

# Preface

Asylum law in Europe is currently undergoing great changes. A bit more than a decade ago, with the adoption of the Treaty of Amsterdam, the Community gained competence to adopt measures in asylum, in connection with the Area of Freedom, Security and Justice policies.<sup>1</sup> This has resulted in the building of the Common European Asylum System (CEAS) by the Union.

The goal of the CEAS could be described as creating a European-wide fair, efficient and flexible asylum system. The current framework of CEAS is based on the following main aspects: allocating responsibility for asylum seekers to an appropriate Member State<sup>2</sup>; and creating common standards for processing asylum-seekers,<sup>3</sup> their reception conditions<sup>4</sup> and their qualification as a refugee in the Member States.<sup>5</sup> To continue the development of the CEAS further, the Commission opened a public consultation in the Green Paper in 2007.<sup>6</sup> As a result the Asylum and Immigration Pact was adopted by the Council of Ministers which

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<sup>1</sup> Article 63 EC Treaty. Now the Union has competence to adopt measures on asylum under Article 78 TFEU, the powers have changed considerably here. Previously the Community could only adopt minimum harmonisation measures, whereas now the Union can adopt uniform measures.

<sup>2</sup> Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ 2003/L50/p. 1 ff., the so-called Dublin Regulation .

<sup>3</sup> Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ 2005/L326/p. 13 ff.

<sup>4</sup> Council Directive 2003/9 laying down minimum standards for the reception of asylum seekers, OJ 2003/L31/p. 18 ff.

<sup>5</sup> Council Directive 2004/83/EC on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ 2004/L304/p. 12 ff.

<sup>6</sup> Green Paper on the future Common European Asylum System, Brussels, 6 June 2007, COM(2007) 301 final.

encourages the construction of “Europe of Asylum”<sup>7</sup> leading to setting up the European Asylum Office, solidarity between Member States on processing asylum applications and creation of a single asylum procedure. By using these means in particular it should be possible to achieve the aims set out in the Green Paper, *inter alia*, “to establish a level playing field, a system which guarantees to persons genuinely in need of protection access to a high level of protection under equivalent conditions in all Member States while at the same time dealing fairly and efficiently with those found not to be in need of protection.”<sup>8</sup>

The EU developments must take into account that asylum law has its underpinnings in international human rights law. All the Member States of the Union are parties to the 1951 Convention relating to the status of refugees and to its 1967 Protocol.<sup>9</sup> Furthermore, the European Convention on Human Rights (ECHR)<sup>10</sup> and, in particular, the jurisprudence of the European Court of Human Rights (ECtHR), has been influential in shaping the standards for the protection of asylum seekers and refugees in Europe.

The Member States are currently debating and new measures are being proposed on how to achieve the bold aims of the renewed CEAS. These aims include creating a single asylum procedure and making sure that the international obligations are respected and potentially also strengthened by the Union. To join in this conversation, the Erasmus School of Law organized a conference “The future of asylum in the European Union. Proposals, problems and interaction with international human rights standards” in April 2009. Scholars and practitioners from many different Member States were invited to discuss the implications of recent developments in EU asylum law and the participants were asked to contribute their views in this book. Even though this book is published two years after the Conference, the building of the Common Asylum System is still discussed in the Union structures and the main discussion points from the Conference are still applicable. The rebuilding of the CEAS is in no means an easy task. These questions for the Conference and the following publication could also be framed using the words of the opening speaker of the Conference, the Dutch State Secretary for Aliens’ Affairs at the time, Ms. Nehabat Albayrak:

... I would like to give you several questions for further consideration during this conference. First of all: what more can we do to harmonise the European asylum policy, for it to become a reality? Which concrete obstacles have to be overcome? How can we realise that we actually protect the people for whom the asylum policy is intended? Given the large number of well-informed specialists, I would even stimulate you to also think about the long term. How should we proceed [after the Stockholm Programme, after 2014]?

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<sup>7</sup> The European Pact on Immigration and Asylum, Commitment 4.

<sup>8</sup> Green Paper, *supra* n. 6, p. 2.

<sup>9</sup> Resolution 2198 (XXI) adopted by the United Nations General Assembly, available from <http://untreaty.un.org/cod/avl/ha/prsr/prsr.html>. There are altogether 144 States parties to this Convention.

<sup>10</sup> Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, available from <http://conventions.coe.int/treaty/en/treaties/html/005.htm>.

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