

Refugee recognition in the EU: EASO's shifting role

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EASO has recently seen an expansion of the scope of its activities and – as a consequence – its potential to influence national refugee status determination.

One of the most notable recent shifts in the European Union's asylum policy is the increasing role of the EU's European Asylum Support Office (EASO)¹ in refugee status determination (RSD). Initially EASO's mandate was heavily focused on activities such as information exchange and training but over time its mandate has expanded and so have its human and financial resources.² This article focuses on the evolving role of EASO, which has both an indirect and direct impact on RSD in Europe.

EASO's indirect impact on RSD

Several EASO activities have an indirect impact on RSD. Training is one of them. EASO has developed a training curriculum for national administrators consisting of several modules including credibility assessment and

interviewing techniques.³ Also of relevance are its quality initiatives whereby EASO maps national practice (of EU Member States) and organises thematic meetings where good practice and implementation challenges are discussed; it also provides practical tools, such as how to conduct a personal interview.⁴

EASO is also involved in the gathering and exchange of country of origin information (COI) and the adoption of a common COI methodology. It jointly produces reports with Member State experts; these reports are publicly available, open to scrutiny by other actors such as asylum applicants and their advocates (in contrast to other less transparent aspects of refugee recognition in some jurisdictions).

What is the impact of these activities? Member States are not bound legally by

the analysis included in the material EASO produces but – despite their non-binding character – EASO COI reports are potentially influential, given the authoritative role of the agency and the importance of COI in credibility assessments. Hence, it is crucial that they integrate information from a variety of actors, including from civil society, that they adhere to the standards of objectivity and impartiality, and that they remain up to date.

If the current influence on decision-making through COI could be described as indirect, the 2016 European Commission proposal for a revamped European Union Agency on Asylum foresees a more robust role for the agency's products and several processes that would grant them a type of 'enforceability'.⁵ One such example is the adoption of a 'common analysis' on the situation in specific countries of origin and the production on this basis of guidance notes to assist Member States in the assessment of relevant applications. The same proposal also envisages a monitoring role for the agency. Depending on its design and operationalisation, such a mechanism could also have an impact on RSD. However, negotiations on this proposal were still pending in October 2020 and thus it is premature to draw any conclusions as to the future role of the agency in these areas.

Direct impact: from expert advice to joint implementation

The involvement of EASO in processing asylum applications is new. Operational support was always part of EASO's legal mandate, with EASO deploying 'asylum support teams' to EU Member States at their request. Initially, though, these teams did not interact directly with individual asylum seekers; rather, their work consisted of providing expert advice or training and so on. However, in the aftermath of increased arrivals of asylum seekers to the EU in 2015–16, EASO staff and deployed national experts began to undertake more hands-on tasks, such as directly providing information to arriving individuals. As pressures increased, forms of joint processing emerged in Greece, whereby EASO and

the Greek Asylum Service shared the task of processing asylum requests in order to reduce the host country's workload. In Greece, experts deployed by EASO are independently conducting asylum admissibility interviews on behalf of the Greek Asylum Service. They then submit their findings, based on which the Greek Asylum Service issues the final admissibility decision. (The admissibility phase aims to weed out applicants who could be returned to safe third countries.) And since 2018, Greek-speaking EASO staff have also been involved in examining the merits of asylum claims in Greece. These developments affecting first instance decision-making have not yet been coupled with a formal review of EASO's legal mandate.

EASO is also involved in a support function at second instance decision-making in Greece, whereby it provides 'rapporteurs' to the national Appeals Committees, a function that is expressly stipulated by national law. Rapporteur tasks are limited to initial preparation of case files and to conducting COI research upon request by the Committee members. They are therefore not providing members of the Appeals Committees with a concrete legal opinion, or even an advisory opinion, regarding the grant of international protection. This function means that their involvement in status determination at appeals stage is only indirect.

And, in turn, what is the impact of these particular activities?⁶ Although the asylum decision-maker at first instance – according to both EU and national law – is the Greek Asylum Service, in practice this decision is based on a recommendation from, and facts ascertained during an interview conducted by, experts deployed by an EU agency, whose advisory opinions influence the outcome. The Greek Asylum Service does not merely rubberstamp the non-binding EASO advisory opinions; it has the power to adopt a decision that goes against the proposal of the deployed experts and has often done so. Nonetheless, EASO's evolving role means it has a growing impact on RSD at national level.

Asylum applicants should enjoy the full array of rights provided for by EU and international law no matter who is conducting

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the interview. On the ground, however, civil society organisations report shortcomings relating, for example, to the manner of assessing vulnerability and conducting admissibility interviews, and to the fact that advisory opinions on admissibility are issued in English and not translated into Greek, and the fact that interviews are conducted in English, undermining the quality of legal representation by Greek lawyers.⁷

Future perspectives

EASO's evolving role brings into sharp relief the challenges of accountability and fundamental rights protection. EASO has sought to enhance the procedural quality of its decision-making by establishing an internal quality audit process. Based on recommendations by the European Ombudsman,⁸ it has developed further concrete procedural standards, such as obligations on EASO to report to national authorities any errors identified by the agency relating to its own part of the processing. The next big step forward would be the establishment by EASO of an internal complaints mechanism that would be accessible to individuals. This is envisaged as part of its new legal mandate which is under negotiation.

EASO's role has shifted significantly. This has incrementally led to the emergence of patterns of joint implementation through the joint processing of asylum applications. Joint implementation patterns and the augmentation of the financial and human resources available to EASO could act as precursors to deeper forms of integration between the EU and national administrations

in RSD. This should be viewed as a pragmatic approach to enhance solidarity and the sharing of responsibilities for assessing claims. Initial experiences with joint processing in Greece illustrate, however, that enhanced administrative integration should not be met with unqualified acclamation. Administrative integration brings its own challenges and, in this case, calls for a rethink of accountability processes and EU procedural law so that it does not lead to a watering down of procedural guarantees in practice.

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1. For EASO's legal mandate see: Regulation No 439/2010 of the European Parliament and of the Council of 19 May 2010
2. For a snapshot of EASO's overall activities see its latest Annual Activity Report for 2019 bit.ly/EASO-ActivityReport2019
3. <https://training.easo.europa.eu/lms/>
4. bit.ly/EASO-QualityInitiatives
5. For the EC 2016 proposal see: Commission Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and Repealing Regulation (EU) 439/2010, COM (2016) 271 final (May 4, 2016).
6. For a more complete analysis see Tsourdi E (L) (2020) 'Holding the European Asylum Support Office Accountable for its role in Asylum Decision-Making: Mission Impossible?', *German Law Journal* 21, 506–531 <https://doi.org/10.1017/glj.2020.21>
7. See, among others, Greece Refugee Rights Initiative (2018) *EASO's Operation on the Greek Hotspots: An overlooked consequence of the EU-Turkey Deal*, HIAS-Islamic Relief USA bit.ly/HIAS-Greece-2018; European Center for Constitutional and Human Rights (2019) 'Case Report: EASO's Involvement In Greek Hotspots Exceeds The Agency's Competence And Disregards Fundamental Rights' bit.ly/ECCHR-EASO-case-report-2019
8. See Decision of the European Ombudsman in Case 1139/2018/ MDC on the Conduct of Experts in Interviews with Asylum Seekers Organised by the European Asylum Support Office (Sept. 30, 2019) www.ombudsman.europa.eu/en/decision/en/119726



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