

## **Green Paper on the Common European Asylum System**

Creating a Common European Asylum System (CEAS) as a constituent part of an Area of Freedom, Security and Justice emerges from the idea of making the European Union a single protection area for refugees, based on the full and inclusive application of the Geneva Convention and on the common humanitarian values shared by all Member States.

This Green Paper aims at identifying the possible options under the current European Union legal framework for shaping the second phase of the Common European Asylum System. In this Green Paper, the Commission has sought to outline the main issues at stake and invites constructive suggestions to take these issues forward.

Hungary welcomes the endeavour of the Commission that all Member States and organizations working on the area of asylum should be able to contribute to the finding of common solutions to the problems mentioned in the Green Paper as regards shaping the second phase of the Common European Asylum System. We are of the opinion that the improvement of solidarity at Community level and common actions are very important issues.

The main long-term aim of the Common European Asylum System is to create a single asylum procedure. However, it has to be taken into account that Member States have different legal – and therefore procedural – systems and practices. An unusual and artificial procedure would raise difficulties in the process and would have a substantial effect on its efficacy. Therefore, we find it important to adopt a mechanism for mutual recognition of national asylum decisions based on common guarantees.

**Hungary's basic views on the questions raised in the Green Paper are the following:**

## *2. Legislative instruments*

### **2.1 Processing of asylum applications**

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

The Common European Asylum System has to be based on the full and inclusive application of the Geneva Convention and on the adoption of unified proceeding based on the common humanitarian values shared by all Member States. In Hungary's point of view, the European Union should accede to the Geneva Convention as one entity, since currently only individual EU Member States are participants of it. This would enable each Member State to interpret the document on the same sources of law adopted at European Union level, which would contribute to the formation of a single asylum procedure and a single protection area.

The single asylum procedure is supposed to form an essential element of the future single protection area. Currently, however, the jurisdictional, decisional practice and also the practice on support and reception differ widely between the Member States. The evaluation of the first phase of the Common European Asylum System can be a useful tool in discovering the differences and giving answers to them. Hungary recommends the introduction of a better monitoring and quality control mechanism.

Creating and introducing a procedure disregarding the national characteristics would be impractical and unrealistic. At the same time it seems to be reasonable to introduce a new system for mutual recognition of national asylum decisions. For making well-founded decisions meeting the high European and international standards, every decision-maker needs to have wide knowledge and has to possess up-to-date information when judging an application. In spite of all the differences, if the decision-maker of a Member State relies on data coming from balanced, correct and exact sources during the decision-making, the national asylum decisions can form the basis of protection in other Member States of the European Union as well.

For the provision of such information a European database is required to which every authority has on-line access and from which data can be used in the asylum procedures. The portal could afford possibility to share several other useful information which would make the future Common European Asylum System even more effective and established (for instance by sharing best practices, elaborating case law, creating a multi-lingual database, keeping track of statistics and trends). During the establishment of a European database particular attention should be paid to data protection aspects. The utilization of special and secret data provided by national security organizations and diplomatic representations would increase significantly the effectiveness of the asylum procedure but would breach data protection obligations as well.

**(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?**

When evolving a common asylum procedure we shall not forget the fact that protection has to be guaranteed for persons in need of international protection right after entering the country – no matter if it happens by air, water or land – but fair treatment also has to be provided for those who are finally not entitled to international protection.

The effective access to protection depends on the constant participation of professionals in the procedure who have the required proficiency and the relevant expertise. Their participation has to be realized throughout the whole process: from the date of the application through the judgment until the successful integration of the person concerned.

The continuous training of officials is crucial for the effectiveness of the asylum procedure. Border guards, policemen, asylum decision-makers, interpreters and health professionals have to be prepared for the specific task. The effective access to protection can only be ensured if the representatives of the authorities are dealing with the application in the possession of exact and adequate information. Mainly the training of the border guards and interpreters should be in focus.

The presence of interpreters in the asylum procedure is an essential tool for exercising the fundamental rights ensured for the applicant. It often raises serious difficulties to find an expert who speaks languages or dialects which are scarcely used. Therefore the establishment of a common database of interpreters has to be considered. With the help of this database the authorities of the Member States could search for interpreters working in other Member States and could have recourse to them in their asylum procedure. This would enable the neighbouring countries to solve the problem of interpreting specific languages more efficiently. In this aspect the Interpreters Pool Project in the framework of GDISC could be taken as an example.

It is important to consider the establishment of a single airport procedure – taking into account the international standards and the uniformity of rules and circumstances relating to the airport – which would be based on uniform and common basic principles and common procedural safeguards. The experience gained from the airport procedure could contribute to the continuous establishment of a common asylum procedure too.

As for the protection guarantees of persons in need of international protection, some questions emerged during the transposition of the relevant directives in the first phase of the Common European Asylum System. The reconsideration and the discussion of these questions would contribute positively to the effective establishment of a single asylum procedure.

Article 23 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status provides a wide range of opportunity for the Member States to make use of the accelerated procedure. However, the accelerated procedure does not ensure that persons in need of international protection can suitably exercise their rights. Having regard to this aspect, we think that the wide margin of discretion provided for the Member States to make use of the accelerated procedure should be re-evaluated. In accordance with the spirit of the Geneva Convention we suggest that the Member States could only use the accelerated procedure in case of factual questions. This is extremely important since the profound examination of an application, the decision-making on legal questions and the exercise of rights of persons in need of international protection are time-consuming processes.

Hungary also supports the declaration of the principle “in dubio pro reo” at European level in order to ensure the uniform interpretation of the evidences. This principle is already declared in the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees issued by the UNHCR (hereinafter referred to as UNHCR Handbook). In spite of the fact that the UNHCR Handbook is a non-binding document in order to ensure a uniform legal practice it is important to consider

whether to declare this principle at a European Union level. This principle should be adopted as a subsidiary principle which would enable Member States to refer to it if the responsible authorities have enough information for decision-making but some questions remain unanswered.

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

Some questions emerged during the transposition of Article 36 of the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status which defines the concept of European safe third country. In Hungary's opinion, the adoption of the directive already shows that there is an existing common will for the application of this definition at European Union level, but there is no consensus on how to draft a common list.

Therefore we suggest making the common list of the European safe third countries confidential that would be available only for Member States so as to avoid diplomatic difficulties. The issuance of a common European list would help to unite the Member States.

Through the transposition of the Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, the relevant legal safeguards and procedural rules have been reinforced or introduced in the Member States.. In case of mass influx of displaced persons, the situation requires united, coordinated and extraordinary acts at EU level. Therefore a common mechanism should be established for dealing with the difficulties effectively, swiftly and promptly in case of a mass influx event. It is important not to forget the specific and unique character of the event that should be taken into consideration in order to find the most optimal solution.

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

In order to create a single procedure in the European Union the approximation of national procedures is indispensable. After the transposition of the directives – accepted in the first phase of the CEAS – in all Member States, the next step is to identify the fields where further harmonization is required. In order to achieve this goal the evaluation of the first period is necessary.

In the Hungarian Act LXXX of 2007 on Asylum (hereinafter referred to as Act on Asylum) Hungary's objective was to introduce such a RSD procedure which aims at ensuring the highest level of protection for persons in need of international protection within the framework of the legal instruments of the European Union. In the light of this the Act divides the administrative procedure into two parts, namely into a preliminary assessment procedure and into an in-merit procedure. The aim of the preliminary assessment procedure is to filter out the applications which aim at misusing the asylum system instead of receiving protection.

The asylum seeker submits one application for recognition: this is an application both for refugee status and/or subsidiary protection. The refugee authority first examines the existence of the criteria for granting refugee status. If the asylum seeker does not fulfil the positive and negative conditions, the refugee authority automatically continues the procedure with the examination of

the positive and negative criteria for granting subsidiary protection. These legal measures and the fact that refugees and beneficiaries of subsidiary protection are entitled to almost the same rights prevent the beneficiaries of subsidiary protection from submitting subsequent applications for refugee status which burdens the asylum system.

The provision of basic guarantees ensuring the exercise of rights of persons with special needs is deeply taken into consideration in the act. Such guarantees can be found amongst the basic principles and also among the rules on legal representation and on reception conditions.

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

Developing a mechanism for the joint processing of asylum applications would lead to one single and common procedure in the European Union. However, in the present stage of harmonization this is not a real alternative due to the differences between the national asylum procedures. In our opinion, the first step should be to achieve unification at European Union level. The accession of the European Union to the Geneva Convention, the establishment of the Common Country Information System – which includes information on the countries of origin – and the improvement of the current regulation would significantly contribute to the development of the single procedure.

The preliminary assessment procedure with common and stable basis and the decision based on the same information would serve as the safeguard of the procedure. The objective examination of the application's preliminary eligibility would make it possible to filter out the unfounded applications which aim at misusing the asylum system. Therefore the accurate and detailed analysis of the applications would take place during the in-merit procedure. This requires comprehensive and up-to-date data on the asylum seekers' country of origin. The Common Country Information System would simplify the monitoring of fast changes.

Collecting and updating the data on the different countries of origin stored in the System would be the responsibility of the individual Member States. In this way, each Member State would be able to focus on two or three countries and all data could be utilized by the help of the common system.

The common system would make it possible for Member States to participate in joint "fact finding missions". This would also enable Member States not having enough capacity alone to launch similar projects to join these programmes.

## **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?**

According to Article 4 of the Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, Member States may introduce or retain more favourable provisions in the field of reception conditions for asylum seekers and other close relatives of the applicant. In our opinion, in order to achieve legal harmonization, consensus on the definition of close relatives would be necessary at European level. The unique

cultural and social backgrounds of third countries should be taken into particular consideration during the drafting of the concrete definition.

More detailed regulation on the reduction or withdrawal of reception conditions should be considered.

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

The material reception conditions granted to asylum seekers should be further harmonized but the differences among the Member States' social and economic systems should be taken into consideration.

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

The rules on access to the labour market should be further approximated. On the one hand, the possibility of being employed is an important element of the integration process and on the other hand, the rules should also motivate asylum seekers to contribute to the expenses of their provision. However, broadening the possibilities of employment should not result in the increase of the number of persons who use the refugee procedure to legalize their stay and their access to the labour market.

**(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 its length be more precisely regulated?**

When further harmonizing the rules, not only public order and legal aspects should be deeply taken into consideration, but also the jurisprudence of the European Court of Human Rights. Particular attention should be paid to the prohibition of detention of minors and persons with special needs. In each and every case it should be examined whether the detention is used as a proportionate and necessary measure and whether it is effectively executed respecting legal guarantees.

### **2.3. Granting of 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)?

**(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?**

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

Regarding the rights and obligations of refugees and beneficiaries of subsidiary protection, and also the benefits granted to persons enjoying protection, we support the combination of the two conceptions envisaged in the Green Paper. Besides maintaining the two legal statuses, namely the refugee status and the status of the beneficiary of subsidiary protection, their content should be standardized. It means that they should be able to exercise the same rights, should enjoy the same benefits and should have the same obligations. The existence of these two statuses is necessary considering that the legal basis of the two categories is different - in case of refugees, the legal basis is the Geneva Convention, while the status of the beneficiaries of subsidiary protection is based on the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted - and different groups of persons are entitled to the two statuses. Despite these facts it is not reasonable to ensure dissimilar rights to the beneficiaries of subsidiary protection. In accordance with this concept, the Act on Asylum, which will come into force on 1 January 2008, does not make a significant difference between the two categories. With some exceptions, the beneficiary of subsidiary protection enjoys the same rights and has the same obligations as a refugee.

The Act on Asylum lays down the following rules with regard to the in-merit procedure, which follows the preliminary assessment procedure:

“58§

- “(1) The refugee authority shall examine in the course of the in-merit procedure whether*
- a) the criteria of the recognition of the applicant as a refugee exist, and whether*
  - b) there is any reason which excludes the recognition of the applicant as a refugee.*
- (2) If the application for recognition as a refugee is unfounded due to the absence of the criteria of recognition or the existence of a reason for exclusion, the refugee authority shall examine whether*
- a) the criteria of the recognition of the applicant as a person eligible for subsidiary protection exist, and*
  - b) there is any reason which excludes the recognition of the applicant as a beneficiary of subsidiary protection.*
- (3) An application is unfounded if*
- a) the conditions of recognition as a refugee do not exist or recognition as a refugee is excluded on the basis of Section 8, subsection (1), and*
  - b) the conditions of recognition as a person eligible for subsidiary protection do not exist or recognition as a person eligible for subsidiary protection is excluded on the basis of Section 15.”*

In this way the examination of applications prevents not only the increase of the number of appeals against the decisions concerning subsidiary protection and that of the number of subsequent procedures, but it also precludes secondary migration at EU-level. A legal status which is based on a different legal ground but at the same time ensures the same rights and obligations facilitates integration as well. It would be reasonable – similarly to the Hungarian regulation – to review the criteria of granting a beneficiary of subsidiary status in every five years.

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

The national rules differ from each other concerning the status they grant to persons who are not entitled neither to refugee status nor to subsidiary protection but are in need of international protection due to the fact that they can not be sent back to their country of origin, as in that case they would be exposed to torture, cruel, inhuman or degrading treatment or punishment. In spite of the fact that the principle of non-refoulement is an international obligation which can be found in the Convention against Torture, in the European Convention on Human Rights and in the jurisprudence of the European Court of Human Rights (e. g. Soering-case), the European Union has not made any common regulation yet regarding this group of persons.

As regards the above-mentioned facts, this gap should be filled in so as to facilitate the creation of the single procedure and the single protection area. It is expedient to determine a status which would end in the foreigner's status after a certain time.

**(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?**

The mutual recognition of national asylum decisions does not seem to be feasible until the Member States have different procedural principles and rules and also until the consideration of an asylum application is not based on a common country information database which is available for all Member States. Without these basic standards persons in need of international protection can misuse the single asylum system and secondary migration might increase as well.

There are several reasons that justify the introduction of a mechanism for the mutual recognition of national asylum decisions. It is not only the abolition of internal borders within the European Union that makes this reasonable but also the formulated aim according to which the European Union shall act as a single entity encompassing all Member States when discussing asylum-related questions in the international organizations.

Therefore Hungary supports the mutual recognition of national asylum decisions, if these decisions are based on single procedural principles, uniform guarantees and information

#### **2.4. Cross-cutting issues**

**(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?**

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

It would be impractical to define exactly the category of persons with special needs, since asylum seekers can be exposed to plenty of traumatic and negative experiences and events during their flight. It would be difficult to identify all these facts in an exact definition without omitting a certain group or circumstance.

Taking into account the fact that a general definition could be applied to a very broad group of asylum seekers, it would be necessary and desirable to define the special needs of asylum seekers individually. It is particularly important to involve appropriately qualified health professionals and psychologists in the procedure. The most reasonable solution in this aspect would be the



personal hearing of the asylum seeker during the health test upon his/her reception. In well-founded cases if he or she needs special treatment, the special needs should be taken into account during the whole procedure.

It is very important to identify persons with special needs in the earliest stage of the procedure. Their benefits and accommodation should be provided by taking their special needs into account. Just like during the whole procedure, qualified and well-prepared interpreters play a key role in this context too.

We consider that it would be reasonable to organize services for these persons within the national health and psychological/psychiatric system instead of creating a separate system. Cooperation with NGO's and programmes tailored to the individual needs are indispensable at the reception centres.

In order to ensure an efficient procedure and to properly protect the rights of persons with special needs, it is necessary to provide adequate training for all persons involved in the procedure. When organizing such trainings, a multi-sectoral approach is needed: joint courses for governmental and non-governmental experts (decision-makers, judges, lawyers, health professionals, members of civil organizations) would contribute not only to the exchange of knowledge but also to the enhancement of cooperation between those working in the same field.

We support elaborating guidelines concerning asylum seekers suffering from mental problems especially with PTSD symptoms.

**(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?**

Asylum seekers in Hungary receive different services at the reception centres, but they are not considered to be a target group of the new law on integration. In spite of this fact, facilitating the integration of persons in need of international protection is necessary in many fields.

The approximation of the rights and obligations of refugees and beneficiaries of subsidiary protection and finally the single status would facilitate the regulation and would help to meet the practical needs. Equal treatment with the citizens of the host country should be provided in the fields of employment, accommodation and health care. The first step would be the establishment of a uniform status provided for refugees and beneficiaries of subsidiary protection. [(15),(16),(17)].

Employment is an essential part of the integration process both for refugees and for beneficiaries of subsidiary protection. However, finding a job requires a lot of skills, such as language skills, appropriate qualification and proper information on the host society, especially on its workplace habits and expectations. These factors play a crucial role in the integration. Language skills and language courses serve as a basis for successful integration and facilitate employment.

Persons enjoying international protection are often qualified, although they do not have the necessary certificates (school degrees, certificates on special qualification etc.) and therefore cannot prove their qualification or professional knowledge. They should be given the opportunity to 're-obtain' these missing certificates by passing practical exams. Refugees and beneficiaries of subsidiary protection often cannot provide evidence concerning their previous studies which

causes serious problems when they are searching for jobs. A possible solution to this problem would be the conclusion of agreements between the refugee authority and the employers that offer jobs for persons in need of international protection. According to the agreement, if the person enjoying international protection cannot prove his/her qualification, he/she would work on a short-term basis for the employer who signs the agreement. The employer would later report to the authority on the work performed by the person concerned. On the basis of the report the refugee authority or the relevant chamber would issue a certificate for these workers that would prove their qualification.

Another aspect of this problem is that persons in need of international protection do not know how to write CVs and applications. Therefore, the European Refugee Fund could finance special trainings that would improve these skills and would make it possible for the participants to get to know how a job interview takes place.

Furthermore, these persons could be trained to be able to work as interpreters. If they speak the language almost at the same level as nationals do and if they have information on the cultural and social background of their country of origin both the host country and other asylum seekers from the same country of origin can draw inspiration from their work. Other Member States have positive experiences of employing second and third generation migrants as administrators.

Only a few persons in need of international protection have the proper financial resources to establish a company. Setting up a company could be supported by credit facilities and earmarked and one-time subsidies financed by the European Refugee Fund and with the help of NGO's.

As regards employment, it is a crucial part of the integration process that persons in need of international protection should be allowed to work without a permit.

The first few years of the integration raise serious challenge for refugees and beneficiaries of subsidiary protection. At this initial stage of the process assistance tailored to their individual needs is the most effective way of help. Therefore the training of NGOs and social counsellors plays a significant role in this aspect and their work cannot be replaced by programmes or comprehensive regulation.

Integration could be promoted by a binding European Union law obliging Member States to create an Integration Programme. The minimum requirements of the integration programme should be discussed at European Union level in order to make harmonization possible in this area. In this way the creation of an integration programme based on the same principles and guarantees could be realized in every Member State. Hungary hopes that the adoption of the Reform Treaty, which modernizes the functioning of the European Union, will create the legal basis for drafting common framework rules at European level in the area of integration.

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

The creation of information technology (IT) systems working with common and appropriate statistics is of essential importance. The detailed recording of data and the possibility to assort them in different ways guarantee the wide range of use. With proper technological improvement, data stored in various European databases could be shared and the analysis and monitoring of

trends and tendencies could help to draft an effective policy concerning refugees and beneficiaries of subsidiary protection.

Furthermore, it may be considered to extend the scope of the Common European Asylum System to stateless persons in need of international protection besides refugees and beneficiaries of subsidiary protection considering that nowadays the persons concerned do not receive any international protection and it is not clear whether they can apply for a refugee status, a beneficiaries of subsidiary protection status or after a certain time for a citizenship. As regards these facts, this gap should be filled in and clarification is needed in this aspect.

### 3. *Implementation – Accompanying measures*

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

**(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?**

An effective information exchange system is essential to the elaboration of a single asylum procedure.

The Commission's Communication on the 'Strengthened practical cooperation' also emphasizes the importance of an Asylum Cooperation Network. Hungary welcomes the work and development of GDISC, ENARO, IARLJ and the Contact Committees, supports the flow of information and opinions within CIRCA. We also support the work of Eurasil and the creation of a common website containing information on the countries of origin.

A user friendly, common database which is accessible for legislators and law practitioners plays vital importance in the joint processing of asylum applications. Nowadays a negotiation process is taking place among the actors of public administration, civil society and UNHCR on the establishment of a Country of Origin Information Centre which can be appropriate for operating as a part of the European Network.

In 2006, a Greek-Hungarian twinning programme took place in Hungary with the participation of state organs, NGOs, experts and UNHCR. The parties conferred the actual problems and alternatives in working groups which resulted in a White Paper on the Integration of refugees and beneficiaries of subsidiary protection in Hungary. We suggest the launching of similar programmes considering that these can enable the Member States to get insight into each other's legal practice, and offer possible solutions based on best practices. Such programmes are ideal for neighbouring countries with similar legal background but it is worth deliberating the possibility of multilateral programmes with more than two countries involved.

Hungary considers it important to involve a wider scope of relevant actors (not only international organizations such as UNHCR and IOM, but NGOs, interpreters, health professionals and teachers dealing with refugees and beneficiaries of subsidiary protection as well) in the development of the Common European Asylum System. Their opinions and experiences can enrich the second phase of the Common European Asylum System with a lot of new approaches.

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

From our standpoint the creation of the European Support Office proposed in the Commission's Communication on 'Strengthened practical cooperation' (17th of February 2006) and in the Green Paper is an appropriate form for the administrative support of the practical cooperation among Member States. Regarding its future tasks we are in favour of developing and maintaining the EU COI portal and the envisaged common COI database, organizing special courses for legislators, interpreters, judges, legal counsellors, etc. and setting up Asylum Expert Teams to assist Member States facing particular challenges. The creation of the office would help in the burden-sharing among Member States under the principle of solidarity.

In our point of view it is important to discuss at European level if the European Support Office should carry out tasks related to the fulfilment of Regional Protection Programmes, the coordination of policy initiatives or monitoring of reception conditions.

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

##### **4.1. Responsibility sharing**

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

As for the Dublin system, the main aim is to make it more efficient and less complicated as much as possible. The implementation of an additional mechanism into the system would result in an even more ambiguous and hardly transparent system, which would be problematic to apply.

While reconsidering the Dublin system special attention should be given to the increased burdens and responsibility of the Member States at the external borders of the European Union.

##### **4.2. Financial solidarity**

- (25) How might the ERF's effectiveness, complementarity with national resources and its multiplier 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?**
- (26) Are there any specific financing needs which are not adequately addressed by the existing funds?**

The European Refugee Fund is an effective and necessary tool to achieve objectives aimed in the field of asylum policy, to work as a catalyst for programmes, to test pilot programmes, to reduce inequalities and to raise current standards.

Nevertheless it is necessary to make the procedure faster, simpler and more flexible to meet the concrete challenges adequately. While re-evaluating the provisions of the tendering mechanism and the conditions of the use of financial tools more attention should be paid to the situation of those Member States where difficulties may arise in the advancement of national allocation. Moreover upon the determination of requirements it has to be taken into account that the stricter the terms of the mechanism are the more it might hinder the effectiveness of the programmes.

We suggest the development of the information exchange mechanism with particular attention to a common guidance for all Member States. Due to an increase in the number of Funds and the administrative burdens it appears to be necessary to strengthen or to broaden the Commission's human resources in regard to the assurance of information flow and the effective contact with Member States.

With broadening the scope of emergency measures (as in Article 5 of the Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme Solidarity and Management of Migration Flows and repealing Council Decision 2004/904/EC) the Member States should be entitled to receive more financial allocation than it is assured by the current legislation to meet the exceptionally urgent needs.. Article 5 should be amended in order to allow the reallocation of resources – with the prior approval of the Commission – to finance newly raised needs (e.g. due to amendment of national law) which are not mentioned in the annual programme.

## *5. External dimension of asylum*

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

**(27) If evaluated 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?**

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

**(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?**

According to statistics two-third of the world's refugee population lives in developing countries, so Regional Protection Programmes have a vital role in the field of asylum policy. The European Union should play an active role in protecting refugees not only in the territory of the EU but in the countries of origin and transit as well.

Hungary is primarily interested in programmes at the Eastern and South-Eastern region of Europe –in joint action with other EU Member States and the countries of the region concerned in the framework of the international asylum system based on the 1951 Geneva Convention.

The first pilot programmes are at an early stage of implementation but it is indispensable to evaluate the experiences and to use them for the elaboration of further programmes. Hungary considers the increase of the number of Regional Protection Programmes as necessary and is likely to welcome similar projects in other regions – for instance in the Southern and South-Eastern region of Europe. The further projects should be based on the experiences of the pilot programmes and on the principles elaborated on joint forums.

The effectiveness of the programmes might be enhanced by regular contact with all the relevant actors (NGOs UNHCR, etc.). The Söderköping process or the Budapest process can also serve as good examples. The aim is to promote the exchange of knowledge and experience among the new Eastern Member States of the European Union and the neighbouring countries (Ukraine, Belarus and Moldova). A further objective is to contribute to the development of migration administration in the relevant states in line with the international and European legal standards.

Besides the regular contact an up-to-date database would be beneficial to all participants of the process.

## 5.2 Resettlement

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

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

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

The question of international responsibility is crucial in the field of durable solutions, as resettlement besides integration and voluntary return is the best tool to solve the situation of people in need of international protection. Particular attention should be paid to the elaboration of a common European Resettlement Programme based on the solidarity and cooperation of the Member States. Therefore the external dimensions of the Common European Asylum System are in this phase of overriding importance. The new Hungarian Act on Asylum joins this approach and declares that Hungary may recognize 100 asylum seekers per year if they have already been recognized as refugees by the UNHCR.

To create a common European Resettlement Program it should be taken into account what kind of material and personal resources the Member States shall have in order to create an effective and common system which serves the best interests of asylum seekers. Regarding the material resources the European Refugee Fund can provide financial background for the resettlement programmes. Regarding the personal resources we shall not forget about the important role of NGOs – they have a special knowledge which is vital to the proper functioning of the system.

A dialogue at EU level is necessary to define possible target groups and to reach a consensus among Member States on the future burden-sharing mechanisms. Cooperation could be based on a common guideline similar to the UNHCR Handbook on Resettlement.

In spite of the importance of resettlement at the moment only seven Member States have annual resettlement programmes. These states can serve as an example for other Member States and their assistance is needed to define the framework of the cooperation for a common, long-term resettlement programme. Besides, possibility and financial assistance have to be insured to share best practices and other relevant information between the states.

UNHCR provides provisions and accommodation for refugees in many countries of the world. Usually this activity is carried out in large refugee camps where the situation and provision of persons with special needs are much more difficult. Hungary deliberates the possibility how a resettlement programme for persons with special needs could be launched in the framework of the new Asylum Act which is will come into force on the 1<sup>st</sup> of January 2008.

### 5.3 Addressing mixed flows at the external borders

**(33) What further measures could be taken to ensure that protection obligations arising out of 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?**

**(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?**

With the enlargement of the Schengen area the systematic border control between the participating countries will be abolished. The responsibility and tasks of Member States on the external border of the European Union will increase due to the complex problem of mixed migration. As Hungary hopes to join the Schengen Information System at the end of 2007 its responsibility will increase for controlling and monitoring a part of the eastern and south-eastern border of the EU. This responsibility shall be shared with other Member States taking into account that an adequate border management system is not only in the interest of the Member State concerned but of all Member States.

We shall endeavour to assure the access to protection while developing a more effective border management. A closer cooperation is needed in the field of border control which should be based on clearly defined common guidelines, and on practical cooperation with neighbouring countries. The role of Frontex should be emphasized in this aspect too. Hungary agrees with the necessity of the last few years' measures which resulted in the establishment of a separate fund (External Borders Fund) for financing the long-term projects at the external borders and groups for taking swift measures at the borders (RABIT) in urgent cases.

### 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?**

From our standpoint broad consensus and cooperation is needed if the European Union aims the European Asylum Policy to develop into a common policy shared by the Member States. Further consensus and compromises are required (in partnership with the UNHCR) to continue harmonization, to clarify the questions raised during the implementation of the directives in the first phase of the Common European Asylum System and to cooperate for the realization of the establishment of a single status and procedure within a single protection area of the Common European Asylum System.

If the European Union wishes to act as a real unity in international organizations, the solidarity and fair burden-sharing between Member States are indispensable, especially in the field of durable solutions for refugees which serves the best interests of persons in need of international

protection. The active, common participation in Regional Protection Programmes or in Common Integration Programmes can form the European Union into a real unity in the field of asylum.

A close collaboration with UNHCR – which has more than 50 years experience in the field of asylum – is indispensable. The asylum policy of the European Union should be carried out in line with the UNHCR projects in order to avoid the presence of parallel programmes. A more intensive participation of the European Union in the Executive Commission of the UNHCR and in its global programmes seems to be the most reasonable way of enhanced cooperation.

Furthermore, while improving the Common European Asylum System more attention should be paid besides to the establishment of a common regulation within the EU, to the external dimensions of the asylum policy. Within the UN all Members of the European Union are committed to find durable solutions to the problems of refugees and other persons in need of international protection. A global approach is essential concerning the situation of refugees and common actions can not be successful if they are leaving the framework of the UN out of consideration.