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Head of Department

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Report “Immigration and Asylum” – “Green Paper on Asylum Policy”
Directorate General “Justice, Freedom and Security”

European Commission
B-1049 Brussels

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**Green Paper on the future Common European Asylum System; COM (2007) 301
final version**

Dear Sir/Madam,

We would like to refer to the conclusion in your “Green Paper on the future Common European Asylum System” of 06.06.2007. In this document you call for all countries involved in the asylum process, particularly also authorities at different levels, to participate in the consultation process concerning the problems and issues raised in the Green Paper.

As the supreme Land authority, the Bavarian Ministry of the Interior has been concerned with all aspects of legislation for several decades, including in particular the diverse issues raised by the practical implementation of immigration policy. We

are therefore pleased to take this opportunity to express our opinion concerning the current Green Paper.

As the Green Paper, in conjunction with the evaluation of the “Dublin System”, also submitted on 06.06.2007, and with the proposed application of Directive 2003/109/EC (Status of third-country nationals who are long-term residents), creates a “package” for recognised refugees and persons entitled to subsidiary protection and refers to the two other initiatives, we have also included these topics in our statement.

General / timescale:

The **immigration figures for asylum applicants** entering the Federal Republic have experienced a **major decline** since they reached their peak in 1992 (over 400,000, of whom only just under 60,000 people in Bavaria, after distribution). Together with the evaluation report concerning the Dublin System, the comparative figures also show an extremely **balanced ratio between Member States** with and without EU external borders.

Above all, **the effective and balanced rules imposed by the national and EU legislation**, which were produced as a result of tough political and social wrangling, continue to represent a decisive part of this development, together with political changes in the former countries of origin. As a result of the harmonisation of asylum legislation, a significant **repeated increase** in national and EU-wide asylum applicant figures and the associated social expenditure must not occur in any circumstances, either due to new distribution mechanisms and/or an increase in benefit levels required by EU legislation. This concern becomes even more important due to the Green Paper leaning in the direction of increasing standards and procedural and protection rights in many areas considered to be in need of harmonisation.

The timescale for the complete harmonisation of the asylum law of the EU (“Phase 2 of the Hague Programme”) anticipates the proposal of more extensive standards and their acceptance by the end of 2010, as a follow-up to an evaluation of the comprehensive legal acts from the first phase to be conducted in 2007. However, in light of the substantial **delays in the 1st harmonisation phase** this appears extremely

ambitious. It is widely known that the **deadline for implementation** of the asylum procedure directive only expires on 01.12.2007. The use of the **EU-wide list of safe countries of origin**, provided within the directive as one of the central aspects of asylum law harmonisation, has so far proved to be unworkable. This example shows how **difficult** it is likely to be to enable extensive **asylum law harmonisation**.

In particular, however, the decisive basis for the conception of the future asylum system must be the above-mentioned **thorough evaluation of the legal acts required during the first harmonisation phase**. Yet this process **only commenced** with the report concerning the Dublin System, submitted at the same time as the Green Paper, while this initial report does not indicate any immediate need to take action. An adequate and transparent **evaluation** of the experiences of all Member States with the application of the asylum directives has not yet been conducted and would hardly be possible prior to the expiry of their deadlines for implementation. This also applies in particular for the statement encountered at several points in the Green Paper, according to which the legislative acts of the first phase would leave the EU Member States too much latitude (for interpretation). Without thorough evaluation, however, there is still the danger of rushing the legislative process.

We state our opinion below subject to further evaluations of content-based and, from our point of view, particularly significant key focuses of the Green Paper. This evaluation is not congruent with the section headings and sequence of the Green Paper due to the common nature of the groups of topics. For this reason, we have added the corresponding outline and question numbers in italics, to which the explanations essentially refer. During the evaluation process, special emphasis was placed on the explanatory comments and assessments of the Green Paper that preceded the questions.

EU-wide increased standard procedural and protection standards

- (2. *“Legislative instruments”*: 2.1. *“Processing of asylum applications”* – Questions 1-5;
3. *“Implementation – Accompanying measures”* – Questions 19-22)

In relation to the objectives of a **standard asylum procedure** it must be stated that, in **Germany, a procedure that takes account of the constitutional and practice-based requirements has been in place over a long period**, for which there can be no alternative due to the economics of the procedure. This applies particularly for the safe country system (entry into this country from a safe third country or provenance from a safe country of origin) and the related decision-making processes – one of the central elements of the German asylum compromise of 1993. The regulations defined in compliance with these provisions concerning the treatment of asylum seekers by border authorities and upon entry into the country by air are also constitutionally effective and practically proven. Reference could be made to the problematic and highly controversial discussion concerning safe countries upon enactment of the asylum procedure directive. It would not appear to fulfil the set objectives to conduct another fundamental debate.

A **more standardised application of legal standards for asylum** appears extremely **suitable** as a means of **avoiding the secondary movements** of persons seeking protection within the EU (“asylum hopping”). For this purpose, a consultation network for the application of asylum directives could possibly contribute in similar areas. Appropriate adjustments already exist on an individual basis between the Member States or were initiated by the Council. However, the development of common **statutory interpretation guidelines** must be **rejected**.

The **practical cooperation** of the national asylum authorities – certainly an important element for the harmonisation of European asylum legislation – already exists in a different form. For example, the dialogue between the leaders of the national migration and asylum authorities is already **institutionalised**. Within the framework of this cooperation, continued use should be made of **existing facilities** in order to avoid the development of a new bureaucracy, instead of creating new facilities. Therefore, for example, the necessity of establishing an EU database for information concerning countries of origin, in view of other potential “joint solutions” and the involvement of existing national systems, calls for critical scrutiny. The creation of a **European support agency** would not represent a contribution to the **reduction of bureaucracy**; its potential assignment of **control functions** in relation to Member States, e.g. for refugee accommodation, is **not acceptable**. Nor is the

common processing of asylum applications advocated. Asylum procedures must also continue to be conducted subject to national and transparent responsibility.

Standardisation of reception conditions for asylum seekers

(2.2 “*Reception conditions for asylum seekers*” – Questions 6-9;

2.4 “*Cross-cutting issues*”: 2.4.2 “*Integration*” – Question 17)

A **statutory adjustment** of the national **access** of asylum applicants to the **labour market** without any formal arrangement with the Member States in relation to different national factors is strictly **rejected**: the decision concerning the nature and extent of access of subjects of third countries to the labour markets is subject to the **exclusive national scope of competence**. Any potential reduction of the thresholds for access to the labour market carries the risk of an undesired incentive effect and de facto permanent residence status for categories of persons with only temporary residence status.

This would thwart any efforts to implement repatriation measures. Therefore – irrespective of compulsory school attendance in Bavaria – the more extensive considerations raised in the context of the “Integration” topic, involving facilitating **access for asylum seekers to special integration mechanisms**, must be rejected.

In relation to the different level of **health care** in the 27 Member States, the equal treatment of asylum applicants in all countries also scarcely appears to be conceivable.

It is unclear what is meant by the topic “Applicability of the Directive concerning Reception Conditions” at “detention centres” and generally in relation to detention measures. Should this involve the rejection of the obligation to be housed in **communal accommodation** during an asylum procedure, to create exit facilities for aliens enforceably required to leave the country or the general rejection of compulsory measures likely to be associated with repatriation, this type of approach **cannot** be advocated.

Standard EU-wide valid legal status for persons recognised as in need in protection / more intensive integration measures

(2.3 “Granting of protection” – Questions 10-13;

2.4 “Cross-cutting issues”: 2.4.2 “Integration” – Question 17)

The **distinction** must **continue** to be made between refugees and persons only entitled to subsidiary protection in view of the qualitative differences of the characteristics justifying protection, particularly the often variable duration of the need for protection.

In this context, the extension of the legal status of subjects of third countries entitled to long-term residence, which is planned as part of the change to the Long-Term Residence Directive, to include not only recognised refugees but also persons entitled to subsidiary protection must be seen in an extremely critical light. The latter category of person can be granted a permanent residence permit in accordance with the applicable German law (Section 26(4) Residence Act) after 7 years at the earliest (discretionary ruling), whereas this would still not include extensive mobility rights within the EU. This 7-year period must also not be circumvented on the basis of an EU regulation in the event of the – still to be reviewed – inclusion of persons entitled to subsidiary protection. The Member States must furthermore be entitled to introduce additional integration requirements.

The extension of the rights arising from refugee or long-term residence entitlement status to include aliens who are only **tolerated** must, however, be fully **rejected**. Aliens are tolerated according to German law if they are required to leave the country, but it is not possible to deport them due to actual or legal reasons and they are unable to claim a residence permit. Otherwise the result would be that all grounds for toleration would be placed on a par with refugee recognition. This would also lever out the **system and hierarchy** of the national residence permit, as tolerated persons would then be favoured in relation to holders of a residence permit.

Strengthening of solidarity between the Member States / Modification of the Dublin System

(3. “Implementation – Accompanying measures” – Question 23

4. “Solidarity and burden sharing” – Questions 24 – 26)

The basic structure of **the Dublin regulations** has proved itself in light of the submitted report and also contributed to the **decrease in asylum applicant figures**. The responsibility for the implementation of asylum procedures should therefore continue to lie primarily with the Member State that has **occasioned** the residence in the EU (e.g. issue of visas, authorisation to cross the external border illegally). If any **long-term unequal burdens** should be created in the future within the framework of asylum procedures and the reception of refugees, for example in Member States with coastal EU external borders, the Dublin Procedure shall not require any fundamental modifications or additions. Moreover, the instruments of the relevant EU aid funds must apply, which are also mentioned in the Green Paper.

The theme of burden sharing is currently being discussed in various committees of the EU and particularly within the context of the situation on the southern sea borders of the EU (rescue and reception of refugees).

Discussions concerning “refugee quotas” for distribution in the Member States for the purpose of avoiding new “pull factors” must be clearly rejected.

Development of cooperation with regions of origin and transit countries

(5. “External dimension of asylum”)

The very welcome development of the cooperation with regions of origin and transit countries is already the subject of a **wide range of initiatives at European level**. Until now the **Regional Protection Programmes** that have been initiated for many years within this context have not, however, **advanced beyond** the initial pilot project stage.

Compulsory resettlement programmes must be **rejected**. The **reception of refugees** independently of national or European requirements must also continue for the purpose of immigration control as a **national responsibility**.

Finally, we request that our appraisal be taken into account in the further levels of the consultation process and the subsequent procedural stages. This also applies particularly for the presentation of a strategy plan scheduled for the first quarter of 2008. With this in mind, we also reserve the right to issue an additional statement at this stage.

Kind regards,

p.p.
sgd.
Dr. von Scheurl
Head of Section