

Latvia welcomes the European Commission's Green Paper on the future Common European Asylum System. Latvia considers that the document establishes a good base for launching discussions on the future Common European Asylum System.

In Latvia's view the legislative instruments adopted in the first phase of the harmonization process have created a solid ground for the system, which guarantee that persons in need of international protection are able to find this protection within the European Union in line with the 1951 Convention and other relevant international instruments.

However Latvia thinks that the existing system has some weak elements which could be improved during the creation of the Common European Asylum System. Therefore Latvia strongly believes that the point of departure for the Common European Asylum System should be a definitive assessment of the outcome of the first phase of the harmonization process. Any proposal for improvement of the existing European asylum norms to ensure higher international protection standards and swifter processing of asylum applications should be based on the accurate and comprehensive impact analysis and assessment of the existing legislative instruments. Accordingly the further development of the Common European Asylum System shall proceed step by step, based on the systematic follow-up and assessment of the previous results, thus new legislative instruments should be proposed only if and when required.

It is equally important that decision making on protection remains a national responsibility and it should serve as the second pillar of the future Common Asylum System. At this stage the current system, which is based on national decision making, is fastest way to strengthen existing European asylum laws and practice. Latvia has an opinion, that the creation of the joint processing of the asylum applications, which automatically imply joint decision making, in this area could be an issue for discussion only in a long-term perspective. Although joint processing is a long-term perspective, meanwhile further strengthening of the practical cooperation including the creation of the Asylum Expert Teams could be envisaged as an attempt to achieve more in responsibility sharing among Member States.

And finally, the creation of the Common Asylum System shall be based on maintaining the approach based on minimum standards, which allow the Member States to maintain the singularity of their national legislative systems, at the same time providing adequate international protection level. However, in future the concept of minimum standards should eliminate any possibility to derogate from these minimum standards by doing that ensure the effective protection. As an additional guaranty to provide the effective protection could serve, where appropriate, common guidelines for uniform interpretation and application of these minimum standards within the European Union. The further

legislative instruments in the asylum will be adopted in the co-decision procedure and that, in Latvia's opinion, will ensure an effective functionality of the asylum system, not being based on the arithmetic simpler lowest common denominator, even in maintaining the approach based on minimum standards.

Latvia positively looks forward to the further development of the principles of solidarity and fair sharing of responsibility. These are basic principles, which should be based on further strengthening of practical cooperation to provide the national institutions, involved in the asylum procedures, with necessary resources to help them effectively manage the asylum flows and more qualitative evaluate the asylum applications.

Latvia would like to emphasize, that the asylum issue shall be considered in the framework of comprehensive approach to migration. Latvia finds that the asylum issues shall be dealt in coordination with other policies, putting a particular emphasis on the importance of coherent development policy. At the same time Latvia would like to stress the importance of an effective return system of persons not in need of international protection as an essential prerequisite to reduce the level of abuse of the asylum system.

1.Legislative instruments:

1.1. Processing of asylum applications:

As it mentioned before Latvia considers that it is important that decision making on protection remains a national responsibility and it should serve as the second pillar of the future Common Asylum System. At this stage the current system, which is based on national decision making, is fastest way to strengthen existing European asylum laws and practice. Latvia has an opinion, that the creation of the joint processing of the asylum applications, which automatically imply joint decision making, in this area could be an issue for discussion only in a long-term perspective. Although joint processing is a long-term perspective, meanwhile further strengthening of the practical cooperation including the creation of the Asylum Expert Teams could be envisaged as an attempt to achieve more in responsibility sharing among Member States.

The creation of detailed common interpretation guidelines of legal provisions and manuals of good practices could serve as a useful tool to strengthen common understanding and common application of the existing provisions thus the necessary harmonization could be achieved within continuing to apply the principle of minimum standards. In Latvia's view the Manual elaborated within the framework of the Border Code and planned within the further Visa Code could serve as an excellent example in searching the relevant solutions.

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phase of the harmonization process. Any proposal for improvement of the existing European asylum norms to ensure higher international protection standards and swifter processing of asylum applications should be based on the accurate and comprehensive impact analysis and assessment of the existing legislative instruments. Accordingly the further development of the Common European Asylum System shall proceed step by step, based on the systematic follow-up and assessment of the previous results, thus new legislative instruments should be proposed only if and when required.

Despite the differential situation and capacity of each Member State to process the asylum applications, according to Latvia's point of view one of the important measures toward more harmonized approaches could be the reduction of provisions in the first stage legislative instruments, which allow Member States to derogate from established mandatory minimum standards, for example, as regards to possibility to reduce the reception conditions or procedural safeguards, accessibility to the accelerated procedure etc.

Latvia would like to express its support to the created concepts of a safe country of origin, safe third country, and the first asylum country. The maintenance of these concepts in the future will allow assessing effectively and speedily the asylum applications. At the same time it is important to continue working at the uniformity of the application and interpretation of those concepts. Although in general sense mentioned concepts are important tools, Latvia has an opinion that the maintenance of the national lists of third countries regarded as safe countries of origin is in contrary to the goals and tasks of the future Common European Asylum System. Latvia is rather sceptical to the necessity to create the common lists of third countries, finding it necessary to review the usefulness and efficiency of those lists. From Latvia's point of view they could impose restrictions to the assessment of the application on a case-by case base.

Latvia strongly supports the use of a single procedure to determine protection needs as an essential element of the further Common European Asylum System. The creation of the single procedure was envisaged already in the Tampere Programme and is confirmed as one of the main tasks by the Hague Programme. In Latvia's view the single procedure will contribute the achievement of the goal established by the Common European Asylum System, thus providing to all, whom it is necessary and who wish it, an opportunity to seek the international protection. At the same time it will stress the Member State's responsibility to assess accurately the situation and circumstances of a particular person regarding all possible protection grounds also beyond formal application submitted by this person. However it is important to ensure that a single procedure is conducted in such way that it does not undermine the refugee status under the 1951 Convention by fact that refugees are given subsidiary protection because the criteria are seen broader. Therefore a mandatory sequence has to be

applied and relevance of the 1951 Convention criteria always has to be examined first.

The establishment of the single asylum procedure and its application in general could give a positive effect on the time limits of the processing of asylum applications in the first instance. Thus not only the person's rights to the comprehensive, individual and timely processing of the asylum application would be ensured, but also the time period, what person must spend waiting for the decision, would be reduced.

In Latvia's evaluation, the one of the next steps toward more harmonized approach would be achieved by determining the time limits for the processing of the asylum applications. In such way the possible risk of asylum „shopping” could be reduced. However at the same time it is vital important to ensure appropriate flexibility by envisaging the possibility to prolong the time limits in the clearly defined exceptional situations. In any case the maximum time limits within possibility to prolong also have to be defined.

Within the framework of the single asylum procedure the establishment of different accelerated procedures, for example, accelerated procedures within border procedures or in case of clearly manifestly unfounded cases, as well as repeated processing of the applications, would be additional tool to ensure timely processing of applications. A uniform application of the before mentioned provisions could make an additional contribution to create the common space for international protection within the European Union.

Although, the models of the joint processing of asylum applications in certain cases could reduce the burden on the administrative capacity of several Member States, bearing in mind the level of harmonization achieved during the first phase of harmonization, Latvia strongly believes that joint processing and decision making on granting the international protection at least at this stage should remain as a national competence. Moreover there are still too many legal and practical obstacles, like diversity of national legal systems and language barriers, which have to be overcome before joint processing and decision making could be even seriously discuss. In Latvia's view the discussions on elaboration of said models may be started only after when purely common criteria and procedures for processing asylum applications are established, implemented and evaluated in practice. Hence Latvia sees no opportunity to start detailed discussions on that concept in the nearest future. Latvia considers the possibility to establish that kind of system as a far future and in any case well beyond 2010.

Although the issue on the joint processing of the asylum applications is not in today's agenda, there are others for bringing the Member States resources together in the spirit of solidarity and fair sharing of responsibilities to improve

processing of asylum applications in the specific situations. The issue on joint preparatory actions before processing of asylum applications and decision making could be considered as one of such tools. The question regarding the establishment of the Asylum Expert Teams should be further elaborated. In Latvia's opinion the Asylum Expert Teams could be useful tool in the situation of crises and in case of mass influx. Such kind of expert teams may support the Member State in case of a request from the respective Member State to provide adequate reception conditions, to conduct non-binding profiling of asylum seekers and to provide translation services, where appropriate. As framework example of creation a pool of such qualified personnel available to help Member States within such expert teams could served agreement reached to create Rapid Border Intervention Teams.

1.2. Reception Conditions

The level of development and social-economic situation of all Member States should be borne in mind harmonizing further the reception conditions. Therefore the implementation of absolute and abstractive common material conditions would be unrealistic. Latvia supports the relative indicators which are based on the social-economic development of the particular Member State and the principle of equal treatment, where appropriate, to the own citizens. At the same time the further harmonization process has to exclude the possibility of derogation from these mandatory minimum standards.

The circulation of the asylum seekers as well as secondary movement within the European Union depends on wide range of conditions. Therefore even the absolute harmonization of the material reception conditions will not fully exclude the aforementioned process. In Latvia's evaluation secondary movement depends not only on material reception conditions and the state's social-economic situation but several purely subjective criteria as well (e.g. existing diasporas, family members, friends, climate, myths, etc.). Due to that fact Latvia would like to point out that the burden of the absolute harmonization for certain Member States would be disproportionate and inadequate to the foreseen benefit.

Recognizing the national competence to regulate the access of third country nationals to labour market, in Latvia's view the regulation of the access of asylum seekers to the labour market could be subject to a higher harmonization. The access to the labour market should be provided in all cases, if the first instance's decision on the application has not been taken during 3 months period and applicant is not detained. Thus access to employment provides the possibility for the asylum seekers to contribute to self-reliance, reduces the risk of unofficial employment and that in its turn could possibly reduce the threat of second movement within the European Union and illegal exploitation.

The development of the jurisprudence of the European Court of Human Rights should be taken on board during further harmonization process. However Latvia would like to stress that the European Court of Human Rights allows certain flexibility, taking into consideration the individual character of each case. Therefore it is vital to keep margin for this flexibility allowed by jurisprudence of the European Court of Human Rights.

Moreover Latvia believes that existing EU regulation and national legislation of the Member States to great extent are already in line with the jurisdiction of the European Court of Human Rights and discrepancies, if such are, could be found only on the level of practical application. Therefore in Latvia's view a special attention has to be drawn to improve training process, including creation of training programme for first-instance decision makers.

1.3. Granting of Protection

Latvia in general supports the creation of a "uniform status" having regard of guidelines outlined in the Hague Programme and intention to introduce single procedure within the European Union. Nevertheless Latvia considers that creation and implementation of said status is a long term measure, which requires an overall analysis of existing legislation and the best practice of Member States to establish sufficient and precise scope of protection within such "uniform status".

At the same time Latvia would like to emphasize that during creation of such "uniform status" the differences in the social-economic development has to be kept in mind. Thus Latvia believes that the scope of rights for the persons granting a "uniform status" has to be determined relatively.

Since the differences among the Member States are significant, as well as to avoid a disproportionate burden to the national administrative capacity, the implementation of the "uniform status" has to be a step-by-step process. During that process initially the differences in the rights and guarantees for both statuses (refugees and subsidiary protection) in the context of the European Union should be excluded, and only then the rights and guarantees granted for both of them could be harmonized in one uniform status. Latvia believes that when there will be equal scope of legal status for both international protection statuses there will be no need further to divide them.

Recognizing the necessity to protect certain individuals who are not eligible for international protection, but at the same time are considered "non removable", Latvia would like to stress that each such case should be examined individually in connection with all relevant individual circumstances. Therefore Latvia does not see added value in creating an exhaustive defined list of such categories. Some degree of national competence and flexibility has to be kept. By

supplementing already existing categories (persons who are not removable on ill health grounds and unaccompanied minors) there is a risk that the list of categories would be too broad and as a result to a certain extent the individual examination of every such case would be reduced.

In Latvia's view any legal limbo and uncertainty situations, when the person is not eligible for international protection but at the same time is considered "non removable", should be avoided as far as possible. Therefore there should be provisions in the national level which allow granting for such persons the legal status. In this regard Latvia would like to remind the project of European Parliament and Council Directive on common standards and procedures in Member States for returning illegally staying third-country nationals which envisages the possibility for Member State at any time in any stage to interrupt the removal procedure and to grant the right of residence issuing the residence permit to third country national.

Latvia does not support the idea that there is a need to establish at Community level a mechanism for the mutual recognition of national asylum decisions and for transfer of protection responsibilities. In Latvia's view such kind of transfer of protection responsibilities is possible only and exclusively in the individual cases on the mutual agreement between Member States or in the framework of the European Agreement on Transfer of Responsibility for Refugees (Council of Europe, 1980). If the person, who is granted international protection, is willing to move within the European Union, in Latvia's view this person should be entitled to do that in the framework of legal migration provisions. However such entitlement should be supplemented with duly ensured possibility to preserve the granted status of international protection and guarantees of non-refoulement. Therefore Latvia strongly supports the Commission's proposal to extend a long term resident status to all persons granted international protection, because this could be a significant step on the right direction towards further harmonization and the Common European Asylum System.

1.4. Cross-cutting issues

1.4.1. Situations of vulnerability

Recognizing the significance of the question of situations of vulnerability the further improvements could be made. From Latvia's point of view the existing legal bases regarding the needs of the most vulnerable asylum seekers is sufficiently broad. Therefore in Latvia's view the further improvements should be primarily targeted to practical implementation and application level. The broad training programmes and projects, involving as much trainees as possible, i.e., representatives of both governmental and non-governmental institutions, as well as collection of the best practice in the Member States and creation of a common manual how to deal with asylum seekers in the most vulnerable situations could be easily achieved to reach that target. Special attention should be given to

improve practical skills and knowledge regarding identification of vulnerable persons and determination of the best interests of minors.

1.4.2. Ensuring a comprehensive approach

As mentioned in the very beginning of these commentaries, in Latvia's view the issue on asylum can not be considered separately from other questions. Therefore Latvia support the comprehensive approach to the asylum questions, linking them with such elements of migration policy as effective management of migration flows, development policy as well as integration policy. In Latvia's evaluation the constructive and open dialogue with third countries within such comprehensive approach is essential precondition to ensure a positive outcome. At the same time Latvia considers that additional attention should be paid to ensure the return of persons not in need of international protection. Therefore Latvia would like to stress the need to intensify the work on European Parliament and Council Directive on common standards and procedures in Member States for returning illegally staying third-country nationals because in our view this Directive could serve as an effective tool to return the persons to their countries of origin as soon as the final decision is made. The effective return system is important element of well functioning asylum system as it ensures the return of persons as quickly and soon as possible and reduces the risk of abusing asylum system, at the same time guarantying the respect of the fundamental rights.

2. Implementation – Accompanying Measures

The strengthening practical cooperation among the Member States should be one of the primary steps moving from the first phase of harmonization towards the Common European Asylum System. Therefore Latvia especially supports the necessity to elaborate the handbook regarding the best practice in the Member States and the manual of interpretation guidelines, thus creating a common system and understanding of relevant issues.

With respect to strengthening practical cooperation special attention should be given to Country of Origin Information (COI). The development of a common COI database should be considered as a priority. Integrated and internally transparent approach to COI would be an important step toward uniform decision making within the European Union.

Latvia does not object to idea set-up a European Support Office, however Latvia thinks that such office might be created only after establishing the complete Common European Asylum System and exclusively, if the achievement of specific aims can not be feasible by using the existing structures and bodies, as well as the added value of creating such a new structure is proportionate to expenditure of recourses needed for establishing and maintenance of it. And in

any case such office primary should serve as an assistant to the Member States in meeting their obligations. Heretofore practical cooperation has to take place in the context of existing structures and forums, like EURASIL, Contact Committees.

As it mentioned before Latvia could support the idea of getting together the Member States' resources within the framework of solidarity for joint preparatory actions before processing of asylum applications and decision making, namely discussing and analyzing the possibilities to create so called Asylum Expert Teams. Such teams could be established in the situation of crises and mass influx to support the Member State. Such kind of expert teams may support the Member State in case of a request from the respective Member State to provide adequate reception conditions, to conduct non-binding profiling of asylum seekers and to provide translation services, where appropriate. As framework example of creation a pool of such qualified personnel available to help Member States within such expert teams could served agreement reached to create Rapid Border Intervention Teams.

3. Solidarity and Burden Sharing

Latvia welcomes the established Dublin system. In our view, considering that the objective for establishing such kind of system is to establish the single country responsible for the examination of an asylum application logged within the territory of the European Union, there is no need for other such mechanism. As mentioned earlier there is a broad range of conditions, including purely subjective, which generated movement of asylum seekers within the European Union. Therefore existing financial compensation mechanisms should be improved to provide a financial compensation for the Member States which are facing larger pressures to their asylum systems. At the same time in Latvia's view existing regulations should stimulate the situations that the Member State may voluntary take over responsibility for the examination of asylum application of another Member State, where that Member State is facing particular pressure. The consent of asylum applicant in such case is a mandatory condition. Moreover the introduction of a financial compensation mechanism could be served as incentives for such practical cooperation between Member States.

4. External Dimension of Asylum

4.1. Cooperation with third countries

Recognizing the necessity to express the solidarity with those third countries which admitted large number of refugees, the further strengthening of Regional Protection Programs is of fundamental importance. Therefore Latvia would like to express its support to Regional Protection Programs, which primarily should be aimed to improve capacity building ensuring the possibility for persons who

are in need of international protection are able to receive durable protection as quickly and close as possible to their country of origin as possible. Latvia believes that important prerequisite for successful project is constructive mutual dialogue with the third countries concerned.

Latvia considers that for building up the effectiveness of Regional Protection Programs it is crucial to use more coherent approach and approximate them not only with activities of other policies of the European Union beside asylum policy in particular region, but also with measures carried out by major international and non-governmental organizations. Such more coherent approach will ensure that all mentioned activities do not overlap but complement each other.

At the same time Latvia would like to stress importance of need to harmonize the activities of Regional Protection Programs with the measures implemented within the scope of global approach to migration. Thus the greater added value for particular region could be achieved; as well as such approach could act as an incentive for closer cooperation with the third country concerned. Moreover it is necessary to involve in the projects not only asylum experts but also development experts, coordinators of assistance policy and experts of other fields, who would ensure that said measures and activities will not overlap, but will complement each other.

4.2. Resettlement

Latvia believes that resettlement programs could be part of durable solutions to provide adequate protection. However it could only complement other measures and it *per se* does not replace other measures and can not ensure sustainable solutions for large number of persons. Therefore the implementation of resettlement programs should not in principle be enforced without other complemented measures of Regional Protection Programs in third country concerned.

Due to different capacity of Member States' asylum systems and keeping in mind that resettlement does not substitute the provision of protection to persons who apply for asylum in the Member State or at its borders, there has to be maintained a principle of voluntary participation. Therefore the role of the European Union in resettlement could be to coordinate the Member States' approach to resettlement as a part of external dimension of the European Union's asylum policy. The possibility offered now to Member States to use the European Union funding for resettlement should be continued as it provides necessary incentives for Member States' participation and encouragement to follow to the EU coordinated approach.

In conclusion Latvia would like to emphasize the role of the European Union as a global actor in asylum process. Therefore the asylum issues within the European Union should be dealt with the highest responsibility, creating standards of adequate quality which could serve as best practices for other countries. Accordingly it could provide the possibility in discussions with third countries to stress the significance of international protection and to invite them to follow the standards set-up by the European Union. At the same time the European Union shall continue to support third countries showing the solidarity with them. Such support will continue to be of vital importance to strengthen the capacity of third countries concerned providing protection and durable solution all over the world.