

## **Malta's Replies to the Green Paper on the Future Common European Asylum System (COM (2007) 301)**

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

Malta believes that the establishment of a common asylum procedure should be approached holistically, in that agreement on revised and more harmonised procedures should be accompanied by the setting up of a system catering for the introduction of sound measures to effectively ensure fair and balanced responsibility sharing.

The establishment of the common asylum procedures would imply the setting up of more clearly defined and possibly higher standards which, although desirable in principle, could prove problematic to implement for those Member States experiencing huge influxes of immigrants, in proportion to their limited resources.

Further to the above, the identification of the aspects of legislation requiring further approximation should be based on an assessment of the added-value of such harmonisation, which should also be as efficient and as simple as possible.

### *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?*

Malta believes that access to the asylum procedure is generally satisfactory and that the current level of regulation is adequate. At the same time, one needs to take into account that efficiency also depends on the level of trained resources available for refugee status determination in relation to the number of applicants at any point in time.

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

The procedure relating to implicit withdrawal or abandonment of asylum applications may need to be reviewed with a view of making it less generous to applicants who "disappear" temporarily or otherwise fail to attend an interview without a just cause.

At some stage the procedure relating to the submission of subsequent applications would have to be reviewed in order to verify whether or not it is being abused of by applicants whose claim is rejected even at appeals stage and who have no new substantive evidence to submit. Although this procedure does grant an additional safeguard to applicants, it should not be allowed to slow down unnecessarily the processing of new applications, particularly in view of the fact that a number of asylum determination authorities operate under considerable pressure for prolonged periods.

*4. How should a mandatory single procedure be designed?*

Malta believes that the authority responsible for refugee status determination at first instance should be empowered to decide whether an applicant fulfils the criteria for recognition of refugee status according to the 1951 Geneva Convention or for subsidiary protection, and to also examine subsequent applications. It would appear that such a way forward also offers, the possibility of better efficiency.

*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?*

A scenario that might prove feasible could involve the secondment of experienced case workers to a European body who would be assigned on a voluntary basis for the preparation of a dossier on the applicants in question according to established practice in the Member State concerned. The asylum determination authority of the Member State that would be assuming responsibility for the applicants in question, would evaluate the dossier and take a final decision on each case. Such a mechanism could be employed upon request by a Member State. A similar initiative might need to be accompanied by the availability of a pool of interpreters who would be able to work hand-in-hand with the case workers from the European body assisting the Member State in those cases where otherwise they would not be able to operate.

*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?*

It is understood that, in principle, it would be best for certain provisions of the Directive on laying down minimum standards for the reception of asylum seekers (2003/9/EC) to be further harmonised. However, it should be recognised that owing to different pressures faced by Member States as a result of illegal immigration and the asylum process, this can give rise to a number of difficulties. Harmonisation may be achieved vis-à-vis the terms for access to the labour market, although the Member States should still be given the possibility to refrain from granting such access for up to a year, as provided for by the current provisions of the Directive.

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

Malta is of the opinion that de facto harmonisation in this area would be very difficult to achieve, owing to the fact that certain Member States experience prolonged periods of high migratory pressure. Maintaining a defined set of standards at all times may, therefore, prove extremely difficult, as the available resources would be stretched to the limit. Such harmonisation is, therefore, not considered feasible in the current context.

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

Approximation in this area may be contemplated, particularly with a view of ensuring that access to the labour market by asylum seekers is facilitated. However, Member States should still be allowed to withhold access to the labour market for up to a year, as per current provisions of the Directive on laying down minimum standards for the reception of asylum seekers (2003/9/EC).

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 length be more precisely regulated?*

Malta believes that the length and conditions of detention, subject to the protection of human rights, should be determined by the individual Member States in line with their policies and legislation.

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)?*

The current criteria for granting protection could be reviewed with a view to obtaining closer approximation between the Member States. However, the current arrangements vis-à-vis the rights and benefits attached to protection status are generally considered adequate.

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 way towards establishing a uniform status for refugees and another for beneficiaries of subsidiary protection would require a study and a comparison of the various experiences / models Member States have in place and / or are ready to introduce. Not all Member States are in a position to offer the same content or duration with regard to certain rights for refugees or persons enjoying subsidiary protection.

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

While one uniform status for refugees and another for beneficiaries of subsidiary protection appears feasible, it would appear that one should be very cautious about the idea of having one single uniform status, which would mean a protection status comprising a uniform set of rights for both categories.

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

The insertion of other categories of non-removable persons would be considered to fall outside the scope of the Future Common Asylum System.

*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 is considered feasible, particularly in view of the fact that minimum standards have already been set by the provisions in Council Directive 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 (2004/83/EC), and that further harmonisation will in all likelihood be achieved in the coming years. This should also facilitate transfer of responsibility for protection, which would stand to reason, particularly in view of the Proposal for a Council Directive amending Directive 2003/109/EC to extend its scope to Beneficiaries of International Protection (COM (2007) 298).

*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?*

A common definition of vulnerable asylum seekers could be helpful with a view to ensure that the needs of these people would be taken into account. Furthermore, such persons could be exempted from detention (where such a policy is pursued) and provided with social service assistance.

The standards laid down in Chapter IV of Directive on laying down minimum standards for the reception of asylum seekers (2003/9/EC) are otherwise regarded sufficient.

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

With regard to the situations of vulnerability, the basic challenge remains that of ensuring, as a matter of principle, that all vulnerable persons are released from detention as fast as possible and are granted appropriate assistance, whether they qualify for international protection or not.

Furthermore, additional funding, resettlement programmes and training opportunities should be made available with a view to enable Member States facing particular pressures to enhance their capacity to respond to these people's needs.

*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?*

Recent developments on integration at a European level, such as the conclusions of the Potsdam Ministerial meeting and the second edition of the Handbook, should be translated into policies according to the different integration scenarios in each Member State. However, further legal measures in the context of integration into the labour market are not considered necessary.

*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?*

The current instruments in the asylum field are considered comprehensive in terms of the areas covered, although certain provisions may be made with regard to vulnerable persons.

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

Malta is in general agreement with the Commission's assessment, whereby a European Support Office could assist in matters relating to training, and that it could also provide support for processing activities in the Member States whenever such support is called for. Furthermore, Malta is in agreement with the fact that such an Office could contribute to the implementation of Regional Protection Programmes.

Efforts towards further practical cooperation should also address, with more commitment, initiatives which favour the sharing of pooled resources via a European Support Office concerning the following:

- country of origin information;
- guidelines;
- case law;
- advice on authenticity of documents, geography tests and language analysis.

*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?*

Information exchange between the Asylum Determination Authorities of the Member States, possibly via a European Support Office, could considerably assist in this regard. Guidelines on how to deal with such delicate situations, could be drafted on the basis of the experience gained and existing case law.

*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 such an office could be a valid option, particularly if allocated tasks on the lines of Malta's replies to question 19. Furthermore, day-to-day cooperation could be secured via an online network.

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

The office could take the form of an Agency, complete with a management board. This would be mainly staffed by officials seconded from the Member States, with a view to ensure that they would have hands-on experience in the asylum sector. The functions of the office would be partly operational (providing support to Member States in certain situations), and partly involving coordination in the field of information exchange and other forms of cooperation between the Asylum Determination Authorities of the Member States. Such an office would also assume a leading role in the context of regional protection programmes.

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

Although the aim of the Dublin System is to identify the Member State responsible for examination of asylum applications, the current migratory scenario, as attested by the events in the Mediterranean, calls for a fair burden sharing system rather than just a mechanism meant to identify the State responsible for processing applications. This need is further exacerbated by plans to establish a Common Asylum System which is expected to raise protection standards. This is inherently positive, however, standards cannot be effectively raised as long as a few Member States are shouldering a disproportionately heavy burden. Therefore, an in-built mechanism within the Dublin System ensuring a fairer distribution of the burden, or reference to another system providing for a different set of rules in certain circumstances, is urgently called for.

*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?*

A possible way forward in this regard would be for Member States in need of migrant labour to make available voluntary quotas for resettlement of asylum seekers and / or beneficiaries of international protection from other Member States. Such a system would have the advantage of relieving the pressure on Member States facing difficulties as a result of migratory pressure, whilst contributing to economic growth in Member States, in immediate need of migrant labour.

*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 measures could be envisaged?*

In terms of complementarity with national resources, the European Refugee Fund (ERF) provisions are considered adequate. However, the creation of information sharing mechanisms such as databases may enhance the fund in this regard. Furthermore, training and, in particular, train-the-trainers initiatives by the Commission could assist the Member States in better utilisation of the funds.

*26. Are there any specific needs which are not adequately addressed by the existing funds?*

Malta believes that whereas the funds address most of the needs in the areas of asylum and immigration, the rules for the financing of the purchasing of equipment would need to be more flexible, by covering a more significant proportion of costs incurred.

*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?*

Given that the first Programmes are still at an early stage of implementation, it is difficult to identify the action that would have to be taken with a view to enhance the effectiveness of Regional Protection Programmes at this stage. However, it would be important for such programmes to target sensitive regions, such as the East and the Horn of Africa.

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

The provision of financial and technical assistance through the Communication from the Commission to the European Parliament and the Council on the Thematic Programme for the Cooperation with Third Countries in the areas of Migration and Asylum (COM (2006) 26) is essential in strengthening third countries' capacity to deal with asylum seekers and migrants in need of protection. Such assistance could be effectively implemented through dialogue under Article 13 of the Cotonou Agreement and by means of the setting up of cooperation platforms. These initiatives should aim at identifying the current structures and national stakeholders, as well as the requirements for capacity building in the third countries concerned. The EU has to further encourage the establishment of regional protection programmes to ensure greater accessibility to protection for displaced persons eligible for such rights.

*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?*

Dialogue on migration must form part of the regular political dialogue with key third countries. In this regard, migration and asylum must not be perceived as distinct themes from those

usually undertaken in general political dialogue with third countries since they also concern issues such as good governance, respect for rule of law and human rights.

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

The Member States may be encouraged to resettle refugees and other beneficiaries of protection on the basis of quotas established voluntarily.

*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?*

It would be useful to explore whether resettlement could be integrated within the implementation of mobility partnerships by encouraging complementarity between the demand for labour migration and the provision of resettlement opportunities, as well as by strengthening cooperation on illegal migration.

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

Malta believes that resettlement should always be undertaken by Member States on a voluntary basis in relation to the absorption capacity of the Member States concerned.

*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 immigration does not affect the access of asylum seekers to protection?*

In practice, all illegal immigrants are given the opportunity to apply for asylum and to have their case heard. Teams of asylum experts to assist Member States on a temporary basis when facing pressures in profiling individual cases would, therefore, be adequate as they would tackle the main difficulty in this regard, such as the availability of sufficient resources to process applications in a timely manner, when faced by particular pressure.

*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?*

Malta is of the opinion that in ordinary circumstances the measures currently in place are protection-sensitive. Therefore, immigrants are informed of their right to apply for international protection and given the opportunity to have their claims properly and adequately examined, according to the merits of the individual case. As indicated in Malta's reply to question 33, further measures may be required when Member States are facing particular pressure.

*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?*

As a first step, the European Asylum Policy needs to be developed further, in due consideration for the different constraints experienced by the different Member States. Burden sharing initiatives would be essential to ensure that standards are maintained at all times. At the same time, the Union would have to continue assisting third countries by way of development aid and other means to ensure that, insofar as possible, they would be able to adequately deal with the asylum situation in their region.