

MANAGING MIGRATION: THE CLASH BETWEEN SOLIDARITY AND SOVEREIGNTY



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Abstract

This paper analyses migration law regulations adopted within the European Union, focusing on the benefits and costs of the unification process of EU law. It first provides an overview of policies on border checks, asylum, and immigration, tracing the evolution of relevant legal norms in EU primary law. It then examines how development directions are shaped, examining analysing key areas of secondary EU legislation and decision-making processes in light of primary law principles. Next, the chapter outlines the unification of EU standards to enhance cooperation, using the examples of the Dublin system, qualification, reception, and procedures. This forms the basis for assessing the benefits and costs of deeper cooperation through unification. The chapter concludes by evaluating whether the expenses borne by EU Member States outweigh the benefits of implementing unified legal regulations in areas such as the Dublin system, qualification, and procedures, and separately, the reception system, within the broader framework of border checks, asylum, and immigration policies.

Keywords: migration, asylum, border checks, EU law, EU law unification

1. Introduction

This chapter examines the unification of European Union law in the field of migration regulation, with particular emphasis on its impact on the principle of

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equality among EU Member States. The topic fits into the broader context of this scientific monograph, which among other things, explores how adopting uniform legal rules responds to global challenges while raising questions about their alignment with fundamental EU law principles.

The chapter aims to determine whether the costs borne by the EU Member States in implementing unified legal frameworks, covering the Dublin, qualification, reception, and the procedural systems, outweigh the benefits derived from their application. Particular attention is paid to the tension between unification and the principle of equality enshrined in EU primary law, which obliges the EU to respect the equality of Member States and their national identity.

The chapter is structured as follows. Part One briefly presents EU policies on border control, asylum, and immigration, outlining their development against the background of EU primary law. Part Two discusses how development directions are shaped, considering the principles of conferral of competences, subsidiarity, and proportionality. Part Three analyses the unification of EU standards across the Dublin system, qualification, reception, and procedural systems, showing how these measures affect the EU Member States to varying degrees. Part Four assesses the benefits and costs of deepened cooperation through unification, focusing on its impact on equality. Finally, Part Five summarises key findings and reflects on the legitimacy of current unification trends in light of the fundamental principles of EU law.

The analysis shows that while unification brings measurable benefits in international cooperation and operational efficiency, it can also weaken the principle of equality among Member States and erode their constitutional identity and sovereignty. The conclusions indicate that current unification trends should be assessed for compliance with EU primary law and may require a discussion on potential treaty amendments. Maintaining a balance between effective migration cooperation and respect for the diversity and autonomy of the EU Member States remains crucial.

2. Policies on Border Checks, Asylum, and Immigration – Brief Characteristics

2.1. Developmental Art of Normatisation in the EU Primary Law

The current primary law of EU concerning ‘Policies on Border Checks, Asylum, and Immigration’ (hereinafter ‘PBCAI’) is contained in the Treaty on the Functioning of the European Union (TFEU).¹ According to Art. 67 of the TFEU:

1 Consolidated version of Treaty on the Functioning of the European Union (OJ C 202, 7.6.2016, pp. 47–200).

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.
2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.
3. The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.
4. The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.²

The provision forms the basis for implementing PBCAI within the EU. However, the subsequent Arts. are also legally significant, as they specify the objectives and competencies in this area. Art. 77 TFEU concerns the Union's policy on border control. According to its paragraph 1:

The Union shall develop a policy with a view to: (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders; (b) carrying out checks on persons and efficient monitoring of the crossing of external borders; (c) the gradual introduction of an integrated management system for external borders.³

Art. 78 TFEU addresses the common policy on asylum, subsidiary protection, and temporary protection. Paragraph 1 provides:

The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.⁴

Art. 79 TFEU addresses the common immigration policy, paragraph 1 states:

² Ibid.

³ See for example: Van der Woude and van der Leun, 2017, pp. 27–45; Hobbing, 2016, pp. 155–182; Geiger, 2016, pp. 135–149.

⁴ See for example: Hatton, 2015, pp. 605–637; Toshkov and de Haan, 2013, pp. 661–683; Costello and Mouzourakis, 2016, pp. 47–73; Ripoll Servent and Trauner, 2014, pp. 1142–1162.

The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention.⁵

In this context, Art. 80 TFEU plays a crucial role, stating that:

The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.⁶

The significance of this provision lies in its applicability to all EU policies set out in Arts. 77 to 79 TFEU.⁷

These legal foundations reflect years of negotiations and competing visions of European integration. From a historical perspective, provisions on border control, asylum, and immigration first appeared in the Maastricht Treaty,⁸ where Art. K.1 stated:

For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest: 1. asylum policy; 2. rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon; 3. immigration policy and policy regarding nationals of third countries: (a) conditions of entry and movement by nationals of third countries on the territory of Member States; (b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment; (c) combatting unauthorised immigration, residence and work by nationals of third countries on the territory of Member States.⁹

The Maastricht Treaty, which established the EU, marked the first step in the evolution of EU primary law toward creating today's PBCAI. This shows that EU competences in this field are relatively deeply rooted in the Union's genesis. The second step was the Amsterdam Treaty,¹⁰ which introduced significant legal regula-

5 Consolidated version of Treaty on the Functioning of the European Union.

6 Ibid.

7 Ibid.

8 Official Journal of the European Communities, OJ C 191, 29 July 1992, pp. 1–112. See: Musaraj, 2023, pp. 92–102; Baun, 1995, pp. 605–624; Grieco, 1996, pp. 261–306.

9 Official Journal of the European Communities, OJ C 191.

10 Official Journal of the European Union, C 340, 10 November 1997, pp. 1–144. See: Moravcsik and Nicolaïdis, 1999, pp. 59–85; Johansson, 1999, pp. 85–101; Shaw, 1998, pp. 63–86.

tions in Arts. 73i to 73k. These provisions, among other things, (a) established the obligation to progressively establish an area of freedom, security, and justice; (b) required measures within five years to remove internal border controls, regulate the crossing of external borders, and set conditions under which nationals of third countries may travel freely within EU Member States for up to three months; (c) required measures within five years as an asylum, refugees, displaced persons, immigration policy, and the rights and conditions for legally resident third-country nationals to reside in other Member States. The provisions of the Amsterdam Treaty represented a significant EU move toward creating today's PBCAI.

Maastricht Treaty concretised the general foundations laid by granting the EU competence to adopt key legal measures that became prototypes for many current acts of EU secondary law in this area. The third step was the Nice Treaty.¹¹ Although mainly technical and focused on procedural rules, its significance should not be underestimated. It reformed decision-making processes, enabling the EU to function more efficiently in adopting legal acts related to PBCAI. In essence, after the EU gained competences (substantive law) under the Amsterdam Treaty, the Nice Treaty enabled their effective implementation (procedural law). The final step was the Lisbon Treaty, adopted in 2007,¹² which formulated the current content of EU primary law, including Arts. 67 and 77 to 80 TFEU. It laid the legal foundations for a fully integrated PBCAI and significantly strengthened the role of the EU and its institutions in these matters. Additionally, the Lisbon Treaty granted the Charter of Fundamental Rights of the European Union in the same legal force as the treaties, making it part of EU primary law. This is particularly significant for PBCAI, as Art. 18 of the EU Charter provides the right to asylum. Subsequent EU actions focused not on further modifying the provisions of EU primary law but on utilizing them in practice through numerous acts of EU secondary law in the PBCAI domain.

2.2. Planned Milestones of EU Integration: From the Schengen Convention Through Tampere to the New Pact on Migration and Asylum

From today's perspective, the EU's development of PBCAI reflects several planned milestones, with changes to primary law serving as either their materialization, final outcome, or part of ongoing planning stage.¹³ First, the milestone Schengen Agreement of 1985, aimed at gradually eliminating internal border controls and

11 Official Journal of the European Union, C 80, 10 March 2001, pp. 1–87. See: Felsenthal and Machoer, 2001, pp. 431–464; Moberg, 2002, pp. 259–282; Heinemann, 2003, pp. 17–31.

12 Official Journal of the European Union, OJ C 306, 17 December 2007, pp. 1–271. See: Reh, 2009, pp. 625–650; Lee, 2008, pp. 131–138; Wouters, Coppens and De Meester, 2008, pp. 143–203.

13 In this context, it is worth referring to the recently proposed treaty amendments by the European Parliament: European Parliament resolution of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties (2022/2051(INL)).

enabling free movement of people.¹⁴ Second, the Schengen Convention of 1990 complemented the Agreement by establishing conditions and safeguards for an area without internal border controls.¹⁵ Together with the accompanying agreements and principles, they form the Schengen *acquis*.¹⁶ Third, in 1999, the European Council meeting in Tampere set forth the future legislative actions in the EU concerning asylum and immigration, including qualification, reception, and procedure systems, as well as the Dublin system.¹⁷ Fourth, the Hague Programme of 2004, set goals in the area of freedom, security, and justice for the years 2005 to 2010.¹⁸ Fifth, in 2008, the European Pact on Immigration and Asylum was adopted, which imposed requirements on the EU to create a legal framework on asylum, regulate legal immigration, control irregular immigration, and improve border control effectiveness.¹⁹ Sixth, the Stockholm Programme, adopted in 2009, reaffirmed the European Council's commitment to creating a common area of protection and solidarity by 2012, based on a common asylum procedure and uniform status for persons granted international protection.²⁰ Seventh, in 2015, the European Agenda on Migration was adopted, a strategic document presenting a comprehensive migration management approach and outlining steps to ensure strong borders, fair procedures, and a sustainable system capable of anticipating future challenges in the context of asylum and migration.²¹ Eighth, most recently, in 2020, the European Commission adopted the New Pact on Migration and Asylum, aiming for a comprehensive reform of PBCAI, by replacing many previously harmonised legal standards with unified counterparts.²² By 2024, its legal regulations are already in force in the EU. These regulations include eight EU regulations, such as in the areas of qualification and reception, which were previously regulated by corresponding EU directives; one directive in the procedural system.

These milestones indicate that regulatory area has been influenced by a currently observable trend in the EU toward the unification of legal standards. It cannot be conclusively proven whether this was the plan from the outset; nevertheless, the aforementioned milestones form a logical sequence progressively tightening the enforcement of EU standards. This occurs because, initially, PBCAI development involved the introduction of norms with a lightly binding character, with

14 See: Davis and Gift, 2014, pp. 1541–1557; Walsch, 2008, pp. 81–90; The Schengen Agreement and the Schengen '*acquis*'.

15 Bevers, 1993, pp. 83–107; O'Keeffe, 1991, pp. 185–219.

16 Huybrechts, 2015, pp. 379–426; Official Journal of the European Union, L 239, 22 September 2000, pp. 19–62.

17 Tampere European Council, 15 and 16 October 1999, Presidency Conclusions.

18 Official Journal of the European Union, OJ C 53, 3 March 2005, pp. 1–14.

19 European Pact on Immigration and Asylum.

20 Official Journal of the European Union, OJ C 115, 4 May 2010, pp. 1–38.

21 Official Journal of the European Union, OJ C 71, 24 February 2016, pp. 46–52.

22 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact On Migration and Asylum, COM/2020/609 final.

decision-making authority resting on the side of state entities. This phase can be referred to as the conceptual or initiating phase. Following this, came a phase characterised by the use of the method of harmonizing the provisions of the Member States of the European Union, ranging from minimum harmonization to exhaustive harmonization, while maintaining a relative balance of decision-making authority between the EU and its Member States. This phase may be termed the transposition phase. Finally, the phase of legal unification became apparent, characterised by uniform legal standards across the EU, with a shift in decision-making toward the EU or selected Member States influencing the direction of EU actions. This phase appears to be currently underway.

3. Shaping Development Directions on PBCAI

3.1. Overview of Key EU Secondary Law Areas

The provisions of EU primary law may serve as the sole legal basis for adopting corresponding acts of secondary EU law. This also applies to PBCAI, whose legal basis consists of Arts. 77 to 79 of the TFEU. These provisions determine the thematic areas that may be regulated at the EU level and establish a legislative framework to be developed through secondary EU law. First, under Art. 77(2) TFEU, the EU is competent to adopt legal measures in areas such as: the common policy on visas and other short-stay residence permits; checks persons crossing external borders; conditions under which nationals of third countries may freely travel within the EU for short periods; measures necessary for the gradual establishment of an integrated management system for external borders; and the absence of internal border controls, regardless of nationality. Examples of adopted legal acts in this regard include: Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code),²³ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No. 1052/2013 and (EU) 2016/1624²⁴ and Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry, exit, and refusal data of third-country nationals crossing external borders of the Member States and determining law enforcement across conditions, amending the Schengen Agreement and Regulations (EC) No. 767/2008 and (EU) No. 1077/2011.²⁵

23 Official Journal of the European Union, OJ L 77, 23 March 2016, pp. 1–5.

24 Official Journal of the European Union, OJ L 295, 14 November 2019, pp. 1–131.

25 Official Journal of the European Union, OJ L 327, 9 December 2017, pp. 20–82.

These legal acts form part of the EU's policy on border control. Second, under Art. 78(2) TFEU, the EU is empowered to adopt legal measures concerning: a uniform asylum status for nationals of third countries, valid throughout EU; a uniform status of subsidiary protection for nationals of third countries needing international protection without qualifying for asylum; a common temporary protection system for displaced persons during massive inflows; common procedures for granting and withdrawing asylum or subsidiary protection status; criteria and mechanisms for determining which Member State is responsible for examining applications for asylum or subsidiary protection; standards concerning the reception of applicants; and (g) partnership and cooperation with third countries to manage inflows of applicants for asylum or subsidiary or temporary protection.

Examples of adopted legal acts in this area include: Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in an EU Member State by a third-country national or a stateless person;²⁶ Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council;²⁷ Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.²⁸

These legal acts form part of EU policy on asylum, subsidiary protection, and temporary protection, with the latter two regulations adopted under the New Pact on Migration and Asylum. Third, under Art. 79(2) TFEU, the EU is competent to adopt legal measures in areas such as: conditions of entry and residence, and standards on the issuance by Member States of long-term visas and residence permits, including for family reunification; the rights of third-country nationals residing legally in a Member State, including conditions governing freedom of movement and of residence in other Member States; illegal immigration and unauthorised residence, including removal and repatriation; combating trafficking in persons, particularly women and children. Examples of legal acts adopted in this area include: Regulation (EU) 2016/1953 of the European Parliament and of the Council of 26 October 2016 on the establishment of a European travel document for the return of illegally staying third-country nationals, and repealing the Council Recommendation of 30 November 1994;²⁹ Regulation (EU) No. 1231/2010 of the European Parliament and

26 Official Journal of the European Union, OJ L 180, 29 June 2013, pp. 31–59.

27 Official Journal of the European Union, OJ L, 2024/1347, 22 May 2024.

28 Official Journal of the European Union, OJ L, 2024/1348, 22 May 2024.

29 Official Journal of the European Union, OJ L 311, 17 November 2016, pp. 13–19.

of the Council of 24 November 2010 extending Regulation (EC) No. 883/2004 and Regulation (EC) No. 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality,³⁰ and; Regulation (EU) No. 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime,³¹ and crisis management.³² These legal acts form part of the segment of the EU policy on immigration.

Notably, even this brief overview of EU secondary law concerning PBCAI demonstrates how readily relevant EU regulations can be identified, confirming and aligning with the current EU trend toward legal standard unification. Additionally, it supports the observation made in the context of discussing the milestones of PBCAI that the EU is currently in the stage of legal unification within the Union.

3.2. Decision-Makers of Development Directions in the Context of the EU Primary Law Principles

The competences of the EU are governed by three fundamental principles outlined in Art. 5 TEU.³³ According to Art. 5(1) TEU, ‘the limits of EU competences are governed by the principle of conferral, and the use of EU competences is governed by the principles of subsidiarity and proportionality’.³⁴ This distinction highlights a crucial difference between the limits and the use of EU competences. Pursuant to Art. 5(2) TEU,

Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.³⁵

Further, under the first paragraph of Art. 5(3) TEU,

Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level

30 Official Journal of the European Union, OJ L 344, 29 December 2010, pp. 1–3.

31 Wielec, 2024, pp. 361–384.

32 Official Journal of the European Union, OJ L 150, 20 May 2014, pp. 112–142.

33 Consolidated version of the Treaty on European Union, OJ C 202, 7 June 2016, pp. 13–46.

34 Ibid.

35 Regarding the literature on the principle of conferral in the EU, see e.g.: Radivojević and Knežević-Predić, 2018, pp. 108–128; Cremona, 2018, pp. 27–62; Želazna, 2022, pp. 593–606; Conway, 2010, pp. 966–1005; Guastaferrero, 2012, pp. 230–248.

or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.³⁶

Finally, under the first paragraph of Art. 5(4) TEU, ‘under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties’.³⁷ These provisions should play a decisive role in determining the directions of PBCAI development. The principle of conferral determines whether the EU can act in a given area at all. Two preliminary options arise: either the EU has the competence, or it does not. Where no competence is conferred, the EU lacks both factual and legal authority to act, serving as a negative prerequisite.³⁸ In cases where EU treaties provide and confer a specific competence to the EU, it is necessary to determine the nature of that competence through Arts. 2, 3, 4, 5, and 6 TFEU – specifically, whether it is exclusive. This distinction is legally significant for Art. 5 TEU, as it indicates whether the principle of subsidiarity applies in a given case. For the principle of proportionality, however, this distinction is irrelevant.

Where the EU holds exclusive competence, the principle of proportionality primarily guides the direction of development. This principle focusses on necessity and the objectives enshrined in the treaties, requiring the EU to meet two considerations: (I) the necessity criterion outlined in Art. 5(4) TEU, and (II) consistency with the treaty objectives of EU primary law. Conversely, when the EU has shared or non-exclusive competence, subsidiarity complements the principle of proportionality. It requires EU to take into account the role and significance of Member States as the first line of legislative authority, respecting their autonomy and refraining from interference where Member States are capable of adequately achieving the intended goal. In practice, this means that subsidiarity imposes additional constraints on the EU in setting directions for development, requiring it to respect the capacity and sovereignty of Member States.

According to Art. 4(2)(j) TFEU, the area of freedom, security, and justice is a shared competence, meaning both the principle of proportionality and the principle of subsidiarity apply to PBCAI. It is therefore justified to treat the principles outlined in Art. 5 TEU as normative decision-makers for determining EU’s development direction. These principles serve as guarantees ensuring that EU action remains within the scope of activities permitted by the principles in Art. 5 TEU. As the creators of

36 Regarding the literature on the principle of subsidiarity in EU, see e.g.: Granat, 2018, pp. 27–56; Kumar, 2021, pp. 45–62; Fabbrini, 2016, pp. 78–102; De Sadeleer, 2012, pp. 63–70; Portuese, 2010, pp. 231–250.

37 Regarding the literature on the principle of proportionality in EU, see e.g.: Kosta, 2019, pp. 189–216; Portuese, 2013, pp. 612–635; Haguena-Moizard, 2015, pp. 102–118; Harbo, 2010, pp. 158–185; Sauter, 2013, pp. 439–464.

38 However, in this context, it is worth noting the increasingly analysed phenomenon of ‘Competence Creep’ in EU, see e.g.: Vėlyvytė, 2023, pp. 45–78; Corrias, 2011, pp. 1–23; Garben, 2019, pp. 295–314; Dougan, 2024, pp. 33–67; Reuter, 2013, pp. 12–36.

EU primary law, the Member States should also act as watchdogs, exercising a disciplining role in borderline situations. From a legal perspective, this interpretation is justified by the Member State sovereignty, which establishes their fundamental and original subjectivity in international public law. This appears to be a desirable state of interpretation from a legal standpoint. However, it must also be noted that the current practice of EU activities demonstrates significant erosion of Art. 5 TEU, driven by non-substantive considerations.³⁹

However, current EU practice shows significant erosion of Art. 5 TEU, driven by non-substantive considerations. The EU is now in a standard unification phase, where issuing EU regulations increasingly serves as the default approach. The trend toward unifying legal standards in the EU applies both to ‘established’ areas, where the EU already has a considerable body of legal achievements, and to ‘new’ areas lacking such a legislative history. The latter, for instance, includes the legal regulation of artificial intelligence.⁴⁰ A principled legislative approach, as derived from subsidiarity, proportionality, and instrument choice in new areas like artificial intelligence regulation, should proceed in these steps: First, exhaustively determine whether EU legislative intervention is legally justified. Second, if it is deemed justified, the EU should initially attempt to adopt a directive as a less intrusive instrument for the national legislation of Member States. Third, only when proven insufficient, consider issuing an EU regulation as a well-justified exception. This three-step approach clearly indicates that, when EU-level legal regulations are necessary, the default should be to use a directive, with the issuance of a regulation being treated as a particularly well-justified exception. This observation applies to both ‘new’ and ‘established’ legislative areas. Regarding ‘new’ legislative areas, reference should be made to the chapter on artificial intelligence included in this publication. Additionally, the analysis and assessment of the unification process undertaken by the EU in ‘established’ legislative areas are the subject of this chapter. For this reason, the following sections analyse and assess the EU’s unification process in established areas, using Dublin system, qualification, reception, and procedure system, which form the core of PBCAI.

39 Mańko, 2005, pp. 165–177; Łacny, 2022, pp. 101–132.

40 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No. 300/2008, (EU) No. 167/2013, (EU) No. 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act). OJ L, 2024/1689, 12 July 2024.

4. The Process of Unifying EU Standards to Enhancing Mutual Cooperation

4.1. *Example of the Dublin System*

The unification process of the Dublin system consists of four general stages. These have consistently led the EU to introduce unified standards for managing migration and asylum issues. This is particularly evident in the criteria and mechanisms for determining which Member State is responsible for examining an application for international protection submitted in one of the Member States by a third-country national or a stateless person.⁴¹

The first stage was the adoption of the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Dublin Convention).⁴² Its objective was to establish the fundamental principles and criteria for determining responsibility for examining an asylum application submitted in a Member State. The ultimate goal was to designate the responsible state, while allowing an exception, as stated in the Convention:

Each Member State shall have the right to examine an application for asylum submitted to it by an alien, even if such examination is not its responsibility under the criteria defined in this Convention, provided that the applicant for asylum agrees thereto.⁴³

The mechanism established by the Dublin Convention was pioneering but imprecise. In practice, this led to numerous interpretative challenges that exposed its weaknesses, particularly during EU enlargement. These challenges sparked discussions about initiating legislative efforts to improve the Dublin system.

The second stage was the adoption of Council Regulation (EC) No. 343/2003 of 18 February 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 (hereinafter: Dublin II Regulation).⁴⁴ Replacing the Dublin Convention, its aim, as stated in Art. 1, was to establish criteria and mechanisms for determining the responsible Member. Recital 5 noted that, at this stage of building the Common European Asylum System, it was necessary to introduce improvements based on experience with the Dublin Convention and to reaffirm its principles. The application of the Dublin II Regulation highlighted

41 Moreno-Lax, 2012, pp. 1–31; Kasperek, 2016, pp. 59–78; Thielemann and Armstrong, 2013, pp. 148–164.

42 Official Journal of the European Union, OJ C 254, 19 August 1997, pp. 1–12.

43 Ibid.

44 Official Journal of the European Union, OJ L 50, 25 February 2003, pp. 1–10.

both strengths and weaknesses, eventually justifying further legislative action in this area.

The third stage was the adoption of Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (hereinafter: Dublin III Regulation).⁴⁵ Art. 1 reiterated the purpose of setting criteria and mechanisms for determining the responsible Member State for applications for international protection submitted by third-country nationals or stateless persons. This objective appears nearly identical to the goal of the Dublin II Regulation, reflecting mainly terminological rather than substantive change. This synonymy in objectives is appropriate, as the EU's underlying aim remained unchanged. What did change were the measures and actions to achieve it. Recital 9 of the Dublin III Regulation noted that improvements were introduced '...based on experience gained, to increase the efficiency of the Dublin system and the effectiveness of the protection granted to applicants under this system'.⁴⁶ However, the Dublin III Regulation did not eliminate all deficiencies, particularly regarding fairness and the system's capacity to respond to migration or refugee crises.⁴⁷ These shortcomings again prompted legislative reconsideration within the EU framework.

The fourth stage was the adoption of Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management, amending Regulations (EU) 2021/1147 and (EU) 2021/1060 and repealing Regulation (EU) No. 604/2013 (hereinafter: Asylum and Migration Management Regulation).⁴⁸ This regulation is part of the New Pact on Migration and Asylum. The purpose of this new EU regulation is outlined in Art. 1, which states:

In accordance with the principle of solidarity and fair sharing of responsibility, as enshrined in Art. 80 TFEU, and with the objective of reinforcing mutual trust, this Regulation: (a) sets out a common framework for the management of asylum and migration in the Union, and for the functioning of the Common European Asylum System; (b) establishes a mechanism for solidarity; (c) lays down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection.⁴⁹

The implementation of this objective, particularly with respect to point (c), as highlighted in Recital 40 of the Asylum and Migration Management Regulation,

45 Official Journal of the European Union, OJ L 180, 29 June 2013, pp. 31–59.

46 Ibid.

47 Scipioni, 2018, pp. 1357–1375; Buonanno, 2017, pp. 100–130; De Genova et al., 2016, pp. 15–21; Gerlach and Ryndzak, 2022, pp. 17–29.

48 Official Journal of the European Union, OJ L, 2024/1351, 22 May 2024.

49 Ibid.

build on the experience gained through the application of the Dublin III Regulation. Additionally, Art. 85 states that this regulation enters into force 20 days after publication in the Official Journal of the European Union and applies from 1 July 2026. However, certain provisions – namely Arts. 7–15, Art. 22(1) fourth para., Art. 23(7), Art. 25(6) and (7), Art. 34(3) and (4), Art. 39(3) second para., Art. 40(4), Art. 40(8) second para., Art. 41(5), Art. 46(1) fifth para., Art. 46(4), Art. 48(4), Art. 50(1) second para., Art. 50(5), Art. 52(4), Arts. 56–57, Art. 64(3), Art. 67(14), and Arts. 78 and 84 – apply from 11 June 2024. Furthermore, Art. 83 of the Asylum and Migration Management Regulation specifies that the Dublin III Regulation will be repealed with effect from 1 July 2026. This means that between 11 June 2024 and 1 July 2026, the Dublin III Regulation and the Asylum and Migration Management Regulation will be applied in a parallel and complementary manner.

Referring to the objective of the Asylum and Migration Management Regulation, it is *prima facie* evident that this objective has been framed more broadly than in the previous legal acts adopted under the Dublin system. The primary objective of the Dublin system has always been to ‘lay down the criteria and mechanisms for determining the Member State responsible for examining an application for international protection’. To this, two new areas have been added. This confirms that the Dublin system is undergoing legal standard unification. From its inception, it harmonised legal standards among the Member States of the European Communities under the Dublin Convention, and subsequently among EU Member States through the Dublin II and Dublin III Regulations. The Asylum and Migration Management Regulation marks a significant step forward by extending unification to two additional areas: a mechanism for solidarity, and the management of asylum and migration, including the functioning of the Common European Asylum System. This significantly broadens the material scope of legal standard unification within the EU in this context.

4.2. Example of the Qualification System

The unification process of the qualification system consists of three fundamental steps that have led to the unification of legal standards within the EU regarding criteria for determining whether an individual qualifies as a beneficiary of international protection, enjoys a uniform refugee status, or qualifies for subsidiary protection.⁵⁰

The first step was the adoption of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons otherwise in need of international protection, and the content of the protection granted (hereinafter: the Qualification Directive I).⁵¹ According to Art. 1, its aim was to lay down minimum standards for the qualification of third-country nationals or stateless persons as refugees or as

50 Lambert, 2006, pp. 161–192; Zaun, 2016, pp. 136–154; Hatton, 2005, pp. 106–119.

51 Official Journal of the European Union, OJ L 304, 30 September 2004, pp. 12–23.

persons otherwise in need of international protection, and the content of the protection granted.

The second step was the adoption of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection, and for the content of the protection granted (hereinafter: the Qualification Directive II).⁵² The objective of this secondary law act, as stated in its Art. 1, is to lay down standards for qualification, uniform status, and content of protection. Additionally, Recital 10 adds that this directive reaffirms the principles of Qualification Directive I while striving for greater approximation of rules on recognition and scope of international protection based on higher standards.

The third step was the adoption of Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or persons eligible for subsidiary protection, and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council (hereinafter: the Qualification Regulation). According to Art. 1 of the Qualification Regulation:

This Regulation lays down standards for: (a) the qualification of third-country nationals or stateless persons as beneficiaries of international protection; (b) a uniform status for refugees or for persons eligible for subsidiary protection; (c) the content of the international protection granted.⁵³

Art. 42 stipulates that the Qualification Regulation entered into force 20 days after its publication in the Official Journal of the European Union and will apply from 1 July 2026. Pursuant to Art. 41, Qualification Regulation, the Qualification Directive II will be repealed as of 12 June 2026. Until then, both legal acts will remain in force, with Qualification Directive II continuing to apply. From 1 July 2026, the Qualification Regulation will take full effect.

In this context, the objective defined across these EU legal acts has not fundamentally changed; what has evolved is the method of establishing legal standards. The first step harmonised minimum standards, the second harmonised standards, and the third introduced of strict, directly applicable unified standards. This progression clearly illustrates that the qualification system serves as a typical example confirming the trend toward the unification of law within the EU.

⁵² Official Journal of the European Union, OJ L 337, 20 December 2011, pp. 9–26.

⁵³ Ibid.

4.3. *Example of the Reception System*

The unification process of the reception system demonstrates a certain specificity, potentially even constituting an exception to the EU's trend of adopting legal acts that unify legal standards. However, for the sake of research integrity, the reception system, as one of the four key systems of PBCAI, cannot be overlooked.⁵⁴ The lack of a unification trend through a regulation may stem from the fact that the conditions for receiving applicants for international protection are highly diverse and largely dependent on the specific circumstances provided by individual Member States. The EU legislator may have refrained from issuing a regulation because imposing uniform legal standards could provoke significant controversies regarding compatibility with national interests. Alternatively, the timing may have been deemed premature, particularly considering the inherently unifying nature of the New Pact on Migration and Asylum. This reasoning aligns partly with the justification provided by the European Commission in its 2016 legislative proposal for a new Reception Conditions Directive, where it was stated: 'Considering the current significant differences in Member States' social and economic conditions, it is not considered feasible or desirable to fully harmonised Member States' reception conditions'.⁵⁵ Nonetheless, the same proposal also emphasised:

A recast of the Reception Conditions Directive together with an extended mandate for the European Union Agency for Asylum to promote a uniform implementation of reception standards in practice is considered sufficient in order to meet the objectives of further harmonising Member States' reception conditions and applicants' integration prospects and reducing reception-related incentives for migrants to move irregularly to and within the EU.

At the time, this meant that the Commission proposed issuing a new piece of EU secondary legislation in the form of a directive, while extending the mandate of the European Union Agency for Asylum⁵⁶ to promote uniform implementation of reception standards across the EU. In practice, this approach can be viewed as an attempt to unify EU law without adopting a regulation. Nevertheless, the process of building and improving the reception system consists of three fundamental steps.

The first step was the adoption of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers⁵⁷ (hereinafter: the Reception Directive I). Its objective, as stated in Art. 1, was to

54 Glorius et al., 2019, pp. 19–30; Campesi, 2018, pp. 44–70; Vianelli, 2022, pp. 41–59.

55 Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (COM/2016/0465 final - 2016/0222 (COD)).

56 Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010. OJ L 468, 30 December 2021, pp. 1–54.

57 Official Journal of the European Union, OJ L 31, 6 February 2003, pp. 18–25.

establish minimum standards for the reception of asylum seekers in EU Member States.

The second step was the adoption of the Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (hereinafter: the Reception Directive II).⁵⁸ Its objective was defined in a manner synonymous with those of Reception Directive I. Building on experience gained from the earlier directive, Reception Directive II pursued the same goal. The difference lay solely in the terminology used, where the term ‘*asylum*’ was replaced with ‘international protection’.

The third and final step was the adoption of Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection⁵⁹ (hereinafter: the Reception Directive III). According to Art. 1, its objective is to ‘lay down standards for the reception of applicants for international protection in Member States’.⁶⁰ Notably, the objective of legal acts within the reception system has remained unchanged since the Reception Directive I of 2003. Pursuant to Art. 37, Reception Directive III entered into force on the twentieth day following its publication in the Official Journal of the European Union. As is typical for directives, a transposition deadline was established. Art. 35 requires Member States to ‘bring into force the laws, regulations and administrative provisions necessary to comply with Arts. 1 to 10, 12, 13, 17 to 29, and 31 to 34 by 12 June 2026’.⁶¹ This means that although Reception Directive III is in force, it is in its implementation phase. Art. 38 specifies that it ‘is addressed to the Member States in accordance with the Treaties’.⁶² Consequently, Reception Directive III did not repeal Reception Directive II immediately but will do so on 12 June 2026. Until then, both the Reception Directive III and Reception Directive II remain in force. However, only the latter has passed its transposition deadline, making it a functional instrument influencing the national laws of Member States and the rights of individuals.⁶³

Although, as noted at the outset, the reception system may be seen as an exception to the EU’s current trend of unifying law through regulations rather than directives, it is worth considering whether it also constitutes an exception to the broader unification phase. This broader phase includes not only regulations but also less intrusive instruments. In this context, the role of the European Union Agency for Asylum (EUAA), established under Regulation (EU) 2021/2303 of the European

58 Official Journal of the European Union, OJ L 180, 29 June 2013, pp. 96–116.

59 Official Journal of the European Union, OJ L, 2024/1346, 22 May 2024.

60 Ibid.

61 Ibid.

62 Ibid.

63 Judgment of the Court of Justice of 4 December 1974, *Yvonne van Duyn v. Home Office*. Request for a preliminary ruling: High Court of Justice, Chancery Division – United Kingdom. Case 41/74; Judgment of the Court of Justice of 5 April 1979, Criminal proceedings against Tullio Ratti. Request for a preliminary ruling: Pretura di Milano – Italy. Case 148/78.

Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No. 439/2010,⁶⁴ may prove pivotal.

According to Art. 1(2) of the aforementioned regulation and Recitals 4 and 6 of the Reception Directive III, the agency's purpose, in this context is to ensure the efficient and uniform application of EU asylum law in the Member States, including facilitating and supporting the implementation of the Common European Asylum System, which includes the Reception Directive III. Thus, for the reception system, the EU chose not to unify legal standards through a regulation but rather extended the agency's mandate to promote the uniform implementation of reception standards across the Union, as announced in the Commission's legislative proposal. While 'promoting' is not the same as issuing a regulation, the EU pursued a soft form of legal unification. Therefore, although the reception system constitutes an exception to the process of unifying EU law, it does not represent an exception to the broader trend of legal unification within the EU.

4.4. Example of the Procedure System

The construction of a uniform procedural system consists of three legislative steps, which have established unified legal norms, directly applicable in EU Member States, concerning the procedures for granting and withdrawing international protection.⁶⁵

The first step was the adoption of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status⁶⁶ (hereinafter: the Procedural Directive I). According to Art. 1, its objective was 'to establish minimum standards on procedures in Member States for granting and withdrawing refugee status'.⁶⁷

The second step was the adoption of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (hereinafter: the Procedural Directive II),⁶⁸ the objective of which is 'to establish common procedures for granting and withdrawing international protection pursuant to the II Qualification Directive'.⁶⁹ The adoption of Procedural Directive II was driven by the need to amend the earlier directive substantially. This need stemmed from the adoption of the Qualification Directive II, as legal acts within the procedural system perform an executive function. The relationship between procedural and qualification systems can be compared to the traditional relationship between substantive and procedural law, as exemplified by the

64 Official Journal of the European Union, OJ L 468, 30 December 2021, pp. 1–54.

65 Schittenhelm, 2019, pp. 229–244; Costello, 2005, p. 35; Costello and Hancox, 2016, pp. 375–445.

66 Official Journal of the European Union, OJ L 326, 13 December 2005, pp. 13–34; Official Journal of the European Union, OJ L 175M, 29 June 2006, pp. 168–189.

67 Ibid.

68 Official Journal of the European Union, OJ L 180, 29 June 2013, pp. 60–95.

69 Ibid.

Criminal Code and the Code of Criminal Procedure. Thus, a change in substantive law (the Qualification Directive II) necessitated changes in the procedural system, which directly confirms the objective of the Procedural Directive II.

The third step was the adoption of Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (hereinafter: the Procedural Regulation).⁷⁰ According to Art. 1, its objective is to ‘establish a common procedure for granting and withdrawing international protection pursuant to the Qualification Regulation’.⁷¹ As with other legal acts discussed earlier, the Procedural Directive II and the Procedural Regulation coexist but are not applied in parallel. Art. 79 of the Procedural Regulation stipulates that it entered into force on the twentieth day after publication in the Official Journal of the European Union but applies from 12 June 2026. It governs procedures for granting international protection for applications submitted after that date, while applications submitted earlier will be subject to Procedural Directive II. For procedures withdrawing international protection, the Procedural Regulation applies if the procedure began after 12 June 2026. If the procedure was initiated earlier, Procedural Directive II applies. Additionally, Art. 78 of the Procedural Regulation specifies that the Procedural Directive II will be repealed as of 12 June 2026.

The example of the procedural system is a typical case that, similar to the Dublin and qualification systems, aligns with the observable trend of legal unification within the EU.

5. Benefits and Costs of Enhancing Cooperation Based on Unification

5.1. Benefits of Unifying the Legal Framework for EU Member States

Turning to the benefits of unifying legal standards in PBCAI, whether through EU regulations or softer means, one can observe a common advantage: unified international cooperation aimed at solving cross-border problems, including crises that individual EU Member States struggle to manage alone. In this regard, it is indeed reasonable to acknowledge that international cooperation facilitates – or even enables – addressing inherently cross-border issues. PBCAI exemplifies such a domain, where coordinated actions and goodwill among Member States are indispensable. However, it is not self-evident that such cooperation requires full legal unification, particularly considering the costs borne by Member States, as discussed below.

⁷⁰ OJ L, 2024/1348, 22.5.2024, ELI.

⁷¹ Ibid.

Focusing on the effects of unifying EU legal standards, these can be categorised as general or specific. Member States of the European Union are not a single organism, nor are they identical – they are diverse.⁷²

General benefits are those that apply to all Member States of the European Union, while specific benefits pertain to certain groups of Member States of the European Union. General benefits include: First, greater transparency and predictability of the system, as uniform standards reduce inter-state and facilitate coordination. Second, enhanced international cooperation, improving legal efficiency, especially in enforcement, while reducing administrative costs dedicated to handling cross-border issues. Third, uniform legal frameworks across the EU could also contribute to strengthening internal security by facilitating the exchange of data and coordination of public service activities. Fourth, as part of a unified EU legal system, Member States of the European Union could benefit from the strong position of the EU in relations with third countries. Fifth, Member States of the European Union may perceive an advantage in having an equal scope of responsibilities, valuable in crises, such as a mass influx of migrants affecting only one part of the EU.

Specific benefits depend on the actual differences among Member States: The first group consists of Member States with comprehensive legal systems offering numerous financial, social, and welfare benefits to PBCAI beneficiaries. The second group includes Member States with standardised or limited legal systems in these areas. The third group comprises Member States facing high migratory pressure, while the fourth group includes those experiencing standardised or low migratory pressure.

For the first group, the primary benefit is the substantial reduction or elimination of migration tourism. Uniform legal standards can limit migrants' movement within the EU in search of the most favourable social, financial, or welfare conditions. This could enable a more even distribution of responsibilities among Member States of the European Union, alleviating the burden on the most 'attractive' ones.⁷³ Additionally, legal unification allows these countries to maintain the integrity of their welfare systems without unilaterally reducing privileges, which could be socially and politically controversial in modern societies.

For the second group – those with standardised or limited legal systems in terms of financial, social, and welfare solutions for PBCAI beneficiaries – legal unification could theoretically open new opportunities to align with European standards. Regulatory uniformity would help these countries integrate more effectively into EU structures, though it may also require resource flexibility. While unified laws could raise standards, implementation may demand measures that seems ambitious for countries with limited budgets. EU financial support might address these difficulties;

72 Akaliyski, 2019, pp. 388–411; Berkhout, Hanegraaff and Braun, 2017, pp. 1109–1131.

73 Kahanec, Zaiceva and Zimmermann, 2009, pp. 3–45.

however, practical experience shows that implementing such mechanisms often tends to be a rather arduous path.⁷⁴

For the third group, the greatest benefit lies in improved management of migratory pressure through solidarity mechanisms and unified procedures. Such Member States can, at least in theory, expect a fairer distribution of responsibility for hosting migrants seeking international protection within the EU. In this context, the relocation system, which reduces the burden on border states, could be particularly significant. Additionally, the legal unification enables effective identification and repatriation of individuals who do not qualify for international protection.

For the fourth group – those facing standardised or low migratory pressure – legal unification can be seen as a step toward greater European cohesion. These states may value being part of a community equipped to address future migration challenges, even if such challenges currently seem distant. Implementing common standards, while demanding, could help these states prepare for hypothetical crises. While countries with migratory stability may view complex regulations as excessive, such actions, in the spirit of European solidarity, can strengthen their sense of belonging, even if the benefits in migration management benefits remain largely potential for now.

5.2. The Cost of Enhancing Mutual Cooperation Through Unification

It is worth noting that the European Union itself is also a beneficiary of legal unification, albeit in a different dimension that determines the costs for the Member States of the European Union. For the EU, the primary benefit lies in strengthening its position as a decision-maker in legal and political matters. By harmonizing laws across the EU, the Union reduces diversity among Member States, creating a quasi-state-like entity with highly similar, ideally identical, legal standards. This approach aligns with the concept of federalizing the EU.⁷⁵ Nonetheless, such activity is inconsistent with current EU primary law, particularly Art. 4(1) and (2) and Art. 5 of the TEU, with significant consequences. These consequences will be described below.

Setting aside questions of legitimacy to maintain research objectivity, several benefits of legal unification within the EU, impacting Member States' costs can be highlighted. First, uniform law simplifies management of cross-border issues and facilitates PBCAI objectives without undermining core state functions and diversity. Second, cohesion and operational effectiveness improve, as unified legal standards across the EU enable faster responses by eliminating delays associated with national legislation, which begin to be treated as a necessary evil. Such a situation evokes Latin maxim '*necessitas non habet legem*'.⁷⁶ Third, the EU's credibility and interna-

74 This is confirmed by the blocking of funds from the NRRP (Poland's National Recovery and Resilience Plan) for Poland, see: Molibog, 2023, pp. 24–48.

75 Loughlin, 1996, pp. 141–162.

76 Korpiola and Øyrehagen Sunde, 2024, pp. 681–711.

tional standing are enhanced, strengthening its ability to promote PBCAI compliance and enforce legal standards effectively. These benefits illustrate an inverse proportionality between the EU's benefits and the costs imposed on Member States through legal unification.

The greatest cost to Member States of the European Union must bear for a unified regime within the PBCAI systems is the departure from, or even the neglect of, the principle of equality as defined in Art. 4(2) of the TEU.⁷⁷ The European Union, established to exercise conferred competences proportionally and subsidiarily (in the realm of non-exclusive competences). It can therefore be reasonably argued that its role differs from that of the Member States of the European Union. This observation, though self-evident, is explicitly confirmed by Art. 4(2) of the TEU. According to this provision, the EU is obliged to respect the equality of Member States in relation to the treaties, as well as their national identity, which is inextricably linked to their fundamental political and constitutional structures, including respect for regional and local self-government and the essential functions of the state.⁷⁸ The adoption of unified legal standards often diminishes the diversity of Member States, encompassing their national and constitutional identities.⁷⁹

EU unification processes within PBCAI systems, such as the Dublin system, reception, qualification, and procedural systems – ultimately lead to largely identical legal standards, even though, as noted earlier, the reception system has its own particularities. The differences that exist or emerge between Member States are minimal, primarily involving national legal acts that ensure the effectiveness of unified EU legal norms. In this way, by eliminating legal differences, the national sense of belonging to a domestic legal system is also diminished, which can impact the national and constitutional identity of Member States and blur distinctions between them. The erosion of these differences may restrict state sovereignty and traditional state functions.⁸⁰ The legal unification may weaken the ability of Member States to independently make decisions in areas crucial to internal governance and public policy. In practice, this can limit their ability to express national identity and implement policies aligned their cultural, historical, or social specificities. While legal unification aims to enhance EU functionality, it may be perceived as a tool of centralization that marginalises the diversity and uniqueness of Member States. This, in turn, can lead to political tensions and weaken the EU's legitimacy.

Additionally, the diversity of Member States of the European Union, as enshrined in Art. 4(2) of the TEU, is not only a historical, cultural, or social fact but also financial, economic, and technological. Member States differ significantly from one another. Introducing uniform legal standards without compensatory mechanisms can deepen existing inequalities because treating diverse entities in exactly the same

77 Williams, 2016, pp. 135–140.

78 Rossi, 2017, pp. 3–42; Wouters and Schmitt, 2017, pp. 43–82.

79 Tribl, 2023, pp. 197–210.

80 Tóth, 2023, pp. 175–195.

way does not produce equality. On the contrary, differences may grow as responses to equal treatment vary. Some entities may thrive, while others may struggle, leading to a 'race to the bottom'. As has long been understood, achieving equality in practice sometimes requires treating entities according to their specific needs rather than identically. The European Union should take this principle into account in its activities.

6. Conclusions

In concluding this analysis, it is essential to address whether the costs borne by EU Member States, as outlined above, outweigh the benefits derived from implementing unified legal regulations in the Dublin, qualification, and procedural systems, as well as, in a different manner, the reception system within the PBCAI framework. In other words, the key question is whether this process is ultimately advantageous for Member States.

To answer this, this study must first refer to the previously identified benefits stemming from the EU's tendency to unify legal standards in PBCAI, particularly through the dominance of the selected systems under examination. Next, it is necessary to revisit the costs incurred by Member States. The final step involves comparing these two categories to determine the overall profitability of this approach, provided that such a comparison is feasible.

The benefits essentially concern the quality and efficiency of international cooperation. This cooperation involves interaction among Member States within the EU framework, including collaboration with EU institutions. Some benefits are institutional, relating to the status and role of the EU as a whole. However, from the Member States' perspective, such benefits may appear secondary, connecting to them only through the argument of belonging to a strong international organization and deriving international status from this affiliation. This argument seems flawed, as international prestige would primarily attach to the EU itself. This could result in such a benefit being illusory in external relations. Nevertheless, even if this argument is accepted, the benefits for Member States fall into a general category of internationally-oriented benefits.

By contrast, the costs incurred by the Member States predominantly concern national matters reflecting the characteristics of a sovereign state. These costs relate to sovereignty, fundamental state functions, and national and constitutional identity. Protecting these attributes motivated the inclusion of principles in the EU primary law, such as the principle of equality respecting Member State diversity (Art. 4(2) TEU) and the principles of conferral, proportionality, and subsidiarity (Art. 5 TEU). Abandoning these national attributes, including as a result of implementing certain concepts of EU integration, may gradually erode or even reverse these principles.

This phenomenon is concerning, as it occurs without a formal amendment of the treaties, raising legitimate doubts about its compliance with those treaties.

Recognizing that the benefits offered by the EU reflect costs borne by Member States in a manner inconsistent with Arts. 4(2) and 5 TEU leads to the conclusion that a cost-benefit comparison cannot be made legally. The consequences of the costs affect matters legally protected by EU primary law in the form of the aforementioned principles. From a legal standpoint, actions that result in non-compliance with legal principles cannot be legitimised through the lens of any potential benefits. In such cases, a formal amendment of the EU treaties is necessary. Only then would the trend toward legal unification in PBCAI be legally legitimate. Although the PBCAI segment includes numerous and extensive legal bases in the Treaty on the Functioning of the European Union (TFEU), it does not authorise the EU to fully unify all systems (Dublin, qualification, reception, and procedure). In this respect, perceptions of centralization or even federalization arise. If the EU intends to introduce such tools in PBCAI, it should initiate a discussion on amending primary law.⁸¹ During such discussions, each Member State should consider whether it values internationally-oriented benefits more than domestically-oriented costs.

In this context, it is worth recalling that national law is closest to the people and, rooted in national history, provides instruments tailored to the domestic identity, values, and culture. Furthermore, international regulations ultimately emerge from national. These international regulations, while facilitating international cooperation, enhance the efficiency and reach of national law by offering broader opportunities, occasionally requiring a degree of adaptation. Such adaptation should result from sovereign national decisions, undertaken at an appropriate time through the legal incorporation of international agreements. In other words, the purpose of international law is to enable what would otherwise be extremely difficult or impossible to achieve domestically. A good example of this is the regulation of migration law, which by definition contains a cross-border element. This is the primary goal of regulations agreed upon between states or issued by international organizations to which they belong. It seems evident that this goal has never been, nor should it be, the marginalization or even the elimination of national law, nor the status and role of sovereign and national states.

81 In this regard, it should be noted that on 22 November 2023, the European Parliament adopted a resolution calling for treaty amendments, one of the topics of which is migration (see: European Parliament resolution of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties (2022/2051(INL)).

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PART VI

BEYOND THE UNION:
PARTNERS OR MODELS –
OUTSIDE, YET INVOLVED
OR INSPIRING

