



MINISTÉRIO DA ADMINISTRAÇÃO INTERNA
SERVIÇO DE ESTRANGEIROS E FRONTEIRAS

**Portugal comments on the future Asylum Common European System
(ASILE 5) green paper**

First of all we would like to congratulate the European Commission for its Green book on the future of the European asylum system, which contains a vast group of questions covering all aspects of the asylum system, and constitutes a good instrument for our exercise of reflection and debate about the way the European Union should proceed in this matter.

Although we don't have yet a clear picture of the results of evaluation that has been done so far on the instruments of the first phase, as foreseen in the Hague programme, it seems clear that the high level of flexibility given to the Member States as regards the implementation of the rules contained in the directives approved affected the level of harmonization, which in our view was actually beneath the expectations. It is true, however, that we have to wait until to the end of the evaluation process, to reflect more precisely on what should be adjusted.

In this context we entirely agree with the EC on the need of having an approximation of national rules in terms of dealing with certain aspects of asylum requests which have not been – or have insufficiently been – covered by the first phase dispositions, as for instance the decision making quality, the evaluation of evidence elements presented by the asylum seekers and the appeal proceedings.



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In our view, a fair and balanced harmonized procedural and proceeding regime should be sought. Otherwise, a common asylum procedure will not be feasible, despite trying to harmonise the substantive aspects. To this end, the decision making quality, the evaluation process of the evidences presented by the asylum seeker and the information processing on COI, are aspects to be considered during the approximation of laws which have not been covered by the first phase dispositions. The application of concepts such as safe origin countries, safe third countries and safe European third countries should be studied. Their correct application should constitute one of the member state's objectives, as a way to prevent asylum abuses and to preserve the system credibility, and therefore to effectively provide protection to those who really need it.

We should move towards the creation of a single procedure in the analysis and processing of all asylum requests, through a systematic evaluation of the Geneva Convention criteria as well as the existence of possible reasons for the granting of subsidiary protection.

The single procedure is not new in Portugal, as we already apply it since 1998. Every asylum request is analysed simultaneously in the light of both regimen by the same entities and with the same procedural guarantees. We believe that a single procedure has numerous advantages, not only for the asylum applicants but also for the administrative organisation of the member states.

The approximation of reception measures and social rights concessions should also be considered, as these are generally considered as a cause of the unequal distribution of asylum seekers over the common territory, as well as of the still existing asylum seekers secondary movements. On the other hand, the means and the level of reception material conditions given to



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asylum seekers should also be subject to greater harmonization, as a way to prevent false asylum seekers to circulate from one state member to another, choosing the most advantageous benefit system.

We agree with the EC concerning the need to reinforce harmonisation of the eligibility criteria, in order to minimize the different interpretation of norms already approved in the qualification directive. But we also believe that we should wait for the analysis of the transposition and application of the qualification and procedure Directives, in order to better reflect on the protection granting harmonization. It is true that the foreseen eligibility criteria confer a great margin for manoeuvre, that is, they will allow some national legislations to be stricter than others. Nevertheless, we consider premature to choose right away the domains in which the approximation of laws should be reinforced, in terms of protection granting criteria.

It seems to us that attention should be given to people who are ineligible for benefiting from international protection but who cannot be removed, under the obligations stemming from international instruments. It would be useful to foresee a status grant outside the international protection instruments. The Commission refers, for instance, those who cannot be removed for medical reasons, but we refer to people to whom international protection was denied under one of the exclusion clauses and who cannot be removed under the non-refoulement principle. None of the Directives foresees this type of situations.

In order to guarantee the effective mobility of beneficiaries of international protection within the EU common territory, it is also important to create rules for the mutual recognition of decisions as well a mechanism for the transfer of protection between member states.



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In our view, the integration reinforcement will not be achieved so much through the reinforcement of legislative measures. In this respect, we find the rules contained in the qualification directive appropriate to this integration objective. A better integration results from the acceptance of refugees and asylum seekers by the host society. A reflection should be made on this theme and, above all, on acknowledging the problems felt by the Member States in this area.

The question of appeals is among those which are not covered by the community Directives, and therefore it is relevant to discuss it. One should consider rules which avoid several-stage appeals, and rules which give priority to the appeals over decisions refusing international protection. A quick asylum procedure will be useless with slow judicial proceedings which lead asylum seekers to extend their stay in precarious conditions and with no legal certainty.

Referring to the sharing of responsibility , it seems to us that the Dublin Regulation shall not suffer any changes in the sense of becoming a cost sharing instrument. Although an evaluation of the Dublin system is being made, we think that the possible change will be towards a more efficient procedure of determination by the Responsible State. Or even if the introduction or change of the criteria hierarchy is thought to be changed, the underlying principle will not be based on solidarity and cost sharing criteria. In our opinion, an equal distribution of asylum seekers or international protection beneficiaries will be possible if the people seeking a way of protection have the same hosting conditions, are subject to a similar procedure and benefit from harmonized status. And this harmonization must also apply to ground for refusal and return conditions. In this way, the factors influencing the asylum seekers choice would be minimized or even eliminated. Consequently, one should wait for the results of the community



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Directive evaluation and, if necessary, reinforce harmonization, develop common guidelines, etc..

On financial solidarity we subscribe the Commission's proposals, in particular with respect to the development of mechanisms to better share the information on national projects and best practices and improve complementarities with all programs. and initiatives

The submission of concrete proposals aiming the protection in the region (RPP) is made difficult by the absence of project evaluation results, and also by the fact that, according to what the Commission has already informed on several occasions, these projects will only show long-term field results. We welcome the last meeting Commission's proposals on this theme, as to organize a field meeting with the delegations of countries with on-going projects, in order to coordinate themselves and exchange information and experiences. Their efficiency may be reinforced by acknowledging the practical field results and improving possible less positive aspects.

Establishing a resettlement common system seems to be very difficult in practice (for example the quota issue) but we think that an EU common approach to resettlement could be developed. Portugal agrees with a common approach, in the scope of the solidarity principle, as long as it is well-weighted. The aim is not to debate a scheme of resettlement, as many Member States and the UNHCR itself already have experience in this domain, and are available to share it. The aim is to foresee the adoption of a coordinated approach to resettlement at the EU level, including, for example, the inherent financial and operational needs.

Under the point of mixed flows at the external borders, one could evaluate the possibility of asylum experts to be integrated in the rapid intervention



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teams (rabit), which would only intervene in case of need to identify persons in need of international protection.