

Establishing a Common European Asylum System: still a long way to go

NGO Statement on the occasion of the final vote on the Asylum Package

After five years of negotiations, the European Parliament will be voting on the final adoption of the 'asylum package'. Without any doubt, this is another milestone in the process of harmonisation in the field of asylum; a process that started in Tampere in 1999 where EU leaders committed to establishing a Common European Asylum System (CEAS), based on the full and inclusive application of the Geneva Convention. A commitment that was reaffirmed in the 2009 Stockholm Programme calling for a CEAS that is based on high standards of protection and where similar asylum applications are treated alike and result in the same outcome regardless of the Member State in which they are lodged. Today, this is far from being accomplished for asylum seekers arriving in the EU who may still be confronted with obstacles in accessing asylum procedures, inadequate reception conditions, difficulties in receiving quality legal assistance and gender-sensitive treatment, and diverging recognition rates depending on the EU Member State responsible for examining their asylum application. The vote in the European Parliament heralds the next operational phase of the CEAS rather than the completion of it.

We acknowledge that the recast asylum legislation includes certain significant improvements such as the strengthening of the right to a personal interview, including in Dublin procedures, the right to an effective remedy, better representation for unaccompanied children and the further approximation of protection statuses under EU law. Nevertheless, the legislation provides a still imperfect legal framework for a CEAS that today only exists on paper. Although serious efforts have been made to ensure the alignment of the EU legislation with human rights law, concerns remain. Some legislative provisions lack legal clarity and are ambiguous, whilst others give too much discretion to Member States, which may have the further effect of undermining the overall aim of achieving harmonized and high standards of protection across Europe. In our view, this is particularly the case with regard to the following key aspects of the legislation to be voted upon this week:

- **Detention:** The grounds for detention defined in the recast Reception Conditions Directive risk leading to an excessively broad interpretation by Member States, thereby encouraging a more systematic use of detention of asylum seekers as opposed to making the practice truly exceptional. EU standards fall short of international refugee and human rights law which presupposes that, as a general rule, asylum seekers should not be detained and that detention should only occur in truly exceptional cases, and then only with full procedural safeguards in place. Member States should explicitly prohibit the detention of children. Alternatives to detention should always be considered first.
- **Procedural guarantees for vulnerable persons:** All asylum seekers are inherently vulnerable. However, due to specific vulnerabilities some asylum seekers, such as torture survivors and unaccompanied children, have special procedural needs which must be identified and addressed to ensure that their protection needs are correctly examined. By refusing to exempt such persons from accelerated and border procedures, the recast Asylum Procedures Directive fails to fully acknowledge their vulnerability.
- **Legal Aid:** Access to quality legal assistance in practice is a crucial element of ensuring effective judicial protection. The legislative standards set in place do not constitute any significant progress in this respect. The recast Asylum Procedures Directive does not include an obligation for Member States to provide free legal assistance and representation at the first instance of the

asylum procedure, while at the appeal stage this can be made conditional on the appeal having a tangible prospect of success. Now more than ever, with the implementation of complex asylum procedures, the availability of high quality legal assistance is an essential element to ensure fair and efficient asylum procedures in practice.

- **Dublin II Regulation:** Recent research indicates that the Dublin system is being applied in a detrimental way, undermining asylum seekers' fundamental rights and leading to lengthy delays in the examination of asylum claims. In this next phase of the CEAS, the challenge for the EU will be to apply the recast Dublin Regulation whilst respecting the fundamental rights of those subject to it. As long as there is limited convergence and harmonization in asylum policies and practices across Europe, problems within the Dublin system will remain. In the longer term, we call for the Dublin system to be fundamentally revised to ensure that asylum seekers' rights are effectively safeguarded.

We, the undersigned organisations, believe that Europe cannot afford to miss the present opportunity to translate these new legislative standards in the EU asylum *acquis* into high standards of protection at the national level. In particular, in transposing the EU legislation, we call on Member States to create or maintain more favourable standards of protection than those outlined in EU asylum *acquis*. States have now to do the right thing and give asylum seekers a fair chance to have their claim properly examined, put an end to the detention of those fleeing persecution, and allow refugees to rebuild their lives and contribute to society. In no way should the transposition of common EU standards result in the downgrading of national asylum systems in law or in practice.

We call on the Commission to allocate sufficient resources to effectively monitor the implementation of EU law, including compliance with international and European human rights law, and address any deterioration of practices by starting prompt infringement proceedings. Likewise, EASO will play a key role in the concrete development of the CEAS in practice as well as in law. Civil society organisations have invaluable expertise and knowledge and provide important services to asylum seekers. Therefore, it is crucial that the Commission and EASO engage meaningfully with these organisations as part of their respective roles in monitoring implementation and the early warning and preparedness mechanism; enhancing practical cooperation on asylum matters and supporting Member States. The support of civil society organisations in delivering essential services and documenting asylum practices in Member States in this respect will be vital. Therefore, sufficient resources and capacity will be necessary to help achieve this objective in practice, which must be incorporated in the upcoming policy dialogues in the framework of the future Asylum and Migration Fund.

During this next phase of transposition and implementation, Member States and the EU institutions are called upon to engage in open, transparent and regular dialogue with UNHCR and civil society organisations in creating a Europe of protection and integration of all persons seeking international protection on our shores.

BRUSSELS, 10 June 2013

