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European Commission
(ARGO)*

POLICY BRIEF 1

Single Procedure: "The One Stop Shop"

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Introduction

The way in which EU Member States handle the protection claims of asylum seekers can be placed in three broad categories. Some use a single procedure to consider all possible protection needs and make a single decision. Some operate a partial single procedure where Geneva Convention grounds are examined with other asylum related grounds in one procedure. Other Member States use separate procedures for the examination of different grounds for protection. In this last situation, a person rejected for protection on Convention grounds might apply again for a form of subsidiary protection, for example, and have their case re-heard under a second form of procedure.

In Spring 2004 the Justice and Home Affairs Council issued two final Directives under the Tampere Agenda. The first was on the qualification for Convention status and subsidiary protection. The second, which is subject to review by the European Parliament, is on the Procedures for granting Convention status. A European Commission July 2004 Communication, "A More Efficient Common European Asylum System: the Single Procedure as the Next Step" (COM (2004) 503) points to a discrepancy that arises as a result of these directives. The qualifications for statuses across the EU will be uniform, but there will be a common procedure for only one status – Convention status. The Communication, drawing on the Study on the Single Procedure conducted by a team led by the lead author of this paper in 2002-2003, describes the rationale for introducing a common procedure for subsidiary and other forms of protection, but also sets out the reasons for which a single procedure giving access to all available status would be the most efficient system for the EU Member States to develop. These include the speed of final decision-making; the positive approach to protection needs achieved through simplicity and clarity vis á vis the applicant; an improved image of an effective asylum system for the consumption of public opinion across the Union; and an optimal relationship between the protection decision and enforcement of the return of rejected asylum seekers. The Communication also develops reasoning on which action should be taken at the EU level.

A single procedure could also play a role in deterring abuse of the asylum system for entry to the EU. A single procedure can generally be completed, with a determination made of any level of protection need, within a much shorter time frame than that required for multiple procedures. Under a multiple procedure system an asylum applicant sets out with a claim to Convention status. If this application fails, the person could file a new application for subsidiary or other forms of protection. What is more, such separate procedures often require the shaping of the flight story to fit different criteria – giving rise to questions of credibility, as well as prolonging the ordeal for those who do indeed require protection. For

those who do not in fact qualify for a protection status, lengthy and complicated procedures only serve to extend their period of residence in the Member State, and to postpone the time at which their return to their country of origin should or could be enforced.

While there are strong reasons for considering EU-wide use of a single procedure, concerns do arise regarding the relationship between the Geneva Convention status and other forms of protection. This is pointed to in both the Communication and the Study on a single procedure commissioned by the European Commission. Some are concerned that a single procedure covering all forms of and reasons for granting protection might have the effect of diluting Convention protection. The Communication suggests that such potential 'devaluation' can be sufficiently tackled through procedural rules. There are, however, a number of other issues that arise from the specificity of the Geneva Convention status. In a single procedure, there should be no possibility of raising successive or separate claims to protection. The subject of the procedure should be entitlement to protection rather than the right to a certain "status". Nonetheless, the status for which the applicant qualifies should be the one granted: a person who qualifies for protection on Convention grounds should be granted Convention status rather than being given subsidiary protection in those Member States which have two separate statuses.

Other key concerns relate to judicial review and the various costs of developing a single procedure where multiple procedures are currently the norm. The Communication stresses the importance of an 'effective remedy' and the need to assess Member States' implementation of this core principle of the Asylum Procedures Directive. UNHCR, among other organizations representing the interests of refugees, has stressed the need for a strong and credible appeals process. As to the financial aspects, it would seem logical that the resource efficiencies to be gained through the implementation of a single procedure would at some point counterbalance the short-term costs of its introduction.

Discussion

Two statuses (Convention and subsidiary) are defined in the Qualification Directive. The Procedures Directive applies to decisions on Convention status, regardless of the system operated by the Member States. Those Member States that operate a single procedure where asylum applications are treated as applications for both Convention status and subsidiary protection are obliged to apply the provisions of the Procedures Directive, once it enters into force, to decisions on subsidiary protection also, because they are part of the same procedure. For those Member States that operate multiple procedures, the Procedures Directive does not have to be applied to applications for subsidiary protection.

Nonetheless, the Commission suggests in its July 2004 Communication that, over time, the Procedures Directive should be extended to cover both statuses that have been agreed upon at EU level. This would mean that the guarantees of the Procedures Directive should be the basis for the procedure through which subsidiary protection decisions are made in Member States with multiple procedures under two sets of circumstances:

1. For those applicants who only apply for subsidiary protection where the procedures are separate.
2. For those applicants who request subsidiary protection following a rejection of their application for Convention status.

This would create a situation in which all applications for international protection as defined in the Qualification Directive were covered by the same procedural guarantees. The result might not be a single procedure in the first instance, but rather a system of parallel

procedures. Even that system would, the Commission notes, close the potential 'protection gap' which could result from the combination of the Qualification and Procedures Directive. Once that 'protection gap' is closed, only applications for a national form of protection (i.e. not Convention and not subsidiary) would fall outside a modified Procedures Directive in those Member States that consider these national forms of protection under a separate procedure.

The Commission suggests taking a phased approach towards expanding the Procedures Directive to cover subsidiary protection claims, in view of the basically identical legal nature of subsidiary protection with Convention protection under the Qualification Directive. It is possible, however, that problems could arise in the medium- to long-term if the guarantees of the Procedures Directive are extended on the basis of *separate procedures* to subsidiary protection examination. In particular, some of the problems that a single procedure can overcome could be exacerbated during this intermediate step. For example, Member States with multiple procedures, where the initial (failed) application is for Convention status, would be obliged – successively and separately under first the Convention and then the subsidiary protection procedures – to grant privileges to applicants including the right to remain during both procedures. During that step of the phased approach towards the introduction of a single procedure, therefore, some applicants who ultimately prove to be ineligible for either form of protection would spend a substantial period of time in the Member State in question. That period of time would be significantly shorter under a single procedure. What is more, an applicant in need of subsidiary protection would be awaiting a decision on their claim for a longer period of time, as well as potentially facing suffering on receipt of the rejection for Convention status.

Similar problems arise with regard to judicial review. Having only one appeal possibility based upon refusal of protection rather than appeals to the rejection of a claim to a certain status has merit. However, as long as there is a special Convention status coupled with specific rights different from those arising from subsidiary protection it will not be possible to exclude the right to appeal for applicants who have been granted subsidiary protection but refused Geneva Convention status. An applicant should indeed provide all relevant information in the application and during the procedure. A single procedure requires strict preclusion rules. Unless new facts or evidence are convincingly presented, an applicant would be refused access to a new procedure – in line with the rules of the Procedures Directive.

There is a widespread "priority rule" in single procedure systems, which requires that Geneva Convention status be examined first. Introducing such a rule at the EU level may not be compatible with the full spectrum of relevant directives, in particular the Temporary Protection Directive, which allows Member States to suspend applications for Geneva Convention status during the time of temporary protection. The development of a single procedure approach across the EU could also require re-assessment of other directives (e.g. on Reception conditions) and the Dublin Regulation.

It will be important that a single procedure includes provisions granting clear access, where needed and applicable, to Geneva Convention protection while at the same time including other forms of protection as appropriate. The rights derived from the Geneva Convention must be respected: those who are deemed to fall outside of those rights after a determination procedure is complete, but who are nonetheless deemed to have a protection need in accordance with other accepted statuses (e.g. subsidiary status) should see their need met with the grant of that status. The issue at hand is how to achieve efficiently and effectively a decision on the nature of the protection need (Convention related or otherwise) of individuals applying for status in the EU.

Deciding that a single procedure is appropriate for the EU is one level of decision that will be required during the coming agenda period. In order to take that decision, Member States would need to be clear on how a single procedure could be affected, and what it could look like. Such advance thinking on the working of a procedural method should in no way pre-empt actual negotiations on the substance of a single procedure. Rather, an overview of the modalities could contribute to the decision to move, as a Union, in this direction.

A single procedure for protection at the EU level could require the following:

1. Establishment of a single national authority in charge of examining qualification for refugee status and subsidiary protection (as defined in the Qualification Directive) and, on an optional basis, other forms of protection according to national law and policy.
2. Alternatively, a single procedure could be used for Convention status and subsidiary protection, while Member States engage a parallel and simultaneous procedure covering any other protection categories they maintain domestically. This could be a way of using a staged approach as set out by the European Commission.
3. Although there could be a single protection decision-making authority, there might be various national agencies involved in the outcome to decisions. This could require at least that enforcement authorities would have exclusive competence to examine objections against enforcement/removal decisions.
4. A single procedure should result in a decision either to grant protection (under the Qualification Directive or under national rules) or to reject the application for protection.
5. Following the logic set out above, the Basic Rules and Principles contained in Chapter II of the Procedures Directive should apply with regard to claims on the grounds of all international protection reasons (Convention and subsidiary). With regard to forms of national protection Member States could be given the option of applying these same standards.
6. Applicants could be required to detail all the grounds on which they seek protection at the point of the initial request. Applicants could be precluded from access to procedures for renewed applications unless new facts or evidence are produced which could not, for reasonable reasons, have been included in the initial application.
7. The legal consequences of filing an application for international protection (Convention or subsidiary) would need to be clearly established and, through appropriate information mechanisms, conveyed to applicants whether they apply at the border; within the Member States after irregular entry; within the Member State after regular entry with visa or residence status; or following expiry of other status, to avoid deportation.
8. The Dublin Regulation would need to be extended to all international protection claims, not just those on Convention grounds.
9. With a single procedure covering Convention and subsidiary statuses, the scope of the Reception Directive would need to be extended.
10. Appeal rights should be granted to all applicants. In principle, appeals could be limited to those rejected; however, so long as specific rights are linked to one status only (eg the full Convention rights are linked only to Convention status and not replicated for subsidiary protection), appeals based on refusal of a Geneva Convention status should not be ruled out.
11. The single procedure could provide for a cooperation mechanism with the authorities competent for enforcement of return at the national level. There could

be a monitoring procedure to supervise the enforcement of decisions. The competence of alien/police authorities in charge of enforcement could be limited to deciding on and putting into effect the details of voluntary or involuntary return and organisational measures related to expulsions.

12. Rejected applicants could be registered EU-wide. All EU Member States could be able to enforce final negative decisions unless they would choose to grant a residence permit to particular individuals in their jurisdiction according to national law.

Conclusions

The elements of the Common Asylum System developed under the Tampere work programme clearly provide a basis for a proposal to develop an EU-wide single procedure (e.g. through the Qualification Directive). At the same time, the decisions in place also pose challenges which will need to be overcome if a single procedure is determined to be appropriate across the EU and is implemented (e.g. in the links to the Dublin Regulation, the Temporary Protection and the Reception Directives). The efficiencies, in resource as well as bureaucratic terms relative to both individual protection seekers and the populations of Member States, have been described in the Commission's Communication. Additional advantages in developing a single procedure are likely to become clear as Member States consider ways in which both their common asylum system and their Area of Freedom, Security and Justice more broadly can be sustained and completed. One of these issues will lie in consideration of the reasons for and mechanisms of transferring protection status between Member States (as discussed in a recently completed study for the European Commission).

Minimum standards for a nationally implemented common *single* procedure for both Convention and Subsidiary Protection appear to be a logical next step in a Union in which many states already employ some kind of unified procedure for granting these statuses. The key question then becomes what such a single procedure should look like. Some key facets for consideration have been set out above.

Questions for discussion

1. What practical and legal problems arise with respect to the "priority" nature of the Geneva Convention status within a single procedure?
2. To what extent, if at all, would it be necessary to modify the Asylum Procedures Directive if subsidiary protection were to be included in a single procedure with Convention status?
3. Could Convention and subsidiary statuses be covered by a single procedure, with alternative national forms of protection being determined under a separate, but simultaneous procedure (the 'staged approach')? Would this be desirable?
4. How can Member States ensure that in a single procedure obstacles to removal are quickly examined so as not to impede the return process, particularly if separate enforcement authorities are competent for making removal decisions?
5. What practical problems would have to be resolved for subsidiary protection to be included in a revised Dublin Regulation?