

Brussels, 21 August 2007

Subject: European Commission Green Paper on the future Common European Asylum System

Opinion of the National Red Cross Societies of the Member States of the European Union and the International Federation of Red Cross and Red Crescent Societies

The European Union National Red Cross Societies welcome the European Commission's initiative to launch a consultation process on the future of the Common European Asylum System. We view this process as a part of an ongoing dialogue on issues of mutual interest in the area of asylum and migration.

EU National Red Cross Societies insist on all European governments respecting the rights of all asylum seekers and other migrants, including in particular respect for and due application of the principle of *non-refoulement* and the provisions of the 1951 Refugee Convention and its 1967 Protocol, and implementation by governments of all their international and national legal and human rights obligations.¹

In this context, we acknowledge the need to establish a common European asylum system, which upholds humane reception standards and safeguards the right to seek and to enjoy asylum through fair and proper asylum procedures. Needless to say, this includes measures to guarantee access. As set out in the Hague Programme, such a system should also ensure a uniform status for those who are granted asylum or subsidiary protection.

Regrettably, the "thorough and complete" evaluation of the existing legislative instruments envisaged by the Hague Programme is not yet at hand. Nevertheless, it is evident that the current "first phase" system does not ensure an adequate level of protection and assistance to everyone applying (or wishing to apply) for asylum in the European Union. The EU is thus far from being "a single protection area". Against this background, the adoption of "second phase" legislative instruments and accompanying measures must lead to a *significant improvement* of the situation if the Union is to achieve the stated objective of establishing a "system which guarantees to persons genuinely in need of protection access to a high level of protection under equivalent conditions in all Member States".

Based on our collective experience of working with asylum seekers and refugees within and beyond the European Union, the present position paper outlines the views and observations of EU National Red Cross Societies on relevant issues addressed by the European Commission in the green paper, subject to the limitations imposed by not having access to a comprehensive evaluation of the implementation and application of EU law currently in force.

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^{*} The Swiss Red Cross aligns itself with this position paper.

¹ "The Istanbul Commitments", adopted by the 7th European Regional Conference of the International Federation of Red Cross and Red Crescent Societies, 2007 (www.ifrc.org).

LEGISLATIVE INSTRUMENTS

Processing of asylum applications

It should be noted at the outset that asylum seekers are typically amongst the *most vulnerable people* in society. Provisions on **access to the asylum procedure** must take this into account, not creating unnecessary legal or practical obstacles such as undue time limits for application or designation of locations where an application can be lodged in a way that reduces availability. Admissibility or border procedures impeding access should be reconsidered, allowing for effective access and proper procedural guarantees². Critically, asylum seekers must be informed about their rights and the requirements of the asylum procedure in a language they understand.

In our view, the aim of further law approximation must be to guarantee **fair and proper treatment of all asylum applications** in all Member States. In this context, it must be ensured that all asylum seekers have the right to remain in the asylum country (i.e. appeals must have suspensive effect) and have access to independent legal counsel throughout the process until a legal status have been granted *or* return have taken place.

A fair and proper procedure must also be *efficient*, avoiding negative consequences of long and unwarranted waiting periods on asylum seekers' health and well-being. To this end, there should be clear and uniform time limits for the authorities within which they have to decide on an asylum application³. If they fail to do so within the set time limits, a secure legal status should normally be granted pending further status determination.

A **single asylum procedure**, where all aspects of a claim for international protection are assessed, would simplify the process, benefiting both asylum seekers and Member States. It would also facilitate further harmonization of procedural rules and thus assist in creating a common asylum system. Moreover, in order to ensure the uniform interpretation and application of EU law, such a procedure should include a common "asylum court of appeal" as part of the Court of Justice of the European Communities.

Existing notions and procedural devices which undermine the **individual examination** of asylum applications should be abolished (with the notable exception of *prima facie* recognition). All claims are unique and should accordingly be processed individually and considered on their individual merits without resort to generalised assessments based on e.g. nationality. Any measures to address "fraud or abuse" of the asylum process must be designed as to not infringe on the right to seek and enjoy asylum.

Finally, a common asylum system must ensure that Member States and EU institutions allocate **sufficient resources**, including **adequately trained staff**, to the processing of asylum applications (as well as to reception).

Reception conditions for asylum seekers

European National Red Cross Societies have adopted *Guidelines on the reception of asylum seekers* aiming at ensuring humane reception conditions⁴. **Humane treatment and decent material conditions** in all Member States should also be the aim of further harmonisation needed to achieve common standards.

² Respecting the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and relevant case-law of the European Court of Human Rights (see in particular *Gebremedhin [Gaberamadhien] v. France* (application no. 25389/05), www.echr.coe.int).

³ Cf. Article 5.4, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (<u>ec.europa.eu</u>).

⁴ "Guidelines on the reception of asylum seekers", International Federation of Red Cross and Red Crescent Societies, 2001 (<u>www.ifrc.org/perco</u>).

Currently, experiences from many Member States show that the Reception Directive is applied very differently by different national authorities. Even when it comes to drastic measures such as detention, the situation varies widely. The same seems to be true with regard to health related matters.

Promoting **good health** should be a matter of priority. Many asylum seekers have been subjected to severe health threats before and during their flight. Upon reception and during the asylum process (i.e. until a legal status have been granted or return have taken place) they require health care that is appropriate to their needs, going beyond mere "emergency care and essential treatment of illness".⁵

Asylum seekers should enjoy freedom of movement within the country of asylum.

From a humanitarian point of view, **detention** of asylum seekers should preferably be avoided. Detention increases the vulnerability of persons who are already in a vulnerable situation. At a minimum, EU law should reaffirm that detention may only be considered as *a last resort*, only if necessary and only if it is clearly prescribed by national law in conformity with Member States' obligations under international refugee and human rights law. It should only be imposed for a minimal period. Furthermore, Member States must ensure that asylum seekers may not be arbitrarily deprived of their liberty. A detention decision has to be lawful, non-discriminatory and subject to proper judicial review. All detainees must receive fair and humane treatment and be informed about their rights and the reason for their detention, have their right to seek asylum respected and enjoy conditions of detention adequate for their health, physical and mental well-being. Particularly vulnerable detainees with special needs must receive proper care.⁶

It should also be noted that the use of detention risks creating a perception of detained asylum seekers being linked to criminality. Obviously, this must be avoided (it may be partially mitigated by the adoption of detention rules and procedures *specific* to asylum seekers). The right to asylum in the European Union must at all times be upheld as a fundamental human right, as reaffirmed by the EU Charter of Fundamental Rights.

In some Member States, National Red Cross Societies provide assistance to detained asylum seekers and/or monitor conditions of detention, including restoring family links (RFL) activities, material assistance, medical attention and psychosocial support as well as counselling and advice to ensure that the rights of detainees are respected. Ensuring *independent humanitarian access* to detained asylum seekers and migrants is thus imperative.

Empowerment should be an essential aspect of reception activities, e.g. through language training and other meaningful daytime activities and the setting up of advisory groups of asylum seekers ensuring effective participation. Language training also facilitates the asylum procedure (as well as eventual integration). Moreover, where asylum seekers are accommodated in centres, access to mainstream housing and education should be facilitated after a certain period of time.

In order to promote **self-reliance**, asylum seekers should have immediate access to the labour market. To this end they should be informed about the skills audit process and their access to language training and vocational training; they should have the possibility to have their professional and academic skills recognised; employer organisations and trade unions should be involved in opening the labour market for the creation of new jobs based on diversity.⁷

⁵ Article 15, Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (ec.europa.eu).

⁶ Position paper "The European Council and the Global Approach on Migration", Red Cross/EU Office, 2006 (www.redcross-eu.net).

Article 11, Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (ec.europa.eu).

All staff involved in the reception of asylum seekers must receive **proper training**. In this regard, clear guidance is needed on the "necessary basic training" required.⁸

Granting of Protection

Given the current situation, it would seem that there is a need to generally pursue further law approximation *and*, in particular, to raise standards. From a humanitarian point of view, and as a general starting point, equal vulnerability in terms of protection needs should result in an equal level of international protection.

It is clear that the provisions on **subsidiary protection** need to be strengthened, with the aim of ensuring that no one in need of international protection is denied such protection, in particular persons fleeing *situations of armed conflict*. In this regard, it is imperative that EU law is implemented and applied in conformity with relevant international law and case-law. In addition, EU law should address the international protection needs of people displaced by *environmental degradation*.

Based on principles of international human rights law, including non-discrimination, we support the introduction of a **single uniform status** for all persons eligible for international protection, building as far as possible on the rules and standards pertaining to refugee status and ensuring timely family reunification. It should also ensure equal access to e.g. health and social care, training and the labour market. This *uniform* protection status should be valid throughout the Union, i.e. a decision to grant international protection should be recognised by all Member States.

Under the common system, all persons who cannot be removed should be afforded an **appropriate status** that guarantees access to fundamental rights. Based on individual needs, this would include persons who for humanitarian reasons cannot reasonably be required return or where return is indefinitely postponed for practical reasons, but also (as an additional protection category) persons who, under the Qualification Directive, are not entitled to international protection, but who nevertheless are protected by the principle of *non-refoulement*. In any event, no rejected asylum seekers should be left to a life in destitution in the country of asylum.

Cross-cutting issues

- Appropriate response to situations of vulnerability

We welcome the intention expressed in the green paper to improve the response to the needs of particularly vulnerable groups of asylum seekers. Our experience so far shows that existing obligations in this field are not sufficiently clearly defined and allow wide-ranging discretion on the part of Member States. Therefore, we would recommend the introduction of **clearer and more detailed rules** and a system of quality control which ensures uniform implementation.

Asylum seekers in especially vulnerable situations (e.g. traumatised persons, victims of torture and ill treatment, victims of human trafficking, unaccompanied or separated minors, people with disabilities, pregnant women, elderly persons, etc.) should be *recognised* as such and be *treated according to their special needs*. This means that **appropriate mechanisms and safeguards** have to be in place to guarantee that such persons are identified and properly treated.

In order to **improve response capacity and raise standards**, common guidelines for identification of particularly vulnerable asylum seekers as well as mandatory training programmes should be developed. In addition, specialist resources are required for the treatment of severely traumatised persons. Here, specifically pertaining to "victims of torture and violence", it appears that the notion "necessary treatment" in the Reception Directive needs to be further defined. The

⁸ Artcile 24, Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (<u>ec.europa.eu</u>).

same goes for "necessary medical or other assistance" to applicants who otherwise have special needs.

Moreover, the above mentioned Red Cross Guidelines on the reception of asylum seekers include practical recommendations pertaining to especially vulnerable people.

National capacities to respond to situations of vulnerability could be increased through encouraging the engagement of experienced humanitarian actors, including National Red Cross Societies and NGOs, where this is not already the case.

- Integration

In our experience, measures facilitating early family reunification improve the chances of successful integration of beneficiaries of international protection. Likewise, access to appropriate health care which promotes good health, language training and employment during the asylum process assists integration.

As regards family reunification, we note with regret a restrictive application of the Family Reunification Directive. Member States, therefore, should be encouraged to facilitate the entry and residence by family members of all beneficiaries of international protection.

From a more general point of view, equality in treatment and rights, as far as possible putting beneficiaries of international protection on an equal footing with nationals of receiving countries, is important to promote integration. In addition, it is essential that targeted support is provided as needed, especially with regard to language training, vocational training, housing, job application and social counselling, etc.

- Ensuring second stage instruments are comprehensive

A comprehensive approach towards the asylum process should also include measures to support sustainable return in safety and dignity of asylum seekers whose claims for international protection have been finally rejected and who do not qualify for residence in the EU on any other ground, e.g. family ties or humanitarian reasons.

While practical cooperation between Member States and with third countries with a view to facilitate return may be useful in this regard, it is essential that the necessary safeguards are in place and implemented in a uniform way. In this respect, rejected asylum seekers who are required to return should be informed about their rights and about conditions in countries of origin and have access to pre-return counselling. Return must be undertaken in a humane manner and. as a rule, without the use of force, in full respect for the human rights and dignity of those affected. Likewise, their rights and dignity must be protected and respected in countries of origin, they must not be discriminated against and their return have to be sustainable, not leading to further displacement¹⁰. Here, it is apparent that efforts to support *reintegration* need to be strengthened.

Hence, the Commission's proposal for a Return Directive should be speedily adopted by the European Parliament and the Council, taking into account the comments previously submitted by EU National Red Cross Societies¹¹. It should reaffirm the principle of return in safety and dignity.

⁹ Articles 20 and 15, Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (<u>ec.europa.eu</u>).

10 Position paper "The European Council and the Global Approach on Migration", Red Cross/EU Office, 2006

⁽www.redcross-eu.net).

11 Position paper on the Proposal for a Directive of the European Parliamant and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, Red Cross/EU Office, 2006 (www.redcross-eu.net).

As regards Red Cross action, we are committed to improve cooperation between National Red Cross and Red Crescent Societies in countries of origin, transit and destination in order better to protect and assist migrants (including asylum seekers) and returnees and to strengthen partnerships with relevant external actors 12. To this end, five EU National Red Cross Societies have initiated the "European Red Cross Return Initiative" - a study on how to better support sustainable return in safety and dignity, co-funded by the European Commission¹³.

Another important issue that should be taken into consideration is the need to support and facilitate the restoration of family links. As mentioned above in relation to detention, the Red Cross assists families and persons unaccounted for or separated as a consequence of situations such as armed conflict, disasters and migration/displacement, including asylum seekers and refugees. Restoring family links (RFL) activities take various forms depending on the context, for instance obtaining news and exchange of family news, tracing individuals, registering particularly vulnerable persons to prevent their disappearance and to enable their families to be informed, and reuniting families. RFL activities can also be linked with activities aimed at helping people affected and their families through psychological support and assistance and integration programmes. 14

The adoption of a RFL Strategy for the Red Cross and Red Crescent Movement (2008-2018) aimed at strengthening the Movement's response to RFL needs is a key part of the Movement's statutory meeting in November 2007.15

IMPLEMENTATION - ACCOMPANYING MEASURES

We recommend that practical cooperation is extended beyond EU governments and includes humanitarian actors, such as the Red Cross, whose considerable expertise and experience in many areas (e.g. reception of asylum seekers, social counselling and family reunification) could greatly enhance the value of trans-national cooperation.

The Red Cross - e.g. through Austrian Red Cross/ACCORD16 - also has expertise in the field of country of origin information (COI). With regard to an EU-wide COI common portal, we would like to emphasize that such a portal should provide public and free COI access for everyone. This is necessary to ensure that not only the authorities, but also asylum seekers and their representatives have equal and fair access to information which is vital for their claim. Moreover, the linkage of a COI common portal to other migration-related databases would seem to be desirable. We also welcome the idea of engaging a greater range of stakeholders in the exchange of good practices, capacity-building and training activities.

We support the creation of an EU level cooperation/coordination structure – a "European support office" - as a part of a common European asylum system. Such an office should operate in a transparent manner and liaise closely with relevant international organisations and NGOs, including the International Federation of Red Cross and Red Crescent Societies. Its services should not only be available to EU governments, but also to individual asylum seekers and their representatives in the Member States.

The activities of the support office should aim at ensuring consistent high quality decision-making in all Member States, including through: joint training of national migration officials; ensuring availability of objective and updated country of origin information; developing guidelines facilitating

¹² "The Istanbul Commitments", adopted by the 7th European Regional Conference of the International Federation of Red Cross and Red Crescent Societies, 2007 (www.ifrc.org).

13 The project is lead by the Swedish Red Cross in partnership with the British, Bulgarian, Danish and German Red Cross,

together with the Swiss Red Cross and the Red Cross/EU Office.

Position paper "Restoring Family Links - Roles of the International Red Cross and Red Crescent Movement", Red Cross/EU Office and the ICRC, 2007 (<u>www.redcross-eu.net</u>). ¹⁵ For more information, see <u>www.icrc.org</u>.

¹⁶ See <u>accord.roteskreuz.at</u>.

accurate and uniform assessment of asylum claims; and monitoring implementation and application of relevant EU legislation and case-law.

Certain services could be provided in **partnership** with relevant organisations. There may also be a case for a separate EU level "COI agency" which would guarantee *independent information analysis*. It should, moreover, be ensured that the activities of the support office do not duplicate or contradict the work of the United Nations High Commissioner for Refugees (UNHCR).

SOLIDARITY AND BURDEN SHARING

Responsibility sharing

Initially, we note that receiving asylum seekers should not be described as a "burden" since this may have an unwarranted negative effect on public perception. Rather, the *principle of solidarity and fair sharing of responsibility* should be affirmed.

In our view, the current system for **assigning responsibility for asylum claims** does not promote *fair responsibility-sharing*. It is neither fair to asylum seekers, nor to Member States, and leaves many vulnerable persons without access to an adequate level of protection and assistance. Therefore, the protection lottery institutionalized by the Dublin II Regulation must come to an end.

Under prevailing conditions, i.e. until a common European asylum system has been effectively established, the most fair criteria for assigning responsibility would be the *intention of each asylum seeker* as regards the preferred country of asylum, bearing in mind that the ultimate aim of any responsibility assigning mechanism must be to guarantee international protection to those in need of it. This would also help to, temporarily, alleviate the protection responsibilities of some eastern and southern Member States (concurrently necessary capacities could be further improved).

Moreover, extending the **right to free movement** within the EU to all persons granted international protection *without imposing undue qualification periods* and with the possibility of transferring responsibility for international protection, could also contribute to more fair responsibility-sharing.¹⁷

However, in the longer term, "a more equitable distribution of asylum seekers and/or beneficiaries of international protection" within the EU can only be achieved through the establishment of a "second phase" common asylum system as outlined above, combined with enhanced financial solidarity.

Financial solidarity

As stated in the green paper, funding allocated under the European Refugee Fund (ERF) is merely a *complement* to national resources devoted to the asylum process. Hence, at best, the ERF can only have a very limited impact in terms of financial solidarity.

Conversely, a genuinely common asylum system, which guarantees international protection to all in need of it *and* where responsibilities are shared equitably, requires **common funding**. In this context, the "initiative on extended solidarity" launched last year by the Finnish EU Presidency could be revisited and serve as a basis for further discussions¹⁸.

Lastly, it should be underlined that solidarity needs to extend beyond EU borders. This aspect will be dealt with below.

¹⁷ Cf. Commission Proposal for a Council directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection (ec.europa.eu).

¹⁸ "Migration management; extended European solidarity in immigration, border control and asylum policies", Informal JHA Ministerial Meeting, Tampere, 2006 (www.eu2006.fi).

EXTERNAL DIMENSION OF ASYLUM

Strengthening protection in third countries

The European Union should actively promote universal accession to, and full implementation of, the 1951 Refugee Convention and its 1967 Protocol. In this context, we strongly encourage EU support for capacity-building with a view to strengthening protection and assistance capacity in third countries. It is essential, however, that such support is not only afforded to (or through) States, but also to other actors, including National Red Cross and Red Crescent Societies, that address the needs of refugees and asylum seekers. Furthermore, protection capacity-building in third countries should always be complementary to - not substituting - measures to ensure access to international protection in the European Union.

The longer-term needs of refugees, internally displaced persons and returnees should be addressed in EU development programming, taking into account also the needs of local (host) communities. Linking development cooperation and migration should focus, on the one hand, on the root causes of migration/displacement, such as factors leading to insecurity and political instability, and, on the other hand, the creation of conditions for sustainable reintegration. As mentioned above, efforts to support reintegration in countries of origin need to be strengthened. Addressing root causes goes beyond development cooperation and therefore coherence with other EU policies which have a direct or indirect impact on migration/displacement, e.g. common foreign and security policy and external trade policy, must be ensured.

At the same time, allocation of funds to countries of transit and origin for migration control purposes should not be mixed up with development assistance. Moreover, development cooperation should not be conditioned by partner countries accepting to support EU migration management.

Resettlement

National Red Cross and Red Crescent Societies worldwide are committed to encouraging their respective government to accept refugees for resettlement and support the resettlement process through facilitating the reception and integration of refugees. 19

As mentioned in the green paper, resettlement is a tool of protection, providing durable solutions to persons in need of international protection taking especially into consideration the situation of particularly vulnerable refugees. It is also a mechanism for responsibility sharing, and as such a concrete demonstration of international solidarity.

Extending resettlement to new countries is an important goal for the European Union. There is a need for financial support for emerging resettlement countries in order to support and motivate Member States which are willing to start national resettlement programmes. Several projects (e.g. the Finnish-Irish MORE project²⁰) have also developed good models to help with this process. An essential element is cooperation between Member States (including receiving municipalities), NGOs and UNHCR in resettling refugees. In this context, EU National Red Cross Societies could have a role in assisting governments and in supporting the integration of refugees in their new communities. Partnerships could also include advising governments on the need for resettlement of refugees from certain countries as well as active participation in selection missions²¹.

The green paper links resettlement with Regional Protection Programmes (RPP). In our opinion, while RPPs could play a role in developing resettlement work in the European Union, they should

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¹⁹ "International Red Cross aid to refugees" (Resolution XXI), adopted by the 24th International Conference of the Red Cross, 1981 (<u>www.ifrc.org</u>).

20 Modelling of the National Resettlement Process.

not be viewed as a starting point for common EU resettlement efforts. Rather, the EU should look more into developing a **common resettlement programme** with the emphasis on *solving protracted refugee situations in a more strategic way* in cooperation with UNHCR.

Moreover, resettlement should not be confused with temporary protection in situations of mass-influx, which is regulated by the Temporary Protection Directive. While it is also important to develop an effective response to emergency situations in order to quickly evacuate people to safety, the term "resettlement" should not be used in this context. The same goes for "intra-EU resettlement" as a "corrective" responsibility-sharing mechanism. This wording contradicts the original purpose of resettlement.

Addressing mixed flows at the external borders

First and foremost, mechanisms which ensure **safe and legal access** to asylum procedures must be put in place. In this regard, the recommendation by States within the so called Berne Initiative to *waive visa requirements* "in the case of certain refugees and others in need of international protection in order to help them to escape persecution or other serious human rights violations"²², should be considered with a view to introduce the necessary amendments to the Visa Regulation.

In situations where people travel and arrive in "mixed flows" everyone must be **treated humanely** and receive **information about their rights** and those who express protection concerns must be **guaranteed access** to fair and proper asylum procedures. In cases of interception or rescue at sea, it must be made clear that final disembarkation may only take place where such procedures are available, i.e. at **a place of safety**.

To this end, all public officials (police, border guards, migration officials) involved should be **properly trained** and conditions **monitored** by independent organisations. Here, depending on local needs and capacities, EU National Red Cross Societies could play an important role. As mentioned above, the Red Cross also has a key role in visiting detained asylum seekers.

In the context of border control operations coordinated by the EU Border Management Agency (Frontex) and with the possible deployment of Rapid Border Intervention Teams (RABIT), properly trained teams of *protection-focussed* "asylum experts" could constitute an important complement, further safeguarding access to asylum procedures and ensuring protection against *refoulement*.

It should be underlined that *failure to ensure* that anyone who wishes to make an asylum claim has the possibility to do so, could amount to a breach of the principle of *non-refoulement*.

The role of the EU as a global player in refugee issues

We encourage the European Union to **lead by example** through committing to high standards of protection and assistance to asylum seekers and refugees and respect for human rights across the Union. In terms of **international solidarity**, global responsibility-sharing through enhanced capacity-building, timely and adequate support to major refugee hosting countries, increased opportunities for resettlement and strengthened reintegration assistance, are important components.

This position paper has been prepared by the Red Cross/EU Office, which represents the National Red Cross Societies of the EU Member States and the International Federation of Red Cross and Red Crescent Societies to the EU institutions, with the support of PERCO²³.

²² "International Agenda for Migration Management", IOM/Federal Office for Migration, Switzerland, 2005 (<u>bfm.mit.ch</u>).

²³ PERCO is the Platform for European Red Cross Cooperation on Refugees, Asylum Seekers and Migrants. Its members include the National Red Cross Societies of Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Greece, Iceland, Italy, Lithuania, Malta, the Netherlands, Norway, Poland, Serbia, Spain, Sweden, Switzerland and the United Kingdom (<u>www.ifrc.org/perco</u>).