



**UNHCR**

United Nations High Commissioner for Refugees  
Haut Commissariat des Nations Unies pour les réfugiés

**Comments by the United Nations High Commissioner for Refugees  
(UNHCR) Regional Representation for Northern Europe on the draft Law  
proposal to introduce carrier sanctions during temporary intra-Schengen  
border controls in Denmark (Lov om ændring af udlændingeloven  
(*Transportøransvar i forbindelse med midlertidig grænsekontrol ved indre  
Schengengrænser*))**

**I. Introduction**

1. The UNHCR Regional Representation for Northern Europe (RRNE) is grateful to the Ministry of Immigration, Integration and Housing of Denmark for the invitation to submit its observations on the proposal, dated 27 November 2015 (Sagsnr: 2015-1423), aiming to introduce carrier sanctions during temporary intra-Schengen border controls in Denmark (Lov om ændring af udlændingeloven (*Transportøransvar i forbindelse med midlertidig grænsekontrol ved indre Schengengrænser*)) (hereafter “Law Proposal”).
2. UNHCR has a direct interest in law proposals in the field of asylum, as the agency entrusted by the United Nations General Assembly with the mandate to provide international protection to refugees and, together with Governments, seek permanent solutions to the problems of refugees.<sup>1</sup> According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto[.]”.<sup>2</sup> UNHCR’s supervisory responsibility is exercised in part by the issuance of interpretative guidelines on the meaning of provisions and terms contained in international refugee instruments, in particular the 1951 Convention Relating to the Status of Refugees (hereafter “1951 Convention”). Such guidelines are included in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (hereafter “UNHCR Handbook”) and subsequent Guidelines on International Protection.<sup>3</sup> This supervisory responsibility is reiterated in Article 35 of the 1951 Convention, and in Article II of the 1967 Protocol relating to the Status of Refugees.<sup>4</sup>

<sup>1</sup> UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b3628> (hereafter “UNHCR Statute”).

<sup>2</sup> *Ibid.*, paragraph 8(a).

<sup>3</sup> UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>.

<sup>4</sup> According to Article 35 (1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of the 1951 Convention”.

3. UNHCR's supervisory responsibility has also been reflected in European Union law, including by way of a general reference to the 1951 Convention in Article 78(1) of the Treaty on the Functioning of the European Union ("TFEU"),<sup>5</sup> as well as in Declaration 17 to the Treaty of Amsterdam, which provides that "*consultations shall be established with the United Nations High Commissioner for Refugees ... on matters relating to asylum policy*".<sup>6</sup>

## II. The Proposal

4. UNHCR notes that the intention of the Law Proposal is to amend the Danish Aliens Act to make it possible to introduce carrier sanctions in the context of temporary intra-Schengen border controls. The sanctions would be of the same nature as those currently enshrined in the Aliens Act concerning arrivals to Denmark from outside the Schengen area, according to which, carriers bringing passengers without valid documentation to Denmark, risk being fined and financially liable for the removal and/or return of the individual.
5. The proposed measures would be taken in accordance with the Schengen Borders Code, Articles 23–26.<sup>7</sup> Intra-Schengen carrier sanctions could only be put in place through a specific decision by the Ministry concerned, and only in the context of the temporary border controls. As is already the case for arrivals from outside the Schengen area, transport companies bringing travelers to Denmark from another Schengen country will have the task to ensure that passengers are in possession of valid travel documentation.
6. The Law Proposal refers to temporary intra-Schengen border controls having already been put in place in Norway, Sweden and Germany, and that Denmark due to this development may be forced to resort to similar measures. While not detailed in the Law Proposal, UNHCR understands that the proposed measures will, in effect, impose an obligation on all persons wishing to enter Denmark, including those wishing to seek asylum, to be in possession of valid travel documents. UNHCR further understands that the measures would impose carrier sanctions on public transport companies for failure to control that every passenger is in possession of valid travel documents and the right to enter Denmark. UNHCR also understands that the measures could result in asylum-seekers being prevented from boarding buses, trains and other means of public transportation, and who thereby in effect are barred from entering and seeking asylum in Denmark.

---

<sup>5</sup> European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, OJ C 115/47 of 9.05.2008, available at: <http://www.unhcr.org/refworld/docid/4b17a07e2.html>.

<sup>6</sup> European Union, *Declaration on Article 73k of the Treaty establishing the European Community*, OJ C 340/134 of 10.11.1997, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/DCL/17: EN:HTML>.

<sup>7</sup> European Union: Council of the European Union, *Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)*, 15 March 2006, OJ L. 105/1-105/32; 13.4.2006, (EC) No 562/2006, available at: <http://www.refworld.org/docid/47fdfb0525.html>.

7. UNHCR recognizes that the high increase in the number of asylum-seekers arriving in Europe is placing a strain on many countries' reception systems, society and infrastructure. In spite of this, however, UNHCR considers that there is a need for European countries to demonstrate greater solidarity with the countries that are receiving the greatest numbers, namely Germany and Sweden among the European Member States and outside Europe, Lebanon, Turkey and Jordan. It is in this context that UNHCR submits its comments on the Law Proposal as outlined below.

### III. Observations

8. The Schengen Borders Code allows for the temporary introduction of border controls at internal borders as a last resort, if there is a serious threat to public policy or internal security, in accordance with its Articles 24, 25 and 26.<sup>8</sup> However, the control at the internal borders should not affect the rights of refugees and persons requesting international protection, as, according to the Code, the refusal of entry applies "without prejudice to the application of special provisions concerning the right to asylum and to international obligations".<sup>9</sup>
9. Sanctions against transport companies for carrying undocumented or inadequately documented persons have been introduced by many European States since the 1980s. UNHCR, at the time, acknowledged that States have a legitimate interest in controlling irregular migration and a right to do so through various measures, including visa requirements, airport screening and sanctions imposed on airlines and other group carriers for transporting irregular migrants.<sup>10</sup> However, if States have recourse to carrier sanctions they should be implemented in a manner, which is consistent with international human rights and refugee protection principles, notably Article 14 of the Universal Declaration of Human Rights<sup>11</sup> and in a way which is in keeping with the intention of Articles 31 and 33 of the 1951 Convention. Hence, the fundamental concern which UNHCR has consistently voiced on this issue refers to the danger that measures such as carrier sanctions, aimed at curbing irregular migration, may prevent individuals in need of international protection from entering and seeking asylum in prospective countries.
10. To ensure access to territory and asylum procedures, carrier sanctions should not apply to asylum-seekers who by the nature of having fled their countries of origin, sometimes in haste, may lack the necessary ID and travel documents. By requiring a refugee to obtain proper travel documentation before fleeing his or her country to seek asylum in another country, States overlook the very problems which give rise to the need for refugee protection and, in effect, deny the possibility of asylum to some refugees. This would be inconsistent with Article 31 of the Convention, which provides that refugees should not be penalised for

---

<sup>8</sup> See above, footnote 7.

<sup>9</sup> Schengen Borders Code, Article 13 in conjunction with Article 28. See also Articles 3b, 5(1) and 5(4)c.

<sup>10</sup> UNHCR, *UNHCR Position: Visa Requirements and Carrier Sanctions*, September 1995, available at: <http://www.refworld.org/docid/3ae6b33a10.html>.

<sup>11</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html>.

irregular entry.<sup>12</sup> The “coming directly” requirement of Article 31 does not refer to refugees who have merely transited through other countries, only those who have stopped and obtained protection in another State already.

11. It needs also to be stressed that airlines and other carrier personnel are not authorised by international law to either make asylum determinations on behalf of States or to assume immigration control responsibilities. They are neither qualified to identify cases which might come within the purview of international refugee instruments, nor inclined -- in light of penalties on their corporate employer -- to permit transport of those to whom the State might otherwise extend protection. UNHCR is thus of the view that the proposed introduction of carrier sanctions within the internal borders of the Schengen area unduly attempts to shift the responsibility for border management from the authorities competent to the transport companies.
12. UNHCR agrees that while everyone has the right to seek asylum from persecution, there is no unfettered right to choose one’s country of asylum.<sup>13</sup> The intentions of an asylum-seeker, however, ought to be taken into account to the extent possible.<sup>14</sup> The 1951 Convention gives States a degree of flexibility to insist that asylum-seekers make their asylum applications in the first safe country of asylum they arrive to, however, there is no absolute rule that they must always apply in a safe first country of asylum.
13. The European Union Dublin III Regulation<sup>15</sup> establishes criteria and mechanisms for determining which Member State is responsible for examining an application for international protection. One of its founding principles is the principle of the first country of asylum. The national asylum system accordingly provides for a procedure for determining which country within the EU is responsible for examining an asylum application and for the transfer of applicants to the country determined to be responsible.

---

<sup>12</sup> Article 31(1) of the 1951 Convention provides that “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

<sup>13</sup> UNHCR, *Guidance Note on bilateral and/or multilateral transfer arrangements of asylumseekers*, May 2013, para. 3(a), available at: <http://www.refworld.org/docid/51af82794.html>.

<sup>14</sup> UNHCR, *Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers (Lisbon Expert Roundtable, 9-10 December 2002)*, February 2003, available at: <http://www.unhcr.org/refworld/docid/3fe9981e4.html>, para. 11; UNHCR Executive Committee Conclusion No. 15 (XXX) (Refugees without an Asylum Country) (1979), paras. (h)(iii) and (h)(iv).

<sup>15</sup> European Union: Council of the European Union, Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), 29 June 2013, OJ L. 180/31-180/59; 29.6.2013, (EU) No 604/2013, available at: <http://www.refworld.org/docid/51d298f04.html>.

14. UNHCR would like to reiterate the importance of adhering to the Dublin system as the established manner for allocating responsibility within the EU for the examination of applications for international protection. UNHCR thus appeals to Denmark to not resort to mechanisms such as border controls in combination with carrier sanctions as a way to shift the responsibility to other countries through which the asylum-seeker may have passed. In order to exercise their right to seek asylum, asylum-seekers need to have access to territory and for asylum procedures to be fair and efficient.
15. In summary, in UNHCR's view, the introduction of internal border controls, ID checks coupled with carrier sanctions could have the effect of preventing individuals from exercising the right to seek asylum. Such measures risk being inconsistent with the obligations of Member States according to the Schengen Border Code and other international obligations, including the Universal Declaration of Human Rights, the 1951 Convention and regional instruments such as the EU Charter of Fundamental Human Rights.<sup>16</sup> While acknowledging the challenges currently faced in Europe in establishing a functioning distribution key, including operational hotspots, and that the Dublin system is not fully working the way it is foreseen, UNHCR urges the Government of Denmark to adhere to its international obligations, existing mechanisms and to contribute to a European solution built on trust, solidarity and responsibility sharing.

**UNHCR Regional Representation for Northern Europe**  
*11 December 2015*

---

<sup>16</sup> European Union: *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, available at: <http://www.refworld.org/docid/3ae6b3b70.html>, Article 18.