



**Response to the consultation on the
“Green Paper on the future Common European Asylum System” COM (2007) 301**

ANCI – Immigration Department

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2 – LEGISLATIVE INSTRUMENTS

2.1. Processing of asylum applications

In applying the measures regarding access to the procedure for the granting of international protection, the European Union is faced with two different requirements, which are too often dealt with in a conflicting way:

- external border control, according to policies and strategies aimed, among other things, at guaranteeing the internal security of individual Member States and of the territory of the Union as a whole;
- proper protection of individuals who are entitled to this protection.

This conflict has prevented the twin objectives of border control and asylum from being pursued in a standardised way, which has in turn led to the implementation of alternating measures and policies: the strengthening of control measures has penalised measures aimed at protecting asylum and vice versa.

Contrary to the measures implemented to date, the procedures used for identification, admission to the territory and access to the asylum procedure must not be penalised by action aimed at guaranteeing the internal security of the Member States.

The approach that is therefore required in order to ensure a standardisation of border control measures (and therefore internal security, in the light, among other things, of anti-terrorism provisions) and, at the same time, to guarantee protection, is a **human rights led approach**.

IN TERMS OF PROPOSALS AND OPERATIONS

- Provide for **common European guidelines** for managing the entry into Europe of people applying for international protection.
- These guidelines should also provide for **close co-operation**, particularly at national level, between border police and border patrol forces on the one hand and non-governmental organisations and other protection bodies involved in providing support and assistance to migrants arriving in the EU to request international protection on the other hand.
- The provisions for this co-operation should establish a **Europe-wide training and updating programme**, aimed in particular at border police and frontier patrol forces, which allows for the inclusion of modules promoting discussion with non-governmental organisations and other protection bodies.

- Plan and test **common procedures for the identification** of migrants that can be applied within a specific period of time (possibly not exceeding 7 days), with firm and precise measures, respecting fundamental human rights and the dignity of individuals.
- Provide for and support the provision at border crossings (airport, port and land crossings) and entry areas of **guidance and assistance services** for foreign citizens intending to apply for international protection. These services could be managed by non-governmental organisations and other protection bodies, developing methods of co-operation with police forces, complying with the common guidelines and training programmes.
- Provide for periodic **monitoring missions** by the European Union to frontier and entry areas.

As regards the procedures for examining international protection requests, it is essential to identify **common instruments** that will guarantee the standardisation of assessments among the individual Member States and therefore allow operational application of the provisions contained in European directives (no. 2005/85/EC in particular).

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Provide for a **handbook**, to be used by bodies assigned to examining international protection requests in the individual Member States, containing instructions regarding:

- Methods for conducting the interview with people applying for international protection (managing relations with the interviewee; types of direct and indirect questions; attention to be paid to gender differences; how to deal with the recounting of particularly painful memories, such as torture and other violent acts; the presence of qualified interpreters; methods for recording and managing sensitive data; etc.).
- Getting hold of documents that provide updates on the situation in the countries, even if they are included in lists of safe third countries, safe countries of origin or non-EU European countries.

Furthermore, provide for the bodies assigned to examining requests for international protection to receive periodic **training and updating opportunities** and for them **to meet, exchange ideas and hold discussions**.

2.2. Reception conditions for asylum seekers

There is no doubt that secondary movements within the European Union stem from the different responses given by individual Member States with regard to reception and, above all, socio-economic integration.

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We therefore believe the situation calls for **compendiums to be produced** of the large amount of material produced in recent years (in the context, *inter alia*, of the considerable amount of research work carried out in the framework of European projects), aimed at recording best practice, particularly with regard to all the different aspects of integration: work, housing, social.

As regards reception, experience gained in Italy from 2001 onwards through the *PNA – Programma Nazionale Asilo* [national asylum programme] and subsequently through the *SPRAR – Sistema di Protezione per Richiedenti Asilo e Rifugiati* [national protection system for asylum applicants and refugees] has allowed the concept of “material assistance” (food and housing) to be superseded by

the concept of “*integrated reception*” (including guidance and assistance services for the individual and socio-economic integration routes).

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The following documents we have produced are therefore made available to the European Union, to assist with the process of creating a common Asylum System:

- SPRAR guidelines for the establishment of local reception projects;
- Two reports on the Italian Protection System.

As well as **expertise in the management of integrated reception projects** and targeted action taken in the interests of people requesting international protection and the most vulnerable refugees.

As regards **detention**, it is important to confirm once more (in the operational instruments that Europe can and must make available to the parties involved in managing the various stages of the common Asylum System and elsewhere) that individuals requesting international protection cannot be held solely for the purpose of examining their application. Any **restrictions on freedom** of movement must be imposed only in the event of prolonged identification procedures which – as mentioned in point 2.1 - require further standardisation work.

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It is essential for the European Union to equip itself with a **charter** (of a regulatory nature) that regulates the status of applicants for international protection whose freedom of movement has been restricted, as well as the respective practicalities, management methods and services to be provided within the facilities allocated to detaining these individuals.

2.3. Granting of Protection

The concept of international protection is still very closely linked to strict definition of a refugee as decreed by article 1 of the Geneva Convention. The international context and the profile of people seeking protection have undergone profound changes since 1951, challenging the characteristics stated in the Geneva Convention, which might have described the figure of a refugee until the 1970s but have become obsolete since then.

Conflicts arising from decolonisation processes, the ever more aggressive nationalistic demands arising from the increasing extremism of the concept of self-determination, the spread of situations involving the violation of fundamental human rights, the major international crises of the past thirty years (Horn of Africa, Great Lakes, Former Yugoslavia, Middle East) have radically altered the profile of people who seek protection and who are increasingly fleeing from situations of generalised violence and armed conflict rather than individual persecution.

In view of this, we can definitely subscribe to the provisions contained in directive no. 2004/83/EC, which define and standardise the subsidiary forms of protection to be granted to persons who cannot be considered refugees within the meaning of the Geneva Convention.

This protection should be considered complementary to the status of refugee rather than subordinate, inferior or secondary. The effort made by the European Commission to define the condition of those entitled to subsidiary protection, in a way that supplements and extends the provisions of the Geneva Convention, is therefore to be commended.

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This reading of the Community's provisions allows two forms of international protection to be provided for (refugee and subsidiary), so as to broaden the definition of people eligible for protection, while establishing **a uniform status** in terms of rights and duties.

The same rights and duties, therefore, regardless of the type of protection granted.

The two types of international protection granted by a Member State must be **mutually recognised** by all the other States of the European Union.

In this new context, provision must be made for **responsibility to be transferred between Member States** when a person entitled to international protection moves his/her residence from one State to another, thus guaranteeing freedom of movement (albeit directly controlled and monitored) within the territory of the European Union.

In view of this uniform status, which could be defined on the basis of the outline already contained in European directives, the European Union must also equip itself with regulatory and operational tools allowing action to be taken in the case of **non-expellable** people, meaning people who cannot be removed from Community territory.

Italy already has a provision defining the other categories of people who cannot be expelled or repatriated: article 19 of Legislative Decree no. 286/1998.

With this in mind, when transposing directive no. 2005/85/EC, the Italian government took into consideration a third type of protection, the so-called "humanitarian protection" afforded to migrant citizens not entitled to international protection but nonetheless requiring specific protection measures.

2.4. Cross-cutting issues

2.4.1. Appropriate response to situations of vulnerability

The complexity involved in identifying the most vulnerable applicants for international protection lies in the difficulty of pigeon-holing individuals within pre-established grids and categories.

With the exception of certain types of people who in themselves require specific reception and protection measures (unaccompanied minors, physically and mentally disabled people), vulnerability should be determined according to the specific characteristics of the individual, his/her past experiences and an assessment of them.

Over the years (as demonstrated by the many EIDHR programmes aimed at supporting the victims of torture in Europe), "standard packages" for vulnerable categories have been found to be fallible. They may have universally standardised the type of action taken, giving security to operators and providing them with pragmatic operational tools, but they have not always achieved the expected results: success of support and/or rehabilitation processes as well as of the reception, protection and integration of people in particularly fragile situations.

As regards the victims of torture in particular we have seen that support and rehabilitation measures are doomed to fail:

- unless they are integrated with specific action aimed at ensuring reception, protection and socio-economic integration;
- if they are implemented exclusively by specific organisations which have no dialogue with national and local welfare organisations or with other programmes and services aimed at people applying for asylum and refugees.

IN TERMS OF PROPOSALS AND OPERATIONS

- The timetable for the creation of a common Asylum System must provide for a wide-ranging and detailed debate aimed at outlining **common standards for identifying individual cases of vulnerability**.
- We propose that the tools Europe is being asked to devise in order to support the work of the various parties involved in the Asylum System (guidelines, handbook, training programmes, etc.) should include **specific guidelines and indicators to facilitate the identification** of situations of vulnerability and therefore make them easier to manage.
- In order to de-categorise cases of vulnerability in favour of an approach that examines and takes charge of the individual, it is essential that provision be made for an increase in the number of operators and, consequently, a **widening of the responsibilities of local welfare services**. In this respect, the European Union can intervene both by earmarking resources to support specific capacity-building programmes and by means of training and updating programmes to be promoted in the Member States.

2.4.2. Integration

As demonstrated at the time of the presentation of the results of European projects, the integration of asylum applicants and refugees cannot be viewed as a single, definitive event. Integration is an ongoing process that can never be deemed complete and the primary objective of which is to allow the asylum applicant and refugee to achieve his/her own level of independence. The integration process follows a sinuous path towards achieving concurrent integration in several different areas (employment, housing, social) and involving different stages (gaining knowledge of the area, access to services, involvement).

When dealing with the difficulties faced by second generation migrants it is essential for integration policies to avoid the danger of always considering refugees (in this specific case) as “*foreigners*” or “*guests*”, following a single integration path which requires the *foreigner* to adapt to a *hosting structure* perceived as advanced, firm, strong and unchangeable. The net distinction between “us and you” is an obstacle to integration and furthermore a risk to internal security, because the relationship with the local community is one of otherness and distance.

It is instead essential for the political and cultural perception to change in a way that favours the development of *contamination paths*, allowing refugees to feel like protagonists and involved in the life of the districts, cities, States, European Union that belong to them as well. Participation in the political life of the territories, beginning with active and passive voting rights, at least in local elections, is of real value, both in concrete and symbolic terms.

The Italian experience with the SPRAR system shows that these contamination paths, and therefore any action that considers all the different aspects of integration in all its complexity, should be implemented with the full involvement of the local authorities that are institutionally responsible for *governing* the coexistence. This involvement should not be perceived as a response to emergencies (landings, humanitarian crises) but as the result of an explicit political and operational decision that is approved by all the public and private entities involved at local level.

The development of this sense of belonging must begin at school, where **reception and integration programmes for refugee pupils and students** can be organically developed by all school (and university) systems in the Member States.

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- Establish **common guidelines** for action to be taken, with the wide-ranging involvement of local authorities, to make it easier for asylum applicants and refugees to access social and health services and find housing, providing for measures to develop involvement with the local communities
- Establish **firm and accurate rules** for: the recognition of educational qualifications, professional retraining; certification of skills.
- **Financial resources** to support entrepreneurship among refugees, involving close co-operation with indigenous businesses in the Member States.

3 - IMPLEMENTATION – ACCOMPANYING MEASURES

IN TERMS OF PROPOSALS AND OPERATIONS

1 – Set up a European office to coordinate the process of implementing a common Asylum System.

The office should be permanently staffed, in our opinion, by a reasonable but not excessive number of people who are highly skilled in the field and have practical experience (administrative and operational) as well as an adequate academic background regarding the various aspects of asylum: legislation, protection and borders, reception, integration, psycho-social issues. In addition to the permanent staff, the office will also be able to call upon experts to fill specific roles for fixed periods of time.

The European asylum office will have the following tasks: analysis; observing and monitoring previous activities; managing consultation and the collection of contributions from Member States for the implementation of specific actions and interventions; submitting proposals to the European Commission and urging it to produce legislation and guidelines, implement programmes, plan economic resources, coordinate action in the field; coordinating activities to be implemented; responsibility for verifying actions taken.

2 – Draw up European guidelines to regulate the various aspects of asylum:

Management of entries and access to national territories and to the procedure for recognising entitlement to international protection. Common standards of *integrated reception*. Integration process standards and tools. Identifying, taking responsibility for and support people in vulnerable situations.

3 – Standardise common procedures for identifying the citizens of third countries applying for international protection.

4 – Review the Schengen Treaty, providing for the possibility of transferring responsibility for recognised international protection between Member States.

Consequently, provide for a European regulation to be issued that governs the following between Member States: mutual recognition of the protection granted; transfer procedures; uniformity of status between refugee and person entitled to subsidiary protection.

5 – Introduce services at borders and in first arrival areas to provide guidance and support to foreign citizens requesting international protection.

By this we mean services managed by non-governmental organisations and other protection bodies, providing assistance and paths for dialogue with police forces.

6 – Draw up a handbook for national bodies assigned to examining applications for international protection.

We propose an operational tool that will specify how an interview with international protection applications should be conducted (managing relations with the interviewee; types of direct and indirect questions; sensitivity to gender differences; how to manage the recounting of particularly painful episodes like torture and other violent acts; the presence of qualified interpreters; methods for recording and managing sensitive data; etc.); how to get hold of documents that provide updates on the situation in the countries, even if they are included in lists of safe third countries, safe countries of origin or non-EU European countries.

7 – Widening of European Union stakeholders.

An essential result of the work carried out by the European asylum office must be the development and spread of tools for consulting with the various players, key stakeholders, for the implementation of a common Asylum System, from national institutions to local authorities, from police forces to NGOs.

8 – Creation of training/updating programmes aimed at:

police forces, NGOs, organisations assigned to examining asylum applications, health and local welfare services, local authorities, executives of national institutions.

9 – Organisation of meetings and opportunities for dialogue.

A “plenary” European conference on asylum and regional conferences, in addition to the launch of a programme of staff exchanges, a kind of *Erasmus* for asylum workers.

10 – Planning of lines of financing and competitive tenders for strengthening the skills of national and local operators.

With particular regard to the psycho-social sphere and to identifying and managing situations of vulnerability.

11 – Planning of periodic monitoring missions.

Teams of experts coordinated by the European asylum office will carry out periodic missions to verify progress in the activities undertaken, as well as to monitor actions taken at national level. In particular, the missions will be focused on: borders/identification/access to the procedure/detention; examination of international protection applications; reception; integration paths.

12 – Drawing-up of a charter to regulate the status of international protection applicants being detained.

By this we mean a document containing provisions that define the status of international protection applicants whose freedom of movement is being restricted, as well as dealing with practical aspects, management procedures and services to be provided inside detention facilities.

13 – Plan for the distribution of European resources.

In order to implement the actions detailed above and guarantee that they benefit the individual Member States, it is essential for the resources earmarked for European asylum policies to include a percentage that is managed at Community level and percentages allocated to the individual Member States. It is necessary in this respect for States in which asylum applications are increasing or constant over time, as well as border States, to receive a financial allocation that is commensurate with the actions they need to take.

The implementation of a common Asylum System will require a great deal of financial resources and, especially in the first five years, a waiver to the rule that requires European funding to match national funding.

4 – SOLIDARITY AND BURDEN SHARING

4.1. Responsibility sharing

Harmonisation of the standards of procedure, reception, integration and involvement in local communities is the first deterrent against the secondary movement of international protection applicants or holders within the territory of the European Union.

The considerable effort required to achieve this harmonisation and to finally build an effective European Asylum System is the main tool by which duties and responsibilities can come to be fully shared among the Member States of the European Union.

We cannot hide the fact that achieving this objective is decidedly not only time-consuming but also costly in terms of human and financial resources. It is a gamble we have to take, however, in order to achieve a model of intervention from which the European management of migratory flows in general will benefit.

With this in mind, we must provide for healthy and detailed planning of European financial resources based on lines of financing which can be accessed in order to take action on the ground, especially in terms of organising training and exchanges of personnel and ensuring the involvement of local stakeholders in the European consultation processes.

Adequate resources must also be provided to support countries that have recently acceded to the European Union and Member States with a more recent history of managing forced migrations, providing additional funding, including financing – for the first five years – to supplement any structural shortcomings that may exist at national level.

In this context, it would be superfluous to think of establishing resettlement programmes within the European Union itself.