

Response of the Netherlands to the Green Paper on the future Common European Asylum System

Question 1)

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

Reply 1)

The first stage in the achievement of a common European asylum system has resulted in six legislative measures including minimum standards for a number of specified areas. This was an important first initiative towards the harmonisation of the asylum procedure. In the current second phase, Community legislation ought to be established leading to the establishment of a Community asylum procedure and a uniform status for persons to whom asylum or subsidiary protection is granted. Alongside this, the Netherlands aspires to a high level of harmonisation, but without the advance exclusion of any national scope for policy-making.

Such a high level of harmonisation can only be achieved if a sufficient basis of trust exists between the Member States. That basis can be achieved – as described in the Hague Programme – by the continued investment in practical cooperation, including the sharing of knowledge and experience, on the one hand, and by proper evaluation of the existing directives and guidelines, on the other. In this way, it would not only become clear that there are differences between Member States in the application of the *acquis*, but why these exist and whether these differences must be sustained, and if not, how these differences may be eradicated. Forums such as Eurasil play an important part in this process of information sharing and analysis. It is after all repeatedly stated that the same asylum seeker may well be considered for refugee status in one Member State, but not in another Member State, on the basis of the same facts and available information, or only for subsidiary protection or for national status. Under a Common European Asylum System this would no longer have to be the case.

The high level of harmonisation should safeguard the simplicity, justice, speed and effectiveness of procedures. The Netherlands is of the opinion that the assumptions of the current 2000 Aliens Act fulfil these requirements. Simplicity of legislation argues for a restriction of the number of exclusions and optional provisions.

Given the complexity of further harmonisation, preference should be given to firstly harmonising those areas of asylum procedures in which uniform practices have already developed.

Question 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?

Reply 2)

Access to the asylum procedure must be guaranteed in all countries at all times. That is to say that in all the Member States of the European Union the expression of the wish for protection means, on the one hand, that the foreign national is not turned away at the border (thereby

benefiting from the protection offered by the directives and treaties) and, on the other, leads to transit to a location where the asylum procedure can formally commence. If necessary, the definition of 'asylum application' must be clarified if it also appears from the Court of Justice's interpretation that the need for this exists. It is to be expected that such jurisprudence will exist in the near future. The registration of asylum seekers must be improved and harmonised. Another point for attention ought to be the opportunity for legal assistance in obtaining effective access to the asylum procedure. Furthermore, improvements are perhaps necessary in the area of reception regarding access to the asylum procedure.

Question 3)

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

Reply 3)

As regards notions and procedures, it is a fact that their interpretation sometimes differs in various Member States. The aforementioned comparison or evaluation of asylum practices is necessary in order to make a careful judgment of existing notions and procedures (consider manifestly unfounded applications, accelerated procedures, and Article 15c of the Qualification Directive).

Question 4)

How should a mandatory single procedure be designed?

Reply 4)

First of all, the procedure ought to be as simple as possible, without devaluing justice. In the experience of the Netherlands, procedural simplicity is a guarantee of swift conclusion. Part of this simplicity and justice is the availability of legal aid as early as possible in the procedure.

In any event, a mandatory single procedure would need to have the following steps. The procedure begins with registration and (restricted) reception is granted from that moment. There ought to be access to legal assistance at the earliest possible stage, together with NGOs (such as national refugee aid organisations). During this period there is time for medical examinations and explanation of the procedure. The asylum application is signed after this interim period. Interviews then commence. In addition, the Dublin research and the EU communications systems must be consulted and their results considered in the assessment. In the event of an interim assessment following a substantive interview on the merits of the case, it is established whether the application will be processed in an accelerated manner, or within a maximum six-month period. Accelerated processing can lead to a positive or negative decision. This also applies to the longer processing period. During accelerated processing, restricted reception is an option, whereas during the longer processing period open reception is granted. If, during the longer processing period, further investigation appears necessary, it ought to be possible for the procedure to be extended. The opportunity for extension must however be treated with restraint. In both procedures, there must ultimately be a national legal authority which can pronounce a substantive verdict on the asylum application. Reception must be granted in principle up to and including the verdict of that authority.

It is necessary for Community arrangements to be made regarding the maximum processing period for applications, both for shortened procedures and for long procedures, and to ensure that appeals procedures to an independent magistrate have a suspensive effect in principle.

Furthermore, equalisation of the package of provisions linked to the various asylum permits can restrict the number of procedures. Experience in the Netherlands has shown that the differentiation of provisions according to the specific asylum permit often leads to an ongoing procedure in order to achieve a maximum package of provisions. At present, aliens who obtain protection in the Member States on the basis of humanitarian considerations or discretionary authority are not considered in the Qualification Directive. The Netherlands can conceive that in the further process of harmonisation and the move to a uniform Community asylum procedure, criteria which, on the basis of current national legislation, lead to the granting of the right to remain within the Member States must be brought in line, with the result that the Member States will have one residence permit regime.

Question 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?

Reply 5)

The joint processing of asylum applications could run according to a practical Community model and a national model. Processing according to a practical Community model gives immigration service employees the opportunity to assist other Member States in the event of shortage of capacity by interviewing asylum seekers on location or remotely with the aid of telephone interviews, video interviews or the internet and in individual cases to issue a recommendation on the facts upon which the decision on the asylum application is to be based. Member States should also be able to develop one electronic asylum file so that, in principle, files are available to each Member State. If necessary, a file can be translated and processed. This last point will be possible only when there truly is a common asylum procedure.

The processing of a request for asylum according to a national model could take place via a central institution which, by means of an apportionment formula, offers the number of asylum seekers for processing by the Member States, which then complete the application. A condition for this is that a common asylum system is established and that care is taken to ensure that this does not conflict with the Dublin system.

In any event there are important practical steps laid down within the framework of GDISC. At this moment in time the heads of the immigration services are developing training for officials making decisions on asylum cases, and a pool of interpreters has been set up and checked which will be introduced into further practical use during the coming period. These steps are important for further harmonisation.

Question 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?

Reply 6)

With regard to the Netherlands, more far-reaching harmonisation across the whole range of the asylum procedure should be able to take place than is currently the case on the basis of minimum standards. This concerns aspects which are discussed later in the Green Paper such as access, reception, legal assistance, definitions etc. Mainly by stimulating practical exchanges of information about one another's systems and work processes and by developing best practices, a broader support can be created in order to replace more "can-do conditions" in the existing directives with obligatory conditions. There is a specific requirement for the restriction of the current far-reaching authority of states on the point of national protection measures, which are arranged in countless variations alongside the international instruments. Different results to asylum requests can also be prevented by more mutual agreements about the interpretation of facts and circumstances in the light of the existing protection criteria.

Question 7)

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

Reply 7)

The conditions in the Reception Directive offer guarantees and adequate assumptions in order to safeguard the reception facilities and the rights of asylum seekers in relation to these during the procedure. Over and above this, Article 4 of the Directive offers Member States the opportunity to establish or maintain more favourable conditions relating to reception conditions. Naturally it is important that, in the event that it appears from the evaluation of the Reception Directive that Member States are offering less favourable conditions than is laid down in the Directive, they adapt their provisions to this. Perhaps a uniform standard for this more favourable level of provisions can be determined by legislation. Member States which have implemented the Directive can offer support by sharing their knowledge and experiences with other Member States which have not yet completely implemented the Directive. In addition the exchange of knowledge and experience can motivate Member States to apply Article 4 of the Directive in more instances. Also a number of more informal conditions could perhaps be formulated more definitively, such as conditions in the areas of education and medical care.

Question 8)

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

Reply 8)

The Netherlands will contemplate further the question of to what extent harmonisation of the national rules for access to the labour market during the asylum procedure is desirable. Acceptance and recognition of diplomas is in any case an important point requiring attention in this respect.

Question 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?

Reply 9)

It speaks for itself that a harmonised regulation must comply with the requirements established in the jurisprudence on Article 5 of the ECHR, including the period for the lodging of an appeal against custody. The Court does not state a period of time within which the legal decision can be considered to be timely, but in the case of *Kadem v. Malta* repeated its established case law concerning Article 5, fourth paragraph of the ECHR, by ruling that the question of whether the requirements laid down in this article are complied with must be answered on the merits of the specific circumstances of the individual case.

A point deserving of attention for harmonisation in the area of judicial review for the Netherlands is that the periods of time for the lodging of an appeal may not be disproportionately short. Until two years ago the system existed in the Netherlands whereby an automatic judicial review occurred within 10 days of the freedom-removing measure, in the event that the alien had not previously lodged an appeal themselves. In practice, this 'ten day test' led to the placing of a disproportionately large demand on the judiciary, together with a consequent lengthening of the time taken for cases to be heard, which was undesirable for the aliens. Furthermore it appeared frequently that aliens had already left the Netherlands prior to the 'ten day test'. For this reason, and at the insistence of the judiciary, this system was amended on 1 September 2004. Currently, an appeal is set up automatically after four weeks. Aliens may still however lodge an appeal from day one themselves. Regular use is made of this opportunity to lodge an earlier appeal. It is also important that the alien in custody is still considered for legal assistance by being assigned an advisor. In regard to this, the Court ruled in *Tekdemir v. the Netherlands* that in the event that an alien can, at all times, dispute the legitimacy of the removal of his liberty with the judge, the rights of an alien are protected under Article 5, fourth paragraph of the ECHR. The fact that the proposed harmonised regulation provides the opportunity for aliens to be able to lodge an appeal against their custody from day one themselves therefore precludes any damage to Article 5, fourth paragraph of the ECHR.

A point deserving of attention for harmonisation from the point of the view of the duration of custody of aliens is that with too rigid an end term for custody, the possibility exists that, in the knowledge of this, the alien may potentially extend a lesser degree of co-operation to repatriation, because he is aware that without his co-operation, repatriation will not easily be achieved and freedom will result if he sits out the term. This does not prejudice the fact that custody of aliens may only continue if the circumstances which prompted it are still in force.

Question 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)?

Reply 10)

The recent discussions during the JHA (Justice and Home Affairs) Council on Iraq show that the protection percentages differ greatly, but that no repatriation in actual fact took place. The enormous diversity and variation in formal and informal subsidiary and national statuses in the EU must be reduced to a simple compulsory system of (potentially temporary) permission or repatriation.

More specifically, the following applies. In relation to the criteria for the granting of protection, thought must be given on the one hand to more harmonisation of existing notions

in the legislative measures in the first phase, such as “an effective legal system”, “technical obstacles” and “acts of a child-specific or gender-specific nature” (Article 7 paragraph 2, Article 8 paragraph 3 and Article 9 paragraph 2 of Directive 2004/83/EC).

On the other hand it is desirable to arrive at more harmonisation in respect of the criteria on the grounds of which protection can be offered to asylum seekers. In the first phase, refugee status and a genuine risk of serious injury are identified as grounds for protection. Protection may also be offered on other grounds. For example, the legislation in the Netherlands makes it possible to grant asylum on the grounds of convincing reasons of a humanitarian nature which are linked to exit from the country of origin and on which grounds the asylum seeker cannot reasonably be expected to return to the country of origin. In addition to this, consideration is given in the first place to the situation that the alien is traumatised, but consideration can also be given to other particular individual convincing reasons. The legislation of the Netherlands also makes it possible for asylum to be granted to aliens for whom repatriation to the country of origin would be particularly harsh in relation to the overall situation there. This involves a combined form of protection which may be granted to asylum seekers from a specific country of origin, asylum seekers from a particular area of a country or a specific group.

In relation to the rights and benefits which are linked to (a) protection status, consideration can be given to granting persons with a refugee status and a subsidiary protection status the same rights and benefits. This suits the wishes of the Netherlands for the development of the Common European Asylum System and the intention of the Aliens Act 2000 in the Netherlands. This Act assumes one asylum permit to which the same rights and benefits are linked, regardless of the grounds upon which it is granted.

Also of importance is that discussions take place regarding the effective complete of second and subsequent asylum applications, such as their accelerated processing, within a European context.

Question 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?

Question 12)

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

Replies 11 and 12)

The Netherlands is an advocate of a uniform status for refugees and those granted subsidiary protection. It must also be possible for this status to be granted to asylum seekers who have the right to protection on other asylum-related grounds (see 10 above). The Netherlands currently already has one uniform asylum status in the form of a residence permit, to which the same rights and benefits are linked, regardless of the grounds upon which it is granted. In addition to the advantage of the simplification of the status system, this method also prevents the situation that asylum seekers proceed on to a better status, that is to say, a residence permit, which offers more rights and benefits. Because the residence permit is also granted to asylum seekers who are refugees within the meaning of the Convention on Refugee Status, the rights and benefits of the single uniform asylum status must be positioned at the level of that convention.

Question 13)

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

Reply 13)

In addition to the categories of aliens stated in the Reply to Question 10 there exists a requirement for a common approach to persons who come under category IF and serious criminals. In respect of the exclusion clauses, co-operation can occur in a European context to commonly deport persons who come under category 1F and to arrive at a harmonisation of the definitions of serious wrongdoing. Persons who are also covered by the exception clauses or are declared as undesirable must be recorded on SIS, so that there is European-wide recognition of who is covered by this. In view of the non-refoulement condition of Article 3 of the ECHR, undesirable persons may invariably not be deported. Although this does not have to lead to status via Community Law, it could be useful to discuss this further within a European context and to arrive at agreements.

Question 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?

Reply 14)

The European Commission's proposal to expand the scope of Council Directive 2003/109/EC to persons who benefit from international protection appears to demonstrate the importance of an EU mechanism for the mutual recognition of national asylum decisions and the possibility of transfer of responsibility for protection. The proposal entails that aliens who benefit from international protection, who have acquired the status of long term resident in the first Member State and exercise their right to residence in the second Member State and/or have acquired the status of long term resident, are removed to the first Member State if the second Member State is considering deportation. The reason for this is that there is no common mechanism for the transfer of protection. Deportation to the first Member State does not fit in with the assumption that all Member States are party to the Convention on refugee status and the ECHR and honour the obligations of those treaties. Neither is it in keeping with the progressive harmonisation in the area of asylum. With regard to these aspects, it goes without saying that the second Member State deports the person concerned to the country of origin if that person is no longer to be considered for international protection.

The further harmonisation in the area of asylum progresses, the more transfer of protection within the EU Member States becomes a workable option. Apart from that, the manner in which this is achieved must be carefully considered. An EU instrument could be opted for, but it is also possible that all EU Member States ratify and implement the Council of Europe agreement concerning the transfer of responsibility concerning refugees. A large number of Member States, including the Netherlands, are already party to this agreement. The advantages and disadvantages of the different options for the implementation of transfer of responsibility must also be mapped out.

Question 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?

Reply 15)

On the basis of the results of the evaluation of the directives which are already in operation, it should be possible for the best practices as utilised in Member States which have already implemented provisions for vulnerable groups, to be shared. In the event of any potential shortcomings and/or lack of expertise indicated by Member States, expertise and experiences can be exchanged (for example via EU working groups and/or conferences in which experts from the various Member States participate). If necessary, European funding must be made available for this purpose (see for example the strategic guidelines for the multi-annual programme of the European Refugee Fund (ERF) in which specific attention is demanded for vulnerable groups).

Question 16)

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

Reply 16)

The common elements concerning vulnerable asylum seekers in the Directives for procedures and qualification can be further elaborated. A broader safety net for vulnerable groups would be welcome in the Qualification Directive. An important point which is worthy of attention is how membership of these groups can be recognised in time. Extra safeguards can be incorporated into the procedures, such as the presence of a confidential adviser at the hearing. Furthermore, it is important to recognise a common position regarding to what extent a medical bodily examination is necessary or desirable as part of the asylum procedure. An official European ('Country of origin information report') is therefore desirable in order to map out the opportunities for medical treatment in the country of origin, and also in the countries of the EU.

Member States can exchange more expertise on special listening techniques for children, older people and people who have been traumatised. The issue of interpreters for these processes also requires attention.

Question 17)

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

Reply 17)

The acceptance and recognition of diplomas helps in the integration of refugees with a residence status in the (European) labour market. Statutory measures can be considered for this purpose, and also in the area of tackling discrimination. Measures (although not statutory) can also be considered in the areas of housing, study and education.

Question 18)

In what further areas would harmonisation be useful or necessary with a view to achieving a truly comprehensive approach towards the asylum process and its outcomes?

Reply 18)

Harmonisation of asylum procedures also implies harmonisation of elements of public (procedural) law. It therefore concerns elementary issues from the calculation of terms to the means of evaluation of the decisions of administrative authorities by the presiding judge; complete or marginal evaluation? Harmonisation of the asylum area, however desirable, may not break through the uniformity of national procedural law.

Question 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?

Reply 19)

Areas in which cooperation can be improved are education, sub-areas such as traumata and other vulnerable groups, quality monitoring, establishing forms of fraud, identity recognition and burden sharing. For example governmental and non-governmental organisations can be involved in each sub-topic, by organising consultations. Furthermore it is of great importance for good, practical co-operation to further harmonise definitions and to exchange information. This can happen with ad-hoc collaboration projects, 'twinning' and expert exchange programmes. Mobile teams can also be an important stimulant for the distribution of expertise, working methods and best practices, for example in the area of status determination. Financing for the above activities must in principle be found from within the existing funds intended for this purpose.

Question 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?

Reply 20)

In order to allow practical cooperation to contribute to the development of a common approach to the issues mentioned, a base is required for an inventory of the Member States' best practices in this area. In addition to this a common approach to the subject of gender- or child-specific legal procedures can be set in motion by the inclusion of these categories in official European reports. Special regulations must come into being taking account of vulnerable groups in the asylum procedure. This also applies to medical problems, such as trauma. A form of category management in respect of certain vulnerable groups comes to mind. The conditions in the existing Directives on vulnerable groups must be expanded and clarified.

In respect of the exclusion clauses, co-operation can occur in a European context to commonly deport persons who come under category 1F and to arrive at a harmonisation of the definitions of serious wrongdoing (see also Reply 13). Persons who are also covered by the exception clauses or are declared as undesirable must be recorded on SIS, so that there is European-wide recognition of who is covered by this. Furthermore, and for the benefit of

exclusion clauses, there is a requirement for foreign judgments and supporting evidence to be made available (insofar as this is not yet the case).

Fraud can be combated with a good information exchange, the joint assessment of fraud and control of registration.

Question 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?

Reply 21)

The Netherlands is an advocate of structural support and ensuring the sustainability of cooperation activities in the EU. This is also necessary in the second phase of harmonisation. Long term financial support is necessary for this. GDISC is already an existing forum of directors and immigration services, established for the purpose of practical cooperation. Practice demonstrates that the immigration services operating within this institution already cooperate well. Worthwhile and necessary projects arise from GDISC. GDISC can be expanded into a European support office. Furthermore there is also agreement on this within GDISC's steering committee. This is a unique opportunity to build practical support from the 'bottom up'. Now is the time to begin developing GDISC into a European support office.

The office could also be tasked with the monitoring of the uniform implementation of the European acquis and to initiate and coordinate cooperation between European national services. The office can also manage a training programme, whereby the continuing input of Member States into people and resources is continually sought.

Question 22)

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

Reply 22)

A specialised European support office would have to consist of a small permanent staff. Potential tasks could be the comparison of asylum practices in the various Member States, the overseeing of policy development in the Member States, the management of an information portal on countries of origin, burden sharing and resettlement projects, and training. The Member States can be requested to make colleagues available on a task by task basis such as now already happens with the Rapid Intervention Teams within the framework of Frontex.

Question 23)

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

Reply 23)

In view of the circumstance that the Dublin system possibly leads to an unequal distribution of asylum seekers across the European Union territory, measures which resolve this can be considered. However, clear criteria must be established to determine whether this distribution is indeed unequal. For measures the question of the offer of aid to a receiving country in the national assessment of asylum seekers arises in the form of colleagues and facilities and the availability of funds and/or resources by the assisting country to a third country in order that prior assessment of asylum seekers may take place in reception centres there. Another option

could be that for a time recognised asylum seekers are adopted from Member States where the number of asylum seekers exceeds the capacity of that country. Asylum seekers are then initially assessed in the country in which they arrived and if approval is granted, transferred to the assisting country. The assisting country can also extend assistance in the repatriation of refused asylum seekers.

In setting up a distributive code for asylum seekers, family members already within the EU Member States must be taken into account.

Question 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?

Reply 24)

Based on the evaluations of the Solidarity Funds it can be seen if and how a more effective system of material measures can be arrived at. For a time an intra-EU resettlement construction can potentially be considered. In time a design for intra-EU resettlement can be considered. That is to say that already recognised refugees can be adopted from one Member State by another Member State. In addition to the promotion of a fair distribution, this should specifically be able to help in bringing families together. Furthermore European resettlement must not be at the expense of the UNHCR resettlement programme, which is after all intended to resettle refugees from third countries.

Question 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?

Reply 25)

The EVF can be made more effective by the introduction of provisions to allow project leaders in different Member States to contact each other. The EU could further stimulate the exchange of best practices for example by organising conferences which are attended by project organisations and (representatives of) the responsible authorities in Member States. GDISC can play a facilitating role in this. Furthermore by introducing measures, funds from the European Refugee Fund can be made available more quickly than is currently the case. The experience of EVF I and EVF II showed that the available funds in the first two budget years following the Council Decision could not be fully utilised because the funds were not made available in time.

The measures for harmonisation and information sharing on a national level as mentioned in the text are provided for in the EVF III regulations. It is now down to the European Commission to ensure supervision and stimulation of Member States to bring about compliance. The mechanism for information sharing at an EU level is currently provided for by a website which is under development on which all completed and current EVF projects can be found. The organisation of conferences could be additional to this.

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

Reply 26)

Discussions with countries outside the EU come to mind, for example regarding projects issuing advice in originating countries in order to prevent people coming to the EU as asylum seekers, or projects which offer more opportunities for the combination of repatriation and development cooperation.

Question 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?

Reply 27)

The Netherlands proposes restraint on potential further development of Regional Protection Programmes until after the evaluation planned for the end of 2007.

Question 28)

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

Reply 28)

Broadly speaking, the Netherlands has a preference for progression linked to the UNHCR. In this way the EU will dedicate itself to the achievement of sustainable solutions (by including twinning projects and the offer of opportunities for resettlement in the EU, amongst other methods).

Question 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?

Reply 29)

Refugee issues must be systematically included in country and regional strategy papers. There must be close relations between the relevant players in the field of intra-EU asylum and the EU external policy in respect of refugee support so that maximum coherence between the two can be achieved. For example this could be in the form of regular meetings of a horizontal EU working group in which all the pillars of the EU are represented, in order to discuss the circumstances of refugees in third countries. These meetings must be fuelled by HOM-reports and relevant players such as the UNHCR could be invited.

Question 30)

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

Reply 30)

Although financial resources from the EU can give support to efforts by the Member States toward resettlement, the political will for this must exist in the Member States. It must firstly be accepted by the Member States that the intra-EU asylum system is closely interwoven with the international regime of refugee protection. In finding sustainable solutions for refugees, the establishment of the possibility for safe and humanitarian repatriation to the originating country is of primary importance. If that is not possible in the short term, the emphasis is upon the protection of refugees as close as possible to the originating country, and if there are bottlenecks in this system, upon resettlement elsewhere. The Netherlands is committed to all

these areas and expects the same from the EU. Humanitarian considerations are central to this. If countries in the originating regions cannot extend sufficient protection, then it is a matter of secondary movements and therefore the protection of the EU asylum policy can also play a role in that region. In addition to the support which the EU offers to countries in the region for the protection of refugees, a good resettlement policy is also of great importance. The Netherlands will continue to be committed to a European resettlement policy.

Question 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?

Reply 31)

A first step which could arise from this is that new 'resettlement countries' cooperate with existing 'resettlement countries' and benefit from their existing logistics and infrastructure. For example, it is conceivable that an existing 'resettlement country' undertakes selection missions and looks after pre-boarding cultural orientation programmes for the new country (that is to say, short term programmes for the invited refugees which prepare them for their new life in the receiving country). By cooperating the new country is able to carry out the entire resettlement procedure itself. Furthermore, research must be undertaken into why the existing financial incentives are not effective for some Member States and steps taken to improve this. On an operational and institutional plane, better coordination at an EU level should be strived for. This can be initiated with such joint resettlement missions.

Question 32)

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

Reply 32)

Commitment to the area of resettlement by the EU must also be considered outside of the regional protection programmes. In every situation in which repatriation and local integration are not possible, resettlement can be considered. This can be particularly relevant for large groups of refugees in the EU, in order to lighten the burden upon neighbouring countries and to prevent the secondary movements of refugees.

Question 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?

Question 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?

Reply 33 and 34)

Knowledge of existing international obligations must be expanded by the means of training for border management officials.

A rescue at sea regulation can be drafted for boat refugees who find themselves on the borders of the EU, according to the example of the positions developed by the UNHCR.

Significant to this is that binding arrangements are made with Member States which have sea ports to allow drowning persons on board, and if they so desire to allow those persons to enter into the asylum procedure.

Within the context of practical cooperation, personnel and resources can be made available for assistance with the assessment of asylum applications.

Further examples are the EU financed projects relating to immigration procedures surrounding asylum, visas and repatriation in conjunction with the authorities in the Ukraine and projects in preparation for Bosnia-Herzegovina for example.

Question 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?

Reply 35)

In order for the EU to address refugee issues at an international level, further harmonisation of asylum practice is first of all necessary. In addition to this it goes without saying that a close cooperation with the UNHCR is necessary. Alongside it, the EU will make a contribution to the international commitments to the development of sustainable solutions for refugees.