



COMMISSION OF THE EUROPEAN COMMUNITIES

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Annex to the

**Communication from the Commission to the Council
and the European Parliament**

**”A More Efficient Common European Asylum System:
The Single Procedure as the Next Step”**

{COM(2004)503 final}

Policy background

1. The Community's competence in the field of asylum and immigration dates from the Treaty of Amsterdam. In October 1999 the Tampere European Council called for a common European policy on asylum and migration entailing the introduction of a Common European Asylum System which would in time lead to a common asylum procedure and a uniform status, valid throughout the Union for those granted asylum. In line with Tampere and as presented in the "*Scoreboard to review progress on the creation of an area of freedom, security and justice in the European Union,*" the Commission has already framed all of the proposals for the first stage.
2. In September 2000 the Commission presented their first proposal for the Asylum Procedures Directive. That proposal was limited to the minimum standards necessary for granting and withdrawing refugee status and did not include minimum standards for determining whether a person qualified for protection under other international instruments or was otherwise in need of international protection. The Commission said that they would welcome the application of the standards in the proposal in deciding on applications for protection other than refugee status and encouraged Member States to do so.
3. The Commission Communication of November 2000 "*Towards a common asylum procedure and a uniform status valid throughout the Union for persons granted asylum*" highlighted the move towards a 'one-stop shop' type of procedure by certain Member States as a means of centralising the examination of all protection needs at a single place so as to assure the applicant that no form of persecution or risk is ignored and to reduce the time taken to examine the request for international protection. The Communication undertook to launch a study as a basis for further reflection.
4. In April 2001 the then Swedish Presidency of the EU organised a seminar in Norkopping entitled: "*International Protection within One Single Asylum Procedure*" which examined aspects of international protection within one single asylum procedure. It was understood by participants that the term 'single procedure' referred to the kind of procedure used in some countries where all possible reasons for protection are considered by a single authority who give a single decision. On the single procedure the seminar found that countries which applied a single procedure did so largely by reason of efficiency, fast procedure and quality of decisions. The seminar observed that while countries might seem to apply very different systems on paper the application of protection grounds themselves did not differ much in daily practice. Protection grounds should be assessed in sequence within a single procedure beginning with the criteria of the Geneva Convention followed by other legal obligations. The seminar also emphasised the links between an efficient single procedure and the issue of returns.
5. In the introduction to the Council of the Proposal for the Qualification Directive presented in December 2001, the Commission commented that the non applicability of the Asylum Procedures Directive to applications for international protection unrelated to the Geneva Convention left a potential gap in the European protection

regime and allowed for differences in Member States' practice to continue with a possible negative effect on the goal of limiting unwarranted secondary movement of asylum seekers within the EU.

6. In June 2002 a conference took place in Potsdam, Germany on a single, fair and efficient asylum procedure. Representatives of several Member States as well as leading academics in the field made presentations on the advantages and disadvantages of a single procedure. In particular arguments were given in favour of a single procedure underlining the cost effectiveness of the establishment of such a procedure and how removals of persons found not to be in need of international protection could be facilitated by its use.
7. The Commission Communication "*On the common asylum policy and the Agenda for protection*" of March 2003 said that there were major challenges facing the Community on asylum procedures notwithstanding the negotiations on the Asylum Procedures Directive. Those challenges were the quality of the examination of applications and the speed of procedures. In respect of these challenges the Commission undertook to intensify its work on "frontloading" (the concentration of resources on the first part of the procedure to ensure good quality first instance decisions that are robust in substance at appeal) in particular through further study of the question of one-stop shop begun in the Communication of November 2000. The Commission Communication of June 2003, "*Towards more accessible, equitable and managed asylum systems*" reiterated this undertaking and said that "frontloading" could also assist in quickly and correctly identifying the persons in need of international protection as well as helping reduce obstacles to return.
8. In June 2003 the Thessaloniki European Council reaffirmed the importance of establishing a more efficient asylum system within the EU to identify quickly all persons in need of protection in the context of broader migration movements and developing appropriate EU programmes. The Thessaloniki Council also invited the Justice and Home Affairs Council and the Commission to examine the possibilities of further reinforcing asylum procedures in order to make them more efficient with a view to accelerating as much as possible the processing of non international protection related applications.
9. Following submission of the Amended Proposal for the Asylum Procedures Directive on 18 June 2002 and the subsequent negotiations on that proposal throughout 2003 and early 2004 the Council took a general approach on the proposal on 29 April 2004. During those negotiations it was proposed that Member States which employ or introduce a procedure in which asylum applications are examined both as applications on the basis of the Geneva Convention and as applications for other kinds of international protection as defined by the Qualification Directive, shall apply the provisions of the Directive in full to both kinds of application. If this approach is adopted, the minimum standards legislative framework will require Member States who decide to introduce a single procedure in the future to apply to applications for subsidiary protection at least the procedural standards laid down under Community law applicable to applications for refugee status. The first stage legislation of the Common European Asylum System therefore sets out a clear perspective towards Community standards on a single procedure.

Summary of the study on the single asylum procedure ‘one-stop shop’ against the background of the common European asylum system and the goal of a common asylum procedure”

Three types of procedure

10. The Study found that among the then EU Member States, asylum procedures could be divided into three broad categories those operating a single procedure where all possible protection needs are considered and a single decision made (Sweden, Netherlands, Finland, UK); those operating a partial single procedure where Geneva Convention grounds are examined with similar asylum related grounds in one procedure (Spain, Greece, Germany, Austria, Portugal, Denmark); and those Member States who operate separate procedures for the examination of different grounds for protection (Belgium, France, Ireland, Italy, Luxembourg). It should be noted that since the issue of the Study, France has adopted a single procedure in their national system.
11. The Member States which operate an all inclusive single procedure charge the same administrative body with the handling of an application for residence based on Geneva Convention grounds or any other grounds such as the threat of the death penalty, inhuman treatment, torture, political humanitarian reasons or family connections. There is some variance as to precisely how all encompassing these procedures are (e.g. temporary protection or the possibility to apply for a residence permit on regular immigration grounds may not be included) but the distinguishing feature remains that a single authority makes a single decision resulting in the possibility of a single appeal.
12. In those countries operating a partial asylum procedure, an examination on Geneva Convention grounds is always combined with ‘asylum related’ claims for humanitarian protection but without attempting to include all possible grounds for protection. This division relates to internal competences or administrative considerations or the perception that some kinds of protection are more connected with the general competence of alien authorities in immigration matters than with the responsibility of asylum authorities.
13. Typically, those Member States who practice separate procedures limit the asylum procedure to an examination of Geneva Convention grounds. Humanitarian grounds may cover different forms of protection ranging from a residence permit to a stay of execution of a deportation order. In some separate procedures there exists the possibility of parallel appeals against different decisions.

Risks and problems

14. The Study lists the possible disadvantages of the single procedure and concerns raised by both those Member States who have introduced a single procedure in their national systems as well as those who have resisted doing so. These included the risk of ‘watering-down’ the Geneva Convention where authorities tend to grant a less beneficial status than Geneva Convention status to applicants for protection leading to lower recognition rates and more restrictive standards in applying the Geneva

Convention. In contrast to the devaluation of the Convention the Study said that there may also be a concern that the introduction of a single procedure might lead to the extension of legal rights to protection and the assimilation of humanitarian protection grounds to Geneva Convention grounds. The Study held that there was no evidence that the inclusion of humanitarian protection reasons in a single procedure would increase the risk of the use of the asylum system for reasons other than protection.

Conclusions of the study

15. The Study's balanced analysis of the country reports and the historical and legal context of how asylum procedures are changing in the face of increasingly diverse reasons for protection arrives at conclusions which largely favour the EU moving toward a single procedure. The Study notes that the main advantages promoted by those Member States who undertook a single procedure were the enhancement of protection for the applicant as well as the higher efficiency of an asylum procedure which included all or most grounds for protection to be considered in one decision. These factors in turn led to important deterrents to the practice of making abusive asylum claims in order to avoid immigration restrictions and a better use of resources.
16. The Study concludes that a major advantage of a single procedure would be the part it could play in the Common European Asylum System. The limitation of secondary movements influenced solely by the diversity of applicable rules is one of the main purposes of the CEAS. The Study adds that the introduction of a single asylum procedure embracing at least all of the international protection grounds common to all EU Member States will make it easier for Member States to develop a system whereby **an asylum seeker has only one chance to have a protection claim examined in a thorough, fair and just process** in the EU. That principle is already laid down in the Regulation replacing the Dublin Convention.

Updating the information in the Study

17. The Study provides a picture of the situation of the asylum procedures of Member States up to April 2002. In order to update the information contained in the Study and record any significant changes which had taken place the Commission services wrote to Member States asking them to update the information they had supplied to the compilers of the Study. In order to take account of the asylum procedures of the new Member States the Commission issued a questionnaire to the then Accession Countries to help inform the drafting of this Communication in respect of the situation in each country of the different categories of persons requesting protection. The questionnaire asked if there were separate procedures or a single procedure for different grounds of protection and what were the details of these procedures. The questionnaire also asked for the context and features of any debate which had taken place around the issue of the introduction of the single procedure.
18. It can be surmised that, for the most part, the new Member States which replied to the questionnaire operated either an all inclusive single procedure or a partial single procedure at least for the refugee status and the grounds for subsidiary protection contained in the Qualification Directive. Several new Member States mentioned that

their model for an asylum procedure had been significantly influenced by the asylum procedures in place in those Member States currently operating an all inclusive single procedure.

The views of UNHCR and the non governmental sector

19. UNHCR and those non governmental organisations consulted by the Commission in advance of the drafting of this Communication held positive views on the eventual adoption of a single procedure by the EU. All agreed that there were key advantages in terms of speed and efficiency and the facilitating effect for applicants. Safeguards against the watering down of the Geneva Convention were important and measures such as a sequential order of examination, a fully reasoned decision and an appeal against refusal of Geneva Convention status were seen as suitable in this context. Some misgivings were expressed as to the timing of the launch of a debate on a single procedure before the concrete results of the first phase of harmonisation had been properly assessed.
20. The reports on asylum procedures in the Member States contained in the Study reflected practices up to April 2002. In preparing this Communication the Commission services wrote to Member States to update the information. A description of the procedures of the Member States is presented in an overview table at **Annex B**. Charts representing the percentage of decisions based on the Geneva Convention as a part of the total number of positive decisions are attached at **Annex C**.

ANNEX B

	Description of the procedures relating to refugee status, subsidiary protection grounds as defined by the Qualification Directive and/or other procedures for other forms of international protection	Single procedure and/ or authority for refugee status and subsidiary protection status under the Qualification Directive?
AT – Austria	A single procedure for both refugee status and a status based on Article 3 ECHR or the death penalty. Separate possibility to grant a residence permit for humanitarian reasons	Yes, except for ‘discriminate violence’ grounds
BE – Belgium	A refugee status determination procedure. Separate possibility to request a permit for exceptional circumstances’	No
CY – Cyprus	A single procedure for refugee status, a subsidiary protection status based on 3 ECHR or a permit for humanitarian reasons	Potentially
CZ – Czech Republic	A single procedure for refugee status and another form of protection based upon obstacles to removal (including Article 3 ECHR). Separate possibilities to request this other form of protection or a permit for humanitarian reasons.	Potentially
DE – Germany	A single procedure before Federal authorities for constitutional asylum, refugee status and other reasons related to the circumstances in the country of origin. Separate possibility to request protection on other reasons with State authorities.	Potentially
DK – Denmark	A single procedure for refugee status and a status based on Article 3 ECHR or the death penalty. Possibility to request a permit for humanitarian reasons after the final decision in the asylum procedure.	Yes, except for ‘discriminate violence’ grounds
EE – Estonia	A procedure for refugee status, protection based on Article 3 ECHR and protection against the death penalty.	Yes, except for ‘discriminate violence’ grounds.
EL – Greece	A refugee status determination procedure. After rejection at first instance, possibility to request or be granted ex officio humanitarian refugee status, based on 3 ECHR or other reasons, such as civil war followed by mass violations of human rights.	No

	Separate possibilities to request other permits for humanitarian reasons	
ES – Spain	A procedure for refugee status and humanitarian status based on the application of other international instruments or on certain links with the reasons listed under the Geneva Convention.	Potentially
FI – Finland	A single procedure for refugee status and a near equivalent status for other reasons for international protection, including subsidiary protection as defined by the Qualification Directive	Yes
FR – France	A single procedure for refugee status and subsidiary protection as defined by the Qualification Directive	Yes
HU – Hungary		
IE – Ireland	A refugee status determination procedure. Separate possibility to request humanitarian leave to remain at the end of that procedure.	No
IT – Italy	A procedure for refugee status and for other forms of protection, in cases of serious humanitarian crisis, based upon reasons of a humanitarian nature, international obligations such as non refoulement or constitutional obligations	Potentially
LT – Lithuania	A procedure for refugee status and protection based upon international obligations such as Article 3 ECHR.	No
LU – Luxembourg	A refugee status determination procedure. Possibility to grant humanitarian status upon condition that the person renounces the claim for refugee status.	No
LV – Latvia	A single procedure for refugee status or subsidiary protection status based on 3 ECHR, death penalty or internal/external armed conflicts.	Potentially
NL – the Netherlands	A single procedure for refugee status and an equivalent status for other reasons for international protection, including subsidiary protection as defined by the Qualification Directive	Yes

MT – Malta	A procedure for refugee status or humanitarian status	No
PL – Poland	A single procedure for refugee status and protection based upon Article 3 ECHR.	No
PT – Portugal	A procedure for political asylum, refugee status and a humanitarian status for fear of safety as a result of armed conflict or gross violations of human rights	Potentially
SI – Slovenia	A procedure for the refugee status and protection against refoulement (3 ECHR). Separate possibility, after a final decision, to request for protection based upon other grounds under the ECHR and circumstances preventing the return to the country of origin.	No
SK – Slovak Republic	A single procedure for refugee status and other reasons for international protection, including Article 3 ECHR, the exercise of political rights and freedoms and humanitarian reasons	No
SE – Sweden	A single procedure for refugee status and a near equivalent status for other reasons for international protection, including subsidiary protection as defined by the Qualification Directive	Yes
UK – United Kingdom	A single procedure for refugee status and leave to remain for other reasons for international protection, including subsidiary protection as defined by the Qualification Directive	Yes

Annex C. Percentage positive decisions based on the Geneva Convention, EU15 1999-2003

	Geneva Convention	Other pos. decisions	% Gen.Conv.	% Other pos. dec.
1999	28940	34900	45,3	54,7
2000	34640	47945	41,9	58,1
2001	45365	33455	57,6	42,4
2002	23459	28680	45,0	55,0
2003	18125	15080	54,6	45,4

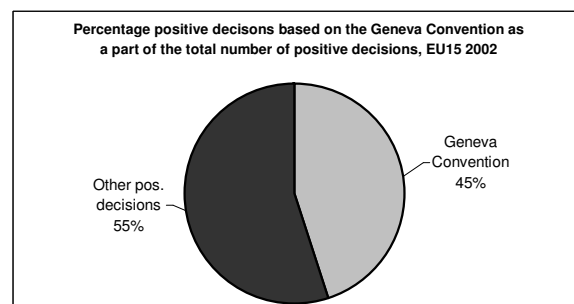
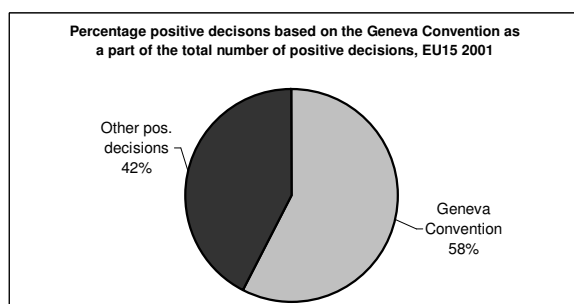
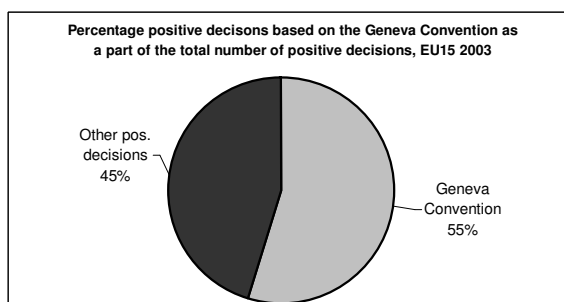
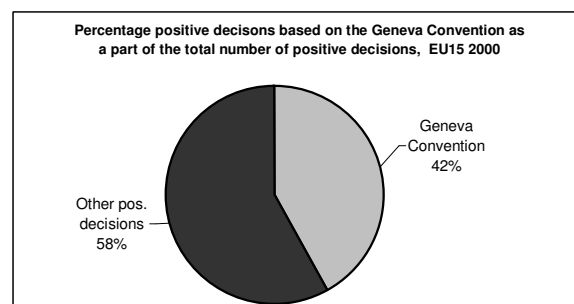
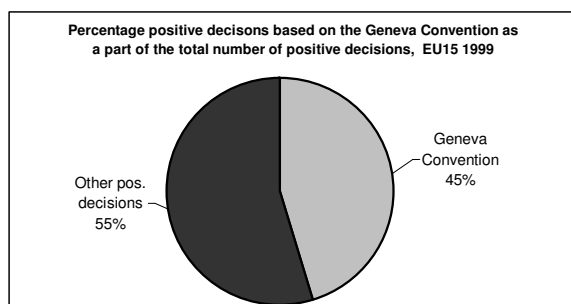
Missing:

1999: Italy

2001: Netherlands

2002: Belgium, Denmark, Italy, Netherlands

2003: Belgium, Italy, Netherlands



The Preparatory Phase: One Stop Shop Action Plan

1. In order to ensure that any legislative framework is built on sound foundations of consensus, mutual knowledge and understanding of the challenges faced in changing the asylum systems of the Member States to adapt to a single procedure a preparatory phase is required to lay these foundations. The **Preparatory Phase** will begin in January 2005 and run in tandem with the implementation of the first stage legislation of the Common European Asylum System and the preparation of any future legislation. The Commission will submit a paper outlining a **One-Stop Shop Action Plan** to implement this period of consultation, debate and preparation on what Member States need to do to unify their procedures. Coordination will be ensured by the Committee on Immigration and Asylum; the Commission will report to this body on the outcomes of each activity. At the end of the process, a conference should analyse the results of the activities and provide guidance to the Commission on how to feed them into the process of drawing up legislative instruments on the single procedure.

2. The aim of the **Preparatory Phase** would be threefold: i) to steer and inform the discussion on how the EU should move towards the adoption of a single procedure, ii) to identify those elements of change which need to take place and iii) to make those changes by the adjustment of operational practices and by the suitable legislative approach. The **Preparatory Phase** would also serve as a platform for the consultative process which needs to take place ahead of the bringing forward of the legislative proposals identified as necessary.
 - The Commission will take charge of a comprehensive and coherent programme of activities including the exchange of information on best practices, the launch of Community actions of ERF II and the initiation of calls for projects under the ARGO programmes to cater for the specific needs expressed by Member States in this area.

 - Member States are invited to initiate specific operational measures to feed the process of progressive capacity building such as twinning projects and staff exchanges between authorities applying the single procedure and authorities who are planning to do so, as well as training sessions for practitioners etc.

An action plan to implement the Preparatory Phase

3. The **One Stop-Shop Action Plan** will comprise four strands:
 - (1) **Evaluating the Common European Asylum System**: Analysis and evaluation of the implementation of provisions in the first stage legislation of the Common European Asylum System which require Member States to introduce the same treatment to both applicants for refugee status and subsidiary protection;

- (2) **Single Procedure vs. Separate Procedure**: Exchange of information and analysis of national practices where there are separate procedures for applications for subsidiary protection status so that aspects relevant for future EC legislation on the single procedure can be identified;
 - (3) **Improving Efficiency with the Single Procedure**: Research and exchange of information on good practices regarding aspects ancillary to the single procedure but which are clearly beneficial to increasing the efficiency of asylum procedures, such as front loading and the nexus with the return process;
 - (4) **Resources in the Single Procedure**: Research and exchange of information on the administrative set up and resources required to maintain a single procedure at national level including costings comparisons between Member States who do operate a single procedure and Member States who do not.
4. The starting point for **the first strand** is to boost the spirit of shared ownership and solidarity towards the development of a common European asylum system. In addition to the regular exchange of information following the notification of measures to transpose the Qualification Directive, the Commission proposes that this specific element of the implementation of first stage legislation is examined in more detail given its connection with the single procedure. This is the case in particular for the assessment of the elements of the claim pursuant to Article 4 of the Directive.
 5. Treatment should be consistent in the case of a single procedure, but it will pose a challenge to Member States where no single procedure is in place. Member States which have partial single procedures in place stand to benefit from the sharing of experience when implementing the above standards in the Qualification Directive. Consequently, the Commission would supervise the sharing of good practice on:
 - arrangements between the different authorities responsible at national level with respect to individual case management;
 - tools and methods for facilitating a comprehensive input of the applicant as soon as possible in the examination process on all the grounds for protection; and
 - (IT) solutions on providing appropriate access to country of origin information and individual decisions for the different authorities responsible at national level.
 6. This should also enable the identification of what scope there is for Member States to initiate proposals for projects in the context of the ERF II and ARGO on the development of administrative systems which can support the operation of a single procedure.
 7. The **second strand** will entail an examination of the situation in Member States which do not operate a single procedure. The purpose would be to assess the standards applicable to the examination of applications for subsidiary protection following the implementation of the Qualification Directive and the extent to which changes would be required once the standards in the Asylum Procedures Directive are to be applied in a single procedure. The Commission would organise a survey to examine this situation in the Member States concerned and, once completed, confer a

seminar to present conclusions and map out a way forward. The results would directly contribute to the process of assessment on the scope of possible legislation on a single procedure.

8. The **third strand** will entail a series of meetings to compare and analyse aspects of fair and efficient procedures which reinforce the benefits of the single procedure. These aspects would include:
 - Effective methods to accelerate all stages of the procedure without compromising the end result: how to ensure a rapid access to procedures and identification of the nature of the application and the supporting elements and to develop methods of early assessment of further examination needs;
 - The strategic use of country of origin information, language analysis and tools for age determination to both accelerate and enhance the quality of the assessment of the claim;
 - The development of a common training manual for caseworkers and interviewers with a view to taking decisions based upon a comprehensive assessment of all grounds for protection;
 - The development of common assessments of the situation in the countries of origin facilitating convergence in decisions relating to the grounds of subsidiary protection under the Qualification Directive;
 - The relationship between the introduction of a single procedure and the facilitation of an effective return process: simplifying the legal framework without prejudice to international obligations and enhancing cooperation between the asylum and return authorities.
9. The **fourth strand** will examine certain technical aspects underlying the smooth operation of asylum procedures. The Commission would commission a survey into the cost and benefits of certain asylum systems to empirically underpin the findings of the Study. Secondly, the Commission would invite a number of Member States to present aspects of the financial outlay of their system with a view to comparing cost and benefits of different systems, taking into account the duration and nature of procedures at first instance and appeal, the relationship to the removal process etc.
10. As far as possible UNHCR, academic and other experts and, where relevant, NGOs would be called upon to assist Member States' practitioners in the analysis involved in all four strands.

Financial framework

11. The Commission proposal for the new generation of the ERF lists as eligible action for support in Member States in particular improvements to the efficiency and quality of asylum systems. There is further provision for furthering Community cooperation in implementing Community law and good practice, the support for transnational networks to facilitate the exchange of experience and good practice and the support for the use of IT and communications technology. Article 6 of the ARGO

programme provides for the promotion of the establishment of the Common European Asylum System, the approximation of rules on recognition and content of refugee status complemented with measures on subsidiary forms of protection and the reinforcement of the efficiency and fairness of asylum procedure to increase convergence in asylum decision making.

12. Certainly, following the adoption of the ERF II Council Decision, the Commission would intend to adopt as one of the guidelines for priorities of the multi annual programmes by Member States the objective to properly implement the Qualification Directive in particular through a) efficient procedures to assess all applications for international protection including in the single procedure and b) strict adherence to the principle of equal treatment of all applicants of international protection and their claims with respect to the provisions of the Directive equally applicable to both categories of applicant.