

Report of the Committee on Social Insurance 2006/07:SfU13

Green Paper on the future Common European Asylum System

Summary

In this report, the Committee reviews the Green Paper of the European Commission on the future Common European Asylum System, COM (2007) 301.

The Green Paper states that the creation of a Common European Asylum System (CEAS) emerged 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. The Hague Programme Action Plan foresees the introduction of CEAS by the end of 2010.

The Commission adopted the Green Paper on 6 June 2007 in order to initiate a public debate in the EU on continued harmonisation in the area of asylum and to identify what options are possible under the current EU legal framework for shaping the second stage of the construction of the CEAS.

The Green Paper presents 35 issues as the basis for discussion. The result of the discussions will inform the preparation of a policy plan. The Commission wishes to publish the plan in the first quarter of 2008. The policy plan will contain proposals for the construction of the CEAS and a timeframe for the adoption of these measures.

The Commission has invited concerned parties to comment on the Green Paper. The statutory period for the submittal of comments has been extended to the 30 September 2007.

The Committee, which also brought up a more fundamental question in its review relating to the legal basis, considers increased harmonisation of the asylum policy within the EU to be worthwhile and therefore welcomes the Commission's Green Paper on the future CEAS. The Committee wishes to encourage a legally secure and open system which safeguards the option to seek asylum and believes that closed EU borders must be avoided. The overriding aim must be to increase the EU's overall capacity to accept asylum seekers compared with the current situation.

Questions relating to the mechanisms for dividing responsibility for assessing asylum applications and relating to economic solidarity between Member States are also central to this debate.

The report includes three reservations (Social Democrats, Left Party, Green Party)

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The Committee's proposal for decision by parliament

The future European asylum system

The parliament puts the report aside.

Reservation 1 (Social Democrats) - explanatory statement

Reservation 2 (Left Party) - explanatory statement

Reservation 3 (Green Party) - explanatory statement

Stockholm 12 September 2007

On behalf of the Committee on Social Insurance

Gunnar Axén

The following members have participated in the decision: Gunnar Axén (Moderates), Helena Rivi re (Moderates), Lars-Arne Stax ng (Moderates), Solveig Zander (Centre Party), Siw Wittgren-Ahl (Social Democrats), Kurt Kvarnstr m (Social Democrats), Mats G Nilsson (Moderates), G te Wahlstr m (Social Democrats), Mikael Cederbratt (Moderates), Kalle Larsson (Left Party), Matilda Ernkran s (Social Democrats), Fredrick Federley (Centre Party), Gunvor G Ericson (Green Party), Jasenko Omanovic (Social Democrats), Magdalena Streijffert (Social Democrats), Eva Johnsson (Christian Democrats) and Fredrik Malm (Liberal People's Party).

Report

On 6 June 2007, as part of the continued harmonisation within the European Union in the field of asylum and in order to introduce a public debate, the European Commission adopted a Green Paper COM (2007) 301 on the future Common European Asylum System (CEAS). The Green Paper identifies certain common aims for continued work and sets out 35 concrete proposals for the construction of the common asylum system

In the Green Paper, the Commission gives concerned parties the opportunity to put forward their opinions before a public hearing. According to the Commission, the result of these discussions will form the basis for a strategy plan accompanied by proposals for measures and a timeframe for the creation of the CEAS.

The Green Paper, which was presented in the Swedish language version to Parliament on 12 June 2007, has been referred to the Committee on Social Insurance for review.

A factual memorandum 2006/07:FPM107 Green Paper on Asylum, from the Cabinet Office and the Ministries, dated 24 July 2007, was also submitted to Parliament.

On 23 August 2007, the Committee held discussions on the Green Paper with Tobias Billström, the Minister for Migration and Asylum Policy, and were informed of the basic elements of the government's position on this matter. The Committee decided to support the government's position in accordance with the factual memorandum.

The Commission has extended the statutory period for submission of comments to 30 September 2007 and decided to hold the public hearing on 7 November 2007.

The government has referred the Green Paper to the Swedish Migration Board. Other closely involved authorities have been given the opportunity to comment.

The government has not yet submitted its comments to the Commission.

The Committee's review

Applicable regulations and background

According to Title IV EC Treaty, Article 61a, in order to construct an Area of Freedom, Security and Justice, the Council must decide on measures aimed at securing the free movement of people within the EU. In this regard, support measures relating *inter alia* to asylum, immigration and border crossing must be introduced. Article 61b states that the Council must also decide on other measures affecting *inter alia* asylum and immigration in accordance with Article 63. Article 63 states *inter alia* that criteria and mechanisms must be introduced for deciding which Member State is responsible for processing asylum applications. Moreover, minimum standards for reception, determining refugee status and procedures for granting or withdrawing refugee status must be put in place. With regard to immigration policy, measures must be adopted in relation to illegal immigration, residence and repatriation.

In 2001 the Council decided to arrange a convention to review how the EU could be made more democratic, open and efficient. The convention put forward a proposal for a treaty on establishing a constitution for Europe, intended to replace the existing treaty. The proposal was approved with minor amendments by the governmental conference in June 2004, and signed in October of the same year. The problems that arose in 2005 in connection with the ratification procedure resulted in the EU entering a period of reflection. In June 2007, the European Council agreed to convene a governmental conference to establish a "reform treaty" to amend the existing treaty. The governmental conference must complete its work as quickly as possible, by the end of 2007 at the latest, to ensure that the resulting treaty is ratified in good time before the European Parliament elections in June 2009.

According to the treaty approved by the governmental conference in June 2004 on establishing a European constitution (DS 2004:52, Part 2 of the Treaty), the EU must decide on a common policy in relation *inter alia* to asylum. It must be compliant with European laws or framework laws (equivalents to Regulations and Directives) on uniform asylum status, uniform status for alternative protection, common procedures for granting and withdrawing protection status, criteria and mechanisms for determining which Member State is responsible for assessing asylum applications, as well as standards for receiving asylum seekers. Furthermore, the EU must decide on a common immigration policy and develop a policy in respect of border controls.

In the communication from the Commission of 10 May 2005 - the Hague Programme: Ten priorities for the next five years, the Partnership for European renewal in the field of Freedom, Security and Justice, COM (2005) 184 - it was stated by way of introduction that the programme mirrors the ambitions expressed in the constitution signed in 2004 and intended to come into force in November 2006, and that the constitution implies a major review of the regulations in the area of Freedom, Security and Justice, and incorporation of the charter of fundamental rights. It further states that the innovations that the constitution entails cannot be put into practice before the end of the ratification period.

The Commission therefore intends to carry out the necessary preparatory work so that measures can be adopted immediately after the constitution comes into force. Three of the ten priorities indicated in the programme for the next five years are: A common asylum area - introduction of an efficient and harmonised procedure in accordance with the EU's values and humanitarian tradition; Management of migration flows: determining a balanced strategy, *inter alia*, by developing a common immigration policy; Freedom, Security and Justice: shared responsibility and solidarity between Member States through the distribution of adequate financial resources.

The main content of the Green Paper

Background and purpose

The Commission states that the creation of a Common European Asylum System as a constituent part of an Area of Freedom, Security and Justice emerged 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. The Hague Programme Action Plan provides for the adoption of the proposal for the CEAS by the end of 2010.

The basic content of the CEAS, as defined in the Tampere Programme and confirmed by the Hague Programme, consists in the establishment of a common asylum procedure and a uniform status valid throughout the EU. The ultimate objective pursued at EU level is thus to establish a level playing field for asylum seekers and introduce a system which guarantees persons genuinely in need of protection access to a high level of protection under equivalent conditions in all Member States while at the same time dealing fairly and efficiently with those found not to be in need of protection.

The goal pursued in the first stage was to harmonise Member States' legal frameworks on the basis of common minimum standards ensuring fairness, efficiency and transparency. In the first stage, the main legislative instruments were adopted (including the Directive on asylum procedures, reasons for granting protection, reception and mass migration, and the Dublin and EURODAC Regulations) which make up the current *acquis* and lay the foundations for the future CEAS. The process of evaluating the first stage instruments and initiatives is under way but the Commission believes that it is essential even at this stage to develop proposals for the shaping of the future CEAS.

The Commission indicates in the Green Paper that it is committed to further pursuing this ambitious goal. In this spirit, it launches a comprehensive consultation process on the form this CEAS should take. The Green Paper aims to identify what options are possible under the current EU legal framework for shaping the second stage of the establishment of the CEAS.

The Green Paper states that the goals in the second stage are to achieve both a higher common standard of protection and greater equality in protection across the EU and to ensure a higher degree of solidarity between EU Member States. It is important to adopt an integrated, comprehensive approach to asylum. It is essential to improve procedures so that persons seeking protection in the EU can effectively present and pursue their claims, to boost the capacity of all stakeholders involved in the asylum process to successfully accomplish their tasks, and to provide national asylum administrations with adequate tools enabling them to efficiently manage asylum flows.

Asylum practices can also be harmonised through the implementation of a set of accompanying measures relating to the practical cooperation between Member States. Furthermore, responsibility for processing asylum applications and granting protection in the EU must be shared equitably. Ways also need to be explored for increasing the EU's contribution to a more accessible, equitable and effective system of international protection.

Legislative instruments

The Commission asks how existing central legal instruments on the right to asylum can be developed and emphasises the following:

The Asylum Procedures Directive and the handling of asylum seekers require an approximation of laws and particular emphasis should be placed on effective opportunity to request asylum. This can involve enhancing legal safeguards in connection with the initial stage of border procedures. National rules also need to be further approximated, e.g. in relation to the quality of decision-making and the assessment of evidence, as well as a reappraisal of the content and added value of certain procedural devices, such as the concepts of safe countries of origin and third countries.

A single procedure for assessing applications for refugee status and for subsidiary protection would require significant progress with regard to harmonisation. Issues to be considered include its scope, the

sequence of examining the different protection grounds, the appeals procedures and possible time limits.

Another option for further harmonisation may be the joint processing of asylum applications. Such a proposal should be considered carefully and be preceded by studies on implications, appropriateness and feasibility.

A high level of harmonisation with regard to reception conditions for asylum seekers is essential to avoid secondary movements. The wide margin of discretion left to Member States in relation to asylum seekers' access to the labour market, the material reception conditions and access to health care affect the practical implementation of the Reception Conditions Directive. This situation begs the question whether the conditions and the timeframe for access to the labour market should be more precisely regulated.

Furthermore the provisions of the Reception Conditions Directive with regard to both conditions and detention time must be revised and clarified where appropriate.

In respect of the Qualification Directive and the development of more uniform protection, several options are available. The first is a fuller harmonisation of the eligibility criteria and the clarification of the concepts used to define the grounds for protection (refugees and beneficiaries of subsidiary protection). The aim is to minimise the margin for divergent interpretations and applications in different Member States. The other way is a further approximation of the rights and benefits attached to the protection granted. Should there be one uniform set of rights regarding content and duration for refugees and another for beneficiaries of subsidiary protection? A third possible course of action could be to grant one single uniform status to persons in need of protection, the same rights applying to all.

There is also the question of the possibility of harmonising the status granted to categories of persons who are not eligible for international protection, but who still cannot be repatriated for other reasons. These include persons who cannot be removed on grounds of ill health and unaccompanied minors. Provisions for a harmonised status for such categories of persons would have to draw on the relevant case law of the European Court of Human Rights.

Mutual recognition of national asylum decisions and the possibility of transfer of protection responsibilities once a beneficiary of protection takes up residence in another Member State are also matters for consideration.

With regard to crosscutting issues, the Commission believes that serious inadequacies exist with regard to the definitions and procedures applied by Member States for the identification of more vulnerable asylum seekers and that Member States lack the necessary resources, capacities and expertise. The ways in which special needs should be identified and addressed in all stages of the asylum process should therefore be prescribed in more depth and detail. Amongst other things what constitutes adequate medical and psychological assistance and counselling should be regulated and an appropriate interview technique should be developed. The national capacity to reach out to all actors involved must be enhanced by specific EU-wide training programmes, e.g. for health care and school staff, social workers, interpreters, lawyers, etc. for the establishment of common requirements for qualifications and skills or dissemination of best practice.

Integration issues should already be addressed during the asylum test period. Amongst other things, integration programmes should be developed with regard to a person's potential and also in consideration of any specific requirements that may exist regarding accommodation, health care and social services. The right to work is emphasised as an important factor in integration, in addition to uniform standards for recognising qualifications.

The member states are also encouraged to monitor whether other areas exist not currently covered by Community legislation where there would be an added value in approximating national rules.

Implementation - Accompanying measures

Activities relating to practical cooperation between national administrations with a view to enhancing the convergence of national practices, improving the quality of decision-making and increasing the efficiency of asylum management should be implemented, *inter alia* within the framework of the European Union Network for Asylum Practitioners (Eurasil).

The Commission wants to consider allowing practical cooperation to include further areas, such as the development of common guidelines on the interpretation and application of common EU asylum *acquis*. Member States should be able to both make an assessment of the situation in countries of origin and adopt a common approach in relation to exclusion or cessation clauses, concepts such as gender- or child-specific persecution, to the detection and prevention of fraud or abuse, or to the translation of documents and the methods and procedures for interviews. Member States should also be able to further develop a common portal for information on countries of origin and enlarge the circle of stakeholders (e.g. legal experts, linguists, health care professionals) involved in the asylum process and engage them more in the development of good practice. All relevant activities must be given adequate structural support and the result systematically followed up and evaluated.

Another option that emerges in relation to practical cooperation is the creation of a European Support Office. The Support Office should be able to provide training and structural support for processing activities, to support Member States experiencing strained resources, administer groups of experts for asylum issues, play a vital role in the implementation of the Regional Protection Programmes, coordinate resettlement at EU level and monitor reception conditions.

Solidarity and responsibility sharing

The Commission believes that one of the most important elements of harmonisation work is increased solidarity between EU Member States. This will be achieved through more transparent responsibility sharing and increased economic solidarity.

An evaluation report adopted by the Commission on 6 June 2007 reveals that, to a large extent, the objectives of the Dublin System have been reached, even if a question mark remains over the effectiveness of the Dublin System with regard to sharing responsibility and reducing secondary movements within the EU.

A system which clearly allocates responsibility for the examination of an asylum claim within the EU will still be necessary. However, it should be considered whether other factors, such as Member States' capacities to process asylum applications and to offer long-term solutions to recognised refugees, should be taken into consideration in relation to the allocation of responsibility. Monitoring should primarily be aimed at establishing corrective mechanisms for the sharing of responsibility that are complementary to the Dublin System. Resettlement within the EU is one option.

In matters relating to economic solidarity, ways to maximise the efficiency of the European Refugee Fund, e.g. by establishing mechanisms for specific consultation and information exchange at national level must be considered. Ways in which the Fund's resources can be better applied must also be examined, *inter alia* to reduce discrepancies and improve standards. The need for a comprehensive strategy for financial affairs has to be considered.

External dimension of asylum

The Commission points out the importance of continued support for third countries in the management of asylum and refugee issues. The regional support programmes can complement this. These should be developed to increase added value and ensure sustainable results. Integration of asylum into strategies for development work from a wider perspective is emphasised as particularly important.

Resettlement constitutes an effective mechanism for responsibility sharing and encourages international solidarity. The Commission wishes to see development of Member States' national programmes for resettlement and encourages them to actively participate in resettlement within the framework of regional protection programmes. It can also be a good idea to consider other forms of

common resettlement initiatives at EU-level in order to contribute to resolving protracted refugee situations or provide an effective reaction to emergencies.

Measures to combat illegal migration and the smuggling of human beings should be implemented in a manner which does not deprive the right to asylum of its practical meaning. The emphasis should be on providing operational and financial assistance to help Member States to establish effective protection-sensitive entry systems, in particular when they are confronted with emergency situations caused by mass arrivals at their borders. For example, teams of asylum experts can be established which could be called to assist Member States on a temporary basis.

The Commission also asks what further measures can be taken to ensure that actions against illegal immigration do not compromise asylum seekers' access to protection.

The Commission thinks that the expectations of the role the EU can play in the global refugee protection system are increasing and that the EU is thus increasingly called upon to present a common vision on refugee policy issues at the international level and to develop common positions vis-à-vis international organizations.

Position of the government, etc.

The fact memorandum Green Paper on Asylum (2006/07:FPM107), dated 24 July 2007 shows that the government is trying to encourage increased harmonisation of asylum policy at EU level and welcomes development of the future Common European Asylum System. A common asylum system is an effective way of handling situations where a single Member State receives multiple asylum applications at the same time.

It is important that emphasis is placed on the practical access to the opportunity to seek asylum and that measures to combat illegal immigration and people smuggling are implemented in such a way that they do not undermine the right to asylum or compromise the respect for basic human rights in the asylum procedure.

The development of a resettlement instrument is a particularly pressing issue for the government. A common asylum system in the EU cannot just consist of asylum regulations for those that make their way here. A common resettlement programme should only be a part of the answer to the question of the role the EU can play in the global refugee protection system. A stable system for international refugee protection also requires an equitable sharing of responsibility.

Other central issues relate to mechanisms for sharing responsibility for the assessment of asylum applications and economic solidarity between Member States.

The government emphasises the importance of consultation with the UNHCR and other international organisations in ongoing harmonisation efforts.

The government has referred the Green Paper to the Swedish Migration Board and other closely involved authorities and individual organisations have been given the opportunity to comment. A number of comments have been submitted to the government.

The Swedish Migration Board has commented *inter alia* that the aim must be to introduce common legislation, directly applicable to all Member States. In certain areas, there must also be the opportunity to further develop rights legislation at national level. A uniform status within the EU, both for refugees and beneficiaries of subsidiary protection, is preferable and all possible grounds for granting residence permits should be checked at the same time. Asylum cases should be processed and assessed by national management authorities and appeals heard in national courts. It is essential to develop a uniform and common training regime for European officials and to facilitate the exchange of know-how and practise, and it is also vital to facilitate practical cooperation between the authorities. A European Support Office can give significant added value. The board also states that variations in the effectiveness of implementation work in other countries provoke secondary movements. The regulations should be common in relation to asylum seekers' access to the open labour market and the right to schooling and health care.

The Swedish Bar Association has submitted the following comments. A prerequisite of a mandatory procedure is that the asylum seeker is given the opportunity to challenge a final national decision in a court of appeal common to all Member States. The criteria for protection should be identical in content in each country's legislation. The division into conventional refugees and beneficiaries of subsidiary protection is also questionable and they should have the same rights. Asylum seekers should be afforded the right to work. An EU Ombudsman Institute can be established whose task, with the support of the authorities, is to monitor the correct application of regulations. A specific minimum economic and social level should apply to asylum seekers in all countries and the right to health care should be coordinated.

The Children's Ombudsman would like the Green Paper to take a clearer position on children's rights and has made the following suggestions. A common European processing mechanism is the best way to secure the rights of asylum seeking children. However a uniform procedure can make the situation of children seeking asylum worse in some Member States. In respect of reception conditions, harmonisation of basic rights is vital. For example, even so-called hidden children have the same right as any other child to attend school. The conditions for asylum seeking children's right to health care in the EU must be harmonised to fulfil the requirements of the Convention on the Rights of the Child. Harmonisation of the eligibility criteria and clarification of the grounds for protection should minimise the margin for divergent interpretations and applications in different Member States. The Children's Ombudsman believes that it is high time to stipulate that children who have a well-founded fear of victimisation due to the fact that they are children must also be recognised as refugees.

The Swedish Red Cross wishes to emphasise certain issues in particular, including that asylum seekers are not prevented from entering the EU or denied access to a just and secure asylum process, that it is important to have only one procedure for asylum seekers, that the establishment of a common asylum system requires a common higher court of appeal for precedential decision-making within the EU, that there should be a uniform protection status and uniform benefits, that asylum seekers must have the right to work and that a support office should be established.

The National Courts Administration has commented that a European Support Office could be of value to immigration courts. Such an office could act as a knowledge bank and provide training. The National Courts Administration also wishes to emphasise the importance of ensuring that the new rules of procedure in matters relating to aliens are evaluated before any possible amendments are made.

Position of the Committee

In the Green Paper, the Commission analyses the most important aspects relating to the construction of the future Common European Asylum System. The purpose of the Green Paper is to instigate a wide-ranging discussion amongst all interested parties and the Commission welcomes constructive proposals to move forward on these issues. The results of this comprehensive consultation will inform the preparation of a policy plan containing measures and a timeframe which the Commission intends to implement.

The Committee has been informed that the government intends to submit comments to the Commission by 30 September 2007 at the latest and make its position on the issues known at that time.

The Committee wishes firstly to highlight that the stated aim of the Commission in the Green Paper is to initiate a discussion on what options are possible under the current EU legal framework for shaping the second stage of the construction of the Common European Asylum System in accordance with the Hague Programme. At the same time it is clear from the Hague Programme that the initiative proposals are based on aims expressed in the constitution signed in 2004 and that the Commission should undertake preparatory work to ensure the measures can be implemented immediately after the constitution is ratified.

In the opinion of the Committee, some of the issues raised in the Green Paper will require treaty amendments and as such cannot be accommodated under the current EU legal framework, which in certain parts refers to minimum standards. No legal basis is specified in the Green Paper. The Committee believes that in the next stage of the development of the policy plan, the Commission should analyse the legal basis for the various initiative proposals. The Committee also assumes that the legislative proposal which will be submitted at a later date will clearly indicate the legal basis and that

the principle of subsidiarity will be observed. The Committee further notes that, in its meeting in Brussels on 21-22 June 2007, the European Council decided to convene a governmental conference to advance the EU's work on treaty reform. The aim is for the governmental conference to conclude its work as quickly as possible so the treaty can be ratified before the European Parliament elections in June 2009.

In addition to this basic position, the Committee wishes to present the following views on the Green Paper but will not examine each individual issue in detail.

The Committee welcomes the Green Paper on the future Common European Asylum System. Like the government, the Committee believes increased harmonisation of asylum policy within the EU is desirable. The overriding aim must be to increase the EU's overall capacity to accommodate asylum seekers compared with the current situation.

The Committee wishes to encourage a legally secure and open system which safeguards the option to seek asylum. The system must be designed in such a way as to ensure applications are processed efficiently. A common European asylum system must not result in a longer processing period.

It is important to emphasise effective access to the opportunity to request asylum and that measures for combating illegal immigration and people smuggling are implemented in such a way that they do not undermine the right to asylum or respect for basic human rights in the asylum procedure. A trend towards closed borders in Europe must be avoided. The Committee therefore also recommends harmonisation of regulations governing labour force immigration, including improved opportunities for citizens of third countries to gain residence permits to work in the EU. The Committee believes this is also important in relation to common regulations enabling asylum seekers to work during the period their asylum application is being processed.

A sustainable common European asylum system requires an equitable division of responsibility within the EU. Issues relating to mechanisms for dividing responsibility for assessing asylum applications and matters relating to economic solidarity are therefore also central to this. The Committee believes the following five building blocks are central features of a common asylum system.

Common regulations: The common asylum policy must be based on a full and inclusive application of the Geneva Convention and other international legal instruments relevant to the asylum area. Common regulations are necessary to achieve a common asylum system. The common procedural regulations which must be developed on the basis of the principle of subsidiarity, must not result in a longer processing period. Access to the opportunity to request asylum is a fundamental principle.

National assessment: The assessment of asylum applications should occur at national level based on a common European legal practise approach in the area of asylum. To ensure that a common practise is implemented, the establishment of a specific department at the European Court of Justice dealing with issues relating to asylum and migrations should be considered.

Common coordination and support function: A common asylum system requires coordination. This can involve common training regimes, coordination of specific initiatives, information, resettlement initiatives and management of an information portal. It is likely that any such function would have to be created. The establishment of a European Support Office could be a solution. The scope and European added value of such a solution should be considered.

Sharing of responsibility and economic solidarity: In the common asylum system, a system must exist for sharing responsibility for assessing applications. This system should comprise the well-functioning principles already set out in the Dublin Regulation. Evaluation of the application of the Dublin System should be taken into consideration in harmonisation efforts. In addition enhanced economic solidarity should be considered with the aim of sharing the costs of assessing asylum applications submitted to Member States.

Increased emphasis on the external dimensions of asylum policy: A common asylum policy cannot be aimed solely at people seeking asylum in a Member State. It must also have an external dimension. The EU has a strong interest in maintaining the international refugee protection regime and should be a

central player at international level. To do this the EU should increase its role as partner to the UNHCR, both in financial and political terms.

This should include an increased commitment to resettlement. The EU should work towards a common system which can both help refugees in third countries where no permanent solution is available and show solidarity with third countries with large refugee populations.

Reservations

The following reservations have been submitted in relation to the Committee's proposal for a decision by parliament and the position.

1. **The future European asylum system - explanatory statement** (Social Democrats)
by Siw Wittgren-Ahl (Social Democrats), Kurt Kvarnström (Social Democrats), Göte Wahlström (Social Democrats), Matilda Ernkrans (Social Democrats), Jasenko Omanovic (Social Democrats) and Magdalena Streijffert (Social Democrats).

Position

We agree with a common EU position in the area of migration. A number of strategic positions have been taken to try and find a way of acting more forcefully. The recently presented Green Paper constitutes an important element in the development of a common position based on applicable conventions and high standards with a view to increased coordination and responsibility for people seeking protection within the EU's borders. We believe that it is important for Sweden to take a leading role so this harmonisation leads to a legally secure and open system which safeguards the right to asylum and rejects a Europe with closed borders. Sweden's approach has previously been met with sympathy but also stood in stark contrast to some of the repressive proposals put forward by certain other Member States. It is of the utmost importance that Sweden retains a generous and proactive approach to the EU's work towards a fitting refugee policy.

With regard to the forms future labour force immigration might take, we believe it is important to differentiate between asylum seekers and economic migrants. Discussions during the Swedish investigation into how a labour market assessment should be carried out suggested that the labour requirement should be decided by individual employers and that the Migration Board should at the same time monitor the flexibility with regard to labour law and wage formation. The issues surrounding such an approach and the complexities involved were illustrated during the Committee's visit to Brussels and in discussions on a common EU approach to labour force immigration. We oppose such an approach and agree with the majority statement in the KAKI report (SOU 2006:87).

We also oppose the fact that persons who are given the right to work during the asylum assessment period by means of a so-called work permit exemption and who are later denied a residence permit as beneficiaries of subsidiary protection, will be able to "change track" in this situation and be given the option to reapply for a residence permit in the country as jobseekers. The risk is that the level of fitness for work becomes more important than the right to asylum thereby undermining in the long run the right to asylum according to applicable conventions. This approach to asylum means that most beneficiaries of subsidiary protection get a worse deal. We therefore oppose this option to "change track" and refer once again to the applicable majority text in the KAKI report. It is extremely important to retain the principle of keeping the right to asylum and labour force immigration separate so as not to undermine the right to asylum. We therefore believe that the principle rule must be that asylum seekers should not be able to apply for residence or work permits in their country of residence during the asylum process or after their asylum application has been rejected.

In the light of the introduction of a common EU approach to migration issues in accordance with the Green Paper, it can be stated that Sweden has experienced significant immigration and has played a prominent role in EU debates arguing for a humanitarian agenda. Swedish economic contributions in respect of the UNHCR and other international organisations have also been considerable from an EU standpoint.

In the light of a fairer distribution of the economic burden on the part of the EU in the future in respect of Member States, it is extremely important that Sweden's previous approach is taken into consideration in any assessment of future requirements. With regard to the future evaluation of the Green Paper, Sweden's previous approach should be considered when it comes to the economic distribution of future responsibility.

We believe that individual assessment is an important principle which must also be applied in a future common European asylum system. The creation of a list of so-called safe third countries outside the EU to which refugees can be sent if they have passed through these countries can therefore undermine the principle that all refugees have a right to an individual assessment of their asylum claim.

To provide protection for those most in need of protection and reduce conflict with labour force immigration or economic migration, the EU should develop the principle of resettlement. Currently only 6 of the 25 countries in the EU accept their quota of refugees. Sweden should therefore work towards developing international responsibility for people in need of protection and encourage other countries to accept their refugee quota.

2. The future European asylum system - explanatory statement (Left Party) by Kalle Larsson (Left Party)

Position

The Treaty of Amsterdam made refugee policy a supranational concern within the EU. Because there was considerable anxiety that a system containing minimum regulations could result in harmonisation at the lowest permitted level with regard to legal security and the treatment of asylum seekers, there was resistance to the transition from international cooperation to supranational responsibility. Unfortunately we can see that these fears have proved justified.

The walls around the EU are built ever higher and to a large extent all legal options to enter Europe have been closed. At the same time as the EU Member States are in the process of protracted discussions on how to satisfy the need to import labour into the EU, the borders remain closed to refugees and all too many people are risking their lives to cross the EU's borders to seek protection. The intensive joint efforts being made by EU countries to shut people out are resulting in comprehensive and systematic infringements of the human rights of asylum seekers and refugees. The production of the Green Paper on the future common European asylum system must be viewed as part of this development and should be seen in the light of the consequences this has had up to now for the protection of asylum seekers within the EU. Enhanced harmonisation of EU asylum policy is therefore not desirable.

The Green Paper makes certain fundamental references to respect for human rights which it is obviously very important that Member States sign up to. The traces of good intentions which the Green Paper contains will however undoubtedly be given a significantly more restrictive wording once the proposal has been reviewed by Member States. All experience up to now points in this direction, for example the extremely sketchy references to rights that remained when the Directive on refugee and immigration policy was adopted. The Green Paper states that significant progress has been made with regard to the protection of asylum seekers during the last ten years. This is an incorrect version of history. The Qualification Directive, the Directive on Minimum Standards for Asylum Procedures, the Reception Conditions Directive and the Directive on the Right to Family Reunification have in various ways been designed to circumvent the right to asylum and make the Geneva Convention inapplicable. They constitute a serious attack on the right to seek and receive asylum as defined in Article 14 of the UN's General Declaration on Human Rights. In their final form, the directives were so watered down in respect of rights that many experts in the field considered them to be almost in contravention of international conventions. Amongst other things, the Directive on Minimum Standards for Asylum Procedures has been largely purged of everything that could contribute to legal security in the asylum procedure. Against the background of these inadequacies even the United Nations High Commissioner for Refugees and Amnesty International have been fiercely critical of the Directive's form.

If Member States were serious in their efforts to protect refugees properly, there are other courses of action they could take rather than concentrating on increased supranational responsibility and a common asylum system. The Green Paper formulates five basic issues relating to the requirements for a common asylum procedure within the EU, including how the asylum procedure should be improved, which concepts and procedural mechanisms need to be revised, and how the efficiency and protection guarantees can be improved. The answer to all these questions must be that Member States' should work together to improve legal protection in the current directives rather than create a common, harmonised asylum system.

The Green Paper further states that there is a need for increase solidarity in the asylum area. If this attempt is genuine, there are many ways of going about it. Firstly, the Dublin Regulation must be abolished. The Dublin Regulation is an important element in efforts to prevent people from reaching Europe and constitutes a serious obstacle to solidarity in the asylum area. The main principle of the Dublin Regulation, that the EU country which the asylum seeker first visits is responsible for asylum assessment and reception, means that asylum seekers are concentrated in countries with borders on

areas from which many refugees come. An evaluation report from 6 June 2007 appraising the effectiveness of the Dublin System also states that the system can cause further strain on those Member States that have limited reception capacity and which are vulnerable to particularly severe migration pressures due to their geographical position. The only equitable principle for determining which country should process an asylum application is to allow asylum seekers to make the decision themselves. Sweden should therefore devote itself to revising the Regulation so that the distribution criterion is defined by the asylum seekers themselves, and revoking the Dublin Regulation.

Further criticism must be directed towards the huge differences that exist between Member States with regard to the actual opportunity to seek asylum and measures taken to address this issue. The directives adopted up to now in this field have completely failed to reduce these false differences. The report from the European Parliament's LIBE Committee of 17 July 2007 on conditions in Greece, where it is virtually impossible to claim protection also backs this up. Without doubt the course indicated in the Green Paper towards a fully harmonised migration policy, will not lead to other similar and at the same time, humane and legally secure regulations in Member States. The risk is rather of a "downwards" harmonisation.

With regard to the needs of particularly vulnerable asylum seekers and determining the most suitable methods for receiving, for example, victims of torture or human trafficking and traumatised people, it is vital to first map out how the regulations on specific initiatives for these groups set out in the Reception Conditions Directive are actually applied. There is good reason to fear that most countries, like Sweden, do not fulfil the Reception Conditions Directive in this matter. To develop meaningful new regulations, Member States must first ensure that current provisions are being adhered to.

Criticism is also justified in relation to the discussion in Green Paper on support to third countries for enhanced protection. The efforts made up to now, including the readmission agreement, tend to focus on keeping asylum seekers as far away from Europe as possible. The same applies to the discussion on resettlement within the framework of the regional protection programme. The efforts made jointly by Member States in the asylum area should instead be aimed at fulfilling the commitment to the rights of asylum seekers made in accordance with the Geneva Convention.

One starting point for a human immigration policy must be that the right to asylum essentially revolves round cross-border solidarity between peoples. The right to asylum and the right to protection without persecution are regulated by a number of international conventions which Sweden, as well as other EU Member States, is a signatory to. These rights are unconditional and cannot be adjusted to fit the trade outlook or the need for labour. Against this background, it is extremely important not to confuse the right to asylum, which is a fundamental human right, with labour force immigration. Confusing these concepts risks undermining the right to seek and receive protection without persecution as set out in international conventions. The concept of solidarity highlighted in the Green Paper on the future Common European Asylum System is limited to finding a way for Member States to as far as possible avoid fulfilling their commitments as signatories to the Geneva Convention.

3. The future European asylum system - explanatory statement (Green Party) by Gunvor G Ericson (Green Party)

Position

Migration flows to the EU's Member States have different characteristics and a harmonised system therefore risks being completely inflexible and irrelevant to many of those who in one way or another find their way to Europe. No part of the migration policy should therefore be harmonised. International cooperation in certain areas however can be a good thing, and recommendations, guidelines, etc. which help other countries represent a better system. As a common asylum policy currently already exists, the comments below on some of the proposals included in the Green Paper are made with the aim of improving the common policy.

The starting point for the Green Paper is the people seeking protection in accordance with the Geneva Convention. The reality is that those classed as refugees by the UNHCR are fewer than those who, for example, flee various types of development project, such as dam building and large infrastructural projects. Convention refugees are only a fraction of all those who flee environmental catastrophes and the effects of climate, or who flee hunger or economic misery. The risk of a harmonised asylum and refugee policy is that even fewer people will be able to stay in Europe and that Europe will become

more closed off to other migrants. The flow of migrants to European countries varies, but only refugees (as defined by the Geneva Convention) have the right to protection under international law. People fleeing from areas beset by armed conflict are also entitled to subsidiary protection, and the concept must not be subject to a restrictive interpretation. Amongst other things Sweden claims to take many refugees and beneficiaries of subsidiary protection in comparison to other countries. However, a number of countries take significantly more economic refugees, but maybe fewer political refugees. This should be taken into account in discussions about solidarity between Member States. The concept "illegal" should also be removed from the language in connection with the EU.

Even though a common asylum and refugee policy to a large extent already exists, the Commission's aim in this second stage to achieve a higher common level of protection and increased solidarity between Member States is still laudable. Both improving the conditions for asylum seekers and increasing capacity of all parties to the process is of course a good thing. To reduce the risk that large groups of people who are currently able to remain in EU countries will no longer be able to do so, increased solidarity in relation to the reception of asylum seekers must go hand-in-hand with increased solidarity in relation to the reception of other migrants (economic migrants, environmental migrants, etc.). The number of refugees Europe as a continent receives today is shrinking. This is probably due to the relative difficulty of getting to the EU and seeking asylum. The Commission should therefore investigate the possibility of introducing a so-called asylum visa.

The content of the procedural mechanisms for assessing what constitutes safe countries of origin, safe third countries and safe European third countries should be revised. These mechanisms make it impossible to assess asylum seekers' individual grounds for protection. The creation of a single uniform procedure also carries the risk that the needs of the individual will not be central to the assessment. As mentioned before, the asylum system should not be harmonised, but if this is done, it is logical to be able to challenge the asylum decision.

Secondary movements will still always occur, irrespective of how much reception is harmonised. Those who do so, usually have a final destination in mind. This can be a country where they can speak the language, where they know fellow countrymen or relatives live, or where there are many people of the same religion.

Access to the labour market, to health care and schooling is enormously important when it comes to guaranteeing asylum seekers' quality of life in the receiving country. Custody regulations need to be revised to guarantee a better standard in all countries.

The decisive factor in deciding whether the group with refugee status and the group with subsidiary protection status should be combined together is that they will be covered by the same rights without losing their grounds for protection. The risk however is that the grounds for protection or rights will be negotiated away in the course of the process, so all countries can approve the final version of the Directive.

Clarification of the Directive is important with regard to people who are protected against removal by international regulations, e.g. the Convention on Torture, or due to illness. Member States must stop deportation if a person may be subject to torture or if necessary care is not available in their home country.

It is important to weigh the use of a so-called support office against the high costs that can often accrue. There is also the risk that the costs may be deducted from funds for development work. Structures should not be duplicated either in the EU or in Member States. If established, a support office should not just handle asylum issues but all issues relating to migration, even so-called illegal immigration, i.e. migrants.

Use of the Dublin System should be reviewed. It should be for individuals to choose in which country asylum assessments are carried out. The Dublin Regulations simply extend the asylum process unnecessarily.

Refugee issues and development work must be viewed as related issues. Those who return home can contribute to development in their home countries. Focus should however not be placed on returning home; the main emphasis of the work should be on development cooperation and promoting peace so

people do not have to leave their home country, which most do not wish to do. At the same time it is important to increase opportunities for cross-border migration for the purpose of work and earning money. In this way, migrants themselves can also contribute to the development of sustainable local economies. There must be lots of ways to enter Europe. The EU's migration policy with ever more closed borders is clearly at odds with the aim of preventing flows of refugees or migrants.

It is a good thing if more countries assume greater responsibility for resettlement within the refugee quota system. However this increased responsibility must go hand-in-hand with a greater shared responsibility for other migrants as well.

Annex

List of proposals

Green Paper on the future Common European Asylum System
COM (2007) 301.