



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT**

**A More Efficient Common European Asylum System:
The Single Procedure as the Next Step**

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INTRODUCTION

At the Justice and Home Affairs Council in Luxembourg on 29 April 2004, the Council formally adopted the 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 (the Qualification Directive) and reached political agreement on the Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (the Asylum Procedures Directive). Formal adoption can take place following the outcome of the consultation of the European Parliament. The first phase of the Common European Asylum System will then be complete.

The end of the first stage of the legislative programme under the Amsterdam Treaty requires the EU to take a view both of what will be the characteristics of the second stage of the Common European Asylum System as well as to reflect on and assess the impact of the instruments agreed over the last four years.

Conclusion 27 of the Thessaloniki European Council of June 2003 called for further reinforcement of asylum procedures in order to make them more efficient with a view to accelerating as much as possible the processing of non international protection related applications. This calls for a response on how the EU can build such reinforcement and acceleration into the procedures which lead to the two forms of international protection defined in the Qualification Directive. For the reasons set out in this Communication, taking steps towards a single procedure would answer those demands.

This Communication puts into context the recent study on the single procedure and is intended to launch further discussion on the single procedure which will take place in the Council and the European Parliament. After a preparatory phase has been completed the Commission will bring forward a proposal for Community legislation.

Background to this Communication

1. The Commission Communication of November 2000 “*Towards a common asylum procedure and a uniform status valid throughout the Union for persons granted asylum*” pointed to the move towards a ‘one-stop shop’ type of procedure by certain Member States. The Commission undertook to launch a study as a basis for further reflection.
2. The “*Study on the single asylum procedure ‘one-stop shop’ against the background of the common European asylum system and the goal of a common asylum procedure*” (the Study) was issued in January 2003 and can be accessed at:

http://europa.eu.int/comm/justice_home/doc_centre/asylum/studies/docs/study_one_stop_shop_en.pdf

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A full policy background and a summary of the findings of the Study can be found at **Annex A**.

Why a single procedure?

Speed and Efficiency

3. The first and most obvious advantage of a single procedure is the increase in speed and efficiency of the procedure. In the Study, those Member States who operate a single procedure point out these effects of its introduction. A procedure which focuses on assessment of the protection needs defined in the Qualification Directive and where a single authority makes a decision on the basis of either of those two sets of criteria clearly has the potential to be quicker than the scenario of consecutive applications to one or more authorities where similar facts are assessed and appeals against the decisions of different authorities run in parallel.
4. The centralisation of resources for dealing with applications for protection can also deliver clear benefits. A single integrated interview and assessment of the case saves time and resources such as legal and country experts and interpreters and helps tackle administrative challenges such as file keeping unity and the generation of representative statistical data based on harmonised definitions. This can be a real gain for Member States - a quicker and more efficient system aids the integration of refugees and the removal of those without protection needs.

Protection

5. There are good arguments for the introduction of a single procedure related to the protection aspects of applications for international protection. There can be no expectation that an applicant for international protection can evaluate whether their claim relates to the criteria set out in the Geneva Convention or have any knowledge of the other human rights instruments which underlie other forms of international protection.
6. The minimisation of possible trauma and the transparent nature of one inclusive procedure are also encouragements to the applicant to present his or her case in a comprehensive manner covering all aspects which make it impossible for him or her to return to the country of origin. This avoids the possibility of significant facts being revealed after the main asylum procedure has been completed when the guarantees applicable to the asylum process no longer apply. The credibility of the applicant may also be improved if they do not have to face a sequence of procedures with the risk of their statements being adjusted to take account of the differing criteria against which it will be measured by different authorities.

Public perception

7. The Commission Communication of March 2003 "*On the common asylum policy and the Agenda for protection*" spoke of a crisis in the asylum system that was more and more striking in certain Member States and a growing malaise in public opinion. Where one decision on protection follows a quick, comprehensive procedure (followed by the possibility of an appeal against that decision), ambiguity and the damaging perception that there are myriad possibilities to stay in a country for protection reasons can be dispelled. There is no evidence that the establishment of a single procedure increases the attractiveness of accessing the procedure as a whole and the majority of Member States award a lesser status to those not qualifying for Geneva Convention status.

Returns

8. A single procedure adds value to the asylum systems of the Member States of the EU in their efforts to return those who do not qualify for international protection. Where all possible protection obligations are included in one procedure, the chance of further protection-related obstacles being raised to delay or prevent removal is all but removed. The authorities responsible for return then act in the knowledge that there are no outstanding considerations to be dealt with. Cooperation between asylum authorities and return authorities is obviously key to smoother procedures here.

Why action at EU level?

Closing a potential protection gap

9. The Qualification Directive obliges Member States to grant subsidiary protection status to any third country national or stateless person who qualifies for subsidiary protection in accordance with the criteria set out in the Directive. The applicant's grounds for protection must be assessed in accordance with the criteria in the Directive including all relevant facts as they relate to the country of origin, relevant statements and documentation, and the individual circumstances of the claim.
10. The Asylum Procedures Directive applies to all applications for asylum made in the territory or at the border or transit zones of Member States. The Directive says that Member States which employ or introduce a procedure in which asylum applications are examined not only as applications on the basis of the Geneva Convention but also applications for subsidiary protection shall apply the Directive throughout their procedure.
11. In light of the formal adoption at the JHA Council in Luxembourg on 29 April 2004 on a Directive which introduces a common understanding of two different kinds of protection status among Member States and political agreement on a Directive which obliges Member States to introduce minimum standards on procedures leading to only one of those status, there remains the question of how to introduce procedural guarantees for those who apply explicitly for subsidiary protection status or who, at an early stage in their application, do not raise grounds which are obviously relevant to the Geneva Convention but who nevertheless would qualify for subsidiary protection. The completion of the first stage of the Common European Asylum System would clearly require the closing of this potential 'protection gap' so that all applications for international protection as defined in the Qualification Directive are covered by the same procedural guarantees. Under Community law it cannot have been intended that those claiming to be in need of subsidiary protection (for which Community law will provide a status) would not have similar possibilities to present their case and exercise appeal rights as those claiming to be refugees (for which Community law also provides a status). This is particularly relevant given that Member States of the EU often provide subsidiary protection with more frequency than protection based on the Geneva Convention for applications for international protection. The closing of this protection gap would not in itself constitute a single procedure – rather, two parallel procedures would be provided for as a necessary first step towards a true single procedure (a procedure with a single authority making a single decision).

Making the necessary changes at EU level

12. While the implementation of the minimum standards Directives will require changes in administrative practices in most Member States, the introduction of a single procedure would involve a more substantial change in the administrative structures. The starting positions of Member States in relation to the possible adoption of a single procedure vary enormously. The step-change required to reach a level field in this area can only be made if a common objective has been identified and agreed in an enlarged EU.

Added value of EU cooperation – a joint methodology

13. In order to initiate this change and provide the technical assistance to prepare Member States for the possibility of legal and infrastructural adjustments the Commission recommends two approaches:
 - Preparatory Phase. A period of consultation, debate and preparation on what Member States need to do to unify the procedures which lead to the two types of status set out in the Qualification Directive. This shall be initiated by the Commission in a series of operational actions and technical projects including Commission-chaired experts meetings which look at how the practices applicable to refugee status determination could be extended to the assessment of whether an applicant qualifies for subsidiary protection and how the whole procedure could further be made more efficient and speedy. The Preparatory Phase would therefore prepare the ground and establish broad consensus for the bringing forward of:
 - Community legislation. First step legislative action to extend the guarantees agreed as applicable to claims for refugee status in the Asylum Procedures Directive to those for subsidiary protection status in the Qualification Directive. Consideration would need to be given to how the Asylum Procedures Directive might need to be amended to take into account the particularities of the assessment of claims for subsidiary protection. Also whether the Reception Conditions would need to be amended and if the Dublin II Regulation might be extended to cover applications for subsidiary protection.
14. The interdependency of the two approaches is clear: legislation should only be brought forward to address those areas identified by the Preparatory Phase as suitable and possible and of real benefit to the asylum systems of EU Member States.

How to achieve a single procedure in the EU

A: Legislative approach: key questions

15. Legislation is clearly required for step change envisaged. However, any legislative action needs to be carefully prepared and firmly grounded in the results of a consultation with Member States and other relevant stakeholders which addresses all of the technical and political issues which are raised. There are several key questions to be answered including those raised by the Commission in the Communication of November 2000 "*Towards a common asylum procedure and a uniform status valid throughout the Union*" which were examined in some detail in the Study.

Level of ambition

16. The focus of legislation would depend to a large degree on the preparatory phase which would assess **a)** what could be changed by Member States by simply adjusting their operational practices and **b)** what, on the other hand, would have to be changed by legislation
17. There are several possibilities for the key goals underlying legislative action:
- to extend to applications for subsidiary protection the guarantees for first instance examination applicable to applications for refugee status pursuant to Chapter II of the Asylum Procedures Directive;
 - to subject negative decisions on applications for subsidiary protection to the notion of an effective remedy before a court or tribunal as for decisions rejecting an application for refugee status under Chapter V of the Asylum Procedures Directive;
 - to extend the scope of the Reception Conditions Directive to applicants for subsidiary protection;
 - to extend the scope of the Dublin II Regulation to cover applications for subsidiary protection;
 - to introduce a common administrative approach to the examination procedures such as the introduction of a single authority for the examination of applications for both refugee status and subsidiary protection;
 - to extend the scope of any of the above Community standards on procedures to other grounds preventing removal from the EU with a view to an all inclusive single procedure.

Timescale of legislation

18. A phased introduction of legislation could be envisaged, focusing first on applying procedural guarantees to both types of status, then on extending other guarantees in the Asylum Procedures Directive followed by an extension of scope for the other instruments in the first stage of the Common European Asylum System and gradually a single procedure for all aspects of the examination of a claim.

Scope of the single procedure – which procedural standards should be included/excluded?

19. As a first step, at least Chapter II of the Asylum Procedures Directive, “*Basic Principles and Guarantees*” (which deals with access to the procedure, the right to remain in the Member State pending examination, examination requirements, interviews, rules on legal assistance and procedures for withdrawal) must be made equally applicable to applications for subsidiary protection. The standards are essential for fair procedures and will constitute the foundation of all common procedures under future Community law.

How should appeals be handled in a single procedure?

20. The obligation to provide an effective remedy in the event of a negative decision affecting an individual’s rights given under Community law is a matter prescribed not only by the Court of Justice but also by the European Court of Human Rights. It will be important to assess how Member States implement the core principle of “effective remedy” contained in the Asylum Procedures Directive and how that principle is interpreted by the European Court of Justice in the context of different national legal systems. A single procedure which included the appeals level would maximise the advantages of administrative efficiency. However, given the potential impact on national legal systems it may be preferable to explore that possibility at a later stage, although the Preparatory Phase should take on board the views of the respective judiciaries of the Member States.

The scope of the single procedure – including/excluding other grounds for stay

21. It will be important to assess how far and within which timeframe the Community wishes to proceed: whether there should be an ‘all inclusive’ procedure which can deal with applications made on grounds outside those described in the Qualification Directive or whether those additional reasons should be left to the individual competencies of the Member States’ alien authorities for the reasons set out in the Study (on-the-spot flexibility, practical competence etc).

How to safeguard the integrity of the Geneva Convention

22. Account should also be taken of the concerns that the introduction of a single procedure might lead to a watering-down of the Geneva Convention outlined in the Study. The Study noted that the introduction of a single procedure generally increased the tendency to grant a less beneficial status than Convention status to prevent a refugee from taking advantage of all the benefits laid down in the Geneva Convention and by extension, the Qualification Directive. Provisions to guard against this tendency would include a predetermined sequence of examination so that claims for subsidiary protection are examined only after a negative assessment of Geneva Convention grounds and a properly reasoned decision for rejecting a claim for Geneva Convention status where subsidiary protection is allowed. Training which deepened practitioners' understanding of the Geneva Convention would prove a useful enabler of these two provisions and would also be used to reinforce understanding of where obligations under the Geneva Convention cease and those under subsidiary protection begin.

Frontloading – maintaining the quality of decisions

23. There is a balance to be struck between the speed and the quality of procedures. While legislation should help accelerate the asylum procedure, good quality decision making, particularly at first instance is also important to ensure the integrity of the system (and this can reduce the number of appeals allowed thereby saving more time and resources). Any legislative measure should take account of this balance. In the mid to long term the EU should agree on key principles of good practice for administrative acts such as interviewing and decision making and could even establish a Centre of Excellence for asylum practitioners which promulgates best practice and provides training on these issues as well as acting as a key resource for the sharing and exchange of Country of Origin Information.
24. Also in this context consideration should be given to the question of whether the examination on subsidiary protection grounds should take place *ex officio* (where the examining office will automatically look at grounds for subsidiary protection if those for Geneva Convention status are not fulfilled) or only on request given that an *ex officio* examination of subsidiary protection grounds would help reduce possible delays incurred during return procedures by removing the possibility that these grounds are raised to delay removal.

Returns

25. A single procedure on applications for international protection as defined in the Qualification Directive will reinforce the potential for an effective return process within the Common European Asylum System. To maximise the effectiveness of an EU single procedure in relation to returns, Member States need to agree that a ‘final decision’ (e.g. an unfounded appeal against a negative decision on the grounds in the Qualification Directive) was also the decision which triggered return. To further enhance the possibilities for effective return, the single procedure could be extended to grounds outside the Qualification Directive or include an early warning and cooperation mechanism with return authorities. A possible end goal could be to ensure parallel decision making processes in the single asylum procedure and the return procedure. In this respect, particular attention should be paid to appropriate treatment of repeat applications preventing effective return/removal action.

Read-across to other instruments

26. All the measures in the asylum package would be affected by the introduction of a single procedure to some degree. The Asylum Procedures Directive would be the vehicle for legislative change if Member States decided that they wanted to limit the introduction of a single procedure to the types of status covered by the Qualification Directive. There would be no amendment required to the Qualification Directive unless Member States decided that a single residence permit or status should issue from the grant of international protection. The scope of the Reception Conditions Directive should also be extended to cover applications for subsidiary protection. In practice that may have a low impact as according to the definitions in that Directive any application for international protection is presumed to be an application for asylum unless another kind of protection that can be applied for separately is explicitly requested. Even now, where an applicant is found not to be a refugee they still fall within the scope of the Directive until a decision is taken after which an applicant can no longer remain on the territory of a Member State as an asylum seeker. Although the Dublin II Regulation applies only to applications for asylum in the sense of the Geneva Convention there is no convincing reason to restrict the application of the Regulation to applicants for Convention status only.

B: The Preparatory Phase

27. In order to ensure that EC legislation is built on sound foundations of consensus, mutual knowledge and understanding of the challenges faced in changing the asylum systems of the Member States to adapt to a single procedure a preparatory phase is required to lay these foundations. The **Preparatory Phase** will begin in January 2005 and run in tandem with the implementation of the first stage legislation of the Common European Asylum System. The Commission will submit a paper outlining a **One-Stop Shop Action Plan** to implement this period of consultation, debate and preparation on what Member States could do to unify their procedures (detailed outline at **Annex D**). Coordination will be ensured by the Committee on Immigration and Asylum; the Commission will report to this body on the outcomes of each activity. At the end of the process, a conference should analyse the results of the activities and provide guidance to the Commission on how to feed them into the process of drawing up legislation.
28. The aim of the **Preparatory Phase** would be threefold: **i)** to steer and inform at a technical level the discussion on how the EU should move towards the adoption of a single procedure, **ii)** to identify those elements of change which need to take place and **iii)** to make those changes by the adjustment of operational practices as much as possible before or in parallel with a legislative approach. Finally, The **Preparatory Phase** would also serve as a platform for the consultative process which needs to take place ahead of the bringing forward of EC legislation.
- The Commission will take charge of a comprehensive and coherent programme of activities including the exchange of information on best practices, the launch of Community actions of ERF II and the initiation of calls for projects under the ARGO programmes to cater for the specific needs expressed by Member States in this area.
 - Member States are invited to initiate specific operational measures to feed the process of progressive capacity building such as twinning projects and staff exchanges between authorities applying the single procedure and authorities who are planning to do so, as well as training sessions for practitioners etc.

29. The Preparatory Phase will address the questions raised about how the EU should introduce a single procedure through work along four main themes. Evaluation of the implementation of the relevant provisions in the existing EC asylum legislation will provide the foundation in examining how Member States are implementing those provisions in the first stage of the Common European Asylum System which require Member States to introduce the same treatment to both applicants for refugee status and subsidiary protection (for example Article 4 of the Qualification Directive on the assessment of facts and circumstances). Comparative analysis of single and separate procedures and a focus on how ancillary measures to a single procedure can improve efficiency will build on this. These three themes will be reinforced by resource and costings comparisons between different national systems. The Preparatory Phase should also provide an innovative method of arriving at consensus on where legislation should take place and the scope of that legislation; the opportunity for ‘bottom-up’ harmonisation through the sharing and establishment of best practices.
30. Taking these steps addresses Thessaloniki’s call for further reinforcement of asylum procedures in order to make them more efficient with a view to accelerating as much as possible the processing of non international protection related applications and enables a completion of the protection objectives aimed at under the Tampere mandate.

Conclusions

31. The Commission will work towards achieving the objectives identified in the Communication, in close cooperation with Member States and the European Parliament, UNHCR and other relevant stakeholders.
32. The Commission will bring forward the **‘One-Stop Shop Action Plan’** by the end of 2004 as the main implementing tool of the Preparatory Phase necessary before legislation will take place.
33. The Commission asks the Council and the European Parliament to endorse the two step approach set out in this Communication as the next step along the road to achieving the common asylum procedure leading to a uniform status valid throughout the Union for those granted asylum in view of the progress made so far on the Tampere agenda.