The Common European Asylum System, LW5113

**COURSE OUTLINE 2022-23**

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| Objective | To explore, critically analyse and monitor the Common European Asylum System (CEAS) |
| Lecturer | Dr Ciara Smythciara.m.smyth@universityofgalway.ieEmail for an appointment |
| Times | Weeks 9-12, Semester 2, 2023-243 hour weekly seminar, Mondays 10am-1pm, Seminar Room, ICHR |
| Learning Outcomes | At the end of this course you should be able to:* Articulate the scope of the key instruments of the CEAS
* Demonstrate an awareness of how select instruments have been interpreted by the Court of Justice of the EU
* Discuss how the CEAS instruments are poised to change with the immanent adoption of new instruments
* Critically analyse the new instruments from a protection point of view
* Have an informed view of the EU’s different responses to the 2015 refugee crisis and the 2022 Ukrainian refugee crisis
* Place in the CEAS in broader context by showing how it has influenced international refugee protection
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| Format | The course will be taught by way of four weekly seminars, conducted over three hours. The weekly readings comprise a mix of primary materials, policy documents and scholarly/civil society commentary. You are expected to do the readings in advance and are encouraged to express your understanding/views and engage in active discussion. Guest speakers may contribute to some of the seminars. Teaching and learning materials for the course are available on the Canvas learning management system: <https://universityofgalway.instructure.com/> You will find the Common European Asylum System (LW5113) in ‘Courses’. You will find this Course Outline in ‘Syllabus’. You will find any teaching and learning materials in ‘Modules’ (the terminology is a bit confusing: a module in Canvas corresponds to a topic within a course, not the course itself!). |
| Programme(s) | LL.M in International Migration and Refugee Law and PolicyLL.Ms in the Irish Centre for Human Rights and School of Law |
| Course Material | See weekly readings (below) |
| Core Text | * Cathryn Costello, *The Human Rights of Migrants and Refugees in European Law*, Oxford University Press, 2017, 9780199644742
* Vincent Chetail, Philippe De Bruycher and Francesco Maiani (eds) *Reforming the Common European Asylum System: the New European Refugee Law*, Brill Nijhoff: Leiden and Boston, 2016, 9789040308657
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| Supplementary Texts | Weekly readings (see below) |
| Assessment | 2,500-word essay (ex footnotes) |
| ECTS | 5 |
| Workload  | 125 hours of student effort |

GENERAL OVERVIEW OF THE COURSE

# This module examines the evolution of the EU Common European Asylum System (CEAS) from the 1990s to the present and beyond, exploring why and how the EU has sought to harmonise the law in this area. At its heart, the CEAS comprises five instruments, four of which have been recast (amended) once already, and all of which are currently in the process of being re-negotiated, with the expectation that they will be adopted in June 2024. Accordingly, we must have an eye not only to the current instruments but to the proposed new ones. Each instrument has strengths and weaknesses from a protection point of view – the jewel in the crown probably being the Qualification Directive, and the most problematic being the Dublin Regulation. Both of these are examined in detail in this course, along with the corresponding case-law of the Court of Justice of the EU. One hitherto dormant instrument – the Temporary Protection Directive – was triggered for the first time in 2022 in response to the anticipated mass influx of Ukrainian refugees. Questions have been asked about why this directive was not activated in a previous mass influx situation, namely the 2015 refugee crisis. We will delve into this debate.

# Parallel to the CEAS, the EU has developed a number of policy initiatives relating to the ‘external dimension of asylum’, such as the EU Turkey Deal, Regional Development and Protection Programmes and Common Operational Partnerships. Furthermore, there is an interesting literature on the growth and oversight (or lack thereof) of EU agencies such as EASO and Frontex. While we will discuss these issues in passing, time does not permit a detailed examination of the debates. However, students are welcome to do an essay (or dissertation) on any of these issues and guidance will be provided on the relevant literature.

**SEMINARS AND READINGS**

**Before we get started**

* Familiarise yourself with the following key instruments of the CEAS (at a minimum know what each of them does, broadly):
	+ The Recast Reception Conditions Directive (2013/33/EU)
	+ The Dublin III Regulation (604/2013)
	+ The Recast Qualification Directive (2011/95/EU)
	+ The Recast Asylum Procedures Directive (2013/32/EU)
	+ The Temporary Protection Directive (2001/55/EC)

**Seminar 1 – History of the CEAS, overview of key instruments, overview of proposals**

* Ciara Smyth, Chapter 1, *European Asylum Law and the Rights of the Child*, Routledge, 2014 (posted on Canvas).
* European Parliament, EU Pact on Migration and Asylum, State of Play: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/739247/EPRS\_BRI(2022)739247\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/739247/EPRS_BRI%282022%29739247_EN.pdf)
* Tsourdi, Lilian, ‘The Emerging Architecture of EU Asylum Policy: Insights into the Administrative Governance of the Common European Asylum System’ in F Bignami (ed) *EU Law In Populist Times: Crises and Prospects* (CUP, 2020). Available at SSRN: [https://ssrn.com/abstract=3845413](https://ssrn.com/abstract%3D3845413) or [http://dx.doi.org/10.2139/ssrn.3845413](https://dx.doi.org/10.2139/ssrn.3845413)

**Seminar 2 – The recast Qualification Directive, select jurisprudence, the proposal for a Qualification Regulation**

* Do a close reading of the text of the Recast Qualification Directive (2011/95/EU) and compare it with the Commission Proposal for a Qualification Regulation (COM/2016/0466 final - 2016/0223 (COD))
* On EUR-Lex, read the following cases:

Sexual orientation

-CJEU 7 Nov. 2013, C-199/12, *X, Y & Z*

-CJEU 2 Dec. 2014, C-148/13, *A, B & C*

-CJEU 25 Jan. 2018, C-473/16, *F*

Exclusion

-CJEU 9 Nov. 2010, C-57/09 + C-101/09, *B & D*

-CJEU 31 Jan. 2017, C-573/14, *Lounani*

-CJEU 13 Sept. 2018, C-369/17, *Shajin Ahmed*

Subsidiary protection

-CJEU 17 Feb. 2009, C-465/07, *Elgafaji*

-CJEU 30 Jan. 2014, C-285/12, *Diakite*

-CJEU 10 June 2021, C-901/19, *C.F & D.N.*

**Seminar 3 – The Dublin III Regulation, select jurisprudence, the proposal for a Regulation on Asylum and Migration Management**

* Do a close reading of the text of the Dublin III Regulation (604/2013) and compare it with the Commission Proposal for a Regulation on Asylum and Migration Management, COM/2020/610 final.
* Read the following key cases on EUR-Lex:

-CJEU 21 December 2011, Joined Cases C‑411/10 and C‑493/10, *N.S and M.E.*

-CJEU 16 February 2017, Case C‑578/16, *C.K., H.F and A.S.*

* Ciara Smyth, ‘The Dublin Regulation, Mutual Trust and Fundamental Rights: No Exceptionality for Children?’, 2023 *European Law Journal* 28 (4-6), 242-262. Available at: [*https://onlinelibrary.wiley.com/share/JWTKGTMIUFCW7KXFM5R9?target=10.1111/eulj.12469*](https://onlinelibrary.wiley.com/share/JWTKGTMIUFCW7KXFM5R9?target=10.1111/eulj.12469)

**Seminar 4 – The response to the 2015 ‘refugee crisis’ and the 2022 Ukrainian crisis compared**

* Do a close reading of the text of the Temporary Protection Directive (2001/55/EC) and compare it with the Commission Proposal for a Regulation Addressing Situations of Crisis and Force Majeure (COM/2020/613 final)
* Iris Goldner Lang, ‘No Solidarity without Loyalty: Why Do Member States Violate EU Migration and Asylum Law and What Can Be Done?’ *European Journal of Migration and Law* 22 (2020) 39–59.
* John Koo, ‘Mass Influxes and Protection in Europe: A Reflection on a Temporary Episode of an Enduring Problem’, *European Journal of Migration and Law* 20 (2018) 157–181.
* Esin Küçük, *‘* Temporary Protection Directive: Testing New Frontiers?’, *European Journal of Migration and Law* 25 (2023) 1–30.

**USEFUL SOURCES OF INFORMATION AND ANALYSIS**

**Journals**

The principal journals are:

*European Journal of Migration and Law*

International Journal of Refugee Law

Journal of Refugee Studies

Refugee Survey Quarterly

Other relevant journals include:

*Common Market Law Review*

*European Law Journal*

*European Journal of International Law*

*Human Rights Law Review*

*Human Rights Quarterly*

*International & Comparative Law Quarterly*

*International Journal of Minorities & Group Rights Law & Contemporary Problems*

Leiden Journal of International Law

*Netherlands Quarterly of Human Rights*

*Nordic Journal of International Law*

Most of these periodicals are available in the university library. The collection is supplemented with on-line journals available through J-Store and Hein On-Line, to which all registered students have access via the library website.

**Useful websites**

Newsletter on European Asylum Issues for Judges: <https://cmr.jur.ru.nl/neais/>

European Commission, Migration and Home Affairs:[*https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system\_en*](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en)

EU Agency for Asylum (EUAA) *(formerly European Asylum Support Office (EASO):* [*https://euaa.europa.eu/about-us*](https://euaa.europa.eu/about-us)

European Union Agency for Fundamental Rights (FRA)*:* [*https://fra.europa.eu/en*](https://fra.europa.eu/en)

EUROSTAT: <https://ec.europa.eu/eurostat>

European Council for Refugees and Exiles: <https://ecre.org/>

Statewatch Observatories*:* [*https://www.statewatch.org/observatories/*](https://www.statewatch.org/observatories/)

The AIRE Centre (Advice on Individual Rights in Europe):[*https://www.airecentre.org/the-aire-centre*](https://www.airecentre.org/the-aire-centre)