

Centre for Equal Opportunities and Opposition to Racism

Response to EU Commission Green Paper on the future Common European Asylum System

Introduction

The Centre (for Equal Opportunities and Opposition to Racism),¹ the Belgian independent public organisation with large competencies in the fields of discrimination and migration welcomes the current EU Commission's Green Paper and greatly accepts the invitation to take part in the proposed public consultation process.

The Green Paper reads as a comprehensive enumeration of asylum topics that need to be tackled at national and regional level when pursuing a Common European Asylum System. The Centre fully endorses this goal of a common asylum procedure and a uniform status valid throughout the EU that goes beyond the current, divergent asylum policy realities in the Member States, provided that the aspired common standard of protection is fully compatible with international and human rights law.

The Centre, in an attempt to make a useful contribution to the current consultation process, judged it appropriate to limit its response to those issues that relate to the Centre's competences. In addition, rather than directly replying to the different issues raised in the Commission's green paper, the Centre prefers to formulate two general and interlinked demands that have a direct impact on the future Common European Asylum System design.

Giving a voice to people seeking international protection

Under all circumstances, asylum policies are and should be perceived as policies designed to assist people looking for international protection. So, not the limitation of the number of asylum applicants but **the quality of the provided assistance should be the main focus of the Common European Asylum System**. Yet, the Directives 2003/9/EC (reception), 2004/83/EC (granting protection) and 2005/9/EC (procedure) admit that they merely set minimum standards, i.e. sub-optimal responses to the asylum challenges lying ahead. The Centre is pleased to find out that the current Green Paper calls the Member States to step up a gear to achieve *"higher common standards of protection and greater equality in protection across the EU"*.

The Centre is convinced that a strong focus on the people asking for international protection will be elementary to constructing a sound Common European Asylum System. In its daily contacts with people looking for international protection, the Centre finds that they are still too often confronted with too complex administrative procedures, (perceived) unfair treatment by immigration officials and police officers, psycho-social difficulties to cope with their precarious living standard, etc. **The Centre urges the EU to include also this type of information in the discussions on the Common European Asylum System.** Two possible ways of giving a voice to people seeking for international protection are discerned.

¹ The Centre acts as the Belgian EU Specialised Body on Equal Treatment and non-Discrimination and the Belgian UN National Human Rights Institution.

First, refugees should be given the floor at EU-level. **Dialogue between refugees and EU-institutions** will increase the awareness for the human factor of asylum policies. In this regard, representatives of ECRE, the European Council on Refugees and Exiles, took the interesting initiative to set up the European Refugee Advocacy Organisation (ERAD). ERAD's mission stipulates that it wants to encourage and to empower refugees and asylum seekers to engage more directly in the defense of their own rights and interests. It is exactly this type of direct communication between refugees and EU institutions that will engender a fair and humane EU asylum policy.

Second, the European Commission and the Member States should earmark funds for setting-up an **EU-wide qualitative academic evaluation of the national asylum systems**. This evaluation would complete the evaluation of the conformity of national legislation with the recent EU asylum and immigration Directives as previewed by the EU Commission.² Both evaluations will be instrumental to the creation a Common European Asylum System based on scientific findings, a necessary but often neglected dimension in the public debate on immigration and asylum in Europe.

Both discerned ways of giving a voice to people seeking for international protection shall uncover the daily life experience of asylum seekers throughout all different phases of the asylum procedure (arrival, procedure, decision, stay or return). At the same time, the evaluation would provide an insight in policy initiatives that are perceived as “problematic” and initiatives that should be labelled “good practices”. Finally, the specificity of certain vulnerable groups within the population of asylum applicants and the need for targeted action towards them would become visible.³ **Only when the results of the current public consultation process are balanced with the conclusions of the proposed initiatives, the goal of a true Common European Asylum System designed to assist people looking for international protection and with respect to the fundamental rights can be designed.** In this regard, the Centre reminds that Member States are held by the set of international instruments related to human rights and that the importance of the respect for these rights when developing asylum policies is acknowledged in the respective preambles of the cited Directives, 2003/9/EC (reception), 2004/83/EC (granting protection) and 2005/9/EC (procedure).

Empowering people seeking international protection

People seeking international protection need to feel that their application is given due consideration. This implies that added to the guarantee of an objective evaluation of their asylum application by the official authorities, **the applicants should receive an unambiguous message from the host society that they are considered as potential beneficiaries of international protection.**

In this regard, the Centre highly appreciates the link between asylum and integration policy that is included in the Commission's Green Paper. As the Green paper rightly points out, entitlements to work, recognition of qualifications and specific selected integration measures are central to fostering successful integration. The current Belgian experience seems to indicate that (under prosperous economic conditions!) private market employers are willing to consider employing people with precarious status. However, it is often national administrative stipulations that hinder effective employment. Article 11.2 of the reception Directive 2003/9/EC stipulates: *“If a decision at first*

² As regards the evaluation of the conformity of national legislation with the recent EU asylum and immigration directives some doubts exist around the Commission's calendar. Foreseeing a finished Common European Asylum System by the beginning of 2008, while the last of the different transposition deadlines was due at October 2006 (taking into account the national delays in transposing) results in a very optimistic evaluation time-frame, if the Commission wishes to give due consideration to the proposed evaluation.

³ The UNHCR “Age, Gender and Diversity Mainstreaming » has been worldwide set up since 2005 on the basis of specific assessment tools and participatory methodology, to ensure that needs and problems of refugees and asylum seekers of all age and background are regularly heard and attended to. The process is currently ongoing in several Member States (Belgium, Luxembourg, Netherlands). The report on the 2005-2007 AGDM for Central Europe (Hungary, Poland, Slovakia, Slovenia) is available on http://www.unhcr-rrbp.org/images/stories/gad_en.pdf.

instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant". Article 12 adds: "Member States may allow asylum seekers access to vocational training irrespective of whether they have access to the labour market. Access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article 11".

Already in 2003, ECRE stated that "*granting access to the labour market within a reasonable period of time can help to prevent exclusion for the host society, to promote self-sufficiency and facilitate integration or re-integration upon return*".⁴ The Centre endorses the demand formulated by Amnesty International and EQUAL in their respective contributions to the current Green Paper consultation process to reconsider the existing margin of discretion for the Member States in setting conditions for granting labour market access. The Centre is convinced that labour market insertion guidance could be previewed from the second month of arrival. **Labour market access should be granted after six months of residence.**

Given the increased attention for the issue of economic migration on the European level and given the opportunities that that asylum seekers can represent for the national labour markets, it would be politically inconsistent to deal with both aspects separately. In a global environment where access to labour market is limited while migration pressure and demand for informal work (by potential employers as much as by potential workers) are growing, the risk of growing semi-legal and illegal work circuits is real, accompanied by increased exploitation of human beings and bypassing of the financial solidarity mechanisms. **Allowing the access to national labour markets even for migrants whose residence status has not yet been decided upon increases the probability of entering the regulated work circuit.** The Centre points out that **all persons looking for international protection, whether looking for protection under the Geneva Convention or whether looking for subsidiary protection, should be granted access to the labour market.**

Finally, the Centre wants to underline the importance to **complement these labour market insertion policies with other integration policies.** Articles 10, 13 and 14 of the reception Directive 2003/9/EC tackle the **issues of education of minors, health care and housing.** However, the Centre sees yet another field, crucial to fostering successful integration, namely the field of **language education.** Given that the majority of asylum applications are turned down, Member States, for reasons of cost-effectiveness and raising unnecessary expectations about future residence status, are often reticent to make these programmes accessible to asylum applicants. However, the former argument does not hold when, next to the positive effects of participation for the host society also the element of skills enhancement for future life whether in or outside that society is taken into account. In addition, this element of skills enhancement will even be increased if the Member States agree to offer next to the national languages, languages which are widely spoken in a European context, namely English, French, Spanish and German. Pursuing a uniform status for international protection throughout the EU will benefit from asylum seekers and recognised refugees which are able to communicate with people all over the European Union. Finally, the raising unnecessary expectations issue can be circumvented if Member State pay due attention to communicating clearly that the aim of the proposed integration programmes relates to achieving active participation. The granting of international protection, however, fully depends on the evaluation of the application by the official authorities.

⁴ ECRE, "Information Note on the Council Directive 2003/9/EC of 27 January 2003 laying down Minimum Standards for the Reception Standards of Asylum Seekers", IN1/06/2003/EXT/HM, p.5