

Warsaw, 31 August 2007

**THE POLISH GOVERNMENT'S POSITION
ON THE GREEN PAPER ON THE FUTURE COMMON EUROPEAN
ASYLUM SYSTEM
COM(2007) 301**

The Polish Government is pleased to receive the Green Paper, which it regards as an important part of continuing work on the future Common European Asylum System.

Chapter One of the Green Paper deals with the **appropriateness of a common asylum procedure**. In spite of the EU's efforts to achieve the greatest possible approximation of asylum practice, the existing Community law, due to the flexible nature of some of its provisions, allows procedures applied by different Member States to diverge. To achieve further approximation of Member States' asylum legislation, it could be considered whether **the current *acquis* should be augmented by a legal instrument regulating both the Common System and the method of its application**. Although the Green Paper aims to "*identify what options are possible under the current EU legal framework for shaping the second stage of the construction of the CEAS*", eliminating differences between the procedural safeguards and procedural standards applied by individual Member States would enable aliens participating in the procedure to achieve the same outcomes concerning their status, whatever the Member State. A legal instrument laying down a common uniform asylum procedure would allow these differences to be eliminated, and thus contribute significantly to the establishment of a Common European Asylum System.

The drafting of such a legal instrument should be preceded by a set of measures aimed at further approximation of Member States' legislation. Particular attention should be paid to the following aspects: implementation of the current EU asylum *acquis*, unification of asylum seekers' rights, specification of the minimum conditions of residence in refugee centres, analysis of appeals procedures from the point of view of their unification in the new legal instrument, and the availability and requirements for "durable solutions".

A key issue in **enhancing effective access to the asylum procedure** is that of ensuring effective access to the asylum procedure, common across the EU, to all third country nationals applying for asylum in any one Member State. All specific requirements, such as e.g. arrival from a safe country, may affect the outcome of a case, but should not affect an alien's access to the procedure.

Safeguards offered to asylum seekers by individual Member States should form the subject of a separate analysis. Such an analysis would greatly facilitate designing measures to harmonise them across the EU.

At the same time, measures to combat abuses of the asylum procedure, whether committed to bypass immigration procedures or to avoid expulsion, should be clearly specified.

Steps should also be taken to **enhance cooperation** between various institutions and services involved in receiving and processing asylum/international protection applications.

What form might a mandatory single procedure take? Poland has been using a **single asylum procedure** for several years now, and it has proved a satisfactory tool for assessing applications for refugee status. It makes it possible to offer protection also to those aliens who are not eligible for refugee status, but who require international protection for other reasons. Poland would be pleased to share its experience of the introduction and application of its single asylum procedure.

As rightly noted in the Green Paper, responsibility for the examination of asylum applications lies with individual Member States. It is therefore important to regulate the requirements for joint processing of asylum applications. A situation in which states would work jointly on processing asylum applications is easily imagined. It could occur e.g. in connection with a sudden and unexpected influx of a particularly large number of aliens seeking asylum in a particular Member State or group of Member States. The influx must be sufficiently large to pose a risk to the effectiveness of a Member State's asylum proceedings and timely asylum decision-making.

Another situation in which cooperation between Member States on processing asylum applications could be beneficial would be an influx of groups of asylum seekers with e.g. specific demographic features. The state experiencing the influx could approach another Member State with greater experience of processing applications from such a group or groups of aliens with a request for expert advice.

It would seem, however, that **a precondition of such cooperation between Member States must be the introduction of appropriate uniform procedures.** Asylum decisions would be made by the relevant institutions in the state experiencing the influx of asylum seekers, while foreign experts would act in an advisory capacity.

Council Directive 2003/9/ EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers allows a wide margin of discretion in determining the benefits and rights available to persons applying for international protection. With respect to matters covered by the Directive, it must be said first of all that **divergences in the conditions of access of asylum seekers to the labour market** constitute a significant obstacle to granting aliens uniform rights across the European Union, and could influence "secondary" movements of this group of aliens within the Union, since divergences between the conditions of access of asylum seekers to the labour market imposed by different Member States could direct migration flows to Member States with the most liberal conditions.

This matter should undoubtedly form the subject of ongoing statistical studies.

Analysis of the validity of further approximation of national conditions of access to the labour market leads to the conclusion that the key issue is the introduction of uniform conditions of access to the labour market throughout the European Union.

In view of the small number of asylum seekers, their entry into the labour market seems more a matter of immigration mechanisms than an economic problem.

Material reception conditions and access to health care depend on individual Member States' economic situation and social policy. Here it would seem appropriate to specify minimum standards, taking into account the true potential of the various Member States.

The European Commission also noted **problems regarding the applicability of Directive 2003/9/EC to detention centres as well as the application of detention measures to asylum seekers**. In Poland's view, this issue, which deals with individuals' fundamental right to freedom, must be accorded special care and attention both at the drafting and at the implementation stage. The grounds for detention and the detention period must be precisely regulated, taking into account national and international law and the jurisprudence of the European Court of Human Rights.

The problems of the applicability of Directive 2003/9/EC to asylum seekers held in detention or otherwise deprived of their freedom must be studied so as to gain reliable information for use in designing remedial measures.

The European Commission also asked questions about **further law approximation of Member States and the introduction of a single uniform status of protection**, and proposed various options.

In Poland's view, the first option relating to further approximation of the rights and benefits attached to the protection granted (regarding, *inter alia*, residence permits, social welfare and health care, education and employment) is the most realistic, bearing in mind Member States' positions presented to date. This option is intended to lead to the development of one uniform status for refugees and another uniform status for beneficiaries of subsidiary protection.

Another proposal put forward by the European Commission consists in the introduction of a single uniform status for all aliens requiring protection, which would result in blurring the differences between the particular situations of refugees and beneficiaries of subsidiary protection. In Poland's view, it should be considered whether the introduction of a joint status would be a valid option. Setting apart specific categories of aliens requiring protection, e.g. refugees, is associated with the particular needs and particular social situation of persons in those categories. The introduction of a single uniform status for all aliens requiring international protection, without regard to their situation and the grounds for granting protection could also result in difficulties in clear formulation of the grounds for seeking protection. It would contravene a long-standing tradition and the consensus underlying cooperation between states based on this tradition (for instance the international protection of refugees was initiated by the League of Nations, and the *acquis* developed since those days forms the backbone of international cooperation on the protection of refugees). For this reason, it would be worthwhile to consider not a single uniform status for aliens requiring international protection, but rather minimum standards for the grant of such protection.

We should begin by defining the constituent elements of the status of an alien requiring international protection. The Green Paper allows for at least two options: status as a set of decisions defining the alien's legal position in the relevant state, and status which includes the person's social, political, economic and other rights. If work commences on the definition of status, its scope would need to form the subject of international discussion.

The next question posed by the Green Paper relates to **the introduction of new categories of persons protected against removal from individual states**. In Poland's view, it would be premature to introduce this option at the present time. Some countries still don't have much experience of granting subsidiary protection based on European Union standards. Consequently, decisions on extending protection against removal to new categories of aliens should be left to the individual Member States.

Establishing a Community mechanism for the mutual recognition of national asylum decisions and one offering the possibility of transfer of protection responsibilities is a necessary component of the construction of a single European asylum system. The lack of mutual recognition of asylum decisions by European Union Member States would hamper the construction of the CEAS. It is therefore appropriate to base the transfer of protection mechanism on the provisions of the Geneva Convention of 1951 and of the European Agreement on Transfer of Responsibility for Refugees concluded in 1980 in the framework of the Council of Europe.

Poland supports the efforts to address the special needs of the most vulnerable aliens. It seems appropriate to regulate more precisely the ways in which these needs can be identified and addressed at all stages of the asylum process. The selected priorities (regulating more precisely what constitutes adequate medical and psychological assistance and counselling for traumatised persons, victims of torture and trafficking and proper identification and response to the needs of minors, especially unaccompanied minors; the development of appropriate interview techniques for these categories based, *inter alia* on cultural, age and gender awareness and inter-cultural skills, as well as on the use of specialised interviewers and interpreters, and laying down more detailed rules regarding what should be relevant to the assessment of claims based on gender- and child-specific persecution, also seem appropriate.

It follows from Poland's experience that the introduction of legal and organisational solutions to the problem of the most vulnerable aliens produces positive outcomes both for those to whom these solutions apply and for the efficient functioning of the asylum system.

Poland supports the idea of EU-wide training programmes for professionals in areas such as health care, education, psychology, linguistics, cultural anthropology, law, social work etc., relevant to work with the most vulnerable aliens. A problem which needs to be addressed is the proper use of existing national capacities for responding to the needs of the most vulnerable persons. An issue of key importance in this context is the coordination and appropriate use of existing resources. Poland would also like to draw attention to the potential for assistance from Member States in

the training courses. A particularly important role in work with vulnerable aliens can be played by NGOs, which frequently have access to unique knowledge and experience of work with such persons.

Issues relating to the integration of refugees and other beneficiaries of international protection are especially complex. There are no international regulations in this area, and the scope of integration and the integration process itself are determined by the relevant country's economic, political and social conditions. The diversity of these conditions produces different models of integration. For this reason, it doesn't seem possible to prescribe integration standards universally applicable to all European Union Member States.

The diversity referred to above is a factor in the "secondary movements" of those categories of aliens within the European Union (the tendency for refugees and beneficiaries of subsidiary protection to flow from countries offering lower social benefits to those offering higher benefits, from those with a narrower range of integration support programmes to those with a broader range, from countries with more difficult access to the labour market to those where access is easier etc.).

For this reason, Poland would suggest that we consider opening up a discussion of possible legal measures which could be introduced to enhance integration of asylum seekers and beneficiaries of international protection.

The Green Paper makes valid comments concerning the importance of employment of asylum seekers and beneficiaries of international protection for the process of their integration. Poland wishes to stress the importance of early identification of the working experience, skills and professional potential of such persons.

Poland would further wish to draw attention to the problem of "pre-integration" measures, i.e. to work with applicants for refugee or beneficiary of international protection status. The scope of benefits granted to such persons and social work with them could form the subject of analysis, of discussions between Member States, of further approximation of their positions and also of their jurisprudence.

Another issue raised by the Green Book concerns the opportunities **for practical cooperation in areas such as e.g. exchange of information about countries of origin of asylum seekers (including the development of a common information portal), sharing best practice etc.** Poland agrees with the European Commission's view that practical cooperation could contribute to the development of a common approach to issues including the concept of gender- or child-specific persecution, prevention of abuse of asylum procedures etc. The creation of a website with links to different (including national) databases on countries of origin is an appropriate initiative, which will facilitate work with asylum seekers. Possible difficulties relate to the ability to create a common European database. It seems to us that a necessary condition of the creation of such a database would be the adoption of a common view of the political situation in the various countries of origin.

The European Commission asks about the **appropriateness of establishing a European practical cooperation support office**. The idea of establishing such an office to act as a means of structural support of the process of construction of a

Common European Asylum System seems well-founded. The creation of a separate Community institution dealing with these problems would not only support change directed at the creation of a common asylum system, but also support Member States in the submission of various wishes and proposals arising out of their own experience of construction of the system to European Union institutions such as the European Commission, the European Parliament or the Council of European Union. However, any ultimate decision on the establishment of a new Community institution must be preceded by in-depth analyses of its appropriateness and estimates of project costs. In particular, we need to bear in mind the European Union's wishes concerning lowering administrative barriers and enhancing the transparency of its operation.

The coordination and organisation of training programmes for all parties involved in the asylum process, as well as the provision of structural support of any processing activities which Member States might undertake jointly in the future could also be included in the tasks to be performed by the future office.

The conditions and opportunities for the operation of teams of asylum experts deployed to Member States facing particular pressures will undoubtedly also form the subject of further discussion.

There is no doubt that a European office could play a role in the implementation of the Regional Protection Programmes. Concerning the coordination of new policy initiatives adopted in the future, for instance regarding resettlement with the European Union, we wish to put on record our feeling that this task should perhaps be implemented at a higher level.

Concerning the practical implementation of reception conditions granted to asylum seekers, we would suggest replacing control with monitoring.

It would also be worth while to consider whether the European office could undertake studies of the influx of refugees and beneficiaries of international protection, the conditions of their reception, integration initiatives, voluntary returns etc. Having analysed the available information on the concept of the future European office, Poland considers that specific issues, such as its operational and institutional model should be discussed and analysed only when the scope of its tasks has been accepted by the Community and the Member States. However, Poland also considers that whichever concept of the new office is finally accepted, it must operate effectively and economically and take into account Member States' asylum experience.

Chapter Four of the Green Paper deals with **financial solidarity and burden sharing**. It asks whether there is a need to complement the Dublin system with mechanisms to ensure fairer burden-sharing. It must be remembered that the European Commission's report on the implementation of the Dublin II Directive is expected in the near future. The report will facilitate a broad discussion of the effectiveness of the existing system, and allow valid proposals to be formulated for the future.

However, it would seem that a future Common European Asylum System should also include measures to mitigate any tensions and problems arising out of the unequal burdens borne by individual Member States, due for instance to their geographical location.

The issue of creating other mechanisms in order to ensure more equitable distribution of asylum seekers and/or beneficiaries of international protection between Member States needs to be considered in depth by Member States. Most importantly, it requires an analysis of the current situation and of the costs incurred by the various states.

The activities planned in the new generation of the **European Refugee Fund** and the legal regulations relating to these activities seem to meet the need for further maximising its effectiveness and complementarity. The Green Book rightly proposes establishing consultation and information sharing mechanisms at national and EU levels. Furthermore, Poland wishes to call attention to the fact that in view of the multidisciplinary and unpredictable nature of many refugee events we ought to aim to devise a financial contribution system which in addition to defined events would also take into account events which could occur and which could lead to particular pressures arising in individual Member States or EU regions. We should also aim to make it possible to finance Member State activities enhancing practical asylum cooperation (such as for instance the activities of the General Directors' Immigration Services Centre – GDISC).

The Green Book also discusses the **external dimension of asylum**, which includes, *inter alia*, regional protection and resettlement programmes. The European Commission asks whether the concept of Regional Protection Programmes should be further developed, and how their effectiveness and sustainability might be enhanced. In Poland's view, further activities in this area should be based on an in-depth evaluation of programmes currently being implemented (Western Newly Independent States and Tanzania). The evaluation should also be made in the context of broader activities associated with the totality of the European Union's foreign policy. Only this analysis and evaluation will enable us to reach conclusions regarding enhancing the effectiveness and sustainability of the Regional Protection Programmes.

How might the EU best support third countries to deal with asylum and refugees issues more effectively? Here, we could base ourselves on the experience of Poland and other new Member States. Before its accession to the European Union, Poland was a recipient of aid supporting the development of refugee infrastructure and training programmes leading to the enhancement of asylum management standards (twinning programmes, bilateral programmes). These activities proved helpful in the adoption of the European Union's asylum standards. Poland is therefore in favour of such activities in relation to third countries, conducted within the framework of the European Union's principles and priorities. We should also like to call attention to projects involving Ukraine, both planned and currently being implemented with its participation. Such activities should be continued and expanded, partly by capacity building of migration management in Ukraine to include all migration flows, not only those relating to asylum.

Resettlement of refugees in EU territory and in the context of the Regional Resettlement Programmes is a new tool of asylum cooperation. In Poland's view, we need enhanced dialogue between Member States on the effective development of these programmes in the future so that, while implementing the principle of solidarity, we also seek to achieve appropriate sharing of the burden associated with the grant of

international protection between Member States, commensurate with their potential. Concerning the resettlement of refugees already resident in EU territory, it is important to draw attention to the problems experienced by Member States with external borders, which receive considerable refugee inflows. A case in point is Southern Europe, whose countries have to contend with inflows of immigrants from Africa during the summer season. Poland wishes to note that it would be appropriate to consider the adoption of legal instruments which would make it possible to resolve situations of this kind at Community level, for instance by amending Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof - a legal instrument which hitherto has not been applied in practice.

In order to enhance Member States' ability to establish effective refugee influx management systems, especially in a mass influx of immigrants, Member States must conduct ongoing analyses of migration risks, including the likelihood of increased influx of persons seeking international protection. A national-level action plan for such situations should be developed, covering such aspects as reception capability, the capacity for registration and processing of an increased number of asylum applications and, importantly, sources of financing such projects. Where a mass influx does not give grounds for establishing a temporary protection system, the state or states finding themselves in such situations must be able to request and obtain rapid and effective assistance, both from European Union institutions and from Member States, including logistics, professional and financial support and where a resettlement mechanism has been established, also assistance with this mechanism.

Poland takes a positive view of the progress accomplished in the creation of the Common European Asylum System. For the EU to develop into a global player in refugee issues, it must continue in the directions envisaged by the Hague Programme.