



## **THE FUTURE EU ASYLUM POLICY CONTRIBUTION FROM SWEDEN AND THE CZECH REPUBLIC**

### **1. Background**

The granting of asylum is based on fundamental European values. Although the significance of the asylum issue varies considerably between different Member States and over time, we share a common commitment to offering protection to persons fleeing persecution, torture and conflict. All Members States are parties to the international instruments forming the basis for such a commitment, making it part of Europe's humanitarian tradition.

Today, the challenge how to devise a Common European Asylum System post-Hague is inevitably intertwined with the wider issue of migration. The EU has an international obligation but also a self-interest in taking its share of the international community's responsibility for the global refugee situation. At the same time asylum in the EU can only be part of the response to challenges that must be met by international cooperation in several policy areas and span measures to meet both asylum and migration-related aspirations reflected in increasingly mixed migratory movements.

### **2. Beyond Hague**

Ideally, the extensive legislation adopted in the area of asylum under the Tampere and Hague programmes will by 2010 have resulted in a system guaranteeing persons in need of international protection a uniform status based on common eligibility criteria. But given that it is not likely that those goals will have been fully reached by then, it might be worthwhile considering a radical change of method whereby a common asylum system be introduced from the top by means of a Regulation. By then the individual Member States systems should have been harmonized to such an extent that it is possible to imagine such a way and implement it.

The present discussion, however, offers an opportunity to take a broader vision of the future direction of the European system of international protection and to pause on the European asylum issues in a larger context.

- *Do you support a way forward through a radical change, i.e. finalizing the completion of the Common European Asylum System by means of a Regulation?*

### 3. Access to asylum procedure

The Common European Asylum System is built on the premise that persons meeting certain eligibility criteria should be entitled to protection. In order to regulate immigration and control irregular entry, however, a series of measures have been adopted which, according to certain NGO's and UNHCR, make it increasingly difficult to access asylum systems in Europe without resorting to illegal ways of entry. The visa regime seems to exclude many of those intending to seek asylum from travelling legally to the EU, carriers are liable to penalties if they allow anyone without proper documentation to embark, etc. At the same time, it is necessary to consider securing the system in such a way that its misuse is, minimized.

While public opinion on immigration varies widely in Member States, it is worthwhile reflecting on whether this will risk having a negative impact on the credibility within the EU of the stated goals of the European Asylum System. It might also have a detrimental effect internationally on the willingness of third countries, especially those hosting large refugee populations, to continue to assume their responsibility under the international protection regime.

- *Is there an inherent contradiction between the purpose of the Common Asylum System and measures to prevent "illegal" immigration?*
- *A number of Member States operate resettlement schemes. Are there other ways to provide legal channels to asylum in the EU?*
- *What kind of instruments could be envisaged to prevent misuse of the asylum system by those seeking a migration outcome without jeopardizing the purposes of the Common Asylum System? Which of these instruments or good practices could be envisaged at national level and which at the European?*

## 4. The Common European Asylum System

### 4.1 The extent of protection

The eligibility criteria agreed upon so far are based on the 1951 Geneva Convention, the European Convention on Human Rights and on an extended protection in situations of armed conflict. A challenge in the further development of the common asylum system is how to relate to other forms of forced migration, increasingly difficult to distinguish from those prompted by individual fear of persecution, risk of torture and capital punishment. An up-to-date definition of the notion of international protection in sync with today's international reality will be important to sustain credibility in the asylum system.

- *Is it realistic to extend further the eligibility criteria we have today? Should the asylum process provide the possibility to try asylum-seekers against so-called humanitarian eligibility criteria?*

## 4.2 The Institutions

In order to complete the Common European Asylum System, the extent of harmonization of individual regulations and decisions at individual instances will play a decisive role. The role of the European Support Office, which would coordinate mainly the practical cooperation in the field of asylum, and the idea to establish a European Asylum Court also relates to it. The question is to which degree we are willing to transfer some of the national competencies to the European level. The competencies of the court may range from the regular instance in the asylum proceedings, or proceedings on the remedial measure, to a mere advisory and consultancy body.

- *What is your idea of the function of the European Support Office? Should it play an advisory and consultancy role or should it be the first instance authority?*
- *Is the existence of a European Asylum Court, which could lead to harmonization of approaches to individual decisions realistic? Can you envisage a uniform single or double-instance asylum proceedings at the national level with the European Court of Justice empowered to issue an extraordinary remedial measure in asylum matters?*

## 5. Solidarity and sharing of responsibilities

Neither the introduction of common asylum procedures nor the uniform status of persons who have been granted protection are guaranteed to remove the factors that make some Member States more attractive than others to the asylum seeker. A higher standard of living, the already settled diaspora and cultural or geographic proximity belong to significant “pull” factors. In an overall perspective, current mechanisms for responsibility and burden sharing – the Dublin Regulation and the provision of Community funds in the event of particular pressure due to increased influx – are of limited significance for addressing these challenges.

As to the Dublin System, it has undoubtedly contributed to the European Asylum System regardless of the possibility of re-evaluating the sequence of criteria and necessity of the improvement of the Dublin proceedings. However, the quality of the Dublin System’s application differs to a large extent in individual Member States. Thus, an increase in the efficiency of the Dublin Regulation remains a challenge for all participants.

- *What are the decisive motives for asylum-seekers to choose certain parts of the EU as their destination?*
- *Do you agree that it is necessary to complete and change the Dublin System in order to strengthen the efficiency of its application? How do you envisage such strengthening?*

- *In a common asylum system, is there a need for a complementary mechanism in addition to the European Refugee Fund, to redistribute resources? What should then be redistributed – people or funds, or both?*
- *Should action in the external dimension relating to e.g. conflict prevention and support for refugee protection internationally be brought into the equation when devising a mechanism for solidarity and responsibility sharing?*

### **5.1. Integration**

Integration is not an eligibility criteria when trying whether an asylum seeker is entitled to protection. However integration will be the subject to closer cooperation when the Lisbon Treaty enters into force. Measures to provide incentives and support for the action of Member States with a view to promoting the integration of third country nationals may be established according to the Treaty. This may form a basis for future elaborations on links between protection and integration.

- *Do you think that the efficiency of a European Asylum System is connected with further cooperation in the field of integration?*
- *Do you think that the idea of a common minimum “integration standard” in these cases would be worthwhile considering?*

### **6. The external dimension**

People flee their countries of origin i.a. because of persecution, torture or armed conflict. Political failures leading to flight is fundamentally the responsibility of the governments in these countries. But when their own governments fail to offer protection, people have no choice but to seek international protection in other countries. Protection and solutions must be a shared responsibility for the international community. Developing countries hosting major populations of refugees and internally displaced people are in need of support by the international community in order to uphold protection and extend their welcome.

This provides the rationale for complementing the internal asylum system by continuing to strengthen external action in regions of origin and transit. European foreign policy strategies, including conflict solution and prevention, could be instrumental in solving political conflicts underlying often protracted refugee situations. Durable solutions should be integrated in Community development strategies. It should target development assistance in host countries to refugees in order to help make them self-sufficient and enabling them to contribute to the development of their host communities. The effectiveness of the Regional Protection Programmes should be evaluated and its role as a strategic complement to other forms of humanitarian support and capacity building reconsidered as regards its rather limited results achieved so far, non-transparent financing, and its compliance with provisions comprised in the Global Approach to Migration.

The “Global Approach” concept, which has been developed recently, has shifted the migration and asylum issues in the desirable direction. No asylum and migration policy will solve problems of the countries of origin as well as those of their citizens, which are, subsequently, the cause of migration waves and the reason for requests to grant asylum. Therefore, it is necessary to devote ourselves more intensely to the situation in the countries of origin and interconnect the Common European Asylum System with humanitarian and development programmes in the third countries. Such interconnection should be systematic and should form an integral part of migration and asylum policies. Naturally, the will of partner states to take part in solving common problems is a prerequisite for such cooperation. The European Support Office envisaged by the Hague Programme should coordinate, regulate and concentrate efforts of individual Member States in this direction.

Another important reform is the development of a common resettlement programme. An EU resettlement programme could be used strategically to complement and encourage additional durable solutions in host countries (local integration) and countries of origin (return) and thereby ultimately contributing to solving protracted refugee situations.

- *Do you support strengthening of the “Global Approach” in the asylum policy? If yes, how should such strengthening be secured?*
- *How to develop further the action in the EU’s external dimension in the area of asylum?*
- *Do you support the establishment of a “European Resettlement System”? How could be a Common Resettlement Program devised? Could the Regional Protection Programme be reconsidered?*

## **7. Conclusion**

The Common European Asylum System should be an effective mechanism of individual protection from persecution to those in need. This system should be also closely connected with the European development and humanitarian policies.

We need a common European Asylum policy which should be able to handle mixed migration flows and provide assistance to those genuinely in need.

To preserve credibility of the common European Asylum policy we must work against its misuse. Asylum is a humanitarian institution but this concept has been severely eroded in recent years. To maintain the public support for our actions we should look at improved access to international protection in the EU, at faster but comprehensive examination procedure not protracting the situation of asylum seekers and at effective returns.