



European Economic and Social Committee

SOC/374
**The added value of a
common European asylum
system**

Brussels, 14 July 2010

OPINION

of the

European Economic and Social Committee

on

**The added value of a common European asylum system
both for asylum seekers and for the EU Member States**
(exploratory opinion)

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Rapporteur: **Mr Pîrvulescu**
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In a letter dated 16 February 2010, and in accordance with Article 304 of the Treaty on the Functioning of the European Union, Ms Joëlle Milquet, Belgian Deputy Prime Minister and Minister for Employment and Equal Opportunities, with responsibility for migration and asylum policy, asked the European Economic and Social Committee, on behalf of the future Belgian presidency, to draw up an exploratory opinion on

The added value of a common European asylum system both for asylum seekers and for the EU Member States.

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 16 June 2010.

At its 464th plenary session, held on 14 and 15 July 2010 (meeting of 14 July 2010), the European Economic and Social Committee adopted the following opinion by 133 votes to one, with eight abstentions.

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1. **Conclusions**

- 1.1 The European Economic and Social Committee welcomes the EU institutions' proactive approach to the issue of asylum and the interest shown by certain Member States in moving forward in this policy area.
- 1.2 Although EU immigration and asylum policy is under pressure from a range of risks and uncertain factors at global level¹, the Committee believes that the various budgetary constraints ensuing from the economic crisis should not lead to a reduction in the level and quality of protection received by beneficiaries. The EU's political identity is closely bound up with safeguarding human rights. Failure to do so would greatly damage the EU's internal and external credibility as a political and democratic body.
- 1.3 Following the entry into force of the Treaty on the Functioning of the European Union, the expansion of the EU's remit in this area and the new decision-making mechanisms established provide real opportunities to create a common European asylum area. There are also risks here, however. The expectations created may be too great for the existing political and administrative capacities.

¹ For example, the risk associated with environmental degradation and ensuing conflicts.

- 1.4 The Committee believes that a truly functional common European asylum policy is the most effective and sustainable response to both the need to protect persons at risk and its impact on the Member States.
- 1.5 The Committee does not see international protection beneficiaries as an economic and administrative burden, but rather as valuable partners of their host countries and communities. In their countries of origin, beneficiaries of protection can become agents of change in terms of strengthening democracy and the rule of law and safeguarding human rights. The skills acquired could make them key players in the socio-economic development of both their host country and country of origin.
- 1.6 The success or failure of the Common European Asylum System (CEAS) hinges on a number of key variables: effective safeguarding of human rights, solidarity between Member States, harmonising legislation and policies in this field, enhancing the content of protection granted and proper funding for the competent EU institutions. A key priority, in the Committee's view, is to build the trust of the general public, civil society and Member State governments in a common European asylum policy. This can be achieved by swiftly making the policy operational and producing tangible results, especially in test cases.
- 1.7 The fact that systems for granting asylum vary from country to country entails significant costs. Developing the CEAS will clarify and limit these costs, firstly through legislative simplification (reducing the number of appeals or repeated requests, limiting the scope for abuse of procedures) and then through the action of the competent EU institutions (e.g. the European Asylum Support Office) which can take the place of the national authorities. It will then become easier to exchange good practice, train staff and importantly, redirect flows of asylum seekers.

2. **Introduction**

- 2.1 The EU's area of freedom, security and justice (AFSJ) is in a critical phase. Since 1999, the Council has adopted two five-year programmes: the Tampere programme (1999-2004) and the Hague programme (2004-2009). Ten years on from Tampere, the original objectives have been only partly achieved. The EU is still not a common area of freedom, security and justice. Considerable but uneven progress has been made on common policy in the realm of immigration, asylum and border security.
- 2.2 The Stockholm programme is to be implemented following the entry into force of the Lisbon Treaty. Many of the policies included in the Treaty are to be adopted by the Council under the ordinary legislative procedure or under the Parliament's co-decision procedure, enabling the EU to set more ambitious goals and re-launch a process that is currently being held back by the reluctance of certain Member States.

- 2.3 The ratification of the Lisbon Treaty, which includes the Charter of Fundamental Rights, has greatly increased the EU's responsibilities and remit in the area of asylum. This increased remit provides a major opportunity to progress towards the goals on immigration and asylum. It also entails a risk, however, if the decisions taken do not secure stakeholder support. Should there be failure to resolve the tensions and inconsistencies that inevitably arise in such a sensitive policy area (and already evident in the framing stage), this could compromise both progress to date and future prospects.
- 2.4 The Stockholm programme resulted from a consultation process that saw the integration and implementation of proposals contained in the European Pact on Immigration and Asylum², the reports of the advisory group on the future of European policy in the realm of home affairs and justice³, and contributions received by the European Commission as part of the public consultation on *Freedom, Security and Justice: What will be the future? Consultation on priorities for the next five years*, in September and November 2008. In June 2009, the Commission published a communication entitled *An area of freedom, security and justice serving the citizen: Wider freedom in a safer environment*⁴, and this was the subject of a Committee opinion⁵.
- 2.5 The idea of creating the CEAS as part of the Area of Freedom, Security and Justice derives from the commitment to fully implement the Geneva Convention on the status of refugees (1951) and from the common humanitarian values shared by all Member States. Significant progress was made over 1999-2006, including the adoption of the four instruments which constitute the current *acquis*. Council Directive 2004/83/EC ("the Qualification Directive") enabled common criteria to be defined for the identification of persons who may apply for international protection and ensured that at least a minimum level of benefits is available for these persons in all Member States. Under the Hague and Stockholm programmes, the Commission undertook to evaluate the progress made in the first phase and to propose a series of measures to the Council and the European Parliament by the end of 2010.
- 2.6 Since 2002, the Committee has been involved in shaping and implementing the CEAS by issuing a series of opinions, including an opinion on the *Green Paper on the Future Common European Asylum System*⁶, and an opinion on the *Policy plan on asylum*⁷.

2 European Pact on Immigration and Asylum, European Council, Brussels, 13440/08, 24 September 2008.

3 Report of the Informal high-level advisory group on the future of European home affairs policy ("The Future Group") *Liberty, Security, Privacy: European Home Affairs in an Open World*, June 2008.

4 COM(2009) 262.

5 OJ C 128, 18.5.2010, p.80.

6 OJ C 204, 9.8.2008, p. 77.

7 OJ C 218, 11.9.2009, p. 78.

- 2.7 With the Policy plan on asylum⁸ adopted on 17 June 2008, the Commission proposed completing the second phase of the CEAS by raising protection standards and ensuring their consistent application across the EU. The European Pact on Immigration and Asylum, adopted by the European Council on 17 October 2008, provided further political endorsement for this policy and the objectives set. The Policy plan proposed amending the Qualification Directive as part of a wider package including amendments to the Dublin and Eurodac Regulations and to the Reception Conditions Directive⁹, and the adoption on 19 February 2009 of a proposal to establish a European Asylum Support Office (EASO)¹⁰. Further measures proposed included strengthening the external dimension of asylum, inter alia through an EU programme on resettlement and developing regional protection programmes.
- 2.8 In advance of assuming the presidency of the European Council, the Belgian government has asked the Committee to draw up an exploratory opinion on the issue of asylum. The official referral states that granting international protection to persons at risk is one of the major challenges facing the EU and its Member States. The primary objective of developing a common European asylum policy has been continuously pursued in recent years. Standards have been established in respect of obtaining international protection, responsibilities have been determined and new institutions set up. Nevertheless, many Member States are reluctant to truly harmonise legislation and policies. Without the support of the Member States, European legislative and institutional integration risks becoming ineffective and costly. The advantages of a common European asylum policy are not yet apparent to the Member States and their responsibilities in this field have not been clearly assumed.
- 2.9 The Committee has made constructive proposals on this issue, welcoming the progress made in the practices of the EU and the Member States. Through the positions it has taken the Committee has openly backed the principles and values that favour basic human rights and has proposed measures conducive to the personal and occupational fulfilment of international protection beneficiaries. However, the Committee has repeatedly highlighted the limitations and inconsistencies in both the design and implementation of the EU's policies. Adjusting policies and instruments in this field requires a consensual process in which there is real dialogue involving the Member States, the EU institutions, organised civil society, the business world and local communities.

8 COM(2008) 360 final.

9 COM(2008) 815 final; COM(2008) 820 final; COM(2008) 825 final.

10 COM(2009) 66 final.

3. General comments

The added value of the Common European Asylum System for asylum seekers and Member States.

- 3.1 The Committee is of the opinion that an approach highlighting the advantages of the CEAS would be auspicious and potentially able to renew the confidence of stakeholders and particularly Member States regarding its establishment.
- 3.2 The Committee endorses the objectives set by the EU with a view to completing the CEAS; it would highlight, however, the disparity between the objectives set at EU level and practices at national level, which could be exacerbated by the economic crisis and its ensuing social and political effects.
- 3.3 The CEAS cannot be built unless it is firmly anchored within a set of common values and principles which place human dignity and security at the heart of the actions of the EU and its Member States.
- 3.4 Owing to asymmetric pressures on Member States, as reflected in the differing rates of acceptance of applications and the level of contested decisions and secondary movements, the implicit principle of solidarity between Member States is not being applied.
- 3.5 The CEAS is being undermined by the tendency of Member States to limit the harmonisation of legislation and national practices. Harmonisation is not a problem of asylum policy but it is the main instrument through which the benefits of the CEAS will be made tangible. Harmonisation will decrease the administrative and financial pressure on some Member States and guarantee a higher level of protection for asylum seekers, at least in the initial phase. If harmonisation is to yield the expected results, it must not be based on the lowest common denominator of protection.
- 3.6 The content of international protection is a sensitive area of asylum policy. Differences between Member States are even more marked than in the actual procedure for granting international protection. Augmenting the content of protection, reflected in the recognition of qualifications and access to education and jobs, would enable beneficiaries of international protection to raise levels of individual and collective wellbeing.
- 3.7 In order to provide satisfactory support for asylum policy, specialist institutions (particularly Frontex and the European Asylum Support Office) must have a clear mandate, a budget consistent with their responsibilities and transparent working methods so as to ensure compliance with procedures and the fundamental rights of asylum seekers and beneficiaries of international protection. Financial support for efficient institutions can best portray the advantages of a real common asylum policy.

4. Specific comments

4.1 The Committee would argue that the various aspects of asylum policy are interrelated. Its success or failure hinges on a number of key variables: effective safeguarding of human rights, solidarity between Member States, harmonising legislation and policies, enhancing the content of protection and proper funding for the European bodies responsible for asylum policy. A key priority in the Committee's view, is to build the trust of the general public, civil society and Member State governments in a common European asylum policy. This can be achieved by swiftly making the policy operational and producing tangible results, especially in test cases.

Respect for human rights in every phase of access to international protection.

4.2 The Committee has constantly emphasised the need for "common" rather than "minimum" standards of international protection¹¹. These standards aim to ensure greater respect for the fundamental rights of applicants for international protection by:

- ensuring guaranteed access to the country;
- ensuring freedom of choice as to where to lodge the application for asylum and protection;
- considering refugee convention status first and then subsidiary protection, if and only if the conditions for the first status are not met;
- ensuring the principle of no forcible repatriation if the applicant's life would be in danger in his country of origin or last transit country;
- suspending an expulsion decision until the competent court has issued its decision, in order to make the right of appeal fully effective, in accordance with the case law of the European Court of Human Rights;
- ensuring the special protection required by minors or presumed minors;
- ensuring respect for individual rights and particularly the right of women to lodge an application for protection.

4.3 It is essential that applicants be able to express themselves in their mother tongue during asylum application procedures and that they be guaranteed free legal aid at all stages.

4.4 Rejections of applications for international protection must be explained with clear reasons and must include information on the possibilities for appeal, including procedures and timeframes. Expulsion measures meanwhile must in any case be suspended pending the outcome of any appeals¹².

¹¹ OJ C 204, 9.8.2008, p.77, OJ C 218, 11.9.2009, p.78.

¹² EESC opinion of 28.4.2010 on the *Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (recast)* COM(2009) 554 final – 2009/0165 (COD), rapporteur: Mr Pezzini.

- 4.5 Holding and detention should always be a last resort after all alternatives have been exhausted, and should never be applied without a court order, taking account of the right to legal defence, and in accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms¹³. There must be a procedure for appealing against court orders.
- 4.6 The Committee would highlight the special situation of women, who have many more difficulties than men when it comes to seeking asylum and obtaining refugee status. It would also raise the issue of minors in asylum policy and stress the importance of protecting their interests and ensuring their safety.
- 4.7 The Committee is concerned that insufficient attention is being given to phenomena relating to immigration and asylum, such as human trafficking and abuse in respect of Member States and third countries, particularly transit countries. Countries which have not ratified the 1951 Geneva Convention cannot be EU partners in the field of asylum policy. The success of asylum policy cannot be assured in the absence of a solid institutional arrangement with transit countries which often allow the rights and safety of persons at risk to be compromised.

Greater solidarity between Member States based on common interest and shared responsibility.

- 4.8 Owing to varying exposure to flows of refugees, some Member States apply restrictive rules to the granting of international protection. Asylum policy would help these States to manage applications and primarily to improve the content of protection. With a view to making this support operational, the Committee approves of the fact that a new procedure is planned in order to suspend Dublin transfers when the responsible Member State concerned would be subject to additional pressure¹⁴.
- 4.9 Enhanced cooperation with Member States subject to additional pressure has many advantages: it would limit secondary movements between Member States, and distributing asylum applications more evenly among Member States would allow the process to be managed more efficiently and ensure that beneficiaries of international protection could be more deeply integrated in Member States.

Effective harmonisation aimed at improving the protection of persons at risk.

- 4.10 The national authorities are responsible for processing asylum applications. Insufficiently harmonised national legislation has allowed conflicting traditions to persist; the situation in the country of origin is evaluated differently; there is a dearth of common European practices; administrative capacities vary; applicants for international protection are not distributed evenly across the EU. In consequence, the level of protection granted by Member States

¹³ OJ C 317, 23.12.2009, p.110.

¹⁴ OJ C 317, 23.12.2009, p.115.

varies significantly, which explains why there continue to be secondary flows of refugees within the EU¹⁵.

- 4.11 One necessary step is to analyse asylum applications using a common information base. The Committee has repeatedly called for the list of "safe" countries to be abandoned and replaced by a system providing real-time risk assessment at individual and Community level in third countries. The EASO would be responsible for this system. The common assessment system must use a set of common definitions including actors of protection and internal protection.
- 4.12 The Committee considers that non-State actors of protection may provide useful or even vital services in the short term, especially in resolving humanitarian issues. However, responsibility for the protection of persons in a given country cannot be entrusted to them even partially; it must be entrusted solely to State-run bodies. Internal protection is valid only where the bulk of the territory is under the control of a central authority willing and able to ensure internal order, a minimum level of public services and adequate protection of the rights and safety of individuals.
- 4.13 The Committee welcomes the move to render the content of the two protection statuses (refugee and subsidiary protection) identical, which it has repeatedly called for. This could enable, in future, more complete protection for persons at risk and help improve their integration in EU Member States. At the same time, rendering the two protection statuses identical should not lead directly or indirectly to a reduction in the level and quality of protection¹⁶ but rather to an improvement.
- 4.14 National governments' responsibility for managing asylum policy must not imply the establishment of completely different practices. Some Member States (such as the Netherlands and Sweden) have evolved a set of best practices which could inspire similar measures in other States. The role of best practices is underestimated: they can illustrate how asylum policy can be put into practice and limit the cost of experimenting at national level.

Augmenting the content of international protection.

- 4.15 There is a wide range of national policies and programmes in this field, although, as no comprehensive analysis of Member States has been carried out, this statement is intuitive. In the absence of proactive measures, the granting of international protection will be devoid of substance and will result in implicit discrimination against beneficiaries of this status. The Committee would recommend involving trade unions and employers' bodies in framing and implementing asylum policy at national level.

¹⁵ OJ C 218, 11.9.2009.

¹⁶ EESC opinion of 28.4.2010 on the *Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted (recast)* COM(2009) 551 final/2 – 2009/0164 (COD), rapporteur: Mr Pirvulescu.

- 4.16 The Committee welcomes the inclusion of provisions on the recognition/equivalence of diplomas and other qualifications as well as on fostering access to vocational training courses for international protection beneficiaries¹⁷, as these are important steps towards their economic and societal integration and a better quality of life. Access to the labour market should be promoted through active measures to combat discrimination and encourage businesses.

Reinforcing and providing proper funding for institutions responsible for asylum policy.

- 4.17 The Committee is of the view that the European Asylum Support Office must become operational as quickly as possible. Its budget must enable it to carry out its logistically complex and intensive activities. For example, it must give priority to developing the common European system for evaluating risk in third countries, a major component of asylum policy. Proper funding for the Office could highlight the advantages of common institutions and procedures at European level. The EASO must coordinate with the other EU bodies and especially with Member State governments.
- 4.18 Funding for the various components of asylum policy must be reviewed. The funding must be stepped up and channelled towards instruments which yield the best results and offer real support for Member States. Solidarity has a financial component which must not be overlooked. For example, the European Refugee Fund has a budget of approximately EUR 5 million, far too little to provide meaningful support for implementing asylum policy at Community and national level.
- 4.19 The Committee is concerned to note a series of practices by Member State governments and the Frontex agency relating to the expulsion of persons who may need international protection¹⁸. These operations, which have increased in frequency and scale, should be carried out under conditions of full transparency and accountability¹⁹. The Committee would recommend that Frontex and the European Asylum Support Office work together to prevent human rights violations. Expelling people to countries or areas where their safety is at risk is a clear infringement of the principle of non-refoulement.

17 IDEM.

18 See the report by the Human Rights Watch (HRW): *Pushed Back, Pushed Around, Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*, HRW 2009.

19 The Committee welcomes the Commission's intention to bring transparency to these procedures.

4.20 The Committee would argue²⁰ that specialist Frontex staff must be trained in order to improve:

- the coordination of operational cooperation between Member States;
- the drafting of common training standards;
- the provision of the necessary support for Member States when organising reception and repatriation operations, with help from cultural mediators;
- training for officials on the humanitarian right to asylum as subscribed to by the EU.

4.21 The Committee would recommend that institutional development in the field of asylum policy be flanked by a stronger role for civil society organisations in the decision-making process and practical running of asylum policy. This will boost the common policy's credibility and help permanently improve the instruments used.

Brussels, 14 July 2010.

The President
of the
European Economic and Social Committee

Mario Sepi

²⁰ EESC opinion of 28.4.2010 on the *Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (recast)* COM(2009) 554 final – 2009/0165 (COD), rapporteur: Mr Pezzini.