



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 June 2008

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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 20 June 2008

to: Mr Javier SOLANA, Secretary-General/High Representative

Subject: Communication from the Commission to the European Parliament, the
Council, the European Economic and Social Committee and the Committee of
Regions

- Policy plan on Asylum
- An integrated approach to protection across the EU
- = Summary of the Impact Assessment

Delegations will find attached Commission document SEC(2008) 2030.

Encl.: SEC(2008) 2030



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.6.2008
SEC(2008) 2030

COMMISSION STAFF WORKING DOCUMENT

Accompanying the

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN
ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF REGIONS**

**POLICY PLAN ON ASYLUM
AN INTEGRATED APPROACH TO PROTECTION ACROSS THE EU**

Summary of the Impact Assessment

{COM(2008) 360 final}
{SEC(2008) 2029}

1. INTRODUCTION

The Commission presented in June 2007 a Green Paper¹ aiming to identify the possible options for shaping the second phase of the CEAS. The response to the public consultation included 89 Contributions from a wide range of stakeholders². The issues raised and the suggestions put forward during the consultation have provided the basis for the preparation of this Policy Plan and its Impact Assessment.

The Commission ordered an external study in order to get support for the preparation of the Impact Assessment. The external study constitutes the main support for this report in conjunction with an analysis of the contributions to the Green Paper and existing evaluation reports of EC asylum instruments³.

Meetings were organised between December 2007 and March 2008 with academic experts, Member States, NGOs and UNHCR and Members of the European Parliament in order to seek their opinion on the future development of certain elements of the CEAS.

The Commission's Impact Assessment Board (IAB) was consulted on the draft final Impact Assessment report and issued its opinion on 21 April 2008⁴. The recommendations of the IAB were duly taken into account.

Most of the individual measures proposed in the Policy Plan will be the object of specific impact assessments. In particular the amendments to the Reception Conditions, Qualification and Procedures Directives and to the Dublin and Eurodac Regulations will be based on impact assessments.

2. STATE OF PLAY AND PROBLEMS

The following problems have been identified in the **area of asylum**:

- Legitimate measures and practices against irregular immigration may in certain cases be hampering access to protection in the EU for asylum-seekers
- Immigrants who are not in need of protection abuse the asylum system to enter and stay in the EU
- Secondary movements of asylum-seekers applying for international protection in more than one Member State impose an unfair strain on national administrations and on asylum-seekers themselves
- The asylum systems of some Member States are overburdened

¹ COM(2007) 301.

² The 89 contributions received are available at:
http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/news_contributions_asylum_system_en.htm

³ Report on the evaluation of the Dublin system - COM(2007) 299; report on the evaluation of the Reception Conditions Directive - COM(2007) 745.

⁴ The opinion will be made available here: http://ec.europa.eu/governance/impact/cia_2008_en.htm

- Increasingly, people are seeking protection for reasons not foreseen in the traditional refugee regime (Geneva Convention) and are receiving protection statuses with lower guarantees
- Divergent national practices lead to extreme differences in the recognition of protection in the Member States and causing inequalities in the level of protection across the EU
- Persons in need of protection face particular integration problems and some of them are in situations of vulnerability
- Worldwide, most refugees remain in regions close to their countries of origin, with poor prospects and imposing a burden on poor, developing countries.

The Impact Assessment looks into the possible evolution of the situation if no action at EU level were taken and concludes that the existing problems would persist and that there is a strong case for EU action.

The Impact Assessment considers the changes brought to the **legal framework** by the Treaty of Lisbon and concludes that the new article on asylum allows and requires a higher level of ambition than the current one. From a fundamental rights point of view, the inclusion of the Charter in the new Treaty also gives higher visibility to certain rights related to asylum, including the right to non refoulement.

3. POLICY OBJECTIVES

The general objective of the second phase of the CEAS is to offer, through a comprehensive approach to protection across the EU, appropriate status, under equal conditions, to any third-country national requiring international protection and to ensure compliance with the principle of non refoulement.

The policy shall in particular pursue the following specific objectives:

- I) To ensure that asylum procedures are accessible to the persons seeking protection and deal quickly and efficiently with those who do not need it;
- II) To ensure higher common standards of protection;
- III) To enhance prompt and effective support to national asylum administrations, by promoting practical cooperation;
- IV) To foster solidarity mechanisms for dealing with persons in need of protection, between Member States and between the EU and third countries;
- V) To facilitate the integration of protected persons;
- VI) To prevent asylum shopping and secondary movements.

4. POLICY OPTIONS

4.1. Policy option A: Status quo

Current developments in Member States would continue within the existing legal framework, which would remain unchanged. Ongoing activities would continue. The existing legislative instruments should all be transposed by the Member States and their implementation monitored by the Commission.

4.2. Policy Option B1: Full scale harmonisation of EU legislation

This option would ensure that the EU asylum system becomes coherent, comprehensive and offering the highest standards by aiming towards complete harmonisation and the elimination of the shortcomings caused by the adoption of the lowest common denominator in the first phase of CEAS. This aim would be reached, inter alia, through:

- The definition of adequate reception conditions for asylum seekers;
- The recognition of an adequate level of protection to persons in need of protection;
- The establishment of a uniform and efficient procedure of asylum;
- The establishment of a higher degree of solidarity and responsibility among the Member States, and between the EU as a whole and third countries.

4.3. Policy Option B2: Further development of EU legislation

This option would focus on a continuation of efforts towards increasingly harmonised national asylum rules, without however reaching a complete harmonisation in all domains, and ensuring high standards of protection.

This option would consist of the introduction of some interventions in the field of reception conditions:

- the improvement of the provisions related to material reception conditions,
- the establishment of easier access to labour market for asylum-seekers, not hindered by additional national restrictions,
- the establishment of rules ensuring that detention is not arbitrary,
- effective identification of the health and material needs of vulnerable persons and persons with special needs, including gender considerations.

The introduction of the following main elements concerning the issue of qualification:

- the establishment of two single uniform statuses: one for refugees and one for beneficiaries of subsidiary protection,
- the extension to the beneficiaries of subsidiary protection of Community's rules on the right to family reunification,

- the exploration of possibilities for establishing an effective transfer of protection mechanism.

The introduction of a new element on procedures:

- the definition of a single procedure through the harmonization of common attached guarantees (access to procedures, suspensive appeal, legal assistance, deadline for decision on substance in first instance, enhanced gender equality) for all types of existing national procedures

The following main interventions related to the issues of solidarity and responsibility:

- the strengthening and clarification of several provisions in the Dublin and EURODAC Regulations in order to enhance the efficiency and ensure better compliance and uniform application by the Member States (in particular provisions on the humanitarian and sovereignty clause and those relating to family unity) and the possibility to suspend ('freeze returns') in certain cases the application of the Dublin rules to relieve overburdened Member States,
- the implementation of the principle of exceptional financial solidarity to be enacted to support Member States in cases of particular pressure,
- the establishment of a voluntary resettlement system for supporting third countries with large refugee populations,
- the approximation of the different types of national Protected Entry Procedures.

4.4. Policy option C: Cooperation and exchange of best practices

This option would be focused on fostering practical cooperation between Member States: making the application of existing legislative instruments more uniform across Member States (in order to avoid disparities and consequently differences in the effective level of protection granted). This practical cooperation would also present some benefits for sustaining the external dimension of EU policy on Asylum issues. This aim would be reached through the establishment of some type of structural and permanent support, possibly under the form of a European Asylum Support Office, which would be established by an EU Regulation or Decision and would be in charge of some or all of the following areas of activity: Country of Origin Information; training and capacity building; Practical assistance to Member States; external dimension; evaluation and monitoring.

4.5. Policy Option D: Overall comprehensive legal instrument on asylum and creation of a European Asylum Authority

- An **overall legislative intervention on EU legislation** on Asylum aimed to consolidate the different existing legislative instruments. In content, the lines stated in option B1 would be almost entirely followed, but in form this option would lead to the adoption of a single instrument containing all European law on asylum (replacing the current set of directives and regulations), thus at the same time harmonising and consolidating.
- The **creation of a European Asylum Authority** in charge of managing and coordinating the joint EU policy on Asylum. Such an Authority would also take the form of an agency but would not only coordinate the practical cooperation activities listed there ('European

Asylum Support Office'): it would also replace national administrative and judicial bodies adopting decisions on asylum applications. The Authority would therefore become the common European adjudicator centralising all asylum decisions and would have decision powers. This option therefore represents the most extreme way to ensure common application of EU asylum law throughout the EU.

5. COMPARISON OF THE POLICY OPTIONS

5.1. Comparison of ratings, results of the weighing

	Policy Option C	Policy Option A: Status Quo Policy Option D	Policy Option B1 Preferred policy option (B2+C)	Policy Option B2
Relevance	Ensure that asylum procedures are accessible to the persons seeking protection and deal quickly and efficiently with those who do not need it	0	√√√	√√√√
	Ensure higher common standards of protection	0	√√√√	√√√√
	To enhance prompt and effective support to national asylum administrations, by promoting practical cooperation	0	√√√√	√√√√
	Foster solidarity mechanisms for dealing with persons in need of protection, between Member States and between the EU and third countries	0	√√√(√)	√√√√
	Facilitate the integration of protected persons	0	√√√√	√√√√
	Prevent asylum shopping and secondary movements	0	√√√	√√√
Feasibility	Transposition feasibility			
	- Under existing treaty			
	-Under new treaty	0	0	√√(√)
		0	√(√)	√√√√
	Financial feasibility	0	-√√√√	-√√√√
Impacts	Social impacts at EU and MS level	0	√√√	√√√
	Economic impacts at EU and national level	0	√√	0(√)
	Impact on people in need of international protection	0	√√√	√√√√√
	Impact on third countries	0	√√√	√√√
	Fundamental rights	0	√√√√	√√√
			√√√√√	
			√√√	

5.2. The preferred option

The preferred option was identified mainly in a comparison with policy options B1 (also in combination with C) and D where, maintaining almost the same level of positive impacts as the latter, it entails lower transposition difficulties and financial and implementation costs. Option B1 presents a number of advantages and is in many aspects similar to B2, but the latter imposes a slightly lower level of harmonisation in some areas and has therefore better chances of being successfully transposed and implemented. Option D has one main drawback: the transfer of sovereignty from the Member States to the proposed European Asylum Authority does not have chances, at this stage, of being accepted by the majority of Member States.

The main advantages of the preferred option are:

- It achieves relevant results in fostering an **integrated and comprehensive approach** to asylum issues, guaranteeing this objective through higher common standards of protection and the support of practical cooperation activities.
- It ensures improved access to protection by starting work on the approximation of national Protected Entry Procedures and by amending the Procedures directive to make it more 'access-sensitive'.
- It establishes **higher common standards in the field of asylum** through enhanced measures concerning **reception conditions** (i.e. easier access to labour market and healthcare), **procedures** (common procedure with strong guarantees), **qualification** (i.e. common definition of two international protection statuses).
- It enhances prompt and effective **support to national administrations** by improving the convergence in decision making processes in Member States through the creation of a **European Asylum Support Office** which would coordinate and monitor various activities.
- It fosters real responsibility and **solidarity between Member States and between the EU and third countries** through improvements to the Dublin system and a **voluntary EU resettlement scheme** and the further development of **capacity building programmes and Regional Protection programmes**, in third countries.
- It promotes the integration of protected persons and specifically of persons enjoying subsidiary protection by increasing the level of the rights attached to their status.

As far as **impacts** are concerned:

- It creates a more level playing field throughout the EU, allowing a **more efficient management of refugee flows** between Member States, with a greater chance of integrating protected people in receiving communities.
- By enhancing access to the labour market for asylum-seekers, it has the potential of **slightly diminishing illegal labour supply** and filling marginal skill shortages within the Member States labour markets.
- It provides greater protection to people in need of international protection by better addressing the needs of the more vulnerable groups, including due sensitivity to the particular difficulties and constraints that female asylum seekers may face when presenting their claims.
- It has an overall **high positive impact on third countries** by partially relieving them of possible asylum pressures through the voluntary **EU resettlement scheme** and allows them to increase their asylum management capacities through corresponding **capacity building programmes**.
- It enhances asylum seekers' and beneficiaries of international protection's fundamental rights by providing reinforced conditions through which they can benefit from such rights.

Concerning costs, the less binding characteristic of the preferred policy option would entail **lower financial and administrative costs in comparison to a full-scale harmonisation process**.

- There are however measures such as the extension of reception conditions to applicants of subsidiary protection and the stronger guarantees related to procedures which inevitably **entail higher financial and administrative costs compared to the current CEAS**, although the easier **access to the labour market** for asylum-seekers could slightly dilute the overall financial impacts.
- **Measures of practical cooperation will entail additional costs** due to the need to back up the various cooperation measures with adequate financial support (i.e. shared financial support to projects and training, financing capacity building programmes in third countries).
- **Administrative costs are also inclined to grow** given the increased utilization of asylum personnel necessary to respond to the foreseen cooperation measures. The creation of the **European Asylum Support Office** would however help national administrations to moderate the increase in administrative costs in the long term.

6. MONITORING AND EVALUATION

The monitoring and evaluation of the implementation of the preferred option will be an important element to ensure the effectiveness of the Policy Plan. The Commission will ensure that the appropriate mechanisms to monitor the implementation of this Policy Plan are in place and will have a pre-eminent role in such monitoring process. It will also be vigilant that standards of fundamental rights' protection of its proposals are not weakened during the legislative process.

As for indicators to assess progress and effectiveness of the preferred option in achieving the policy objectives, the following can be taken into consideration, among others:

- Number of new applications for asylum
- Number of rejections and of positive decisions granting refugee or subsidiary protection status
- Number of asylum-seekers in comparison with resident population and GDP
- Number of Dublin requests and transfers
- Number of Regional Protection Programmes implemented, and resources dedicated for them
- Number of resettled refugees from third countries
- Level of financial resources allocated for the ERF
- Level of financial resources allocated for practical cooperation activities, including for the creation of a European Asylum Support Office