



Government of the Netherlands



The Presidency of the Council of the European Union
Kingdom of the Netherlands

Position on the proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the European Union Agency for Asylum and
repealing Regulation (EU) No. 439/2010

An effective migration policy is a European migration policy. It is in this believe that we welcome the Proposal of the European Commission on the European Union Agency for Asylum. As part of a greater package this step towards the overhaul of the Common European Asylum System is greatly appreciated.

The mass influx of migrants especially in the second half of 2015 has put many Member States under immense pressure and revealed the weaknesses of the Common European Asylum System (CEAS). The past months have proven the need for an European solution. A reform of the CEAS is desperately needed. The Commission's Proposal on a European Union Agency for Asylum will, with some appropriate changes, be an important first step in the right direction. The Dutch government understands the reserve with which some Member States approach yet another Agency at European level and appreciates the honest voicing of concerns about the Members' sovereign rights in the field of asylum policy. On the other hand, it is impossible to dismiss that a disproportionate burden falls on certain Member States and the Union must be equipped to provide the help necessary.

The Netherlands believes that it is possible to reach a compromise regarding the extremely sensitive decision on how much competences need to be given to the Agency in order to guarantee an efficient European asylum system and a fair share of responsibility.

I. Tasks of the new Agency

Several Member States criticized the authorisation of the Agency to assist with the relocation of migrants within the Union in article 2(1)(h) of the Proposal. The Presidency would like to underline that this phrase alone does not establish a redistribution system of beneficiaries of international protection within the Union, which can only be set up through a separate regulation and through the proper legislative channels. The Dutch government supports the new Agency's administrative role in the resettlement agreed upon last year. However, we strongly favour the Dublin system and do not believe that major changes should be made in this area. We therefore call for the Agency's mandate to focus on the prevention of secondary movements and the return of asylum seekers to the Member States responsible under the Dublin system and ask to change article 2(1)(h) to reflect this appropriately.

We understand that Member States are struggling with the sudden influx of many migrants. We believe however, that the solution is not giving up on EU Law. Instead, strong operational support should be provided (by the new Agency as well as by other Member States) so that struggling Members can bring their asylum systems in order.

II. Cooperation, Information Analysis and Exchange

The Presidency welcomes the provisions in Chapter 2 and 3 that render the Agency a centre for data gathering and information analysis. This will be an efficient tool for the Union and its Members, which will deepen the understanding on asylum matters and enable effective handling of relevant challenges. In particular, we support the Commission's proposal for the mandatory establishment of factual, legal and case law databases on the application and interpretation of European, national and international asylum instruments in Article 5 (2) of the Proposal. We are confident that the Agency can draw on existing arrangements from the EASO.

In this regard, the Dutch Presidency also welcomes the extensive provisions on country of origin information gathering by the Agency. As clearly expressed in the text, the Member States competence for deciding on individual applications for international

protection must be safeguarded (article 10 (2)). We are looking forward to the establishment of a common EU list of safe countries of origin, which will clearly make it easier for Member States to refuse applicants not in need of protection.

On the other hand, Member States, including the Netherlands, face problems to prove that there are sometimes protection alternatives for an applicant within his or her country of origin, even if such a country does not fall among the designated safe countries. The Dutch government therefore asks for a shift of the burden of proof onto the applicant to prove that no such protection alternative exists within his / her country of origin. While it is clear that such a change cannot be part of legislation on the establishment of a European agency, we would ask for the Agency's research to include such "safe regions" and "protection alternatives". A reference should be made to this point in article 10 of the new regulation.

With regard to the criticism from some Member States that information exchange should be voluntary as it places an additional burden on them, we would like to point out that this was already established under the old EASO mandate and has only been more clearly framed. We cannot share the view that such information gathering would impact the right to privacy. The Presidency strongly reaffirms its commitment towards personal data protection and the rights of the individuals affected thereby, however the Proposal clearly takes this into consideration in Chapter 7, which includes provisions for the protection of personal data and provides the Agency with a mandate to process personal data, limited to the purpose of performing its tasks when providing operational and technical assistance. Otherwise the Presidency believes that the information collected under Chapters 2 and 3 is vital to effectively monitor and develop the CEAS and thus should not be further diminished or made more difficult to obtain.

III. Monitoring and Assessment

Regarding the monitoring and assessment competences of the new Agency, the Netherlands appreciates the steps towards greater convergence by establishing operational standards and guidelines under article 12. However, as the Member States ultimately apply and put into practice asylum law, we call for them to be included in the development of operational standards, indicators, guidelines or best practices on asylum-related matters. The Agency should be required to seek feedback from the Member States before establishing such guidelines, especially as they are later used as indicators for monitoring compliance.

Overreaching and practically unfeasible operational standards and guidelines should be avoided at all costs.

Additionally, some Member States have hinted that the monitoring and assessment competences given to the Agency in Chapter 5 might be too far reaching and it is true that a delicate balance has to be struck. It cannot be stressed enough that the Member States' sovereignty in deciding individual asylum applications has to be preserved. However, the Presidency is of the opinion that an effective European policy relies on the functioning of the Member States' migration systems. The inability of some Member States' systems to deal with the sudden increase of applications over the last year has led to major problems in all Member States and for the Common European Asylum System. The Dutch government therefore strongly supports a monitoring and assessment system, supplemented with operational support from the European level.

IV. Collaboration with non-EU countries

In light of the EU-Turkey Agreement from 18.03.2016 to end irregular migration, the Presidency stresses the importance of article 35 on cooperation with third countries. It empowers the Agency to coordinate not only on information exchange but also operational cooperation between Member States and third countries. We advise that a thorough debate shall be conducted on the degree of the coordination duties, the participatory role of the agency in drafting and implementing EU agreements with third countries and Member States especially with regard to operational cooperation. This is important with regard to the particularities of the Common Foreign and Security Policy, which might be implicated by such cooperation.

V. Organisational structure and operational methods

First, based on the positions voiced by some Member States, our interest lies in directing a discussion on how the structure and competences of the Management Board can be strengthened to fulfil the function of a democratic oversight committee. The Dutch presidency supports the requirement of a qualified majority for decision making by the Management Board. While this might not be the fastest mechanism, a qualified majority is required in most areas of legislative decision making in the Union and has proven reliable.

Secondly, the name for the “Asylum Intervention Pool” was called into question since the term “intervention” was perceived as too militaristic. Since Asylum Intervention Pools have already been established by article 15 of the Regulation No 439/2010, the Presidency is not convinced a name change is reasonable, when the general function remains the same. Regarding other suggestions, with regard to the length of the deployment, the amount and recruiting procedure of agents, we encourage discussing amendments to the Commission Proposal.

Finally, several Member States support the independent operational nature of the Asylum Support Teams, in most cases pushing for the possibility of faster interventions using model plans or hastening the administrative procedures. Some proposals were made to facilitate routines in the field. As above, we are open to discussions on these issues and are looking forward in particular to the seasoned input from Member States most strongly hit by the recent surge in migration.

VI. Financial Provisions

Regarding financial provisions the Presidency draws the attention to budgetary extension in order to accommodate the increase in the number of staff members of the agency in reaction to suggestions by member states. We believe that the increase in staff and therefore budget is necessary to tackle the current crisis.