

## A New Impulse for EU Asylum Policy?

The Potential of the European Asylum Support Office

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EU member states set themselves the deadline of 2012 to complete the common European asylum system. They have a mountain to climb. Asylum-seekers' success in finding protection in Europe still depends largely upon which country they arrive in. And there is no common approach to the uneven asylum burdens borne by individual member states. The blueprint set out in May 2010 by EU Regulation 439/2010 of the Parliament and Council for a European Asylum Support Office is supposed to remove these deficits. Yet, the lack of detail in the Regulation shows that there is no common vision for the new agency. If it is to play a meaningful role, the office will have to find its own means of appealing to the different interests of the member countries.

Some ten years ago, the EU heads of state and government first talked seriously of their intention to create a common European asylum system. This system was intended to ensure that the individual member states bore a more equitable burden for asylum in the EU. It has subsequently become clear, however, that the member states have very different understandings of burden-sharing. There are two camps.

Northern and western member states' notion of burden-sharing harks back to their experiences in the 1990s. Back then, countries like Germany, the United Kingdom, France and the Netherlands took in larger numbers of asylum-seekers than did their neighbours to the south and east. By their own reckoning, this was due to their own comparatively high asylum standards.

Asylum-seekers could be quite sure of meeting with better treatment in the north and west of Europe than elsewhere.

Northern and western member states believe that the Europe-wide disparities in asylum standards continue to create an uneven burden. For them, the point of the common European asylum system is therefore to ensure that all member states adhere to the same basic standards. This, coupled with a more fundamental effort to deal with the root causes of forced migration, will put an end to "asylum-shopping".

In the south and east of the EU, a rather different position is heard. When setting out their vision of burden-sharing, countries like Greece, Malta, Cyprus and Poland cite more recent experiences. In the past ten years, levels of immigration to these

countries have risen, and asylum policy has become increasingly politicised. To their minds, membership in the EU has made them more attractive as an “asylum destination”. The burden on members at the EU’s eastern and southern borders is cemented by European rules such as the Dublin II Regulation. This measure pins responsibility for asylum claims largely upon the country through which the applicants entered the EU.

Against this background, southern and eastern member states are calling for greater support from their northern and western partners when dealing with these new responsibilities. For them, the point of the common asylum system is to ensure practical support and the possible redistribution of asylum-seekers and refugees within the Union. These states can also be resistant to efforts to make them raise their asylum practices to meet EU-wide standards – something which they believe would only cement the burden they bear.

### **Motives for the office**

Between 2000 and 2005, work towards the EU’s common asylum system was at its most intense. Efforts focussed on creating common minimum standards for the major aspects of asylum policy (including reception, qualification and procedural rules). Yet, five years on, differences in national recognition rates differ enormously. According to Eurostat, more than three quarters of successful applications in 2009 were made in just six member countries (United Kingdom, Germany, France, Sweden, Italy, Netherlands). The lowest recognition rates were found in Greece, Ireland, Spain and Slovenia.

The EU Commission’s 2007 asylum strategy sought to end such disparities. The strategy foresaw the establishment of a support office which would support moves towards common standards. This was a recognition that, alone, the agreement of common legal standards would not harmonise national asylum practices.

What was instead needed was a greater focus on the exchange of expertise and best practice to ensure the uniform interpretation and implementation of European rules. This vision picked up on the priorities of countries such as the United Kingdom and Germany.

The creation of the Commission strategy paper was not, however, the first time the idea of an office had been mentioned. Already in 2005, the heads of state and government had considered the possibility of creating an office. The interpretation of the office to emerge from that discussion was rather different, and was mainly concerned with giving practical support to member states faced with an influx of asylum-seekers. This was an option that had been strongly advocated by countries like Malta, which in 2009 had the highest number of asylum-seekers relative to its population: the 2,390 applications made in Malta represented a ratio of 5.8 per 1,000 residents (compared with 0.3 in Germany and 0.5 in the United Kingdom).

The EU Regulation of 19th May 2010, which set out the blueprint for the office, failed to resolve these two agendas.

### **The mandate**

The Regulation is technically detailed but somewhat lacking in substance. It sets out the broad parameters of the office’s role, but its precise work and the appointment of the office’s executive director are to be decided upon only in the coming months. In Brussels circles, it is assumed that, by 2013, the office will have a staff of around sixty to seventy and will have established working parties on subjects such as the collection of information on third countries and cooperation on returns programmes. But all this will largely depend upon the executive director’s success in creating an active consensus on the part of all member states.

On the one hand, the office has a mandate to take up tasks which have traditionally been of interest to states like Germany

and the United Kingdom, namely the harmonisation of legal and practical standards and the reduction of the causes of forced migration. The office will, for example, play a role in supporting the spread of best practice in the implementation of EU rules (Art. 3). It will foster the use of the EU asylum curriculum and will be able to “train the trainers”. The office will also collect data on refugees’ countries of origin (Art. 4) – something which could help create more uniform recognition rates.

On the other hand, the office will also be involved in tasks of interest to countries like Malta. The office will, for example, be charged with supporting the relocation of those with international protection within the Union (Art. 5). The office can also send asylum support teams to member states that request practical aid. These teams will be made up of experts pooled by the member states (Art. 13) and will provide services as regards interpretation, information on countries of origin and the processing of claims (Art. 14). Whilst the decision about whether to activate a team lies with the office, it must ask the individual members to stump up for the personnel (Arts. 15–18).

The Regulation is clear about what the office should not do. The office is, for example, to play only a handmaiden role in the actual analysis of data about countries of origin. And it is not to give instructions about how to deal with individual asylum cases. More centralised forms of practical burden-sharing and relocation have also been resisted, particularly by northern and western states. Article 46 alone offers a prospect of change in this regard, decreeing that by June 2014 there should be a review to ascertain whether further action is needed to achieve solidarity. This was a concession wrung from the northern and western members by southern states and the Parliament in pursuit of a more robust European relocation system.

## Prospects

It became clear during the negotiations that there is no vision for the work of the office. Northern and western states were nervous about the office gaining too powerful a role in fostering solidarity. Southern and eastern states in particular were wary of giving the office too much power in harmonising asylum standards. All member states were keen to maintain as much of their sovereignty in these matters as possible.

In the absence of a working consensus on the part of the member states, there is reason to fear that the new office will turn out like Frontex, the EU agency for coordinating operational cooperation at the EU’s common external border. Frontex’s efforts to encourage burden-sharing have been characterised by a distinct lack of efficiency, because it has failed to give all members a concrete interest in border cooperation. Some members already worry that the Asylum Support Office will be driven more by supranational activism than by the member states themselves. The Commission has secured itself two seats on the management board whilst the member states have only one each (Art 25 [1]), and the Parliament will have a potentially powerful role in the appointment of the director (Preamble 18).

Supranational activism can only take the office so far. Without an active consensus on the part of the member states, there will be no meaningful burden-sharing of any kind. For this reason, the incoming executive director will have to find ways of combining the rather reactive priorities of southern and eastern members with the more fundamental agenda of western and northern states. An informal quid-pro-quo arrangement between the two camps would be one possibility. Those states which demand practical help (for example support teams) from the office would have to show that they are properly applying EU standards.

Another means would be for the executive director to make creative use of the

office's powers. At present, these are so limited that it will be difficult to engage the member states in any kind of meaningful activity: the individual members simply do not stand to gain enough from the office to make real engagement worthwhile. From this perspective, an active director could make sure that the office's competencies in the external dimension of asylum policy (Art. 49) apply both to cooperation with the transit states on the EU's southern and eastern borders and to efforts to deal with the root causes of forced migration in countries further afield.

Similarly, the office might be able to overcome some of the limitations on its powers to foster the implementation of EU asylum rules by actively supporting the Commission in its role as policeman of European standards. Simply by strengthening its relations with the Commission, the office could increase its clout. By the same token, the office's management board could provide a source of gravitas, meaning that, even in areas such as the analysis of third country data or the harmonisation of asylum standards where its powers are carefully curtailed, the office could have real influence.

It would be strange – though not without precedent – if the member states created this office only to keep it weak. If they wish to get something out of it, they must instead invest something in it. That means supporting the appointment of an active executive director, helping the management board attain the gravitas it needs, and contributing actively and with highly-qualified personnel to working parties and the asylum pool.

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