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on the communication from the Commission to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin - 'Improving access to durable solutions'
((COM(2004)0410 – 2004/2121(INI)) and

on 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)0503 – 2004/2121(INI))

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Rapporteur: Jean Denise Lambert

CONTENTS

| | Page |
|---|-------------|
| MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION | 3 |
| EXPLANATORY STATEMENT..... | 9 |
| OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS | |
| OPINION OF THE COMMITTEE ON DEVELOPMENT | |

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the communication from the Commission to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin - 'Improving access to durable solutions'

((COM(2004)0410 – C6-2004/2121 – 2004/2121(INI))

and

on 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)0503 – 2004/2121(INI))

The European Parliament,

- having regard to the communication from the Commission to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin - 'Improving access to durable solutions' ((COM(2004)0410),
- having regard 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)0503),
- having regard to the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948, in particular Article 14 thereof,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and its additional protocols,
- having regard to the Charter of Fundamental Rights of the European Union, solemnly proclaimed on 7 December 2000¹, in particular Articles 1, 18 and 19 thereof,
- having regard to the draft Treaty establishing a Constitution for Europe², adopted by the European Convention on 13 June and 10 July 2003, submitted to the President of the European Council in Rome on 18 July 2003, and endorsed by the Intergovernmental Conference meeting at the level of Heads of State and Government, during the European Council meeting on 17 and 18 June 2004, in particular Articles II-1, II-18, II-19 and III-167,
- having regard to the Geneva Convention relating to the status of refugees of 28 July 1951, supplemented by the New York Protocol of 31 January 1967,

¹ OJ C 364, 18.12.2000.

² OJ C 169, 18.7.2003.

- having regard to the Treaty on European Union in its consolidated version¹, in particular the fourth indent of Article 2 and Article 6,
 - having regard to the Treaty establishing the European Community in its consolidated version², in particular Article 63,
 - having regard to the Action Plan of the Council and the Commission on how to best implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice³, in particular paragraphs 8, 32, 33, 34, 36 and 37 thereof,
 - having regard to the conclusions of the European Council in Tampere on 15 and 16 October 1999, in particular those set out in paragraphs 13, 14 and 15,
 - having regard to the conclusions of the European Council in Laeken on 14 and 15 December 2001, in particular those set out in paragraphs 39 and 40,
 - having regard to the conclusions of the European Council in Seville on 21 and 22 June 2002, in particular those set out in paragraphs 26, 27, 28, 29, 33 and 34,
 - having regard to the conclusions of the European Council in Thessaloniki on 19 and 20 June 2003, in particular those set out in paragraphs 24, 25, 26 and 27,
 - having regard to the communication from the Commission to the Council and the European Parliament ‘Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum’ (COM(2000)0755),
 - having regard to the Agenda or Programme for Protection, adopted by the Executive Committee of the UNHCR and welcomed by the General Assembly of the United Nations in 2002 after worldwide consultations on international protection,
 - having regard to the communication from the Commission to the Council and the European Parliament of 26 March 2003 on the common asylum policy and the Agenda for Protection (COM(2003)0152),
 - having regard to the communication from the Commission to the Council and the European Parliament of 3 June 2003 ‘Towards more accessible, equitable and managed asylum systems’ (COM(2003)0315),
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report of Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Development (A6-0000/2004),
- A. whereas Conclusion 26 of the European Council in Thessaloniki called on the Commission ‘to explore all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection and to examine ways and means to

¹ OJ C 325, 24.12.2002, p. 5.

² OJ C 325, 24.12.2002, p. 33.

³ OJ C 19, 23.1.1991, p.1.

enhance the protection capacity of regions of origin with a view to presenting to the Council, before June 2004, a comprehensive report suggesting measures to be taken, including legal implications’,

- B. whereas the Commission’s two communications which are the subject of this resolution, that of 4 June 2004 and that of 15 July 2004, should be considered together, since although the reasons behind them are different, they constitute the Commission’s response to conclusions 26 and 27 respectively of the Thessaloniki European Council, held on 19 and 20 June 2003, and tackle the premises and basic objectives of a possible new approach to better managed, more accessible and fair asylum systems, exploring new ways of achieving the gradual approach defined at Tampere,
1. Deplores the fact that the progress made in the adoption of the legislative programme for the first stage of a European common asylum system defined in the conclusions of the Tampere European Council has been delayed, that harmonisation is based on the lowest common denominator of the Member States, and that the Council was unable to reach a political agreement on the proposal for a directive on the minimum standards on procedures to be applied in Member States for granting and withdrawing refugee status until 29 April 2004;
 2. Thanks the Commission for submitting its communication of 4 June 2004 in which it proposes, in addition to the current European common asylum policy, both measures to develop better organised entry into the EU of persons in need of international protection and measures to step up protection capacity in the regions of origin;
 3. Considers that the still only partial establishment of the first stage of the European common asylum policy presents serious structural shortcomings which threaten Europe’s humanitarian tradition, and that in order to improve the management of asylum in the context of an enlarged Europe it is necessary to achieve, by means of gradual application, the objectives which are to complement rather than replace the European common asylum policy envisaged at Tampere; these are as follows:
 - (a) to improve the quality of decision-making in the European Union,
 - (b) to step up protection capacity in the regions of origin,
 - (c) to deal with applications for protection at a level as close as possible to needs and to regulate safe access to the EU by means of orderly and managed entry for some of the persons in need of international protection,
 - (d) to share the burden and responsibilities within the EU and with the regions of origin,
 - (e) to develop an integrated approach with a view to establishing, in the area of asylum and return, efficient procedures which produce executive decisions;
 4. Is convinced that one of the instruments for guaranteeing more orderly and better managed entry into the EU of persons in need of international protection may consist in a Community-wide system of resettlement, whereby such persons would be transferred from a first host country to an EU Member State, where they would be guaranteed protection, including residence, and would have prospects of integration

and autonomy, with the UNHCR taking part in selecting and forwarding specific documentation;

5. Considers that in resettlement schemes particular attention be paid to those considered most vulnerable in that situation: for example, victims of rape, unaccompanied minors or human rights activists and that such an approach would represent real added-value at the EU level
6. Trusts that such resettlement programmes, if properly managed and adequately resourced, can assist in the development of a public understanding of refugees and their reasons for seeking protection in the countries receiving these refugees and others in need of international protection
7. Holds that the active development of such understanding is essential in combating racism and xenophobia within the EU
8. Calls on the European Union to establish an appropriate legal instrument guaranteeing the prompt application of an EU-wide system for resettling persons in need of international protection, which would be flexible and adapted to the differing needs of such persons, subject to the Member States' capacity to resettle certain groups of people benefiting from international protection, and to which the European Fund for Refugees (EFR II) could make a contribution;
9. Considers that the additional resources required for the improvement of support in the region must be additional monies and not a re-allocation of the existing aid and development budget: that this should be taken in to account in deliberations on the Financial Perspectives; additional funding to the UNHCR will also be necessary given the role it would be asked to play in this process
10. Considers it necessary that there shall be clear lines of responsibility and accountability for the agencies involved
11. Considers that the best solution for those seeking protection in the region is to invest in the resolution of long-term conflicts and conflict prevention and that this should be an important consideration in any common foreign and security policy of the EU: therefore welcomes the Commission's proposals to bring forward EU Regional Protection Programmes and expects that the EP will be involved in their development and the assessment of their implementation
12. Considers that such Protection Programmes must contain safeguards against the premature return of refugees through the safe third country concept
13. Calls on the Union, for the purposes of dealing with cases of people in need of immediate and urgent protection, to further explore the possibility of a legal instrument defining and establishing the elements of a system of Protected Entry Procedures (PEP), which would consist in allowing a third-country national to submit an application for asylum, or other form of international protection, to a potential host Member State, but from outside its territory, and to obtain a provisional or definitive entry permit;

14. Stresses that it is important for the EU to share responsibility with third countries and, in particular, with the countries of first asylum, for the handling of refugees and that more effective cooperation is needed for the purposes of stepping up the protection capacity of the countries accommodating refugees, to enable them to become stable providers of real protection;
15. Recognises the value of supporting those countries which receive the majority of those seeking sanctuary and considers it important that the conditions offered there meet at least those outlined by the Commission in para.45 a-e
16. Believes such support in the region to be a complement to a common asylum procedure within the EU based upon high standards of delivery and in full recognition of our international obligations and therefore states that such support cannot be a replacement for such a procedure within the EU
17. Considers that the investment in durable solutions will require considerable co-ordination between different departments and agencies of the EU, not least development, JHA, trade and AFET: believes that the Commission should communicate its proposals for such cooperation to the EP as soon as possible and report regularly to the EP on the progress of such co-operation
18. Welcomes the Commission's submission of the above-mentioned Communication of 15 July 2004 on a more effective European common asylum system, the purpose of which is to develop the process which would close the protection gap and lead to the effective implementation of the first stage of the common asylum policy.
19. Welcomes the proposal to “front-load” the assessment procedure to include all relevant information but stresses that this must include the application of full-country information from a variety of sources; high quality training for those deciding on applications and the full legal representation of applicants, information provided in the applicant’s own language and the right to in-country appeal
20. Proposes that systems be put in place to monitor the outcome for those returned to their country of origin when their claim has been deemed unfounded to assess whether correct decisions have been made;
21. Backs the proposal for a single procedure for international protection, since it is convinced that a single procedure administered by a single competent authority will make the procedure swift and more efficient and provide better guarantees for persons seeking protection, since the single authority would assess the international protection needs of the applicant, either in order to grant him refugee status or subsidiary protection or, if appropriate, turn down his application;
22. Requests that in cases where any of the types of status of international protection should be refused, because the requirements are not met, the unfavourable decision should be duly reasoned and be communicated in writing in an authenticated document in the applicants own language;

23. Is convinced that a single procedure would not adversely affect the status of refugees as envisaged in the Geneva Convention of 1951, if the application is examined by the same authority but in a set order: firstly, the request would be examined on the basis of the reasons for protection laid down in the Geneva Convention, and if these are not applicable, it would be determined whether the reasons justifying the granting of subsidiary protection apply;
24. Expresses its deep concern at the serious situation which will inevitably arise in future if, on the one hand, Member States have to apply the Council directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection, the field of application of which covers the two types of international protection (refugees and subsidiary protection), whilst, on the other hand, the future Council Directive on the procedure for granting and withdrawing refugee status confines its field of application to the examination of applications for international protection based on the reasons listed in the Geneva Convention of 1951 and the Protocol of 1967, since applications for subsidiary protection are outside its field of application;
25. Calls on the European Union to take appropriate steps to ensure that the field of application of the directive on the procedure for granting and withdrawing refugee status is extended to cases of subsidiary protection, so as to give everybody the same procedural guarantees in all the Member States during the examination of their applications for international protection and the same opportunities to defend themselves and exercise their right to appeal against decisions which they consider unlawful, and that such appeals should have the effect of suspending the decision;
26. Is convinced that if the Directive on the procedure for granting and withdrawing refugee status is not extended to cases justifying requests for subsidiary protection this would constitute an unjustifiable legal vacuum in the field of protection, the consequences of which would be aggravated by the fact that when the Member States grant international protection they do so on the basis of the reasons for subsidiary protection rather than on those justifying the application of the Geneva Convention on the granting of refugee status;
27. Expects that Parliament will be involved in any urgent re-consultation on the Directive on Minimum Standards on procedures in Member States for granting and withdrawing refugee status and about any minimum common list of safe countries of origin;
28. Maintains that, as soon as possible after the preparatory stage, the European Union should adopt the legislative measures needed to adopt the whole legislative package envisaged in the Amsterdam Treaty and by the Tampere European Council, for the creation of the first phase of a European common asylum policy, in order to ensure the fair and effective application of a single international protection procedure in all the Member States;
29. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

In general, your rapporteur welcomes these two communications from the Commission concerning the future development of a common asylum policy. She feels it important, however, to establish a clear framework for such future development.

Parliament has repeatedly stressed the need for a high quality asylum procedure, firmly entrenched in the Geneva Convention and other international instruments. We took the same view with regard to those in need of international protection (subsidiary protection). Speed and administrative efficiency are important in assessing any system but they cannot be the only criteria when people's futures are at risk.

The current figures for non-founded asylum claims are often misrepresented as they often omit those cases overturned on appeal or inadequately assessed as they are fast-tracked through a dubious "safe-country" assessment. Thus the Commission's proposal to "front-load" the assessment process is a welcome one: a single process which contains all information and which is then assessed, firstly against the criteria for full refugee status and only if that is not attained, assessed for subsidiary protection, simplifies the process for applicant and administration. However, the quality of the procedure then becomes crucial and the Commission's aim to improve training, in-country assessment and the related information and judicial procedures is to be welcomed: your rapporteur remembers Parliament's repeated demands including the rights to mother-tongue communication, adequate time, legal assistance to prepare and follow through applications and the right of in-country appeal with suspensive effect. A procedure to monitor what happens to those who are returned to their country of origin, having had their claims rejected, becomes crucial as a test of the system's quality.

Your rapporteur notes the tension between the requirements of the Qualifications Directive concerning a single procedure and those of the Minimum Requirements Directive, which does not apply to countries not already implementing the practice of providing subsidiary protection. Given that the Minimum Requirements Directive, as currently agreed by Council, has given rise to considerable concerns on a number of grounds, Parliament should be reconsulted under the new procedures, following the Amsterdam and Nice Treaties. Indeed, there should be provision in Tampere 2 for the assessment of the current package of Directives dealing with asylum and related issues, with a view to ensuring their coherence and compliance with human rights instruments.

Given that in 2003 some 70% of the world's refugees remain in their region of origin (only some 20% arriving in the EU), it has long seemed sensible to offer greater protection and of better quality in those regions but to be clear that this is in addition to the EU's current responsibilities to offer protection under international agreements. The additional measures proposed which offer the means of managed, legal entry in to the EU are to be welcomed, not least if they help to reduce trafficking, although that is often connected to migration rather than a need to seek sanctuary. However, the nature of the fear of persecution means that flight cannot always happen "neatly" through regulated channels with the appropriate documents.

The intention to develop high quality protection regimes in conjunction with receiving

countries is to be welcomed but should not become a means to enhance border control with the intent of preventing people moving on or as a way of abdicating our own protection responsibilities. The aim must be, in full partnership, to improve the conditions of both those seeking sanctuary and those giving it, in order to avoid additional tensions in countries which are often poor and have unstable governments of their own. This is an ambitious but necessary goal. Such an approach demands increased resources for the UNCHR, which is seen as playing a key role in such developments. It will also require significant cooperation between different parts of the European Institutions in developing policy and delivering it on the ground, especially if we are to invest in the resolution of long-term conflict situations and in effective conflict prevention. Your rapporteur believes that this must involve an examination of certain of the EU's policies to ensure that these do not become factors in causing and maintaining conflict. We must also look to new resources for delivery, not simply a switching of the aid and development budgets for new goals as so often happens. The conditions applying to resettlement programmes must be fully transparent and open to appeal.

However, we should also be clear that the Commission is not proposing a means to “off-shore” the EU's own responsibilities for those seeking sanctuary. Your rapporteur believes that the majority of Parliament would not accept camps set up in countries, often with poor records on human rights, to act as holding centres for the assessment of either protection or immigration status. Such “camps” would be seen to operate outside the light of democratic accountability and with little chance of meeting any reasonable criterion for external legal assistance of claimants and would probably do little to stem the tide of traffickers.

Thus the Commission's dual approach – to aim for a universal high standard of the application of the current Directives, with potential for their review, within the EU and to seek to improve the conditions for the vast majority of refugees within the region of their flight – seems reasonable. Parliament will wish to be fully involved in the developments of such initiatives.