

GREEN PAPER

on the future Common European Asylum System

PROPOSALS AND COMMENTS FOR FURTHER CONSIDERATION

REPUBLIC OF SLOVENIA

1. INTRODUCTION

The Republic of Slovenia welcomes and supports further efforts for building the Common European Asylum System. The Green Paper is definitely one of the most appropriate steps towards further activities and processes in this field.

Comments and proposals for further consideration are indicated in individual chapters, in line with the structure of the Green Paper.

Proposals and comments are to be submitted to the European Commission no later than until 31 August 2007. Based on the collected proposals the Commission will organise a public debate in October 2007 (November 2007?).

2. LEGISLATIVE INSTRUMENTS

2.1. Examination of applications for asylum

Examination of application for asylum within or on the basis of a common asylum procedure is in our opinion by all means the chief as well as the most important objective pursued by the European Union. The variety of national arrangements in terms of the process is the biggest challenge demanding lots of national appeasement and the omission of individual national traditions. We believe therefore that the first and foremost element is **a phase approach** towards the harmonization of the procedure. The latter should be based on a progressive harmonisation of rules and finally on the introduction of a uniform or common asylum procedure, defined on the EU level.

In the initial stage it is particularly important to harmonise (EU level) those institutes of the asylum procedure that are already practically implemented in Member States in the same way and later continue with those that do not require many changes in national systems. Only in the end and as the time goes by, the institutes that differ entirely in the Member States should be harmonised.

With regard to the legal instrument it is probably needless to say that we see the Regulation as an adequate instrument to provide legal value of the very idea. Initially it would be necessary to include as many obligatory provisions (»must/shall«) as possible in the existing directives.

We believe that both legally and actually the existing system represents a sufficient guarantee in terms of the protection as well as the rights of those who are eligible for international protection.

We agree that the efficiency of the system or procedures themselves could be further improved. Among the institutes that could be harmonised on the EU level and would at the same time enhance the efficiency of the system we see above all:

- A uniform application for asylum in terms of a uniform sample or pattern, reception modality, same standards of rights (legal aid, translation, interpretation...);
- Uniform criteria for the authority responsible for receiving applications for asylum which includes the evaluation of the alien's first statement;
- A uniform modality of access to asylum procedure;
- A uniform arrangement of border and airport procedures;
- Uniform criteria for the restriction on movement in the individual stages of the asylum procedure.

By all means it is necessary to study again the sense and the implementation of safe country of origin institute. In the light of a common asylum procedure it would be necessary to establish a common European list of safe countries and perhaps even exclude the possibility of setting up national lists. It should also be said that we are aware of different positions in Member States regarding this issue.

As regards a common examination of applications for asylum we believe that a common legal basis is important. It should be the same and binding for all the Member States. It is only on that platform that we can further discuss a practical implementation of a common examination of application for asylum on the EU level.

Inasmuch as the question (no. 5) concerns rather the burden sharing issue, we do not imagine conducting asylum procedures without a direct contact with the applicant. Burden sharing can be regional or by the applicants' countries of origin.

2.2. Reception requirements for applicants

As regards the reception of applicants for asylum we believe that it would be reasonable to harmonise the following fields at the first stage:

- Health care of beneficiaries;
- Certain segments regarding the reception (for example common criteria and a common procedure for cancelling the residence and uniform rights of these persons); and
- The procedure (uniform applications for asylum issue) and the right to education. With regard to the latter we share the opinion of those who leave further education (secondary and university level) to national needs and possibilities. We believe that such derogation and differences in individual Member States would not have a negative impact on the unity of the system itself.

Material reception conditions must be harmonised. It is the scale of material conditions that is important not so much the form itself. The form can be left to Member States that will probably adapt it to their own situation: accommodation capacities, possibility to find other types of housing etc.

We believe that it is the reception that makes a certain Member State more attractive to those who seek international protection and consequently encourages the secondary flows of asylum seekers. The harmonisation of all the segments would definitely be for the benefit of a common system. We are aware of differences between the Member States and their wish to make certain progress and we try to follow the above phase approach.

We therefore believe that it is still not the right time to harmonise the rules on the reception of asylum seekers and their access to the labour market. In our opinion the existing arrangement in the directive regarding the right to employment is at the moment entirely adequate and needs not be amended. We believe that the applicants' right to work should not be extended. The reason for this is the fact that asylum procedures in Member States are in general very short and efficient. In cases where this is not possible the existing arrangement already allows these persons the possibility of employment. It is equally necessary to adapt other integration measures to the short-term nature of the applicant's status and the degree of probability that he or she will be granted protection.

Detention or the restriction on movement is in our opinion an institute that should be harmonised to the highest possible degree. What we have in mind are grounds, duration as well as legal and procedural aspects (decisions, appeals...). It is particularly necessary to introduce common rules for restricting the movement on applicants for asylum set out in the so called »Dublin procedures«.

2.3. Granting protection

Criteria for granting protection and rights as well as benefits deriving from the statuses can be in our opinion improved in two ways: on the one hand the existing directives leave the Member States too much space so that already on the normative level there are huge differences. On the other hand more attention should be paid to a uniform application, interpretation and decision taking based on these provisions - therefore to the practical aspect. It is urgent to include justice, constitutional courts and other bodies in the Member States that decide asylum cases at various instances.

As regards uniform statuses it is necessary to continue with the harmonisation, namely for each individual status. In particular we see the need for upgrading the institute of subsidiary protection both on the normative level and with regard to the application of the existing provisions.

We do not agree with the introduction of a single status for all the beneficiaries of the international protection. The grounds that serve as the basis for each status namely differ too much in terms of contents, background and also duration.

It would be necessary to introduce a new status for the categories of persons who cannot be deported. This status would be conditioned exclusively by social and medical reasons. At the same time it should be defined exactly whether the requirements are to be established in a common asylum procedure and which is the authority responsible for that task (especially in those countries where the authority responsible for deporting aliens is not the asylum authority). The essential question is whether this problem can be solved within the international protection or separately from it. In our opinion this is more a case of deporting or removing aliens from the country (asylum procedures in such cases are normally closed) and that this area (grounds and status) should not be mixed with classical questions of international protection.

Obligation deriving from Article 3 of the European Convention on the Protection of Human Rights is an absolute obligation for the signatories and does not tolerate any exceptions. Already to this day the States had to find an adequate solution for the persons who cannot be deported from the country which is perhaps a further argument for not including this issue in the international protection.

In the future it will be necessary to elaborate on the criteria for separating the beneficiaries of subsidiary protection and those persons who belong to the protection under Article 3 of the European Convention on the Protection of Human Rights.

In the light of recent experiences it is obviously still too early for a mutual recognition of asylum decisions and the transfer of responsibility. It is first necessary to assure certain conditions or requirements, particularly to harmonise the interpretation of decisions with regard to granting statuses by all the responsible authorities (including instance bodies) in all Member States. It would be necessary to study also the question of criteria for approving the responsibility transfer: available capacities or facilities in member States, funds/resources for integration. The mutual recognition of asylum decisions and the transfer of responsibility will of course be possible once the asylum procedure is uniform as well as the policy of recognising or granting the protection.

2.4. Cross-cutting questions

As regards vulnerable categories we believe that a uniform definition of vulnerable categories and a uniform treatment (accommodation, health care, whether to deal with these persons in an accelerated procedure or to restrict their movement...) are necessary.

One of the measures for enhancing national capacities to respond to vulnerable cases is training of experts above all with regard to previously defined uniform criteria for vulnerable groups, exchange of so called »best practices« etc.

With regard to integration issues Slovenia otherwise maintains the position that integration measures are designed for those persons who have been granted a long-term (permanent) form of protection. As for applicants for asylum and other short-term forms of protection we believe there is no need for classical integration measures since this status is merely of a transient nature and the eligibility procedures are relatively short.

In connection with providing comprehensive second stage instruments and additional fields that are currently not included in the Community acquis we would like to say that harmonising »special asylum procedures« (manifestly unfounded applications, border and airport procedures, new application for asylum, safe countries...) would bring an added value to the Common Asylum System.

3. IMPLEMENTATION – ACCOMPANYING MEASURES

Practical cooperation between responsible bodies and EU authorities will be extremely important in the future. We see further possibilities particularly in exchanging information on applicants' countries of origin and activities aimed at establishing a common portal on countries of origin. It is necessary to promote practical cooperation especially in terms of a uniform application and interpretation of provisions in directives. We see one possibility within an expert group from Member States envisaged in individual directives (so called Contact Committee). A good model is also the so called Dublin Expert Group which at its meetings practically provides the exchange of positions regarding all the Dublin Regulation implementation issues including decision taking based on individual provisions.

We believe that the establishment of a European asylum office is one of the requirements to attain the Common European Asylum System not so much as regards the possible tasks of this office but also the responsibilities that such an office would deal with. Among the tasks and responsibilities the following ones could be included: training experts, activities concerning the uniform European curriculum, professional support to common EU activities, coping with extraordinary pressures, establishment and mobilisation of the so called expert teams, coordination and management of regional protection programmes activities, preparation and coordination of new political initiatives in asylum, monitoring of legal instruments implementation in Member States as regards asylum, information on funds in the new financial perspective, monitoring and coordination of Dublin system operations etc. All these tasks and responsibilities appear within the debate on the Common European Asylum System. Asylum tasks concentrated in this way within one institution surely lead to rationalization of expenses and more efficient work.

It is difficult to say which from an operative and institutional basis would be the most appropriate for such an office. It is most important to assure sufficient financial resources for the office and as many qualified experts in this field (with relevant experience) as possible who will be able to begin working immediately after its establishment. Any delay in operating due to such problems seriously reduces the credibility and the powers of such an office.

4. SOLIDARITY AND BURDEN SHARING

4.1. Responsibility sharing

Responsibility sharing is in our opinion one of the basic principles to be followed within a uniform asylum system. It is therefore necessary to complement the Dublin system with other measures and criteria to assure responsibility as well as burden sharing. A very important criterion is to consider the pressure on the external EU borders. Member States located on the external borders (blue or green) should be afforded more favourable conditions and more financial resources within the funds established for that purpose.

This will be particularly important after the changes and amendments to the Dublin system which represents additional burden for the countries located on external EU borders.

4.2. Financial solidarity

It is necessary to continue the simplification of procedures within the existing financial funds. Requirements for drawings and the potential contents of ERF should be more flexible (a more direct consumption of funds, for example grants for employers who hire refugees and so on).

The Republic of Slovenia is above all in favour of more transparency of drawing resources from these funds and a systematic exchange of information.

5. EXTERNAL DIMENSIONS OF ASYLUM

5.1. Support to third countries for enhancing protection

With regard to regional protection programmes it is first necessary to increase the transparency of existing activities. It is necessary to start a debate about where the programmes should be oriented (in line with external dimensions and priorities of a global approach). It is equally necessary to establish adequate evaluation mechanisms of the goals reached in individual projects in relation to the expenditures. It is of course also very important that the programmes are adapted to the situation in countries and regions where they are launched. We believe that asylum should become a mandatory element in the external strategy development of third countries. Experiences show that the establishment of asylum system in third countries has a positive impact and indirectly reduces the number of applicants for asylum from these countries.

Regional protection programmes should be reasonably made as much uniform as possible on the European level (possibility for training in the EU on condition that the person in question returns to his or her country of origin after a definite period of time, possibility to raise funds for the reconstruction of housing in the country of origin, possibility to raise initial resources for reintegration...).

5.2. Resettlement

As regards resettlement Slovenia believes that it is necessary to assure mechanisms for burden sharing within the EU. This means the reception of applicants for asylum or recognised beneficiaries of international protection within the EU. It is no doubt very important that an adequate legal instrument should be adopted serving both as a basis and a commitment for Member States.

Slovenia's position on resettlement in the classical meaning of this term, i.e. reception of refugees from third countries, is that any decision lies in the hands of Member States.

5.3. Dealing with mixed flows on external borders

To establish a group of asylum experts in case of extraordinary pressures is certainly a good idea that can be of help to countries located on EU external borders. For better effects these groups and the respective know-how should be combined also with adequate material assistance and support.