



*European Economic and Social Committee*

**SOC/280**  
**Future Common European**  
**Asylum System**

Brussels, 12 March 2008

**OPINION**

of the  
European Economic and Social Committee  
on the  
**Green Paper on the future Common European Asylum System**  
COM(2007) 301 final

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On 6 June 2007 the European Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

*Green Paper on the future Common European Asylum System*  
COM(2007) 301 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 21 February 2008. The rapporteur was Ms Le Nouail Marlière.

At its 443rd plenary session, held on 12 and 13 March 2008 (meeting of 12 March 2008), the European Economic and Social Committee adopted the following opinion by 118 votes to one, with nine abstentions.

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## **1. Introduction to the consultation: Green Paper on the future Common European Asylum System**

1.1 The future Common European Asylum System (CEAS) has its legal basis in Title IV – "Visas, asylum, immigration and other policies related to free movement of persons" of the Treaty of Amsterdam (1999); the decisions of the Tampere Summit in Finland in 1999; and more recently, the Hague Summit. We should also recall its "functional" basis, namely the Dublin I Regulation in 1997 and Dublin II in 2003, which came into force in 2006; the first Schengen agreement of 1985, recently extended to include a number of new Member States in 2007. We should not lose sight of the fact that the primary objective was the uniform implementation and transposition throughout the European Union of the 1951 Geneva Convention relating to the Status of Refugees, ratified by most Member States, in order to ensure that persons in need of international protection effectively receive such protection. The underpinning idea is 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. The Hague Programme Action Plan foresees the adoption of the proposal for CEAS by end 2010.

1.2 With a view to starting on the second stage, and prior to launching its action plan due to be published in July 2008, the Commission has launched a comprehensive consultation process through this Green Paper in order to identify what options are possible under the current EU legal framework.

- 1.3 The Tampere Programme, subsequently confirmed by the Hague Programme, consists in the establishment of a common procedure, a uniform status, a homogeneous framework, and a high level of harmonised protection in all Member States guaranteeing the consistent implementation of the Geneva Convention.
- 1.4 During the first stage between 1999 and 2006, the adoption of the four main legislative instruments created the current *acquis* and laid the foundations for the CEAS. The Commission is monitoring the timely transposition and implementation of the legal instruments already adopted.
- 1.5 Although the process of evaluating the first stage instruments is still underway, given the need to come forward with the proposals for the second phase in time for their adoption in 2010, the Commission considers it essential to embark as of now on an in-depth reflection and debate on the future architecture of the CEAS.
- 1.6 **The Commission's objectives include achieving a higher degree of solidarity between EU Member States, boosting the capacity of all stakeholders, improving the overall quality of the process, eliminating existing deficiencies and harmonising current practices through the implementation of a set of accompanying measures relating to practical cooperation between Member States.**
- 1.7 The Commission has set out its consultation in four chapters and 35 questions: legislative instruments, implementation, solidarity and burden sharing, external dimension.
2. **Summary of conclusions and recommendations**
- 2.1 **The Committee**, bearing in mind its (numerous) previously adopted opinions on the subject, the recommendations of NGOs providing support to refugees and the UNHCR's <sup>1</sup> recommendations to the Portuguese and Slovenian presidencies of the European Union,
- 2.2 Recalling that asylum issues are already subject to qualified majority decisions in the Council whereas immigration is still subject to unanimity and should be made subject to qualified majority decisions under the Lisbon treaty, recommends that when implementing a common procedure the Commission and the Council ensure that the national exemption clauses ("opt outs") frequently used by some Member States are excluded or avoided.
- 2.3 The Committee supports the adoption of a fair asylum system, i.e. an asylum system with a human face that takes account of asylum seekers' need for protection as a genuine objective to be included among the objectives for building a Europe that is also social. The Committee

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<sup>1</sup> United Nations High Commissioner for Refugees.

recalls that these social objectives are not in conflict with and do not exclude the economic and security interests of host populations or Member States.

- 2.4 It calls for conditions to be created that promote the respect of international conventions, European directives in line with international law and humanitarian law and the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe; a better distribution of the responsibilities incumbent on Member States; the speedy resettlement and integration of people granted protection as refugees or subsidiary protection; a sincere cooperation and co-development policy that improves effective democracy in certain third countries and that contributes to international solidarity in response to asylum needs.
- 2.5 To this end, it recommends measures that are inseparable from and complementary with each other.
- 2.5.1 That those in need of international protection are always able to enter the territory of the European Union, irrespective of the level of strengthened controls in order to ensure that the right at least to submit an asylum application is respected, whatever the form, and that access to fair and efficient procedures is guaranteed.
- 2.5.2 That requests for recognition of refugee status should always be examined and the decision delivered and substantiated in writing by the decision-making authority before subsidiary protection is considered, including for applications submitted at the border.
- 2.5.3 That asylum seekers should be free to choose the country to which they submit their claim.
- 2.5.4 That unaccompanied minors and women, together with other vulnerable persons, are granted specific protection<sup>2</sup>: physically, mentally or socially disadvantaged persons who may be unable to meet their basic needs and may therefore require specific assistance (pregnant women, children, the elderly, infirm, disabled, etc.).
- 2.5.5 That persecution specific to certain women must be taken into consideration as a motive for protection on an individual basis and independently of any persons accompanying or accompanied by them (minors, or husbands, relatives, and others)<sup>3</sup>.

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<sup>2</sup> As defined by the UNHCR (Master Glossary of Terms, June 2006).

<sup>3</sup> Rape, conflict-related rape, physical, mental or social abuse inflicted due to unwillingness to submit to an established male order. See point 2.5.1 of the EESC opinion on *Qualification*, rapporteur: Ms Le Nouail Marlière, (OJ C221, 17.9.2002): "Although not explicitly covered by the 1951 Geneva Convention, the specific forms of gender prosecution – female genital mutilation, forced marriages, stoning to death for presumed adultery, and the systematic rape of women and young girls as a strategy of war, to name just a few – should be acknowledged as strong reasons for submitting an application for asylum and as legitimate grounds for granting asylum in Member States".

- 2.5.6 That all asylum seekers, are entitled to an effective and case-by-case examination of their applications, access to an interpreter, free legal assistance and sufficient time to present their case.
- 2.5.7 That the fundamental principles applicable to asylum procedures should apply to all asylum claims, including manifestly unfounded claims.
- 2.5.8 That all appeals against decisions denying refugee status or subsidiary protections should always have the effect of suspending the execution of a repatriation order, especially for people who cannot be expelled without risk to their life, freedom or safety should they be returned to another country.
- 2.5.9 That integration and resettlement under normal and decent living conditions should be guaranteed in order to ensure self-sufficiency, the conditions for which should be met as soon as possible after arrival, and with the consent of the party concerned, in terms of health care, orientation and language training; contact with organisations providing support for refugees and the with the local population; training, including the evaluation and recognition of qualifications, access to legal employment, etc.
- 2.6 Recommends that NGOs and associations providing legal, material and humanitarian assistance to refugees always have access to holding and detention centres, whether open or closed. With respect to resettling recognised refugees within a burden-sharing framework for Member States, the Committee recalls its Opinion CESE 1643/2004 of 15 December 2004, and in particular point 2.4, which states that "the conditions under which NGOs and refugee associations can work in reception centres should be improved through partnership agreements with the authorities in the host countries, or at least by clarifying their rights".
- 2.6.1 That reception standards that respect human dignity should apply without distinction to all asylum seekers entitled to refugee status or subsidiary protection.
- 2.6.2 That alternative solutions (open reception centres) be preferred to the systematic detention of asylum seekers and holding centres that are totally closed and deny access to NGOs, and sometimes even the Red Cross.
- 2.7 Advises against the use of safe third country lists (compliance with procedures allowing for the case-by-case examination to which asylum seekers are entitled under the Geneva Convention) and recommends reviewing the "safe third country" status of third countries of origin or transit that deprive asylum seekers of an examination of their specific case, and any ensuing rights<sup>4</sup>.

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EESC opinion of 15 December 2004 on the Communication from the Commission to the Council and the European Parliament on *A more efficient Common European Asylum System: The single procedure as the next step*, rapporteur: Ms Le Nouail Marlière (OJ C 157 of 28.6.2005), point 2.7.

- 2.8 Recommends, nevertheless, that if "safe country" lists are to be maintained, then they should be common to all Member States and approved by national parliaments and the European Parliament, they should take account of information provided by duly consulted NGOs, and that under no circumstance should they continue to be used in the meantime.
- 2.9 Recommends that coast guards, public officials and agents of public or private services having contact with asylum seekers during the initial and subsequent stages (police, customs, health, education, employment) should be provided with training in asylum rights and humanitarian law.
- 2.10 Reiterates and stands by its recommendation to take proper account of the obligations of local and regional authorities with respect to providing frontline assistance and long-term integration for asylum seekers granted refugee status or international protection, and therefore to give them a fair share of involvement in drafting a common asylum policy, and to continue and clarify the use and allocation of funds under the European Refugee Fund (ERF), as specified below.
- 2.11 Approves the creation of a European support office for Member States provided that it complements the work of regional and local branches of the UNHCR and that it complies with the objective of improving the quality and consistency of decisions with a view to ensuring that those in need of international protection receive it irrespective of where they submit their claim in the European Union, and the objective of continually assessing European laws to ensure that they comply fully with international refugee law and humanitarian law. This support office could hold training courses for border guards on the distinctions between refugees and other migrants in cooperation with the UNHCR, which currently provides and participates in these courses, mainly but not solely on the EU's eastern borders since the expansion of the Schengen area (Hungary, Poland, Slovakia, Slovenia).
- 2.12 Recommends that measures taken to control immigration do not result in the violation of fundamental rights, namely the right to seek and obtain protection from persecution.
- 2.13 Calls for emphasis to be placed on the absolute obligation of ships' captains in cases of interception and rescue at sea to come to the assistance of persons in distress; and for steps to be taken to resolve the lack of recognition of their responsibilities relating to the disembarkation of persons rescued at sea and to provide for the immediate examination of claims and grant international protection if necessary.
- 2.14 With regard to the specific debate surrounding the establishment of a common European asylum procedure, the Committee recalls the recommendations and warnings set out in its opinion, CESE 1644/2004 of 15 December 2004, concerning any lowering of protection standards liable to occur during the 2004-2008 period between the consultation on the single procedure and the Green Paper on the common asylum system.

- 2.15 Reminds Member States that, irrespective of the type of procedure (administrative or judicial), every stage must be governed by the logic of protection and not prosecution.
- 2.16 Recommends that the Commission and the Council ensure clarity and transparency in the allocation and use of the European Refugee Fund for 2008-2013, under the general programme "Solidarity and Management of Migration Flows" as recommended in its opinion<sup>5</sup>, in which it "calls for practical provisions to be included in the decisions setting up these various funds to ensure that non-state operators are associated at as early a stage as possible in the annual and multi-annual framework of guidelines drawn up by the Member States and by the Commission itself".
- 2.17 Recommends that the pro rata financial incentives in proportion to the considerable efforts of certain Member States - such as Sweden for instance – or the limited capacity (geographical size and pro rata to population) - such as Malta and Cyprus - do not lead other Member States to shirk certain of their responsibilities and obligations in terms of access to their territory and the processing of asylum claims, or resettlement of refugee groups, whether internal (solidarity and burden sharing) or external (contribution to extraregional efforts).

### 3. **General comments**

- 3.1 The Committee welcomes the public consultation on the future CEAS via the Green Paper. It is pleased that the Commission has taken this opportunity to draw attention to deficiencies in European legal provisions and the differences between European laws and the practices of Member States.
- 3.2 The Committee urges the Commission and the Council to ensure that discussions on the management of borders do not undermine the fundamental right to seek asylum or international protection, including land, air and maritime border measures, and especially in the case of interception and rescue at sea, both within and outside the territorial waters of Member States.
- 3.3 With regard to combating terrorism in particular, as well as crime and human trafficking, the Committee urges the Commission and the Council to ensure that insecurity around the world does not have a negative impact on public perceptions of refugees and asylum seekers, and does not jeopardise the integrity and nature of asylum.

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<sup>5</sup> EESC opinion of 14 February 2006, rapporteur: Ms Le Nouail Marlière (OJ C 88 of 11.4.2006), point 2.4 and the Conclusions, fourth indent.

#### 4. Specific comments

##### 4.1 Legislative instruments; processing of asylum applications; national exemption clauses

According to the Commission, basing its opinion on many NGO and UNHCR reports, the "Asylum Procedures Directive" provides for procedural standards based on common minimum criteria, leaving the Member States scope for national adaptations and exemption clauses. For this reason, persons seeking protection in the EU do not benefit from identical guarantees, which vary according to the country where they seek asylum; and sometimes, even according to the place in the country where they submit their asylum application. This flexibility has also led to a gradual decrease in respect for asylum seekers' rights, as can be seen from certain recent national legislative reforms.

The Committee supports the objective of setting up a common European asylum system with the fundamental aim of ensuring that every asylum seeker has access to fair and efficient procedures. For this reason, **the implementation of a common procedure hardly seems compatible with the national exemption clauses applied by Member States.** The Committee will be vigilant regarding the common nature of the procedures put forward in the Commission's action plan, as well as to ensure that the definition of procedural rules and common criteria is not harmonised according to the lowest common denominator for refugee protection.

##### 4.2 Safe countries of origin

The Committee is concerned about obstacles to some asylum seekers' access to fair procedures, in violation of the principle of non-discrimination as set out in the Geneva Convention (Article 3).

Thus people from countries considered as "safe" or "safe third party countries", whose claims may be deemed "unfounded" under fast track, "accelerated" or "priority" procedures have no safeguards for their right of review and appeal. The fact that Member States have been unable to agree on a common list creates de facto inequalities, especially with regard to the application of the Dublin II regulation: the "Member State responsible" may therefore declare an asylum claim to be inadmissible under its national list of safe countries, whereas this country may not feature on the list of the country returning the asylum seeker.

The Committee recommends that Member States rapidly draw up a single list.

Recalling that "free and unrestricted access to their territory and asylum procedures constitutes a fundamental guarantee that the Member States must strive to provide"<sup>6</sup>, the

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<sup>6</sup> EESC opinion of 26.4.2001 on the Proposal for a Council Directive on *minimum standards on procedures in Member States for granting and withdrawing refugee status*, rapporteur Mr Melícias (OJ C 192 of 10.7.2001), point 3.2.2.

Committee believes, moreover, that an "application for asylum cannot be dismissed solely by invoking the concept of safe third country"<sup>7</sup>, but must be supported by a specific examination, in application of the Geneva Convention. Indeed, the obligation to examine applications for protection and asylum on a case-by-case basis excludes the concept that a country may be considered safe for each and every individual, and that a person cannot be subject to persecution due to his/her specific status (belonging to a social group, persecution by state- or non-state agents or for other reasons).

Furthermore, it would stress that the provisions set out make it impossible to guarantee that the country to which the asylum seeker is being returned can offer him effective and lasting protection.

#### 4.3 Review and appeal (suspending execution of decisions)

In application of the principles of effectiveness and equity, decisions rendered in this context should not be exempt from review by an impartial and independent authority or court. Noting that some Member States apply this right restrictively or artificially in many situations, the Committee stresses the fact that such appeals/reviews should always have the effect of suspending execution of the decision and calls on the Commission and Council to monitor the situation.

#### 4.4 Country of origin information

The EESC considers that the examination of applications for asylum must be accompanied by reliable data provided on the real risks presented in the countries of origin. In its opinion of 26 April 2001, the Committee stated that "information regarding the asylum applicant's country of origin and the transit countries he has crossed [should] also be able to be provided by organisations which are recognised as representing civil society and which are active in the Member State examining the asylum application"<sup>8</sup>.

In view of setting up a common system for all Member States, the Committee believes that the quality and homogeneity of first instance decisions will depend largely on the quality and homogeneity of available country of origin information consulted by the Member States' authorities or judicial bodies.

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<sup>7</sup> Melicías, point 3.2.12.3.

<sup>8</sup> EESC opinion of 26.4.2001 on the Proposal for a Council Directive on *minimum standards on procedures in Member States for granting and withdrawing refugee status*, rapporteur Mr Melicías (OJ C 192 of 10.7.2001), point 2.3.

#### 4.5 Asylum at the border

The Committee notes that Member States are called on to improve access to procedures but is concerned by the inadequacy of information to applicants regarding their rights and the guarantees to which they are entitled.

Contrary to what the press would have us believe, there is a steady fall in asylum applications made in the EU<sup>9</sup>. This leads the Committee to reiterate that all asylum seekers, **irrespective of their situation or location**, are entitled to an effective examination of their applications. **This means that they should have access to an interpreter, free legal assistance and sufficient time to present their case.** It recalls its previous proposal that asylum seekers should also be entitled "to contact recognised NGOs which defend and promote the right of asylum"<sup>10</sup>.

In the same spirit, the Committee reiterates previously expressed reservations regarding the excessive application by Member States of the "manifestly unfounded" concept to asylum claims. It notes an excessive increase in the application of this concept, which results from the unduly vague wording of Article 23(4) of the Asylum Procedure Directive, and considers it necessary to reframe this concept. In agreement with the UNHCR on this point, **the Committee reiterates its hope that "the principles which are essential to a fair asylum procedure (...) apply to all asylum applications, including those which are manifestly unfounded"**<sup>11</sup>.

As a consequence, the Committee would like to express its interest in the Commission's proposal to strengthen "the legal safeguards accompanying the crucial initial stage of border procedures and in particular the registration and screening process".

#### 4.6 Single procedure

The Commission believes that "[s]ignificant progress (...) may furthermore be achieved by including as a mandatory element in the CEAS a single procedure for assessing applications for refugee status and for subsidiary protection"<sup>12</sup>. It would appear that where the single procedure has been implemented, it has indeed significantly reduced waiting times for decisions and, consequently, uncertainty for the asylum seeker.

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<sup>9</sup> In 2006, 192 300 asylum applications were made in EU-27, i.e. 50% less than in 2001 and 70% less than in 1992 (EU-15) – Eurostat, *Statistics in Focus*, Issue No. 110/2007.

<sup>10</sup> Melicías, point 3.2.4.4.

<sup>11</sup> Melicías, point 3.2.15.2. UNHCR press conference, and UNHCR's Recommendations for Portugal's European Union Presidency, of 15 June and 11 December 2007.

<sup>12</sup> Green Paper, p. 4.

This procedure means that the asylum seeker has to deal with a "one-stop shop" and that the decision-making authority first reaches a decision on recognition of refugee status under the Geneva Convention and then, and only as a complementary measure, on subsidiary protection. **In order to fulfil this objective, such a procedure must apply everywhere, including to asylum applications submitted at the border**<sup>13</sup>.

The Committee nevertheless stresses that, as stated in its opinion of 29 May 2002, "subsidiary protection cannot be a means of weakening the protection conferred by refugee status"<sup>14</sup>. The EESC also notes, as does the UNHCR<sup>15</sup>, that Member States make considerable use of subsidiary protection when this has little to do with developments in the country of origin, and do not invariably substantiate this in the decision, as asylum seekers are entitled to expect.

#### 4.7 Reception conditions for asylum seekers; standards

The Committee notes that reception conditions for asylum seekers vary considerably from one Member State to another. The EESC notes that some of them would prefer harmonisation to result in more restrictive laws, such as "placing geographical constraints on applications and residence"<sup>16</sup>, in the belief that this makes some countries less attractive than others.

The Committee is aware that asymmetrical national laws result in secondary movements; it cannot however conclude from this fact that there is a need to lower the standard of rights for asylum seekers. To eliminate disparities, it is not necessary to demand a higher level of protection than necessary if these standards are common to all Member States and uniformly applied.

#### 4.8 Access to training and the labour market

Certain Member States put forward two reasons against giving asylum seekers access to the labour market: they want room for manoeuvre in order to respond to the employment

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<sup>13</sup> *Asylum in the European Union, A study of the implementation of the Qualification Directive* UNHCR, November 2007.

<sup>14</sup> EESC opinion of 29.5.2002 on the Proposal for a Council Directive on *minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*, rapporteur Ms Le Nouail-Marlière (OJ C 221 of 17.9.2002), point 2.3.5.

<sup>15</sup> **Same study:** The Committee also refers to the proposed amendments to the Qualifications Directive (Articles 8.3; 8.1; Recital 26 of Article.15c; Articles **12 and 14** (compliance with the 1951 Geneva Convention); 17 and 19; and the following recommendations to the European Commission: requesting interpretations and decisions from the European Court of Justice; quality assurance and control of decisions throughout the European Union; Training; Adoptions of guidelines for EU Member States: application of UNHCR guidelines; Preliminary decisions of national courts to the European Court of Justice; written submission or decisions; Quality control of decisions at national level; Analysis of the potential of agents involved in protection; on-site protection; access and eligibility; serious risks; reasons for exclusion, **UNHCR November 2007**.

<sup>16</sup> France: *Rapport d'information déposé par la délégation de l'Assemblée nationale pour l'UE*, presented by Mr Lequiller. No 105, 25 July 2007.

situation in their countries; and the fact that since asylum claim rejection rates are expected to remain high and procedures more expeditious, access to the labour market would only be temporary.

The Committee believes that despite the objective of expediting asylum procedures, their number and the nature of many cases presented by claimants could cause substantial delays in the processing of claims in some countries. The Committee notes that, as a result, although the Reception Directive sets out that "Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence." (Article 13), **the integration of refugees in the host country depends on their self-sufficiency and that the latter will be all the more effective if conditions for it are met as soon as possible after their arrival.**

**In its opinion of 28 November 2001, the Committee stated that the "possibility of access to the labour market is clearly of material and moral benefit to both asylum seeker and host country"<sup>17</sup>; the EESC reiterates this statement and stresses that asylum seekers must have access to training, language courses and health care in particular.**

The fact that some of them will not be allowed to remain in the country if their claims are rejected is not a valid argument against measures for increasing the self-sufficiency of asylum seekers as these are "the best foundation for a successful integration process and, where appropriate, a fair system for returning asylum seekers to their countries of origin"<sup>18</sup>. By contrast, there is every indication that excluding them from the labour market encourages undeclared work.

The Committee shares the Commission's view that **reception standards that respect human dignity could apply without distinction to all asylum seekers, irrespective of whether they are entitled to refugee status or subsidiary protection.**

#### 4.9 Detention

The Committee has expressed its concern that some Member States place asylum seekers in "holding centres", which are not so much reception centres as detention centres.

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<sup>17</sup> EESC opinion 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*", rapporteurs: Mr Mengozzi and Mr Pariza Castaños (OJ C 48 of 21.2.2002), point 4.3.

<sup>18</sup> *Idem*, point 3.1.

Echoing the Council of Europe's recommendations, the EESC has already stated that **asylum seekers should only be detained in exceptional circumstances and only for the strictly necessary period<sup>19</sup>. Alternative solutions should be preferred<sup>20</sup>.**

In any event, a claimant placed in such a situation should not be treated like "a criminal" and should have the same access to free, impartial and qualified legal aid as any other asylum seeker. NGOs should be in a position to intervene in order to provide advice and assistance to asylum seekers. Vulnerable persons<sup>21</sup>, including minors, and especially unaccompanied minors, must receive special protection.

Persecution specific to certain women must be taken into consideration as grounds for protection on an individual basis and independently of any persons accompanying or accompanied by them (minors, or husbands, relatives, and others).

The Committee further believes that "holding centres" should be subject to regular monitoring by the European Committee for the Prevention of Torture (CPT).

#### 4.10 Granting protection

Persons who are not entitled to protection but cannot be expelled

The Commission intends to harmonise the status of persons who, for specific reasons, cannot be removed from the country even though their asylum claim has been rejected. This consists in applying the principles set out in international instruments on the rights of refugees and human rights, backed systematically by the case-law of the European Court of Human Rights.

The practices of Member States vary in this regard, and the Committee considers it necessary **for the grounds for this status to be defined uniformly throughout the EU**. It is particularly unacceptable that in some countries people are deemed to be "without status", i.e. they have no residence permit but cannot be expelled, and therefore find themselves in a

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<sup>19</sup> EESC opinions of 26.4.2001 on the Proposal for a Council Directive on *minimum standards on procedures in Member States for granting and withdrawing refugee status*, rapporteur Mr Melícias (OJ C 192 of 10.7.2001), point 3.2.11.

<sup>20</sup> Report of an international fact-finding mission: *Locking up foreigners, deterring refugees: controlling migratory flows in Malta*, International Federation for Human Rights, Catherine Teule, point 4-1.1.

See also modernisation of monitored but open reception centres during the accession of Romania to the EU, observed during a mission carried out during the preparation of the EESC opinions of 15.12.2004 on the Communication from the Commission to the Council and the European Parliament on *the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin – Improving access to durable solutions* and on the Communication from the Commission to the Council and the European Parliament on *A more efficient Common European Asylum System: The single procedure as the next step*, rapporteur: Ms Le Nouail Marlière (OJ C 157 of 28.6.2005).

<sup>21</sup> As defined by the UNHCR (*Master Glossary of Terms*, June 2006): physically, mentally or socially disadvantaged persons who may be unable to meet their basic needs and may therefore require specific assistance. (pregnant women, children, the elderly, infirm, disabled, etc.).

precarious legal, social and economic situation, which is incompatible with their human dignity. Thus they become subject to policies for the removal of persons in irregular situations. Without seeking to underplay the complexity of the issue, the Committee believes that **such circumstances should result in the issuance of temporary residence permits entitling the holder to work.**

#### 4.11 Solidarity and burden sharing

##### Responsibility sharing - the Dublin system

In an opinion dated 12 July 2001 on a common asylum procedure and a uniform status<sup>22</sup>, the Committee delivered its opinion on the application of the Dublin Convention. It noted that the mechanism created more problems than it solved and its cost outweighed its results, without preventing asylum seekers from disappearing before they can be returned to the country of first entry.

Returning to these points, the Committee believes that the relevance of the Dublin system (Dublin and EURODAC Regulations) was that it raised the question of asylum procedures at EU level. However, the EESC also notes that the system, whose primary objective was to "quickly establish which Member State is responsible for the examination of an asylum application", did not achieve its ancillary objective, which was to "prevent secondary movements between Member States"<sup>23</sup>. Furthermore, it has created additional burdens, which are sometimes very onerous for certain Member States, and in particular, for those at the EU's external border.

Moreover, according to an evaluation carried out by the Commission<sup>24</sup>, some Member States transfer more or less the same number of asylum seekers between each other, so much so that it would be conceivable "to allow Member States to conclude bilateral arrangements concerning "annulment" of the exchange of equal numbers of asylum seekers in well-defined circumstances"<sup>25</sup>. Registering the fingerprints of asylum seekers with EURODAC should in itself be enough to further reduce asylum shopping and multiple applications.

**The Committee notes that the human cost of applying the Dublin system outweighs its technical objectives.** It believes that adopting common standards by minimising the

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22 EESC opinion of 12.7.2001 on the Communication from the Commission to the Council and the European Parliament: *Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum*, rapporteurs: Mr Mengozzi and Mr Pariza Castaños (OJ C 260 of 17.9.2001).

23 Green Paper, point 12.

24 Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system – COM(2007) 299 final - 6 June 2007.

25 COM(2007) 299, page 8.

differences in the way Member States process applications should reduce the importance of this criterion (vis-à-vis other criteria) in the minds of asylum seekers when they decide to apply for asylum in one country rather than another. On the other hand, cultural and social considerations will continue to play an undeniable role in a refugee's integration in the host country.

As a result, the Committee recommends, as it has already done in previous opinions<sup>26</sup>, 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.** Insofar as recognised refugee status confers the freedom to travel to countries other than the State having recognised such status, this would amount to no more than anticipating the implementation of this right.

In any event, the Committee believes that the **Regulation should not be applied to unaccompanied minors** unless this is the best interests of the child.

#### 4.12 Financial solidarity

Reforming the Dublin system along these lines should significantly reduce the burden of Member States that are currently the first destinations of asylum seekers. It nevertheless remains that there are marked differences in the number of applications registered in individual Member States. An efficient burden-sharing system therefore seems necessary to help those States where the highest number of applications is registered.

So-called "internal" resettlement (within the European Union) could also be a partial solution but it cannot become a rule or a single solution especially as **resettlement should only take place with the explicit and informed consent of the refugee concerned and subject to guarantees that the conditions for resettlement offer the refugee a high level of integration in the new host country.**

#### 4.13 External dimension of asylum

Supporting third countries to strengthen protection – Regional protection programmes

Based on experience gained through the regional protection programmes designed to provide protection for refugees in their own regions of origin or in transit countries, the Commission

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EESC opinion of 12.7.2001 on the Communication from the Commission to the Council and the European Parliament: *Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum*, rapporteurs: Mr Mengozzi and Mr Pariza Castaños (OJ C 260 of 17.9.2001) and EESC opinion of 29.5.2002 on the Proposal for a Council Directive on *minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*, rapporteur: Ms Le Nouail Marlière (OJ C 221 of 17.9.2002).

intends to consolidate them and put them on a permanent footing. This policy in line with the broad outlines of the Hague Programme.

The Committee supports all initiatives liable to improve reception conditions for asylum seekers in third countries. However, it 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.

The Parliamentary Assembly of the Council of Europe<sup>27</sup> states that if such centres are to be established, "**they should be created first within the European Union before extending the experiment outside the frontiers of the European Union or outside of Europe**". The Committee emphasises that countries that have not ratified the 1951 Convention Relating to the Status of Refugees (Geneva, 1951) should be excluded from these programmes. Nevertheless, the Committee is in favour of the European Union showing solidarity with certain third countries coping with mass or minor influxes.

#### 4.14 Mixed flows at the external borders

The Committee recalls that in its opinion on Frontex, it had stressed that efficiency in border control should not come into conflict with asylum rights. "The Agency's tasks must also include co-ordinating rescue services – particularly sea rescue – to warn and help people who are in danger owing to the high-risk practices employed in illegal immigration"<sup>28</sup> and called for **coast guards to be trained in humanitarian law**.

**With regard to maritime interception, the Committee notes that no procedures for examining applications to enter the territory, a fortiori asylum claims, exist. The EESC calls for steps to be taken to ensure that such procedures are implemented, namely so that asylum applications can be registered as close as possible to the point of interception.**

#### 4.15 The role of the EU as a global player in refugee issues

The Committee believes that in framing a common asylum policy, the EU should also organise the future system in such a way that it also serves as an inspiration for other parts of the world by playing an exemplary role in the system of international protection for refugees,

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<sup>27</sup> Council of Europe – Parliamentary Assembly: Assessment of transit and processing centres as a response to mixed flows of migrants and asylum seeker's - Doc. 11304, 15 June 2007.

<sup>28</sup> EESC opinion of 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: Mr. Pariza Castaños (OJ C 108 of 30.4.2004), point 3.2.

by ensuring that European laws are in full compliance with international refugee law and humanitarian law, and by assuming its own responsibilities.

#### 4.16 Monitoring instruments

The Committee notes that the Commission has asked it to deliver an opinion on the future framework for a common European system at a time when the instruments and initiatives of the first phase have not been evaluated, and the directives have yet to be transposed into all national legislations. In order to respect the 2010 deadline, it advocates identifying adaptation mechanisms for the purposes of future evaluations and recommends that the implementation of new instruments and/or the review of existing instruments should be accompanied by a monitoring system to analyse the effects of a common asylum system and the situation of refugees. This task could be delegated to the support office envisaged in the Green Paper, and the UNHCR, NGOs active in this field and the Fundamental Rights Agency of the European Union could be associated with the office. This work could also culminate in an annual report to be submitted to the EU institutions.

The Committee calls on the Commission to subsequently deliver an annual report on the implementation of the common system to the consultative committees (the EESC and the CoR) and the European Parliament.

Brussels, 12 March 2008.

The President  
of the  
European Economic and Social Committee

The Secretary-General  
of the  
European Economic and Social Committee

Dimitris Dimitriadis

Patrick Venturini

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