



“A Europe Without Barriers”: UNHCR’s Recommendations to the Czech Republic for its European Union Presidency (January – June 2009)

Introduction

The incoming Czech Presidency has announced that promoting a “Europe without barriers” will be among its priorities, with an emphasis on the “four freedoms” of movement underpinning the European Union, including freedom of movement of persons within the EU.¹ The Office of the United Nations High Commissioner for Refugees (UNHCR) acknowledges the importance of these principles for EU cohesion, but notes that limits on freedom of movement apply to millions of refugees, asylum-seekers and other people of concern to UNHCR worldwide. In relation to the European Union, UNHCR has consistently emphasized the need to ensure that people seeking protection are able to gain access to the territory of Member States and their asylum procedures. Greater freedom of movement within the European Union should not affect access to EU territory for people in need of protection and to the right to seek and enjoy asylum in Member States.

UNHCR provides advice and expertise to European Union institutions and Member States on asylum questions, based on its supervisory responsibility with respect to the implementation of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol² and on UNHCR’s consultative role as affirmed in Declaration 17 to the Amsterdam Treaty.³ The present recommendations are made to the Czech authorities in

¹ Interview with the Minister for European Affairs of the Czech Republic, February 2008, at: <http://www.euractiv.com/en/opinion/vondra-europe-barriers-top-priority-czech-presidency/article-170427>; Press release of the Czech Representation to the European Union, at: <http://www.mzv.cz/www/default.asp?id=46775&ido=13925&idj=2&amb=3>.

² *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series, vol. 189, p. 137, at: <http://www.unhcr.org/refworld/docid/3be01b964.html>, and *Protocol Relating to the Status of Refugees*, 30 January 1967, United Nations Treaty Series, vol. 606, p. 267, at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html> (together referred to hereinafter as the “1951 Convention”).

³ Declaration 17 to the Treaty of Amsterdam provides that “consultations shall be established with the United Nations High Commissioner for Refugees (...) on matters relating to asylum policy”; *Declaration on Article 73k of the Treaty establishing the European Community* [OJ C 340/134, 10.11.1997] at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/DCL/17:EN:HTML>.

the constructive spirit that has guided UNHCR's input since the start of asylum harmonization efforts in the EU.

The Czech Presidency has committed itself to achieving progress towards establishing the Common European Asylum System (CEAS), including by setting higher standards for refugee protection across the EU.⁴ The European Pact on Immigration and Asylum, adopted in October 2008, reiterates this goal.⁵ UNHCR urges the Czech Presidency to follow up on this ambitious political commitment by leading discussions in the Council on key legislative proposals from the European Commission (EC), including for revision of the Dublin and Eurodac Regulations,⁶ the Reception Conditions Directive,⁷ the Qualification Directive,⁸ and the Asylum Procedures Directive,⁹ as well as on the proposed establishment of a European Asylum Support Office. UNHCR looks forward to progress in these areas, in view of the need to improve the minimum EU standards set so far, and ensure their consistency with international refugee and human rights law.

⁴ Department of the Czech Deputy Prime Minister for European Affairs, *Sectoral priorities of the Czech EU Presidency*, July 2008, p. 12, at: http://www.vlada.cz/assets/cs/eu/dokumenty/sektorove_priorita-cervenec2008.pdf; French, Czech and Swedish Presidencies, *18-month programme of the Council*, 11249/08, 30 June 2008, p. 68, at: http://www.ue2008.fr/webdav/site/PFUE/shared/ProgrammePFUE/Trio_EN.pdf.

⁵ *European Pact on Immigration and Asylum*, 13440/08, adopted by the European Council on 16 October 2008, p. 11, at: <http://register.consilium.europa.eu/pdf/en/08/st13/st13440.en08.pdf>.

⁶ 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 lodged in one of the Member States by a third-country national or a stateless person*, COM(2008) 820, 3 December 2008, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0815:FIN:EN:PDF>; European Commission, *Proposal for a Regulation of the European Parliament and of the Council concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EC) No [...] establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*, COM(2008) 825/3, 3 December 2008, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0825:FIN:EN:PDF>.

⁷ European Commission, *Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum-seekers*, COM(2008) 815, 3 December 2008, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0815:FIN:EN:PDF>.

⁸ Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted* [OJ L 304/12, 30.09.2004], at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:EN:PDF>.

⁹ Council of the European Union, *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status* [OJ L 326/13, 13.12.2005], at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>.

1. Building a fair and effective Common European Asylum System

EU institutions and Member States, including the Czech Republic,¹⁰ have acknowledged the unsatisfactory level of harmonization achieved by the first phase asylum instruments, and the need for higher common standards. UNHCR remains deeply concerned that current laws and practice mean that persons in need of international protection are not necessarily able to find it in all Member States. Numerous factors contribute to this state of affairs, including gaps between the existing EU minimum standards and Member States' practice and between these standards and international refugee and human rights law, as well as some ambiguous provisions in the asylum instruments, wide margins for discretion, and inadequate safeguards defined by some of these provisions. These causes should be addressed through a series of corrective measures, including amendment of some existing provisions, information-gathering on implementation, increased practical cooperation among States to promote best practices, and effective enforcement by the EC where required to address non-compliance with minimum standards. These corrective measures should take into account the linkages between the various instruments of the CEAS, to ensure that gaps are filled, and that greater protection and harmonization achieved in one area is not undermined by shortcomings in another.

1.1 Amending the first phase instruments of the Common European Asylum System

The EC issued proposals for amendments to the Dublin and Eurodac Regulations and the Reception Conditions Directive in December 2008. It is expected to propose amendments to the Asylum Procedures Directive and the Qualification Directive in April 2009.

UNHCR recalls the Hague Programme's stipulation that amendments should be informed by a thorough evaluation of the application of the first-phase instruments.¹¹ In addition to the evaluations undertaken by the EC to date, several stakeholders and expert bodies have issued reports over recent years documenting pressing needs and problems in transposition and implementation of the European Community instruments.¹² These reports, many of which contain thorough and authoritative research and analysis, should be taken into account, and their findings addressed in the amendment process.

¹⁰ *European Pact on Immigration and Asylum*, p. 20, see above footnote 5; European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Policy Plan on Asylum. An Integrated Approach to Protection Across the EU*, COM(2008) 360, 17 June 2008, pp. 4-5, at: <http://www.unhcr.org/refworld/docid/4860eee72.html>; see above footnote 4.

¹¹ European Council, *The Hague Programme Strengthening Freedom, Security and Justice in the European Union*, Annex I to the Presidency Conclusions, 5 November 2008, paragraph 1.3, p. 17, at: http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/doc/hague_programme_e_en.pdf; European Commission, *Communication from the Commission to the Council and the European Parliament. The Hague Programme: Ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice*, COM(2005) 184 final, 10 May 2005, p. 8, at: http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/doc/com_2005_184_en.pdf.

¹² See below footnotes 13, 16, 19, and 20.

Assessments are still pending for the Asylum Procedures Directive, but once available, they should be considered as well.

Recommendation: *UNHCR urges the Czech Presidency to lead substantive discussions on proposals for amendments of key asylum instruments. These discussions should take account of lessons learned and available analyses of the application of the instruments to date. The Presidency should support fulfillment of the Amsterdam Treaty obligation to ensure adherence to and consistency of the asylum instruments with the 1951 Convention relating to the Status of Refugees and other relevant international treaties.*

a. Proposed amendments to the Dublin Regulation

UNHCR welcomes the EC's proposals for amendment of the Dublin Regulation which, if adopted, would address some of the significant problems in the system as it currently operates. The Presidency is encouraged to seek political agreement on the following elements:

- Provision for temporary suspension of transfers under Dublin, based on a request from a Member State facing an “exceptionally heavy burden” on its reception capacity or asylum system - or at the initiative of the Commission if it considers that inadequate levels of protection are provided by the State in question.
- Further safeguards for the rights of children in the Dublin system: proposals should be supported to strengthen obligations to respect the principle of the best interest of the child, and to clarify provisions regarding the right of minors to be reunited with relatives in the EU.
- Reinforcement of the principle of family unity: proposed amendments would extend the categories of family members entitled to be reunified under Dublin, notably to include dependants who are not part of the nuclear family; and to reinforce the importance of the family unity criterion for determining which Member State is responsible for determining an asylum claim.
- Clarified and broadened “discretionary” clauses to encourage the Member States to examine a claim, or request another State to do so, in cases where humanitarian or compassionate considerations apply.
- Stricter limits on detention of asylum applicants subject to the Dublin Regulation, including through provisions which would require Member States to consider alternatives to detention; ensure judicial control of detention; minimize its use in respect of children, and other important safeguards.
- Strengthened provisions on the right to reception assistance in accordance with the Reception Conditions Directive; to an effective remedy against a Dublin decision; to information about the Dublin procedure, and on data protection and access for claimants to their personal data.

UNHCR urges the Czech Presidency and the Member States to bear in mind the serious impact of the Dublin system on the fundamental rights of people seeking asylum.¹³

¹³ UNHCR, *The Dublin II Regulation. A UNHCR Discussion Paper*, April 2006, at: <http://www.unhcr.org/refworld/docid/4445fe344.html>; European Commission, *Report from the Commission to the European Parliament and the Council on the Evaluation of the Dublin System*

Moreover, all Member States have an interest in ensuring that asylum claims are dealt with swiftly and fairly by one responsible State. UNHCR considers that the proposed amendments to the Dublin II Regulation would support that aim.

Some Member States may consider that the proposed amendments will not serve adequately to improve the “efficiency” of the Dublin system, namely, the ratio of actual transfers relative to the number of requests made by Member States. UNHCR stresses, however, that the appropriate response must not lie in reducing the entitlements and safeguards for applicants, which are essential to ensure that the system can operate fairly and humanely.

The EC has also issued proposals for amendments to the Eurodac Regulation¹⁴ which are largely technical in nature. UNHCR considers that there is a need for increased data protection safeguards for persons whose fingerprints are registered in Eurodac.¹⁵

Recommendation: *UNHCR encourages the Czech Presidency to make substantive progress on the Dublin amendments, and to support important changes aimed at strengthening the rights of children, families and vulnerable people within the Dublin system, as well as others that would enhance its effective operation to determine swiftly and transparently the State responsible to examine a protection claim. Given the complexity and importance of the Dublin II Regulation, the Czech Presidency is encouraged to prioritize negotiations on this instrument, in parallel with or ahead of the Eurodac amendments.*

b. Revision of the Reception Conditions Directive

Appropriate reception conditions for asylum-seekers are essential to ensure a fair and effective examination of protection needs. UNHCR has identified wide disparities in Member States' practice, which have been confirmed by the EC's own evaluation, notably in application of the Directive to persons in detention and subject to the Dublin Regulation; the level and form of reception support, including health care; access to employment; free movement rights; identification of vulnerable persons and provision of care to meet their needs.¹⁶

(COM(2007) 299 final), 6 June 2007, at: <http://www.unhcr.org/refworld/docid/466e5a082.html>; European Council on Refugees and Exiles (ECRE), *Report on the Application of the Dublin II Regulation in Europe*, March 2006, at: http://www.ecre.org/files/ECRE_Dublin_Report_07.03.06_-_final.pdf; ECRE, *Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered*, March 2008, at: http://www.ecre.org/files/Sharing_Responsibility_Dublin_Reconsidered.pdf; Human Rights Watch, *Stuck in a Revolving Door: Iraqis and Other Asylum-seekers and Migrants at the Greece/Turkey Entrance to the European Union*, 26 November 2008, at: <http://www.hrw.org/en/reports/2008/11/26/stuck-revolving-door-0>; ProAsyl, *Research into the situation of asylum-seekers in Greece*, October 2008, at: http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Asyl_in_Europa/Griechenland/Out_of_control_Eng_END.pdf

¹⁴ See above footnote 6.

¹⁵ UNHCR's Recommendations for Portugal's European Union Presidency (July-December 2007), p. 6, at: <http://www.unhcr.org/refworld/docid/4672acd72.html>.

¹⁶ European Commission, *Report from the Commission to the Council and to the European Parliament on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the*

UNHCR notes the Czech Presidency's intention to accord priority to achieving progress on the Reception Conditions amendments. The proposed amendments submitted by the EC in December 2008 should be welcomed, as they address many of the gaps in a comprehensive fashion.¹⁷ Among the provisions that could significantly strengthen existing common reception standards, the following are welcomed in particular:

- Proposals to regulate and limit detention for asylum-seekers, and to promote the use of alternatives by Member States, provide for judicial control and review, and define minimum standards for detention conditions.
- Provisions which would reinforce the existing provisions in the Directive regarding particularly vulnerable applicants, including traumatized people, separated children, and people with special medical needs.
- Amendments which would clarify the application of the Reception Conditions Directive to applicants subject to the Dublin Regulation and to those in detention, thereby rectifying inconsistent and unsatisfactory interpretation and practice across the Member States.
- Proposal to extend the scope of the Directive to persons applying for subsidiary protection, in Member States where a single procedure has not yet been established;
- Proposals to ensure earlier access to the labour market, i.e. within 6 months after the date of the asylum application (a reduction from the current 12), and to eliminate additional restrictions on asylum applicants' rights to work beyond this period.
- Provisions strengthening access to material assistance, in particular by obliging Member States to take into account the level of assistance available to their nationals, and limiting the conditions under which material assistance may be withdrawn.

Many problems around the current Directive relate to non-implementation of its existing provisions. It is hoped that during the coming six months, discussions on the proposed amendments, as well as efforts to promote practical cooperation among asylum services, can bring these difficulties to the fore and address them.

Recommendation: *UNHCR encourages the Czech Presidency to focus efforts on progress in negotiations on proposed amendments to the Reception Conditions. There is in particular a need for a principled, practical discussion on the necessary limits and safeguards on asylum detention, promoting alternatives to detention and meeting the needs of the vulnerable. Discussions are also needed on ways to ensure more effective fulfillment of existing obligations by Member States.*

reception of asylum-seekers (COM(2007) 745 final), 26 November 2007, at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0745:EN:NOT>; see also Odysseus Academic Network, *Comparative overview of the Implementation of Council Directive 2003/9 of 27 January 2003 laying down Minimum Standards for the Reception of Asylum-Seekers in the EU Member States*, October 2006, at: <http://www.unhcr.org/refworld/docid/484009fc2.html>.

¹⁷ See above footnote 7.

c. The revision of the Qualification Directive

In UNHCR's view, the Qualification Directive has not achieved its objectives,¹⁸ due largely to wide differences in its interpretation and application by Member States.¹⁹ UNHCR's November 2007 Study on the application of key provisions of this Directive by selected Member States clearly demonstrates that the possibility of finding protection varies dramatically from one Member State to another. Subsequent studies undertaken by other stakeholders have confirmed and supplemented these findings.²⁰

Some problems may be addressed through enhanced practical cooperation, particularly through initiatives to improve the quality of asylum decision-making. At the same time, UNHCR sees the need to amend key provisions of the Qualification Directive in order to fill gaps and address unclear provisions, as well as ensuring that the Directive conforms to international legal standards. UNHCR hopes that the proposed amendments to be submitted by the European Commission in April 2009 will result in greater harmonization and higher protection standards.

The Czech Presidency is encouraged to facilitate preliminary discussions of these proposals, once submitted, taking into account the following suggestions:

- Amendments are needed to the Qualification Directive provisions on "actors of protection", to preclude application of the concept in cases where non-state actors cannot provide effective protection.
- On the notion of internal protection alternatives, clarification is needed to ensure that any proposed area of internal protection is practically, safely and legally accessible to the applicant, in line with the jurisprudence of the ECHR.²¹
- The cessation clauses require amendment, to incorporate exceptions to their use in cases where applicants cite compelling reasons based on prior persecution. This is needed to ensure their formulation and application in line with Articles 1C(5) and 1C(6) of the 1951 Convention.
- On subsidiary protection, the requirement for "individualization" of the threat in situations of indiscriminate violence should be removed, and the relevant

¹⁸ Recital 6 of the Qualification Directive (see above footnote 8) states that its aim is to "establish common criteria to identify persons in need of international protection and to ensure that a minimum level of benefits is available for these people"; Recital 10 underlines that the Qualification Directive "respects the fundamental rights" and seeks to ensure "full respect for human dignity and the right to asylum of applicants for asylum and their accompanying family members".

¹⁹ UNHCR, *Asylum in the European Union. A Study of the Implementation of the Qualification Directive*, November 2007, at: <http://www.unhcr.org/refworld/docid/473050632.html>.

²⁰ ECRE, *The Impact of the EU Qualification Directive on International Protection*, October 2008, at: http://www.ecre.org/files/ECRE_QD_study_full.pdf.

²¹ European Court of Human Rights, *Salah Sheekh v. The Netherlands*, Application No. 1948/04, Judgment of 11 January 2007, paragraph 141, at: <http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=60417&sessionId=16920897&skin=hudoc-en&attachment=true>.

- provision amended, to extend its application beyond situations of international or internal armed conflict.²²
- Provisions on exclusion require amendment²³ to ensure their application in line with Article 1F of the 1951 Convention and avoid, in practice, the disproportionate use of exclusion.
 - Entitlements accorded to subsidiary protection beneficiaries should be extended to align them more closely with the rights of refugees under the Directive. This would reflect more accurately the protection needs of subsidiary protection beneficiaries and the practice of many Member States.²⁴

Recommendation: *The Czech Presidency is encouraged to work with the Commission to prepare the ground for amendments to the Qualification Directive. UNHCR looks forward to the Czech Republic's support for changes to important provisions of the Directive, which at present allow for extensive divergence in practice among Member States, thereby undermining the aim of effective harmonization and high protection standards in line with international law.*

d. Revision of the Asylum Procedures Directive

UNHCR has consistently expressed concern about parts of the Asylum Procedures Directive which have the potential to lead to breaches of international refugee law, including to the *refoulement* of persons in need of international protection.²⁵ Some aspects of the Asylum Procedures Directive also raise issues under the European Human Rights Convention.²⁶ The Asylum Procedures Directive itself recognizes that “effective access to procedures” and “sufficient procedural guarantees” are needed to ensure that persons in need of protection are recognized as refugees.²⁷ In its present form, however, the Directive falls short of the standards required to achieve this.

²² UNHCR, *UNHCR Statement on Subsidiary Protection Under the EC Qualification Directive for People Threatened by Indiscriminate Violence*, 1 January 2008, at: <http://www.unhcr.org/refworld/docid/479df7472.html>

²³ Articles 12, 14, 17 and 19 of the Qualification Directive.

²⁴ In particular regarding residence permits (Article 24(2)), access to employment (Article 26(3)), social welfare (Article 28(2)), health care (Article 29(2)) and integration facilities (Article 33(2)). In its study, ECRE found that most of the surveyed countries grant the same rights to beneficiaries of subsidiary protection as to refugees, See above footnote 20.

²⁵ UNHCR, *Annotated Comments on the Amended Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (COM(2002) 326 final)*, 27 February 2003, at: <http://www.unhcr.org/refworld/docid/3e5e34895.html>.

²⁶ The European Court of Human Rights has found that the lack of automatic suspensive effect of the remedy within the border procedure in France (permitted by the Asylum Procedures Directive) violated Article 13 of the European Convention on Human Rights, *Gebremedhin v. France*, Application No. 25389/05, Judgment of 26 April 2007, at: <http://cmiskp.echr.coe.int/tkp197/viewhbkm.asp?action=open&table=F69A27FD8FB86142BF01C1166DEA398649&key=62045&sessionId=16921233&skin=hudoc-en&attachment=true>; The European Court of Human Rights has communicated a case to the French authorities regarding the safeguards and time limits of the accelerated asylum procedure in France, *H v France*, Application No. 33087/07, Case communicated on 12 November 2007, at: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=H%20%7C%20France%20%7C%20prioritaire&sessionId=16921257&skin=hudoc-cc-en>.

²⁷ Recital 13 of the Asylum Procedures Directive, see above footnote 9.

In 2008-2009, UNHCR is conducting an European Refugee Fund (ERF)-funded project which aims to facilitate improved application of asylum procedures.²⁸ This project will analyze and compare the way in which the Directive has been transposed and implemented in 12 EU Member States, which in the first 10 months of 2008 were together responsible for 75% of asylum claims in the EU. UNHCR anticipates that this project's findings will inform and provide constructive input to negotiations on forthcoming amendments to the Asylum Procedures Directive which the European Commission will propose in April 2009. UNHCR welcomes the Czech Republic's participation in this project, a demonstration of its commitment to improving the quality of asylum procedures and related legal standards.

In this context, UNHCR looks forward to a positive approach from the Czech Republic to the Directive amendment process. Areas in which it is urged to support changes include:

- Extending the scope of application of the Asylum Procedures Directive to ensure that its standards also apply to subsidiary protection claims, and to claims submitted at Member States' borders and in their territorial waters;
- Strengthening provisions on access to procedures, to ensure that applicants have an effective opportunity to lodge an asylum application;
- Limiting the possibility for bodies other than the competent "determining authority" to process protection claims;
- Extension of the types of decisions which must be subject to an effective remedy, and amending provisions allowing unlimited scope for non-suspensive appeals;
- Limiting the scope of accelerated procedures with reduced procedural safeguards;
- Strengthening guarantees applying to admissibility procedures;
- Deletion of provisions on European safe third countries;
- Strengthening provisions regarding the procedural rights of and protections for separated children and;
- Precluding application of specific and accelerated procedures to persons with special needs.

Recommendation: Upon issuance of proposals by the Commission, UNHCR urges the Czech Republic to lead discussions in an open manner, supporting a comprehensive approach to addressing key problems in the Directive. In line with its participation in UNHCR's Asylum Procedures Directive project, the Czech Presidency is encouraged to facilitate constructive input by Member States in consultations leading to the preparation of proposed amendments to this Directive.

²⁸ The "Improving Asylum Procedures" project will be implemented during late 2008 and 2009 in co-operation with the asylum authorities in Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Greece, Italy, Netherlands, Slovenia, Spain and the United Kingdom.

1.2 *Strengthening practical cooperation: the European Asylum Support Office*

UNHCR supports the aim to further practical cooperation among the asylum services of Member States, as a means to facilitate the exchange of good practice and to improve quality. The objective of such cooperation – like all other aspects of asylum harmonization – must be to ensure better asylum decision-making. This is in the interests of both States and applicants. The gathering and compilation of accurate information on State practice will be needed to highlight problems as well as positive innovations and performance, in order to bolster the legislative development process and take the CEAS forward towards completion.

In 2008, the European Council expressed its unequivocal commitment in the European Pact on Immigration and Asylum to establish a European Asylum Support Office (EASO). The European Commission is to issue a proposal for the EASO early in 2009. Given the significant political interest in this idea, a strong and proactive approach by the Presidency will be needed to guide discussions towards a positive outcome. UNHCR welcomes the Czech Presidency's expressed intention to prioritize and make progress on this issue.

UNHCR believes that the European Asylum Support Office can be an effective means to support practical cooperation among Member States' asylum administrations, in a way which can achieve greater harmonization and improve quality of asylum decision-making. However, the scope of the functions and resources accorded to the EASO will determine its ability to operate effectively and ensure that the CEAS fulfils its harmonization and protection aims.

UNHCR is prepared to contribute actively and constructively to the work of the future Office. This contribution could involve, among other things, providing expertise on questions of international refugee law, input on comparative analysis of procedures and practices, and knowledge of conditions in countries of origin and transit, among others. UNHCR personnel could assist in initiatives in relation to training, sharing best practices, and other areas of coordination undertaken by the office.

Member States have acknowledged the importance of quality in asylum decision-making for the future CEAS, and several have built quality assurance mechanisms into their national systems. UNHCR has contributed to the development of such systems, and is currently leading an ERF-funded project designed to promote improvement in asylum decision-making in eight Member States.²⁹ As a result of both projects, UNHCR will also be well-equipped to advise and support the Member States in discussions on possible quality assurance and best practice initiatives that should form part of the practical cooperation agenda in the future.

²⁹ The "Asylum Systems Quality Assurance and Evaluation Mechanism" project will be implemented in cooperation with the authorities of Austria, Bulgaria, Germany, Hungary, Poland, Romania, Slovakia and Slovenia. It will complement the "Improving Asylum Procedures" project referred to above in footnote 28.

Declaration 17 to the Amsterdam Treaty requires consultations with UNHCR on all matters relating to asylum in the European Union. A formal role for UNHCR in relation to the Support Office could ensure that this consultation takes place in a systematic, transparent and timely fashion.³⁰

Recommendation: With the EASO as a high priority task on its agenda, the Czech Presidency is encouraged to take the Regulation proposal as far as possible towards political agreement among the Member States in the first part of 2009. The Presidency is urged to support and promote a formal role for UNHCR in relation to the EASO in the Regulation, as the best means to ensure that the future CEAS will be in line with international refugee law, in compliance with the requirements of EC primary law.

2. Towards more solidarity and resettlement

2.1 Intra-EU solidarity

UNHCR welcomes the European Council's commitment to define the common asylum policy "in a spirit of mutual responsibility and solidarity between Member States and of partnership with third countries."³¹

UNHCR welcomes proposed measures to assist Member States faced with particular pressures, including the secondment of officials from other Member States, quicker mobilization of EU financial resources, and the establishment of relocation mechanisms for beneficiaries of international protection.³² UNHCR has followed discussions on an EU relocation mechanism, going beyond financial assistance, to ensure a balanced distribution between the EU Member States of responsibility for providing protection to persons in need. Such a mechanism would assist in view of existing imbalances, including those created by the operation of the Dublin II Regulation and the significant demands it places on some Member States, especially those at external EU borders.

While supporting in principle the proposal to set up a relocation mechanism within the EU, UNHCR recommends that this respect a number of parameters. First, the individuals concerned must consent to such relocation. Secondly, relocation must be based on clear and rational criteria, which *inter alia* would ensure the reunification of families and the relocation of individuals to countries where their particular needs can be met. Third, relocation must ensure a durable solution for the persons concerned. Fourth, relocation should be part of a wider approach which results in improvements in the protection standards of the Member State benefiting from such arrangements. Finally, any intra-EU relocation arrangement must not undermine or reduce EU participation in the resettlement of refugees from host countries outside the EU.

³⁰ The need to consult UNHCR is further underlined by the European Council on Refugees and Exiles, *ECRE Comments on EU plans to establish a European Asylum Support Office (EASO)*, 5 December 2005, at: http://www.ecre.org/files/ECRE_comment_EU_plans_EASO.pdf.

³¹ See above footnote 5, p. 4.

³² *Ibid.*, Part IV, sub-paragraph (c), p. 12.

Recommendation: *UNHCR urges the Czech authorities to promote the establishment of a comprehensive EU responsibility-sharing mechanism, encompassing not only financial measures but practical support for Member States with limited capacity. Any potential relocation mechanism must reinforce the delivery of effective protection in the EU, by meeting a number of important parameters.*

2.2 Greater involvement of the EU and the Member States in refugee resettlement

EU solidarity and cooperation with third countries in the field of asylum focuses chiefly upon financial support to capacity-building in relation to asylum systems, laws and institutions, and resettlement of refugees from host countries where they cannot find durable solutions.

UNHCR supports the call in the European Pact on Immigration and Asylum for more EU involvement in resettlement. At present, only a small number of EU Member States implement formal resettlement programmes. The EU in 2007 provided only around eight percent of the total number of resettlement places available worldwide.

UNHCR welcomes the recent commitment by EU Ministers to increase resettlement of refugees from Iraq, and to aim for resettlement of 10,000 refugees as part of a collective initiative. The JHA Council Conclusions of 27 November 2008 recognized the pressing needs of refugees in Jordan and Syria, including particularly vulnerable groups such as those with medical needs, victims of trauma and torture, female-headed households and religious minorities. Resettlement efforts from European and other countries are important to maintain the protection space in the region.

UNHCR commends the Czech Republic on its June 2008 adoption of the “Concept of a National Resettlement Program” and its resettlement of a group of Burmese refugees from Malaysia under a pilot resettlement program. On the basis of its positive example, the Czech authorities can encourage other EU Member States, which are not traditional resettlement countries, to initiate pilot programmes as well.

UNHCR also backs efforts to work on a common EU resettlement scheme, which should aim to support, expand and facilitate Member States’ resettlement activities and encourages the Czech authorities to lend their support to this idea.

UNHCR reiterates its support for capacity-building and resettlement actions generally, including those undertaken in the context of the EU’s pilot Regional Protection Programmes (RPPs),³³ an initiative which is due for evaluation beginning in early 2009. UNHCR emphasizes that resettlement to the EU should not be limited to RPP regions, and urges the EU to ensure that it has the flexibility to respond to resettlement needs wherever they arise. Increases in the amount and flexibility of ERF funding for

³³ UNHCR, *Observations on the Communication from the European Commission to the Council and the European Parliament on Regional Protection Programmes (COM(2005)388 final)*, 10 October 2005, at: <http://www.unhcr.org/refworld/docid/436090204.html>.

resettlement, including from non-RPP regions, would help to encourage further resettlement in EU Member States.

Recommendation: *UNHCR encourages the Presidency to support increased Member State participation in resettlement, as well as the elaboration of an EU resettlement scheme. The Presidency is also urged to support the swift implementation of the November 2008 JHA Council Conclusions on resettlement of refugees from Iraq.*

3. Towards protection-sensitive migration policies

The Czech Ministry of Interior will hold a Ministerial conference on “Building Migration Partnerships” in Prague in April 2009.³⁴ The theme of the meeting, which will be an important event on the Presidency’s JHA calendar, demonstrates the interest of Member States in developing closer collaboration with third countries on migration management.

The inclusion of UNHCR in the Conference represents a positive acknowledgement of the links between asylum and migration issues in today’s world, where flows of people on the move include persons fleeing war and persecution, as well as those leaving for other reasons. It is hoped that discussions at the Ministerial meeting will acknowledge the vital need to ensure that EU responses to the challenges of migration – including measures to combat irregular migration, visa policies, policies on return and readmission, managing labour migration, and integration – take into account that there are significant numbers of asylum seekers and refugees amidst the migratory flows, and incorporate safeguards and appropriate measures for these people seeking international protection.

In taking forward the cooperation now underway on border management - including in the context of Frontex-led operations at land, sea and air borders - Member States must ensure access to their territory and to fair and effective asylum procedures for persons seeking international protection. This necessitates legal and practical safeguards, expertise and political commitment to fulfilling the promises of the Common European Asylum System for those arriving at borders who may be in need of international protection.

UNHCR looks forward to continuing its cooperation with Frontex, and in this connection, welcomes the Council’s acknowledgement in the European Pact on Immigration and Asylum³⁵ of the need to ensure that Frontex operations include increased safeguards for people with international protection needs. UNHCR believes that more concrete ways must be found to ensure that border control operations do not result in denial of access for asylum-seekers to States where they will be safe and where their protection claims will be examined in full and fair procedures. In particular UNHCR calls for measures to ensure that asylum-seekers are not diverted or sent to States where they face the risk of *refoulement* or other human rights violations.

³⁴ Czech Presidency of the European Union, *Timetable of significant events taking place in the Czech Republic during the Czech EU Presidency*, at: <http://www.eu2009.cz/en/important-events-3294/>

³⁵ See above footnote 5, Part III, sub-paragraph (c), p. 9.

Within the European Union, UNHCR call on the Member States, EU institutions and organizations dealing with migrants to address the humanitarian and legal issues arising in a number of situations involving irregular migrants in Member States.

Progress is anticipated during the Czech Presidency on the Visa Information System and the Schengen Information System II, as well as the interaction of these databases with Eurodac. UNHCR welcomes the fact that the instruments regulating these information systems explicitly state that their provisions are subject to Member States' obligations under the 1951 Refugee Convention. Continuous efforts will be needed to ensure that the 1951 Convention's international protection principles are observed in practice.

Removal of irregularly present third country nationals is expected to receive increased attention, with recent agreement in the Council and in the European Parliament on the Returns Directive³⁶ and commencement in 2009 of the European Return Fund.³⁷ UNHCR notes the commitment in the Returns Directive to monitoring of removals, and encourages financial and political support for such activities. In order to promote safe and sustainable return, monitoring should extend beyond observation of modalities of removal from the EU, and include assessment of whether removal policy and practice results in safe and sustainable returns. While it is an important condition for ensuring the integrity of the asylum system, UNHCR underlines that the removal of rejected asylum seekers to their country of origin should not take place before their asylum claims have been duly considered in fair procedures.

***Recommendation:** The Czech Presidency is encouraged to remind Member States of their protection obligations in the context of EU migration and border policy development, to ensure that asylum-seekers have effective access to Member States' territory and status determination procedures. The Czech Presidency's Ministerial Conference on Migration Partnerships should take into account the need for migration policies to respect international protection principles, including in the context of cooperation between Member States and neighbouring countries.*

4. Towards better integration of refugees and subsidiary protection beneficiaries

Integration of refugees and migrants remains an important theme for EU Member States. The European Pact on Immigration and Asylum invited Member States to establish and

³⁶ European Parliament, *Position of the European Parliament adopted at first reading on 18 June 2008 with a view to the adoption of Directive 2008/.../EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals*, 18 June 2008, at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0293+0+DOC+XML+V0//EN&language=EN#top>.

³⁷ *Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'*, [OJ L 144/45, 06.06.2007], at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:144:0045:0065:EN:PDF>.

promote ambitious integration policies,³⁸ and the French Presidency hosted a Ministerial event on integration in November 2008.³⁹ In 2009, Germany will host a conference to examine the important role of inter-cultural dialogue in the integration process for third country nationals in EU Member States.⁴⁰

While it is often assumed that integration policies address beneficiaries of international protection along with other categories of persons, UNHCR notes that refugees and subsidiary protection holders may have special needs and face particular challenges in regard to integration as a result of past experiences of persecution, flight and exile. Upon recognition, many refugees might have spent prolonged periods of time in “enforced” idleness and isolation, separated from host communities by reception policies limiting their access to work, education, and vocational training in the country of asylum. Some might be mentally or physically traumatized due to persecution, or have ongoing medical needs that require specialized support if they are to integrate effectively in their host societies. These are all challenges that can be met with effective planning and sufficient political will.

Racism and xenophobia continue to pose significant challenges in a number of Member States. This unfortunate reality is a further barrier to successful integration, including of persons to whom Member States owe protection responsibilities. Member States individually and collectively should take measures to change perceptions, build tolerance and raise public awareness of the positive contributions that newcomers can make to society. In the case of refugees, awareness-raising should also aim to highlight the special needs of people who have fled persecution. This can facilitate their successful integration to the benefit of host Member States and the Union as a whole.

UNHCR encourages the Czech Presidency to ensure that these issues are included on the integration policy agenda for expert analysis and debate.

Recommendation: *Integration discussions and initiatives should explicitly consider policies and measures aimed at international protection beneficiaries who need targeted support to integrate in their host communities and at awareness-raising and building tolerance in host communities.*

5. Intra-EU freedom of movement for refugees and subsidiary protection beneficiaries

UNHCR hopes that the Presidency's focus on “Europe without barriers” will draw attention to the specific challenges faced by people in need of international protection. While mutual recognition of *negative* asylum decisions exists within the Union, there is no similar mutual recognition of *positive* decisions. The result is limited movement rights

³⁸ See above footnote 5, p. 6.

³⁹ *Declaration of the European Ministerial Conference on Integration*, 4 November 2008, at: <http://soderkoping.org.ua/files/pages/21605/1.pdf>.

⁴⁰ *Ibid.*, paragraph 7, p. 10.

within the EU for persons who have been recognized as refugees or granted subsidiary protection under the Qualification Directive. Protection beneficiaries recognized in one Member State are not entitled to move to another to reside or work. Following the Council's failure to agree on the proposed amendments to the Long Term Residence Directive, refugees and subsidiary protection beneficiaries continue to be denied the rights held by other third country nationals despite years of lawful residence in the EU. UNHCR views the resolution of the issue of a legal mechanism to ensure "transfer of protection" as a priority that the EU should address to ensure the effective completion of Europe's asylum system.

Recommendation: *Barriers to the free movement within the EU of refugees and subsidiary protection beneficiaries need to be addressed. In particular, extension of the Long Term Residence Directive to include refugees and subsidiary protection beneficiaries is a high priority.*

Conclusion

UNHCR welcomes the affirmation by the Czech Republic of its willingness to work positively with UNHCR during the upcoming Presidency. With an intensive agenda of legislative amendments and a major new proposal on the EASO, the Czech Presidency will have a vital role to play in guiding discussions which will shape the outcome of the second phase of work towards the CEAS. These discussions, as well as those in related areas of practical cooperation, migration management and cooperation with third countries, must recall that access to and provision of effective protection for people in need remain key principles of international law to be respected, based on EC law and express political commitments made at the highest level.

UNHCR
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