

21.09.07

Bundesrat Decision

European Commission Green Paper on the future Common European Asylum System

COM (2007)301 final; Council document 10516/07

At its 836th meeting on 21 September 2007, acting under Articles 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG), the Bundesrat adopted the following opinion:

1. In principle, the Bundesrat welcomes the EU's efforts to harmonise further asylum systems in the Member States, in so far as is necessary following completion of the "first phase" of the Hague Programme, to promote uniform application of asylum standards and to introduce mechanisms for the mutual recognition of asylum decisions within the EU.
2. However, the Bundesrat would point out that Germany has for a long time had in place an asylum procedure that takes account of practical requirements and the requirements of the rule of law. This applies in particular to the system of safe countries (safe third countries, safe countries of origin) and to the procedural rules based on it.
3. The Bundesrat is moreover concerned, given the ambitious deadline of 2010 for completion of the second phase of harmonisation of asylum law and the fact that no sound assessment of the first-phase asylum standards has been possible to date, that EU legislation may be rushed through too quickly.

At the same time, the need for further harmonisation highlighted by the Green Paper points towards an improvement in standards and procedural and protection rights.

4. Nevertheless, in promoting, as is commendable, more uniform application of asylum standards, the introduction of new bureaucratic structures should be avoided. As far as possible, preference should be given to using existing institutions as a platform. We therefore reject the proposal to set up a new European support office and in particular to entrust it with a monitoring function vis-à-vis Member States. National authorities must remain responsible for carrying out asylum procedures.
5. The system of social welfare under the Asylum Seekers Benefits Act (AsylbLG) for people who do not have permanent residence status in the territory of the Federal Republic is tried and tested. The type and scope of welfare provision are appropriate and adequate. The needs of any groups of people requiring special protection can and are taken into account by way of special arrangements, specific programmes or individual assistance. It is therefore neither necessary nor advisable to extend or change the welfare system. In particular, in view of the completely different levels of health care in the 27 Member States, approximating health care systems would appear inconceivable.
6. Decisions on the type and extent of labour market access for third-country nationals without permanent residence status are entirely a matter for the national authorities. Account has to be taken of the differing circumstances of national labour markets. Easier access to the labour market would be likely to act as an unwanted incentive and lead to the *de facto* permanent residence of groups with only temporary residence status.
7. The more extensive plans to give asylum seekers specific access to integration measures (besides access to school for children) are rejected as this would lead to unwanted *de facto* permanent residence and would counter efforts relating to return measures.

8. For the rest, the Bundesrat takes the view that a uniform EU-wide protection status for persons already recognised as requiring protection should be confined to distinguishing between refugees and persons afforded only subsidiary protection, in particular as regards the often different duration of the need for protection.

In any event, we reject any extension of the rights granted to those with refugee or long-term residence status to foreigners with only exceptional leave to remain: this would result in placing any exceptional leave to remain on the same footing as refugee status and in invalidating the system of national residence permits.

9. The Bundesrat shares the view set out in the Commission's evaluation report of 6 June 2007 that the "Dublin system" for determining which Member State is responsible for the asylum procedure in a given case has proved satisfactory and has also helped to reduce the number of asylum seekers in Germany. The asylum procedure should therefore continue to be the responsibility of the Member State responsible for the asylum seeker's presence in the EU (e.g. the Member State which issued a visa or allowed its external border to be crossed illegally).

If the Member States face lasting unequal burdens in connection with asylum procedures and the reception of refugees in future, the Dublin procedure does not need supplementing; instead, the instruments under the relevant EU assistance fund should be used.

We therefore also reject binding programmes for resettling refugees in the EU Member States, in so far as this involves immigration management, which is a matter for the national authorities.

10. The Bundesrat would point out that, with a view to developing a fair refugee policy, thought should also be given to procedures for the stages following the rejection of a refugee's application and appeals against decisions in cases where it can be proved that incorrect facts were used for purposes of deception. The Green Paper fails to devote sufficient attention to the consequences of rejected applications and the illegal or fraudulent conduct of refugees. The Green Paper also fails to establish any links to the question of repatriation. The Commission should not deal with these topics in isolation, but integrate them into the discussion on approximating asylum law.