European Economic and Social Committee

SOC/320
Policy plan on asylum

Brussels, 16 December 2008

OPINION

of the
Section for Employment, Social Affairs and Citizenship
on the
Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Policy plan on asylum: an integrated approach to protection across the EU
COM(2008) 360 final

Rapporteur: **Mr Pariza Castaños**
Co-rapporteur: **Ms Bontea**

Administrator: Pierluigi Brombo

99 rue Belliard - B-1040 Brussels - Tel. +32 (0)2 546 90 11 - Fax +32 (0)2 513 48 93 - Internet http://www.eesc.europa.eu

EN

On 17 June 2008, the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

> *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Policy plan on asylum: an integrated approach to protection across the EU*
> (COM(2008) 360 final).

The Section for Employment, Social Affairs and Citizenship, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 December 2008. The rapporteur was Mr Pariza Castaños and the co-rapporteur was Ms Bontea.

At its ... plenary session, held on … (meeting of ...), the European Economic and Social Committee adopted the following opinion by ... votes to ... with ... abstentions.

*

* *

1. Conclusions

1.1 The EESC agrees with the general objectives put forward by the Commission, but would draw attention to the gulf between those objectives and European legislation, as well as national laws and practices.

1.2 The Committee believes that in this case, as with other European policies, aspirations and values have been replaced by rhetoric, and too often practice and laws conflict with values.

1.3 The EESC believes that the second phase of the construction of the CEAS should address the shortcomings of the first phase. A critical review of the first phase should therefore be carried out before the second phase begins.

1.4 Bearing in mind that in the second phase of developing the Common European Asylum System (CEAS), the Council of the European Union adopts decisions under the ordinary procedure and by co-decision with the EP, the EESC fervently hopes that progress can be swifter and the legislation of higher quality. The Committee welcomes the fact that in this communication the Commission gives a commitment to adopting a number of policy and legislative initiatives.

1.5 The EESC considers that European asylum policies should be harmonised and the CEAS completed in a manner that ensures a high degree of quality, without lowering international levels of protection. Harmonisation will always retain a degree of discretion for national legislation but should never be used to reduce current levels of protection in the Member States. Harmonisation should instead serve to improve legislation in those Member States where protection is inadequate.

1.6 The new legislation should allow asylum seekers access to the labour market and training.

1.7 The EESC is calling for the work of NGOs specialising in asylum and refugees to be recognised and for these NGOs to be given full access to the procedures and places connected with their activities.

1.8 The Committee welcomes the fact that the EU has given fresh impetus to the development of the Common European Asylum System through the European Pact on Immigration and Asylum[1].

2. Introduction

2.1 The Common European Asylum System (CEAS) is developing in two different phases. The first of these began at the **Tampere European Council** (1999), following the adoption of the Treaty of Amsterdam, which gave an EU dimension to immigration and asylum policies. This first phase ended in 2005.

2.2 In the **first phase** progress was made on developing a number of asylum directives, improving the level of cooperation between Member States, and on some aspects of the external dimension of asylum.

2.3 The most important legislative measures are: Directive 2005/85 on procedures for granting or withdrawing refugee status, Directive 2003/9 on reception conditions for asylum seekers, and Directive 2004/83 on standards for qualification and status as refugees and the content of the protection granted. Regulatory changes have also been made in other fields, such as in determining the State responsible for examining an application (Dublin Convention and Regulation); EURODAC, and Directive 2001/55 on temporary protection.

2.4 In the area of cooperation between Member States, a series of activities have begun which are carried out by EURASIL, a group of national experts over which the Commission presides. A financial solidarity instrument has also been set up, with the creation and renewal of the European Refugee Fund.

2.5 In the external dimension of asylum, progress has been made in fields such as supporting third countries which have large numbers of refugees (the Regional Protection Programmes are particularly important) or resettling refugees in the EU.

2.6 The **second phase** of constructing the CEAS began with the **Hague Programme** (adopted in November 2004), which sets 2010 as the deadline for achieving the main objectives of the CEAS:

---

1 See Council document 13440/08.

- Establishment of a common asylum procedure
- Developing a uniform status
- Improving cooperation between Member States
- Giving European asylum policy an external dimension.

2.7 As a preliminary to the adoption of new initiatives, in 2007 the Commission produced a **Green Paper**[2] to launch a debate between the different Institutions, Member States, and civil society.

2.8 The EESC submitted an important opinion[3] on the Green Paper which responded to the Commission's questions and included several proposals to develop the Common European Asylum System.

2.9 The Commission has used the comments made on the Green Paper to draw up the **Policy Plan on Asylum**. This opinion should therefore be read alongside the opinion that the Committee produced for the Green Paper.

3. General comments

3.1 The Commission presented its communication on asylum at the same time as the communication on immigration. The Committee is pleased that the DG JLS at the Commission has for several months now differentiated between services, as it will allow a greater level of specialisation, taking into account that in the field of asylum, legislation and international conventions place requirements on EU Member States.

3.2 The EESC believes that the second phase of the construction of the CEAS should address the shortcomings of the first phase. A critical review of the first phase should therefore be carried out before the second phase begins. The Committee shares the critical view of the Commission, but believes that the European Council and Member States should also recognise the errors and address the shortcomings of the first phase.

3.3 The main problem in the first phase was that the legislative measures which were adopted allowed too much scope for the measures to be interpreted by national legislation, meaning that Member States have ended up with very different policies and legislation. The necessary degree of harmonisation has not therefore been achieved.

3.4 It is the Member State authorities who decide whether to accept or reject applications for asylum, using national legislation which is not harmonised; keep to their own, different

2 COM(2007) 301 final, submitted on 6 June 2007.

3 See the EESC opinion of 12.3.2008 on the "Green Paper on the future Common European Asylum System", rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8. 2008).

traditions on asylum policy; evaluate the situation in the countries of origin in different ways; there is a lack of common European practice. As a result, the levels of protection provided by different Member States vary greatly, which is why there are still secondary movements of refugees within the EU.

3.5 The Commission notes that "*the agreed minimum common standards have not created the desired level playing field*[4]". The EESC believes it is the unanimity rule, which the Council has used until recently, that has brought about this disappointing situation. The Committee considers that the ordinary procedure, together with co-decision, should be used for common asylum policy to overcome the constraints of the Treaty. The hope is that more progress will be made on harmonisation during the second phase.

3.6 The EESC notes that the quality of the protection provided by the EU must be improved. As was stated in the opinion on the Green Paper, the construction of the CEAS should be governed by *"the underpinning idea .... to make the European Union a single protection area for refugees, based on the full and inclusive application of the Geneva Convention and on the common humanitarian values shared by all Member States"*[5].

3.7 The Committee therefore believes that the harmonisation of European asylum policy and the construction of the CEAS should be carried out without diminishing or weakening international protection standards. The EU should develop a common legislation without compromising protection standards in any way, so that it will be Member States with insufficient levels of protection that have to change their legislation.

3.8 The Member States will always have a degree of discretion when implementing EU asylum legislation, but the EESC will only support EU legislation that provides a high level of protection and reduces the scope for interpretation which, as is currently the case, might prevent the legislation from being applied correctly. The legislative measures in the second phase of the construction of the CEAS should establish a set of quality protection standards which uphold the principles of the Geneva Convention, and ensure that the asylum system is available for all those who need it.

---

4 Point 3 of the Policy Plan on Asylum.

5 See the EESC opinion of 12.3.2008 on the "Green Paper on the future Common European Asylum System", rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008), point 1.1.

4. Specific comments on the new legislative instruments

4.1 Directive on reception conditions

4.1.1 The Directive on reception conditions now in force gives the Member States considerable latitude in important areas, as noted by the Commission. This means that reception conditions in the EU are very different.

4.1.2 The EESC endorses the Commission's proposal to achieve more harmonisation in order to avoid secondary movements. The Committee gives details of these proposals in its opinion on the Green Paper.

4.1.3 The Committee also welcomes the new Directive's inclusion of reception standards for people seeking subsidiary protection; its inclusion of procedural guarantees on detention; and the fact that it makes identifying and meeting the needs of vulnerable people easier. The EU should in particular protect those, often women and children, who have suffered torture, rape, abuse or other types of violence.

4.1.4 In various opinions[6] the EESC has proposed that the new legislation should allow asylum-seekers access to the labour market and to training. The EESC underlines the special importance of ensuring a simplified and more harmonised access to the labour market, ensuring that actual access to employment is not hindered by additional unnecessary administrative restrictions, without prejudice to Member States' competences.

4.1.5 The social partners, in the different spheres, could also work together with refugees and asylum seekers to help them access jobs and training. Cooperatives and other forms of social economy, educational establishments and specialised NGOs could also provide support.

4.1.6 It has also recommended changes that would safeguard family reunification, improve conditions for education, especially for educating children, and provide full access to healthcare[7].

---

6 See the EESC opinions of:

- 28.11.2001 on the "Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States", rapporteur: Mr Mengozzi, co-rapporteur: Mr Pariza Castaños (OJ C 48, 21.2.2002),
- 13.9.2006 on the "Civil society participation in the fight against organized crime and terrorism", rapporteurs: Mr Rodriguez Garcia-Caro, Mr Pariza Castaños and Mr Cabra de Luna (OJ C 318, 23.12.2006),
- 12.3.2008 on the "Green Paper on the future Common European Asylum System", rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008).

7 See the EESC opinion of 11.07.2007 on "Health and Migrations", rapporteur: Ms Cser, OJ C256, 27.10.2007.

4.1.7 Finally, the Directive should make it clear that the reception conditions must be guaranteed in equal measure to all asylum seekers, regardless of whether or not they are at a reception centre.

4.2 **Directive on asylum procedures**

4.2.1 The Commission has indicated that it will propose amendments to the Asylum Procedures Directive because this has not achieved the desired degree of harmonisation between the Member States. The EESC endorses the introduction of a single common asylum procedure that, as the Commission puts it, leaves *"no space for the proliferation of disparate procedural arrangements in Member States"*[8]. It also supports the fixing of mandatory procedural guarantees.

4.2.2 However, the EESC believes that changes made to the Asylum Procedures Directive should be substantial. This is one of the Directives that gives most discretion to the Member States, which approved it with the clear intention of each maintaining their existing systems.

4.2.3 Setting up the CEAS requires more streamlined procedural legislation that provides better guarantees, ensures that decisions are equitable and increases security during appeals procedures.

4.2.4 The EESC repeats the points it made in its opinion[9] on the Green Paper, namely that:

- asylum-seekers must have access to an interpreter; and to
- free legal assistance if necessary;
- reasons must be given for administrative decisions;
- appeals against decisions to expel must have suspensive effect, to ensure that asylum seekers may not be expelled during an administrative or judicial appeal procedure; and that
- NGOs may assist asylum seekers without any restrictions, at all stages of the procedure.

4.2.5 Asylum seekers are still held in detention centres in a number of Member States, notwithstanding reservations expressed by the Committee and protests from NGOs. The EESC reaffirms its position opposing the detention of asylum seekers, because this should be an exceptional measure. Asylum seekers and their families should be allowed to live decently in an appropriate social setting.

---

8 Point 3.2 of the Policy Plan on Asylum.

9 See the EESC opinion of 12.3.2008 on the "Green Paper on the future Common European Asylum System", rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008).

4.2.6 The Committee calls for greater transparency regarding detention centres, for the Office of the United Nations High Commissioner for Refugees (UNHCR) to be informed about conditions in such centres and about detainees and for those detained to be able to receive assistance from NGOs.

4.2.7 The Geneva Convention guarantees the right to apply for asylum, and the Committee has therefore advised against using lists of "safe countries" and "safe third countries" that may limit the options for each application to be examined individually.

4.2.8 The EESC notes again that the treatment and guarantees given to asylum-seekers at borders must be the same as those given to asylum seekers presenting a request on the territory of a Member State.

4.3 **Directive on minimum standards for attaining refugee status**

4.3.1 Nor has the Directive on minimum standards harmonised decision-making and the level of protection. There are still wide differences within the EU, which means that some people, under the same conditions, may be accepted as refugees in certain Member States and refused in others. The same applies to subsidiary protection.

4.3.2 Subsidiary protection is replacing the granting of refugee status. The Committee considers that a single procedure should never mean that subsidiary protection undermines refugee status under the Geneva Convention.

4.3.3 The EESC believes that a "one-stop shop" system could streamline procedures. If appropriate, recognition of refugee status must be considered first, followed by subsidiary protection.

4.3.4 The Committee advocates drawing up minimum EU standards on refugee status and subsidiary protection in order to ensure a minimum level of protection in all the Member States and to narrow the current differences.

4.3.5 Subsidiary protection complements refugee status, but the level of rights should be similar, and the Committee therefore agrees with regard to respecting the right of family reunification, access to the labour market and economic benefits.

4.3.6 Status must really be the same across the whole EU, so as to reduce the discretionary power of the Member States. Conditions of access to subsidiary protection must be more clearly defined, as the Commission proposes, so that the same criteria are used across the EU to grant either type of status. The Committee proposes harmonising to the highest level, as opposed to reducing levels in the Member States with the strongest humanitarian tradition.

4.3.7 The EESC also highlights the importance of better defining the legislative measures to assist vulnerable people. Procedures must be adapted for them so that their needs are immediately

identified, assistance is provided more promptly and they can be sure to receive every guarantee of legal assistance and help from specialised NGOs.

4.3.8 The EESC has reservations about the possibility of non-state parties being considered responsible for protection. The Member States should not be able to avoid this responsibility or delegate it. The involvement and support of non-state actors should take place under the supervision and responsibility of the Member States.

4.3.9 Nevertheless, the work carried out by specialised NGOs and other social actors for refugees and their families should be recognised and should receive the necessary support from the public institutions. The EESC calls for the role played by NGOs specialising in the fields of asylum and refugee protection to be recognised and for such NGOs to be given full access to all procedures and forums related to their work.

5. Resolving difficulties

5.1 Effective access to the possibility of requesting asylum is mentioned by the Commission, both in the Green Paper and in its Communication on the Policy Plan on Asylum. The EESC believes this to be a matter of prime importance. It is necessary to guarantee that people who need international protection can submit a request for asylum in an EU Member State.

5.2 In its Communication, the Commission mentions the fact that current levels of asylum applications are at a historic low. The Committee does not believe that this fall is due to conflicts in the world being resolved and human rights being improved, but rather to the increase in barriers being set up by the EU to prevent people needing international protection from reaching EU territory.

5.3 The Committee calls on the EU to demonstrate greater commitment in the fight against criminal networks trafficking in human beings, but considers that some policies to "combat illegal immigration" are producing a serious asylum crisis in Europe. The EURODAC visa system, FRONTEX, penalties imposed on transport companies, readmission agreements with third countries and cooperation agreements for fighting illegal immigration are all creating new problems for people who need protection to present an asylum application. The EESC

has said in several opinions[10] that the fight against illegal immigration should not create new problems in relation to asylum, and that officials responsible for border control should receive appropriate training so as to guarantee the right to asylum.

5.4 The EESC supports the proposals made by UNCHR to set up teams of asylum experts to help in all border control operations in the EU.

5.5 The EESC is against the EU or Member States concluding repatriation or border control agreements with countries that have not signed the main international legal instruments for defending asylum rights. It is also opposed to any return or repatriation measure that is not carried out under conditions of complete security and dignity.

5.6 People whose need for protection has not been examined by a Member State should not be returned or expelled unless there is a guarantee that their needs will be examined in the third country under a just procedure that meets international protection standards.

6. European Asylum Support Office

6.1 In order to establish the CEAS, it is necessary for legislative harmonisation to be accompanied by substantial cooperation between the Member States. This practical cooperation will improve with the setting-up of the **European Asylum Support Office** (EASO) proposed by the Commission, which the EESC supports.

6.2 The CEAS must be able to clearly identify the differences in asylum practices between the Member States, as well as the differences in their legislation, and to propose the necessary changes. It must also have the authority to draw up joint guidelines on the interpretation and application of the various procedural and substantial facets of the EU asylum *acquis*, as the Commission proposed in its Green Paper.

6.3 The Office could become an important centre for exchanging good practice, and for developing training activities on asylum, in particular for border officials. It could also be a centre for monitoring and analysing the results of the new measures that the EU is developing

---

10 See the EESC opinions of:

- 25.4.2002 on the "Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration" rapporteur: Mr Pariza Castaños (OJ C 221, 17.9.2002),
- 29.1.2004 on the "Proposal for a Council Regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders" rapporteur general: Mr Pariza Castaños (OJ C 108, 30.4.2004),
- 27.10.2004 on the "Proposal for a Council decision amending Decision No. 2002/463/EC adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme)" rapporteur: Mr Pariza Castaños (OJ C 120, 20.5.2005),
- 12.3.2008 on the "Green Paper on the future Common European Asylum System", rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8. 2008).

in relation to asylum. And it could be a place from where the joint teams of asylum experts could be set up and managed.

6.4 The CEAS will have to practise networking, collaborate with EURASIL and maintain close ties with UNHCR and specialised NGOs. The European Parliament and the EESC must be informed and consulted on EASO's activities.

7. Solidarity between the Member States and the external dimension

7.1 Solidarity between the Member States

7.1.1 The Hague Programme indicates that one of the objectives of the CEAS is to support the Member States that are facing more pressure on their asylum systems, which means improving cooperation and solidarity mechanisms. The Commission also proposes to make certain changes, both to the Dublin II Regulation and to EURODAC. It is necessary to improve the balance of asylum requests and to reduce secondary movements.

7.1.2 The EESC notes that the Dublin Regulation was designed on the assumption that asylum systems in the Member States are similar, which is not yet the case. It is unacceptable to move asylum seekers from a country with better procedural guarantees to a country with poorer guarantees. In its opinion on the Green Paper[11], the Committee notes that *"asylum seekers should be free to choose in which country to submit their asylum applications and that, for this reason, Member States should apply forthwith the humanitarian clause set out in Article 15(1) of the Regulation"*.

7.1.3 In accordance with a UNHCR recommendation, the Dublin Regulation should contain new provisions on defining family members, the suspensive effect of appeals and time limits for transfers. In addition, the time limit within which the asylum seeker can be detained awaiting transfer must be drastically cut.

7.1.4 The Committee has certain reservations about the Commission's recommendation in relation to the EURODAC system that data on refugees held by national authorities be unblocked, because this could conflict with the right to privacy and reduce the protection that many people need.

7.1.5 The EESC endorses the Commission's proposal to set up teams of experts on asylum issues that would provide temporary assistance to the Member States in certain circumstances, and case-working when Member States' asylum systems are overloaded.

---

11 See the EESC opinion of 12.3.2008 on the "Green Paper on the future Common European Asylum System", rapporteur: Ms Le Nouail-Marlière (OJ C 204, 9.8.2008).

7.1.6 The European Refugee Fund must be used to improve the financial support given by the EU to Member States that are heavily burdened by illegal immigration and asylum seekers.

7.1.7 Solidarity between EU Member Status should be improved, given that some small States such as Malta are receiving more asylum seekers than they can cope with.

7.1.8 Solidarity can be demonstrated through policies to redistribute refugees between EU Member States, through working together with EASO and through the manner in which the European Refugee Fund is managed.

7.1.9 The EESC supports the pilot projects presented at the European Parliament which promote the voluntary relocation of refugees and asylum seekers within the EU.

7.2 **External dimension**

7.2.1 The vast majority of refugees live in developing countries (of the 8.7 million refugees recognised by UNHCR, 6.5 million live in developing countries). The EESC would like the European Union to take on new responsibilities for supporting and helping developing countries and improving their ability to protect people.

7.2.2 The **Regional Protection Programmes** offer one option which the EESC is considering, but there are only a few of these and they are in an experimental phase. Evaluation of these programmes should lead to new proposals for expanding and converting them into a new mechanism with which the EU can take action to improve the situation of refugees worldwide. In its opinion on the Green Paper, the Committee *"queries the final objective underlying the establishment of reception centres in certain countries, such as the new independent States (Ukraine, Moldova, Belarus), which seem far from able to guarantee reception conditions for asylum seekers. The EESC therefore emphasises that these programmes would appear to be intended not so much to improve protection for refugees as to reduce their chances of presenting themselves at EU borders"*.

7.2.3 Another important mechanism which the EU must use to demonstrate its commitment is the **resettlement of refugees**. Resettlement means inviting people who have been granted refugee status by third countries to take up permanent residence in an EU Member State. Resettlement was first advocated by the EU at the European Council meeting of November 2004, and since then some, though very few, resettlement programmes have been carried out. UNCHR has pointed out that only 5% of the resettlement places provided in 2007 were in the EU and only seven Member States had resettlement programmes.

7.2.4 The EESC calls on all the Member States to become actively involved in developing resettlement programmes, and supports the introduction of a joint programme so that resettlement of refugees in the EU is not a symbolic act but is extensive enough to become an

effective mechanism for redistributing refugees in the world. European resettlement programmes will have to be developed in collaboration with UNCHR and specialised NGOs.

7.2.5 The Committee agrees that it is necessary to facilitate entry into the EU for people who need protection, but border control systems must respect the right to asylum and the visa regime should be applied flexibly.

7.2.6 The Committee notes that the joint processing of applications outside the EU, in embassies or consular services of the Member States, could in fact have a positive outcome, in that it could assist in the fight against human smuggling and curb the resultant loss of life at sea. Although it is not anticipated that joint processing would result in any reduction of standards vis-à-vis the processing of asylum application, eliminating any risks of such processing should be seriously addressed.

Brussels, 10 December 2008.

The President of the Section for Employment, Social Affairs and Citizenship	The Secretary-General of the European Economic and Social Committee
Leila Kurki	Martin Westlake

*

* *

N.B. Appendix overleaf

Appendix I
to the
OPINION
of the
Section for Employment, Social Affairs and Citizenship

The following amendment, which was supported by at least a quarter of the votes cast, was defeated in the course of the debate.

Point 4.1.5

Add a new paragraph 4.1.6 after 4.1.5:

> *"Access to the labour market should not be allowed prior to the expiry of 12 months as envisaged by Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers (Reception Conditions Directive). Due regard must be given to Member States subject to disproportionate pressures and the consequences which measures providing for earlier access to the labour market would have within different national scenarios."*

Result of the voting:

For:	12
Against:	31
Abstentions:	5