



Refugee Council briefing on the common European asylum system

March 2004

Introduction

In 1997, at a summit in Amsterdam, the European Council, a body made up of all 15 EU member states, agreed to work towards an area of 'freedom, security and justice'. The need for greater co-operation on migration, security and judicial policy arose from the gradual dismantling of borders between EU countries that was part of the process of EU integration beyond a common market. At the European Council summit in Tampere in 1999, states set themselves a goal to establish a common EU policy on immigration and asylum that would include the following elements:

1. Partnership with refugees' countries of origin
2. A common European asylum system
3. Fair treatment of foreign nationals and
4. Management of migration flows

This paper focuses on 2, the development of a common European asylum system (CEAS). It examines and explains the progress that has been made in agreeing four key pieces of EU law that will make up the first stage of the CEAS. The paper outlines the UK's role in negotiations on the four laws as well as highlighting their positive aspects and the Refugee Council's concerns about them.

The Common European Asylum System (CEAS) – stage one

The first stage of establishing the common European asylum system (CEAS) requires countries to 'harmonise', or bring into line, various aspects of their asylum policies. They have set themselves an overall and legally-binding deadline of May 2004, by which time they must have agreed four pieces of EU law, legal 'building blocks' that will:

1. outline minimum standards for the reception of asylum seekers (the reception directive);
2. establish which country is responsible for examining an asylum claim (the Dublin II regulation);
3. agree the definition and content of refugee and subsidiary protection¹ status (the qualification or 'definition' directive);
4. set minimum standards on the procedures for making decisions on asylum claims (the procedures directive).

This first stage of harmonisation will establish minimum standards in order to reduce the differences in European countries' asylum policies. States hope that this will create a more level playing field across Europe, reducing the 'pull factors' that they believe attract asylum seekers to particular countries. The harmonisation process has huge implications for asylum seekers in all EU countries, including the UK. It will affect whether they are able to get into the EU, how their claims are processed if they do succeed, whether or not they are recognised as refugees and how they are supported through the process.

¹ Subsidiary protection status is given to people who do not fit the 1951 Refugee Convention definition of a refugee but are nonetheless in need of protection. People with this status in the UK were formerly given 'exceptional leave to remain' and are now given 'humanitarian protection'.

Harmonisation has the potential to bring positive results if standards are set high and states are required to meet them. However, the Refugee Council and other NGOs have long been concerned that states would reach agreement at the 'lowest common denominator' and would then alter their national practices to match them. Those concerns now appear vindicated, with standards being set so low that they risk violating international human rights law.

During negotiations on the four building blocks of the CEAS member states have substantially watered down the standards contained in the initial Commission proposals. The UK has been instrumental in this process of driving minimum standards down and setting them at as low a level as possible, in some areas even lower than the lowest common denominator. This is largely because the UK wants to ensure the CEAS will not force it to change its domestic policy, nor prevent it from lowering UK standards in the future.

Decision-making

EU legislation is made up of directives and regulations which must be implemented by member states. Directives stipulate the result that must be achieved, but countries can choose how to transform the directives into national law. Countries do not have to change their policy and practice unless it conflicts with a directive. Regulations are different in that they apply directly and are legally binding on all member states as soon as they come into force.

During the first stage of harmonisation all decisions on asylum and immigration law must be unanimous. This means that all countries must agree on every aspect of the four building blocks of the CEAS. The UK, however, is able to choose whether to opt in or out of any measure affecting control of its external borders. This is because the UK, like Ireland, secured an amendment to the Treaty of Amsterdam giving it three months, once a proposal has been presented, to decide whether to take part in an agreement on asylum, immigration or judicial matters. After a proposal has become European law the UK and Ireland can opt-in to it at any time. This is related to the UK and Ireland's ability, unlike other EU countries, to select which aspects of the Schengen agreement will apply to them.² To date, the UK government has tended to opt in to asylum and illegal immigration measures and to opt out of those relating to legal immigration, which might give people the right to enter the UK. Denmark is the only other country to have a special position in relation to EU asylum, immigration and judicial laws. It does not have to take part in such measures unless they build upon the Schengen agreement, in which case it has six months to decide whether or not it will implement a measure into Danish law.

Progress to date

So far the following pieces of legislation have been agreed:

² The UK and Ireland are the only member states that do not belong to the Schengen area. The other 13 EU member states belong to the Schengen area and have agreed to the gradual abolition of border controls between them. They share rules, amongst other things, on the issuing of visas, the control of external borders and cooperation on cross-border policing. For more information about the Schengen agreement and the Schengen area see <http://www.europa.eu.int/scadplus/leg/en/lvb/l33020.htm>.

1. **The reception directive** was formally adopted in January 2003 and countries have until February 2005 to bring their legislation into line. It lays down minimum standards for the reception of asylum seekers while their claim is being decided. Areas covered include access to work, housing, education, healthcare, freedom of movement and the reception of unaccompanied children.
2. **The Dublin II regulation** – came into force in September 2003 and establishes which member state is responsible for deciding an asylum claim. The main idea behind it is that the country that let an asylum seeker into the EU, whether legally or by failing to prevent their illegal entry, must take responsibility for their asylum claim.

States have not yet agreed the following EU laws:

1. **The 'definition'/qualification directive:** this will provide a common definition of who is a refugee and who qualifies for subsidiary protection status (see footnote 1) in the EU. It will also define the minimum rights that people with status are entitled to.
2. **The procedures directive:** this will set out minimum standards for the procedures EU countries use to consider asylum claims. It will cover a range of fundamental issues such as the use of detention, the definition of 'safe third country' and 'safe country of origin', the right of access to the asylum system, the right to a personal interview, legal assistance and an in-country appeal.

The Common European Asylum System (CEAS) – stage two

The intention is that once the first stage of harmonisation is complete countries will start work on stage two of the CEAS. Negotiations will begin to establish a single asylum system for the whole of Europe, including a unified status for all people granted asylum within the EU.

Ten new countries³ will join the EU in May 2004 and will participate fully in stage two of the negotiations. The new member states will be bound by agreements on the reception directive and Dublin II. However, if the first stage of harmonisation is not complete then the new member states will be able to join negotiations on the two outstanding directives and will have the right of veto, as decisions must be unanimous. There is a danger that they may seek to lower the minimum standards even further.

It is likely that decision-making about stage two of the CEAS will be by qualified majority voting⁴ and the UK will almost certainly continue to be able to opt-out of asylum and immigration measures. However, the precise procedures for making decisions will only become clear once the new EU constitution has been agreed. Negotiations on the new constitution ended in failure in December 2003 during the

³ Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia.

⁴ Under qualified majority voting votes are weighted according to the population size of the various countries. The weighting of member states' votes is one of the most contentious issues being discussed in the context of the new EU Constitution, which has not yet been agreed.

Italian presidency of the EU.⁵ However, Ireland now holds the EU presidency and one of its priorities is to move forward with negotiations and reach agreement as soon as possible. New decision-making procedures will not enter into force until the constitution has been finalised and approved by national parliaments, which is likely to be 2006 at the earliest.

⁵ The formal term is 'Presidency of the European Council'.

The four legal 'building blocks' of the common European asylum system

Reception directive

Full title

[Council Directive laying down minimum standards for the reception of asylum seekers. \(2003/9/EC\)](#)

Key dates

- The Commission published its proposal in April 2001.
- The directive was formally adopted on 27th January 2003.
- The deadline for member states to implement the directive is 6th February 2005.

What is the reception directive?

The reception directive was the first building block of the common European asylum system that states approved. It lays down minimum standards on the reception of asylum seekers while their application is being decided. States have agreed that these are the minimum standards necessary to ensure asylum seekers a dignified standard of living. Countries have until 2005 to bring their policies and practice into line with standards set out in the directive.

The minimum standards cover access to work and vocational training, the provision of housing, food, clothing, education, healthcare and services for those with special needs. Other areas covered include the provision of documents and information to asylum seekers, maintaining family unity, the reception of unaccompanied children, and limitations on freedom of movement.

The reception directive is the only aspect of the common European asylum system that explicitly aims to reduce the secondary movement of asylum seekers who leave one EU country to claim asylum in another where reception conditions are better. This has been termed 'asylum shopping'. Some states, including the UK, are concerned that their treatment of asylum seekers is better than in other countries. They have argued that their higher standards act as a 'pull factor' for a large number of asylum applicants. States hope that by establishing similar living conditions for asylum seekers across the EU people will be discouraged from moving on to a country where reception conditions are better.

The UK opted in to negotiations and is therefore bound by the directive. Denmark and Ireland are not. The deadline for compliance also applies to the ten accession countries joining the EU in May 2004.

Positive aspects

The agreement of the reception directive is a significant step towards establishing a common European asylum system. Once it is implemented there will be greater similarity between member states' reception systems. The situation of asylum seekers should improve substantially in countries such as Greece where reception facilities are currently under-resourced. The directive should also limit the 'race to the bottom' among member states who, believing their reception conditions are a pull factor, strive to make their national conditions ever more harsh. While countries with higher standards may lower them to the minimum agreed by the EU, they will be unable to lower them beyond that floor.

The UK's role in negotiations

During negotiations on the reception directive, the UK persuaded other countries to draft the directive so that it allows for children to be educated in accommodation centres. Although states are able to retain higher national standards than those outlined in the directive, there is grave concern that as a result of the UK's actions other countries may alter their existing policies and segregate asylum seekers' children, educating them in accommodation centres.

Member states reached agreement on the reception directive in April 2002. Despite this, the UK later back-tracked and pressed for negotiations to be re-opened. Since the initial agreement, the UK government had decided to change the UK asylum system and introduce a range of restrictive provisions with the Nationality, Immigration and Asylum Act 2002. The UK needed to lower EU minimum standards so that its new national reception policies could continue once the EU reception directive came into force. In particular, the UK wanted to ensure that it would not be prevented from removing support from asylum seekers who did not apply in good time without good reason, a policy the government had introduced in Section 55 of the new 2002 Act. The UK was successful in persuading other countries that a provision almost identical to Section 55 be incorporated into the reception directive. The result is that other EU states will be able to introduce a similarly punitive and inhumane policy into their national law.

Refugee Council concerns

- The minimum standards outlined in the directive are much lower than current reception standards in the UK and many other EU countries. Further, there is no 'standstill clause' to prevent states from levelling down their national standards to match those outlined in the directive. There is a real risk that countries with higher standards will lower them to mirror the agreed minimal standards.
- The directive will allow countries to restrict asylum seekers' freedom of movement. Germany is the only country that requires asylum seekers to stay within a particular part of the country and was successful in pushing for a provision to allow it to continue this practice. There is now a risk that other countries, such as the UK, may use the directive to justify limiting asylum seekers' ability to move freely throughout the country.

- As a result of German pressure, governments will be able to set conditions for allowing asylum seekers to work. They will be able, for example, to give priority to EU citizens. The directive sets a one-year limit on the length of time that countries can prevent asylum seekers from working.
- The directive gives states wide powers to withdraw support altogether from people they consider to have abused the asylum system. This may include asylum seekers who fail to report to authorities as requested, who do not claim asylum 'as soon as reasonably practicable' or who have been required to live in a particular place but move somewhere else. Countries will be able to reduce or withdraw the very levels of support that they have agreed are the minimum required for a dignified standard of living.
- The directive only requires countries to meet the minimum reception standards in their treatment of people applying for 1951 Convention refugee status. Countries will be able to disregard the standards in their treatment of asylum seekers applying for protection under the European Convention on Human Rights. This is of great concern in EU countries such as France where there are different application processes for different protection statuses.
- Countries will only be obliged to provide asylum seekers with information in a language that they may 'reasonably be supposed to understand.' This will mean that there is no obligation on states to provide information in appropriate translation.

The UK government should

- use its influence to encourage countries to improve their national reception conditions, not lower them to the minimum levels set out in the directive.
- reinstate the UK work concession. It should not wait until 2005, but take steps immediately to comply with the directive by lifting work restrictions to asylum seekers who have not had a decision on their case after more than a year. Moreover, the Refugee Council believes that the UK should introduce provisions more favourable than the minimum standards contained in the directive and that asylum seekers should be entitled to work from the first day they arrive in the country.
- ensure that asylum seeker's children are educated in mainstream schools, with proper support. This allows for normal contact with other children, best facilitates children's learning and assists the integration process for those families who are eventually allowed to remain in the UK. The reception directive requires that the education received by asylum seekers' children is similar to that received by nationals. It is doubtful that this can be achieved if they are segregated in accommodation centres.

'Dublin II' regulation

Full title

[Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third-country national.](#) (EC) 343/2003

Key dates

- Commission proposal published July 2001.
- Political agreement reached 18th December 2002.
- Came into force 1st September 2003.

What is Dublin II?

This regulation entered into force on September 1st 2003 and is commonly known as 'Dublin II'. It has replaced the Dublin Convention as the mechanism for deciding which EU country is responsible for processing someone's asylum claim. The Dublin Convention was not EU law, whereas the new Dublin II regulation is. The main principle behind Dublin II is that the country that let an asylum seeker into the EU, whether legally or by failing to prevent their illegal entry, must take responsibility for their asylum claim. For example, if someone claims asylum at Dover, having got off a ferry from France and it can be proved he or she entered Greece illegally, then Greece may be held responsible for processing that person's asylum claim. However, the Dublin II process is by no means straightforward and there is a long list of criteria for establishing which country is responsible.

Positive aspects of Dublin II

- Dublin II upholds the principle of family reunification. Asylum seekers will be reunited with any family member in an EU country who has been recognised as a refugee or who has applied for asylum but not yet received an initial decision.⁶
- Separated children will have their asylum claim considered in the country where a family member is present or in the country where their application has been made.
- Before the Dublin Convention, asylum seekers were sent back and forth between countries that could not agree who was responsible for processing their claim. Dublin II should end this phenomenon because it outlines clear, if complex, criteria for establishing which country must process a claim.
- The regulation contains shorter deadlines for countries to respond to a transfer request from another EU country. This may speed up the process of determining

⁶ The regulation defines 'family member' to include spouses, unmarried children and, if the asylum seeker is an unmarried minor, parents.

which country is responsible for processing an application and reduce the amount of time that asylum seekers are left in limbo.

Refugee Council concerns

- Under Dublin II states continue to be able to force people to make their asylum claim in a country where they have a lesser chance of receiving protection. In this way Dublin II perpetuates a system that makes seeking protection a dangerous lottery. The regulation should have been the last 'building block' of the common European asylum system to be agreed and should never have come into force before standards had been harmonised across the EU.
- Dublin II links responsibility for border control to responsibility for refugee determination. This potentially means that countries along the EU's external borders will be responsible for a higher proportion of asylum claims. A statement is attached to the regulation, recognising the burden on those countries and outlining a series of measures to assist them to further strengthen their external borders. These measures will make it increasingly difficult and dangerous for people fleeing persecution to access protection in the EU.
- It is very difficult to prove which country is responsible for an asylum seeker's entry into the EU, particularly in situations where he or she has been trafficked or smuggled. Governments hope that the EURODAC database of fingerprints will assist with this.⁷ Countries like the UK hope that border states will intercept and fingerprint people who enter their country illegally. They will then be held responsible for the following 12 months for any asylum claim made by those people anywhere in the EU.
- It is widely recognised, even by the European Commission, that the regulation is flawed and that a 'Dublin III' regulation is needed to replace Dublin II. What is needed is an improved and more efficient system for deciding which country is responsible for processing an asylum seeker's application. A 'Dublin III' will need to be fair to all, based on equitable responsibility-sharing between countries. In addition to family ties, asylum seekers' cultural, language and community ties must be taken into account.

The UK government

- should encourage member states to start negotiating a Dublin III immediately. The agreement France and the UK reached over the Sangatte centre in Calais demonstrates that countries are able to sit down and work out a system of responsibility sharing that, to some extent, takes into account asylum seekers' links to a particular country.

⁷ The EURODAC database is designed to store the fingerprints of every person who claims asylum or who is found trying to enter the EU illegally but cannot be refused entry.

The qualification/'definition' directive

Full title

Proposal for a Council directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection. COM(2001) 510 final

Key dates

- The Commission proposal was presented in September 2001.
- The initial deadline for agreement on the directive was June 2003 but was extended to December 2003.
- The December 2003 deadline was missed and the Irish Presidency hopes to reach agreement before May 2004.

What is the qualification/definition directive?

The 'qualification' or 'definition' directive will provide a common definition of who is a refugee and who is otherwise in need of international protection (for example, people who were granted exceptional leave to remain (ELR) in the UK or who are now granted humanitarian protection (HP)). It will also define the rights that people with refugee and complementary protection status are entitled to. The aim of the directive is to minimise differences between the way states define and treat refugees and others in need of protection.

Positive aspects

This directive is long overdue. There are significant differences between countries' interpretation of who is a refugee and of who is otherwise entitled to international protection. This results in a 'protection gap' whereby asylum seekers refused asylum in one EU country may have been recognised as in need of protection if they had applied in another. The directive has the potential to close this gap and eliminate some of the variations in states' interpretation of their international obligations.

The following aspects of the directive, if retained in the agreed version, would be welcome:

- The directive covers both Convention refugees and others who are in need of protection.
- The definition of a refugee is reasonably full and inclusive and is based largely on the 1951 Refugee Convention definition.
- The directive proposes that people persecuted by non-state agents be recognised as refugees. An example of a non-state agent might be a warlord in Somalia or the Islamist opposition in Algeria. At the moment, some countries, notably France

and Germany, do not recognise persecution unless it is carried out by the state or an agent of the state.

- Gender-based persecution is recognised in the directive.

The UK's role in negotiations

The standards contained within the current draft of the directive have been significantly watered down since the European Commission's initial proposal. That proposal sought to provide refugees and others in need of protection with rights similar to EU citizens on a range of issues. During negotiations states have substantially scaled back the rights and entitlements, particularly for people with subsidiary protection status. Minimum standards have been set at, or close to, the lowest common denominator, meaning that some of the core principles of refugee protection will be compromised.

The UK played a significant role in ensuring that the definitions rule out applications from nationals of EU countries, including countries that are preparing to join the EU. This may result in people seeking protection but being refused asylum solely on the basis of their country of origin. In addition, the UK was instrumental in lowering the entitlements of people with subsidiary protection status, despite a previous Home Office statement that there should be little difference between refugee status and complementary forms of protection.⁸

Refugee Council concerns

- The definition directive should have been the first 'building block' of an EU asylum system. It is illogical that work on detailed areas, such as reception conditions, has been completed before countries have a common understanding on the core issues of who a refugee is and who is otherwise in need of protection.
- Convention refugees and people otherwise in need of protection have equally compelling protection needs and should be given equivalent rights and entitlements. The definition directive, however, will allow countries to accord lower rights to people with complementary forms of protection (such as ELR/HP) in relation to the following
 - Entitlement to a residence permit
 - Eligibility for the right to work and to access vocational training and integration programmes
 - The right to a travel document
- The directive will stipulate that protection from persecution can be provided by administrations or organisations, including international organisations which control a country or part of it. This might include the kind of administration that

⁸ In its Memorandum to the House of Lords enquiry into the directive the Home Office stated that 'there are a number of reasons for limiting the difference between the two protection statuses: an individual's needs are the same regardless of the status granted; it would help limit the number of appeals by those refused refugee status but granted subsidiary protection.' (Explanatory Memorandum 2001/0207 (CNS))

currently operates in Iraq. Such bodies are not subject to international law and cannot be signatories of international human rights instruments. It is therefore inappropriate that such entities be considered capable of offering effective protection.

- Family members of people recognised to be in need of international protection will be entitled to lesser rights and benefits than the family member who made the asylum application. For example, while people with refugee status will be entitled to a three year residence permit, member states will be able to issue their family members with residence permits for a shorter period of time. This is contrary to UNHCR guidelines which state that family members should be accorded status in the same way as the head of the family.
- Countries are considering whether they should be permitted to exclude people from refugee status on national security grounds before examining their case. This is contrary to the 1951 Refugee Convention.

The UK government

- must not cave in to German demands. Although 14 out of the 15 members of the EU have reached agreement on the text, Germany is pushing for a substantial dilution of the standards it contains, particularly in relation to the rights of people with subsidiary protection status, and of family members of people who have that status. Further, Germany does not want the directive to apply to people fleeing generalised violence, such as civil war. The UK government should encourage EU member states to use their collective influence and pressure the German government to lift its restrictive reservations.

Procedures for granting and withdrawing refugee status

Full title

[Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status. COM \(2000\) 578 final](#)

Key dates

- The initial Commission proposal was presented in September 2000.
- The deadline for agreement on the directive, as decided at the Seville European Council in 2002, was December 2003.
- The December 2003 deadline was missed and the Irish Presidency hopes to reach agreement before May 2004.

What is the procedures directive?

The directive aims to establish minimum standards for the procedures EU countries use to determine asylum claims. It will cover a range of fundamental issues, including:

- Access to the asylum procedure, to a personal interview, information, legal assistance, advice and representation
- The right to remain in a country until a final decision has been made on a claim;
- The use of detention
- Accelerated (fast-track) procedures for people whose claims are deemed 'inadmissible' or 'unfounded'
- Guarantees for unaccompanied minors
- Definitions of 'safe' third country and 'safe' country of origin concepts and
- Appeals procedures.

Positive aspects

There are few existing international standards that govern the way states process asylum claims. As a result, this is one of the most challenging aspects of establishing a common European asylum system. The differences between state procedures are so great that reaching any agreement is an immense challenge. Agreement somewhere above the lowest common denominator would be positive, so long as states are prohibited from diluting their national standards.

It is difficult to identify positive areas of the directive given that standards have been lowered so drastically and countries are still finding it so difficult to reach agreement. However, the provisions relating to asylum seekers' access to information are likely to be generally good.

The UK's role in negotiations

The standards contained within recent drafts of the procedures directive are substantially lower than those within the initial Commission proposal. Recent drafts of the directive have been widely criticised by NGOs for breaching international law. Adherence to many of the provisions is optional, including some long-standing principles of international refugee and human rights law. The Refugee Council is concerned that member states will be left with extensive discretion as to whether or not to apply even the minimal standards within the directive. The result may be a very low level of harmonisation of state procedures.

Throughout the negotiations the UK has been trying to ensure that it will not be prevented from making radical changes to UK asylum procedures now and in the future. In particular, it appears to want to ensure that the directive will not prevent it from implementing aspects of its 'zones of protection' proposal to process asylum claims overseas. It is, for example, working to ensure that asylum seekers can be transferred to a 'safe third country' even if they have no previous connection with that country. Further, the UK seems to have encouraged other countries to expand the definition of 'unfounded cases' to include a wide range of people, including those entering a country with false or no documents.

Refugee Council concerns

- Many countries are negotiating for a directive that will allow them to channel the majority of asylum applicants through accelerated (fast-track) procedures with extremely limited safeguards.
- It is likely that the directive will contain a long list of circumstances in which asylum claims will be deemed 'unfounded.' In these cases, asylum seekers will not be allowed to remain in the country until their appeal has been heard, as is the case for asylum seekers in the UK from 'non-suspensive appeal' countries. Under the directive if an asylum seeker is deemed to come from a 'safe country of origin', if he or she presents false documents, or if a state believes an asylum seeker has destroyed his or her travel document then the claim will be deemed unfounded. Immediately after an initial decision has been made, the applicant will be removed to another country and may only be able to appeal once outside the UK. There are few safeguards to ensure that the country to which they are being removed is not one in which they are at risk of persecution.
- States will not be required to examine a case at all if it is considered 'inadmissible'. This is likely to include people who have entered a state from a country that falls within the loose definition of a 'safe third country'. Some states are supporting a proposal that states should not have to examine whether the country is safe for the particular asylum applicant.
- Authorities will be able to deny asylum seekers a personal interview if it is not considered to be 'reasonably practical' or where the application is considered inadmissible.
- States were unable to reach agreement on the definition of detention or the grounds for its use. As a result, the directive says very little about it and will

leave states with an alarming degree of discretion when deciding on the duration of detention and its necessity.

- States are likely only to be obliged to provide free legal assistance for appeal, and it will be subject to a financial resources and legal merits test.
- The minimum standards are only binding for applications made for Convention refugee status. States may choose not to apply them to claims made by people with other protection needs.

The UK government should

- urge member states to abandon the 'safe country of origin' and 'safe third country' concepts, instead ensuring that every asylum seeker gets a fair hearing. The Refugee Council is fundamentally opposed to designating countries 'safe', as it is impossible to guarantee that any country will be safe for all people all of the time.
- insist that the directive guarantees asylum seekers the right to remain in the country where they have made their asylum claim until they receive a **final** decision.
- ensure that member states are required to operate a single procedure for all asylum claims – a single procedure is better able to respond to the complexity of many asylum applications.
- re-introduce into the directive stringent restrictions on the use and duration of detention.

Conclusion

As negotiations have progressed it has become increasingly difficult to find evidence that EU states remain committed to harmonising their asylum systems. At the regular EU meetings where states discuss immigration and asylum policy, they find it far easier to agree restrictive measures to combat illegal immigration than those to improve the situation of asylum seekers and refugees in the EU. States appear to be forgetting the commitment they made at the Tampere summit in 1999 to balance control of illegal migration with guaranteed access to the EU for people in need of international protection.

Negotiations on the common European asylum system have veered towards the lowest common denominator approach. This is largely because states, such as the UK, want to ensure that national practices can continue and that EU laws will not prevent them from introducing new restrictive policies in the future. The result, most clearly apparent in the procedures directive, is that standards are set so low that in some areas they breach international law.

At the moment states look set to miss the May 2004 deadline for concluding the first stage of harmonisation. We will only know exactly how low common standards will be once member states finally agree and actually implement the directives. The length of time it has taken to negotiate stage one of the CEAS, and the low level at which standards have been set, makes prospects bleak for stage two, where member states will try to establish a single asylum system for the whole of Europe.