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Briefing: Qualitative Analysis of Methods & Concepts of Common European Asylum System Literature

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Introduction

The central aim of the CEASEVAL project is to provide a comprehensive evaluation of the Common European Asylum System (CEAS). In order to advance our knowledge and understanding of the underlying legal and political developments as well as past and future challenges, it has to build on existing empirical and theoretical work.

There is already a fast-growing body of literature that not only describes and analyses the apparent failure(s) of the current system but also highlights certain elements of success or at least potential for such. In order to systematically collect, organise, and examine this existing knowledge, the project team based at the University of Sussex is conducting an in-depth review of the relevant literature, primarily focusing on academic work (published since 2000), but also taking into account some of the "grey literature" produced by non-academic organisations.

Another recently published briefing paper outlines the strategy and procedures we followed to identify, collect and select the most relevant literature for closer examination[1]. The result of this exercise is a thematically coded online database containing full-text PDF versions of 400 items, including journal articles, book chapters, working and opinion papers, as well as policy reports and evaluations.

The aim of the present briefing is to provide an overview of the types of data and methods that previous research on the CEAS has drawn on (section 2); and to summarise the most important arguments and contributions that these studies make in relation to a number of selected themes that are central to the CEASEVAL project (section 3).

Analysis of methods

Overall, our review suggests that a significant share of what has been written about the CEAS is not systematically based on findings from original empirical research but rather discusses the failure (or partial success) of the current system at a theoretical level. Such work does not engage primarily with existing policy and at worst treats policy in a purely superficial fashion.

Our sample of the relevant literature is thereby not limited to studies and reports that explicitly mention the CEAS[2], but also includes work that more implicitly relates to this topic by highlighting some of the underlying problems or discussing specific issues of implementation that arise at the national or even local level.

A significant overall finding of our review was that just about half (55%) of all the analysed literature is based on original empirical research, and much of it makes a largely theoretical

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[1] See CEASEVAL Deliverable 1.4: Briefing on quantitative literature review
[2] Just over 50% of the reviewed literature contains the term "Common European Asylum System" or "CEAS".

contribution to the ongoing academic and/or policy debates. It should be noted that these distinctions are not clear-cut and drawing them obviously involved a certain degree of subjective judgement on the part of the reviewers. That said, **figure 1** provides an overview of the primary research methods employed in those studies that do report findings from original empirical research.
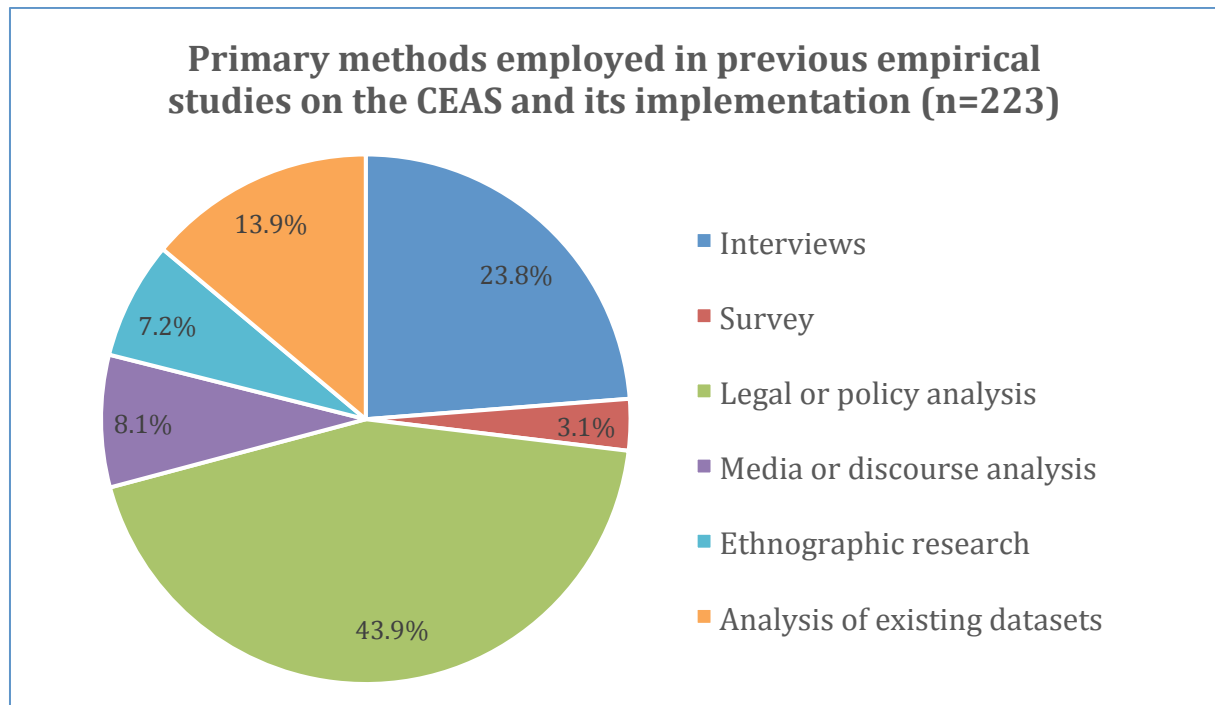
Primary methods employed in previous empirical studies on the CEAS and its implementation (n=223)

Figure 1: Overview of primary data collection methods employed by studies that explicitly draw on original empirical research

Interestingly, less than 20% of all the analysed literature and about one third of those studies that are based on empirical research, draw on original interview, survey, or ethnographic data; whereas two thirds of the latter rely on legal or policy analysis, discourse analysis, or statistical analysis of existing datasets, and thus purely desk-based research.

This presents CEASEVAL with an opportunity to fill this apparent gap with new empirical insights gained through intensive fieldwork to be carried out over the coming months in various countries, thereby looking at the CEAS not only from a comparative, but also multi-level and multi-actor perspective.

Central themes and concepts addressed in the reviewed literature

Apart from collecting basic information on the methods used, we also coded each item in our database thematically by adding tags from a pre-established set that broadly reflects the central research questions to be addressed in each of the CEASEVAL work packages. Access to this database can easily be shared with other project partners, who can use the tags as simple filters to download (or view online) the corresponding sets of literature. In addition, they could also be invited to contribute to the database by adding (or suggesting) any additional literature they deem particularly relevant.

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The remainder of this briefing provides a brief overview of the main arguments and contributions made by the reviewed literature in relation to selected key themes, as a starting point for more in-depth analysis and further research.

Harmonisation

One of the most frequently addressed issues is the degree of harmonisation of asylum policies and practices across the EU. Existing research provides ample evidence of inconsistent interpretations of common legal norms, different protection standards as well as divergent recognition rates, all of which tends to trigger (irregular) secondary movement among asylum seekers and contradicts the very idea of a *common* European Asylum System.

Most observers thereby regard the underlying aim of eventually creating a fully integrated system, common procedure, and unified status, as too ambitious (at least in the near future), given the challenges that would pose not only for individual Member States' (MS) territorial sovereignty but also in terms of political decision-making. In fact, much of the literature points out significant opposition against further harmonisation in or by some MS. The process of Europeanisation is thereby frequently seen as a form of "venue-shopping", through which policy-making on particularly contentious issues can escape politicisation at the national level. At the same time, many commentators point at the risk of (and sometimes provide evidence for) a "race to the bottom", whereas others argue that overall, harmonisation has led to higher protection rates and/or standards.

Most assessments of the current state of harmonisation – often based on a comparison of application numbers and/or recognition rates across different MS – suggest that convergence has at best been modest and was mostly geared towards additional restrictions. Harmonisation thus seems most successful in relation to deterrence and externalisation measures that limit refugees' access to EU territory, such as the proliferation of "safe third country" and "safe country of origin" rules.

Specific policy recommendations made in the reviewed literature frequently relate to changes in EU decision-making procedures, the strengthening of existing monitoring and enforcement mechanisms, and the upgrading of relevant supranational institutions such as the European Asylum Support Office (EASO). In addition, joint processing exercises, common training facilities, and increased exchange of country-of-origin information across EU MS is endorsed. In relation to the role of academia, a stronger focus on qualitative research as well as local implementation practices is often called for.

Solidarity / Responsibility-Sharing

The need and potential for harmonisation are closely related to the issue of solidarity between MS, and much of the reviewed literature addresses these two issues together. For many authors, the highly unequal distribution of asylum applications across the EU represents a major challenge for the CEAS and clearly proves the failure of its current setup. Most of them agree that this is not just an issue of divergent policies but also has structural causes (including socio-economic, political and other factors) and thus cannot be "solved" through policy harmonisation alone.

The current Dublin system is not only presented as the corner stone of the CEAS, but often also as the main reason for its failure: In addition to the fact that it proved unworkable in the face of a sudden and geographically concentrated arrival of protection seekers, existing evidence suggests that it results in excessive transfers that too often rely on coercive

measures, thereby undermining human rights standards as well as overall efficiency. All of this provides refugees with a strong incentive to try and escape this system.

The reviewed literature draws on a range of theoretical approaches, including liberal intergovernmentalism (often to highlight the asymmetry of interests and/or negotiating power among MS) as well as game-theoretical approaches. Refugee protection is thereby frequently treated as a public or collective good, which helps to explain certain spill-over effects and free-riding practices.

Concrete policy recommendations put forward in the literature include various corrective measures like modified distribution keys (which also take into account population size, macro-economic indicators, as well as asylum seekers own preferences and social connections beyond the core family), a better monitoring and enforcement of existing rules, and more efficient and humane relocation procedures. Critical commentators argue that the Dublin principle should be abandoned altogether and replaced by a more equitable distribution mechanism. The latter overlaps with calls for allocation to be carried out by a central authority that would be better placed to match the needs or preferences of MS with those of individual protection seekers. Several authors propose that distribution schemes can only work if complemented with a system of "tradeable refugee admission quotas" or other forms of financial compensation for MS that overfulfill their assigned quota.

Overall, the reviewed literature suggests that current responsibility-sharing mechanisms are neither fair nor effective. Rather than sharing the financial and political burden caused by the latest crisis, MS are engaged in burden-shifting, i.e. the externalisation of protection responsibilities to countries of origin and transit.

Externalisation (incl. solidarity with third countries)

The impact of the CEAS on countries outside Europe is a major focus of the entire bibliography: a total of 80 articles, or 20% of the 400 total, explore this theme. There is a particular focus on the EU's immediate neighbourhood, but this also includes consideration of relationships further afield. Given the timing of our review, this is not surprising; 'partnership with countries of origin and transit' was first raised as an EU objective at the 1999 Tampere European Council and the publication of articles increases after 2004, when the entry into force of the Treaty of Amsterdam provided a legal basis for policy engagement in this area. Much of this literature uses the intra-EU harmonisation framework to investigate policy transfer beyond the EU. Policy development in the EU's neighbourhood in the field of migration and asylum cannot be separated from the dominant position and clear interests of the EU.

Within this overall framework, there are a few studies of individual countries, particularly the more obviously strategic partners, including Libya before 2011 and Turkey, especially after the 2016 EU-Turkey agreement. More frequently, studies investigate particular themes. These often occur within particular time periods, reflecting the popularity of particular terms in the political discussion. For example, the challenges of establishing extra-territorial processing centres are the focus of a group of articles from 2004 onwards, but this subject fades as political interest moves on and the theme barely appears after 2010. A focus on 'transit migration' has a similar intellectual history as the term is critiqued and analysis moves on. The use of development to address the 'root causes' of migration indicates a number of peaks as it is first raised in 2000 and appears periodically as it re-enters political discussions. Similarly, different approaches to deportation or returns are a continual theme but make use of different terminology. In all of these areas it is important not to confuse the precise use of particular terms with the broader idea. Academic analysis can highlight the problematic

history to certain ideas that appear innovative but in fact draw on a well-established set of ideas that are simply framed in a different way.

Politicisation: public attitudes, political and media discourse on asylum

Another frequent theme within the collected literature is how asylum generally is politicized, including how political and media discourses on asylum and the CEAS are meditated, as well as the drivers of public attitudes towards immigration and asylum.

In terms of public attitudes, the perception of migrants, including who counts as a migrant and overestimation of flows of immigration determine individual level attitudes. On the whole economic and demographic situations seem to matter less in informing opinions on immigration than social identity and culture. Contact theory holds true and there is overwhelming consensus in the literature that levels of educational attainment shape attitudes towards immigration, whereby the latter also depend on migrants' ethnicity and nationality.

The established literature finds that the media's framing of immigration is usually through securitisation or threat frames. In terms of the Refugee Crisis specifically, the evidence points at temporal shifts in the media framing as the Crisis evolved, from an initial humanitarian and empathetic framing towards a hostile or suspicious framing. Existing evidence also demonstrates large regional and country variations in media coverage of the Crisis with divergent framings between the East and West, although the UK is found to be especially hostile. Finally, there is an absence of migrant's voice in the press, while political elites dominate in the press coverage.

Political discourse has mirrored media discourse of the Crisis, shifting from a humanitarian/moralistic frame in the early stages to more explicit securitization. The question of responsibility or burden sharing played a major role in political discourses, although in all cases the Crisis has been portrayed according to national, not Union, perspectives. Also, there have been significant cross country variations as to how political discourse has responded to the crisis, with various triggering events shaping discourses at the national level and local levels.

Multilevel governance and the role of non-state actors

One of the central objectives of the CEASEVAL project is to develop a new theoretical framework of multilevel governance in relation to the CEAS. It can thereby draw on a growing body of academic and non-academic work that highlights the necessity to overcome state-centrism and more systematically take into account the (potential) roles of both sub-state and supra-national entities, as well as that of non-state actors.

The state-centrism that characterises much of the academic literature on migration and asylum thereby ultimately mirrors the reluctance of EU-MS to even partly concede their power over the admission of foreigners to their territories. In fact, most of the studies that explicitly address questions of multilevel governance thereby focus on interactions or conflicts between the European and national levels. Only a very small share of the reviewed literature specifically focusses on the role or perspective of local governments in relation to (the implementation of) certain aspects of the CEAS, particularly the reception of asylum seekers and the integration of those eventually recognised as refugees. The dominant logics and pressures that drive local practice towards both of these groups are thereby often different from, and sometimes in opposition to, those that dominate policy-making at the national level. That said, however, there are also potential parallels to be drawn and lessens

to be learned from local practice and experiences. It is argued, for example, that a closer and more systematic examination of national (re-)distribution models, although difficult to transfer to the European level, could provide valuable insights for policy makers.

Other studies have looked at the role and influence of courts, relevant international organisations (like UNHCR) and/or non-governmental organisation (NGOs) in relation to the CEAS. They generally suggest that a greater involvement of non-state actors tends to be associated with higher recognition rates and a stronger focus on fundamental rights as well as the special needs of particularly vulnerable groups. Closely related to this is the question of how much autonomy the various EU agencies and other implementing bodies should be given. Although the importance of the latter has increased since the foundation of the CEAS, it seems that most of the political responsibility for dealing with the issue of asylum is still being attributed primarily to national governments. The reviewed literature thus often discusses these complex dynamics in terms of a principle-agent problem, whereby nation-states act as principles, who can regulate but seldom fully determine the actions of their increasingly diverse and more or less autonomous agents.