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from: Secretary-General of the European Commission,  
signed by Ms Patricia BUGNOT, Director

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to: Mr Javier SOLANA, Secretary-General/High Representative

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Subject: Communication from the Commission to the Council and the European  
Parliament on the managed entry in the EU of persons in need of international  
protection capacity of the regions of origin  
"Improving access to durable solutions"

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Delegations will find attached Commission document COM(2004) 410 final.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.6.2004  
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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL  
AND THE EUROPEAN PARLIAMENT**

**ON THE MANAGED ENTRY IN THE EU OF PERSONS IN NEED OF  
INTERNATIONAL PROTECTION AND THE ENHANCEMENT OF THE  
PROTECTION CAPACITY OF THE REGIONS OF ORIGIN**

**“IMPROVING ACCESS TO DURABLE SOLUTIONS”**

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**Introduction**

1. This Communication is the Commission’s response to Conclusion 26 of the 19/20 June 2003 Thessaloniki European Council in which the Commission is invited “*to explore all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection and to examine ways and means to enhance the protection capacity of regions of origin with a view to presenting to the Council before June 2004, a comprehensive report suggesting measures to be taken, including legal implications*”.
2. The Commission Communication “*On the common asylum policy and the Agenda for protection*” (Second Commission report on the implementation of Communication COM(2000) 755 final of 22 November 2000) of March 2003 (the March 2003 Communication) questioned whether the Member States could not better deploy the major human and financial resources which they were devoting to receiving asylum seekers in the context of often lengthy procedures that regularly culminated in negative decisions requiring repatriation after a long wait. That Communication noted that these factors constituted a real threat to the institution of asylum and more generally for Europe’s humanitarian tradition and therefore demanded a clear structural response. The Communication concluded that three complementary objectives should be pursued to improve the management of asylum in the context of an enlarged Europe: improvement of the quality of decisions (“frontloading”) in the European Union; consolidation of protection capacities in the region of origin and the treatment of protection requests as close as possible to needs and the regulation of safe access to the European Union for some of those in need of international protection.
3. The Commission’s Communication of 3 June 2003 “*Towards more accessible, equitable and managed asylum systems*” (COM(2003) 315 final) (the June 2003 Communication) examined in more detail the serious and structural deficiencies of the current international protection system. It noted the emerging serious imbalances in the EU where Member States were spending significant amounts on processing asylum claims in the EU where the majority of applicants did not qualify for international protection while the majority of refugees including the most vulnerable groups remained in poorly resourced circumstances in third countries in their region of origin. The Communication concluded that there was therefore a clear need to explore new avenues to complement the stage-by-stage approach adopted at Tampere, leading to the establishment of the first phase of the Common European Asylum System.

4. The June 2003 Communication underpinned this new approach with three specific but complementary policy objectives: 1) the orderly and managed arrival of persons in need of international protection in the EU from the region of origin; 2) burden- and responsibility sharing within the EU as well as with regions of origin enabling them to provide effective protection as soon as possible and as closely as possible to the needs of persons in need of international protection, and 3) the development of an integrated approach to efficient and enforceable asylum decision-making and return procedures. The June 2003 Communication envisaged those objectives as complementary to the first phase of the Common European Asylum System called for at Tampere. Hand-in-hand with this Communication the Commission is also issuing a Communication on how the EU can further ensure speed and efficiency in their asylum systems by moving towards a single asylum procedure.
5. The three objectives identified by the June 2003 Communication are equally important, have cross-links and strategically reinforce each other, and are together aimed at addressing the noted deficiencies in current asylum systems, and to restore and enhance the public support for both the asylum system and refugee protection more broadly. The June 2003 Communication suggested a graduated implementation of this new approach; first taking preparatory actions to test the ground for what could be done followed by more concrete proposals for programmes and projects to be implemented including participation in UNHCR steered Comprehensive Plans of Action and within the context of the “*Agenda for Protection*” and the “*Convention Plus*” initiatives of UNHCR which are both aimed at adapting and reinforcing the international protection regime.
6. In the Resolution of 1 April 2004 on both the March 2003 Communication and the June 2003 Communication, the European Parliament urged the EU to consider and commit itself decisively to a new approach to international protection based, on the one hand, on better management of access for persons requiring international protection within the territory of the Member States and on the other on the firm establishment of suitable responses to refugees’ protection requirements in their regions of origin. The European Parliament also took the view that in the light of the shortcomings of the current asylum systems it is essential to examine new ways and develop a new approach to supplement them which should be realised in the context of a real sharing of burdens and responsibilities to guarantee better management of asylum flows and arrive at better managed, more accessible and just asylum systems. To that end the European Parliament said that a new complementary approach must be based on the managed arrival of persons in need of international protection into the EU from their region of origin by means of a Community-wide resettlement scheme involving the transfer of refugees from an initial country of reception to the EU for which purpose there should be devised a legislative instrument and the inclusion of a specific financial chapter in the new European Refugee Fund.
7. The recent fall in the numbers of asylum applications in Europe does not lessen the significance of addressing the two objectives set at Thessaloniki. A reduction in the numbers of asylum seekers in the EU does not necessarily mean an overall reduction of the numbers of refugees and persons seeking international protection at a global level and it is clear that there remain many regions and countries in the world where human rights violations and consequent displacement cause protracted refugee situations, with still some 85% of these persons being hosted by the under-resourced neighbouring countries in regions of origin. Asylum statistics also continue to

indicate that the majority of applications in the EU do not meet the criteria for international protection. According to the statistics presented by Member States in connection with the European Refugee Fund there were 78,633 positive decisions for 360,541 applications in 2000 (21%); 73,746 for 345,332 in 2001 (21%); 52,128 for 308,787 in 2002 (17%); and from 8 countries in 2003 (12%) 25,880 for 192,225. These figures include both refugee status and subsidiary protection status. The need to reform the international protection regime to make it more accessible, better managed and first and foremost more equitable therefore continues to be pressing. It is from that perspective that this Communication should to be read. Indeed, more orderly and managed entry and enhanced protection capacity are not end-goals in themselves rather they are the conditions that need to be met if the international protection regime is to be made to work properly.

8. This Communication makes recommendations to deliver in more operational terms on the Thessaloniki mandate but such an ambitious undertaking necessarily goes wider in its remit than purely immigration and asylum policy issues. The role of third countries in the region of origin is obviously crucial here too and their partnership and sponsorship is a prerequisite if any policy addressing these movements is to be successful. While the return of refugees is clearly the most desirable durable solution for all concerned and the wider work of the EU must take action to address root causes and facilitate that outcome, the options of local integration into the host country in the region and resettlement to an EU country also must be fully utilised. This Communication therefore makes recommendations on how to enhance protection capacities to maximise the opportunities for all three options and also proposes an EU-wide Resettlement Scheme to more specifically address the third possible durable solution. Such a Resettlement Scheme would also contribute towards enhancing protection in the regions as by sharing refugee numbers more equitably the protection capacity of a third country in the region of origin could be enhanced in that more resources would be available to that country to protect those within their borders who were not in need of resettlement. As such, resettlement would represent a valuable part of any partnership arrangement with a third country. As the High Commissioner said at the Forum meeting of 12 March 2004: *“A committed effort to resettle a sizeable number of refugees from States hosting large numbers of refugees for protracted periods may lead to greater ability and willingness to continue to protect and find other durable solutions for those refugees who remain.”*
9. The High Commissioner also called for new agreements, as part of the Convention Plus initiative, to supplement the Refugee Convention and help protect refugees and achieve durable solutions in regions of origin. The aim is to use understandings and commitments by States in multilateral agreements that address specific caseloads, including through comprehensive plans of action. UNHCR envisages that these new arrangements, in the form of multi-lateral “special arrangements” could consist of comprehensive plans of action to ensure more effective and predictable responses to large-scale refugee situations, including additional development assistance targeted to achieve more equitable burden sharing and to promote the self reliance of refugees and returnees in countries hosting large numbers of refugees; multilateral commitments for the resettlement of refugees; and the agreement of roles and responsibilities of countries of origin, transit and destination in irregular secondary movement situations.

10. Discussions in the UNHCR-framed Working Group on Resettlement have focused on the strategic use of resettlement and UNHCR has drawn up a global resettlement strategy based on the links between the Convention Plus initiative and the strategic use of resettlement. In the context of the Resettlement strand of Convention Plus, a Multilateral Framework of Understandings on Resettlement has been drawn up for integration in comprehensive “special agreements” to address specific (often protracted) refugee situations.
11. This Communication is set out in four chapters. Chapter I looks at the first objective of Conclusion 26 of the Thessaloniki European Council, the need “*to explore all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection*”. Chapter II addresses the second objective of Conclusion 26, the need “*to examine ways and means to enhance the protection capacity of regions of origin*”. Chapter III examines how to operationalise the Thessaloniki’s European Council’s clear call for an integrated, comprehensive, balanced, flexible and situation specific approach to asylum and migration issues in which both the mechanisms ensuring a more orderly entry in the EU of persons in need of international protection as well as the enhancement of the protection capacity of regions of origin play a key role. Finally, Chapter IV provides the conclusions of this Communication and outlines the best way forward.

## **Chapter I**

**First objective Conclusion 26: “*to explore all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection*”**

### **EU Policy framework**

12. The repeatedly asked question of how to more effectively manage who enters the EU and under which circumstances is a primary characteristic of our immigration and asylum policy. The Thessaloniki Council set the challenge of how to ensure more orderly and managed entry in the context of moving towards a more accessible, equitable and managed asylum system. The possibilities of processing asylum claims external to the EU has long been a concern of Member States as a means both of more quickly delivering international protection to those who most require it and as a method of ensuring more orderly and managed entry in the EU. In the Communication of November 2000 “*Towards a common asylum procedure and a uniform status valid throughout the Union for persons granted asylum*” the Commission suggested that processing requests for protection in the region of origin and facilitating the arrival of refugees on the territory of the Member States through a resettlement scheme may be methods of offering rapid access to protection without refugees being at the mercy of illegal immigration or smuggling gangs or having to wait years for recognition of their status. That Communication also stressed that this option should be complementary and without prejudice to the proper treatment of individual requests for asylum expressed by spontaneous arrivals in the EU.
13. To further explore these assertions two studies on options for processing asylum claims external to the EU were commissioned by the Commission: *the Study on the feasibility of processing asylum claims outside the EU against the background of the common European asylum system and the goal of a common asylum procedure* (published in March 2003), and *the Study on the feasibility of setting up resettlement*

*schemes in EU Member States or at EU level against the background of the Common European Asylum System and the goal of a Common Asylum Procedure (published in May 2004).*

14. The first of these two studies focused on the possibilities afforded to Member States by Protected Entry Procedures (PEPs). This notion is understood to allow a non-national to approach the potential host state outside its territory with a claim for asylum or other form of international protection, and to be granted an entry permit in case of a positive response to that claim, be it preliminary or final. The second study focused on the practice of refugee resettlement where refugees are transferred from a first host country to a second country where they enjoy guarantees of protection, including residence, and prospects for integration and autonomy. The importance of Resettlement practices in the sharing of responsibility for managing refugees with third countries including countries of first asylum was also highlighted by the Commission in both the March 2003 Communication and the June 2003 Communication.
15. In October 2003 the Italian EU Presidency organised a seminar in Rome on delivering on the first objective of Thessaloniki Conclusion 26 – how to arrive at more orderly and managed entry in the EU. The seminar examined both Resettlement and PEPs as a method of ensuring more orderly and managed entry to the EU. At the Seminar the Commission outlined its views on the merits of managed entry in the EU of persons in need of international protection. The Commission stressed that if access to protection can be offered, as quickly as possible and as close to the needs as possible of those concerned and which facilitated a safe and legal avenue to protection in the EU, then there would be no need for those in need of protection to pay traffickers thousands of Euros for a dangerous and illegal journey to the EU. They would then also not have to face a long period of uncertainty while their claim was being considered. This would also deliver a strong message to those countries in the regions of origin that EU countries were ready to take a share of the responsibility for those displaced within those regions.
16. The Commission said that the managed arrival of persons in need of international protection would also constitute an efficient tool in **combating sentiments of racism and xenophobia**, as the public support for those positively screened outside the EU and then resettled in the EU is likely to be increased. This is significantly different to the current situation where a majority of the persons applying for asylum are not found to require any form of international protection. The lack of clarity in terms of public perception of this group threatens the credibility of the institution of asylum. The example of the humanitarian evacuation from Kosovo can be used to illustrate the impact. Although protection needs were different, and the situation was different, the reception of those displaced persons by the different countries of the EU and their public contrasts sharply with the uncertain and often hostile reception faced by many who arrive in the EU today as applicants for asylum in irregular and difficult circumstances. The reasons for this difference are clear – the public had confidence then that those who were evacuated were clearly in need of protection, whilst no such certainty exists at the moment.
17. The Commission stressed at the Seminar that, in general, the legal, orderly and managed entry to the EU would allow the Member States to anticipate the arrival of the persons determined to be in need of international protection. This advance notice

could bring a number of advantages in terms of **planning**: for housing and the inevitable financial impact. The setting up of tailor made integration programmes for specific categories of refugees would also be much more easily devised, if a country knew in advance who was arriving on its territory to stay. Resettling and allowing physical access to the territory of the EU of persons whose identity and history has been screened in advance would also be preferable from a security perspective.

18. Participating Member States at the Seminar viewed the idea of an EU wide Resettlement Scheme, if strategically used as part of a comprehensive approach, as a potentially very useful policy tool enabling i) comprehensive solutions to refugee situations, in particular to those of a protracted nature, ii) the creation and enhancement of protection capacities of the regions of origin, and iii) an alternative to irregular secondary movements of those persons who cannot find effective protection in the country of first asylum, as well as the criminal activities linked to such movements.
19. Furthermore, the Seminar concluded that Resettlement is an indispensable and essential part of the international protection system, the use of which has saved many lives; that it provides immediate access to protection, including in emergency situations, for those persons in need of international protection outside their regions of origin, and offers an immediate access to durable solutions. Resettlement also allows for the identification of the most vulnerable and needy cases, contributes to more orderly and managed arrivals and enable States to carry out pre-arrival security and health checks. Furthermore Resettlement enables better planning and management of resources and facilitates the early integration of refugees. Importantly, the Seminar concluded, Resettlement has a positive impact on the integrity and credibility of the institution of asylum.
20. With regard to PEPs, the seminar identified a number of advantages such as the delivery of quick and effective protection, in particular for those who may have immediate and urgent protection needs, and the potential cost and time saving impact of such procedures when compared to territorial asylum procedures. The disadvantages identified related in particular to the required level of resources for a rapid application processing as well as the difficulty of establishing direct contact with the asylum decision makers and the (non-) access to legal assistance. It was also stressed that any possible implementing tool should be characterised by discretion and flexibility.
21. The Presidency invited the Commission “to take note of the seminar conclusions when drawing up its comprehensive report on ensuring a more orderly and managed entry into the European Union of persons in need of international protection, as called for in point 26 of the Thessaloniki European Council Conclusions”. This was noted by the November 2003 Justice and Home Affairs Council.

### **Policy Measures proposed**

22. In terms of the three durable solutions for refugees laid down by UNHCR in the Agenda for Protection, and as reiterated by the UNHCR Executive Committee in Conclusion 20 (i) of 2003, Resettlement assumes a lower profile than both voluntary repatriation, which is by far the favoured solution for most host countries, and local integration (the other two durable solutions) in part because of the impact on total



numbers which resettlement schemes in their small scale can have. Nevertheless it is by definition a managed and orderly entry in the EU and could play an important if limited part in the EU's common asylum policy. For the reasons set out above the Commission believes that there are good reasons for taking an EU-wide approach in this area and for **the setting up of an EU Resettlement Scheme**. The paragraphs below briefly outline the various key elements of an EU Resettlement Scheme.

### Context

23. A targeted and comprehensive approach aimed at a specific **caseload, limited but consistent in number as appropriate to the specific situations in which resettlement is deemed necessary**, could have a significant effect and it is within that context that the Commission is proposing the eventual setting up of an EU-wide resettlement scheme. UNHCR involvement in the selection and referral of target caseloads would of course be crucial. Such a scheme would also be an indispensable constituent in a comprehensive approach towards third countries in relation to asylum and migration. Such a scheme would deliver in the short term on the Thessaloniki mandate as by definition it would result in orderly and managed entry in the EU and in combination with other elements of a more comprehensive approach, sharpen the EU's competitive edge in the fight against human trafficking.

### Legal framework

24. There are several options as to what form a legal instrument on resettlement may take. A general procedural framework on resettlement could form the basis of individually tailored, situation-specific schemes targeted at particular caseloads within the context of the broader approach taken by the Community towards a particular region or third country. This would provide a greater degree of flexibility than an annual programme with a set number of places to be allocated.

### Application

25. The basic premises of an EU Resettlement Scheme would strongly emphasise that resettlement was complementary and without prejudice to Member States' obligations to determine asylum claims in fair procedures and to provide protection in their territories in accordance with international law. The watchwords of such a scheme would be "flexibility" and "situation-specific". This means that an EU resettlement scheme would be adaptable to the differing characteristics of global refugee needs, including protracted refugee protection situations in various regions, as well as **being adaptable to the ability of Member States to resettle certain caseloads in given years**. Such a scheme would only be offered by the EU where appropriate and in partnership with the third country, given the particular circumstances of the targeted protracted refugee situation and/or potentially refugee-producing situation, where it has become clear that durable solutions need to be found, and whether these include resettlement for part or all of a specific population group. Of course, the added value of such a scheme, both in terms of economy of scale and the political weight it held within a comprehensive partnership arrangement with countries in the region would increase in line with the number of resettlement places offered.

## Scope

26. Although all Member States would participate in an EU-wide Resettlement Scheme that participation would by its very nature be flexible. Those Member States which currently operate Resettlement schemes would be encouraged either to be prepared to reserve a set number of places for use, strategically, within the scope of the EU Resettlement Scheme, **or to continue to operate those programmes at the same time as they fully participate in the EU Scheme, contributing the wealth of their experience to the collective action of Member States.** The scheme would only be applied if appropriate as part of a multi-faceted response to a particular refugee situation. Those countries which do not currently operate Resettlement schemes would be encouraged to participate on an *ad hoc* or even a ‘funds only’ basis (thereby possibly encouraging other Member States to try their hand at Resettlement). As Resettlement would be one element of a wider Community response to a particular, targeted, protracted refugee situation, the part played and the added-value of Resettlement within that response would be a clear incentive to all Member States to participate.

## Objectives

27. The overall **motive** for the resettlement into the EU of persons in need of international protection flows from the humanitarian tradition of the EU and its Member States to provide safety and shelter to those who flee persecution. Its main **goals** are to provide international protection and offer a durable solution in the EU to those who genuinely need it and to facilitate their managed arrival in the EU, and to express solidarity with and share the burden of countries in the regions of origin faced with protracted refugee situations. The overall impact of an EU resettlement scheme on the global international protection scheme would of course be limited by the numbers involved but used strategically it could deliver durable solutions otherwise unavailable in a protracted refugee situation and add value and weight to action taken on that situation in parallel.

## Targets

28. It is likely that in a future proposal for an EU Resettlement Scheme, the Commission will propose the setting of **targets** rather than of quota or ceilings. Targets have most potential for success, being more flexible. In a future framework for a possible EU Resettlement Scheme a total annual target for resettlement numbers could be set at EU level. Such a target would be initially non-binding however, and it would be up to Member States to establish their own resettlement targets. In the *Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of effort between Member States in receiving such persons and bearing the consequences thereof* the concept of “double voluntariness” was introduced. Similarly, financial assistance or the actual physical resettlement of persons by Member States could be considered. If the persons concerned are willing to go to one Member State rather than another Member State and the first is willing to receive them, possibly in return for financial assistance then this could of course contribute to the meeting of an EU level target. Targets would also be drawn up with the strategic considerations of a wider

comprehensive approach in mind. They would be caseload focused and constructed to address a particular problem within a protracted refugee situation.

### Criteria

29. Resettlement must be primarily targeted at those who qualify for international protection according to the criteria defined and codified in the *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* (the Qualification Directive). The selection of candidates for resettlement could be predicated on several criteria and could include the resettlement of groups determined to be in need of international protection and who Member States regard as eligible for resettlement under the EU resettlement scheme. It could also be envisaged that the EU takes **some special responsibility for vulnerable groups** of refugees or those for whom there are integration difficulties in the third country concerned (e.g. victims of torture or sexual violence, human rights defenders, members of specific ethnic, religious or other groups discriminated against in the host country) but for whom, by comparison, there may be more integration and protection potential in an EU Member State. Interviews by the Immigration Services of EU Member States during visits to the region of origin would be an essential part of the decision making process – though possibly not feasible in some emergency cases. These visits would also be useful to enable decision-makers to understand conditions in the region; useful for both resettlement and asylum decision-making.

### Legal implications

30. There are two issues to be considered in deciding whether or not a person is suitable for resettlement under a possible EU scheme. Do they qualify for international protection? Are they part of the target group deemed suitable for selection? How selection criteria are formulated will be a matter for negotiation in any future proposal but there may be legal implications to the application of such criteria. The question of how to deal fairly with the dissatisfaction of those not selected for resettlement and the rationale for proposing one durable solution to one particular group of people but not to another when both groups are in similar situations will also have to be carefully managed. It should also be borne in mind that selection will be focused on a particular target group or caseload. Selection criteria could be set as EU collective selection criteria or as Member State specific criteria within a broad, flexible, EU-level programme. There are also legal consequences attached to carrying out determination procedures in a third country particularly if those determination procedures are carried out within the framework of an EU instrument.

### Operational implications

31. Orientation programmes taking place pre-departure in the host country should feature in an EU scheme and would assist in instilling realistic expectations and preparing refugees for the future awaiting them. There would also be a provision for pre-departure security checks which could also facilitate the exclusion from the resettlement programmes of those persons who are not entitled to international protection because they fall under the exclusion clauses of the Qualification Directive. The transport of those selected for resettlement in the EU could be organized by IOM which has a long standing experience in this field

32. Initially an EU Resettlement Scheme could take the same route as some European Resettlement countries now do in which UNHCR plays a key role in preparing and referring the dossiers to a resettlement country for selection. Direct applications could also be allowed in some circumstances and there may be a role for NGOs in this process. For example, for the US Refugee Admissions Programme, field based contracted NGOs or IOM act as processing bodies, completing dossiers in the field prior to interview by the Immigration Service. These bodies do not refer cases as such, but rather facilitate processing.
33. EU level **technical assistance** to the participating Member States will also need to be explored. Such assistance could include the preparation, referral, and selection of resettlement cases and the assignment of a particular dossier to a specific Member State within an agreed cooperation framework. A planning and coordination system could among other tasks, determine the policy goals and working methods of a potential scheme within the parameters agreed and by reference to international best practice. It could oversee the implementation of a scheme and monitor its outcomes in accordance with defined indicators as well as analyzing and identifying the refugee situations for which resettlement would be an appropriate tool. Within the context of the preparations of an EU Resettlement Scheme the Commission will explore the feasibility of such technical assistance and what is required to deliver it.

#### **Financial implications**

34. In terms of the financing of such an EU resettlement scheme the explicit inclusion of resettled refugees as beneficiaries of the second phase of the European Refugee Fund, as proposed by the Commission and submitted to the Council and the European Parliament, will reinforce the collective and cooperative notion underlying any such scheme. In this proposal the same target groups as in the first phase are retained, with the addition of people admitted into the EU for international protection reasons under resettlement schemes. Although this group was not formally excluded from the Fund before, there was no mention of it, which led to confusion. This is now an issue of European concern, referred to in Commission Communications and recent Presidency Conclusions, and the subject of operational programmes in several Member States. The goal is to provide an EU level budgetary mechanism to support those Member States which have or will have a resettlement programme, in particular by ensuring reasonable financial support for the resettling of refugees during their first year in such EU Member State. Also, the Community Actions strand of the ERF, set up to finance innovative action or action of interest to the Community as a whole concerning asylum policy could support best practice, more transnational projects, dialogue and information on projects results in the area of resettlement, and could initially finance the costs involved in starting up an EU Resettlement scheme. In the longer term, in connection with the second multi-annual programming phase of the ERF II (2008-2010), a specific strand on resettlement could be created, the implementation of which would associate the European Parliament on an appropriate basis.

#### **Protected Entry Procedures (PEP)**

35. UNHCR is of the view that in addition to the obvious protection benefit they offer, such procedures can bring an element of order and predictability into the secondary movements of refugees, and mitigate the need to resort to unlawful means of travel,

including smuggling and trafficking. However, it became clear from the Rome Seminar and from Member States' relevant legislative practice that with regard to the potential of Protected Entry Procedures, there is not the same level of common perspective and confidence among Member States as exists *vis a vis* resettlement. The Commission does not therefore plan to suggest the setting up at EU level of an EU Protected Entry Procedure mechanism as a self standing policy proposal. However, in certain circumstances, a protected entry in the EU of persons with immediate and urgent protection needs could nevertheless be procedurally facilitated. Such a procedure could feature as an “**emergency strand**” of wider resettlement action, though at the full discretion of individual Member States and if local circumstances warranted such availability. Such procedures would obviously have similar legal implications to those described in the context of the EU Resettlement Scheme with the important difference that the refugee status determination would take place in the EU (after a screening process).

## Chapter II

### **Second objective Conclusion 26: “to examine ways and means to enhance the protection capacity of regions of origin”**

#### **EU policy framework**

36. The Commission Communication of December 2002 “*Integrating migration issues in the European Union's relations with third countries*” (the December 2002 Communication) outlined the different Community actions in favour of refugees and particularly the work undertaken by the Community in terms of humanitarian assistance to alleviate the plight of refugee populations. These actions also included Community development cooperation and economic, financial and technical cooperation with third countries. The Communication commented that the burden on host developing countries of large refugee populations was often exacerbated by the intrinsic limited financial and institutional capacities of those countries. Specific Community actions were aimed at providing the necessary funds for protection, care and maintenance of refugee populations for as long as they were required. Projects funded to address refugee needs also assisted indirectly the host country in providing better protection, their own infrastructure and institutional capacity often being inadequate to deal effectively with the demands placed upon them. A number of EC instruments aim at providing assistance to refugees and/or host countries, including Aid to Uprooted People in Asia and Latin America, humanitarian aid delivered through ECHO and Financial and Technical Assistance. However, the Communication also said that humanitarian assistance was neither sufficient nor adequate to address all needs arising from protracted refugee situations and could not always of itself ensure durable and sustainable solutions to refugee problems. In this context reference was made to the importance of initiatives linking relief, rehabilitation and development as well as to Community actions such as EDF, MEDA and CARDS.
37. The General Affairs and External Relations Council of 19 May 2003 noted the December 2002 Communication and invited the Commission to ensure that, *inter alia*, migration related assistance in relation to third countries would be focused on improving national legislation and management of legal migration and asylum with full respect to international obligations. Account should be taken of the financial and

institutional capacities of many developing countries and the impact of refugees on those structures. The Council asked the Commission to consider ways of strengthening reception capacity and to elaborate further on the use of development cooperation in the search for durable solutions for refugees and to develop concrete proposals on how more aid could be directed towards assisting refugees in the region. The Council also said that the integration of migration aspects in the external action of the Community should respect the coherence of EU external policies and actions and should be part of a comprehensive approach towards each country or region, taking into account their specific situation.

38. In the March 2003 Communication the Commission had set the development of a common European asylum policy in the context of developments on the global stage and called for increased co-ordination between the EU's internal process and the external aspect of the governance of refugees. The March 2003 Communication had highlighted the importance of sharing responsibility for managing refugees with third countries and particularly countries of first asylum and the need for more effective cooperation to reinforce the protection capacities of countries receiving refugees. The June 2003 Communication had stressed in particular that possible new approaches to asylum should focus more sharply on action that could be taken outside the EU, within a framework of genuine burden- and responsibility sharing. The overall aim of such an approach should be to better manage asylum related flows in their European territorial dimension and in regions of origin, resulting in more accessible, equitable and managed systems. In parallel, many programmes to build up asylum systems in third countries and to ensure their proper functioning, in line with the UNHCR standards have already been financed, in particular in the Balkans and Eastern Europe regions.
39. The June 2003 Communication suggested a graduated implementation of this new approach; first by taking preparatory actions to test the ground for what could be done followed by more concrete proposals for programmes and projects to be implemented. Indeed, budget line B7-667 (budget year 2003), on co-operation with third countries in the area of migration, allowed actions enhancing the protection capacity of regions of origin to be financed. Several projects have been selected, all to be conducted through UNHCR, which focus on protection gap analysis, on strengthening international protection and self-reliance for refugees, on undertaking preparatory activities towards a Comprehensive Plan of Action for specific refugee groups, on needs-based protection planning as a precursor to building effective protection capacities in selected countries, and on institution building on asylum in specific regions of origin. The findings of these projects should prove invaluable, in both policy and operational terms, for the development of policy on the enhancement of the protection capacity of the regions or origin, and for developing strategies for measuring effective protection.

### **Global Policy framework**

40. According to UNHCR, there is a collective duty of the broader community of States, including through UNHCR, to equip States receiving or likely to receive asylum-seekers with the means to live up to international standards in their treatment of refugees. From the perspective of international burden-sharing, those regions that host the smallest number of refugees relative to their wealth can be expected to assist those with the highest number of refugees in relation to their economies. UNHCR

has consistently stressed that the ultimate goal of capacity building in host countries for the protection of refugees and asylum-seekers is to enhance the ability of states to meet their international legal obligations towards refugees and asylum-seekers, to build protection networks in civil society and to strengthen the rule of law and respect for human rights in those States. UNHCR say that if protection capacities are adequately developed and enhanced, asylum-seekers and refugees will be better protected and assisted.

41. Standards for the protection of refugees and asylum-seekers cover all stages of a refugee situation, from initial reception and status determination, comprehensive protection, to the ultimate resolution of their situation (be it voluntary repatriation, local integration in the host country, or resettlement to a third country). To be effective, however, these standards need to be ‘operationalised’ (that is applied through practical actions). It is clearly important for the EU to select indicators for ongoing work on protection in third countries which are both measurable and achievable. Recognition that this kind of improvement will take place at a different pace from country to country is important when evaluating protection. Indeed, some countries may take decades before they can reach the institutional and infrastructural standards required. In the **Handbook on strengthening protection capacities in host countries** UNHCR identifies several components relevant to both the development and assessment of the protection capacity.
42. Action to enhance protection capacity requires a coordinated and systematic approach to strengthen and build protection capacities for processing, receiving and integrating asylum seekers and refugees in third countries in regions of origin, with the aim of assisting these countries in becoming robust providers of effective protection. In other words, the third country in the region of origin should be able to offer the possibility of eventual local integration to a refugee if one of the UNHCR-identified traditional other two durable solutions (resettlement or return to the country of origin) is not available, or while waiting for a durable solution. In this context it is necessary to work towards a benchmark of effective protection towards which host countries, with the help and partnership of the EU, should aim.
43. To do this the EU should first look at the elements it uses itself when guaranteeing protection to those who require it and which are largely contained in Article 63 TEC. These measures focus on protection from persecution and refoulement (minimum standards on qualification as a refugee), access to a legal procedure (minimum standards on procedures) and the possibility of adequate subsistence (minimum standards on reception conditions). This is the subject matter of what effective protection should represent. While international obligations must necessarily be respected, levels of subsistence will differ from country to country.
44. The protection components identified below could serve two purposes. They could be regarded as suitable indicators to assess the protection capacity of a host country and whether a sustainable protection system has developed. Furthermore they could serve as orientations for capacity- and institution building benchmarks, suitable for targeted technical assistance such as, for example, that envisaged for funding under the AENEAS programme.

**a. Accession and adherence to refugee instruments, including regional refugee instruments and other human rights and international humanitarian law treaties, including withdrawal of reservations**

Accession and adherence to the international refugee and other human rights instruments can be considered a first key step to a full and more effective national refugee protection regime.

**b. National legal frameworks: adoption/ amendment of refugee/asylum legislation**

It is important that national refugee and asylum legal frameworks not only exist, but also that they conform to international standards, including the establishment of fair and efficient asylum procedures. Moreover, proper legal frameworks and procedures are of no use if they are not implemented or implemented unfairly. Capacity- and institution building, including staff support and training, facilitating the creation of proper refugee management structures are also key features.

**c. Registration and documentation of asylum seekers and refugees**

Registration and documentation are important aspects of refugee protection. It is a State responsibility to document a need or request for international protection, once identified. Documentation, as an asylum-seeker or, within the context of group recognition *prima facie*, as a refugee, is not only an important guarantee for the person concerned, it is also a service to other States, to whom this information is potentially relevant. Without proper registration, including the use of biometrics, and/or documentation of the fact that an asylum-seeker sought protection, any collective system for apportioning subsequent State responsibilities may be seriously undermined. UNHCR therefore stresses the need for harmonized approaches to, and support for, comprehensive and systematic registration and documentation of refugees and asylum-seekers including standards on exchange of information and incentives for asylum-seekers and refugees to retain and for States to provide travel and/or identity documents.

**d. Admission and reception of asylum-seekers**

Reception standards are closely related to the quality of individual status determination procedures. These *conditions of reception and stay* for asylum-seekers should be consistent with relevant international and national legal standards, taking into account the socio-economic situation prevailing in the host country, and based on the principle that asylum-seekers should enjoy an “adequate standard of living” in relation to this host country throughout the asylum procedure. In particular it should be ensured that the basic needs of refugees are met, including food, shelter, health and education.

**e. Support for self-reliance and local integration**

The quality of protection and the quality of life of persons in need of international protection, with prospects for a durable solution, in third countries heavily impact on the possibilities to reduce, and eventually remove the need for onward irregular secondary movement. That is what makes the difference between whether a person is simply safe or whether they have the possibility of having a decent life while waiting



for a durable solution, be it return, local integration or resettlement. Integration in the host country, in particular economic self-reliance and access to basic social services also facilitates significantly a proper reintegration in the home country when return is finally possible. Therefore, there should be good prospects for the refugees to have access to productive activities, to appropriate education and other basic social services including health services. Improved safety and availability of and access to means for self-reliance are particularly relevant to avert secondary movements, and is an important precursor to a durable solution. In this context, the importance of supporting host state government's efforts to curtail the proliferation of illicit weapon in refugee hosting areas, to dismantle armed groups and demobilise and reintegrate ex-combatants should be stressed.

45. The particular circumstances of the person who requires to access protection must be considered in the light of certain principles if an assessment is to be made on the availability of effective protection. Those principles should form a benchmark for effective protection and directly address the subject matter of the five protection components above. The following principles could form a basis for such a benchmark:

- (a) *life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; and*
- (b) *the principle of non-refoulement in accordance with the Geneva Convention is respected; and*
- (c) *the right to freedom from torture and cruel, inhuman or degrading treatment is respected as well as the prohibition of removal to such treatment; and*
- (d) *the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention; and*
- (e) *the possibility exists to live a safe and dignified life taking into consideration the relevant socio-economic conditions prevailing in the host country.*

46. There is a long way to go before most of the current refugee hosting countries in the regions of origin could be considered to meet such a standard where they are able and willing to offer effective protection based on an assessment made in line with the benchmarks above, and the need for secondary movement is reduced. None of the durable solutions can be arrived at overnight – they are all the products of long term planning. In this context it is vital that third countries are assisted in a multi-annual engagement by the EU in this transformation process. The December 2002 Communication has established that in the context of the programming of external aid in countries in the Mediterranean basin, central Asia, the Balkans, the ACP countries and elsewhere already financial and technical support is being provided to this type of actions. Furthermore, the EU has an established record of specific activities in the building of protection capacity, including through the Phare Horizontal Programme on Asylum and the Twinning Tool. A possible ACP Migration Capacity Building Facility (which is currently being considered) would also provide resources for specific targeted action in this area.

47. In the short term, action with a view to enhancing the protection capacity of third countries so that the need for secondary movements may be reduced, could be taken under the new AENEAS Programme for financial and technical assistance to third countries in the area of migration and asylum. This financial instrument offers the opportunity to Member States, third countries, international organisations or NGO's to propose in response, in particular to protracted refugee situations or situations of influx from a particular region, in full partnership with all countries concerned and in close cooperation with UNHCR, projects enhancing the protection capacity of the country or region concerned. Work has already started in this area with UNHCR projects under the former B7-667 Budget line on needs-based protection planning as a precursor to building effective protection capacities in selected countries in Africa.

### **Chapter III:**

#### **A comprehensive approach to asylum and migration**

48. A wider and more comprehensive approach to immigration and asylum issues has long been the aim of the EU. The Tampere European Council of October 1999, whilst noting that asylum and migration are distinct but interlinked issues, underpinned the need for such a comprehensive approach, and stressed the importance of partnership with third countries in the region of origin and transit as a key element of the success of such policies. The Seville European Council of June 2002 underlined the importance of such action and called for a targeted approach in the EU's relations with third countries which utilised all appropriate EU external relations instruments. Most recently the Thessaloniki European Council of June 2003 reiterated the top political priority ascribed to migration issues and also agreed that dialogue and actions with third countries in the field of migration should be part of an overall, integrated, comprehensive and balanced approach, which should be differentiated, taking account of the existing situation in the different regions and in each individual partner country. The Thessaloniki European Council said that the development of an evaluation mechanism for the monitoring of relations with third countries should include participation by these third countries in international instruments relating to asylum and human rights, the cooperation of third countries in the readmission of their nationals and of third country nationals and the creation of asylum systems with specific reference to access to effective protection.
49. To address and operationalise Thessaloniki's clear call for an integrated, comprehensive and balanced approach which would be flexible and situation specific, **EU Regional Protection Programmes** would be brought forward by the Commission with an agenda of actions and projects on asylum and migration, and elaborated in full partnership with third countries in the region. These programmes would be drawn up in conjunction with, and following the same cycles as, the Regional and Country Strategy Papers, that provide the overarching framework of EC relations with developing countries. Thus, the regional protection programmes would have a multi-annual basis and include the opportunity for mid-term reviews as a response to protracted refugee situations in a particular region where a solution seem to be reachable.
50. The analysis and the proposed actions in EU Regional Protection Programmes shall be fully consistent with the Regional Strategy and Country Strategy Papers. The protection programmes would thereby be part and parcel of the overall strategy

towards the country or region concerned and synergies with the various components of the strategy (in particular good governance, judiciary reform, institution building, democratisation and human rights etc) will be fully exploited. The EU Regional Protection Programmes would also provide the guiding framework for action taking place in a particular country or in a region by individual Member States. Likewise, the programmes would as far as possible be coherent with and complementary to actions of other third countries (such as USA, Canada) or other actors, including international organisations. Their constituent elements would be as far as possible measurable, practical actions that would deliver real benefits both in terms of protection offered and in terms of their impact within existing arrangements with the third country.

51. EU Regional Protection Programmes would provide a “**tool box**” comprising a range of measures; some already in existence, some still in the process of development and some still to be proposed (see Resettlement schemes above). These tools would be mainly protection oriented. However, taking into consideration the need to balance and assess all interests concerned, including the previously expressed interest third countries take in migration related tools, the following specific characteristics might in particular be included in such a “tool box”:

- **Action to enhance protection capacity**: a coordinated and systematic approach to strengthen and build protection capacities for processing, receiving and integrating asylum seekers and refugees in third countries in regions of origin, with the aim of assisting them in becoming robust providers of effective protection based on the protection components identified above.
- **Registration Scheme**: The UNHCR registration scheme “Profile”, which will ultimately utilise biometric technology, constitutes a fundamental protection tool to better manage who requires protection in a third country. Such a scheme could also prove invaluable in terms of evaluating the effects of the action taken under the EU Regional Protection Programmes.
- **An EU-wide Resettlement Scheme**: Such a scheme, based on the main elements set out above, could prove an important element in such Programmes, both in terms of ensuring orderly entry and in enhancing the protection capacities of third countries.
- **Assistance for improving the local infrastructure**: this assistance should help to ensure that the presence of refugee communities doesn't put too much strain on local infrastructure (be it social infrastructure, water supply, environment, energy, transport networks etc.), and brought benefits rather than problems to the refugee-affected communities, taking into account their genuine needs and aspirations. Host communities should be actively involved in the design and implementation of such programmes.
- **Assistance in regard to local integration of persons in need of international protection in the third country**; this assistance would help reduce the necessity for secondary movement and enable refugees to access decent living conditions either as a durable solution (local integration) or while waiting for such a solution, as quickly as possible and close to their needs. The importance of addressing the

needs of the various categories of people concerned in such assistance programme should be stressed.

- **Cooperation on legal migration:** the promotion of active cooperation and dialogue in the area of legal migration including the identification of legal migration possibilities for nationals of the third country involved in the partnership negotiation, and the negotiation of visa facilitation for certain categories of person. This action may also have a preventative impact on illegal migration flows as concluded in the *Study on the links between legal and illegal immigration*, as laid down in the Commission's Communication on that subject.
- **Action on migration management:** these arrangements would focus on improving the response of third countries and countries of transit to mixed migratory flows, as well as at combating illegal immigration and organised crime. Support could also be given to encourage the return of migrants.
- **Return:** return could be aimed at the third country's own nationals, as well as other third country nationals for whom the third country has been or could have been a country of first asylum, if this country offers effective protection. Where transfer for return occurs in a context which engages UNHCR and IOM, and is subject to diplomatic agreement where a package of support and action is negotiated, there are greater safeguards and more opportunities for monitoring, than there are for individual asylum seekers who remain in the country of first asylum, or for an individual asylum seeker who is denied entry and returned as part of generic safe third country arrangements.

52. EU Regional Protection Programmes would need to be flexible and situation-specific, tailor-made and not generally prescriptive, and their added value would lie in the improved coordination and systematisation given to each constituent element, as well as in them being used in combination with one another. Their use would add genuine leverage to partnership arrangements with the third countries involved. An EU Regional Protection Programme would be drawn up after a systematic analysis of the refugee crisis in the region concerned including a gap analysis of the protection situation which could utilise the Monitoring and Evaluation Mechanism requested by the Thessaloniki and Seville European Councils. The aim of that mechanism is *to monitor the migratory situation in the third countries concerned and also their administrative and institutional capacity to manage asylum and migration*. The mechanism should provide all the relevant information for the systematic assessment and evaluation of the cooperation of the countries in question and any factors which might hamper effective protection.

53. The EU Regional Protection Programmes would be updated in line with the mid-term reviews of the Country and Regional Strategy Papers. Through **negotiations** with the third country partners involved, as well as consultation with the Council which encompasses all of the relevant policy areas, the EU Regional Protection Programmes would be targeted and tailored to address the particular needs of a region or country, with the aim of both enhancing protection capacity and ensuring that people arriving in the EU from that region do so in an orderly and managed manner. The co-ownership of the EU Regional Protection Programmes should ensure a practical and operational focus and provide tangible results, to the satisfaction of all

parties. This could be easily evaluated and built upon and clear benchmarks would be identified and agreed in advance.

54. UNHCR should play a central role in both the development and implementation of EU Regional Protection Programmes. As sponsors of the Convention Plus initiative they are ideally placed to lend them a genuine protection focus. Their experience and authority in the field would enable them to deliver on the key aspects of this comprehensive strategy. Indeed, the formulation of such Programmes would also address the UNHCR's "Convention Plus" initiative and would set the foundations for "**special agreements**" along the lines of those envisaged by the High Commissioner.

#### **Chapter IV Recommendations**

55. The EU is entering a new phase in the development of the Common European Asylum System, called for in Tampere. It needs to decide what shape it should give to the System's second phase. 2004 will prove crucial in that the global momentum created by the Agenda for Protection and the "Convention Plus" initiatives must be met by action at EU level. The EU must nevertheless take care when devising responses in a process which will have a major impact across various policy areas. Policy developments should build upon the first phase of that System and be integrated in the second phase, paving the way for a Tampere-II agenda
56. The Commission proposes that as part of that agenda the strategic use and the introduction of EU Resettlement Schemes should be considered as a tool to ensure more orderly and managed entry in the EU of persons in need of international protection. This Communication sets out why the policy objective of this kind of managed entry could be beneficial for all concerned and create a win/win situation for those in need of international protection, countries of first asylum and destination countries, such as EU Member States. Furthermore this Communication highlighted the need to assist the countries in the regions of origin, often merely transit countries, in becoming proper countries of first asylum allowing persons in need of international protection to access effective protection sooner and closer to their needs. In this context it is vital that these countries are assisted in a multi-annual engagement by the EU in this transformation process, and the Communication has identified the various elements of protection capacity enhancement on which such technical and financial assistance could be focused.
57. This Communication also proposes the crafting of EU Regional Protection Programmes which aim at addressing protracted refugee situations globally in a comprehensive and concerted approach. EU Regional Protection Programmes would need to be flexible and situation-specific and their added value would lie in the improved coordination and systematisation given to each of the identified possible elements of which such Programmes could be comprised. The Commission envisages taking charge of the drawing-up of a pilot EU Regional Protection Programme in relation to a protracted refugee situation identified by the Commission in close cooperation with UNHCR and consulting the relevant Council groups with a **plan of action** by July 2005 and a fully fledged EU Regional Protection Programme by December 2005.

58. The Commission asks the Council and European Council to endorse this Communication as the basis for contributing to more accessible, equitable and managed asylum systems, in view of the preparation of the Tampere-II agenda.
59. More specifically, the Commission requests the European Parliament, Council and the European Council to endorse the following elements, needed in the short to mid term for achieving more orderly and managed arrival in the EU and the enhancement of the protection capacity of regions of origin, as identified in this Communication:
- (a) **EU Regional Protection Programmes and their main constituent elements as a key policy tool to address protracted refugee situations globally;**
  - (b) **The identification of the indicators of protection capacity as a means of reaching agreed targets of effective protection as set out in this Communication;**
  - (c) **An EU resettlement scheme- proposal to be submitted to the Council by July 2005- on the basis of the main features as set out in this Communication, including a proposal for technical assistance- underpinning such scheme.**
60. The Commission will work towards achieving the objectives identified in the Communication, in close co-operation with Member States and the European Parliament, in full partnership with countries of origin, transit and first asylum, and in close co-operation with UNHCR and other relevant stakeholders.