

Remarks by Ms. Erika Feller
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Public Hearing on the Future Common European Asylum System
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Introduction

Thank you very much for the invitation to participate today in consultations on the future Common European Asylum System (CEAS). The very notion of an Asylum System common to 27 countries is ambitious, forward-looking and entirely unprecedented.

UNHCR welcomes the opportunity to contribute to this important debate. It is positive to see that such a wide range of stakeholders have offered substantive input through their responses to the Commission's "Green Paper". UNHCR's written response to the Green Paper is publicly available, and is considerably more detailed than my comments today, which given the short time available will only be able to focus on the overarching themes we find important.

UNHCR has a particular interest in the development of the European Union's asylum laws, policy and practice. Refugee protection is our core mandate. It is our direct responsibility to assist states in making sure that people who need international protection in fact receive that protection. The 1951 Convention relating to the status of refugees sets out, in Article 35, our role in supervising the application of that Treaty.

The 1951 Convention forms part of the EU acquis. The Treaty of Amsterdam stipulates that European Union measures on asylum shall be in accordance with the 1951 Convention. The European Council has on several occasions reaffirmed its political commitment to making sure that the Common European Asylum System is based on ‘the full and inclusive application’ of the 1951 Convention and other relevant treaties. This explicit acknowledgement by the EU of the central place of international law is an important starting-point for today’s discussion.

Need for comprehensive evaluation of first phase legal measures

According to the Hague Programme, which set the agenda for the second phase of work toward a common European Union Asylum System, a ‘thorough and complete evaluation’ of the asylum instruments adopted in the first phase is to be done, before new legislative proposals are presented. Such new legislative proposals should be adopted by the Council and Parliament by 2010, to complete the establishment of the system.

However, evaluating how five very complex legal instruments are implemented in the law and practice of the Member States is an enormous undertaking. As of today, the Commission has published only one evaluation – of the Dublin II Regulation. Others are expected over the coming months, but the time is very short for the sound analysis required to prepare comprehensive and well-informed new legislative proposals. The responses to the Green Paper provide many important insights, but empirical analysis is still required.

UNHCR would encourage the Commission and Member States not to rush this process. The experience with the first phase instruments should be carefully assessed. This means evaluating not only national laws, but also practice – including the impact of EU law on the lives of asylum-seekers and persons in need of protection. The need to prepare fully-informed and high quality proposals should guide the process, rather than political factors.

Next steps for the legal framework: key challenges

In our written comments on the Green Paper, UNHCR has recommended several new initiatives to strengthen the European Union’s refugee protection framework.

With regard to legislation, we strongly recommend, as we have consistently done, that shortcomings in the current instruments be addressed, including by way of amendment, to raise standards of procedural or substantive protection. The concept of ‘minimum standards’ should not be equated with the lowest common denominator or the lowest possible standard of protection. Rather, it should reflect the standards necessary to ensure effective protection throughout the Union.

At the level of practice, ways need to be found to improve the quality of asylum decision-making. It is deeply distressing that the chances of an individual asylum-seeker to find protection in the EU can vary nearly seventy-fold, depending on where he or she applies.

UNHCR has recommended that systematic quality control and assurance mechanisms be developed for asylum decision-making. Inspiration could be drawn from successful Quality Initiative projects, which UNHCR has undertaken with some Member States in recent years.

UNHCR's specific proposals for amendment and supplementing of the asylum instruments are set out in our public response to the Green Paper. I will not enumerate them today. Rather, I would like to highlight three cross-cutting challenges, which arise in relation to all of the Directives and Regulations – challenges which UNHCR believes can be met, with the requisite political will and sensitivity to protection standards.

First, providing access to fair and effective asylum procedures:

The Commission's Green Paper rightly focuses on access as one of the main challenges to the system. Access to asylum procedures depends on access to the territory of the Union. As control of external borders is reinforced, it becomes increasingly difficult for people seeking protection to have access to the territory of states where they can ask for it.

Border and migration control measures need to include safeguards to make sure that people who are seeking protection are able to apply for it, and to have their claims heard in fair and effective procedures.

With this in mind, UNHCR has developed a “Ten Point Plan”, which offers suggestions to States on how to integrate refugee protection considerations into migration and border control policies.

Even once access to EU territory has been secured, there are concerns that asylum procedures in the Member States, and the provisions of the Asylum Procedures Directive, lack important safeguards to ensure that people in need of protection will receive a full examination of their claims. Many of the basic standards in the Procedures Directive are positive, but they are often offset by a long list of exceptions and limitations.

We have significant concerns about the Directive’s limits on the right to a personal interview; about far-reaching safe third country concepts; and about accelerated procedures with limited procedural safeguards. These provisions, combined with stringent border procedures, strict rules on implied withdrawal of claims, and non-suspensive effect of appeals in some States, give rise to legitimate concerns about whether a refugee will indeed be able to find protection in the European Union.

Access to a fair decision-making procedure is essential to give meaning to the promise of a “full and inclusive” application of the 1951 Convention. The impact of the Asylum Procedures Directive should be examined and documented, so that gaps and problems can be identified and addressed.

Second, it is vital to address the divergent approaches taken to protection needs by Member States

Recognition rates for asylum-seekers from the same countries of origin vary widely among Member States. Iraqis, for instance, receive protection in close to 70% of cases in one Member State, and in 0% in another. Similar discrepancies arise in relation to Sri Lankans, Chechens, Somalis and others with evident protection needs.

Yesterday, UNHCR issued its Study of the implementation of the Qualification Directive in five Member States. Based on analysis of nearly 1500 asylum decisions, the Study demonstrates that there are vast differences in how Member States interpret key legal concepts (for instance, subsidiary protection, the internal flight alternative, non-state agents of persecution and exclusion from protection). If there is one conclusion I would draw from the study, it is that not all people who are in need of and claim international protection in the EU are assured of receiving it. This should be of concern to all of us.

As one response to this, UNHCR has recommended amendment of some important provisions of the Qualification Directive, for instance those relating to the internal protection alternative, and to protection for persons at risk in situations of indiscriminate violence. We have also called for intensified training of decision-makers and development of EU Guidelines, to help Member States to interpret key legal provisions. UNHCR is willing to help to develop such Guidelines.

Third, we believe that the responsibilities of key EU institutions for the development of the Common European Asylum System should be more clearly defined and exercised.

Respect for legal norms is closely linked to the strength of institutions overseeing them. The role of key European bodies should be clarified where needed, and those bodies helped to play their roles.

The European Court of Justice is expected to play a major part in overseeing compliance with the asylum *acquis*. UNHCR has welcomed proposals in the draft Reform Treaty which would give new powers to national courts – and not merely those of last instance – to refer questions of interpretation to the ECJ. This would increase the scope for authoritative pronouncements on questions of disputed interpretation across the EU.

In addition to its right of initiative, the Commission will continue to have responsibility for ensuring compliance with Member States' obligations. But with the Commission's limited resources, help will be needed. UNHCR thus applauds the idea of an Asylum Support Office. While not possessing a normative role, this body could assist the Commission in monitoring and quality control, and facilitate discussion and exchange among Member States, among other functions.

UNHCR has an important contribution to make to the development and operation of a Common European Asylum System. We already work closely with the Commission as well as with Member States at national level. Our observation of their laws and practice helps to identify problems and strengthen good practice. We are ready to provide advice with respect to new legislation, and to contribute to the development of guidelines to clarify the application of existing and new laws. However, we would like to see our role strengthened and formalized, for instance in the context of a European Asylum Support Office or through a formal advisory status to Council bodies.

Conclusion

In conclusion, UNHCR greatly appreciates the opportunity to participate in today's hearing, and in the exciting effort to develop a Common European Asylum System. However, harmonization is not an end in itself. The overriding aim should be to guarantee that refugees are able to find protection throughout the European Union, in line with the 1951 Convention and other international norms.

We urge the Commission, the Member States, and all those interested in this endeavor, to think beyond adjustments to the existing framework. This consultation offers opportunity for more visionary and creative approaches to the unique objective of establishing a Common Asylum System.

Thank you for your attention, and I look forward to today's debates.