weakening of harmonised standards?
  - Reduced scope of protection?
    - Formal definitions probably stable, yet MS application uncertain
    - Indirect reduction by way of procedural devices: inadmissibility, acceleration...
  - Reduced level of protection standards?
    - Differentiation between refugee status and subsidiary protection abandoned by COM
    - Sanctions against secondary movements
- New dynamics in EU asylum and migration law and policy?
  - External restrictions vs. internal protection commitments
  - Invisibility and policy dynamics: restrictions prevailing?

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