

1. LEGISLATIVE INSTRUMENTS

1.1. Processing of asylum applications

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

In recent years, a significant progress has been made in the field of asylum in the EU, since during the stage of CEAS I establishment, the main legal instruments constituting current asylum acquis and creating the base for CEAS were adjusted. At the moment, all member states are transferring already adopted legislation of the European Union into the national law and implementing already adopted asylum legislation of the European Union. In practice, while implementing the provisions of legislation, certain problems, uncertainties and questions related to how legal norms should be applied in different situations as well as the gaps in the legal acts arise, which are to be revised and amended in the future. Because of the mentioned reasons, in order to establish CEAS, asylum legislation should be further amended, complemented and replaced. Only in this way the final goal will be reached, i.e. the provision of the equal conditions and the establishment of the system, which would guarantee a high level protection under equal conditions in all member states to the persons, who really qualify for the international protection, as well as their proper repatriation to the countries of origin or other host countries. In order to further adjust legislation in the asylum field, it is necessary to exercise a comprehensive analysis of the practice of all the member states in implementation of valid asylum regulations and directives. Such analysis would clear the problems which the member states are facing with; also it would facilitate the determination of the lacking legislation or the provisions to be amended or complemented.

(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?

Following the best practice of the member states, both the European Union and national asylum legislation should be further improved, because yet now there is a need for a more comprehensive regulation of certain asylum granting procedures (e.g. the application of border procedures: registration of asylum applications and the process of checking asylum seekers at the border, and accelerated proceeding of applications, etc.) in the existing legislation to prevent member states from extra flexibility in the application of certain provisions, which undermine the establishment of CEAS. One of the main aspects for the focus of one's particular attention is the establishment of the common asylum granting procedure in all member states allowing to win time in the processing of asylum applications and to save the funds necessary for the implementation of asylum granting procedures. These positive results have been attained in the Republic of Lithuania since 2000 when common asylum granting procedure was first applied. The law of the Republic of Lithuania „On the Legal Status of Aliens“ provides for common asylum application, and foreigners, whose asylum applications are examined are provided with equal procedural guarantees. Common asylum procedure in the Republic of Lithuania means that during a single investigation it is determined whether a person qualifies for the status of refugee as determined in 1951 Geneva Convention on Refugee Status, and, if he or she does not qualify as a refugee, whether he or she is in need of another form of protection, i.e. subsidiary protection. (primarily, under art. 3 of European Convention of Human Rights and Fundamental Freedoms, applying the principle of non-refoulement).

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

At the moment, the terms in the legislation of the European Union, which are transferred or are being transferred into the national law, are laid down in a comprehensively clear and detailed manner. There is also a respective number of procedural instruments introduced which are to be implemented in practice by member states in order to establish if they should be reconsidered or replaced.

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

All member states should apply common asylum procedure within the European Union. The core of this procedure is to determine during one investigation whether a person qualifies for the refugee status as provided in 1951 Geneva Convention on Refugee Status. However, in case he/she is not a refugee under provisions of the Geneva Convention, it should be immediately determined if he/she is in need of another form of protection– subsidiary protection. Thus, one investigation of asylum application might result in granting the refugee status or subsidiary protection or refusing any form of international protection. In the latter case, the further legal status of such refused asylum seeker in the state has to be decided (his/ her repatriation or expulsion to the country of origin or third country, granting residence permit on other grounds, etc.).

(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?

Joint processing of asylum applications can only be applied if all member states properly adjust their national asylum legislation to that of the European Union and if the best asylum granting practice of the member states is taken into consideration and approvingly accepted by those member states, which to date have no sufficiently effective asylum procedures.

1.2. 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?

Broad freedom of action to be used by member states when implementing the Council Directive No. 2003/9/EB of 27 January 2003 related to the minimum standards for the reception of asylum seekers undermines the establishment of equal reception conditions for asylum seekers in all member states. For example, the access for asylum seekers to the labor market is differently regulated in member states. In many of them asylum seekers can get the right to work immediately after their asylum applications are started to be examined and they are allowed the entry into the territory of the state; that is, in other member states, the asylum seekers can obtain a work permit during the whole asylum procedure. Consequently, it leads to the conclusion that the provisions related to the access of asylum seekers to the labor market laid down in the above mentioned Directive must be revised in order to set equal reception conditions for all asylum seekers in the member states. It is also assumed that the provisions regulating health care for asylum seekers as well as their detention conditions in reception centers must be revised as well so that their

regulation was clear and later it would be easier for all member states to apply it when creating CEAS.

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

Yes, the reasons have been mentioned in the answer to the 6th question.

It is supposed that after determination of equal conditions for the reception of asylum seekers in all countries, in which the minimum living standard, and minimum monthly salary, etc. differ even several times, there is a probability that asylum seekers would be provided with better conditions than state residents and therefore only minimum reception conditions can be harmonized, and their level cannot be made equal. Only gradual approachment to the equalization of minimum accommodation conditions is possible along with the approachment to the common level of the European Union development.

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

National rules regulating access to labor market should not be further adjusted.

Lithuania holds the position that the question should be left for the national competence, as it is now.

(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?

The grounds for detention should be in compliance with those enshrined in Art. 5 of the European Convention of Human Rights and Fundamental Freedoms. It is also worth considering the detention-related practice of the European Court for Human Rights.

1.3. 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)?**

Protection granting criteria are determined in a rather clear manner in the legislation of the European Union. Regular meetings of the member states experts provide for possibilities to answer certain specific questions, to identify how certain provisions of the EU legislation are understood and treated, which helps member states to properly implement legislation and to apply the set requirements regarding protection granting criteria. However, the numbers of recognition of the asylum seekers from the same country of origin differs among different member states, e.g. the degree of recognized refugees or persons granted subsidiary protection who are the citizens of the Russian Federation or persons granted subsidiary protection is 90 per cent in Austria or Lithuania, whereas in other member states the recognition rate concerning the citizens of the Russian Federation is significantly lower. Consequently, it leads to the conclusion that member states treat legal provisions and implement them in practice in a different manner. Due to these reasons, it is necessary to prepare the evaluation of the good practice of EU member states and guidelines for the

practical application of protection granting criteria on a regular basis and, in regard to that, to improve and harmonize asylum legislation.

At the moment, different asylum forms are determined in EU legislation – refugee status and subsidiary protection. According to EU law, granting different forms of the international protection implies granting different rights and benefits to the asylum seekers. However, member states are free to introduce and apply more favorable conditions for persons granted subsidiary protection.

(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?

As it has been mentioned, at the moment, according to the EU asylum legislation, asylum seekers are granted refugee status or subsidiary protection, however, persons belonging to both categories have different rights and guarantees in different member states. That is allowed for member states by existing legislation. For example, some member states having granted refugee status provide such persons with permanent residence permits, while others – temporary residence permits (in most cases, for 3 years). In most cases, granting subsidiary protection is followed by issuing a temporary residence permit valid for 1 year. However, persons of both categories are granted one of the forms of international protection. Because of these reasons, it is supposed that after the moment of granting international protection, whether it is the refugee status or subsidiary protection, under national law, such persons could get equal rights in terms of social welfare, health care, education and occupation. That would be the way to ensure the implementation of the rights of the persons granted asylum despite of the form of international protection they have been granted.

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

No, because refugee status and subsidiary protection are granted to asylum seekers according to the determined criteria, which are basically different. Refugee status is granted according to the criteria provided by Art. 1A of 1951 Geneva Convention on Refugee Status, while subsidiary protection is granted by implementing other international documents, e.g. 1950 European Convention on Human Rights and Fundamental Freedoms and other provisions of legislation regulating the protection of human rights. At the present, the mentioned criteria are also determined by the Council Directive 2004/83/EB of 29 April 2004 on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

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

This question could be considered in the context of the proposal for a Directive of the European Parliament and the Council on common standards and procedures in member states for returning illegally staying third country nationals.

(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?

At the moment, the mechanism of reciprocal recognition of decisions related to asylum granting and the possibility to pass the responsibility for protection granting is partly determined in 1951 Geneva Convention on Refugee Status claiming that refugee, who has settled in a different state than that where he/she was issued a refugee travel document and who again wants to travel, has to contact respective institutions of the country of residence and to get a new document. However, this provision is only applicable when issuing of documents is concerned, while the implementation of other rights is not covered by the mentioned convention. The mechanism of responsibility transfer was also determined by 1980 European agreement related to the transfer of responsibility for refugees, contracted by the European Council; however not all member states are parties to this agreement, Lithuania neither. Consequently, at the moment, there is no proper legislation to regulate the mechanism of the transfer of international protection to another member state. It is supposed that already now there are persons granted asylum in one member state and willing to settle in another member state, and it will certainly be the case in the future. In order to implement such process, there is a need to consider the mechanism regulating the transfer of international protection from one member state to another (the order of submission of documents, the provision of information by member states about persons granted protection to another member state, the mechanism of cooperation among member states, etc.).

1.4. Cross-cutting issues

1.4.1. Appropriate response to situations of vulnerability

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

Already now there are obligatory provisions provided in the EU legislation for member states which make them identify and consider the needs of the most vulnerable asylum seekers (minors, the disabled, the elderly, pregnant women and persons who have suffered torture, coercion and violence). However, detailed instructions or guidelines should be approved for the employees working with the persons belonging to the above listed categories. The instructions or guidelines should cover proper service of medical and psychological assistance as well as counseling, conducting interviews, etc.

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

Firstly, the cooperation among member states in this field should be strengthened by exchanging good practice. Before choosing instructions and guidelines for employees who deal with vulnerable groups of asylum seekers, the best practice of member states in the field should be examined, because a number of member states have much practice and high qualification in work with the mentioned persons as well as with the group of particularly vulnerable asylum seekers. Besides, training is needed for employees who are involved in asylum processes related to vulnerable persons in order to ensure a comprehensive assistance – both psychological, medical and social, so that the asylum procedure was proper and complete.

1.4.2. Integration

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

One of the initiatives related to the improvement of integration of persons granted asylum is their possibility to receive long- term resident status as provided in the proposal from the Commission of 6 June 2007 related to the amendment of the Council Directive 2003/109/EB. That is one of the means to bring into line the status of such persons in all member states and to apply equal standards in the process of their integration.

(18) Ensuring second stage instruments are comprehensive 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?

When improving reception conditions for asylum seekers and asylum granting procedures, it is necessary to continue making analysis of the practice of member states in the mentioned field and to provide proposals for the amendment of certain existing asylum legislation, complementation or adoption of the new one. For example, a more detailed and exact regulation of the provisions related to the terms of the exercise of asylum procedures could be considered. The question of separate regulation related to exercising of one of the main rights of asylum seekers – the right to translation services- could also be considered separately. A number of member states face the problems of translation from/to languages of asylum seekers, especially those of African regions, because of the constant lack of qualified interpreters who could provide translation service from/to exotic languages during asylum procedures. If an asylum seeker is not provided with the service of a qualified interpreter, in most cases, he/she can not exercise the right to asylum. Refusal to provide the services of interpretation or providing it in an unqualified way would also violate the right of asylum seekers to be heard, while granting of such right is one of the main principles of a state of law. Because of the all mentioned reasons, it is considered that ensuring the service of interpreting, according to the practice and experience of other countries, could be executed by adoption of a separate EU document or agreement among member states, which would assist in solving currently existing problems of implementation of common provisions, foreseen in the EU legislation, and would ensure the implementation of one of the main rights – right to the translation services. That would allow to further improving the conditions for the reception of asylum seekers.

2. 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?

The cooperation among member states in the field of asylum should be developed in the future as well; therefore it is necessary to analyze in detail the practice of member states, their political priorities and cooperation possibilities. The study about the practice of EU member states in implementing EU legislation adopted during the first stage of CEAS establishment would serve best for this purpose. The Commission, international and non-governmental organizations could contribute to the drafting of the study and after having studied the practice of the states they could

present their proposals related to its improvement and better compliance with the EU legislation as well as international obligations of the member states. Sufficient attention should continually be paid to the creation of the common portal on information about countries of origin (COI). COI is one of the key issues in asylum granting procedures, because in most cases such information is the only evidence in the asylum case and therefore it is essential for the member states to have comprehensive, up-dated and reliable information about the countries of origin. Because of these reasons the initiatives related to common COI data bases of member states and the improvement of other relevant “common portal“of information are supported. However, it is supposed that obligatory EU legislation concerning the issue should be adopted which would solve the issue of reliability of information collected according to the set guidelines and provided in the “portal“. The financial support of these initiatives is also an important issue (whether these initiatives will be supported by the Commission or solved in the framework of other programmes or solidarity of member states).

Basically, the idea of the establishment of the mechanism of systematic information exchange, encouragement and spreading of the best practice as well as experience storage is welcome. For this purpose, TAIEX programmes, Eurasil experts, organized meetings, conferences, etc. could be employed in a broader way.

(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?

Member states, when proceeding individual cases, e.g. persecution on the basis of sex, persecution of minors, etc., have to determine common provisions when applying exceptions for the above mentioned persons. However, in each case, there is a necessity to consider certain specific circumstances of the cases requiring legal and fact-based assessment. In order to reach these goals, it is necessary to assure professional translation of the documentation and the observation of interviewing methods and procedures. Consequently, the cooperation of member states in this specific field is essential, because the process of exchange of good practice, competence and knowledge is the only means to secure the achievement of the indicated goals.

(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?

It could be proposed to establish a common e-centre for consultations and coordination. It is supposed that the e-centre would be the most effective form of information exchange, because its nature and activity principles would guarantee speedy and effective transfer of information, also it would not require much additional administrative, technical, and financial costs, which could not be avoided when establishing certain administrative institutional body. E-centre would provide member states with needed information on their specific inquiries. In principle, one approves the establishment of European support office which would coordinate various activities related to development of practical cooperation. The above mentioned office could provide with comprehensive information about the implementation of asylum procedures, proposals related to improvement of asylum legislation, organize asylum related training for interested persons according to the needs of member states, etc.

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

First of all, the functions, competence and activity funding of European support office should be identified. Only having established the legal basis, such office could start functioning and involve highly experienced experts working in the field of asylum in the member states. The office could play a significant role in the implementation of EU asylum acquis, in the improvement of legal base in the field as well as in coordination and analysis of how the member states meet their obligations under the international, EU and national law.

3. SOLIDARITY AND BURDEN SHARING

3.1. Responsibility sharing

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

Common application of the Council Regulation 343/2003 of 18 February 2003 determining the criteria and mechanisms for determining member state responsible for the investigation of asylum application submitted by third country national in one of the member states can be improved by complementing the Commission Regulation 1560/2003 of 2 September 2003 determining comprehensive rules for the application of the Council Regulation 343/2003 which is obviously lacking clearness in certain matters. Regarding continuous discussions related to the interpretation of the Council Regulation and the increasing number of questions being raised during annual meetings of Dublin experts, it is obvious that, in seeking to have a common Dublin system, there is a need for binding legal means, which would encompass all questions not mentioned in the Regulations. The practice of the EU member states shows that certain provisions are not being implemented because of their inconsistency. Therefore, one is in favour of the position, that when establishing efficient and effective common European asylum system, it is necessary to attain that the Dublin provisions would be equally applied in each EU member state. The European Commission constantly receives member states comments and proposals on clarification of the Dublin procedure, which should be considered when preparing detailed instructions for the implementation of the Regulation 343/2003. It is impossible to foresee whether the complementation of the current Commission Regulation will eliminate all deficiencies of the Dublin mechanism, however, equally applying the provisions, the efficiency of the Dublin system, which is the core stone of European asylum system, will undoubtedly increase.

(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?

It is likely that complementing Council Directive 2003/109/EB related to long- term resident status, as it is provided in the Commission's proposal of 6 June 2007, by including persons granted asylum into its scope, would lead to the possibility for such persons to move to another member state and to settle there.

3.2. 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?**

The purpose of European Refugee Fund is to promote and support European Union countries receiving asylum seekers, refugees and resettled persons. The fund provides financial assistance for the improvement of reception conditions of asylum seekers, implementation of integration of the persons granted international protection into the society, and to fund the voluntary repatriation of persons not qualifying for international protection to their country of origin. Also in the case of mass influx of refugees or resettled persons, European Refugee Fund can provide financial support for the means applied in emergency situations (i.e. for the reception and accommodation of such persons, for the provision of means for living, medical, legal or other assistance, to cover the costs of personnel and administrative ones, etc.). It is worthy for the member states to participate in activities of European Refugee Fund, because the financial support provided by the fund facilitates the member states to improve asylum granting procedures and to solve in a certain extent the problem of the lack of funds in the national budgets, which are used for the reception of asylum seekers, integration of persons granted asylum and voluntary repatriation to their countries of origin. In order to fully make use of possibilities offered by the fund, it would be useful to create a mechanism for consultations and information exchange which is the only means to comprehensively analyze the needs to be met by using the support provided by ERF. It is also necessary to exchange information about projects and programmes implemented in all member states. That could serve as the examples of the best practice.

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

There are no specific financial needs.

4. EXTERNAL DIMENSION OF ASYLUM

4.1. 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?

The need for strengthening the effectiveness and sustainability of regional protection programmes is to be supported. In order to reach these goals, it is necessary to further increase in various forms the support of EU member states for the third countries in dealing with asylum issues.

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

EU asylum specialists together with members of international and non- governmental organizations could help third countries with their experience and qualification, providing training and assistance in order to improve national legislation of third countries, and contributing to the creation and implementation of detailed instructions and rules for employees working in the field of asylum. EU experts could also invite interested persons from third countries working with asylum seekers to arrive to the member states in order to gain experience and good practice.

(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?

Comprehensive analysis of current projects and programmes in third countries and supported by EU funds has to be carried, which will help to improve the relations between EU and third countries and to increase the effectiveness of EU action with the above mentioned countries and regions. Also that would be a sufficient base for further EU strategy to be developed in other third countries as well.

4.2. Resettlement

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

The issue related to implementation of resettlement (part of solidarity programmes) is negotiable. At the moment, the largest concern of member states is focused on the burden sharing issue related to the distribution of asylum applications among EU member states. In order to solve the problem, it is offered to apply the so-called resettlement schemes under regional protection programmes (when certain number of foreigners who are in need of protection is resettled, while the protection granting question is decided in the region of origin). The member states which do not apply resettlement schemes should financially contribute to the practical implementation of the scheme. At the moment, not all member states, including Lithuania, apply resettlement schemes, because it is supposed that each member state can participate in such schemes merely on voluntary basis.

In the future, member states should also be allowed to decide whether they are willing to join the implementation of resettlement programmes, while common EU resettlement programme obliging all member states to its implementation should not be established, because the implementation of the programme does not release member states from their obligations under international and EU law to accept asylum seekers who are in need of international protection and arrive in member states by other means. Contributing to resettlement programmes, a member state at the same time would be obliged to accept additional number of refugees which is often impossible due to limited administrative capacities (material, financial, and human resources).

The Republic of Lithuania maintains its strict position concerning voluntary accession into resettlement programmes in the nearest future and disapproves of the establishment of common European Union resettlement programme with the compulsory participation of the member states.

(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?

The voluntary basis of participation in resettlement schemes should be established.

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

Every single country should be allowed to decide upon whether to commit to take part in EU resettlement schemes and on what conditions.

4.3. 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?

By assent, the means to fight against illegal migration and human trafficking should be implemented in compliance with the right of asylum seekers for protection. We support the proposal to establish groups of asylum affairs experts in emergency cases of mass influx at the state border. They could assist member states to deal with existing difficulties. At the places of entrance into the country, such groups' members would briefly describe the situation of asylum seekers, would provide emergency assistance, the necessities and would contact respective institutions in order to start speedy and effective asylum granting procedures. The work of such asylum affairs expert groups should be coordinated. In order to strengthen the solidarity among member states and to properly organize a reception of mass immigrant influx, voluntary organizations acting on national and European level could cooperate (such as European Voluntary Service, the Red Cross, etc.).

(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?

Supposedly, the creation of ad hoc groups is the right instrument to be used in case of mass influx of asylum seekers in one of the member states. These groups would be created under the request of a member state facing the mass influx of asylum seekers. Such member state should define what kind of assistance is needed.

4.4. 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?

Asylum granting procedures in separate member states form common EU asylum granting system, which will become even more effective after introducing a common procedure defining a uniform status. Along with increasing importance of the EU asylum policy, higher requirements have to be met, because it has to become a part of overall common refugee protection system. For that purpose, common vision of asylum policy should be created as well as common positions for international and non-governmental organizations.