



EUROPEAN COUNCIL
ON REFUGEES AND EXILES
CONSEIL EUROPEEN
SUR LES REFUGIES
ET LES EXILES

Memorandum to the UK Presidency

Putting refugee protection at the heart of the Hague Programme

AD1/7/2005/EXT/RW

The European Union (EU)'s Hague Programme will take its first major steps forward in the area of refugee and asylum policy during the UK Presidency, with the Commission due to publish a number of proposals. The European Council on Refugees and Exiles (ECRE)¹ calls on the UK to take up that agenda in a way that will lead to the development of a coherent European asylum system that respects refugees' human rights and dignity. ECRE makes seven specific recommendations to the UK:

1. Ensure asylum seekers have access to a fair and efficient asylum procedure
2. Create mechanisms to ensure consistent, high quality asylum systems across the EU
3. Ensure returns are safe, dignified and sustainable
4. Include NGOs in evaluating and sharing best practice on refugee integration
5. Introduce a long term residence status for refugees
6. Ensure respect for the 1951 Refugee Convention and human rights when cooperating with third countries
7. Create an EU refugee resettlement programme

In short, the increasing focus on the external dimension of Europe's asylum and refugee policy must be balanced by efforts to ensure quality protection, and access to it, within Europe.

1. Ensure asylum seekers have access to a fair and efficient asylum procedure

As the Council prepares to consider some of the first elements of the next stage towards a common European asylum system, a keystone of the first stage of harmonisation has yet to be adopted. In March ECRE set out its comments on the draft asylum procedures directive², as politically agreed by the Council, and warned that provisions such as the 'super safe third country' concept, restrictions on legal advice and the absence of a right to remain pending the outcome of an appeal may result in refugees being returned to face persecution. The UK should ensure that the Council responds to the opinion of the European Parliament, once it is delivered. The Council should seize this last chance to make the necessary amendments so that

¹ ECRE represents 77 refugee assisting NGOs from 30 countries working towards humane and fair asylum and refugee policies and practice

² Comments from the European Council on Refugees and Exiles on the Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, as agreed by the Council on 19 November 2004, CO1/03/2005/ext/CN March 2003

the directive guarantees that Member States comply with their obligations under international refugee and human rights law.

2. Create mechanisms to ensure consistent, high quality asylum systems across the EU

Asylum in Europe will remain a dangerous lottery as long as Member States' approach to the determination of asylum claims differ so widely. Last year Austria recognised 94% of applicants from Russia (mostly Chechens) as in need of protection, Sweden 8.4% and Slovakia just 1.7%. Legislation setting minimum standards in qualification for international protection and in asylum procedures is only part of the solution. The Commission's forthcoming proposal on practical cooperation between Member States' asylum services presents a welcome opportunity to move more rapidly towards a more level playing field. During the UK's Presidency, ECRE will issue its own proposals in this area. Transparent, accountable, and effective arrangements are needed to collate and analyse country of origin information independently of asylum decision makers; to set minimum criteria for the recruitment and training of decision-makers; and to monitor states' practice by using, for example, teams of experts to audit asylum determination processes.

3. Ensure returns are safe, dignified and sustainable

The political imperative to be seen to enforce returns has led to an increasing and excessive use of detention and to the withdrawal of all means of subsistence as an inducement to return. The result is that asylum seekers whose applications have been rejected form a growing segment of vulnerable, poor and marginalised people in many EU countries. ECRE urges the Council to draw on its recently issued paper on the return of asylum seekers whose claims have been rejected³ to inform its deliberations on the Commission's forthcoming directive on returns.

The key to safe, dignified and sustainable returns is fair and efficient asylum decisions. When there are doubts about the reliability of asylum decisions, the system is undermined. Any EU standards on return must be in line with international human rights and refugee law, including UNHCR guidelines⁴. Particularly relevant are the Council of Europe's Committee of Ministers recently adopted guidelines on forced returns⁵ and the parliamentary assembly's guidelines on expulsions⁶. The use of detention to enforce returns must always be a last resort, and only when alternatives, such as reporting requirements, have been shown not to be viable.

The safety, dignity and sustainability of mandatory returns will be maximised and costs minimised when consent is given and the use of force is avoided. Individuals should be granted a reasonable period to make their own arrangements to leave before force is used or any sanctions applied. Consent can be obtained through positive inducements, such as financial or other assistance, an area in which the UK has some positive experience. ECRE recommends that the return of people whose protection status has ceased should be supported to enable them to return to their country of origin in safety and dignity. Cooperation with countries of origin in a spirit of solidarity can help to create the conditions for sustainable returns. Those who cannot be returned should be given a legal status and not be left in limbo.

³ *The Return of Asylum Seekers whose applications have been rejected in Europe*, ECRE, June 2005

⁴ EXCOM Conclusion 96 (LIV) 2003 on the return of persons found not to be in need of international protection

⁵ 20 Guidelines on Forced Return, CM2005 (40)

⁶ Recommendation 1542 (2002) Expulsion procedures in conformity with human rights and enforced with respect for safety and dignity, Parliamentary Assembly of the Council of Europe

4. Include NGOs in evaluating and sharing best practice on refugee integration

With the Commission soon to produce a communication on the exchange of best practice on integration, ECRE urges the Council to recognise in any new structures the important role that NGOs play in assisting refugees in the process of integration. ECRE's members are well placed to contribute to the assessment and collation of best practice in the integration of refugees.

ECRE will soon publish a paper supplementing its 2003 position on integration, which will focus on the need to develop welcoming societies. The challenge of facilitating the integration of refugees lies in reconciling the fact that they share many integration needs with other migrants and resident third country nationals, but that refugees are also likely to have special needs as a result of their forced migration, treatment in the asylum determination process and inability to return to their home country. In order to be effective, integration policies must address the special needs of refugees, through mainstream provision where possible, or specialised services when necessary.

5. Introduce a long term residence status for refugees

By the end of the year, the Commission is due to issue a proposal for legislation on long term residence for persons in need of protection, who were excluded from the directive on long term residents adopted in November 2003. The scope of the new instrument must include both refugees and beneficiaries of subsidiary protection, whose integration needs are identical, whatever their grounds for international protection. Long term residence status should guarantee access to the labour market and to education equal to nationals, enabling refugees to contribute to the host countries' economies and reducing welfare costs. Rights to freedom of movement must be included to allow refugees to relocate to a Member State where they have family or community links, or better language skills, accelerating their eventual integration into society.

6. Ensure respect for the 1951 Refugee Convention and human rights when cooperating with third countries

The Council's recent decision to cooperate with Libya on migration and the Commission's imminent adoption of a communication on EU regional protection programmes (RPPs) represent important milestones in the development of the external dimension of EU asylum and migration policy. The UK Presidency is responsible for fulfilling the Hague Programme undertakings to make such arrangements conditional on commitments by the third countries concerned to the 1951 Refugee Convention.

RPPs should assist countries in refugees' regions of origin to provide refugees with effective protection, and increase access to all the durable solutions: local integration, resettlement and voluntary repatriation. Any benchmarks used to assess standards of protection must include all existing international human rights standards. RPPs should be developed in a spirit of genuine burden and responsibility-sharing and should not result in responsibility shifting or the devolution of European responsibilities, by emphasising, for example, the strengthening of border controls or facilitation of returns over refugee protection. ECRE urges the Presidency to ensure that RPPs in no way impinge on Member States' own obligations to refoule refugees or other people in need of protection, either directly or indirectly.

Noting that Commission Vice President Franco Frattini has indicated that one of the first RPPs might be located in Eastern Europe, ECRE recalls its new Guidelines on the treatment of Chechens,⁷ which ask EU Member States to refrain from returning Chechen asylum seekers whose claims have been rejected to Azerbaijan, Belarus, Georgia, Moldova and Ukraine, at least until those states meet their obligations under the 1951 Refugee Convention. ECRE has also suggested that the EU should offer financial support to those states to ensure more effective protection and better conditions for refugees on their territories. ECRE calls on the EU to share Azerbaijan, Kazakhstan and Georgia's responsibility for protection by resettling Chechen refugees to Europe from those countries.

7. Create an EU refugee resettlement programme

With more than 6m refugees languishing in the limbo of protracted refugee situations ECRE welcomes the UK's EU Presidency seminar this week and its efforts to garner support for resettlement in Europe. In 2004 more than 100,000 places were made available for resettlement worldwide, less than 5,000 in Europe. Europe must take a fairer share. Resettlement creates the opportunity to provide protection to those most in need, providing access to Europe to those who would otherwise be unable to reach it; it presents an opportunity to develop coordinated, high-quality reception and integration programmes and it can facilitate public understanding of refugees' plight and the situations they flee. As a tangible demonstration of international solidarity and burden-sharing, it will be a crucial element in the European Union's Regional Protection Programmes, which will require countries outside of Europe to do more to protect and integrate refugees.

ECRE argues⁸ that an EU resettlement scheme lead to an increase in resettlement opportunities and, rather than being voluntary, should engage the participation of all EU Member States. In the longer term such a scheme should be expanded into a truly joint European resettlement programme with common selection criteria and which would commit European states to making a significant number of resettlement places available each year. A European resettlement programme should have mechanisms to make full use of the experience and expertise of non-governmental organisations (both in receiving countries and in regions of origin) to help ensure that the resettlement process remains credible, transparent and focused on the protection needs of refugees. If refugee populations are involved in resettlement planning expectations can be more effectively managed. It is crucial that resettled refugees enjoy a long term status in their new host state. Resettlement is considered internationally to be one of the durable solutions to refugee situations and it would be particularly unjust to deny a long term status to people who had been invited to Europe precisely because they had lived in insecurity for years

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⁷ *Guidelines on the Treatment of Chechen IDPs, Asylum Seekers and Refugees in Europe*, ECRE, June 2005

⁸ *Towards an EU resettlement programme*, ECRE, June 2005

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