



# **EJTN On-line Classroom on EU Asylum Law**

**17 – 18 September 2020**

CEAS: overview of legislation and  
milestones in case law

Judge Katelijne Declerck

International Association of Refugee and Migration  
Judges

# CEAS: The Common European Asylum System

## a legislative framework established by the EU

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The CEAS was born out of the recognition that, in an area without internal frontiers, asylum needed harmonized regulation at the EU level.

The issue of secondary movement was first addressed in legislative form by the 1990 Dublin Convention which set criteria for determining the State responsible for examining asylum applications lodged in one of the Member States of the European Communities.

Such harmonization of Member States' asylum law was first pursued through intergovernmental cooperation under the 1992 Maastricht Treaty (Title VI on cooperation in the field of Justice and Home Affairs).

# the CEAS

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- regulates and
  - sets common standards
- in the field of **international protection**

with a view to

- developing common concepts and criteria,
- and harmonizing the interpretation and application of asylum law among EU Member States.

International protection refers to refugee status and subsidiary protection status.

# CEAS

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## First Face:

- common minimum standards
- Significant disparities between MS
- Divergent outcomes for applicants
  
- Reflexion: Green Paper (2007)
- Policy Plan on Asylum (2008)

# CEAS

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## Second Face:

- European Pact on Asylum (2008)
- Aims and content detailed in Article 78 TFEU
- New rules set out :
  - Common high standards
  - Stronger co-operation
  - Aim to ensure that persons seeking international protection are treated equally in an open and fair system in all MS

# CEAS Instruments

The EU legislative instruments of the CEAS

## **consist of primary law**

- the TFEU, the Treaty on European Union (TEU), and the EU Charter and

## **secondary legislation**

- Of the latter, only two (the Dublin III Regulation and the Eurodac Regulation (recast)) are EU Regulations.
- The rest are Directives. The form of legislative instrument will have different legal effects.

(i) EU primary law is always directly applicable, which includes, of course, the Charter (since December 2009);

(ii) EU secondary law in the form of Regulations (e.g. the Dublin III Regulation, the Eurodac Regulation) are always directly applicable as well.

# CEAS Instruments

CEAS Instruments	Date of entry into force
The Temporary Protection Directive, 2001 <sup>(22)</sup>	7 August 2001
The Commission Regulation laying down detailed rules for the application of the Dublin Regulation, 2003 <sup>(23)</sup>	6 September 2003
The Qualification Directive (recast) (QD (recast)), 2011 <sup>(24)</sup>	9 January 2012
The Eurodac Regulation (recast), 2013 <sup>(25)</sup>	19 July 2013
The Dublin III Regulation (recast), 2013 <sup>(26)</sup>	19 July 2013
The Reception Conditions Directive (recast) (RCD (recast)), 2013 <sup>(27)</sup>	19 July 2013
The Asylum Procedures Directive (recast) (APD (recast)), 2013 <sup>(28)</sup>	19 July 2013

## CEAS

Temporary Protection Directive  
Asylum Procedures Directive (recast)  
Dublin III Regulation  
EURODAC Regulation  
Qualification Directive (recast)  
Reception Conditions Directive (recast)

# CEAS Instruments

As most of the EU secondary legislation comprised in the CEAS is in the form of Directives which require transposition into the national law of Member States,

members of national courts and tribunals will, for the most part, initially be concerned with the application of their own national laws effecting the transposition of the Directives,

subject to any issue as to whether they accurately apply the provisions of the EU Directive in question



# CEAS

It is settled case-law that a national court which is called upon to apply provisions of EU law is under a duty to give full effect to those provisions, if necessary by refusing to apply any conflicting provision of national legislation (51). The CJEU has ruled that EU law:

*precludes a judicial practice which makes the obligation for a national court to disapply any provision contrary to a fundamental right guaranteed by the EU Charter conditional upon that infringement being clear from the text of the Charter or the case-law relating to it, since it withholds from the national court the power to assess fully, with, as the case may be, the cooperation of the Court of Justice, whether that provision is compatible with the Charter.*

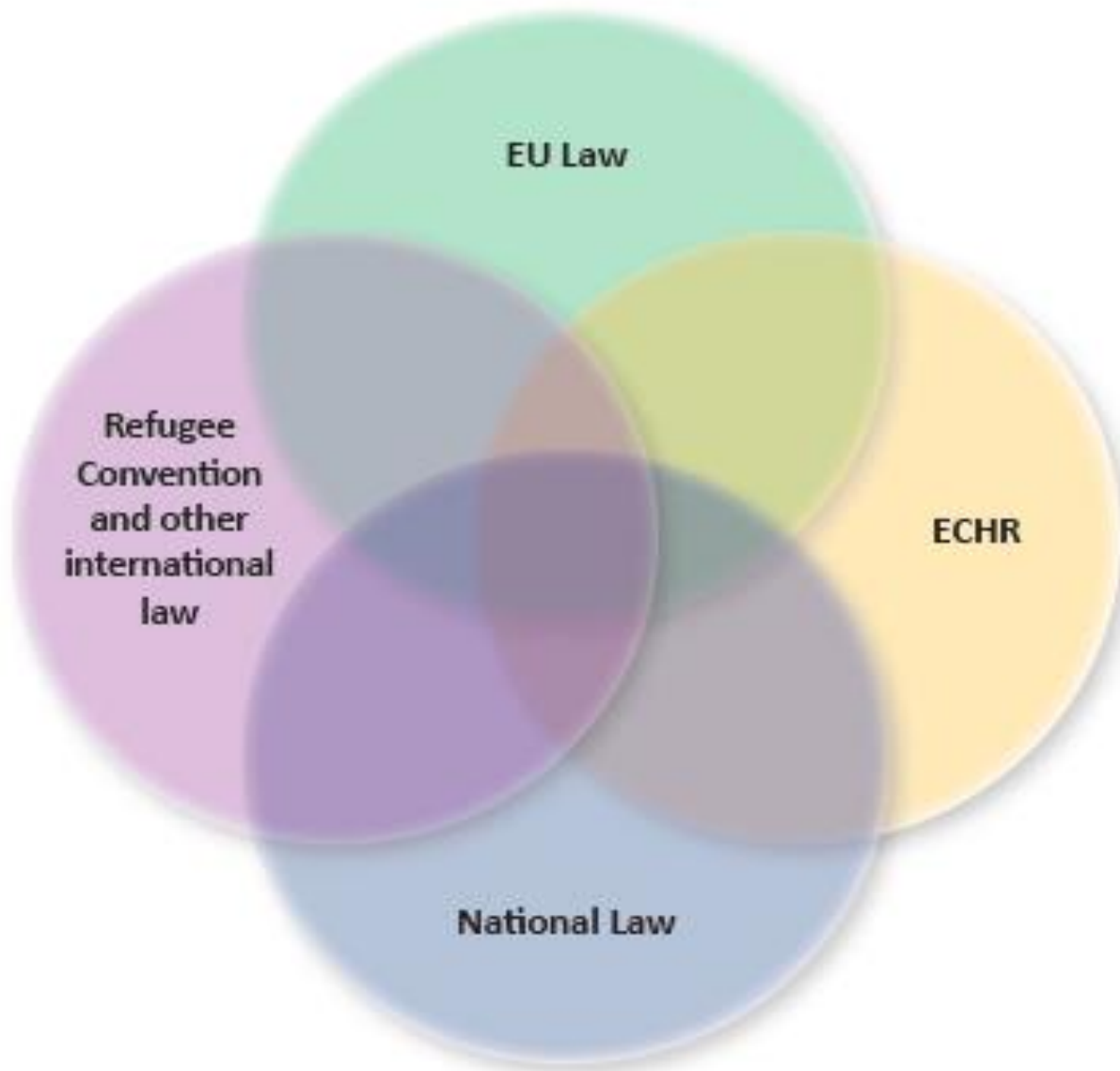
CJEU, judgment of 26 February 2013, Case C-617/10, Åklagaren v Hans Åkerberg Fransson, paragraph 21 and 49.

# CEAS

Case Torubarov, CJEU C-556/17 (29 July 19)

(Second time appeal after the court has upheld an appeal and sent it back to the first instance but the first instance repeats its first decision)

*Pursuant to Article 46(3) of Directive 2013/32, read in conjunction with Article 47 of the Charter, the court must vary the decision at issue that does not comply with its previous judgment, and substitute its own decision with the one of the [first instance]*



# CEAS - Convention relating to the Status of Refugees (Refugee Convention/'GC')

The content of the CEAS is inspired by international treaties as they affect issues concerning international protection needs as defined by the QD (recast). This applies particularly with regards to the Refugee Convention and its 1967 Protocol which are the only instruments explicitly referred to in Article 78 TFEU

According to the 1999 Tampere Conclusions, the CEAS was to be established '***based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement***'.

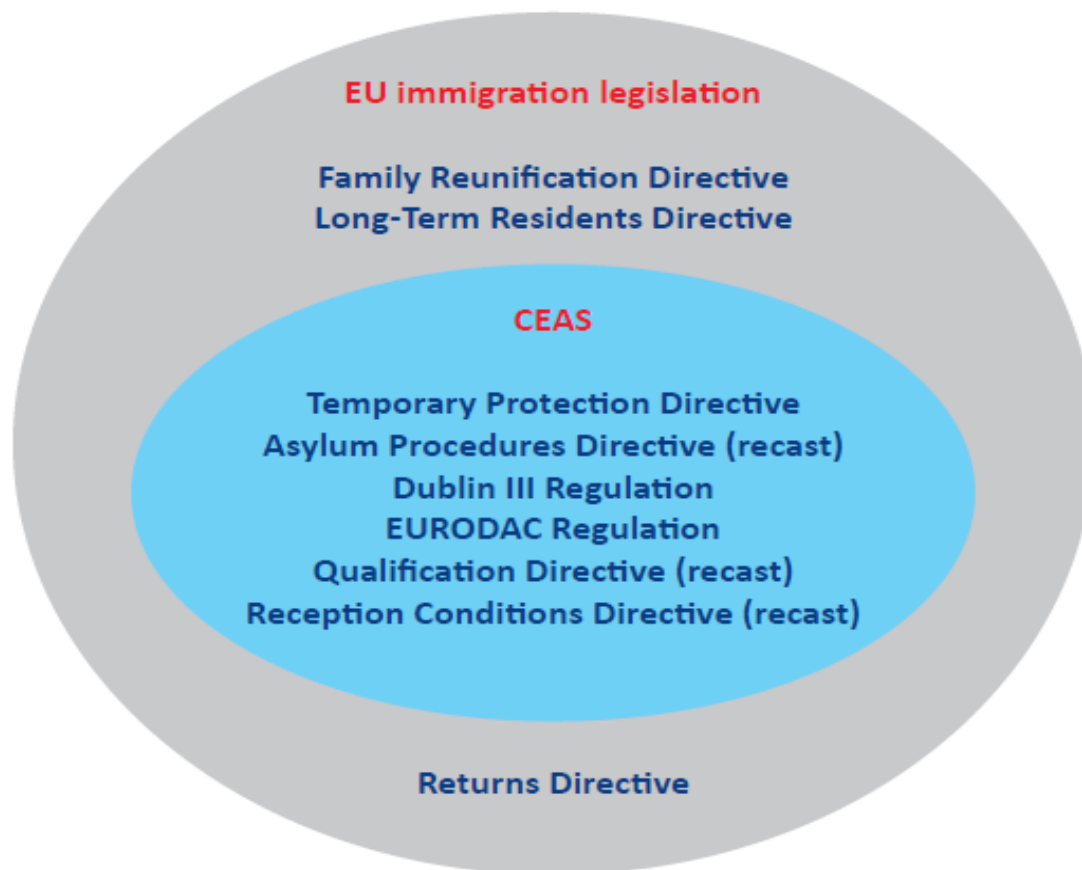
The importance of the Refugee Convention and its Protocol is underlined in all CEAS instruments, save for the Eurodac Regulation.

# THE TREATY ON THE EUROPEAN UNION Art.6

- Makes the EU Charter binding on Member States as part of the primary law of the EU. It is declaratory of the EU recognition of the rights, freedoms and principles set out in the EU Charter with the proviso that the Charter '*shall not extend in any way the competences of the Union as defined in the Treaties*'.
- Article 6(3) provides that '*fundamental rights, as guaranteed by the [ECHR] and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law*'. It does not, however, have the effect of incorporating the provisions of the ECHR into EU law.
- **The ECHR and the case-law of the European Court of Human Rights (ECtHR) constitute an important source of for interpretation.**

It follows from Article 52(3) of the Charter that, in so far as the Charter contains rights which correspond to rights guaranteed by the ECHR, their **meaning and scope are to be the same** as those laid down by the ECHR, as interpreted by the case-law of the ECtHR.

# Further important EU legislation in addition to CEAS



# REGULATION (EU) No 604/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013(recast)

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- The so-called Dublin III Regulation establishes 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.
- The key feature of the Regulation is that it provides that an application for international protection shall be examined by a single Member State. It imposes obligations on Member States responsible under this Regulation to ‘take charge’ of an applicant who has lodged an application in a different Member State or to ‘take back’ an applicant.

# The Eurodac Regulation (recast)

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- “The fingerprint regulation”
- Aims to facilitate the application of the Dublin III Regulation
- A system known as ‘Eurodac’, consisting of a Central System, which will operate a computerized central database of fingerprint data, as well as of the electronic means of transmission between the Member States and the Central System.



# The 2011 Qualification Directive (recast)

- Details the ‘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’
- Personal scope:
  - International protection refers to refugee status and subsidiary protection status for which only third-country nationals or stateless persons are eligible, thereby excluding EU citizens (Article 2).
  - It does not extend to those who are allowed to remain in the territories of Member States ‘on a discretionary basis on compassionate or humanitarian grounds’ .
- The Directive’s definition of a **refugee** reflects Article 1 of the Refugee Convention, with the exception that it is restricted to third-country nationals or stateless persons.

# The 2011 Qualification Directive (recast)

- Elgafaji, 17 Feb 2009, C-465/07, Art. 15c; serious harm
- Abdulla a.o., 2 March 2010, C-175...179/08, revocation; new circumstances
- Bolbol, 17 June 2010, C-31/09, Palestinian exception
- B. & D. , 9 Nov 2010, C-57/09, terrorist acts organisation
- Y. & Z., 5 Sep 2012, C-71/11, Ahmadiyya in Pakistan
- M.M., 22 Nov 2012, C-277/11, duty of cooperation
- X., Y. & Z., 7 Nov 2013, C-199...201/12 A., B. & C., 2 Dec 2014, C-148...150/13 homosexual orientation forms a social group
- Diakite, 30 Jan 2014, C-285/12, internal armed conflict
- H.N., 8 May 2014, C-604/12 connectivity subs. protection and refugee status
- M'Bodj, 18 Dec 2014, C-542/13 right to medical treatment

# Chapter 2 TFEU at Article 78

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.

Articles 77 and 79-80 providing the legal basis for related areas.

## CEAS - Convention relating to the Status of Refugees (Refugee Convention/'GC')

The QD (recast) further underlines that ***'[t]he Geneva Convention and the protocol provide the cornerstone of the international legal regime for the protection of refugees' (recital (4)).***

The GC does not directly inform the provisions of the APD (recast) or the RCD (recast) because the Refugee Convention is silent on such matters.

- In *Abdulla v Germany*, the CJEU reminded itself of the relevance of the Refugee Convention. It noted that the provisions of the QD *'were adopted to guide the competent authorities of the Member States in the application of that convention on the basis of common concepts and criteria'*.

The CJEU concluded that

*'the provisions of the Directive must for that reason be interpreted in the light of its general scheme and purpose, while respecting the [Refugee] Convention and the other relevant treaties referred to in' Article 78(1) TFEU.*

# CEAS - Convention relating to the Status of Refugees (Refugee Convention/'GC')

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CJEU, judgment of 2 March 2010, Grand Chamber, joined cases C-175/08, C-176/08, C-178/08 and C-179/08, Aydin Salahadin Abdulla and Others v Bundesrepublik Deutschland, ECLI:EU:C:2010:105, paragraph 52;

Judgment of 17 June 2010, Grand Chamber, Case C-31/09, Nawras Bolbol v Bevándorlási és Állampolgársági Hivatal, ECLI:EU:C:2010:351, paragraph 37.

# CEAS - Convention relating to the Status of Refugees (Refugee Convention/'GC')

Qurbani, 17 Jul 2014, C-481/13,

*24 In the present case, although several pieces of EU legislation have been adopted in the field to which the Geneva Convention applies as part of the implementation of a Common European Asylum System, it is undisputed that the Member States have retained certain powers falling within that field, in particular relating to the subject-matter covered by Article 31 of that convention. Therefore, the Court does not have jurisdiction to interpret directly Article 31, or any other article, of that convention.*

*28 Although in Bolbol (C 31/09 EU:C:2010:351) and Abed El Karem El Kott and Others (C 364/11, EU:C:2012:826) the Court did indeed accept that it had jurisdiction to interpret the provisions of the Geneva Convention to which EU law made a renvoi, it must be noted that the present request for a preliminary ruling contains no mention of any rule of EU law which makes a renvoi to Article 31 of the Geneva Convention and, in particular, no mention of Article 14(6) of Directive 2004/83.*

# The 2013 Asylum Procedures Directive (recast)

is to establish common procedures for granting and withdrawing international protection pursuant to' the QD (recast).

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- The APD (recast), together with the QD (recast) and the Dublin III Regulation, provides the mechanisms to be applied in the processing of applications for refugee and subsidiary protection status under the CEAS.
- Some rules are mandatory and MS may also apply more favorable standards so far as compatible with the Directive. Particular emphasis is placed upon reflecting the needs of vulnerable applicants and unaccompanied minors.
- The Directive gives detailed provisions as to the procedures to be followed in making a decision on the application which are of relevance to the judiciary in so far as they relate to the procedural lawfulness of the decision of the determining authority at first instance.
- Article 46 is of direct relevance to the appeals procedure providing the right to an effective remedy.

# The 2013 Asylum Procedures Directive (recast) ; territorial scope



**In the  
territorial  
waters**

**At the border**

Territorial scope of the  
APD (recast)

**In transit zones  
of Member  
States**



**In the inland  
territory**



# The 2013 Asylum Procedures Directive (recast) ; territorial scope

Parliament/Council 6 May 2008 C-133/06 list of safe countries of origin

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A. 25 Jul 2018 C-404/17 country of origin info and clearly unfoundedness  
accelerated procedure, remedies

- Diouf 28 July 2011 C-69/10
- H.I.D. & B.A. 31 Jan 2013 C-175/11

Tall 17 Dec 2015 C-239/14 effective remedy and multiple asylum claim

Danqua 20 Oct 2016 C-429/15 dealing with application within reasonable time

Sacko 26 Jul 2017 C-348/16 2017:591 effective remedy

P.G. 19 Mar 2020 C-406/18 2020:216 Art. 31; effective judicial remedy; Art. 47 X. &

Y. 26 Sep 2018 C-180/17 2018:775 suspensory effect only at first instance

Fathi 4 Oct 2018 C-56/17 2018:803 Art. 3(1); meaning of examination

E.G. 18 Oct 2018 C-662/17 2018:847 Art. 46(2) subsidiary protection

Torubarov 29 Jul 2019 C-556/17 2019:626 Art. 46(3) power to amend decisions of  
competent authority

Hamed & Omar 13 Nov 2019 C-540+541/17 inadequate conditions for refugees

Charter L.H. 19 Mar 2020 C-564/18 Art. 33 inadmissible applications; Art. 47

Charter

F.M.S. a.o. 14 May 2020 C-924+925/19 PU 2020:367 Hungarian Border; detention

# The 2013 Reception Conditions Directive (recast)

- Aims to establish ‘a dignified standard of living and comparable living conditions for applicants for international protection in all Member States’ with the view to ‘limit [their] secondary movements [...] influenced by the variety of conditions for their reception’.
- Expanded personal scope and applies to ‘all third-country nationals and stateless persons who make an application for international protection [...] as long as they are allowed to remain on the territory as applicants’
- Zubair Haqbin v Federaal Agentschap voor de opvang van asielzoekers, Belgium, CJEU C-233/18 (12 Nov19) (**Grand Chamber**) - relationship to the Charter

# Other secondary legislation relevant to the field of international protection

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- The 2010 EASO Regulation
- The 2003 Family Reunification Directive
- The 2003 and 2011 Long-Term Residents Directives
- The 2008 Returns Directive

## COMMON EUROPEAN ASYLUM SYSTEM

**ASYLUM** is granted to people fleeing persecution or serious harm.

The process for applying for asylum is now similar throughout the EU (Asylum Procedures Directive).

Each applicant's fingerprints are taken and sent to a database called Eurodac (Eurodac Regulation). These data are used to help identify the country responsible for the asylum application (Dublin Regulation).

Asylum applicants receive material reception conditions, such as housing and food (Reception Conditions Directive).

An asylum applicant is interviewed by a case worker trained in EU law, with the help of an interpreter, to determine whether he/she may qualify for refugee status or subsidiary protection (Qualification Directive and Asylum Procedures Directive).

Asylum is not granted to the applicant at first instance, but this refusal may be appealed in court.

Confirmation of the negative first instance decision by the court, following which the applicant may be returned to his/her country of origin or transit.

Overturing of the negative first instance decision by the court.

Refugee or subsidiary protection status is granted, which gives the person certain rights, such as access to a residence permit, the labour market and healthcare (Qualification Directive).

Newsletter NEMIS, NEAIS, NEFIS and the CJEU overview for judges 2020/2 are available at: <https://www.ru.nl/law/cmr/documentation/cmr-newsletters/>

The screenshot shows a web browser displaying the website of the Centre for Migration Law at Radboud University. The page is titled "Centre for Migration Law" and features a navigation menu with options like HOME, EVENTS, ORGANISATION, COURSES, RESEARCH, DOCUMENTATION, and JEAN MONNET CENTRE. A sidebar on the left lists various resources such as CMR Newsletters, Brexit, and Migration Links. The main content area is titled "Newsletters" and contains a table with the following information:

Deze tabel scrollt horizontaal	
	NEMIS <a href="#">Newsletter on European Migration Issues</a> (since 2010)
	NEAIS <a href="#">Newsletter on European Asylum Issues</a> (since 2012)
	NEFIS <a href="#">Newsletter on European Free Movement Issues</a> (since 2019)
	CJEU <a href="#">Overview of CJEU case law on:</a> <ul style="list-style-type: none"><li>• migration</li></ul>

The browser's taskbar at the bottom shows several open PDF files: cjeu\_2020\_2.pdf, nefis.2020.2.pdf, nemis.2020.2.pdf, and neais.2020.2.pdf. The system tray indicates the date and time as 14/09/2020, 23:29.

# Thank you!

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