

Memorandum to the Czech Presidency

Redefining the building blocks of the Common European Asylum System



AD/16/12/2008/AB/AP/MDM

ECRE's calls for action:

Monitoring the right to access to protection in Europe

The Czech Presidency should support border monitoring agreements in the EU and in countries at the external borders of the EU to ensure adherence of international and European human rights and refugee obligations, including the observation of FRONTEX operations.

The Integration of Refugees and their rights as Long Term Residents of the EU:

The Czech Presidency should prioritise the achievement of an agreement in the Council that extends rights under the Long Term Residence Directive to refugees and persons with a subsidiary form of international protection.

Formalised involvement of independent asylum experts in the structures of the European Asylum Support Office (EASO)

The Czech Presidency should support the participation of independent asylum experts, including NGOs, and the European Parliament in the establishment and structures of the European Asylum Support Office to ensure principles of transparency and democratic accountability are adhered to.

Revision of the Dublin Regulation

The Czech Presidency should support the proposals for amendments to the Dublin Regulation made by the European Commission to increase the level of protection offered to asylum seekers in the EU, in particular amendments concerning vulnerable groups.

The reception of asylum seekers in the European Union

The Czech Presidency should support the proposals to amend the Reception Directive, especially the provisions that enhance asylum seekers' access to the labour market as well as the provisions that improve the conditions and safeguards for children and other vulnerable groups.

Enlarging the capacity of EU countries to protect refugees through resettlement

Increase the number of resettlement places made available to refugees in the EU and foster the preparations for the establishment of a European Resettlement Programme.

Introduction

The Czech Republic will hold the Presidency of the European Union (EU) at a period where the building blocks of the Common European Asylum System (CEAS) will start to be redefined. The enhancement of practical cooperation in the field of asylum and immigration, the establishment of a European Resettlement Programme, the reform of the Dublin system and the EU Directive on minimum standards for the reception of asylum seekers will be discussed. Initial discussions may also start on amendments to the Qualification and Asylum Procedures Directives. Furthermore amending the Long Term Residence Directive to extend its scope to beneficiaries of international protection is still to be adopted. The Czech Presidency has announced that one of its priorities will be the focus on a ‘Europe without barriers’, especially on the four basic freedoms, one of which is the freedom to move within European territory. ECRE urges the Czech Presidency to ensure that greater freedom of movement will also be established for refugees and persons with subsidiary protection through the amendment of the Long Term Residents Directive. Furthermore ECRE urges the Czech Presidency to use its position of leadership in the Council to lay down a sound foundation for the completion of a Common European Asylum System.

Defending Refugees’ access to protection in Europe

Eastern Borders

At present, countries along the EU’s Eastern land borders are facing unprecedented challenges with border management, particularly in implementing border controls, while at the same time respecting obligations to refugees under international human rights law. Recent Readmission agreements (RAs)¹ between Ukraine and Russia, Ukraine and the EU, Russia and the EU, and Moldova and the EU run the risk of creating cases of “chain-refoulement” from the EU. RAs potentially constitute a major obstacle for individuals to access protection once they have been able to reach the EU territory as national authorities often immediately return people having crossed irregularly to the third country from which they have arrived in the EU, relying on existing RAs. It is not unusual in such cases for people to be returned without their presence having been recorded, let alone any protection needs or even fear of persecution in the country to which they are being returned having been ascertained. In addition to RAs concluded by the EU and third countries, there are also many RAs agreed on between individual Member States and third countries. Asylum seekers should be explicitly excluded from the scope of RAs to ensure full compliance with the principle of non-refoulement as enshrined in the 1951 Geneva

¹ RAs are agreements between States in which they undertake to readmit into their territory their own nationals who have been found in an irregular situation in the territory of the other signatory, and sometimes RAs also include agreement to readmit other third country nationals and stateless persons who are not their own nationals but who have entered their territory in transit before being intercepted in the other signatory’s territory.

Convention, to guarantee access to the asylum procedure and to avoid their removal before a fair and efficient final decision has been made. This is one of the several reasons why it is important to ensure independent monitoring of what is happening at the EU's external borders.

Procedures at airports often bar also access to the territory to refugees and other people in need of protection. Recently, tripartite border monitoring agreements involving national border authorities, UNHCR and NGOs have been put in place in countries such as Hungary, Slovenia, Romania and the Slovak republic. Such agreements provide UNHCR and NGO partners' permission to visit border areas and detention centres to monitor access of asylum seekers to the territory of a country and its asylum procedure thereby ensuring more transparency and compliance with human rights standards. ECRE has a number of member agencies and partners who are actively cooperating with their governments and border authorities to help create border regimes, which are more protection-sensitive.²

FRONTEX

ECRE is particularly concerned about the alarming lack of clarity and transparency regarding the exact scope of FRONTEX's coordinating role and the way in which its operations are conducted. To date, despite having been asked by ECRE and other NGOs, FRONTEX has not been able to present exact figures of who exactly has been intercepted and pushed back during their operations. This means that it is still unclear if FRONTEX is sending people with protection needs back to an uncertain fate. FRONTEX should ensure that protection and human rights safeguards are incorporated into its work. To this end, its mandate should be revised, in order to spell out very clearly that protection and human rights concerns are an integral part of the management of the EU external borders. FRONTEX should also vigorously pursue ways to establish a structured cooperation with asylum experts such as the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations with a protection mandate, in order to facilitate operations that take account of protection issues.

An external evaluation of FRONTEX has been carried out on behalf of the European Commission and it is important that the final report is made public. Any revision of FRONTEX's mandate should involve discussions with all relevant stakeholders, such as the European Parliament, UNHCR and other independent asylum experts, such as NGOs to ensure greater transparency and democratic accountability in the development of this agency.

ECRE calls on the Czech Presidency to:

- Ensure all discussions with third countries and consequent agreements, including RAs, incorporate human rights safeguards to guarantee access to protection in Europe.

² More information about ECRE's work in Eastern Europe is available at http://www.ecre.org/projects/eastern_europe

- Support border monitoring agreements between national authorities, UNHCR and NGOs in the EU and in countries at the external borders of the EU and prioritise the allocation of resources to this end under the EU External Borders Fund.
- Ensure the revision of FRONTEX's mandate addresses the key concerns regarding its duty to support Member States in upholding human rights and ensure the revision is undertaken in a transparent manner and in consultation with all relevant stakeholders including NGOs.

Long Term Residence Directive

The integration of refugees in their European host societies is a dynamic two-way process that begins from the day a refugee arrives in the new country. It is important to strike a balance between the responsibility of the refugee to adapt to the host country and the responsibility of the host country to take the necessary steps to be welcoming and to offer support and opportunities that promote their integration. A stable legal status is an important building block for successful integration, and the extension of the scope of the Long Term Residence Directive to refugees and beneficiaries of subsidiary protection would therefore be a significant step forward. The current Long-Term Residence Directive offers third country nationals a more stable status and social rights equal to those of nationals after a legal stay of five years. If this Directive is extended to beneficiaries of international protection, the full duration of the asylum procedure should be taken into account in the calculation of the period of five years.

ECRE urges the Czech Presidency to:

- Ensure the amendment of the LTR to extend its scope to refugees and beneficiaries of subsidiary protection is finally adopted during its' Presidency, in order to support the integration of refugees in Europe.
- Ensure that if beneficiaries of international protection are included in the LTR, the full duration of their asylum procedure is calculated in the period of five years that is one of the requirements to obtain a LTR permit.

Practical Cooperation in the field of asylum: Towards a European Asylum Support Office

Practical Cooperation in the field of asylum is an important element in achieving the CEAS. Greater practical cooperation between Member States, in the form of exchanging best practices, capacity building and training, as well as the systematic monitoring of the implementation of the EU asylum instruments, could lead to improvements in the efficiency and quality standards of the asylum systems in Member States. The Commission is due to come forward with proposals

to provide adequate support for practical cooperation, including the creation of a European Asylum Support Office (EASO) under the Czech Presidency.

ECRE supports the creation of an asylum support office, but considers it crucial that such an entity is well resourced and founded strongly on principles of democratic accountability and transparency. Given the potentially fundamental impact that the EASO can have on the development of the CEAS, it is important that its possible tasks as well as its structure and legal framework are discussed amongst a wide range of stakeholders. In particular, the European Parliament should be fully involved in the process of setting up the support office, as well as in overseeing its operation once it is in place. The EASO should also operate with the full participation of and cooperation from UNHCR and other independent asylum experts, such as NGOs, to ensure the EASO is fully transparent, democratically accountable and engenders the support of all relevant stakeholders.

The monitoring of the implementation of the asylum acquis is a vital task of the European Commission but serious gaps currently exist in overseeing how Member States apply EU asylum law in practice and adequate resources should be made available to address this issue. Other important tasks of the EASO should be the coordination of quality assessment teams to address differences in the quality and capacity of asylum determination systems; the collection, presentation and analysis of relevant, reliable, accurate, up to date country of origin information; and the deployment of asylum expert teams assisting in the identification of people with protection needs in situations requiring such expertise.

ECRE calls on the Czech Presidency to:

- Support the creation of a well-resourced European Asylum Support Office based on principles of transparency and democratic accountability.
- Ensure that the participation of UNHCR and other independent asylum experts, including NGOs, is formalised in the new structures of the European Asylum Support Office.
- Ensure the EASO is able to assist the European Commission in monitoring compliance with the EU asylum acquis in the Member States and ensure adequate resources are made available for carrying out this important task.

Reforms to the Dublin Regulation and the Reception Directive: a promising start

On 3 December 2008, the Commission presented its proposals for amendments to the Dublin Regulation and the Reception Directive, with a view to creating a CEAS by 2010 as set out in its

Policy Plan of June 2008. Initial discussions on the proposals will commence during the Czech Presidency.

Dublin

Several of the amendments proposed were welcomed by ECRE, such as provisions on better informing asylum seekers about the Dublin procedure, improvements on the right to a judicial remedy, ensuring effective access to the asylum procedure, strengthening safeguards on detention and minors, and the reinforcement of the right to family reunification.

However, ECRE is disappointed that the right to appeal against a transfer decision still gives discretion to Member States to decide on whether the transfer should be suspended and subsequently to allow the person to remain on the territory of the State pending the appeal decision. ECRE supports a right to appeal with suspensive effect in all cases. Proposals to extend the right to family reunification to include family members who are beneficiaries of subsidiary protection, to make reunification of dependent relatives compulsory and to extend the definition of 'family members' as far as minors is concerned, are all important steps forward and should be endorsed. However, ECRE notes again that family support can benefit both asylum seekers and their host States, making it important to extend the definition of 'family members' for all asylum seekers and not just minors.

Furthermore, the Dublin Regulation should also allow Member States to prevent the transfer of vulnerable groups such as torture victims or those with health problems that may require specialised treatment. Determination of responsibility for the applications of children and other vulnerable people should follow a separate process that focuses on their best interests and particular needs.

ECRE calls on the Czech Presidency to:

- Ensure adequate provisions for vulnerable groups, including the prevention of transfers where they are likely to have a detrimental effect on the persons transferred.
- Support the proposal of the European Commission to expand unification for vulnerable groups with relatives in other EU Member States able to support them.
- Ensure an automatic suspensive right of appeal against the decision to transfer a person to another Dublin State.

Reception

With regard to amending the Reception Directive, ECRE generally welcomes the proposals of the Commission. Early access to the labour market during the reception phase is a prerequisite to

enhance the quality of life of asylum seekers, promote their self-sufficiency and their long-term integration into the host society or their re-integration upon return. The provision allowing access to employment for asylum seekers within 6 months of lodging their application would constitute a significant improvement. However, ECRE is concerned that Member States still can decide the conditions for granting access to the labour market for asylum seekers. This can, in practice, result in preventing asylum seekers from working during their asylum procedure can make them vulnerable to exploitation as cheap labour force.

Furthermore ECRE welcomes the enhanced safeguards for children and other vulnerable persons such as victims of torture and sexual violence, elderly, and disabled people. The initiatives of the European Commission to prohibit the detention of unaccompanied children and to ensure that their family members are traced are particularly important to ensure that children's best interests are fully respected in all circumstances. The adoption of the Commission's draft amendments would also improve the reception of other asylum seekers with special needs, by ensuring that these persons are promptly identified and provided with adequate care.

However the provisions on detention are of concern. ECRE strongly believes that as a general rule asylum seekers should not be detained. Although the proposal requires detention to be necessary and based on an individual assessment, it allows the deprivation of asylum seekers' liberty simply for the purpose of verifying their identity or while the authorities decide whether an individual can enter the territory. Furthermore the periodic review of detention is not necessarily automatic and no specific time scale is included in the proposal -detention is to be reviewed at 'reasonable intervals'.

ECRE calls on the Czech Presidency to:

- Support the proposal to decrease the waiting period for asylum seekers to work during their asylum procedure to six months.
- Support the European Commission's proposals, which improve the conditions and safeguards for children and other vulnerable persons during their asylum procedure.
- Initiate a principled discussion on detention provisions, which among others fully explores alternatives to detention.

Resettlement

The Czech Republic started a pilot resettlement programme in 2008 and resettled 23 refugees from Myanmar in October 2008. This represents a great step forward for the Czech Republic in becoming a resettlement country with a formal resettlement programme and ECRE encourages the Czech Presidency to encourage other Member States that currently do not have formal resettlement programmes to start pilot programmes as well. Towards the end of the Czech

Presidency the European Commission will present a proposal for a European Resettlement Programme. ECRE supports the idea of a European Resettlement Programme that should ultimately result in more resettlement places in Europe. It is also important for a European Resettlement Programme not to complicate already existing mechanisms. A European Resettlement Programme should acknowledge the role that NGOs play in the resettlement process. NGOs in countries of origin as well as in resettlement countries have extensive expertise in different aspects of resettlement programmes and are keen to support governments in starting or expanding their resettlement activities. Refugees themselves are an oft-neglected partner in resettlement procedures although they can make a great contribution to the resettlement process for instance in managing the expectations of refugees about to be / or recently resettled to Europe.

Following on from the JHA Council Conclusions of 27 November 2008 on the reception of Iraqi refugees, in which the aim to resettle around 10,000 Iraqi refugees was stated, the Czech Presidency should help ensure these words turn quickly into action. To date it is not clear if the approximately 3,000 Palestinians who are living in dire conditions in the border camps between Syria and Iraq will be also be resettled as a result of these Council Conclusions. A delegation of NGOs worldwide (including 3 ECRE member organisations) went on a mission to the border camps from 9 to 14 November 2008 and the report of this mission concluded once again that resettlement is the only option for the men, women and children living in those camps. The Czech Presidency should facilitate agreement amongst Member States on the resettlement to Europe of the Palestinians in the border camps as well as other Iraqi refugees in a particularly vulnerable situation such as those with medical needs, trauma or torture victims, members of religious minorities or women on their own with family responsibilities.

ECRE urges the Czech Presidency to:

- Support the development of the EC's forthcoming proposal for a European Resettlement Programme.
- Support the involvement of NGOs as well as refugees in a European Resettlement Programme that will result in additional resettlement places.
- Encourage the 27 Member States to take the necessary steps to urgently resettle the committed 10,000 vulnerable Iraqi and Palestinian refugees as soon as possible.

ECRE, December 2008

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