

**Subject: European Commission Green Paper on the future Common European Asylum System**

**Note:**

**1. Introduction**

The introduction to the Green Paper first reminds us that the Common European Asylum System (CEAS) is intended to be a constituent part of an Area of Freedom, Security and Justice defined in the Tampere Programme and endorsed by the Hague Programme. Under the Hague Programme Action Plan, proposals for the CEAS should be adopted by the end of 2010. In the **first stage** of implementation, the **four most important legislative instruments** for establishing the basis for a common European asylum system were adopted. These are:

- the qualification Directive (2004/83/EC),
- the procedures Directive (2005/85/EC),
- the reception Directive (2003/9/EC) and
- the temporary protection Directive (2001/55/EC).

These Directives were transposed into German law by the Directive Implementation Act [*Richtlinienumsetzungsgesetz*].

On the basis of the above legislative instruments, the **following goals** are to be pursued in the **second stage**:

- establishment of a common asylum procedure,
- introduction of uniform status, valid throughout the EU, for asylum seekers and persons in need of protection,
- establishment of an equal level of protection for all persons in need of protection,
- even distribution of the burden among all the Member States, and
- fair and efficient treatment of persons who are deemed not to need protection.

Although Germany already has high standards for the assessment of individual vulnerability, procedural rules and the possibilities of legal protection, a common European asylum system is nevertheless an objective very much worth working for. Equal treatment, legally and in practice, throughout the EU is an essential basis for the goal of distributing the burden evenly, although the goals indicated must still be weighed carefully against considerations of subsidiarity.

In order to give an opinion on the Green Paper from the point of view of a German Land, a distinction must be made between two basic fields of competence.

The material issue of need for protection is examined and decided by the Federal Office for Migration and Refugees. This competence might, depending on how the European asylum system develops later on, be transferred to an asylum authority with a broader geographical field of competence (EU-wide?). A redistribution of competence on a smaller scale within the Member States cannot be expected. Assessment of this legal field is thus primarily the competence of the Federal authorities.

On the other hand, it may be expected that powers relating to the reception, housing and care of asylum seekers, looking after the legal and practical needs of vulnerable persons and dealing with persons who are not deemed vulnerable will continue to be allocated regionally, and in Germany to the German Länder.

## **2. Legislative instruments**

### **2.1. Processing of asylum applications (Questions 1 - 5)**

It is not at present clear why the procedural standards established in the procedural Directive should be replaced by a single standard procedure. Before discussing this issue, the *study on the implications, appropriateness and feasibility for joint processing of asylum applications* referred to in the text preceding questions 1-5 should first be carried out. Only if this study produces reliable results to indicate that the standards of the procedural Directive are not being met in all or some Member States should the need for additional regulation be considered.

### **2.2. Reception conditions for asylum seekers**

#### **Questions 6 and 7:**

In view of the objective of distributing the burden evenly, we fundamentally support extensive but balanced harmonisation of reception conditions in the Member States. Without such harmonisation, decisions about which Member State to enter will always be influenced not only by the practical possibility of getting in, but also by the quality of reception conditions. However, the margin of discretion allowed to Member States at present should be restricted only if the discrepancies between individual States become too great and are not adjusted at the States' own initiative.

#### **Question 8:**

One of the motives for entering EU territory and applying for asylum is often to improve the individual's living conditions, including through access to the labour market. It should be made universally clear that automatic access to the labour market is not available in any Member State. Account should nevertheless be taken of specific local circumstances by allowing access to the labour market according to regional needs even while the asylum process is under way, using a work permit system.

**Question 9:**

Since this question is posed in the section on *Reception conditions for asylum seekers*, the terms "detention" and "detention centres" used here cannot be taken to refer to measures terminating residence. In so far as these terms are used in connection with accommodation in preliminary reception centres and collective accommodation, and are to be taken to apply to confinement within a given place or area, this possibility should still be allowed, since it does not result in such extensive restriction of personal freedom as to be termed detention. The only purpose of such measures is to ensure that the persons concerned can be contacted as quickly as possible. However, where this approach is applied more severely, we would consider it a problem.

**2.3. Granting of protection**

**Questions 10 - 12:**

The qualification Directive has already resulted in approximation regarding the criteria for granting protection. The need for further approximation should be determined according to whether the actual situation calls for it. This could be established by evaluating how Member States apply the qualification Directive. Only when the results of such evaluation are available should we examine the question of whether uniform status is necessary, and, if so, in what form.

**Question 13:**

This question obviously refers to people in respect of whom grounds for non-enforcement are identified relating to a situation within the country concerned. This regularly involves reasons relating to the personal relationships of the persons concerned. The grounds given are quite often so individual in their nature that any attempt to establish appropriate criteria would have to be so open-ended as to be pointless. At present we do not see any practical use in such an arrangement.

As regards the category of unaccompanied minors referred to in the text preceding questions 10 to 14, a *Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (20.6.1997)* already exists. According to this Resolution, measures terminating the residence of unaccompanied minors should only be taken under certain specific conditions intended to protect those minors. This Resolution should be further transposed into legislation.

**Question 14:**

Sooner or later, harmonisation of the European asylum system must logically lead to a mechanism for mutual recognition of national asylum decisions. This would result in a high degree of immediate freedom of movement within the EU for persons with refugee status, subject to compliance with all protective functions under the law on rights of residence. Although such a mechanism might lead to migratory movements of recognised refugees towards the more economically successful Member States, this aspect of a common asylum system should not be negated.

## 2.4. Cross-cutting issues

### 2.4.1. Appropriate response to situations of vulnerability

#### Questions 15 and 16:

In answering these questions, the following aspects must be distinguished:

- determining whether a person is particularly vulnerable,
- if so, deciding what practical measures are to be taken (e.g. treatment of illness) and
- determining whether a person is therefore entitled to some sort of protected status.

The question of whether a person is particularly vulnerable must be considered in the context of the tension between a **duty** to identify the vulnerable and the **possibilities** of doing so.

One can establish relatively reliably whether the person is a minor using medical resources. This also applies to torture victims, provided that external evidence of mistreatment remains, and to objectively identifiable physical diseases.

It is much harder to reach conclusions in the case of psychological trauma that may have resulted from torture, human trafficking, war experiences or other comparable experiences. Here we are dealing with accounts which are rarely supported by hard evidence and usually have to be assessed on the basis of their individual plausibility.

Where psychological trauma is established, this is already, in Germany at least, treated **appropriately**, just like other illnesses. Should a deficit of comparable standards in some other Member States give rise to the need for making specific provisions on appropriate procedures in a European asylum system, we are fundamentally in favour of this.

The differences that may exist between Member States' health systems and methods of treatment, particularly in the case of psychological illness, can hardly be avoided. Therefore any provision introduced on this subject should be geared to ensuring that treatment is given in line with national standards.

However, we do consider that there should be common provisions on the legal consequences of establishing vulnerability and entitlement to protection.

### 2.4.2. Integration

#### Question 17:

Persons with refugee status in Germany are already entitled, or obliged, to claim support/take steps under Chapter 3 of the *Aufenthaltsgesetz* [Residence Act] to further their integration. In addition, all State, educational, medical, cultural and other social facilities are as a general rule open to them.

These possibilities are open to asylum seekers only to a very limited extent. As the vast majority of asylum applications (in Germany around 95%) are rejected and the applicants then obliged to leave, it would be counterproductive for the State to support integration programmes at this stage, particularly given the many difficulties that in any case exist in terminating residence. Asylum seekers should, however, have general access to educational institutions, basic medical care and indispensable basic social services.

For the issue of integration in the labour market, please see our comments under point 2.2, question 8.

### **2.4.3. Ensuring second stage instruments are comprehensive**

#### **Question 18:**

It is not possible to answer this question at this stage. In the areas likely to be involved, further provisions would probably concern relatively peripheral and practical issues such as medical treatment, social services, accommodation and other benefits. The scale and form of the corresponding framework conditions depend to a considerable extent on the structures established in the Member States. In this context the principle of subsidiarity would probably carry considerable weight. These issues should therefore be examined separately if and when circumstances so prompt. There seems little point at this stage in listing all the areas that might be concerned.

## **3. Implementation - Accompanying measures**

#### **Questions 19 - 22:**

This section of the Green Paper essentially concerns ways of improving the supply and exchange of information and training for persons involved in substantive decision-making in the asylum procedure. Assessment of these issues should therefore be left primarily to the competent authorities. In Germany these tasks do not fall within the competence of the Länder.

However, as a matter of general principle, an extensive pool of information, supported by a European agency, an exchange of information and experience, as well as training, would be welcome. We would, however, point out that in our experience, the more information there is available, the harder it is to maintain a clear overview.

The planned feasibility study in which the possibilities mentioned can be thoroughly and comprehensively examined therefore seems a good idea.

## **4. Solidarity and burden sharing**

### **4.1. Responsibility sharing**

#### **Question 23:**

The Dublin system was set up to determine unambiguously which Member State was responsible for examining an asylum application and to make it possible to return asylum seekers, even against their will, to the competent Member State, as well as to take account of family and humanitarian factors. Legal provisions on determining competence have nothing to do with even burden sharing.

We are not in favour of extending this system as a basis for even distribution of asylum seekers among Member States with a view to fair burden sharing. Stand-alone, practicable solutions should be found for this issue. Attempting to distribute the persons concerned among all the Member States would be likely to lead to a great deal of travelling between Member States. Depending on the scale of immigration, which will not necessarily retain its current moderate proportions in the long run, this would produce further migratory movements and one might expect to see similar phenomena to those already being criticised as "asylum tourism" and "refugees in orbit". The proposed solution would also probably create a sizeable administrative burden, in many cases involving labour- and cost-intensive administrative enforcement where allocation decisions are not accepted.

#### **Question 24:**

As a way of achieving fair burden sharing, it seems more useful to consider financial compensation and practical assistance for Member States which receive a disproportionate number of asylum seekers (see also point 4.2).

We do not support proportionally equal distribution of beneficiaries of international protection amongst the Member States. Once the planned amendment of Directive 2003/109/EC concerning the legal status of long-term beneficiaries of the right of residence has been adopted, such persons will probably in the near future, on the basis of their protected status, enjoy freedom of movement in the Member States within a few years (although responsibility for protection will not be transferred). They will then be able to decide for themselves which Member State they wish to live in. With a common asylum system, we may also expect to see mutual recognition of national asylum decisions, or even European asylum decisions (see also our response to question 14).

Furthermore, allocation of a refugee to another Member State after refugee status has been recognised would mean uprooting the refugee once more after initial flight from the home country. This would mean renewed language difficulties and new integration needs. We should not do this to refugees.

#### **4.2. Financial solidarity**

##### **Questions 25 and 26:**

As we have already said in our response to question 24, where a Member State is burdened by a disproportionate number of asylum seekers, the burden can probably be shared better and more cost-effectively through financial compensation than through such solutions as distributing asylum-seekers throughout the EU. It is true that for this solution to work, the Member States must have comparable facilities for

receiving, housing and taking care of asylum seekers, or the financial compensation must take account of the circumstances of the receiving Member State.

## **5. External dimension of Asylum**

### **5.1. Supporting third countries to strengthen protection**

#### **Questions 27 - 29:**

Current migratory movements over the Mediterranean to southern Europe and over the Atlantic to the Canary Islands have shown that controlling the EU's external borders, in particular its sea borders, cannot suffice in itself to control migration. Other concepts, such as the pilot Regional Protection Programmes, are therefore indispensable. Such projects are already being conducted in the Caucasus and south of the Sahara (Tanzania). Only when enough experience of the current projects has been accumulated can an adequate response be provided concerning possible future development of this approach.

### **5.2. Resettlement**

#### **Questions 30 - 32:**

The paragraphs preceding questions 30-32 relate to the resettlement of refugees in EU territory as a partial aspect of the *Regional Protection Programmes*.

We consider it indispensable to further develop the concept of the *Regional Protection Programmes* at every level (both in the regions of origin and at Member State level). When the Programme has matured, it may be a suitable means of perceptibly reducing migration movements, a substantial proportion of which involve life-threatening conditions for the migrants. In addition, the resettlement of refugees in the EU could potentially mean that assistance with integration can be offered immediately, whereas so far this has only been granted after protection status has been recognised.

Such resettlement programmes have already been implemented in Denmark, Finland, Ireland, the Netherlands, Sweden and the UK. These countries' experience should be studied for the purposes of further developing resettlement in the EU.

In our opinion, *Regional Protection Programmes* not only offer promising potential for reducing the number of asylum seekers within the EU, but also offer a fundamental opportunity for reducing cross-border migration in general, and thus reducing life-threatening journeys, particularly sea journeys. This is on the assumption that the measures envisaged in the *Regional Protection Programmes* for the regions of origin of migrants will also be implemented to the same extent and in parallel.

In our view we need a common commitment on the part of the Member States, if only because there is every prospect of migration movements continuing in future, not only in reaction to persecution or economic pressures, but also for climate-related reasons. One example is the current flood situation in the Sahel and all its consequences, and the periods of drought in other areas are also examples. In this respect too, we need to think about whether and how the consequences of climatic

problems in regions of origin can be dealt with and mitigated under the Regional Protection Programmes, for instance with construction and technology (e.g. water removal or irrigation) in such a way that there is no need for migration.

### **5.3. Addressing mixed flows at the external borders**

#### **Questions 33 and 34:**

Those genuinely in need of protection can be distinguished from those trying to enter EU Member States illegally only by questioning would-be entrants in the way that is usual in the asylum process, and evaluating the plausibility of what they say and of any evidence offered. This can only be done at the border by conducting a rapid asylum procedure. Where there is an increased inward movement, the State concerned would have to be supported by, for example, a European support agency (which would first have to be created).

### **5.4. The role of the EU as a global player in refugee issues**

#### **Question 35:**

When developing a common European asylum system, the effects of global migratory movements in Member States should not be the only basis of decision-making. The causes of migratory movements and the experience and expertise of organisations working in this field should also always be taken into account. This would probably result almost automatically in refugee issues being addressed at international level. The EU's Regional Protection Programme (see response to questions 30 - 32) is a very good example of this.

signed  
Michael Bestmann