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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN
ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF REGIONS**

**POLICY PLAN ON ASYLUM
AN INTEGRATED APPROACH TO PROTECTION ACROSS THE EU**

1. INTRODUCTION

1.1. Background

Work on the creation of a Common European Asylum System (CEAS) started immediately after the entry into force of the Treaty of Amsterdam in May 1999, on the basis of the orientations given by the Tampere European Council. During the first phase of the CEAS (1999-2005), the goal was to harmonise Member States' legal frameworks on the basis of common minimum standards.¹

The Hague Programme set as the aims of the CEAS in its second phase the establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection, as well as strengthening practical cooperation between national asylum administrations and the external dimension of asylum.

The Commission considered that, before proposing any new initiative, an in-depth reflection and debate with all the relevant stakeholders on the future architecture of the CEAS was also necessary. It therefore presented a Green Paper in June 2007, which aimed at identifying possible options for shaping the second phase of the CEAS. The response to the public consultation included 89 contributions from a wide range of stakeholders.² The issues raised and the suggestions put forward during the consultation have provided the basis for the preparation of this Policy Plan.

Building on the existing and future legal framework, this Policy Plan defines a road-map for the coming years and lists the measures that the Commission intends to propose in order to complete the second phase of the CEAS.

1.2. The legal context

If the Treaty of Lisbon (hereafter, the Treaty on the Functioning of the European Union 'TFEU') enters into force on 1 January 2009, this Policy Plan will be implemented under two different legal frameworks: the existing Treaty provisions and those of the TFEU. Under both regimes, the Geneva Convention plays a fundamental role.

The changes brought by the TFEU will enlarge the scope of EU competence in asylum policy: asylum legislation should form a coherent 'system', comprising a 'common' asylum procedure and 'uniform' status. The external dimension of the asylum policy is also explicitly mentioned.

In addition, the TFEU incorporates the Charter of Fundamental Rights, including Article 18 on the right to asylum and Article 19 on protection against *refoulement*.

This will have an impact on the time-frame for the presentation of the proposals outlined in this Policy Plan. If the Commission wants to meet the high level of ambition set out by the Hague Programme and the TFEU, it will need to postpone certain initiatives, namely the amendments to the Procedures and Qualification Directives, until after the entry into force

¹ All relevant legislative instruments and policy documents are listed in Annex II.

² Available at:

http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/news_contributions_asylum_system_en.htm

of the TFEU, to take advantage of the enlarged scope for EU action allowed by the new Treaty provisions.

This means that the deadline for the completion of the second phase of the CEAS might have to be rescheduled, possibly for 2012. A roadmap of the initiatives can be found in Annex I.

1.3. Trends

Three important trends can be identified from an analysis of available statistical data.³ These trends and their implications for future developments in asylum policy are further analysed in the Impact Assessment attached to this Policy Plan.

Firstly, the historically low levels of asylum applications in most Member States mean that most Member States' asylum systems are currently under less pressure than in the recent past. This appears to be the right moment to concentrate efforts on improving their quality.

Secondly, the differences in decisions to recognise or reject asylum requests from applicants from the same countries of origin point to a critical flaw in the current CEAS: even after some legislative harmonisation at EU level has taken place, a lack of common practice, different traditions and diverse country of origin information sources are, among other reasons, producing divergent results. This is creating secondary movements and goes against the principle of providing equal access to protection across the EU.

Thirdly, when looking at positive decisions, an ever-growing percentage of applicants are granted subsidiary protection or other kinds of protection status based on national law, rather than refugee status according to the Geneva Convention. This is probably due to the fact that an increasing share of today's conflicts and persecutions are not covered by the Convention. It will therefore be important during the second phase of the CEAS to pay particular attention to subsidiary and other forms of protection.

2. THE OVERARCHING OBJECTIVES OF THE CEAS

A genuinely coherent, comprehensive and integrated CEAS should:

- ensure **access to those in need of protection**: asylum in the EU must remain accessible. Legitimate measures introduced to curb irregular migration and protect external borders should avoid preventing refugees' access to protection in the EU while ensuring a respect for fundamental rights of all migrants. This equally translates into efforts to facilitate access to protection outside the territory of the EU;
- provide for a single, **common procedure** for reasons of efficiency, speed, quality and fairness of the decisions;
- establish **uniform statuses** for asylum and for subsidiary protection, which shares most rights and obligations, whilst allowing for justified differences in treatment;
- incorporate **gender** considerations and take into account the special needs of **vulnerable groups**;

³ Annex III contains statistical data.

- increase **practical cooperation** in order to develop, *inter alia*, common training, as well as jointly assessing Country of Origin Information and organising support for Member States experiencing particular pressures;
- determine **responsibility and support solidarity**: the CEAS must include rules on the determination of the Member State responsible for examining an asylum application and provide for genuine **solidarity** mechanisms, both within the EU and with third countries;
- ensure **coherence with other policies** that have an impact on international protection, notably: border control, the fight against illegal immigration and return policies.

To attain these objectives the Commission proposes a three-pronged strategy in this Policy Plan, based on:

- higher common standards of protection through further alignment of Member States' asylum laws (section 3);
- effective and well-supported practical cooperation (section 4); and
- a higher degree of solidarity and responsibility among the Member States, as well as between the EU and third countries (section 5).

The provisions of the Geneva Convention, the evolving jurisprudence of the European Court of Human Rights (ECtHR) and the full respect of the Charter of Fundamental Rights will be a constant reference for this strategy.

3. TOWARDS HIGHER COMMON STANDARDS OF INTERNATIONAL PROTECTION

As a whole, the first phase legislative instruments of the CEAS can be considered as an important achievement and form the basis on which the second phase must be built. However, shortcomings have been identified and it is clear that the agreed common minimum standards have not created the desired level playing field. The Commission therefore intends to propose amendments to existing legislation and to consider new instruments..

3.1. The Reception Conditions Directive (RCD)

The Commission's evaluation report on the RCD identified a number of problematic issues largely due to the amount of discretion allowed to Member States in a number of key areas. The amended instrument should contribute to achieving higher common standards, so as to limit the scope for such issues to drive secondary movements.

To this end, the Commission will propose amendments in the course of 2008, in order to:

- cover persons seeking subsidiary protection, ensuring consistency with the rest of the asylum *acquis*;
- ensure greater equality and higher standards of treatment with regard to the level and form of material reception conditions;

- provide for easier and more harmonised access to the labour market, ensuring that actual access to employment is not hindered by additional restrictions imposed at national level;
- incorporate procedural guarantees on detention; and
- guarantee that the special needs of vulnerable persons are identified immediately and that adequate care is available for them.

3.2. The Asylum Procedures Directive (APD)

Diverse procedural arrangements and qualified safeguards produce different results when applying common criteria for the identification of persons genuinely in need of international protection. This can damage the very objective of ensuring access to protection under equivalent conditions across the EU. In addition, both the Hague Programme and the TFEU call for the establishment of a common asylum procedure. This requires a fundamentally higher level of alignment between Member States' asylum procedures, as confirmed by the Green Paper consultation.

In order to achieve this goal, the amendments to the APD (to be proposed in 2009) will primarily aim at:

- setting up of a single, common asylum procedure leaving no space for the proliferation of disparate procedural arrangements in Member States, thus providing for a comprehensive examination of protection needs under both the Geneva Convention and the EU's subsidiary protection regime;
- establishing obligatory procedural safeguards as well as common notions and devices, which will consolidate the asylum process and ensure equal access to procedures throughout the Union;
- accommodating particular situation of mixed arrivals, including where persons seeking international protection are present at the external borders of the EU; and
- enhancing gender equality in the asylum process and provide for additional safeguards for vulnerable applicants.

3.3. The Qualification Directive (QD)

The QD has secured a minimum alignment on both the criteria for granting international protection and the content of protection statuses across the EU. The positive impact of the Directive has been evident in many Member States. However, data show that the recognition of protection needs of applicants from the same countries of origin still varies significantly from one Member State to another. To some extent, this phenomenon is rooted in the wording of certain provisions of the QD.

In order to ensure a truly common interpretative approach and to achieve the objective of introducing uniform statuses (as required by the Hague Programme and the TFEU) the Commission will propose, in the course of 2009, to:

- amend the criteria for qualifying for international protection. To this effect, it may be necessary *inter alia* to clarify further the eligibility conditions for subsidiary protection, to define with more precision when non-state parties may be considered as actors of

protection, or when a person may be considered as not in need of international protection if he stays in a certain part of his country of origin; and

- reconsider the level of rights and benefits to be secured for beneficiaries of subsidiary protection, in order to enhance their access to social and economic entitlements which are crucial for their successful integration, whilst ensuring respect for the principle of family unity across the EU.

In addition, the possibility of establishing an effective transfer of protection mechanism will be explored, either as part of the amendment to the QD or as a separate instrument.

Finally, a study will be launched on the possible alignment of national types of protection status which do not currently fall under the EU's regime of international protection.

4. PRACTICAL COOPERATION

Member States are nowadays bound by an important asylum *acquis*. However, large discrepancies between asylum decisions (even within similar caseloads) still exist. This is due on the one hand to the low standards of harmonisation of the current legislation, and on the other hand, to different practices in national administrations. It is therefore necessary to accompany legal harmonisation with effective practical cooperation.

One of the main goals of practical cooperation is to improve convergence in asylum decision-making by Member States, within the EU legislative framework. A substantial number of practical cooperation activities have already been undertaken in recent years. The replies to the Green Paper showed wide support for enhancing practical cooperation activities and for the idea of creating a dedicated structure to support and coordinate such activities in the form of a European Asylum Support Office (EASO) for Asylum.

In order to ensure that those activities are given the proper support needed and to widen the scope of cooperation, the Commission has launched a feasibility study on the establishment of structural support for practical cooperation in the field of asylum. The results of this study will be published in July 2008. On the basis of the study's findings and in line with the mandate of the Hague Programme and the JHA Council conclusions adopted on 18 April 2008, the Commission will put forward in 2008 a legislative proposal for the creation of the EASO. In the meantime, support for existing activities will continue to be ensured.

5. PROMOTING RESPONSIBILITY AND SOLIDARITY

In the TFEU, "*Solidarity and fair sharing of Responsibility*" is a principle which governs the implementation of a number of common policies, including the CEAS. Moreover, the TFEU lists as one of the elements of the CEAS: "*partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection*".

Therefore, the third strand of the three-pronged strategy should be based on responsibility and solidarity, in two different contexts: within the EU and between the Union and third countries.

5.1. Responsibility and Solidarity within the EU

As a preliminary remark, it should be noted that further alignment of national asylum procedures, legal standards, reception conditions and enhanced practical cooperation, as envisaged in this Policy Plan, are bound to reduce those secondary movements of asylum seekers which are mainly due to divergent applications of the rules. This could therefore result in a fairer overall distribution of asylum applications between Member States.⁴

5.1.1. Amendments to the Dublin system

The Commission decided to take a two-track approach by separating the technical and the policy evaluation of the Dublin system. The evaluation report published on 6 June 2007 constituted the technical assessment, while the Green Paper consultation served as policy evaluation.

The evaluation confirmed that the objectives of the system, notably to establish a clear and workable mechanism for determining responsibility for asylum applications, have, to a large extent, been achieved. During the consultation, there was general support from Member States for maintaining the current system, whilst recognising the need to improve certain aspects.

The Commission considers that the underlying principles of the Dublin system are worth upholding and that, in the long term, the higher common standards of protection resulting from the completion of the CEAS will eliminate most of the concerns regarding the operation of the current system, by ensuring that persons transferred to other Member States have equal access to protection.

While acknowledging that a system which clearly allocates responsibility for the examination of an asylum claim is necessary in order to avoid the phenomena of 'asylum shopping', the Commission is committed to evaluating the application of the Dublin Regulation at regular intervals and reassessing the principles on which it is based, once the second phase of the CEAS is in place.

In the short term, and in order to address the shortcomings identified in the evaluation report, the Commission will propose in 2008 amendments to both the Dublin and the Eurodac Regulations. Firstly, their scope will be extended to include subsidiary protection, to ensure consistency with the evolved asylum *acquis*.

As regards the amendments specific to the Dublin Regulation, the Commission will:

- strengthen and clarify several provisions in order to ensure better compliance and uniform application by the Member States (in particular the provisions on the humanitarian and sovereignty clause and those relating to family unity); and
- introduce amendments to enhance the efficiency of the system (notably as regards deadlines).
- Concerning the amendments specific to EURODAC, the Commission will:

⁴ In addition, the extension of the Long-Term Residents Directive to beneficiaries of international protection, as well the transfer of protection and practical cooperation mechanisms proposed respectively in sections 3.3. and 4 may also have a positive effect on 'overburdened' Member States.

- propose the unblocking of data on recognised refugees and making them searchable; and
- allow access to EURODAC by Member States' authorities and Europol for law enforcement purposes in line with the Commission's communication on interoperability and the Council Conclusions of 12-13 June 2007.

5.1.2. *Solidarity mechanisms*

The Dublin system was not devised as a burden sharing instrument: nevertheless, its functioning may *de facto* result in additional burdens on Member States that have limited reception and absorption capacities and who find themselves under particular migratory pressures because of their geographical location.

The Commission believes that the best way to ensure a high degree of solidarity is not to adopt a new overarching instrument, but to put at the disposal of Member States a series of mechanisms, which will help them cope with the variety of challenges they are faced with.

To this end, the Commission will propose:

- the launch of a study assessing the possibilities for joint processing in the EU of specific caseloads, as requested by the Hague Programme;
- to introduce the possibility of temporarily suspending the application of the Dublin rules for transfers of asylum-seekers to a Member State whose reception system cannot adequately deal with the transferred persons;
- to create asylum expert teams who would be coordinated by the EASO and could be called upon to assist overburdened Member States, on a temporary basis, in performing the initial profiling of asylum-seekers. In particular, the expert teams could provide support through interpretation services, as well as case-working and country of origin expertise;
- to facilitate, by providing specific EU funding, the internal re-allocation, on a voluntary basis, of beneficiaries of international protection from one Member State to another in cases of exceptional asylum pressure.

Finally, the issue of the financial burden posed by high numbers of asylum seekers on the resources of Member States should be looked at from the wider perspective of general migratory pressures. The Commission will launch a study in the course of 2009 to evaluate possible methods of improving the impact of EU financial solidarity, including the European Refugee Fund, and to assess whether the existing financial instruments provide effective support to the challenges Member States face in addressing strong irregular migratory pressures. Proposals will be considered on the basis of the results of the study.

5.2. **External solidarity**

In the coming years, the focus on the external dimension of asylum will become even stronger. The EU must share the responsibility for managing refugees with third countries and countries of first asylum, which receive a far greater percentage of the world's refugees than Europe. In this regard, more financial support will be available to enhance protection capacity in third countries. For the period 2007-2013, an amount of €384 million is available under the 'Thematic Programme of Cooperation with Third Countries in the

Areas of Migration and Asylum'. One of its key priorities is asylum and international protection.

Furthermore, the Commission will further integrate capacity building for asylum in development cooperation with third countries, placing the emphasis on a long term, comprehensive approach. Asylum should not be treated as crisis management but as integral part of the development agenda in the area of governance, migration and human rights protection.

In addition to this, the Commission believes that, to make a commitment of solidarity towards third countries effective, the EU should focus on three different but interlinked types of measures to promote refugee protection.

5.2.1. *Regional Protection Programmes (RPPs)*

In response to the Green Paper, many stakeholders have underlined the importance of RPPs as a means to reinforce the external asylum dimension.

The Commission is currently working in close cooperation with Member States, recipient countries, UNHCR and other key stakeholders to develop RPPs further, so as to have a substantial impact on improving the protection and asylum systems in specific regions of the world. To this purpose, and on the basis of the evaluation being carried out in 2008, RPPs will be made into regional multi-annual action plans, in full coherence with National and Regional Action Plans and the Thematic Programme, which will identify protection gaps and concrete activities to be implemented.

The current RPPs, which are carried out in Tanzania (as part of the Great Lakes region) and Ukraine, Belarus and Moldova, will be further developed in 2009.

The Commission will examine – in line with its Communication of 2005 – whether RPPs can be developed in other regions, such as northern Africa, the horn of Africa, Afghanistan and the Middle East, and may potentially make new proposals in this regard. In the selection of new regions for RPPs a number of factors will be taken into account, including the assessment of particular refugee situations, financial opportunities available under EU funds, existing relationships and frameworks for cooperation between the Union and particular countries or regions.

5.2.2. *Protected Entry Procedures (PEPs)*

With the development of comprehensive and more sophisticated border control regimes, the issue of asylum seekers' access to EU territory has increasingly come into focus. Disorderly movements are a significant route to safety in the EU, with human smugglers acting as important facilitators for entry. The Union should make efforts to solve this dilemma: one possible answer would be to encourage the operation of PEPs from the platform of diplomatic representations in the countries of origin or transit of asylum-seekers. PEPs would not replace normal territorial asylum procedures, but would complement them and be a response to the challenge of reconciling legitimate migration control objectives with the obligation of protecting refugees.

As shown by a Commission's study conducted in 2003, some Member States operate PEPs but they are quantitatively of minor importance. There is room for common action in this area, which should lead to better access to protection while reducing smuggling. In 2009,

the Commission will start examining possibilities for a flexible use of the visa regime, based on protection considerations. In the longer term it could explore the advantages of establishing common procedural standards for PEPs.

A related development in this area will be the launching of a study, in close consultation with the UNHCR, on the merits, appropriateness and feasibility of joint processing of asylum applications outside EU territory.

5.2.3. *Resettlement*

Resettlement fulfils an important role in the external asylum policies of the EU and there is much to be gained from a higher degree of cooperation on resettlement among Member States, UNHCR and NGOs.

This was widely acknowledged in the responses to the Green Paper. Resettlement will therefore be further developed and expanded into an effective protection instrument to be used by the EU to meet the protection needs of refugees in third countries and to show solidarity with third countries of first asylum.

In the course of 2009, the Commission will make proposals on developing an EU resettlement scheme (in which Member States would participate on a voluntary basis), setting common criteria and coordination mechanisms. Cooperation on practical and logistical aspects will lead to more financial and quality effectiveness (organisation of missions, medical and security screening, travel arrangements, preparation and submission of cases by UNHCR). The Commission will cooperate with Member States and other relevant stakeholders, such as UNHCR and NGOs, to discuss the shape and functions of the EU resettlement scheme.

6. CONCLUSION

The Commission is fully committed to achieving the ambitious objectives set out in the Hague Programme and in the TFEU by proposing the measures identified in this Policy Plan and monitoring the correct implementation of both existing and new measures.

The following principles will guide the action of the EU in the field of asylum in the coming years:

- **Upholding the Union's humanitarian and protection tradition and ensuring respect of fundamental rights** when implementing the CEAS: ensuring that protection is accessible to those who need it in the face of a rapidly changing world, where migration and the movement of people takes place at a much greater rate than ever before and for a greater variety of reasons;
- **Establishing a level playing field**: the EU should be ambitious and build a system where all asylum seekers will be treated in the same way, with the same high-standard guarantees and procedures, wherever in the EU they make their asylum claim;
- **Enhancing the efficiency of the asylum system**: the CEAS should provide Member States with a series of uniform legal norms and standards, common devices and cooperation mechanisms to secure the availability of high quality protection standards throughout the asylum process, from the moment of the reception of asylum seekers to

the full integration of those granted protection, whilst maintaining the integrity of the asylum system by preventing abuse; and

- **Providing solidarity within and outside the Union:** the Union should continue and intensify the provision of support to its Member States in providing protection. The solidarity should equally be expressed towards countries outside the EU in order to enhance their capacity to offer effective protection and durable solutions, whilst ensuring that the Union is ready to take a fair share of responsibility.