

## **Green Paper on the Future Common European Asylum System - answers to the questions posed in the respective sections**

By submitting the Green Paper, the Commission starts a widespread debate on the future construction of the Common European Asylum System (CEAS). The above-mentioned document is foreseen in The Hague Programme Action Plan, more specifically in paragraph 2.3 "Common European Asylum System" and is included as a tool of the second stage of the development of the CEAS.

The Green Paper contains **4 main areas titled:**

- 2. Legislative instruments**
- 3. Implementation - Accompanying measures**
- 4. Solidarity and burden sharing**
- 5. External dimensions of Asylum**

The Commission has posed questions regarding each section and/or subsection aimed at solving the current problems and the concept for the future. The answers to these questions will serve as a basis for the development of the Action Plan, which will be a specific plan of the policies with a time framework for the adoption of the proposed measures.

The answers are prepared in such a way so as to show both the general view of the issues and the Czech Republic's attitude to the given area or the Czech Republic's opinion on the solution to the given problem.

### **Questions and answers regarding the respective points:**

#### **2. Legislative instruments**

##### **2.1. Processing asylum applications**

*(1) How might a common asylum procedure be achieved? Which aspects should be considered for further law approximation?*

The extent of unification of the asylum procedure is currently limited by major **differentiation of the bodies** by which the asylum procedure is provided in individual EU Member States. The issued Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status did not in any case determine for any Member State the type of body by which the application procedure must be conducted and decided, nor did it determine any exact institutional form of the review body (it defined it as an independent body of a judicial type or a tribunal). When replying to the possibility of introducing a common procedure it is thus necessary to consider whether it will be this particular issue that would hamper the creation of a common asylum procedure or to what extent it would hamper it.

Naturally, it is already possible at this stage and regardless of the institutional aspect of this issue to make a certain **partial unification** of certain types of asylum procedure and a unification of certain procedures within the framework of the asylum process uniformly for all

states, unify the time limits, define, if relevant, the form of the decisions or applications, determine the content of certain notions, etc. Assuming the content of "common asylum procedure" as a procedure common for asylum and the other forms of international protection, this form would essentially be feasible immediately if this form is agreed by the Member States because it will most probably be feasible without major interventions into the current institutional structure in individual EU Member States. At this second stage of rule approximation, the discussion should be focused on the form of the common procedure for international protection taking into account the fact that such a common procedure already exists in the Czech international protection law and it can be considered useful.

In addition there could be a discussion on the creation of uniform rules within the EU in certain partial issues, e.g. judicial review and its time limits, common rules for filing repeated applications aimed at preventing the abuse of the institute of international protection, modification of certain special types of border procedures - here, we have in mind the airport procedure, etc. The effectiveness of the asylum procedure and its efficiency would surely be improved also by uniform rules set for the emigration of unsuccessful applicants and the associated rules for repatriation of foreigners, or return programmes, as the case may be.

Differences in entry conditions and requirements are a problem that influences then the whole asylum procedure. Different standards in issuing e.g. the airport transit visa enable illegal economic migrants that do not have any single genuine refugee claim to enter the territory of one member state through an asylum application. They simply abuse the asylum procedure for entering the territory and moving into another member state.

The creation of a common asylum procedure and further law approximation in this area is impossible without **monitoring the jurisprudence of the European Court of Human Rights**. Hence, it is necessary that the jurisprudence would be monitored by the Member States and workgroups would discuss its possible impacts on legal regulation and practice.

*(2) How might the effectiveness of access to the asylum procedure be further enhanced? More generally, what aspects of the asylum process as currently regulated should be improved, in terms of both efficiency and protection guarantees?*

A problematic point is the **safe countries**, since the current regulation is too loose; here mandatory lists of these countries should be created for the Member States at a minimum. In connection with this institute, the justification and usefulness of the existence of the notion "safe European third country" should be considered (Article 36). The regulation of these issues would undoubtedly contribute to the uniformity of the decision-making regarding evidently unjustified applications within the whole EU. The Czech Republic has always supported the efforts to create a common list as a minimum, which should be recognised by all EU states, and it will continue to support this instrument. This particular list could be one of the harmonising measures ensured by the European support office based on joint verification missions to the countries of origin.

As it was mentioned above, differences in entry conditions and requirements are a problem that influences then the whole asylum procedure. Different standards in issuing e.g. the airport transit visa enable illegal economic migrants that do not have any single genuine refugee claim to enter the territory of one member state through an asylum application. They simply abuse the asylum procedure for entering the territory and moving into another member state.

*(3) Which, if any, existing notions and procedural devices should be reconsidered?*

See the answer to question 2. Moreover, the Czech Republic proposes to reopen and discuss Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

*(4) How should a mandatory single procedure be designed?*

See the answer to question 2.

*(5) What might be possible models for the joint processing of asylum applications? Under what circumstances could a mechanism for joint processing be used by Member States?*

There are the following possible models:

- creation of uniform (cogent) process rules regulating either only the partial process procedures within the asylum procedure (the gathering and form of applications, conducting interviews and other evidence, form and content of decisions, certain types of procedures effective for all Member States or qualifying content of individual notions relevant for decision-making regarding applications - the notion of persecution, social group...), **or** unifying the whole process from the lodging of an application to its decision and review, the form of international protection and determination of its content, regulation of the legal status of persons enjoying individual forms of international protection, termination...
- establishment at the EU level of common institutions - e.g. European court for decision-making practice unification or creation of common agencies for certain issues (e.g. collection of sources on country of origin, agencies of translators and interpreters) ....

## 2.2. Reception conditions for asylum seekers

*(6) In what areas should the current wide margin of discretion allowed by the Directive's provisions be limited in order to achieve a meaningful level playing field, at an appropriate standard of treatment?*

We do not recommend further limitation of the powers of the Member States. We believe that a meaningful level playing field in this area has been essentially created by the reception directive.

For the discussion on the reception conditions, we recommend using, in particular, information from the informal network of the ENARO organisations (European Network of Asylum Seeker Reception Organisations) associating in several member countries the institutions responsible for the reception of asylum seekers.

*(7) In particular, should the form and the level of the material reception conditions granted to asylum seekers be harmonised further?*

It would be appropriate to set more detailed rules for the **provision of health care** - make a closer definition of the care that should be provided to the applicants in all Member States to avoid unjustified differences in the extent of healthcare provision. The regulation in Article 15 of Directive 2003/9/EC is too general in this respect - at least the content of the notions used in the said Article should be defined. However, we do not recommend any further distinct harmonisation of the forms and degrees of the material conditions.

The harmonisation of material conditions is surely one of the basic prerequisites for identical access to the applicants in all countries. At the same time, it is clear that the material conditions are markedly different in individual countries. The question is whether and how this harmonisation will be financed? In the case of the use of the highest standards (probably Sweden), most of the EU Member States would have considerable problems with ensuring a similar standard.

*(8) Should national rules on access to the labour market be further approximated? If yes, in which aspects?*

We believe that yes, it would certainly be appropriate to make a uniform definition within the EU of the period of time for which the applicant has no access to the labour market as well as of the conditions for the access to the labour market. We do not believe that laying down automatic, immediate access of the applicants for international protection to the labour market would be a suitable solution. The primary purpose of the stay of the international protection applicants is the procedure regarding international protection rather than their labour engagement.

*(9) Should the grounds for detention, in compliance with the jurisprudence of the European Court of Human Rights, be clarified and the related conditions and their length be regulated more precisely?*

We consider it desirable that the reasons for detention and the length of detention of the applicants for international protection be specified.

### 2.3. Granting protection

*(10) In what areas should further law approximation be pursued or standards raised regarding*

- *the criteria for granting protection;*
- *the rights and benefits attached to protection status(es)?*

As regards asylum protection, it would be appropriate to concentrate on whether and what types or kinds of asylum (refugee status) - besides the status granted based on the Geneva Convention - are granted to foreigners by individual Member States within their national regulations. Whether asylum is granted for the purpose of uniting families or on humanitarian grounds and under what conditions. This area should be given attention from the EU's viewpoint and **unification of this protection within the EU** should be considered - even with respect to the benefits attached to this form of protection. The same should also be done with respect to the subsidiary forms of protection. Such asylum law unification would definitely be needed if the individual Member States come to the conclusion that it is desirable to support the idea of the mutual recognition of decisions in the area of international protection and transfer of protection responsibilities.

*(11) What models could be envisaged for the creation of a "uniform status"? Might one uniform status for refugees and another for beneficiaries of subsidiary protection be envisaged? How might they be designed?*

The Czech Republic holds the opinion that it is not desirable to create one single status without difference for asylum seekers and the persons with granted subsidiary (additional) protection because of the difference (in quality) of these types of protection. If a single uniform status and the attached uniform material and legal conditions are adopted, there is no point in differentiating these forms of international protection. It is both appropriate and purposeful to create a uniform status for asylum seekers (persons with granted refugee status) and a uniform status for the beneficiaries of subsidiary protection as distinguished by Czech law.

*(12) Might a single uniform status for all persons eligible for international protection be envisaged? How might it be designed?*

See the answer to question 11.

*(13) Should further categories of non-removable persons be brought within the scope of the Community legislation? Under what conditions?*

The answer to this question is sure to be subject to extensive discussion. We assume that not only the Czech Republic but many other Member States already have a **regulation for non-removable persons** although it may be solved within the scope of the foreigner regime rather than asylum law. If such a discussion is started, we suggest conducting a study on the categories of non-removable persons and on the reasons why they are non-removable in individual Member States. Here, again we point out the strong influence of the jurisprudence of the European Court of Human Rights.

*(14) Should an EU mechanism be established for the mutual recognition of national asylum decisions and the possibility of transfer of responsibility for protection? Under what conditions might it be a viable option? How might it operate?*

It is perhaps impossible to imagine the Common European Asylum System in its final stage without mutual recognition by the Member States of their decisions regarding international protection. This **mutual recognition**, however, cannot be implemented before the creation of the common procedure for international protection.

The issue of the transfer of protection responsibilities is likely to be very sensitive and problematic. In this connection, we point out the not very effective or successful European Agreement on Transfer of Responsibility for Refugees. The negotiation on the possible system could run up against certain fundamental problems. The transfers would follow the classic schemes of migration flows: 1) from the poorer countries to the richer ones, 2) from the countries without a diaspora or another community background to the countries with a strong diaspora. Accordingly, the prerequisite for this system is almost absolutely equal material and social conditions. If such conditions are not ensured, the above-mentioned shifts can be expected.

#### 2.4. Sectional issues

#### 2.4.1. *Appropriate response to situations of vulnerability*

*(15) How could the provisions obliging Member States to identify, take into account and respond to the needs of the most vulnerable asylum seekers be improved and become more tailored to their real needs? In what areas should standards be further developed?*

We can decidedly state that the regulation contained in the European regulation is sketchy. A procedure should be identified - most likely of a judicial type or another independent body - that would state, based on the given criteria that there is a vulnerable person and classify such a person in a certain protection regime. To settle these problems, the necessary material resources would have to be found to build the necessary material provision, e.g. for the establishment or extension of special workplaces, or facilities of the type of protected housing, etc.

*(16) What measures should be implemented with a view to increasing national capacities to respond effectively to situations of vulnerability?*

See the answer to question 15.

#### 2.4.2. *Integration*

*(17) What further legal measures could be taken to further enhance the integration of asylum seekers and beneficiaries of international protection, including their integration into the labour market?*

Despite the need for further unification and quality improvement of the asylum policy of the EU countries **we cannot identify ourselves with the high rate of liberalism of the integration measures being considered**, especially as regards the access of all applicants for international protection to the labour market.

The reason for this is the fact that the proposed measures are negating fundamentally the principles of the hitherto applied *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Directive 2003/9/EC)*. In this respect we consider it essential to mention that *Directive 2003/9/EC* was originally adopted on the basis of many years of experience of the EU countries with asylum process abuse and that it states explicitly that the primary purpose of the stay of international protection applicants in the territory of the host state is the asylum procedure rather than integration and free access to the labour market because employment represents the key element of their integration.

In our opinion, the measures to improve the quality of the status and to enhance the personal prospect (integration) of the international protection applicants should be focused - as a result of the very nature of the issue - particularly on the following:

- adopting measures and creating conditions for swift decision-making in the asylum procedure
- using the period of time of the asylum procedure for the acquirement or deepening of the qualification or working and other skills of the international protection applicants, which they will be able to utilise with respect to the result of the

asylum procedure in the labour market in the host country or their home country as a fundamental prerequisite for their reintegration

- preparing conditions for a dignified return of unsuccessful applicants for international protection to their home countries within the scope of voluntary repatriation
- systematically removing obstacles and provide supporting programmes for persons who will be granted international protection, in their rapid entry into the labour market in the host country and their stabilisation in their jobs, including the utilisation of achieved qualification
- supporting the development assistance programmes focused on the frequented countries of origin of the international protection applicants.

#### *2.4.3. Ensuring the second stage instruments are comprehensive*

*(18) In what further areas would harmonisation be useful or necessary with a view to achieving a truly comprehensive approach towards the asylum process and its outcomes?*

A truly comprehensive approach towards the asylum process and its outcomes cannot be achieved without stipulating the rules for cases where the persons under the asylum law regime come into situations subject to other rules of the EU. Hence, it would be appropriate to solve which legal regulation has application priority in the case of a **clash of the rules provided by the European legislation**. In practice, this includes, for instance, situations of the concurrence of the international protection procedure and the execution of the imposed sentence of expulsion.

### **3. Implementation - Accompanying measures**

*(19) In what other areas could practical cooperation activities be expanded usefully and how could their impact be maximised? How could more stakeholders be involved usefully? How could innovation and good practice in the area of practical cooperation be diffused and mainstreamed?*

Practical cooperation is fundamental for building confidence and common procedures in the asylum process and asylum practice. There are platforms today where these issues are being discussed (Eurasil workgroup, platform of asylum directors within the framework of the General Conference of Migration Office Directors). The influence and form of discussion of Eurasil proved to be a very good solution. In our opinion, experience with these two forms of practical cooperation should be used in the steps to follow.

*(20) In particular, how might practical cooperation help to develop common approaches to issues such as the concepts of gender- or child-specific persecution, the application of exclusion clauses or the prevention of fraud?*

In the case of the establishment of the **European Support Office** we can imagine the issuance of certain common approach proposals within the EU for specific issues. However, the question remains whether such an office should have the power to issue binding or optional recommendations for a common procedure. At present, we tend to prefer optional recommendations that could be approved by the Member States under certain conditions.

*(21) What options could be envisaged to structurally support a wide range of practical cooperation activities and ensure their sustainability? Would the creation of a European support office be a valid option? If so, what tasks could be assigned to it?*

The creation of the European Support Office (ESO) has been one of the issues of the common asylum system from the very beginning. As a matter of fact, the Czech Republic has no negative attitude toward the creation of such an office, which would play primarily a service role. Currently we can speak only about a **supporting role** with tasks e.g. in the area of managing a common information portal about the countries of origin, preparation and implementation of joint verification missions, common procedure in the education of asylum workers, or the organisational and financial provision of certain types of information sources. A discussed topic for the work of the European Support Office is also represented by the quick-response teams of asylum experts, who should be sent to areas of high growth in asylum cases. This approach is presently very topical particularly in the context of the situation in Malta, Sweden or the Canary Islands. It is a question whether it will also be topical in the time of the establishment of the ESO.

*(22) What would be the most appropriate operational and institutional design for such an office to successfully carry out its tasks?*

See above.

#### **4. Solidarity and burden sharing**

##### 4.1. Responsibility sharing

*(23) Should the Dublin system be complemented by measures enhancing fair burden-sharing?*

**We generally hold the opinion that the idea leading to the creation of the Dublin system is correct and this system should be preserved.** The EC Commission states in the Dublin system Evaluation Report that the Dublin system's objectives have been generally fulfilled in practice. As regards the issue of burden sharing connected with the acceptance of asylum seekers, the Report states that there is a general consensus that Member States with an external EU border receive more applicants within the scope of the Dublin system than Member States with an internal border only. However, practice has shown that the distribution of applicants is roughly equal. ("Commission Staff Working Document" - Annex to the Dublin System Evaluation Report - Paragraph 4.6, p. 51). We believe that "fair burden sharing" would be contributed if the Dublin II Regulation be dutifully applied and more used.

*(24) What other mechanisms could be devised to provide for a more equitable distribution of asylum seekers and/or beneficiaries of international protection between Member States?*

In our opinion, the creation of new mechanisms outside the Dublin system for the achievement of a more equitable distribution of asylum seekers between individual Member States is not a suitable solution. We are afraid that any mechanism positioned beside the Dublin system would inevitably interfere in it. Collisions would occur between the two systems (mechanisms), most probably having a negative effect on their effectiveness.

One solution could be the adjustment of the existing system or its replacement with a brand new system. We logically incline to prefer the former variant, i.e. a change of the Dublin II Regulation. However, we could agree to a legislative amendment of the Dublin II Regulation only in so far as it would be a more exact specification of the existing criteria or their extension in certain aspects (uniting family members). We cannot see any room for the creation of additional new criteria. We also strongly support the EC Commission's proposal for the introduction of mandatory category 3 scanning – an illegally staying foreigner - and its storage in the EURODAC system. In our opinion, it will substantially improve the efficiency of the whole Dublin system.

#### 4.2. Financial solidarity

*(25) How might the ERF's effectiveness, complementarity with national resources and its multiplying effect be enhanced? Would the creation of information-sharing mechanisms such as those mentioned above be an appropriate means? What other means could be envisaged?*

We agree to the statement that to maximise the Fund's impact and to remove the deficiencies, the consultation mechanisms for information sharing would be useful because practical exchange of experience with the other Member States is most beneficial and it will help to avoid possible obstacles in the realisation and implementation of the Fund.

As regards the financial mechanism for the Fund, the projects are co-financed by the European Commission at a maximum of 75%. In view of the fact that the applicants for public financial support from the ERF have to ensure the remaining 25% by themselves, they are interested in carrying out the projects of only certain measures since 25% of the total project budget represents a large financial burden for the support beneficiary (e.g. non-governmental non-profit organisations). This is why it would be appropriate for the possibility to include voluntary work in the project and the method of its quantification to be stipulated clearly. It would be highly beneficial if the co-financing from the EU were increased for instance to 80%.

*(26) Are there any specific financing needs, which are not adequately addressed by the existing funds?*

We do not think there are any other financing needs.

The new ERF within the scope of the Framework Programme on "Solidarity and the Management of Migration Flows" will include the possibility of using the means for resettlement programmes. The Czech Republic would welcome, for the future that the resettlement from third countries would continue to be covered from the ERF. We do not consider it useful to establish a new fund engaged in resettlement issues.

### **5. External dimension of Asylum**

#### 5.1. Supporting third countries to strengthen protection

*(27) If evaluated as necessary, how might the effectiveness and sustainability of Regional Protection Programmes be enhanced? Should the concept of Regional Protection Programmes be further developed and, if so, how?*

The concept of Regional Protection Programmes (RPP) was created in the EU in 2005 as one of the outcomes of the fulfilment of The Hague Programme. The evaluation of the pilot phase is currently under way. Based on the experience and information received to date, we still have **doubts about the added value of these programmes**. The original idea of a long-term solution of the refugee situation on the spot (in the form of local integration, voluntary repatriation or resettlement) is interesting and the Czech Republic agrees that refugee problems should be solved primarily on the spot. The EC has just marked certain projects within the scope of the budget section for external relations in the asylum and migration area as RPP and supported their financing. It is possible that these projects would be financed even without the RPP concept.

*(28) How might the EU best support third countries to deal with asylum and refugee issues more effectively?*

One of the possibilities of supporting third countries is the **capacity-building projects**. The Czech Republic has rich experience with this type of assistance. Within the framework of foreign development assistance, it has implemented several projects in Bosnia and Herzegovina, Ukraine, Moldova and Georgia, namely the building of capacities of asylum infrastructure. This year it will participate in cooperation with Germany in a twinning project for the area of asylum legislation. At the same time, this year the Czech Republic won the EU's tender for a joint capacity-building project in Ukraine (EUR 2.1 million, cooperation of NL, UK, SLK, HU, PL). The main objective of these projects is the effort to strengthen the third countries' own possibilities for the solution of the refugee issue, both in terms of material and experts.

*(29) How might the Community's overall strategies vis-à-vis third countries be made more consistent in the fields of refugee assistance and be enhanced?*

Experts in the migration area have been trying for a longer period of time to interconnect the issues of asylum and migration to external relations. The basic prerequisite for the solution of the refugee issue continues to be the strengthening of the development, stability and good governance in third countries. In this respect, the political pressure exerted on third countries is of great importance.

The EU should focus, with respect to third countries on a change in the concept of solving humanitarian crises. The current solutions of immigration pressures on the European continent consisting in "extinguishing fires" should be replaced by development assistance on the spot (see also the answer to question 27) - building standard political and administrative capacities.

## 5.2. Resettlement

*(30) How might a substantial and sustained EU commitment to resettlement be attained?*

The issue of resettlement presently concerns less than 1% of the refugees worldwide. The Czech Republic understands this system as a supplementary to other possibilities of a long-term solution. The Czech Republic wishes to remain in the ad hoc resettlement area and for the time being, create no resettlement models based on annual quotas.

*(31) What avenues could be explored to achieve a coordinated approach to resettlement at the EU level? What would be required at the financial, operational and institutional level?*

Although the Czech Republic has not so far praised the EU's common resettlement system it considers a certain degree of coordination to be necessary. The coordination system could be based on the negotiation of experts in the resettlement area with the mutual provision of information on selection missions (or possible organisation of joint selection missions), quotas, ad hoc activities, etc.

*(32) In what other situations could a common EU resettlement commitment be envisaged? Under what conditions?*

The Czech Republic supports first of all the involvement of multiple states in the national resettlement programmes (coordinated - see question 31) and only then the start of any possible common activities. The decision on resettlement should continue to be taken at a national level with the possibility of introducing the duty to inform the other Member States.

### 5.3. Addressing mixed flows at the external borders

*(33) What further measures could be taken to ensure that protection obligations arising from the EU acquis and international refugee and human rights law form an integral part of external border management? In particular, what further measures could be taken to ensure that the implementation in practice of measures aimed at combating illegal migration does not affect the access of asylum seekers to protection?*

See the question on the access to asylum procedure and question 34.

*(34) How might national capacities to establish effective protection-sensitive entry management systems be increased, in particular in cases of mass arrivals at the borders?*

The Czech Republic's stand is based on the right of the state to decide who will be admitted and received to the territory of the Czech Republic as the fundamental attribute of state sovereignty. Asylum applications at the borders should be enabled but if the conditions for entry to the territory are not fulfilled, they should be decided at the borders. This system assumes the ability of the state to decide in a relatively short time, including judicial review.

### 5.4. The role of the EU as a global player in refugee issues

*(35) How could European asylum policy develop into a policy shared by the EU Member States to address refugee issues at the international level? What models could the EU use to develop into a global player in refugee issues?*

It is indisputably necessary that the EU's stands be presented as uniform. Accordingly, more coordination of the EU's stands would be needed e.g. in relation to the UNHCR, as well as a common presentation of the activities in refugee issues (hence with greater visibility and strength).