



**UNHCR Observations on the Communication from the Commission to the Council
and the European Parliament on Strengthened Practical Cooperation –
*New Structures, New Approaches: Improving the Quality of Decision Making in the
Common European Asylum System***
[COM(2006) 67 final, 17 February 2006]

Introduction

The Office of the United Nations High Commissioner for Refugees (UNHCR) welcomes the European Commission's Communication¹ which outlines "how practical cooperation between Member States can support the realisation of the goals set at Tampere and in the Hague Programme".²

The Communication responds to a request from the European Council contained in the November 2004 Hague Programme. The Council called for the establishment of appropriate structures involving the national asylum services of the Member States with a view to facilitating practical and collaborative cooperation towards three main objectives: achieving an EU wide Single Procedure; the joint compilation, assessment and application of Country of Origin Information (COI); and how Member States can better work together to address particular pressures on asylum systems or reception capacities resulting from factors such as geographic location.³

UNHCR is prepared to assist the Member States and the European Commission in this endeavour. In particular, UNHCR is willing to participate in the asylum cooperation network, which the Commission proposes to establish. UNHCR urges the Commission and Member States to structure this network in such a way as also to permit the involvement of specialized non-governmental organizations at the EU level. Such organizations can bring considerable experience and the engagement of civil-society to the effort to enhance refugee protection across the European Union.

On several occasions the Communication refers to the aim of achieving convergence in decision-making and/or to "levelling the asylum playing field." UNHCR cautions the Commission and Member States against any suggestion that harmonization should take place at the level of the lowest common denominator. In UNHCR's view, the focus of practical cooperation must be to improve refugee protection in the European Union. Greater consistency in State practice could help to ensure that protection is indeed extended to all those who need it. The long-term credibility of EU asylum policy would benefit from this effort, which should encompass the full spectrum of actions, from access to the territory, through reception, asylum decision-making, and integration, to the eventual return of persons who are not in need of international protection.

¹ Hereafter referred to as "Communication".

² Communication, paragraph 2.

³ See "The Hague Programme: Strengthening Freedom, Security and Justice in the European Union", OJ C 53/1, 3.3.2005, paragraph 1.3.

Single Procedures: Fairness and Efficiency

UNHCR has consistently supported the establishment of single procedures to assess whether an applicant qualifies for refugee status according to the 1951 Convention relating to the Status of Refugees or for a subsidiary form of protection.⁴ A consolidated process offers a more efficient and less fragmented approach, and should result in greater coherence in the interpretation of international protection norms. It also ensures that applicants for refugee status and other forms of protection enjoy equal due process guarantees.

This approach has gained widespread acceptance, and nearly all Member States already implement single procedures.⁵ UNHCR urges the Commission to evaluate the experience to date with single procedures, and to promote best practice. This would be an important contribution to the development of a Common European Asylum System, and would help to reduce the incentive for secondary movements within the European Union.

One of the Commission's priorities as set out in the Communication is an “analysis and evaluation of the implementation of provisions in the first stage legislation of the Common European Asylum System which require Member States to introduce the same treatment to both applicants for refugee status and subsidiary protection”.⁶ UNHCR welcomes such a review and encourages the Commission to undertake a critical assessment of the results, including of any need to revise first phase legislation in order to ensure that implementation complies with international standards.

At the same time, equal attention must be given to making sure that procedures are of high quality, so that protection is in fact extended to all those who need it. The significant number of negative first-instance decisions which are overturned on appeal in many Member States is an indication that there is considerable room for improvement. UNHCR urges the Commission and Member States, under the heading of “practical cooperation”, to consider developing initiatives to assess and improve the quality of asylum decision-making in the EU-25. The “Quality Initiative” which UNHCR and the U.K. Home Office have been implementing since 2004 could serve as a useful example.⁷

In this context, the subject of vulnerable asylum applicants would, in UNHCR's view, warrant particular attention, although it is not dealt with by the Communication. Practical cooperation could help States to develop their ability to handle applications for international protection from persons who have special needs, such as victims of trauma, unaccompanied children or the mentally ill. Practitioners observe that the resources and expertise available to assist applicants with special needs vary widely from one Member State to another. Exchange of experience in this area through twinning or other mechanisms would be particularly useful.

⁴ See “UNHCR Observations on the European Commission Communication on ‘A More Efficient Common European Asylum System: the Single Procedure as the Next Step’”, 30 August 2004, available on www.unhcr.org/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=43661f6f2.

⁵ Only Belgium and Ireland do not yet implement a single procedure. In Belgium, however, the proposed reform of the asylum law would introduce a single procedure.

⁶ See “Commission Staff Working Document – Annexes to the Communication from the Commission to the Council and the European Parliament on Strengthened Practical Cooperation: New Structures, New Approaches: Improving the Quality of Decision Making in the Common European Asylum System”, SEC(2006) 189, 17.2.2006, (hereafter referred to as “Commission Staff Working Document”), Annex B, paragraph 7.

⁷ See www.ind.homeoffice.gov.uk/ind/en/home/about_us/reports/united_nations_high.html.

With respect to children, the Convention on the Rights of the Child, to which all EU Member States have subscribed, requires that the best interest of the child be a primary consideration in all actions concerning children.⁸ Similarly, many Community instruments require States to act in the “best interest” of the child.⁹ However, most Member States do not have appropriate mechanisms for determining what is in the best interest of asylum-seeking children. Balancing the often competing interests of child protection and of immigration control has proven particularly challenging. UNHCR recommends working toward common standards and methods for best interest determinations, and suggests that the Commission support an EU-wide study on this question, involving UNHCR, UNICEF and the Separated Children in Europe Programme, along with other expert actors.

Country of Origin Information (COI)

UNHCR has a clear interest in ensuring that decision-makers have access to objective and reliable country of origin information. UNHCR’s 2004 report “Country of Origin Information: Towards Enhanced International Cooperation”,¹⁰ written for the European Commission, makes a number of recommendations for enhanced cooperation among States, as well as between States and UNHCR, to achieve this goal.

Accurate and reliable information about the causes of forced displacement is essential for assessing who is in need of international protection and is central to the credibility of any asylum procedure. It is also crucial for determining whether and when safe return is possible and for decisions involving the cessation of refugee status. The actions of the European Union in this respect have a particular standard-setting value.

As pointed out in the Communication, the practice of Member States in this field varies greatly. Some Member States generate their own country of origin information and have developed sophisticated information systems and tools upon which their decision-makers can rely.¹¹ Others do not have the advantage of such systems, do not produce information of their own, and rely chiefly on external sources, including NGOs and UNHCR.¹² Effective cooperation in the provision of country of origin information could reduce these

⁸ Article 3(1) of the 1989 Convention on the Rights of the Child (available on www.unhcr.ch/html/menu3/b/k2crc.htm) reads: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

⁹ See, for instance, Article 6 of the Dublin II Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50/1, 25.2.2003), Article 18(1) of the Reception Conditions Directive (Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31/18, 6.2.2003), Article 20(5) of the Qualification Directive (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, 30.9.2004), and Article 17(6) of the Asylum Procedures Directive (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).

¹⁰ www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=RSDLEGAL&id=403b2522a.

¹¹ One good practice example is that of Ireland, which has a Refugee Documentation Centre serving all stakeholders: asylum institutions, NGOs, and others;

see www.legalaidboard.ie/lab/lab.nsf/ContainerPage?OpenForm&Refugee%20Documentation%20Centre.

¹² See “Commission Staff Working Document”, Annex C, paragraph 6.

discrepancies and significantly strengthen the quality and consistency of asylum decision-making across the European Union.

The Commission suggests that a first step in this process would be to establish an easily accessible common entry point for existing information, a so-called “common portal”. While this could facilitate access to COI as well as to national and Community legislation and case law,¹³ it is important to note that a “common portal” is simply a collection of hyperlinks, not a common database. Any new “common portal” should take existing structures into account, in particular those which have proven to be of high quality and have demonstrated their added value in the daily work of asylum authorities.¹⁴

A second important aspect of practical cooperation in the field of country of origin information concerns the elaboration of “Common Guidelines on the Production of COI”.¹⁵ UNHCR strongly supports this proposal and would wish to be closely associated with the development of such Guidelines. In UNHCR’s view, Guidelines should also extend to the *use* of country of origin information.

An approach to the production and use of country of origin information which is based on common principles can make an important contribution to improving quality and consistency of asylum decision-making in the EU. Without agreed standards, national authorities may find it difficult to use information supplied by other Member States. One important principle is that all country of origin information relied upon by the determining authority in the course of the decision-making process should be available to the asylum-seeker and his or her counsel, not only to reviewing bodies. Nonetheless, no matter how good the country of origin information is, it cannot be a substitute for a careful evaluation of all the details of a claim for refugee status, including those which come to light in the course of the personal interview.

A third, longer-term objective set out in the Communication is the establishment of an EU database. UNHCR is prepared to collaborate with the EU in the establishment of such a database. However, it urges the Commission and Member States to look beyond the creation of a database, and to consider setting up a fully-fledged EU Documentation Centre for the production, collection, evaluation and dissemination of country of origin information. This would be a major contribution toward a Common European Asylum System.

In UNHCR’s view, there is no need for each asylum authority in the EU separately to collect all data. Selected data sets could be made available centrally, in order to obviate the need for labor-intensive data collection to be done in each national context.¹⁶ In order to prevent duplication and ensure consistency, any EU COI system should have the capacity to keep track of questions asked and answers given.

¹³ Op. cit. note 12, paragraph 8.

¹⁴ Examples of a “common portal” are UNHCR’s *Reflink* portal (www.unhcr.org/cgi-bin/texis/vtx/reflink), the European Country of Origin Information Network (www.ecoi.net), which is supported among others by the European Refugee Fund and UNHCR, and the (password protected) portal of the Inter Governmental Consultations on Asylum, Refugee, and Migration Policies, in Europe, North America, and Australia (www.igc.ch). See in this context also International Centre for Migration Policy Development (ICMPD), “Comparative Study on Country of Origin Information Systems: Study on COI Systems in Ten European Countries and the Potential for Further Improvement of COI Co-operation”, April 2006.

¹⁵ Op. cit. note 12, paragraph 10.

¹⁶ For more information see UNHCR, “Country of Origin Information: Towards Enhanced International Cooperation” (op. cit. note 10), especially paragraphs 59, 66, 68 and 72.

UNHCR urges the EU to build on already existing databases, and in particular on UNHCR's extensive *Refworld*¹⁷ database, which is already widely used by Member State authorities. *Refworld* is available both on the Internet and off-line (in a CD-Rom version), and is the widest existing collection of full-text COI sources, including national legislation, jurisprudence and UNHCR guidelines.

Particular Pressures

The final aspect of the Communication concerns practical cooperation to address "particular pressures" faced by Member States. The Communication characterizes "particular pressures" as "the arrival of several hundred persons of different nationalities at particular points on the external border" or "when individual Member States have been faced with rapid rises in asylum applications with resource implications and the threat of backlogs and problems in delivering adequate reception facilities".¹⁸ It states that "failure to address situations which seriously stretch one Member State's reception capacity and asylum system threatens the application of the Common European Asylum System and the benefits derived from it for all Member States".¹⁹

UNHCR takes note of this definition, but is of the opinion that it may be too narrow. UNHCR would recommend an approach to the definition of "particular pressures" which would make clear that cooperation would not only support State administrations but also benefit individuals and their enjoyment of rights accorded to them by Community law.

In reality, particular pressures are most likely to emerge where "mixed" flows of asylum-seekers and other migrants arrive in an irregular manner at the external borders of the European Union. UNHCR and Member States have a responsibility to ensure that individuals are able to have access to international protection when needed, including in the context of mixed migratory flows. Control of entry and the provision of protection need not be irreconcilable objectives, and practical cooperation can help to ensure that such situations are properly managed.

There are numerous areas in the context of mixed flows in which practical cooperation could be undertaken. These range from registration and database management to the setting-up of emergency accommodation, transport facilities and medical and other assistance, as well as to case management and the processing of asylum applications. UNHCR urges particular attention to quality standards in decision-making, especially in the context of accelerated procedures. UNHCR is prepared to cooperate closely with the European Commission and Member States in developing benchmarks for quality in procedures, where asylum-seekers are dispersed among larger groups of irregular migrants. Other forms of UNHCR involvement might concern training for newly recruited staff hired by States to cope with particular pressures, monitoring of and support to initial screening processes or counseling of new arrivals.²⁰ In addition, practical cooperation could help to ensure that

¹⁷ www.unhcr.org/refworld.

¹⁸ Communication, paragraph 16.

¹⁹ "Commission Staff Working Document", Annex D, paragraph 3.

²⁰ In one example of cooperation between a Member State, international organizations and NGOs to address particular pressures, UNHCR, IOM and the Italian Red Cross have accepted an invitation from the Italian Ministry of Interior to establish a presence on the island of Lampedusa, in part with ARGO funding, in

durable solutions are provided for persons in need of protection, and that persons not in need of protection are able to return in safety and dignity to their countries of origin.

UNHCR welcomes the fact that financial support is foreseen for States facing particular pressures, e.g. by amending the European Refugee Fund as well as simplifying and clarifying the conditions for accessing financial support provided by the ARGO Programme for emergency actions.²¹ In addition, UNHCR urges the Commission to use the occasion of its first evaluation report on the Dublin II Regulation to consider developing a proposal for a new responsibility sharing system among EU Member States, in order to take more directly into account the particular pressures resulting from the geographical situation of certain Member States.²²

Training

Although training is a cross-cutting issue of equal importance to the three areas covered by the Commission's Communication, it is dealt with only very briefly in the Communication. UNHCR attaches considerable importance to the training of asylum service personnel, in particular those involved in decision-making, and believes that EU training efforts would meet with broad Member State participation and approval.²³

Potential areas of training for decision-makers could include inter alia interview techniques, working with vulnerable applicants, working with interpreters, finding and using country of origin information, developments in international human rights and refugee law, and drafting of decisions. An EU curriculum for asylum adjudicators in Member States would contribute to uniform standards in the European Union and to achieving a Common European Asylum System. The ongoing discussions on a common curriculum, which are taking place in the framework of the General Directors' Immigration Services Conference (GDISC), may provide useful input on this subject.²⁴

UNHCR has extensive experience in training of asylum officials in many countries, and would be pleased to take part in policy discussions, the development of training programmes and tools, as well as in actual training activities. UNHCR urges the Commission and Member States also to work with relevant NGO partners, such as the European Council on Refugees and Exiles (ECRE)²⁵ and the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD)²⁶, in view of their considerable experience with training and capacity-building activities. Another important NGO source could be the Hungarian Helsinki Committee's "Refugee Law Reader".²⁷

order to enhance Italy's response capacity to unpredictable arrivals of mixed population flows who reach Lampedusa from African countries or are taken there during rescue-at-sea operations.

²¹ Op. cit. note 19, paragraph 7.

²² See UNHCR, "The Dublin II Regulation – A UNHCR Discussion Paper", April 2006.

²³ Again, benefit could be drawn from the experience of UNHCR and the U.K. Home Office in implementing the "Quality Initiative" project.

²⁴ See cooperation between the Swedish, Dutch, Czech and Spanish Immigration Services with the Odysseus Academic Network aimed at elaborating a European Asylum Curriculum;

www.gdisc.org/index.php?id=133&tx_gdiscdb_pi1%5BshowUId%5D=19&cHash=eaa53250cc.

²⁵ www.ecre.org.

²⁶ ACCORD, "Researching Country of Origin Information – A Training Manual", www.ecoi.net/coi-manual.

²⁷ See www.refugeelawreader.org.

Conclusions

UNHCR welcomes the Commission's focus on strengthened practical cooperation among Member States' asylum authorities, in order to realize the goals set at Tampere and in the Hague Programme. Harmonization requires not only a common legal framework but also a coherent and consistent interpretation and application of the law. The areas covered by the Communication – single procedure, country of origin information, particular pressures – are important topics which indeed lend themselves to closer cooperation among Member States.

As the Commission takes forward the challenge of practical cooperation, UNHCR urges that it concentrate on strengthening refugee protection in the European Union. Harmonization should not take place at the level of the lowest common denominator; improvement in the quality of asylum decision-making should be the key priority. In addition, training of decision-makers and other authorities who work with asylum-seekers and refugees requires more comprehensive attention. Particular importance should be given to meeting the needs of vulnerable applicants. UNHCR is ready and willing actively to contribute its knowledge and experience, to achieve continued improvements in EU asylum policy and practice in compliance with international human rights and refugee standards.

UNHCR
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