

The Green Paper on the EU Asylum System: Necessary but not Sufficient

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In its 2004 Hague Programme, the European Council prescribed the adoption of the “second phase” of the Common European Asylum System before the end of 2010. In the first phase, elaborated within the framework of the preceding Tampere Programme, minimum standards for refugee protection had been adopted; these were now to be improved. Seeking to foster the necessary debate and impetus, the European Commission presented a Green Paper on the subject in June 2007. The Paper certainly contains useful suggestions for future harmonisation, yet with its exclusive focus on asylum policy it may be found wanting. The supreme problem facing asylum policy-makers today—“mixed” immigration flows comprising both forced and economically-motivated migrants—cannot be tackled without at least a consideration of the extension of channels for economic immigration. Against this background, improving protection standards may require the further integration of asylum policy into the European Union’s so-called Global Approach towards Migration.

In the 1997 Amsterdam Treaty, the member states set in motion the communitarisation of asylum and immigration policy-making. The key measures to be adopted before 2004 were also laid down. By expressing the aim of adopting minimum standards to cover the basic constituent elements of European asylum systems (Article 63 TEC), the signatories may be deemed to have taken a step towards the improvement of protection—at least insofar as they thereby sought to prevent a “race to the bottom” between the individual member states. Nevertheless, in 1997 the fundamental qualitative goals of integration remained in large part unclear.

At the Tampere Summit in October 1999, the heads of state and government addressed this lacuna when they elaborated the goals that ought to underpin a common asylum and immigration policy—and in particular the “first phase” of a common asylum system. They confirmed the importance of recognising the Geneva Convention and human rights, whilst at the same time promising citizens a high degree of immigration control. Yet the heads of state and government did not really consider how these twin goals might be realised. Considerations of function and form therefore remained out of step.

The measures subsequently adopted were characterised by their restrictive character. The member states had apparently viewed the prospect of high asylum standards as a constraint upon their capacity to control their borders. Efforts were therefore characterised by the aim of reducing the numbers of asylum applications in the EU.

In their 2004 Hague Programme, the heads of state and government decided that the “second phase” of the Common European Asylum System ought to be adopted before the end of 2010. They stipulated too that the immigration and asylum policies adopted should reflect a comprehensive and coordinated approach. Preliminary discussion about the precise aims and form of the next phase of asylum policy was, however, still required. In June 2007, the European Commission presented its Green Paper on the future of the asylum system.

The Green Paper offers a golden opportunity to tie qualitative goals to concrete measures, bringing together debates about the function of cooperation with those concerning its form. Yet the Paper betrays one fundamental flaw: its focus is almost exclusively on asylum policy. It thus falls short of the aims of the Hague Programme as well as the subsequent “Global Approach to Migration” adopted in December 2005 by the European Council: both of these texts call for the coordination of asylum and immigration policies. The limited horizons of the Green Paper will hardly be conducive to a happy reconciliation of immigration control and refugee protection goals.

Problem: Mixed Migration Flows

The core problem for EU asylum policy-makers is currently the makeup of asylum flows to the EU: these “mixed” migration flows comprise not only the persecuted but also economically motivated immigrants. Such flows have lately grown in intensity.

Channels for regular immigration to most member states have been increasingly restricted. The pull and push factors of immigration remain. This restriction of

channels for regular immigration is, for example, at odds with the continuing demand in the member states for cheap labour, and particularly for foreign labour to fill vacancies in the low-skilled sector. It is hardly surprising that potential workers responding to this demand abuse the EU’s asylum system as a means to gain access to national labour markets.

This situation is fundamentally different to that of the 1990s. Whereas in the last decade the challenge to EU asylum systems lay in the sheer numbers of applications being filed, today it is the quality of the relatively few applications filed which has proved problematic. Yet the logic which emerged during those years for dealing with asylum issues continues to shape policy-makers thinking to this day.

With the dissolution of the Eastern Bloc from the late 1980s, the number of asylum seekers in the EU rose steeply. In 1992, 438,000 applications were filed in Germany alone. Local authorities encountered considerable problems in their efforts to care for these individuals. The reaction of the then EU-12 was to introduce new mechanisms—the safe-third-countries rule, the concept of safe countries of origin, airport procedures—in order to disrupt potential applicants’ very access to the territory. As a result, the number of applications for asylum has fallen away dramatically. In Germany only 21,000 applications were filed in 2006. In quantitative terms, policy-makers have achieved their goals.

In qualitative terms they fell far short of the mark. Access to asylum procedures in the member states has been so reduced that talk of substantial EU refugee protection today seems misplaced. Certainly those deserving individuals who do gain access to these procedures are, for the most part, subsequently offered a decent level of protection; yet access can often only be gained by irregular means. In this way, the asylum system also remains susceptible to those economically motivated immigrants who, like the persecuted, are turning to people-smugglers in increasing numbers.

In short, only a small number of persecuted individuals are finding protection in the EU. At the same time, the asylum system appears to be functioning primarily as a means for voluntary immigrants to gain access to labour markets—at least if the recognition rates which in some member states lie well below the five per cent mark are anything to go by.

Dangerous Developments for the EU

That such a low proportion of the persecuted are finding protection in the EU is highly problematic. In the member states, public support for the asylum system is hollowing out in response to the high ratio of claims posed by economic immigrants. The growing public scepticism towards the maintenance of asylum systems has in turn been fuelled by the false hope offered by governments that this abuse can only be countered by reducing asylum numbers and standards. Recognition rates point to a very different reality.

This diminishing readiness to offer protection is not only disadvantageous for the persecuted: it also creates risks for the EU states themselves. Even if the EU plays host to a high proportion of the world's asylum-seekers, the majority of *refugees* in the world are found not in the EU but above all in less-developed states. The EU has long been engaged in efforts to bolster and improve asylum systems in these countries as a means to curb “secondary movements” of refugees to the EU itself.

Seen in this perspective, a further erosion of the EU's own refugee protection regime is detrimental to the interests of the member states. The EU will thus lose the battery of normative arguments which it still enjoys to cajole other states into improving their protection efforts. Instead it will increasingly have to offer material incentives. The perceived double standard of reducing its own protection efforts whilst it induces others to strengthen theirs can only undermine the EU's international credibility.

Reducing Abuse

The paramount question for the future Common European Asylum System is thus how to protect it from abuse. Realistically, refugee protection in the EU can only be improved over the long haul if this abuse is reduced. Indeed, this reduction remains a prerequisite for many member states, if they are to reopen access to asylum and raise asylum standards.

There are numerous ideas in discussion for achieving this reduction. Apart from the necessary, but often unrealistic, long-term option of alleviating the causes for refugee movements by combating the reasons for conflict, promoting political stability and good governance, and besides the widely criticised notion of processing EU asylum claims in neighbouring states, above all two options remain.

The first involves the EU setting up Regional Protection Programmes in third countries. The Commission has set out a number of proposals for achieving “durable solutions” in the affected regions, elaborating three options for refugees (return to their countries of origin; regional integration; resettlement to another state—including in the EU). In cooperation with the UN High Commission for Refugees, the Commission has launched pilot projects in the Great Lakes region of Africa as well as in the newly independent western CIS states (Ukraine, Belarus, Moldavia). Advocates of these programmes expect the subsequent improvement of protection levels in the region of origin to reduce secondary movement to the EU. The programmes are currently undergoing evaluation.

The second option is to relieve the burden on asylum systems by opening up channels for regular voluntary immigration. This is in line with the Commission's existing proposals for reducing irregular immigration. However, in order to achieve this relief, asylum policy-makers will have to “think outside the box”. A comprehensive approach is needed which not only opens migration channels from certain countries but also ensures that these greater

possibilities for migration have a beneficial effect upon the economic and human rights situations in the countries of origin.

The Global Approach

The heads of state and government have confirmed the importance of this kind of comprehensive approach. In December 2005, they called for a dialogue with African states in an effort to introduce third countries' interests into EU policy-making. By lending its weight to initiatives on circular migration and mobility partnerships with third countries, the German government used its EU Presidency in the first semester of 2007 to cement the Global Approach.

The tools discussed under the German aegis can also be employed for purposes of asylum policy: those countries from which large numbers of failed asylum claimants originate—but which the EU member states consider safe—could be offered mobility partnerships. Under the terms of these agreements, third states could send limited numbers of migrants to participating EU member states for a set period of time.

Such an approach would require political backbone, for it might appear that the EU was rewarding precisely those states that produce the most “bogus asylum-seekers”. For this reason, the partnerships might also incorporate reciprocal obligations, for example, that participating third countries improve their own asylum systems. Those states which are the main countries of origin for unwarranted asylum claimants in the EU are themselves often important receiving countries for refugees from third countries too.

An improvement in refugee protection, as foreseen for the “second phase”, can only be achieved within the framework of a comprehensive approach. This approach should include at least two elements:

- ▶ The abuse of asylum for reasons of voluntary immigration should be reduced. To this end, the currently disparate debates on asylum and on immigration policy should be joined. The Global Approach

comprises suggestions for the extension of channels for regular migration, which may now be put to the test in pilot projects. One element that should be considered in any evaluation is the effect of the new measures upon “mixed” migration flows. This will throw light upon their possible benefit for the EU's fledgling asylum system.

- ▶ EU states should reinforce their own protection capacities rather than emaciating them. This should be undertaken in tandem with EU efforts to support third countries and their asylum systems. A functioning global refugee regime is not only desirable for normative reasons; it also lies in the interests of the EU.

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