



Konsorcium nevládních
organizací pracujících
s migranty v ČR

*Consortium of Migrants
Assisting Organizations
in the Czech Republic*

Position paper on the proposed reform of the Common European Asylum System

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Description of the current situation

Consortium of Migrants Assisting Organizations in the Czech Republic¹ (Consortium) has been closely following the proposals on the reform of the Common European Asylum System (CEAS) put forward by both the European Commission and the Council. This policy brief aims to summarize the Commission's proposals published in the spring/summer 2016 in light of further developments, and to articulate a reasoned assessment, based on the experience of our members and the reality facing our country, our region and Europe as a whole.

In response to the so-called refugee crisis of 2015, which had exposed the shortcomings of the existing legal and institutional framework, the European Commission began working on a complex proposal for the reform of the CEAS. On 4 May 2016, it presented the first part of a reform package entitled *Towards a Sustainable and fair Common European Asylum System*² which includes a draft regulation setting out rules and mechanisms for determining the Member State responsible for processing an application for international protection.³ In July 2016, the second part of the package was made public, under the title *Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy*.⁴

The Consortium welcomes the Commission's initiative for the creation of a real common asylum system. Only a common asylum system can prevent a race to the bottom among Member States in dealing with asylum-seekers, discouraging potential applicants from seeking asylum on their soil. Moreover, faced with the absence of a common system, some Member States are succumbing to substantial migration pressure while others aren't prepared to play a role in a common solution.

At this point, it is clear that the Commission's proposals will undergo significant amendments within the legislative procedure - be it in the European Parliament or via member states' representatives in the Council. Nevertheless, it is possible to assess them in their present form and to highlight the main shortcomings of the asylum system in the Czech Republic as well as other EU Member States. These include:

- Illegal obstacles to the entry of asylum-seekers to Member States' territory and their admission to the asylum procedure (such as border pushbacks and outright rejection of asylum claims);
- the use of detention as a deterrence tool for refugees in violation of European Court of Human Rights' rulings;
- intolerably prolonged asylum proceedings and low quality of asylum decisions which are then often repeatedly repealed in court;
- dysfunctional sanction mechanism for Member States who constantly violate EU law (e.g. Hungary not applying the Dublin Regulation or the Czech Republic violating its obligation to provide free legal aid in the asylum and repatriation procedures.)

¹ The Consortium is an umbrella organization comprising of 18 NGOs working on the topics related to migration. See <http://www.konsorcium-nno.cz/en/index.html>.

² European Commission - Press Release, *Towards a Sustainable and Fair Common European Asylum System*. Brussels, 4 May 2016. http://europa.eu/rapid/press-release_IP-16-1620_en.htm.

³ European Commission, *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection*. COM(2016) 270 final. Brussels, 4 May 2016. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/dublin_reform_proposal_en.pdf.

⁴ European Commission - Press Release, *Completing the reform of the Common European Asylum System: towards an efficient, fair and humane asylum policy*. Brussels, 13 July 2016. http://europa.eu/rapid/press-release_IP-16-2433_en.htm.

Individual proposals and the Consortium's position

a) Reform of the Dublin Regulation

The proposal aims to change the rules determining the Member State responsible for processing individual asylum claims. It includes a mechanism for tackling situations when a certain Member State's asylum system becomes overwhelmed with a high number of applications. The Commission strives to introduce a so-called corrective allocation mechanism which would automatically determine whether the given state is dealing with an excessive number of asylum applications, based on the population and economic capabilities of each Member State. In such a case, all the applicants in the country would, following the verification of the admissibility of their claim, be relocated to another EU Member State. The Member State would retain the possibility to temporarily opt out of such relocation, however, it will be required to pay the Member State which deals with the application instead a fee of 250 000 eur per person.

The corrective allocation mechanism shall also take into account the previous efforts of Member States in resettling refugees from third countries which underlines the Commission's interest in establishing legal and safe pathways to Europe. The new "Dublin" envisions shorter periods for relocation applications as well as states' responses to those and for the implementation of the relocation of asylum-seekers between Member States. The applicants will be obliged to stay in the EU country responsible for processing their claim.

Consortium's position

It is Consortium's long-standing conviction that the relocation of asylum applicants on the basis of the Dublin Regulation to the first EU country of entry is disproportionately burdening states at the southern and eastern external border and that the whole system is very inefficient. In 2015, 856,723 people arrived in Greece alone.⁵ It is apparent that Greece cannot on its own process such an amount of asylum applications in a timely fashion and provide protection to all successful applicants. The Czech Republic, on the other hand, received mere 1,525 asylum applications in 2015.⁶ **Due to the completely disproportional migration pressure on states on the EU external border the corrective allocation mechanism based on the redistribution of asylum-seekers seems like a rational tool inherent to any common solution.** The enforcement of such system is ensured by the threat of significant financial sanctions.

The Consortium further proposes that the so-called Dublin transfers, as well as the corrective allocation mechanism, allow for much more consideration of applicants' links to individual EU Member States based on family ties, language competence, professional qualification etc. **The best solution appears to be the**

⁵ UNHCR, *Refugees/migrants emergency response - Mediterranean*.
<http://data.unhcr.org/mediterranean/country.php?id=83>

⁶ Ministry of Interior of the Czech Republic, *Number of applications for international protection in 2015*.
<http://www.mvcr.cz/soubor/cs-stat-prosinec-2015-1-pdf.aspx>

development of the so-called refugee match system⁷, i.e. taking into account both preferences of the Member States and of the individual refugees. We welcome the proposed shortening of time limits for states' responses to transfer applications as well as the implementation of the transfers and also the maximum allowed period for the administrative detention of asylum-seekers.

The Consortium further welcomes proposed widening of the circle of persons who can be included in family reunification procedures. At the moment, many family members of people who already gained international protection are forced to take unnecessary risks using the services of people smugglers.

At the same time, the Consortium cannot agree with the proposal that would impose on the first EU Member State of entry an obligation to first undertake a preliminary assessment of the application and eventually decide on invoking the safe country of asylum concept. According to the proposal only then could the Dublin Regulation be applied. Such a regulation is unacceptable for the already disproportionately burdened countries. The Consortium also disapproves of the proposed broad system of sanctions for asylum applicants who leave the country responsible for the processing of their claim, and of the limiting of the asylum-seekers' right to appeal against a decision.

b) **Creating a common framework for resettling refugees from third countries**

In July 2016, the Commission had also put forward a draft resolution which would establish an EU framework for the resettlement of refugees from third countries.⁸ The states would remain free to decide what number of refugees they would resettle. Nevertheless, the European Council would adopt annual resettlement plans and the Member States would be given a contribution of 10 000 EUR for each resettled person. The EU thus declares its intention in replacing irregular pathways to Europe with legal ones.

Consortium's position

The Consortium fully supports the European Commission's efforts for the creation of a common EU refugee resettlement framework including financial support for resettlement as well as considering the Member States' resettlement efforts as a criterion for the allocation of responsibility for asylum applications processing.

c) **Enhancing the EURODAC system**

According to the Commission's proposal⁹ the fingerprint database for identifying asylum-seekers (EURODAC) should be expanded in order to contain data of all persons residing within the EU irregularly so that such persons could be

⁷ See for instance Will Jones and Alexander Teytelboym: *Choices, preferences and priorities in a matching system for refugees*, in *Forced Migration Review*, No. 51, 1/2016.

<http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/destination-europe/jones-teytelboym.pdf>

⁸ European Commission, *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council*. Brussels, 13 July 2016.

<https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-468-EN-F1-1.PDF>

⁹ European Commission, *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013. COM(2016) 272 final. Brussels, 4 May 2016.*

<https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-272-EN-F1-1.PDF>

identified for the purpose of returns. Moreover, Member States would be allowed to store additional personal data such as name, date of birth, citizenship, travel document or profile picture. More information in the system would allow the authorities to better identify asylum-seekers or third country nationals without residence permits without the need to request such information individually, as is the case at present.

Consortium's opinion

The Consortium welcomes the proposed reform and enhancement of the EURODAC system. There needs to be certainty about who arrives to the EU, who resides there legally and who irregularly.

d) Establishment of the EU Agency for Asylum

A proposed regulation would lead to the transformation of the present European Asylum Support Office (EASO) into a full-fledged EU Asylum Agency (EUAA)¹⁰ with an enhanced mandate and substantially broadened set of tasks. The EUAA should among other things decide on the key for the application of the corrective allocation mechanism under the reformed Dublin system. Other tasks of the Agency include harmonisation of standard-setting and procedures of individual states in their assessment of asylum applications as much as strengthening cooperation and information-sharing among Member States. On top of that, the Agency should be empowered to dispatch expert teams and provide operational and technical support in cases when a Member State would face excessive migration pressure.

Consortium's opinion

The Consortium fully supports the transformation of the present European Asylum Support Office into a new EU Agency for Asylum. In our view, the enhancement of its powers should be even more significant. The current situation in which an asylum-seeker could be prevented from applying for asylum in some countries (e.g. in Hungary or Greece), would be detained and eventually granted subsidiary protection for a limited amount of time in others (e.g. Czech Republic), and in another Member State would receive a swift positive asylum decision and quality integration support (e.g. Germany) is untenable. The EUAA's priority should therefore be first and foremost the harmonisation of national asylum systems within EU both in terms of entry to EU territory and admission to asylum procedure, and in terms of evaluation of the application, unification of the types of protection granted and the length of asylum proceedings.

e) Replacement of the Asylum Procedures Directive with a regulation

¹⁰ European Commission. *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the European Union Agency for Asylum.* COM(2016) 271 final. Brussels, 4 May 2016. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/easo_proposal_en.pdf

The proposed regulation¹¹ would introduce a harmonized common asylum procedure within the EU. Its aim is to reduce the current differences in success rates between the individual Member States, ensure effective procedural safeguards for the applicants and, at the same time, discourage applicants from secondary movement within the EU. It further strives to simplify and shorten the length of asylum proceedings so that a decision would be made within six months. Applicants for international protection would be guaranteed the right to personal interview, free legal aid and representation already in the course of the administrative procedures. The hitherto optional sanctions for the abuse of the system, refusal to cooperate and secondary movements should become mandatory and newly also include the rejection of the asylum claim as implicitly withdrawn or unsubstantiated and the use of an accelerated procedure.

The Commission further clarifies and introduces a mandatory use of the safe country concept. The list of safe countries would be compiled on the EU level. Within five years of the regulation's entry into force, this list would replace the Member States' classification of safe countries of origin and safe third countries.

Consortium's position

The Consortium welcomes the efforts to diminish the current disparities in the ratio of successful asylum applications among Member States as well as the intended harmonisation of procedural safeguards for asylum applicants. We also embrace the simplification, clarification and shortening of asylum proceedings. It is precisely the excessive length of the proceedings, unsubstantiated and restrictive decisions which are being used as "tools" of domestic asylum policies.

The Consortium further stresses that it remains a common practice on the EU's external borders in violation of the *non-refoulement*¹² principle (Poland/Ukraine, Slovakia/Ukraine, Hungary/Serbia, Bulgaria/Turkey, Prague airport etc.) that asylum-seekers are not able to enter the country's territory and/or file an application for protection. The European Commission does not sanction states for such actions which include even the active intimidation of potential applicants by the authorities. It is in this context that we embrace the proposed detailed provisions on asylum procedures. At the same time we reiterate that independent agents (e.g. NGOs as well as UNHCR) must have access to the place of first contact between the asylum-seeker and the authorities of the relevant Member State. In the Consortium's view, the newly-established EUAA should strive to establish such good practice.

The Consortium disagrees with the proposed automatic review of positive asylum decisions in case of relevant new findings. Such practices could have a significant impact on the lives of persons who have already integrated and on the process of integration itself. It would also trigger secondary movements to countries which would apply such review less strictly. Moreover, it would substantially increase the agenda and possibly overload of the whole system.

The concept of safe third countries and safe countries of origin causes much controversy and is commonly criticised for its conflict with the international

¹¹ European Commission. *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*. COM (2016) 467 final Brussels, 13 July 2016. <http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-467-EN-F1-1.PDF>

¹² A principle of international law prohibiting the return of an asylum-seeker to a country where their life or freedom would be endangered. See UNHCR. Note on Non-Refoulement. 1977. <http://www.unhcr.org/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html>.

refugee law principle stressing the individual character of persecution.¹³ The Consortium does not reject such concepts *a priori* provided that states will not be put into these categories arbitrarily. At the same time we stress that for applicants whose asylum claim is rejected on the basis of application of safe third country or safe country of origin concept, the inability to file an appeal suspending the enforcement of the original decision may be a significant factor.

The Consortium similarly does not reject the conclusion of migration pacts or partnerships with third countries on principle¹⁴, provided that such countries abide by the provisions of the 1951 Refugee Convention (most notably the *non-refoulement* principle) and enable the UNHCR and NGOs to operate on their territory, providing refugees with legal protection.

f) Replacement of the Qualification Directive with a regulation

The proposed regulation¹⁵ should, among other things ensure the harmonisation of the type of international protection granted and the duration of a residence permit given to persons enjoying international protection. The Member States would be obliged to take into account the EUAA's assessment of the situation in the asylum-seekers' countries of origin as well as the appropriate type of international protection. The Commission proposes to introduce harsher rules regarding secondary movements and also a five-year waiting period for persons enjoying international protection seeking permanent residence. The Commission further proposes to grant international protection exclusively for a limited amount of time and introduce a mandatory review which would e.g. consider possible changes in the country of origin. Among its further goals is the clarification of rights and duties of persons enjoying international protection pertaining to social security and support.

Consortium's position

The Consortium embraces the Commission's efforts in unifying the various types of international protection within the EU as the current differences in deciding on asylum claims around the EU are vast. **The Consortium further supports enhancing the EUAA's role and requests that the EUAA interpretation and instructions are binding in all EU Member States so that international protection standards wouldn't be arbitrarily undermined and the *non-refoulement* principle violated as is the case now in many Member States.** The EUAA should particularly focus on the enforcement of the 1951 Convention and the EU legislation by the national asylum authorities.

¹³ See ECRE: „Safe countries of origin“: A safe concept? AIDA, 2015.

http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/AIDA%20Third%20Legal%20Briefing_Safe%20Country%20of%20Origin.pdf.

¹⁴ European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL AND THE EUROPEAN INVESTMENT BANK on establishing a new Partnership Framework with third countries under the European Agenda on Migration. COM(2016) 385 final. Brussels, 7 June 2016.

http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf

¹⁵ European Commission, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection. COM(2016) 466 final. Brussels, 13 July 2016.

<https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-466-EN-F1-1.PDF>

At the same time the Consortium loudly rejects the proposal to provide protection principally for a fixed period. Such regulation is not in line with the Refugee Convention provisions, according to which states should “*as far as possible facilitate the assimilation and naturalization of refugees*” (Art. 34). The uncertainty about the refugee’s residence would form an obstacle for their integration, family reunification and also the formulation of just about any integration policies. For these same reasons, the Consortium rejects the mandatory, periodical review of the refugee status. Subsidiary protection is the right tool for temporary protection of war refugees who are not subject to individual prosecution but rather a general conflict-related violence (e.g. Syrians).

g) Reform of the Reception Conditions Directive

The new phrasing of the directive¹⁶ shall ensure that member states apply EUAA-adopted norms and indicators pertaining to receiving asylum-seekers and that they formulate emergency plans applicable in cases of extensive migration pressure. The European Commission intends to enable Member States to define the refugees’ place of residence and to report to the authorities. In cases when an asylum-seeker breaches their obligation to stay at the given place and there is a danger that they would go into hiding, Member States are allowed to make use of detention. The Commission further suggests that asylum-seekers gain access to the job market at the latest within six months after filing their asylum application.

Consortium’s position

The Consortium supports the EU efforts to harmonize reception conditions for asylum applications on the whole EU territory.

The Consortium welcomes easing the asylum-seekers’ access to the job market. We further recall the ever-spreading practice in some EU Member States (e.g. Germany) to enable asylum-seekers with high probability of receiving protection as expedient as possible integration to the job market including sufficient access to language courses and labor policy tools.

At the same time, the Consortium stresses that the principle of applying detention (i.e. imprisoning the applicant) as only the *ultima ratio* for ensuring their collaboration with the authorities needs to be upheld. Member States commonly treat detention as a deterrent mechanism and apply it in violation of the European Convention on Human Rights (in the Czech Republic particularly detention applied in cases where return is clearly impossible, detention in breach of admissible reasons according to the Dublin Regulation etc.). The Consortium further insists that the detention of families with children as well as of unaccompanied minors is in violation with the Convention on the Rights of the Child and the principle of the best interests of the child.

The Consortium further disapproves of the sanctions proposed in cases of asylum-seekers’ secondary movements. Their exclusion from the social support

¹⁶ European Commission, *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down standards for the reception of applicants for international protection*. COM(2016) 465 final. Brussels, 13 July 2016.
http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160713/proposal_on_standards_for_the_reception_of_applicants_for_international_protection_en.pdf

system (accommodation, medical assistance etc.) compiled with the permanent responsibility of individual Member States for the processing of an asylum application according to the Dublin Regulation would lead to situations where many asylum-seekers could effectively end up homeless for the entire duration of the application process.