



Informal meeting of the Justice and Home Affairs Ministers Sopot

18-19 July 2011

Moving ahead in the negotiations on the Common European Asylum System

I. The current situation

Completing the Common European Asylum System (CEAS) is one of the most important commitments of the Stockholm Programme and the European Pact on Immigration and Asylum. The target date for the adoption of the CEAS, the end of 2012, was restated in the European Council Conclusions of 24 June 2011.

Yet work on the CEAS is in need of a fresh impulse.

At this stage, the only legal act that is close to being adopted is the qualifications directive on which significant progress was made in the course of the Hungarian Presidency.

The discussions on the Commission's revised proposals of the asylum procedures and reception standards directives have just started at technical level. Delegations have shown a constructive approach although it is clear that certain provisions will require intensive negotiation.

The Dublin and Eurodac regulations, which are both crucial to the EU's asylum system are at a stalemate. They cannot be adopted due to a political disagreement surrounding the proposed emergency mechanism (Article 31) for the transfer of asylum seekers on the basis of the Dublin regulation (strongly supported by the EP and rejected by the Council) and the articulated needs for law enforcement agencies to have to access the Eurodac database (a Council request, opposed by the EP).

The possibility of the Council agreeing to an emergency mechanisms applicable only in cases where the Member State in question properly implemented the asylum *acquis* in exchange for law enforcement access to Eurodac was discussed in the context of the of the European Council Conclusions but did not receive sufficient support.

Progress could be achieved by changing the current approach to the above mentioned legal acts. Bold political ideas and actions are required. The purpose of this document is to present a way of progressing on the Dublin / Eurodac Regulations to be discussed at the informal ministerial meeting in Sopot on 18 July 2011. In this

way, a new impulse will be given to negotiations on the CEAS and a constructive discussion about the impact of recent events on asylum policy will be opened.

II. The way forward – a comprehensive framework for the management of migration and asylum crises

EU law regulates two kinds of situation:

- a regular influx of refugees and migrants; and
- a mass, sudden and usually single influx of displaced persons (with the 2001 Directive on temporary protection). The mechanism established by the Directive has never been used.

EU law does not regulate comprehensively other situations to a sufficient extent, for instance that faced by the Union at present, consisting of a rapid increase in incoming refugees and/or irregular migrants (mixed flows) for a longer period of time, which remains difficult to manage for Member States' administration for a certain period of time. In the interests of the long-term stability of the Union's asylum policy, this gap should be filled through a more comprehensive framework.

From the perspective of the CEAS, the core issue relates to increases in the number of requests for international protection but this matter cannot be dissociated from the broader question of increases in migration pressure.

The three main pillars of such a framework could be:

A. Early warning and preparedness for migration and asylum crises

The preparedness of the Union for migration and asylum crises should be enhanced. There is significant scope of the strengthening of Union secondary law in this respect.

A key aspect of preparedness for increases in the number of requests for international protection would be the establishment of a peer – to – peer evaluation of administrations responsible for asylum policy and procedures in the Member States, in particular to support the good governance of the Member States' asylum systems ('Asylum evaluation'). It would significantly contribute to the development of mutual trust among Member States with respect to asylum policy, which would facilitate quick decisions on the application of emergency and solidarity measures in crisis situations.

Priorities in the choice of evaluations to be carried out could take into account assessments produced by the EASO and/or contributions of other agencies such as FRONTEX and EUROPOL. A role for the United Nations High Commissioner for Refugees could be agreed as appropriate.

EASO would play a key role. It may be necessary to review its powers to ensure it could adequately support other proposed measures, for example by strengthening

EASO's capacity to assist asylum and reception systems of Member States subject to particular pressure, to prepare crisis response teams with sufficient logistics and staff, or through training and technical assistance programmes improving the operation of asylum institutions and procedures.

B. Criteria for the application of the emergency response mechanism

The criteria and decision-making procedure set out in Article 31 of the draft Dublin Recast as proposed by the EC and worked out under the Hungarian Presidency are a good starting point for a discussion concerning the emergency response mechanism. Two aspects of this matter should be distinguished.

- *The definition of an emergency situation.* This would be based upon strong and disproportionate pressure on the asylum system (asylum procedures and reception systems), the inability of Member States to examine applications for international protection, their inability to manage other problems of the asylum system; and
- *The definition of the conditions for the application of the emergency mechanism once it has been determined that a crisis has begun:* the application of the mechanism could be a measure of last resort, available after all other options/instruments have failed and for Member States compliant with the asylum *acquis*.

C. The effects of the emergency mechanism

The aim of the mechanism is to express solidarity and perform a rapid intervention in order to quickly restore the ability of the Member State(s) concerned to carry out asylum procedures and maintain reception conditions. The type of measure that would assist the Member State(s) in dealing with a crisis could include:

- The Member State(s) could be assisted in the development of an action plan, the implementation of which would be monitored and evaluated;
- Financial and logistical assistance could be granted, including to the other Member States which would have additional responsibilities due to the application of the emergency mechanism;
- Certain transfers under the Dublin system to the Member State which is under extraordinary migration pressure impacting on its asylum system could be suspended, following clear rules that would ensure a smooth running of the system;
- A relocation mechanism, applied on a double voluntary basis could be applied;
- Additional EASO activities (long term actions) could be activated.

III. Roadmap of the negotiations of the Common European Asylum System

The Polish Presidency will address the key political question of the inclusion within the Dublin Regulation of the emergency mechanism.

The Polish Presidency has also launched dynamic negotiations on the basis of new drafts of the Reception Conditions and Asylum Procedures Directives; a first reading at expert level should be completed by the end of July 2011. The progress made in negotiations on the Qualifications Directive, in particular the definition of family members contained therein, should be helpful in this regard. It is crucial to seize the momentum and advance speedily.

A broad discussion of the modalities of the management of asylum and migration crises on the basis of Commission proposals and tied in with the communication on intra-European solidarity would help to build the trust between Member States. A constructive discussion of this underlying issue would facilitate negotiations on the emergency mechanism.

In parallel, the Commission would be invited to present a new proposal of the Eurodac regulation regarding the access of law enforcement agencies to the database.

The conclusion of negotiations on the CEAS is dependent on an agreement not just within the Council but also between the Council and the European Parliament. At present, the European Parliament is waiting for the Council to give political impetus to negotiations on the Dublin Regulation. The Presidency would commit itself to working towards convincing the European Parliament of the merits of the approach set out in this document.

IV. Next Steps

In the view of the Polish Presidency, the approach set out in this document would advance negotiations on the CEAS in the following ways:

- Addressing the question of whether the emergency mechanism should be taken out from the Dublin Regulation, or whether the Council should keep working on the Dublin Regulation including an emergency mechanism;
- The current positive dynamic, as shown by progress on the Qualifications Directive, would be reinforced and feed into discussions on the other asylum instruments;
- On the understanding that the Dublin emergency mechanism would be addressed in a separate legal act to be presented at the same time, a new proposal concerning the access of law enforcement agencies to the Eurodac database should be presented by the Commission;

- A roadmap would therefore be in place to guide negotiations on the CEAS to a successful conclusion in 2012;
- A thorough debate on the management of asylum and migration crises would address a matter insufficiently regulated in EU law at present, in particular as regards the good governance of asylum systems in the Member States.

Ministers are invited to consider whether the approach set out in this paper could provide the necessary impulse to negotiations on the CEAS. In particular, the Presidency requests that Ministers address the question of the removal of the most contentious issue of the Dublin Regulation in order for it to be addressed in a separate act which would be part of a broader legal framework related to migration and asylum crises. On this understanding, the Commission would be invited to present a new proposal regarding the access of law enforcement agencies to the Eurodac database.