

**Common European Asylum System**

**European Parliament resolution of 10 March 2009 on the future of the Common European Asylum System (2008/2305(INI))**

*The European Parliament,*

- having regard to Article 63(1) and (2) of the EC Treaty,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the 1951 Geneva Convention relating to the Status of Refugees, and the 1967 Additional Protocol thereto,
- having regard to Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national<sup>1</sup> ("the Dublin Regulation"),
- having regard to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers<sup>2</sup> ("Reception Directive"),
- having regard to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status<sup>3</sup> ("Asylum Directive"),
- having regard to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted<sup>4</sup>,
- having regard to the Commission report on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (COM(2007)0745),
- having regard to its resolution of 14 April 2005 on Lampedusa<sup>5</sup>,
- having regard to its resolution of 6 April 2006 on the situation with refugee camps in Malta<sup>6</sup>,
- having regard to its resolution of 21 June 2007 on entitled 'Asylum: practical cooperation,

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<sup>1</sup> OJ L 50, 25.2.2003, p. 1.

<sup>2</sup> OJ L 31, 6.2.2003, p. 18.

<sup>3</sup> OJ L 326, 13.12.2005, p. 13.

<sup>4</sup> OJ L 304, 30.9.2004, p. 12.

<sup>5</sup> OJ C 33 E, 9.2.2006, p. 598.

<sup>6</sup> OJ C 293 E, 2.12.2006, p. 301.

quality of decision-making in the common European asylum system'<sup>1</sup>,

- having regard to its resolution of 2 September 2008 on the evaluation of the Dublin system<sup>2</sup>,
  - having regard to the reports of the Committee on Civil Liberties, Justice and Home Affairs on the visits to various holding centres in order to monitor reception conditions,
  - having regard to the judgment of the Court of Justice of the European Communities of 6 May 2008 in Case C-133/06 European Parliament v Council of the European Union<sup>3</sup> concerning an action for annulment of the Asylum Directive, seeking in particular annulment of the Directive's provisions on the procedure for adoption and amendment of minimum common lists of safe countries,
  - having regard to the European Pact on Immigration and Asylum adopted by the European Council on 16 October 2008, whose fourth objective is to 'construct a Europe of Asylum',
  - having regard to Rule 45 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Development (A6-0050/2009),
- A. whereas the legislative instruments relating to the first phase of the establishment of the Common European Asylum System (CEAS) have allowed the introduction of common minimum standards but not of equal conditions of access to protection throughout the EU and, as a result, there are still problems such as secondary movements and multiple applications,
- B. whereas the Dublin system's first country of entry criteria can result in a disproportionate burden being imposed on some Member States, in particular on those constituting the EU's external border, simply as a result of their exposed location, and whereas this has harmful consequences for both Member States and asylum seekers,
- C. whereas the Commission's evaluation of the Dublin system reveals that, in 2005, the 13 border Member States had to deal with increasing challenges raised by the Dublin system,
- D. whereas, in its above-mentioned report on the Reception Directive, the Commission noted serious problems in its implementation, in particular in closed centres and transit zones, as the Parliamentary delegations were able to note at first hand during their many visits,

### ***General considerations***

1. Notes that in the past year the number of refugees has grown to more than 12 million refugees and 26 million internally displaced people worldwide; in this context, supports the establishment of a CEAS and welcomes the Commission's Policy Plan on Asylum, serving as a roadmap for the completion of the CEAS;
2. Regrets that, owing to the change of legal basis which will result from the entry into force of the Lisbon Treaty, there are plans to put back to 2012 the deadline for completion of the

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<sup>1</sup> OJ C 146 E, 12.6.2008, p. 364.

<sup>2</sup> Texts adopted, P6\_TA(2008)0385.

<sup>3</sup> OJ C 158, 21.6.2008, p. 3.

second phase of the CEAS, which is due to put an end to the unhealthy disparities between the asylum systems of Member States;

3. Draws attention to the fact that recognition rates of candidates to refugee status for certain third-country nationals vary from approximately 0% up to 90% between Member States;
4. Stresses that the harmonisation of standards leading to a common asylum procedure and uniform asylum status should result in a high level of protection throughout the EU and should not be based on the lowest common denominator, which would deprive the common asylum scheme of its added value;
5. Regrets that the concept of the institution of asylum, an essential part of democracy and protection of human rights, has been severely eroded in recent years; reiterates the need for full respect for the rights and needs of asylum seekers and the principle of non-refoulement;
6. Draws attention to the fact that the EU should provide for mechanisms at the external borders to identify asylum seekers and ensure that persons entitled to international protection gain access to EU territory, including in the context of its external border control operations;
7. Welcomes the fact that the Commission has identified access for those in need of protection to be one of the overarching objectives of the CEAS;
8. Calls on the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) to provide detailed data relating to the number of asylum seekers identified as such during its operations and the plight of persons intercepted and sent back to a country of transit or origin during its operations; calls on the Commission to table a proposal for a revision of Frontex' mandate in order to explicitly state that protection and human rights concerns are an integral part of the management of the EU external borders;
9. Welcomes the fact that the Commission recognises the need to ensure coherence with other policies that have an impact on international protection; calls therefore on the Commission to support and introduce initiatives to review and adapt all border management policies and practices such as Frontex and the European Border Surveillance System (EUROSUR) to guarantee refugees' access to protection in the EU and full respect for the principle of *non-refoulement* at the EU's external borders; in addition, stresses that the duty to render assistance as enshrined in the UN Convention on the Law of the Sea (UNCLOS) is legally binding on the Member States, the EU and Frontex;

#### ***Improvement of existing legislation***

10. Welcomes the fact that, in its above-mentioned judgment in Case C-133/06, the Court of Justice annulled paragraphs 1 and 2 of Article 29 and paragraph 3 of Article 36 of the Asylum Directive, which concerned the adoption or amendment of a minimum common list of safe countries of origin and a common list of safe third countries;
11. Welcomes the positive initiatives carried out in some Member States to welcome asylum seekers – on submission of their request for international protection – in facilities that are open and fully integrated with local communities;

12. Considers that asylum seekers are vulnerable persons who require appropriate reception conditions; draws attention to the fact that a prison environment can under no circumstances help them to overcome the traumas experienced in their countries of origin or during their journey to Europe;
13. Welcomes the provisions mentioned in the latest Commission proposals that Member States shall not hold a person in detention for the sole reason that he or she is an applicant for international protection; considers that asylum seekers should, as a matter of principle, not be placed in detention, in view of their particularly vulnerable position;
14. Regrets the fact that, in several Member States, asylum seekers are still detained following their irregular entry into the country, and therefore welcomes the insertion into the Reception Directive of procedural guarantees relating to detention; in this regard, is of the opinion that detention of asylum seekers should only be possible under very clearly defined exceptional circumstances and subject to the principle of necessity and proportionality with regard both to the manner and to the purpose of such detention; is also of the opinion that, where an asylum seeker is held in detention, that person should have a right to a remedy before a national court;
15. Considers that the scope of the new Reception Directive must be clarified in order to cover holding centres, transit areas, border procedures and Dublin transferees;
16. Welcomes the establishment, in the Reception Directive, of a formal system to immediately identify vulnerable persons, in particular unaccompanied minors, dependent elderly persons, disabled persons, pregnant women, single parents with children and persons who have suffered traumatic experiences, such as torture, rape, and psychological, physical and sexual violence;
17. Considers that a single asylum application procedure and single standards for qualification as refugees or persons needing international protection should be established, covering all requests for 'international protection' (refugee status, subsidiary protection and temporary protection);
18. Welcomes the fact that the Commission plans to clarify the conditions for granting subsidiary protection, and above all that it is suggesting that the level of entitlements and benefits to be granted to beneficiaries of this type of protection be reviewed; this should ensure greater parity of treatment at an enhanced level;
19. Welcomes the Commission's intention to amend the Asylum Directive and stresses that the common asylum procedure should provide for clear, uniform and reasonable time limits for the authorities to decide on an asylum application, thus avoiding long and unwarranted waiting periods which could have negative consequences for asylum seekers' health and well-being; reiterates that granting of refugee or subsidiary protection status should always be subject to an individual assessment and in no way be limited to a generalised assessment (e.g. based on nationality) or conditionality (e.g. relating to the human rights situation in a country of origin);
20. Considers it desirable to pool the information on countries of origin available to the various Member States and encourages the Commission to step up its efforts to set up a common databank; emphasises that the collection and presentation of country of origin information and the management of a portal should ensure that the country reports of different

established experts are included, that the information is publicly accessible and kept distinct from its application by decision-makers (and therefore remains impartial and free from political influence) and that a fair balance is struck between governmental, non-governmental and international sources when collecting country of origin information;

21. Welcomes the recast of the Dublin Regulation and the proposed provisions for a mechanism to suspend Dublin transfers if there are concerns that they could result in applicants not benefiting from adequate standards of protection in the responsible Member States, in particular in terms of reception conditions and access to asylum procedures, as well as in cases where those transfers would add to the burden on those Member States which are faced with disproportionate pressures due, in particular, to their geographical or demographic situation; stresses, however, that these provisions would ultimately be a political statement rather than an effective instrument to significantly support Member States without the introduction of a two-fold binding instrument for all Member States providing for the following:

(a) the secondment of officials from other Member States under the aegis of a European Asylum Support Office to assist those Member States which are faced with specific and problematic situations;

(b) a scheme to relocate beneficiaries of international protection from Member States which are faced with specific and problematic situations to others, in consultation with the Office of the United Nations High Commissioner for Refugees (UNHCR) and with the consent of the beneficiaries;

22. Considers that under the revised Dublin Regulation asylum seekers should be granted the right to appeal against a transfer decision, such an appeal imposing an obligation on the courts or tribunals to examine *ex-officio* the necessity of temporarily suspending the enforcement of a transfer decision;

### ***Administrative structures***

23. Firmly supports the establishment of a European Asylum Support Office, which should work in close cooperation with UNHCR and with NGOs specialised in asylum matters;

24. Considers that one of the tasks of the European Asylum Support Office should be to conduct a detailed assessment of the remaining disparities between national asylum systems so as to contribute to their improvement;

25. Considers that the activities of the European Asylum Support Office should include developing guidelines in order to facilitate more accurate assessment of asylum claims, promoting exchange of good practice, and monitoring the implementation and application of relevant EU legislation (supporting the Commission's role as guardian of the Treaties);

26. Considers that practical consideration should be given to following up the treatment of those returned to their country of origin or departure as a result of protection claims being refused;

27. Strongly encourages the Commission to pursue its efforts to establish a common European training programme on asylum, given that the quality of decisions adopted in this area is directly linked to that of the training and information provided for decision-makers at

national level; takes the view that a consultation of civil society organisations specialised in this area with a view to drawing up training programmes would guarantee effectiveness in this respect;

28. Considers that all decision-makers must have equal access to professionally and objectively researched country of origin information, which is a core tool for asylum authorities and appeal instances as well as for asylum seekers, who rely on it to help verify their claim for international protection;
29. Stresses that during the waiting periods authorities should take into consideration the different needs of asylum seekers in a more fragile situation, such as children, people with disabilities and women, and provide the necessary infrastructure;

### ***Integration of beneficiaries of international protection***

30. Acknowledges the importance of the integration of beneficiaries of international protection with regard to democracy, security and economic considerations;
31. Regrets that the rules laid down by the Dublin Regulation to determine which country is responsible for consideration of an asylum request do not take account of the wishes of applicants, and considers that certain criteria relating to family, cultural and linguistic considerations should be given greater consideration in such decisions with a view to promoting the integration of asylum seekers;
32. Urges the Council to reach an agreement on the extension of the scope of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country-nationals who are long-term residents<sup>1</sup> to cover refugees and beneficiaries of subsidiary protection;
33. Welcomes the Commission's proposal in the Reception Directive to provide applicants with simplified access to the labour market, given that their integration into working life constitutes an essential condition for their integration in the host Member State and also assists in the development of skills which are of benefit both during their stay in the host Member State and, in the event of return, in their country of origin;
34. Considers that, when determining the Member State responsible, the asylum system should facilitate integration by taking into account, among other elements, social, cultural and linguistic background, and the recognition of the educational achievements, professional qualification and skills of the asylum seeker that match economic needs in the host Member State;
35. Recommends that no distinction be made between rights granted to refugees and beneficiaries of subsidiary protection; stresses in particular the need to improve access for beneficiaries of subsidiary protection to social and economic rights, given that this is essential to their integration;

### ***Solidarity mechanisms***

36. Considers that one of the objectives of the CEAS should be to set up effective solidarity mechanisms in order to improve the situation of countries with the greatest flows of asylum

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<sup>1</sup> OJ L 16, 23.1.2004, p. 44.

seekers and experiencing difficulties in guaranteeing adequate reception conditions, processing applications within the prescribed time limits and procedures or integrating applicants who have been granted refugee status;

37. Takes the view that solidarity cannot be confined to the granting of financial resources and calls for the effective implementation of internal resettlement and relocation mechanisms on a voluntary basis as envisaged by the European Pact on Immigration and Asylum; is of the view that this would enable beneficiaries of international protection to be received by a Member State other than the country which has granted them the benefit of that protection;
38. Considers that consideration should be given to extending the scope of Directive 2001/55/EC<sup>1</sup> to enable, in particular, specific categories of persons requiring international protection for a provisional period to be received even where there is no mass influx;
39. Encourages the creation, under the aegis of the future European Asylum Support Office, of teams of asylum experts who can assist Member States experiencing sudden and mass influxes of asylum seekers with which they cannot cope;
40. Calls on the Commission to consider the possibility of setting up a European mechanism for transferring international protection, under the supervision of the future European Asylum Support Office, to allow the movement of refugees in Europe at their request and thus ease the burden borne by some Member States;
41. Welcomes the fact that the Commission intends to launch a study to review the means of improving financial solidarity within the EU, and looks forward with interest to the proposals that will be drawn up in this context;
42. Supports border monitoring agreements between national authorities, UNHCR and NGOs in the EU and the allocation of resources to this end under the EU External Borders Fund;

### ***Cooperation with third countries***

43. Emphasises that the CEAS should be fully coherent with the objectives and activities in the area of refugee protection of EU instruments for cooperation with developing countries (such as the European Development Fund, the Development Cooperation Instrument (DCI), the European Neighbourhood and Partnership Instrument and the European Instrument for Democracy and Human Rights) and agreements and partnerships between the EU and developing countries (such as the Cotonou Agreement and the Africa-EU Strategic Partnership);
44. Shares the Commission's view that asylum is an integral part of development cooperation with third countries rather than a crisis management tool; reiterates also that development cooperation, particularly crisis prevention, human rights monitoring, conflict transformation and peace-building, could serve as a means of preventing displacement; stresses therefore that the CEAS should be closely connected with EU development and humanitarian policies;

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<sup>1</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of 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 (OJ L 212, 7.8.2001, p. 12).

45. Looks forward to the assessment of the Regional Protection Programmes due to take place in 2009; stresses that the development of such programmes should be fully coherent with National and Regional Action Plans, the Thematic Programme on Migration and Asylum of the DCI and, more generally, should never be a means to remove responsibilities from Member States and the EU; calls on the Commission to improve coordination of the measures taken by its various services in this context with a view to optimising synergies between them, and to report to Parliament on steps taken in this connection;
46. Recognises the importance of strengthening the reception capacities of first-asylum countries and of setting up, at European level and in close cooperation with UNHCR, a resettlement programme laying down common criteria and coordination mechanisms;
47. Also requests that an evaluation should be made of the adequacy of the funds available for measures relating to third countries, for example, protection within the region, especially in the light of Parliament's stated view that these measures require additional funding and not a reallocation of development funds;
48. Calls on the Commission to promote greater participation by Member States in worldwide refugee resettlement efforts;
49. Notes with great interest the idea of setting up 'Protected Entry Procedures' and strongly encourages the Commission to give due consideration to the specific procedures for and the practical implications of such measures;
50. Looks forward with interest to the results of the study on the joint processing of asylum applications outside EU territory which the Commission plans to conduct in 2009, and warns against any temptation to transfer responsibility for welcoming asylum seekers and processing their requests to third countries or UNHCR;

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51. Instructs its President to forward this resolution to the Council, the Commission, the governments of the Member States, Frontex and the United Nations High Commissioner for Refugees.