The Way Forward
Europe's role in the global refugee protection system

Towards Fair and Efficient Asylum Systems in Europe

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Foreword

The European Council on Refugees and Exiles (ECRE) is a pan-European network of refugee-assisting non-governmental organisations, concerned with the needs of all individuals seeking refuge and protection within Europe. It promotes the protection and integration of refugees based on the values of human dignity, human rights and an ethic of solidarity. ECRE draws on the energy, ideas and commitment of an active membership and a strong secretariat. It strives to involve wider civil society, the political community and refugee communities in its work.

ECRE aims to ensure that its ideas, projects, research and policies are of the highest quality, legally accurate and representative of a wide range of knowledge, experience and best practice throughout Europe. ECRE encourages the widest possible active involvement of its member agencies.

The Way Forward

The development of this paper on fairer and more efficient asylum systems in Europe is part of the organisation's development of a series of proposals entitled **"The Way Forward - Europe's Role in the Global Refugee Protection System"**, designed to provide constructive recommendations on a number of topical refugee policy issues and contribute to positively influencing the European debate. The other proposals address the issues of developing European resettlement activities, making refugee protection effective in regions of origin, improving solutions for refugees through integration and the return of asylum seekers whose applications have been rejected.

Executive Summary

Although the number of asylum claims lodged in European countries has continuously dropped over the last few years, the political importance in Europe of how well or how badly a government is managing its national asylum system has not diminished. The current disparities between European asylum systems are the cause of many of the problems associated with asylum such as illegal transit/residence, onward movements, delay and associated lack of public confidence. EU Member States have increasingly recognised that they must co-operate on matters of asylum to better address the challenges they face. As a result a first set of binding laws establishing minimum standards were agreed between 1999 and 2004, and now the EU has set itself the goal of establishing a Common European Asylum System by 2010. But it cannot be said that states are yet seriously co-operating at the European level: recent years have seen their constant efforts to tighten their own national legislation and increasing efforts to shift responsibility for processing asylum claims either to each other or outside of the EU altogether.

ECRE and its member organisations share the desire of European governments for asylum systems that are efficient, manageable and capable of identifying those who qualify for international protection as well as those who do not. However, this must never be at the expense of asylum seekers' rights and correct decision-making. ECRE's experience on the ground shows that many of the current practices not only risk violating fundamental human rights but often create the need for lengthy and expensive appeal proceedings to rectify wrong decisions. Against this backdrop ECRE is making practical proposals for increased co-operation and burden sharing to improve asylum systems across Europe. ECRE is also putting forward a model asylum procedure that is efficient and workable, but also fair and upholds essential safeguards and fundamental principles of international refugee and human rights law.

The situation facing asylum seekers in Europe

Regrettably, it is still too often the case that state authorities deny asylum seekers access to asylum procedures, and sometimes to state territory altogether. For those individuals who are admitted many European states have established expedited or accelerated procedures that appear to be based not only on speed but on a "culture of disbelief" whereby most asylum seekers are presumed to be abusing the system. Such procedural developments have severely compromised the capacity of states to correctly assess whether an individual needs protection. Rather than the focus of the procedure being on identifying persons in need of protection, it has shifted towards techniques devised to screen out as many applications as possible. As a result, expedited asylum procedures appear to be increasingly adversarial in nature. Furthermore, these procedures are often characterised by a critical deficiency of legal and procedural safeguards necessary to comply with the principle of *non-refoulement*, the cornerstone of international protection obligations.

Practical Co-operation for better and more equal refugee protection across EU Member States

It is clear that pressures are periodically felt by different Member States regarding various aspects of an asylum procedure, including lack of reception capacity,

decision-making backlogs, staff shortages and facilities for vulnerable applicants. Flexible and practical co-operation measures for sharing resources and expertise could help address these challenges and the involvement of UNHCR, NGOs and other independent experts would contribute to the success of such measures. ECRE's suggested areas of co-operation are:

Staffing: Common mandatory qualifications would help ensure the recruitment of high quality decision-makers. States could usefully exchange best practice (including study visits) on recruitment and staffing issues such as the rotation of staff to avoid 'burn-out', compassion fatigue or secondary traumatisation.

Training: In order to help improve the quality of decision-making a common EU training programme should be developed covering elements such as interview technique, working with vulnerable and traumatised applicants, researching and assessing country of origin information, assessing credibility, international refugee and human rights law and drafting decisions. A centralised EU training body could co-ordinate this programme by arranging training courses, maintaining a database/website of training materials and overseeing an accreditation scheme.

Country of Origin Information (COI): The provision of relevant, reliable, accurate and transparent COI is crucial for a fair and efficient asylum determination process. States would benefit by more efficiently sharing existing COI and exploring the increased and more co-ordinated use of joint fact-finding missions, particularly those states which currently lack extensive COI resources. Common guidelines could be developed on the researching, collection and application of COI. Such initiatives could lead to the development of an independent EU Documentation Centre responsible for producing both generic country reports and employing a team of experts to respond to specific information requests from decision-makers which could be posted on a public website. The creation of Independent National Advisory Boards would be a useful interim measure to improve COI provision while common structures are developed.

Quality Assessment Mechanisms: Independent monitoring teams should be established and given access to randomly selected samples of files in order to assess the quality of state decision-making. Access should cover all COI and other materials used and allow one-to-one interviews with decision-makers. In this way failings or weaknesses in asylum systems could immediately be identified and remedial advice provided. Periodic public reports would ensure transparency and accountability.

Expert support teams: States may periodically experience backlogs or unexpected increases in asylum numbers. Expert support teams (consisting of decision-makers, interpreters and other experts) could be used to meet any resulting shortfall in the capacity of an affected state. States with greater capacity could provide staff to these expert teams alongside independent experts and representatives of UNHCR.

A European Union Support Office: In the medium and longer term it will be necessary to establish an independent EU office to co-ordinate these measures and facilitate a truly common and unified EU approach. An EU Office could assume responsibility for the co-ordination of expert support teams and quality assessment mechanisms, the supervision of project-led initiatives (including possibly the

management of the ERF), and related monitoring and evaluation functions. In the short term existing structures such as EURASIL and the Committee on Immigration and Asylum (CIA) could start the process of co-ordinating increased practical co-operation among Member States. These structures currently lack capacity, transparency and accountability and thus would need to be modified in order to fulfil this role.

A Common European Asylum System?

The single most fundamental objective of a Common European Asylum System (CEAS) must be to end the current asylum lottery and instead guarantee that every asylum applicant arriving in the EU has access to one fair and thorough asylum determination procedure. ECRE is putting forward some creative and pragmatic solutions to overcome these and other challenges.

Determining which state is responsible for processing a claim: The Dublin II Regulation provides that after consideration of any family links or whether a prior visa or residence permit exists, if it can be established that an asylum seeker has irregularly entered the border of a Member State, that country shall be responsible for examining the request for asylum. As a consequence either more asylum seekers are returned to Member States on the periphery of the EU or they simply choose not to lodge a formal asylum claim but instead travel on to another Member State. Thus the Regulation creates unequal burdens and works as a disincentive for states to give full access to fair asylum procedures or even to their territories. As well as placing individual asylum seekers at risk of *refoulement*, the Dublin system is inefficient and resource-intensive. ECRE recommends the abolition of existing arrangements under Dublin II and proposes an alternative system for allocating responsibility based on two criteria: 1) the Member State where the asylum seeker has a family member is responsible, provided he or she agrees with a transfer to that state; or 2) the Member State where the asylum request was first lodged is responsible, unless there are compelling humanitarian considerations to prevent this.

Burden and responsibility sharing: ECRE accepts that its proposed system for allocating state responsibility for hearing an asylum claim must contain mechanisms to share responsibility by supporting those Member States that receive disproportionately high numbers of asylum seekers. A well-resourced financial burden sharing instrument based on the real costs of hosting and processing asylum claims could compensate Member States receiving higher numbers as well as helping those with less developed asylum systems to catch up with more developed states. A well-resourced Integration Fund could promote the integration of refugees and a well-resourced Return Fund would help facilitate the efficient and sustainable return of those found not to be in need of international protection. Common structures could co-ordinate the despatch of expert support and quality monitoring teams to assist overburdened states, as well as concrete programmes for joint responses to large-scale humanitarian crises.

Free Movement: ECRE considers that a crucial, linked reform would be the adoption of EC legislation granting freedom of movement within the Union to all persons recognised as being in need of international protection. As a result of their escape from persecution, refugees, unlike other third-country nationals, have been forced to

migrate and have had very little choice about where they reside in Europe. There is a natural logic that refugees will integrate more easily into those countries where they have extended family members, social networks, good employment opportunities and cultural or linguistic ties. In a market-based economy as within the European Union, where the mobility and flexibility of labour is increasingly important, there is much to be said for giving persons granted refugee status freedom of choice as to where to reside.

Joint processing within the EU: One possible model for a future CEAS would involve a system of jointly processing asylum applications. ECRE opposes any system that involves the forced transfer of asylum seekers to centralised joint processing centres or the unnecessary and disproportionate use of detention. This would be expensive, impractical and risk violating fundamental rights. However, ECRE would support further exploration of a system of joint processing comprising a single EU determining authority with decentralised offices in each Member State provided it guaranteed full respect for asylum seekers' rights under international law. This could be compatible with ECRE's proposals for an alternative system of determining state responsibility, burden sharing and the granting of free movement. However, questions regarding the legal and financial basis for joint processing and the issue of democratic control and accountability must first be addressed.

Towards more fair and efficient asylum procedures in Europe

Whether asylum determination procedures are processed unilaterally by European states or as part of a common multilateral framework, ECRE considers that there are certain universal and fundamental principles, that would help ensure the provision of a procedure which is both fair and efficient.

Frontloading: Frontloading is the policy of providing asylum determination systems with the requisite resources and expertise to make accurate and properly considered decisions at the first instance stage of the procedure. While the increased investment of resources will facilitate quicker decision-making, frontloading is not about the acceleration of procedures for its own sake and requires the inclusion of all necessary safeguards from the start of the procedure. Better initial decision-making reduces the length and expense of the system as a whole by refining the issues to be dealt with at appeal and avoiding unnecessary appeals. As an incentive for states to cut delays ECRE recommends the granting of residence status to an asylum seeker who has been in the procedure for 15 months and, for reasons beyond his/her control, has not received a final decision on his/her asylum request.

Registration: In some European states it is all too common for applicants to be denied access to a procedure altogether or to be processed by border guards lacking an adequate knowledge of states' obligations under international refugee or human rights law. ECRE therefore recommends that all border applicants should be taken to a designated registration point for a formal screening interview to be conducted with the assistance of a qualified interpreter. The applicant must be provided with documentation at this stage and referred to the competent authority for processing. Border guards should not be responsible for status determination and substantive interviews should never be conducted at a border or transit zone. Border guards

should receive better training to help them identify would-be claimants as well as practical facilities such as the improved provision of interpreters.

Reception Conditions: ECRE is concerned about the increasing tendency of states to detain asylum seekers during the processing of their claim and believes that asylum seekers should only ever be detained, as a last resort, in exceptional cases and where non-custodial measures have been proven on individual grounds not to achieve the stated, lawful and legitimate purpose. Instead access should be given to open and well-resourced reception centres where information is available on how to obtain services including health care, education facilities and legal advice.

***Prioritising*:** ECRE believes that manifestly well-founded cases (including vulnerable or traumatised individuals) should be prioritised: this allows refugees to integrate as early as possible and keeps costs down. States should additionally be able to prioritise the rare cases that raise security concerns through specialised exclusion procedures. However, precisely because these cases raise complicated issues, there must be respect for all relevant safeguards and obligations under international law, including the absolute prohibition under Article 3 of the European Convention on Human Rights to return individuals to face torture or inhuman or degrading treatment.

Acceleration: The asylum procedure should not contain any acceleration mechanisms during the first instance stage of decision-making. If states choose to accelerate asylum procedures, this should be at the appeal stage, provided that the necessary legal safeguards are in place and the overall procedure is fair**.**

Essential safeguards: There are five minimum safeguards from which there should never be derogation (even in so-called accelerated procedures): access to free legal advice, access to UNHCR/NGOs, a qualified and impartial interpreter, a personal interview and a suspensive right of appeal.

***A Single Procedure*:** A single procedure with the same minimum guarantees, determining whether an applicant qualifies for protection under the 1951 Refugee Convention or for subsidiary protection on international human rights grounds, is the clearest and most efficient way of identifying those in need of international protection. These statuses should afford the same rights.

ECRE's Model Asylum Procedure

ECRE is proposing a seven-step model asylum procedure (see Annex 1) that respects the above principles and provides a fair and efficient alternative to the myriad and varied asylum procedures currently existing in Europe.

The development of this paper on fairer and more efficient asylum systems in Europe is part of the organisation's development of a series of proposals entitled ***"The Way Forward - Europe's Role in the Global Refugee Protection System"****, designed to provide constructive recommendations on a number of topical refugee policy issues and contribute to positively influencing the European debate. The other proposals address the issues of developing European resettlement activities, making refugee protection effective in regions of origin, improving solutions for refugees through integration and the return of asylum seekers whose applications have been rejected.*

Introduction

ECRE and its member organisations share the desire of governments that asylum systems be efficient, manageable and capable of identifying those who qualify for international protection as well as those who do not. However, this must never be at the expense of applicants' rights and correct decision-making. Many of the practices currently operated by European states not only risk violating fundamental human rights but often create the need for lengthy and expensive appeal proceedings to rectify erroneous initial decisions. Determining states therefore have a vested interest in ensuring that fairness is not sacrificed for speed and efficiency in asylum procedures. Although eradicating delays in the asylum process is an important and laudable feature of a fair and efficient asylum procedure, curtailing or eliminating necessary procedural and legal safeguards in fact only serves to undermine effective decision-making.

The development of fairer and more efficient asylum systems would also help to address public anxiety and misconceptions about the issue of asylum. The public debate has often dangerously confused the issue of asylum with that of irregular migration motivated by economic reasons. Governments have responded to media outcries about perceived 'abuse' of the system by introducing draconian measures in an effort to restore public trust in their ability to protect national labour markets, welfare systems and borders. These reactive measures have not only served to reinforce public misconceptions and the mood of crisis but resulting poor decision-making at first instance requiring rectification at appeal has in turn prolonged the length and cost of the system overall. This has further fuelled existing public anxieties about the issue of asylum and the scale of the perceived 'problem'. Overly restrictive measures may also cause some refugees to lose faith in the ability of asylum systems to guarantee a fair examination and lead them to reside and work illegally in European states rather than formally lodge a protection claim.

Asylum in Europe is at a transitional point. The first phase of harmonisation under the Amsterdam Treaty is almost concluded.[1] The second stage of harmonisation, which envisages the adoption of a Common European Asylum System by 2010, is now under way and some of the steps to achieve this are outlined in the Hague Programme.[2] At the same time, there has been a substantial enlargement of the European Union (EU) from 15 to 25 Member States. Now is therefore a crucial time to engage with the debate concerning the direction of asylum processing in Europe.

ECRE has taken this opportunity to develop its own model for an asylum procedure that is efficient and workable, but is also fair and upholds fundamental principles of international refugee and human rights law. ECRE believes that a procedure, which is based on high quality and principled initial decision-making is fairer and faster and therefore also more cost-effective than the current variety of procedures for different categories of applicants that have led to complicated legal and procedural 'jungles' in

[1] Except for the *Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status*, 14203/04, Asile 64, of 9 November 2004. This will be adopted following re-consultation with the European Parliament.
[2] The Hague Programme, *'Strengthening freedom, security and justice in the European Union'*, Annex 1 to the Presidency Conclusions, European Council, 4/5 November 2004.

many European states. In preparing its model, ECRE has looked at best practices in different European and non-European states and drawn from the extensive experience of its member organisations who work on behalf of refugees and asylum seekers across Europe. This paper builds on previous ECRE position papers.[3]

Section 1 of the paper sets out some of the failings of existing European asylum systems and the situation faced by many asylum seekers arriving in Europe. Section 2 considers practical co-operation measures among Member States that could help address the current inequality of protection within the European Union (EU), and create the necessary conditions for the construction of a Common European Asylum System, future perspectives concerning which are explored in Section 3. Section 4 addresses the necessary components of a fair and efficient asylum procedure and expands on the basic principles informing ECRE's proposed model procedure, which is then outlined chronologically in section 5 (a diagram of which is provided in Annex 1).

Many of the proposals put forward in this paper would be applicable in all European countries, but certain sections are predominantly relevant to the Member States of the EU. In particular, sections 2 and 3 consider issues around the development of a Common European Asylum System, and can stand independently from the rest of the paper for those readers who prefer to focus solely on ECRE's proposed model procedure and associated recommendations outlined in sections 4 and 5. It is envisaged that the model procedure would be primarily for adoption by European States at the national level but could also potentially form the basis of a future Common European Asylum System at EU level. Finally, this paper only concerns the treatment of individuals spontaneously arriving in Europe to claim asylum. Issues surrounding the resettlement of refugees are comprehensively covered in the ECRE Way Forward paper 'Towards a European Resettlement Programme'.[4]

[3] ECRE *Guidelines on fair and efficient procedures for determining refugee status,* September 1999; ECRE *Position on the detention of asylum seekers,* April 1996; ECRE *Comments on the Proposal for a Council Regulation establishing criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third national,* December 2001.

[4] See ECRE, *The Way Forward. Europe's role in the global refugee protection system. Towards a European Resettlement Programme,* April 2005.

1 The Situation Facing Asylum Seekers in Europe

1.1 Varying protection standards and lack of harmonisation across Europe

Recent years have seen increasing and concerted efforts to shift responsibility for processing asylum claims outside of the EU. This current preoccupation with deflecting those in need of protection is at odds with Europe's past and with its vision of itself as a protector of human rights and humanitarian principles. Within Europe patterns of 'burden' shifting are continuously at play between EU Member States as well as other European countries. Fluctuations in numbers of asylum seekers in different European countries are partly due to a continuing refusal to seriously co-operate at the European level and the constant efforts of EU Member States to tighten their own national legislation in order to deflect asylum seekers away from their territories. This attitude of non-co-operation among states also precludes them from finding common solutions to the challenges they all face.

This pattern of competitive downgrading by EU Member States has continued in spite of the harmonisation objectives envisaged by the Tampere process.[5] In negotiating agreement of Directives in the field of asylum[6] Member States have sought to include restrictive elements of national practice or to set standards at such a low level so as to avoid necessitating any upward revision on their part. This is particularly evident in relation to the proposal for minimum standards on asylum procedures[7] that rather than reducing disparities among Member States' asylum systems, in fact amounts to little more than a catalogue of national worst practices. Thus asylum law and practice continue to vary considerably from one Member State to another.

In addition to a lack of harmonised legislation there are also huge differences and varying capacities among Member States' asylum systems. Even before the accession of ten new Member States (with historically less developed asylum systems) it was evident that protection standards varied significantly between Member States across the EU. National systems differ in almost every respect from one another – in relation to the provision of legal advice, the composition of first instance decision-making bodies, appeal structures, the recruitment and training of personnel, the collection and assessment of country of origin information, concepts or interpretations of instruments

[5] For the Tampere objectives see European Commission, 'Towards common standards on asylum procedures', Working Document (SEC 1999) 271 Final. See the Commission's assessment of the Tampere programme, where it states *"the original ambition was limited by institutional constraints, and sometimes also by a lack of sufficient political consensus"*, Communication Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations, COM (2004) 4002 Final, 2 June 2004, page 5. See also ECRE's assessment, ECRE *Broken Promises – Forgotten Principles. An ECRE Evaluation of the Development of EU Minimum Standards for Refugee Protection, Tampere 1999 – Brussels 2004*, Brussels, 20 June 2004.

[6] *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, 27 January 2003 ('Reception Conditions Directive'); *Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need intrnational protection and the content of the protection provided*, 29 April 2004 ('the Qualification Directive'); and *Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status*, 14203/04, Asile 64, of 9 November 2004 ('the Asylum Procedures Directive').

[7] *Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status*, 14203/04, Asile 64, of 9 November 2004.

applied, and consequently recognition rates. This is aptly illustrated by the fact that in 2004 Austria recognised 94% of applicants from the Russian Federation (mostly Chechens) as in need of protection, Sweden 8.4% and Slovakia just 1.7%.[8]

It was widely anticipated that a significant change in asylum flows would be witnessed following the accession of ten new Member States combined with the operation of the Dublin II[9] and Eurodac[10] Regulations. Fingerprinting and registration under Eurodac mean that asylum-seekers can be more easily identified if they try to move from one EU country to another. UNHCR and NGOs warned that greater numbers of asylum seekers would be transferred to have their claims processed in Member States at the EU's external borders, and that such transfers under Dublin II could overwhelm less well-equipped asylum systems or alternatively create pressure for irregular onward movement within the EU and for individuals to go 'underground' rather than lodge formal protection claims in countries perceived as not providing a fair asylum determination procedure.

Comprehensive statistics are not yet available on the application of the Dublin II Regulation[11] and it is therefore too early to comprehensively assess its impact or confirm whether increasing numbers of asylum applicants have been transferred to Member States on the EU's external borders as anticipated. However, as warned by UNHCR,[12] any overloading of affected asylum systems may tempt states to adopt policies seeking to restrict access to their territories or to an asylum procedure. This is likely to jeopardise respect for basic protection standards and compromise the EU harmonisation process as a whole. The goal of achieving both a higher standard and greater equality of protection across the EU is therefore vital in order to prevent *refoulement* and continuing cycles of irregular movement.

Recommendation 1
EU Member States need to co-operate more extensively in order to increase capacity and achieve greater harmonisation of their asylum systems.

1.2 Backlogs and deterrence

It is not unusual in the current European context for asylum procedures to take years. There are a number of factors that have contributed to this. Firstly, in many countries the determining authorities have lacked the capacity to deal with large numbers of asylum seekers fleeing human rights crises since the late 1980s. As a result, backlogs have built up at the first instance stage of the procedure and subsequently at appeal level. Secondly, states have used stalling techniques as a deliberate instrument of

[8] *2004 Global Refugee Trends (Table 8)*, UNHCR Geneva 29 June 2005 http://www.unhcr.org/statistics.
[9] *Council Regulation 343/2003 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*, 16 February 2003 ('the Dublin II Regulation').
[10] *Council Regulation 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention*, 11 December 2000 ('Eurodac').
[11] However, Article 28 of the Regulation requires the Commission to report to the European Parliament and the Commission on the application of the Regulation by March 2006.
[12] UNHCR (2002) '*Observations on the European Commission's Proposal for a Council Regulation 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 COM (2002) 447, Final'*. Brussels, February 2002.

deterrence, fearing that a swift granting of refugee status may attract more refugees and their family members. Some states have waited for the situation in a country of origin to change before carrying out a substantive examination of the claim.[13]

Other cynical deterrence measures include the practice of states not registering asylum claims immediately thus denying claimants reception facilities,[14] or giving minimal or no reception facilities during year long asylum procedures thereby marginalising asylum applicants from wider society and further blurring the distinction between asylum and irregular migration. These practices intentionally or unintentionally dehumanise asylum seekers and have become, in a circular way, a justification for the introduction of yet harsher control measures. This inaction also denies torture survivors seeking asylum the 'necessary treatment' to which they are entitled under the Reception Conditions Directive.[15]

Recommendation 2
States should allocate sufficient resources to their asylum systems in order to reduce existing backlogs and should desist from stalling techniques as a deliberate instrument of deterrence.

Recommendation 3
All asylum applications should be registered immediately and adequate reception facilities provided for the full duration of the asylum determination process, which should at the very least comply with minimum standards under the EU Reception Conditions Directive.

1.3 Special and accelerated procedures

Under pressure to relieve public anxiety and address the phenomenon of lengthy asylum procedures, many governments' responses have been to go to the other extreme and introduce a range of special procedures involving excessive acceleration mechanisms[16] or aimed at denying access to status determination altogether. The justification for such measures has been to prevent abuse and reduce backlogs but too often such measures fail to provide protection to those critically in need.

Examples are special border procedures, accelerated procedures for particular categories of asylum seekers and special procedures for subsequent applications. Often such measures are justified by states on the basis of UNHCR's EXCOM

[13] See *ECRE Survey on the Treatment of Iraqi Asylum Seekers*, April 2004 which indicated that the claims of many Iraqi asylum seekers in the UK were awaiting assessment at the time of the US interventions.
[14] For example, in 2002 Greece started a policy of stamping asylum application forms with a later date for the starting of the examination procedure leaving asylum seekers in a legal limbo, protected from *refoulement* but denied access to social rights. See *'The New 'Dubliners': Implementation of European Council Regulation 343/2003 (Dublin-II) by the Greek Authorities'*, Panayiotis N. Papadimitriou and Ioannis F. Papageorgiou, Journal of Refugee Studies 2005 18: pp 299-318.
[15] Article 20, *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*.
[16] The introduction of a 48 hour accelerated procedure in the Netherlands has attracted particular controversy. See Human Rights Watch, *'Fleeting Refuge: The Triumph of Efficiency over Protection in Dutch Asylum Policy'*, April 2003.

Conclusion No. 30,[17] which acknowledges that special provisions may be used to expeditiously process applications that are "*so obviously without foundation as not to merit a full examination at every level of the procedure*". However, states have extended the range of criteria under which cases can be labeled as 'manifestly unfounded' and thus subject to accelerated procedures that often lack essential safeguards. ECRE notes with regret that many of these practices have now been codified in the draft Asylum Procedures Directive in relation to which ECRE has already voiced its concerns.[18] Examples of applications considered to be unfounded and eligible for accelerated procedures under the draft Asylum Procedures Directive include those where the applicant:

- has not produced sufficient information to establish identity (Article 23 (4) (f));
- has not lodged an asylum application immediately on arrival (Article 23 (4) (i));
- is deemed to have given insufficient or contradictory information about the claim (Article 23 (4) (g));
- is deemed to have traveled through a 'safe third country' or is designated to originate from a 'safe country of origin' whose nationals are considered generally not to be at risk of persecution (Article 23 (4) (c)).

It is of major concern that such procedures are increasingly becoming the rule rather than the exception.

Recommendation 4
All asylum claims should be individually and thoroughly assessed at first instance under a single procedure which is the same for all applicants rather than under special border procedures or accelerated procedures for certain categories of applicant.

1.4 Denial of access to the procedure

Aside from the use of special procedures many European countries, including Member States of the EU, often deny asylum seekers access to a procedure altogether. Both UNHCR and Amnesty International have documented allegations concerning the mass expulsion of hundreds of persons to Libya, including asylum seekers, from the Italian island of Lampedusa.[19] In April 2005 the European Parliament adopted a resolution calling on Italy to refrain from collective expulsions of asylum seekers and irregular migrants from the island of Lampedusa and to uphold the principle of *non-refoulement.*[20] In many countries it is too often the case that asylum seekers are simply rejected at the border, without being provided an opportunity to even lodge an asylum application, by border guards untrained in refugee and human rights standards. In some cases they are detained for lengthy periods while their removal is pending.

[17] UNHCR Executive Committee Conclusion No. 30 (XXXIV) of 1983, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum.*
[18] ECRE, *Comments on the amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status*, March 2005.
[19] *UNHCR deeply concerned over Lampedusa deportations*, Geneva, 18 March 2005; Amnesty International, *'Italy: Lampedusa, the island of Europe's forgotten promises'* (7 June 2005).
[20] European Parliament Resolution on the situation in Lampedusa, B6-0252/2005, 14 April 2005.

Recommendation 5
The right to seek asylum must be fully respected and all asylum seekers must have access to a fair determination procedure.

1.5 Absence of procedural safeguards

Regrettably, over the last decade, many European states have established expedited or accelerated procedures that appear to be based not only on speed but on a "culture of disbelief" whereby most asylum seekers are presumed to be abusing the system. Such procedural developments have severely compromised the capacity of states to correctly assess whether an individual needs protection. Rather than the focus of the procedure being on identifying persons in need of protection, it has shifted towards techniques devised to screen out as many applications as possible.[21] As a result, expedited asylum procedures appear to be increasingly adversarial in nature. Furthermore, these procedures are often characterised by a critical deficiency of legal and procedural safeguards necessary to comply with the principle of *non-refoulement*, the cornerstone of international protection obligations.[22]

In the course of such accelerated procedures, asylum applicants may not be informed, in a language that they understand, about the asylum procedure nor about their rights and duties. They may often be denied access to any independent legal advice. In this state of ignorance, they may be interviewed on or shortly after arrival without having even had time to recover from their journey. The expedited decision-making process does not allow for adequate preparation of the asylum application as time-limits are very short, and the competent authorities have inadequate time to thoroughly investigate the application and obtain necessary relevant evidence. The interview may be brief, focus on the wrong issues and be accompanied by poor interpretation. Through shame and humiliation, torture survivors may be inhibited from disclosing their ill-treatment at the first prompting. The right to appeal may be rendered illusory if the applicant is not permitted to remain in the country in order to lodge and prepare the appeal and await the outcome of the appeal. Such procedures clearly do not conform to the general concepts of law recognised in democratic societies, such as the right to natural justice, but they are unfortunately all too common in Europe today.

Recommendation 6
States should work to end the current 'culture of disbelief' endemic in asylum systems and should instead focus on developing quality determination processes capable of accurately identifying individuals who qualify for protection. This necessarily requires respect for all relevant rights and safeguards.

[21] Concepts such as 'safe countries of origin', 'safe third countries', 'internal protection alternative', restrictive interpretations of the refugee definition and expansive definitions of 'manifestly unfounded' have all been developed with the aim of screening out applications.
[22] See Council of Europe, Parliamentary Assembly Recommendation 1440 (2000), Restrictions on asylum in the member states of the Council of Europe and the European Union , recommendation 6 v) b) "to refrain from applying and legitimising regulations and practices which might hinder the fair implementation of the right to asylum".

2 Practical Co-Operation for Better and More Equal Refugee Protection across EU Member States

2.1 The current EU context

The Hague Programme[23] envisages 'practical and collaborative co-operation' among Member States as an important step in the process of achieving a Common European Asylum System. The Treaty establishing a Constitution for Europe, although yet to be ratified,[24] also provides concrete guidance for a future asylum policy.[25] With the first phase of legislative activity identified at Tampere close to completion,[26] attention has turned to the need to work towards harmonisation among Member States, not only of laws and regulations, but also in practice.[27]

Although the Hague Programme calls for the establishment of a Common European Asylum System by 2010, it does not clearly outline what form the proposed common system should take. It is not yet determined whether this could involve common but parallel national asylum systems or alternatively a single unified system in the form of joint processing within the European Union. Member States, institutions and other observers have differing views on the legal, institutional and practical parameters of a common system but an integral question to this debate is to what extent asylum determination functions could or should be centralised?

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[23] The Hague Programme, *'Strengthening freedom, security and justice in the European Union'*, Annex 1 to the Presidency Conclusions, European Council, 4/5 November 2004.

[24] The Treaty establishing a Constitution for Europe, signed in Rome on 29 October 2004, although not binding until ratified by all Member States. The future of the Constitution has however been placed in doubt following the 'no' votes in the French and Dutch referendums.

[25] The Treaty contains some provisions on responsibility and solidarity mechanisms in the field of asylum:

- Article III-257 (2) stipulates that the Union shall frame a common policy on asylum, based on solidarity between Member States, which is fair towards third country nationals.
- Article III-266 (1) and (2) (e) stipulates that European laws or framework laws shall lay down measures for criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection.
- Article III-268 stipulates that the policies set out in Section II (on border checks, asylum and immigration) shall be governed by the principle of solidarity and the fair sharing of responsibility, including financial implications, between the Member States. Whenever necessary, acts of the Union adopted under Section II shall contain appropriate measures to give effect to this principle.

[26] Except for the *Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status*, 14203/04, Asile 64, of 9 November 2004. This will be adopted following re-consultation with the European Parliament.

[27] The Hague Programme stresses that *"the second phase of development of a common policy in the field of asylum, migration, and borders … should be based on solidarity and fair sharing of responsibility including its financial implications and closer practical cooperation between Member States: technical assistance, training and exchange of information, monitoring of the timely and adequate implementation and application of instruments as well as further harmonisation of legislation"* . It should also be *"based on a common analysis of migratory phenomena in all their aspects"* and key importance is attached to *"the collection, provision, exchange and efficient use of up-to-date information and data on all relevant migratory developments"*.

The Hague Programme refers to the establishment of 'appropriate structures'[28] which following the development of a common asylum procedure and further evaluation will eventually develop into a 'European support office' for all forms of cooperation between Member States relating to the Common European Asylum System. Leading up to 2010 it stresses the urgent need for Member states to maintain adequate asylum systems and reception facilities in the run-up to the establishment of a common asylum system.

2.2 Objectives of increased practical co-operation

In recent years it has become increasingly apparent that solutions to many of the problems associated with asylum procedures cannot be achieved unilaterally. Greater consistency in practice (to a sufficiently high standard) among Member States, particularly in relation to decisions on particular groups, would help reduce the problem of secondary movement within the European Union. It is clear that pressures are periodically felt by different Member States in regard to various aspects of an asylum procedure, including lack of reception capacity, decision-making backlogs, staff shortages, and facilities for vulnerable applicants.

In order to identify where support is required it is vital to properly assess current disparities and failings or lack of capacity in certain Member States. This will necessitate the provision of more timely, accurate and comprehensive asylum statistics which are currently lacking at the EU level,[29] for example on numbers of applications received, recognition rates (both at first instance and appeal) by nationality, the duration of procedures and other relevant aspects. Regular reports should be published which highlight variations between Member States.

Flexible and practical co-operation measures for sharing resources and expertise could help address disparities in capacity and protection standards. The following are suggested areas of co-operation.

2.3 Staffing

At present the qualifications, experience and competences of officials in national asylum systems vary hugely from one state to another. In some countries a university degree is required whereas in others a school leaving certificate is considered adequate. Some states face difficulties in recruitment because the work can be

[28] The Hague Programme suggests that these structures will assist Member States *"in achieving a single procedure for the assessment of applications for international protection, and in jointly compiling, assessing and applying information on countries of origin, as as well as in addressing particular pressures on the asylum systems and reception capacities resulting, inter alia, from their geographical location"*.

[29] In April 2003 the European Commission recognised the need to improve the exchange of information and the quality of statistical collection on asylum of Member States. It presented an action plan to develop and improve EU statistics and their analysis in the field of asylum and immigration and to launch a discussion on principles for future legislation to underpin statistical work. However no proposals have since been adopted by the Council although the Commission has now put forward its proposal for a framework regulation on statistics which sets out a number of areas for which Member States will be obliged to provide data to the Commission. See European Commission *Proposal for a Regulation of the European Parliament and of the Council on Community statistics on migration and international protection,* COM (2005) 375.

demanding and stressful while at the same time sometimes perceived as lacking in prestige. Furthermore, limited resources may restrict salary levels and thus deter potential high quality candidates.

ECRE considers that states might benefit from exchanging experiences and best practices in relation to recruitment. This might facilitate the identification of personnel standards necessary to facilitate better quality decision-making and implementation of EU standards,[30] and help ensure that states fully respect their obligations under international refugee and human rights law. In addition to developing mandatory minimum qualifications/experience in the recruitment of officials, states could also consider introducing psychological/personality tests for prospective candidates to avoid the recruitment of individuals with racist, xenophobic or other inappropriate views.

Other personnel issues that could be considered might include allocation of resources and workload distribution, working environment and the structuring of teams.[31] This might involve the rotation of staff to avoid caseworkers becoming fatigued or 'case hardened' or suffering symptoms of secondary traumatisation as a result of the information they receive which often manifest themselves as 'burn-out' or 'compassion fatigue'. These phenomena are widely recognised by those working in the field with refugees but are only just emerging as issues within refugee status determination procedures in Europe and North America.[32] This process could also involve study visits or exchange programmes to enable managers to look at the experiences of other states. This might be particularly useful between states where wide variations in recognition rates of similar cases have been identified.

Recommendation 7
Common EU mandatory minimum qualifications should be introduced for all officials involved in the asylum determination process, and states should exchange best practice (including study visits) on recruitment and staffing issues.

Recommendation 8
Common EU guidelines should be developed concerning the rotation of staff to avoid 'burn-out', compassion fatigue or symptoms of secondary traumatisation.

2.4 Training

As with staffing issues, there are wide variations in the provision of training between states. Some asylum bodies provide full induction and then follow-up training

[30] The draft Asylum Procedures Directive contains some provisions on the standard for competences of staff and cultural and gender sensitivities:
Article 7 stipulates: *the personnel examining application and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law;*
Article 11 (a) stipulates : *[The Member states shall] ensure that the person who conducts the interview is sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant's cultural origin or vulnerability, insofar as it is possible to do so;*
Article 11 (b) stipulates: *[The Member States shall] select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview*.

[31] These issues have recently been addressed by UNHCR and the UK Home Office in connection with the collaborative 'Quality Initiative' project. This is further discussed in section 2.6 below.

[32] UNHCR QI Project, Key Observations and Recommendations March 2004 – January 2005.

whereas others provide no specialist training whatsoever. In some countries immigration officials, including decision-makers, lack even the most rudimentary knowledge of obligations under international refugee and human rights law.

There are certain common skills and knowledge requirements that are applicable across all Member States. ECRE therefore supports the development of a common training manual or elements of a common training programme. Such elements might include:

- interview technique (particularly cognitive interviewing including for torture survivors, and cultural, age and gender awareness)
- working with interpreters
- working with vulnerable (including unaccompanied minors/separated children) and traumatised applicants (including those suffering signs and symptoms indicating evidence of torture, physical and psychological abuse – including sexual violence)[33]
- researching and assessing country of origin information
- assessing credibility
- international refugee and human rights law
- drafting decisions.

These elements could also be covered in dedicated training courses, which could be provided to newly recruited asylum staff along with refresher training for more experienced staff. An accreditation scheme could be introduced under which officials would be awarded continuing professional development (CPD) points for attending training courses, and would be required to accumulate a minimum number of CPD points per annum. Thus, the training necessary to help ensure the provision of high quality decision-making would be both mandatory and continuous. A centralised EU training body/resource could be developed to co-ordinate the provision of training courses and the development of a training manual. Such a body would need to be independently and transparently managed and to draw on input from expert organisations including UNHCR[34] and NGOs working in the refugee field. Translation and interpretation resources would be needed to facilitate this initiative, and any training manuals would necessarily have to be translated into all languages of the European Union.

Joint training for interpreters could also be established, including provision of an accreditation scheme to ensure interpretation of a sufficiently high standard. In addition specialised training could be developed for members of the judiciary or other second tier review bodies. This would be particularly useful in countries where second instance appeals are conducted before civil courts, which do not necessarily have specialist expertise in relevant asylum and human rights law. In this regard, it would be useful to consult with and involve national associations of judges or other similar

[33] See Istanbul Protocol, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Office of the High Commissioner for Human Rights, New York and Geneva, 2001.

[34] This would be consistent with UNHCR's supervisory role under Article 35 of the 1951 Geneva Convention. In particular the capacity building role which UNHCR has identified as part of its responsibility under this role. See *General overview of the functions of the office of the United Nations High Commissioner for Refugees*, Geneva: UNHCR 2002.

judicial bodies in developing training programmes. Consideration could be given to the benefits of the joint training of decision-makers (first instance officials and judges) and legal representatives (lawyers, advice clinics, NGOs, social workers etc) in terms of moderating the adversarial nature of the process by reducing 'sectarianism' and solely negative perceptions of the 'other side'. Similarly, the advantages of trans-national training activities could be explored.

As part of the process of improving standards, common EU guidelines should be developed to assist decision-makers and promote consistency, fairness and transparency in certain types of complex case such as those involving gender-related persecution, civil war, torture survivors and children. Guidelines on gender-related persecution could be modelled on those produced by UNHCR[35] and cover considerations caseworkers should take into account in relation to gender when assessing claims, including gender persecution and failure of state protection, as well as procedural issues such as the need for female interviewers and interpreters.

When developing training initiatives it is important that sufficient account is taken of existing training expertise in order to avoid the unnecessary duplication of resources. This would be far more efficient and cost-effective than seeking to develop exclusively new materials and resources at the EU level. An immediate challenge is to make existing resources more accessible through improved dissemination and greater use of translation. UNHCR has developed a wide range of training materials and guidelines relating to refugee status determination, notably the UNHCR Handbook.[36] NGOs have also developed valuable expertise in this area, and already provide national[37] and international training courses.[38] ECRE recommends that a website/database should immediately be set up to provide details of current European training activities/courses and links to common as well as national training manuals/materials. This should be established on a permanent basis but would also serve as a highly useful interim measure to identify materials and resources to be used in developing a more formal structure. It would provide a useful resource to practitioners in the immediate term.

Recommendation 9
A common website/database should be established to provide details of current European training activities/courses and links to common as well as national training manuals/materials.

Recommendation 10
A common training programme and manual should be developed for staff involved in asylum determination and could include elements such as interview

[35] UNHCR *Guidelines on International Protection No.1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, 2002.
[36] UNHCR (1992): *Handbook on procedures and criteria for determining refugee status* (1979). UNHCR has also developed specific guidelines on various aspects of refugee status determination and compiled other resources such as the *UNHCR Tool Boxes on EU Asylum Matters*. See www.unhcr.org.
[37] For example the COI Network & Training, a consortium of NGOs led by the ACCORD Centre in Vienna (see section 2.5 below).
[38] For example ECRE coordinates the provision of the bi-annual ELENA International Training Courses on Refugee and Asylum law. ELENA is the European Legal Network on Asylum, established in 1985 and covering asylum practitioners in 25 European countries.

technique, working with interpreters, working with vulnerable and traumatised applicants, researching and assessing country of origin information, assessing credibility, international refugee and human rights law and drafting decisions. In developing this programme sufficient account should be taken of the existing expertise and resources of UNHCR and NGOs in the field.

Recommendation 11
Training courses providing professional development should be delivered on a continuous basis covering elements of the common training programme and a common accreditation scheme should be introduced to ensure that all asylum staff have the requisite skills and knowledge.

Recommendation 12
A centralised EU training body should be set up to co-ordinate the implementation of the common training programme. It could also oversee the training of interpreters and members of second tier review bodies.

Recommendation 13
Common EU guidelines should be prepared to assist decision-makers and promote consistency, fairness and transparency in certain types of complex case such as those involving gender-related persecution, civil war, torture survivors and children.

2.5 Country of Origin Information

The provision of relevant, reliable, accurate, up to date and transparent country of origin information (COI) is a crucial component of a fair and efficient asylum determination process. Indeed, COI is the only objective evidence available in all asylum cases, and is therefore critical for refugee status determination. It is therefore all the more concerning that current practice in relation to the collection and application of COI varies so widely among Member States. In some Member States there are no or very limited structures to facilitate the provision of COI. In other states such as France this information is not made publicly available, at least in relation to information used at the first instance decision-making stage. In countries which do make information publicly available there can be big variations as to its quality and impartiality, and whether the process is independently managed or exclusively state-controlled.

ECRE considers that there could be many advantages in common provisions for the gathering, research and dissemination of COI. Not only could additional resources be made available to the national determining authorities of all states, thereby cutting costs for the individual states, but this could also contribute to the adjustment/approximation of COI used to determine refugee status thereby again helping to fight the current 'asylum lottery' faced by asylum seekers.

As a starting point Member States could consider the following initiatives:

- the development of common guidelines on the researching, collection and application of COI (e.g. to avoid bias/inaccuracy by ensuring the use of up to date, multiple and attributable sources etc)

- the increased and more co-ordinated use of joint fact-finding missions
- improved methods for approving the accuracy and presentation of COI
- the provision of greater access to and sharing of existing national COI (among both decision-makers and practitioners).

Such initiatives could lead to the development of an independent EU Documentation Centre for the provision of COI. The precise extent of its remit would need to be determined but could include the production of generic country reports and the establishment of a team of experts to respond to specific information requests from decision-makers. Both generic reports and information resulting from individual requests could be posted on a public database/website. Consideration could also be given to establishing a directory of independent experts across Europe with specialist knowledge of particular countries, and this could also be included in the database/website.

It would be essential that any such centre be sufficiently resourced to carry out its work, operate in a transparent manner and that there be democratic control over its functioning. As well as facilitating better uniformity of decision-making across the EU an independent centre would be more objective and less inclined to take national policy considerations into account in its country assessments. The relevant determining authority would assess the asylum application on the basis of the country information provided by the centre so there would remain a separation between the collection and the application of COI. The quality of the country information and the manner in which it is applied by the determining authority would need to be subject to judicial scrutiny. Thus, there would be sufficient incentive to ensure the maintenance of high quality reports. Sufficient resources would have to be allocated for the translation of documents, as at present one major obstacle to the proper provision of country of origin information is the lack of reports in languages other than English.

However, prior to the establishment of a centre interim measures are urgently required in order to address current shortfalls in the provision of COI at the national level. One device to help achieve this would be the timely creation of independent national advisory boards on COI. Members could consist of independent experts/academics and representatives from UNHCR and NGOs. Such boards could advise on the way in which country reports should be compiled and monitor the quality of COI.[39] Projects could also be established whereby independent experts be given access to a sample of status determinations in order to monitor and assess the quality of the COI used by decision-makers.[40]

Further training could then be initiated where structures had been found to be inadequate. Training on COI should be provided to both decision-makers and practitioners. This could be project-led training provided by UNHCR, NGOs or other independent experts. One possible model for such training has already been developed under a European Refugee Fund (ERF) co-funded proposal involving a consortium of

[39] An illustration of this type of model is the recently established UK Advisory Panel on Country of Origin Information. This consists of 70% academics and representatives from UNHCR, IOM, British Refugee Council, and other NGOs.

[40] A model for this already exists in the form of the Common COI Standards Initiative pilot project, financed and supported by UNHCR and involving the Hungarian Helsinki Committee (Hungary), the Helsinki Foundation for Human Rights (Poland), CNRR (Romania) and SOZE (Czech Republic).

NGOs led by the ACCORD centre in Vienna, COI Network & Training, and could form the basis for future initiatives. This project has produced a manual[41] containing comprehensive guidelines on the application of COI and trainer instructions, which has now been translated into French, English and German. A follow-up project has facilitated training courses for practitioners and decision-makers in different European countries, most recently in Italy where previously there had been an identified gap in the provision of COI.

Recommendation 14
States should start sharing and providing greater access to existing national country of origin information (among decision-makers and practitioners) thereby cutting the cost to individual states and leading to greater approximation of country of origin information used.

Recommendation 15
States should develop common guidelines on the researching, collection and application of COI, improve methods for approving the accuracy and presentation of COI, and explore the increased and more co-ordinated use of joint fact-finding missions.

Recommendation 16
An EU Documentation Centre should be established to oversee the common provision of COI. In addition to producing generic country reports it should also employ a team of experts to respond to specific information requests from decision makers. All information should be provided on a public website/database. A directory of independent country experts should also be established, either by the Documentation Centre and/or as an interim measure.

Recommendation 17
Independent National Advisory Boards comprising independent experts/academics and representatives from UNHCR and NGOs should be set up as an interim measure to improve COI provision while common structures are established.

2.6 Quality assessment mechanisms

It has already been noted that there are currently huge differences in the quality and capacity of asylum determination systems across the European Union, and this section of the paper outlines some proposed co-operation measures which could help to address these problems. However, for these measures to be effective and for asylum systems to be truly fair and efficient, it is essential that they are subjected to regular, independent and transparent review.

ECRE would therefore support the establishment of quality assessment mechanisms - monitoring teams to assess asylum determination procedures in different Member

[41] COI Network & Training, '*Researching Country of Origin Information – A Training Manual*' (September 2004).

States.[42] Quality assessments teams would need to be independent and have a clearly defined reporting role. UNHCR should play a central role in such initiatives, which would be in accordance with its supervisory function under Article 35 of the 1951 Geneva Covention and which is also expressly alluded to in Article 21 of the draft Asylum Procedures Directive. However, ECRE believes that quality assessment teams should additionally comprise a range of specialist personnel working in the refugee field, including NGOs and other independent experts.

Teams would be temporarily attached to state decision-making bodies and given access to a sample of randomly selected files in order to 'audit' the quality of decision-making. Such access should cover all COI and other materials available to the decision-maker as well as one-to-one interviews with the decision-maker him/herself. In this way failings or weaknesses could immediately be identified and remedial advice provided – thus constituting a form of 'embedded' training. Teams would make internal recommendations to decision-making bodies on the remedial action required. However, they would also deliver periodic public reports outlining key findings in order to ensure transparency, accountability, and a degree of leverage to ensure that findings are acted upon by the relevant authorities. The reports could then form the basis of future reviews in order to facilitate a systematic monitoring of progress. Quality assessment mehanisms could also be considered for inclusion as part of the evaluation of Justice, Liberty and Security (JSL) measures agreed as part of the Hague Programme. [43]

Such mechanisms could also usefully be extended to monitor border areas where there are often shortages of suitably trained officials with the requisite knowledge of refugee and international human rights law. Quality assessment teams could ensure that proper procedures are followed for receiving and guaranteeing the individual examination of all asylum claims, and thus identify and eradicate weaknesses in systems which otherwise could result in breaches of international law.

Recommendation 18
Quality assessment mechanisms including monitoring teams should be established to assess the quality of national asylum determination procedures by analysing a randomly selected sample of decisions.

Recommendation 19
Monitoring teams should be independent and comprise representatives of UNHCR (as mandated by its supervisory role under Article 35 of the 1951 Geneva Convention) and a range of other specialist personnel working in the field, including representatives of NGOs and other independent experts. Periodic public reports would ensure transparency and accountability.

[42] An existing example or model of such a mechanism would be the Quality Initiative project, developed by UNHCR in close collaboration with the UK Home Office. See UNHCR, *Quality Initiative Project. Key Observations. March 2004 – January 2005.*
[43] The Hague Programme states that *"Evaluation of the implementation as well as of the effects of all measures is, in the European Council's opinion, essential to the effectiveness of Union action. The evaluations undertaken as from 1 July 2005 must be systematic, objective, impartial and efficient, while avoiding too heavy a burden on national authorities and the Commission".*

2.7 Expert support teams

States may periodically experience backlogs or unexpected increases in the number of asylum applicants in their asylum systems. In an extension of the quality assessment mechanism proposal, expert support teams (comprising decision-makers, interpreters and other experts) could be used to meet any resulting shortfall in the capacity of an affected state. For example, a state experiencing a high volume in a particular caseload could receive the support of external staff with specialist knowledge in this area.

States with greater existing capacity could provide staff to these expert teams who could additionally comprise independent experts and representatives from UNHCR. These expert teams could share best practice, advise on international refugee and human rights law, conduct interviews and make recommendations on status determination. The authorities in the host country would still make the final decision, and the legal basis for the decision would remain the relevant law of the host state. The provision of interpreters could be particularly useful in some border areas where there are currently acknowledged shortages. The functioning of these support teams more generally would obviously also rely on the provision of adequate resources for interpretation and translation. The idea of expert support teams has parallels with the establishment of teams of national experts envisaged as part of the EU's Border Management Agency.[44]

In addition to volume-related capacity problems states may also sometimes lack expertise in relation to a particular caseload. States may not have specialist knowledge in relation to claimants from certain countries or sufficient interpreters competent in a particular language. States may lack staff trained in dealing with vulnerable or traumatised applicants, or lack adequate psychiatric assessment facilities. It would therefore be both efficient and cost-effective for states to engage in a mutual sharing of resources in order to fill such gaps.

Recommendation 20
Expert support teams could be set up consisting of state officials, UNHCR representatives and other independent experts to help meet any capacity shortfall in a state experiencing backlogs or unexpected increases in asylum numbers.

Recommendation 21
In addition to assisting with volume-related capacity problems states should also engage in a mutual sharing of resources to address situations where certain states might lack expertise in relation to a particular asylum caseload or sufficient interpreters competent in a particular language.

[44] The European Agency for the Management of Operational Cooperation at the External Borders was established on 1 May 2005. In the Hague Programme the Council is invited *"to establish teams of national experts that can provide rapid technical and operational existence to Member States requesting it, following proper risk analysis by the Border Management Agency, and acting within its framework, on the basis of a proposal by the Commission on the appropriate powers and funding for such teams, to be submitted in June 2005".*

2.8 A European Union Support Office

ECRE appreciates that many of these suggested areas of practical co-operation would need to be developed through an incremental process. Initially they could be co-ordinated by existing structures such as EURASIL[45] as well as the Committee on Immigration and Asylum (CIA) and relevant Contact Committees. However, it must be recognised that these structures currently lack the capacity to effectively oversee medium and long term objectives under the Hague Programme. Even in the shorter term, success in delivering initiatives will be determined by the ability of EURASIL to reach agreement on the sharing of resources and crucially to open up existing structures by bringing in independent expertise from UNHCR, NGOs and other specialists working in the field. For example, EURASIL could create subgroups tasked to deliver on particular initiatives, comprising both government and independent experts. A pragmatic approach will be crucial in making efficient and cost-effective use of existing resources and by co-ordinating project proposals under ARGO,[46] the European Refugee Fund (ERF) or other funding streams to implement elements of the practical co-operation programme. It is important that project proposals are tailored to allow sufficient access for applications from NGOs and other independent organisations. It is also important that the Commission is provided with extra resources to strengthen its Secretariat function in EURASIL.

ECRE is also concerned that existing structures do not provide the requisite degree of independence, transparency or accountability. Therefore measures would need to be introduced to ensure transparency and accountability through increased reporting functions. In the short term this could be achieved through the greater involvement of independent experts in EURASIL or its subgroups, by requiring EURASIL to periodically report to the CIA on progress, and by making public these reports and any recommendations made by the CIA. Such transparency and accountability is necessary to ensure the effectiveness of measures, and particularly to combat the existing problem of states 'competing' with each other by pursuing only vested national interests and seeking to offload burdens.

ECRE considers that in the medium and longer term it will be necessary to establish an independent EU office to implement the full scope of the Hague Programme, and to facilitate a truly common and unified approach. ECRE recognises that this might need to be developed incrementally and notes the Commission's proposal for the creation of a Centre of Excellence as outlined in its Communication on a Single

[45] EURASIL (European Union Network for Asylum Practitioners) was born as a new network after the dissolution of CIREA (Centre for Information, Discussion and Exchange on Asylum) at the end of June 2002, transferred its tasks to the EU Commission and began its activities in the summer of 2002. EURASIL sits six to eight times per year by coming together for 2 days at a time at the EU Commission in Brussels. Representatives of the responsible national ministries and asylum authorities take part in these meetings. From time to time international organizations such as UNHCR and IOM are invited to join the meetings for particular topics, and very occasionally, NGOs such as Amnesty International or ECRE. EURASIL is intended to look after and intensify the working relationship between national practitioners (civil servants from the relevant Ministries) and seeks to achieve a higher convergence at EU level through the exchange of information and experience gained on conditions in countries of origin, relevant case studies and other practical experience. This process has been aided by the creation of the electronic platform CIRCA (Communication & Information Resource Centre Administrator).

[46] ARGO is an action programme for administrative cooperation at EU level in the fields of asylum, visas, immigration and external borders, replacing in part the Odysseus programme.

Procedure.[47] ECRE believes this centre could oversee common provision of training and COI initiatives prior to the establishment of an EU support office as envisaged by the Hague Programme as part of the future Common European Asylum System. The office could assume responsibilities such as the co-ordination of expert support teams and quality assessment mechanisms, the supervision of project-led initiatives (including possibly the management of the ERF), and related monitoring and evaluation functions. It must be fully transparent and accountable. To this end it is important that UNHCR and other organisations working in the refugee field be regularly consulted and afforded extensive input into these developments.

Recommendation 22
In the short term existing EU structures such as EURASIL and the Committee on Immigration and Asylum (CIA) could start the process of coordinating increased practical co-operation among Member States. EURASIL should create subgroups tasked to deliver on particular initiatives, comprising both government and independent experts (including representatives of UNHCR and NGOs). The European Commission should be provided with extra resources to strengthen its Secretariat function in EURASIL, and transparency and accountability should be improved through increased reporting functions.

Recommendation 23
In the medium and long term it will be necessary to establish an independent EU office to implement the Hague Programme, and to facilitate a truly common and unified EU approach. The office could assume responsibility for monitoring and evaluation functions, the co-ordination of expert support teams and quality assessment mechanisms and the supervision of project-led initiatives to implement the Hague Programme. Calls for project proposals should be designed to allow sufficient access for applications from NGOs and other independent organisations.

[47] Communication from the Commission to the Council and the European Parliament, *'A more efficient common European asylum system: the single procedure as the next step'* COM (2004) 503 Final.

3 A Common European Asylum System?

ECRE believes that the single most fundamental objective of a Common European Asylum System (CEAS) must be to end the current 'asylum lottery' and instead guarantee that every asylum applicant arriving in the EU has access to one fair and thorough asylum determination procedure. Member States must acknowledge that current disparities between their asylum systems are the cause of many of the problems associated with asylum such as illegal transit/residence, secondary movement, delay and associated lack of public confidence.

This section explores how a future Common European Asylum System might be designed in order to eradicate these problems and guarantee one fair asylum determination process to every person seeking protection in the EU. First the section outlines ECRE's proposed alternative system for deciding which state is responsible for determining a claim lodged within the EU before proceeding to consider some supporting measures necessary to make this system fair and workable including the creation of burden sharing instruments and rights of free movement. Finally, the issue of joint processing is examined in the context of ECRE's alternative proposals for a future common system. ECRE acknowledges that some of its proposals will require incremental development and be dependent on progress in achieving greater harmonisation and approximation of national asylum systems as envisaged by the Hague Programme.

3.1 Determining which state is responsible for processing a claim

ECRE believes that any future Common European Asylum System should not continue with the current policy under the Dublin II Regulation[48] of compelling the return of individuals to third countries for the sole reason of having transited through those countries. ECRE has previously outlined its grave reservations concerning both the Dublin Convention[49] and the Dublin II Regulation which has now superseded it.[50]

The Dublin II Regulation provides that after the consideration of any family links or whether a prior visa or residence permit exists, if it can be established that an asylum seeker has irregularly entered the border of a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the request for asylum.[51] The likely consequences of such a system are twofold: either an increased number of asylum seekers will be returned to Member States on the borders of the enlarged Union or they may simply choose not to lodge formal protection claims but instead resort to further onward and illegal transit.

[48] *Council Regulation (EC) 343/2003 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*, 18 February 2003 ('the Dublin II regulation').
[49] Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, O.J. 1997 No. C 254.
[50] See ECRE *Comments on the Proposal for a Council Regulation 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*, December 2001.
[51] Article 10, Dublin II Regulation.

The Dublin II Regulation is based on the incorrect presumption that an asylum seeker will receive equal access to protection and equal access to justice in each Member State. It is directly binding, unlike the other asylum Directives[52] forming the 'four building blocs' set out in the Tampere conclusions, which were adopted on the basis of minimum standards allowing national derogations and periods of transition. It was therefore inevitable that the contradictions between European and national asylum rules would appear most sharply in the application of the Dublin system. Huge disparities remain in relation to the quality of protection provided across the EU. For various reasons central and southern European states which make up the EU's external borders tend to have particularly limited capacity to process asylum applications, or to integrate those recognised as requiring protection. The result is that many individuals transferred under the Dublin system do not have their claims properly considered or may even be denied access to a determination procedure altogether, as evidenced by the practice of the Greek authorities of 'interrupting' the asylum claims of individuals having transited to other Member States and subsequently using this as a justification to deny access to a determination procedure even after having accepted responsibility for the claim from the returning Dublin state.[53]

The mechanics of both the Dublin II Regulation and the Dublin Convention have also historically led to unnecessarily protracted proceedings in requesting states as individuals have sought to challenge their removal on Dublin grounds. Therefore in addition to causing hardship and uncertainty to individual asylum seekers, the Dublin system has also been inefficient and resource-intensive from a state perspective. A further benefit of the abolition or reform of Dublin II would be that the asylum procedure would become less focused on the applicant's travel route, and would therefore reduce the incentive for asylum applicants to destroy documentation and conceal travel itineraries. This would assist with the efficient examination of asylum applications and, if the applicant is found not to be in need of protection, return to the country of origin.

ECRE believes that the current system which links responsibility to border management is unfair, ineffective and unworkable. Instead, ECRE proposes an alternative system for allocating responsibility for determining an asylum claim that is based on two criteria:

1) the Member State where the asylum seeker has a family member, provided he or she consents to a transfer to that state, or
2) the Member State in which an asylum claim was first lodged, unless there are compelling humanitarian considerations to preclude this.

[52] See footnote 6 above.
[53] UNHCR (Branch Office Athens) (2004a) *Note on access to the asylum procedure of asylum seekers returned to Greece, inter alia, under arrangements to transfer responsibility with respect to determining an asylum claim or pursuant to application of the safe third country concept,* November 2004. For a full description and analysis of this practice see *'The New 'Dubliners': Implementation of European Council Regulation 343/2003 (Dublin-II) by the Greek Authorities'*, Panayiotis N. Papadimitriou and Ioannis F. Papageorgiou, Journal of Refugee Studies 2005 18: pp 299-318.

The Eurodac system could still be retained in order to prevent applicants from attempting to make multiple asylum requests in different EU Member States.

Recommendation 24
The Dublin II Regulation should be replaced with an alternative system for determining the state responsible for processing a claim according to two criteria: 1) the state where the asylum seeker has a family member, provided s/he consents to the transfer; or 2) the state in which an asylum claim was first lodged, unless there are compelling humanitarian considerations to prevent this.

3.2 Burden and responsibility sharing

ECRE accepts that under its proposed system for allocating responsibility for a claim there will continue to be variations in the numbers of asylum applications lodged in the various Member States.[54] ECRE recognises that a system under which a Member State is bound to accept all applications lodged in its territory must contain responsibility sharing mechanisms to help support Member States that receive disproportionately high numbers of asylum seekers.

It is natural that refugees will be reluctant to seek protection in states that have little capacity and low standards but will instead wish to reach states with developed asylum systems with high protection standards and integration opportunities.[55] By 2010 the common asylum procedures and mechanisms for improved quality standards should provide for the same or equivalent treatment of asylum seekers and refugees throughout the European Union. In this scenario there would be less incentive for asylum seekers to seek to reach particular countries, and therefore the likelihood of certain states being overburdened could be significantly reduced. If there is a serious commitment by all Member States to engage with responsibility sharing and practical co-operation measures aimed at increasing capacity in the 'new' and southern Member States then individuals seeking protection could come to view such states as countries of asylum rather than as predominantly transit countries.

The issue of what responsibility sharing and other measures would need to be applied must be assessed on the basis of true rather than perceived asylum pressures, and thus there must be a mechanism capable of providing comprehensive and up to date statistical data. This would highlight deficiencies in the operation of current systems and help to debunk many of the myths surrounding the issue of asylum, thereby facilitating clearer and better informed policy making at the EU level.

The following burden sharing instruments would need to be developed and could follow from initiatives developed under the Hague Programme:

[54] Aside from protection-orientated reasons, such variations could be due to a number of other factors including the existence of particular national and ethnic communities in some countries, language, geographic location of the country, transport links, previous colonial links etc.
[55] See ECRE, *The Way Forward. Europe's Role in the Global Refugee Protection System. Towards the Integration of Refugees in Europe*, August 2005.

1) a well-resourced financial burden sharing instrument - based on the costs of hosting and processing asylum claims, which could compensate Member States receiving high numbers;[56]
2) common structures co-ordinating the despatch of expert support teams comprising officials, experts, interpreters etc could assist overburdened states;
3) concrete programmes for joint responses to large scale humanitarian crises, whereby states undertake to grant protection to evacuees;[57]
4) a well-resourced Return Fund;
5) a well-resourced Integration Fund.

The financial burden sharing instrument proposed by ECRE could build on the European Refugee Fund (ERF),[58] both ERFI and ERFII.[59] However, in order to be meaningful this fund should be significantly larger and reflect the real costs incurred in building and implementing asylum systems. Both ERFI and ERFII distribute resources to Member States according to two principal mechanisms: first a decreasing fixed amount per Member State and second, an amount based on the proportion of persons seeking or benefiting from international protection in each Member State. ECRE has commented on some of the limitations of this model[60] which does not effectively achieve a redistributive function in addressing current disparities in capacities among Member States as the fixed amounts are the same for all states regardless of existing capacity, and even the proportional amount ends up favouring large states who receive large numbers but may relatively have much greater absorption capacity (per population, GDP etc) than other states.

Firstly, an effective burden sharing financial instrument must target funds at states with historically less developed asylum systems while at the same time continuing to compensate states that receive a higher volume of asylum applications. Thus, instead of a fixed dispensing element there should be a mechanism that is specifically designed to allow states with less developed asylum systems to catch up with more developed states. Secondly, the dispensation logic of any instrument should assess Member States' responsibilities resulting from the relative rather than absolute

[56] ECRE has similarly proposed the establishment of a European Refugee Resettlement Fund, as part of fiscal responsibility sharing, to support the costs of resettlement activities of its Member States, accession states and other European countries. See ECRE, *The Way Forward. Europe's role in the global refugee protection system. Towards a European Resettlement Programme*, April 2005.
[57] Some examples of such programmes would be the Humanitarian Evacuation Programmes (HEPs) used in Kosovo and Bosnia, and the provisions in the Temporary Protection Directive concerning the evacuation of displaced persons and the provision of assistance to Member States which have insufficient capacity for the reception of more protection seekers arriving under a regime of temporary protection.
[58] The explanatory notes of the Council Decision establishing the ERF state that the objective of the fund is to *"demonstrate solidarity between Member States by achieving a balance in the efforts made by those Member States in receiving refugees and displaced persons and bearing the consequences of so doing"*.
[59] Account would also need to be taken of the framework proposed in the *Communication from the Commission to the Council and the European Parliament establishing a framework programme on Solidarity and the Management of Migration Flows for the period 2007-2013*, COM (2005) 123 final. This proposes that the current proposal for the period 2005-2007 will continue to run its course under the current Decision with management of the fund moving under the framework programme from 2008 with the programming period running until 2013 thus bringing it into line with the other instruments managed under the framework programme.
[60] See *ECRE Information Note on the Council Decision establishing the European Refugee Fund for the period 2005-2010*, December 2004.

number of protection seekers received and, which operates alongside a compensation element. Thus resources would be distributed according to the degree of relative effort required by different states (ie. relative to population size or GDP). Thirdly, and crucially, the fund would have to be large enough to realistically reflect the cost of processing an asylum claim. It should be understood that the ERF was established to promote networking and innovative new ideas and practice rather than to recompense states for the full cost of running their asylum systems. As such it is not surprising that the current typical level of contribution under ERF has been estimated to reflect a fraction of the real costs per asylum seeker.[61] It must be stressed that the objectives identified in this section would require a significantly greater degree of financial investment.

Such a burden sharing/redistributive instrument can be justified from the perspective of Member States on two main grounds. On the one hand it can be seen as an insurance mechanism against the highly variable impact of asylum flows over time.[62] On the other hand, it would serve as a concrete expression of widely shared ideals in the EU's emerging political community, expressed at Tampere[63] and reiterated in the Hague Programme. On a practical level such an instrument would also contribute to the diffusion of tensions resulting from perceptions of free-riding by certain states in the context of an unequal distribution of displaced persons across Europe. Crucially this could help discourage the competitive downgrading of protection standards by Member States which results from their attempts to counter the possibility that they might attract a disproportionate number of asylum seekers, and which has a highly detrimental effect in encouraging illegal secondary movement and obstructing attempts to find common solutions to common problems (as identified in section 1 of this paper).

The development of a meaningful financial burden sharing instrument would thus first play a crucial role in facilitating responsibility and practical co-operation measures necessary for the incremental development of a Common European Asylum System in the years up to 2010 and beyond. Thereafter it could continue its burden sharing function by compensating states receiving a disproportionate number of asylum claims under the new arrangements. Importantly, this would have to be supported by a well-resourced Return Fund that would help facilitate the efficient and sustainable return of those people not found to be in need of international protection,[64] and a well-resourced Integration Fund to promote the integration of those recognised as refugees or beneficiaries of subsidiary protection. This would help address current individual

[61] According to UK Home Office estimates, the UK spent just under 30,000 Euro per asylum seeker in 2002 whereas it received just over 100 Euro per asylum application from the ERF (and this was as the second largest beneficiary from the fund).
[62] Between 1999-2004 fluctuating asylum numbers have resulted in Germany, then the UK, and now France alternately becoming the top asylum receiving country within the European Union. See Eurostat. at http.//epp.eurostat.cec.eu. However, it should also be noted that in 2004 Cyprus, Austria and Norway respectively received the highest number of asylum applications per 1000 inhabitants. See UNHCR, *Asylum Levels and Trends in Industrialized Countries*, 2004 at http:www.unhcr.org.
[63] *"The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity"*, para 4 Conclusions of the Presidency (Tampere Summit Conclusions) 15 and 16 October 1999.
[64] See ECRE *The Way Forward. Europe's Role in the Global Refugee Protection System. The Return of Asylum Seekers whose Applications have been Rejected in Europe*, June 2005.

states' anxieties about the perceived long term commitment/burden typically associated with taking responsibility for an asylum claim, linked to historical delays caused by protracted and inefficient determination procedures often resulting from lack of capacity, as well as difficulties effecting return. If Member States had in place fairer and more efficient determination procedures, as advocated in this paper, then claims could be processed in a controlled and timely manner.

Recommendation 25
ECRE's alternative system for allocating state responsibility for determining asylum claims should be complemented with improved burden sharing and other measures to support states receiving higher numbers of asylum applicants. In order to evaluate true rather than perceived asylum pressures it will be necessary to develop functions which can provide more accurate and comprehensive asylum statistics.

Recommendation 26
A well-resourced financial burden sharing instrument should be established based on the real costs of hosting and processing asylum claims which could compensate Member States receiving higher numbers. This should include a mechanism designed to dispense additional funds to enable states with less developed asylum systems to catch up with more developed states.

Recommendation 27
There should be a well-resourced Integration Fund to promote the integration of refugees and beneficiaries of subsidiary protection and a well-resourced Return Fund to help facilitate the efficient and sustainable return of those found not to be in need of international protection.

Recommendation 28
The financial burden sharing instrument could also fund common structures co-ordinating the despatch of expert support teams and quality monitoring teams as well as concrete programmes for joint responses to large-scale humanitarian crises.

3.3 Free Movement

In addition to the provision of funds to facilitate effective integration, ECRE considers that a linked and crucial reform would be the adoption of EC legislation granting freedom of movement within the Union to all persons recognised as being in need of international protection. This could be achieved either through modification of the Qualification Directive or through the adoption of a separate instrument. Two different models could be envisaged to facilitate a whole new system for refugees and beneficiaries of subsidiary protection to be permitted to move, reside and work throughout the EU.[65] The first system would attach a right to free movement and residence anywhere in the EU to any protection status recognised in an EU State. This would be ECRE's preferred model. Alternatively, a second possible system would

[65] See '*Study on the transfer of protection status in the EU, against the background of the common European asylum system and the goal of a uniform status, valid throughout the Union, for those granted asylum*' conducted on behalf of the European Commission by the Danish Refugee Council, Migration Policy Foundation and the Institution for Migration and Ethnic Studies (25 June 2004).

allow mobility to refugees throughout the EU following the grant of protection but which would be subject to certain criteria that might, for a certain period at least, exclude individuals from certain welfare provisions in the second state. In other words, the beneficiary of protection would have full rights in the state that determined status, but more limited rights (similar to Long-Term Resident Third Country Nationals) in all other Member States (such as a demonstrable means of support through employment, savings or family networks). In relation to this proposal, it is worth recalling that the current *de facto* situation anyway is that refugees who lawfully take up residence in another Contracting State may transfer their status under the terms of the 1951 Geneva Convention and the European Agreement on Transfer of Responsibility for Refugees.[66]

As a result of their escape from persecution, refugees, unlike other third country nationals, often have been forced to migrate and have had very little choice about where they reside in Europe. There is a natural logic that refugees will integrate more easily and most naturally into those countries where they have extended family members, social networks, good employment opportunities/labour market conditions, and cultural or linguistic ties. A system which delivers quick efficient status recognition (wherever a claim is lodged) followed by an opportunity to relocate within the EU would provide an incentive to those in need of protection to lodge their claim as soon as possible after entering the European Union rather than 'going underground' or risking further onward illegal transit often thereby placing themselves in danger and perpetuating the problem of people smuggling.

Considerations such as family, social networks, employment opportunities and language are understandable motivations which often complement protection-related factors, and can be considered a reflection of the absorption capacity of a particular state. A system allowing free movement would be in the interests of Member States as they would receive motivated individuals looking to actively contribute to their societies. Research findings suggest that where recognised refugees have sought to transfer their status they aspire to move because they hope to fulfil their 'life potential' and rarely because of 'passive' pull-factors such as more generous welfare facilities in a second state.[67] Moreover, in a market-based economy such as that within the European Union that relies on the mobility and flexibility of labour, there is much to be said for giving refugees freedom of choice as to where to reside.

Furthermore, a system (of fair and efficient procedures leading to either quick return or recognition with attached rights to freedom of movement) which could help address and reverse an apparent perceived need by asylum seekers to go 'underground' would deliver marked benefits to states from an economic perspective (in terms of additional tax/national insurance contributions) and a security perspective (in terms of having a fuller knowledge of the individuals present on their territories). This would surely make more sense than the current system whereby Member States expend huge resources trying to impose artificial borders and barriers which serve neither the interests of states, nor individuals in need of protection, and which hinder an effective integration process.

[66] *Ibid.* However, the study found that transfer under the Agreement was extremely complicated in practice and that few refugees made use of it, often instead waiting to naturalise as citizens before seeking to move within the EU.
[67] *Ibid.*

Recommendation 29
The EU should adopt legislation granting freedom of movement within the Union (to reside, work etc) to all individuals recognised as being in need of international protection.

3.4 Joint processing within the EU

The Hague Programme does not precisely set out the intended final structure and design of the Common European Asylum System. However, it appears to at least entertain the possibility that this could involve the joint processing of asylum claims lodged in the EU.[68] There are different possible models for a system of joint processing. One possible model is that current national structures could be replaced by a single EU determining authority with a limited number of large-scale central processing centres strategically located across the EU. Such a model would need mechanisms to determine where particular applicants or caseloads would be processed, and thereafter where those recognised as needing protection would be 'resettled', and how those rejected would be removed.[69] Apart from as a measure in exceptional situations, where one Member State is confronted with extremely high numbers of asylum seekers, ECRE would not support a system of joint processing that involves the forced transfer of asylum seekers to centralised joint processing centres. This would result in high financial costs, practical difficulties and would put a further strain on refugees, delaying their integration in a Member State. ECRE would have particular concerns about the application of such a model for selected caseloads such as those deemed as 'manifestly unfounded' or the widespread use of detention.

A second possible model would be to have a single common EU determining authority with decentralised offices/branches in each of the Member States, thereby not requiring the forced transfer of asylum seekers. ECRE thinks it is worth exploring such a model. A number of experts see joint asylum procedures, run by a common EU Asylum Agency, as the most appropriate basis for a future CEAS. It is argued that only in this way can a consistent quality of asylum procedures be achieved throughout the EU and current practices of individual Member States shifting asylum burdens to each other be reversed. Such a model of joint processing could complement and be compatible with ECRE's proposals for an alternative system of determining state responsibility, burden sharing, and the granting of free movement.

While recognising the need for positive and imaginative thinking about future models for a CEAS, ECRE reiterates that such future models must be based on high standards in all the elements of an asylum system, and must guarantee full respect for asylum seekers' rights under international law. Many questions still need to be resolved concerning the legal and financial basis for joint processing, and the issue of democratic control and accountability. The feasibility of a common system will also be determined by progress in the harmonisation of national asylum laws and in the implementation of the Hague Programme through the development of capacity and common structures. It seems only logical that for any common European system to be based on international law, it is first necessary that individual Member States comply

[68] The Hague Programme calls upon the Commission, between 2007 and 2010, to instigate and present a study on the feasibility of joint processing within the European Union.
[69] This is essentially the model outlined by UNHCR in its EU Prong proposal. See UNHCR Working Paper, *A Revised "EU Prong Proposal"*, 22 December 2003.

with their legal obligations. As a first step it will also be necessary for Member States to demonstrate their commitment to end current practices of competitive downgrading and policies aimed solely at deflecting asylum seekers away from their territories. Only after a comprehensive evaluation of the first phase instruments and progress in implementing the Hague Programme will it be possible to assess whether there is a need for joint processing.

Recommendation 30
Any system of joint processing must accord with all relevant human rights standards and guarantee full respect for asylum seekers' rights under international law. It should not involve the forced transfer of asylum seekers to centralised processing centres or the unnecessary and disproportionate use of detention. The need for joint processing should only be assessed after a comprehensive evaluation of the first phase instruments and progress in implementing the Hague Programme.

4 Towards More Fair and Efficient Asylum Procedures in Europe

Whether asylum determination procedures are processed unilaterally by European states or as part of a multilateral framework or Common European Asylum System, ECRE considers that there are certain universal and fundamental principles, the observance of which would help ensure the provision of a procedure that is both fair and efficient. This section expands on these principles whereafter the following section sets out ECRE's model procedure in chronological order.

4.1 Frontloading

ECRE has long advocated for the frontloading of asylum procedures. Frontloading is the policy of financing asylum determination systems with the requisite resources and expertise to make accurate and properly considered decisions at the first instance stage of the procedure. It is about ensuring that every asylum application be thoroughly and individually reviewed by a qualified decision-maker with adequate resources at his/her disposal. While the investment of such resources will facilitate quicker decision-making, frontloading is not about the acceleration of procedures *for its own sake* and requires the inclusion of all necessary safeguards from the start of the procedure. Ensuring quality first instance decision-making reduces the unnecessary appeals, and thereby saves time and resources. Also, if first instance decisions are coherently reasoned and clearly identify the issues at stake then appeal bodies are enabled to hear appeals more quickly and therefore cost-effectively.

Asylum procedures would be both fairer and more efficient if protection remained their central focus An efficient asylum procedure can only be attained if supported by institutional capacity, good quality independent and accurate information and continuous training. The overall length of the asylum procedure thus depends on the will and capacity of a state to invest in asylum procedures. With the allocation of sufficient resources, speedier decisions could be achieved without compromising procedural fairness. Measures should also be taken to facilitate quicker decisions on obviously well founded applications for asylum. It is clearly in the interests of both individual applicants and national authorities that such decisions are made as quickly as possible.

In contrast with the current situation in a number of European states, ECRE believes that the first phase of the asylum procedure needs to be slowed down facilitating frontloading by allowing an adequate minimum period for proper preparation for the main substantive interview. This should be a minimum of four weeks after the applicant has lodged his/her claim for asylum.[70] The time allowed in this first phase should be used to adequately inform the applicant of his/her rights during the procedure, both by the state and through NGOs, and to provide him/her with legal assistance. This helps to facilitate a better fact-finding process and improved opportunities for the asylum seeker to obtain documents. To ensure effective legal assistance, it is necessary that there is sufficient time and contact so that a relationship of trust may develop between the asylum seeker and his/her representative. This may also prevent the asylum seeker from following advice from other sources such as

[70] See Section 5 below outlining ECRE's model procedure.

smugglers. At the same time, the provision of more time before the interview will allow the competent authority to adequately research and prepare the interview, making the interview less adversarial and improving the potential for an objective gathering of facts and assessment of the case. ECRE believes that the benefits for both applicant and state outweigh any potential additional costs of the initial reception period since frontloading of the procedure will result in better quality initial decision-making and therefore reduce the number of unnecessary appeals.

A policy of frontloading would help to reduce backlogs which currently exist in some states. Asylum procedures should contain mechanisms to prevent delays and delaying strategies by the determining authorities. ECRE recommends the granting of residence status to an asylum seeker who has been in the procedure for 15 months and, for reasons beyond his/her control, has not received a final decision on his/her asylum request. [71]

Recommendation 31
States should adopt a policy of frontloading by investing sufficient resources in order to enhance the quality and efficiency of first instance decision-making thus avoiding unnecessary appeals.

Recommendation 32
The first phase of an asylum procedure should include minimum time limits in order to enable every asylum applicant to properly prepare his/her claim.

Recommendation 33
States should work to eradicate delays from their determination systems. A residence permit should automatically be granted to an asylum seeker who has been in the procedure for 15 months and, for reasons beyond his/her control, has not received a final decision on the asylum request.

4.2 Registration Procedures

It is of fundamental importance how claims are received by states at the initial point of registration. In some European states it is all too common for applicants to be denied access to a procedure altogether or to be processed by border guards lacking an adequate knowledge of states' obligations under international refugee or human rights law. It is also sometimes the case that applicants are subjected to long screening and sometimes substantive interviews before they have had access to any legal advice and often when they are physically and mentally exhausted having just undertaken long and dangerous journeys. This is not only unfair to applicants but also hinders an efficient examination of the claim, often resulting in inconsistencies or a lack of information being provided which can only ultimately be resolved after lengthy and costly appeal proceedings.

ECRE therefore recommends that border guards should receive better training to help them identify would-be claimants as well as practical facilities such as the improved provision of interpreters. All persons claiming international protection whether

[71] The Netherlands formerly operated a policy whereby asylum applicants who had not received a decision within 3 years were granted a residence permit on humanitarian grounds. This policy was incorporated in legislation (Aliens Decree Art. 3.4 (1)) but was abolished as from 01 January 2003.

apprehended or volunteering themselves at a border or in a transit zone (including at airports) should be given a formal screening interview in a language they understand (and thereafter be provided with an opportunity to consult a lawyer). The purpose of the screening interview should primarily be to confirm that a person wishes to make an application for international protection but should not involve detailed questioning as to the basis of the claim. This should be carried out at a later substantive interview conducted by the central immigration authorities. The screening interview should be used to conduct fingerprinting and to confirm the applicant's personal details and identity, as well as the existence of any family members in the receiving state.

ECRE has major concerns about the practice of some states of penalising and sometimes criminalising applicants who arrive without valid travel or identity documents,[72] and such practices may result in a violation of Article 31 of the 1951 Geneva Convention.[73] Increasingly, asylum seekers enter the asylum procedure without documents. There are a number of factors that play a role in this. Firstly, there are cases where bringing documents is dangerous.[74] Secondly, individuals fleeing persecution may not have the time to collect documents before departure, or maybe even not have such documents in the first place (e.g. many Somali refugees do not have a functioning state authority which can issue a passport). Thirdly, as a result of ever more restrictive visa regimes it has become almost impossible for asylum seekers to legally enter Europe. This means that they often are smuggled into the EU without any documents or with false identity documents. Smugglers often force asylum seekers to leave identity documents behind or to destroy them. Given these many valid justifications ECRE strongly opposes states penalising applicants without documents by challenging credibility,[75] labeling their case as 'manifestly unfounded' and/or subjecting them to accelerated procedures.[76]

If states nonetheless persist in placing an emphasis on the provision of documents or information concerning travel route then it is essential that there is a meaningful opportunity for the applicant to rebut any resulting presumptions about credibility. This means that the asylum seeker should:

- be informed of the relevance of the documents and/or other information concerning his/her identity, nationality or travel route;
- be given legal assistance and a preparation period prior to any substantial hearing on these aspects;
- be facilitated to obtain documents from the country of origin, where this is relevant and possible in safety;

[72] See section 2 of the UK Immigration and Asylum (Treatment of Claimants' etc.) Act 2004 as an example of this practice.
[73] Article 31 provides that "*... 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*".
[74] The practice of some states in penalising or criminalising asylum seekers for arriving without valid documentation is particularly unreasonable given that where asylum seekers do use valid documents to leave their country of origin, states will sometimes seek to assert this as evidence to suggest that they were not in fact at risk.
[75] See article 4 of the Qualification Directive.
[76] See articles 23 (4) and 29 (2) of the draft Asylum Procedures Directive.

- be given the possibility to rebut presumptions on his/her willfully destroying or withholding information/documents;
- be informed if doubts regarding the travel route or identity may raise overall credibility issues.

Recommendation 34
All border applicants should be taken to a designated registration point for a formal screening interview to be conducted with the assistance of a qualified interpreter. The applicant must be provided with documentation at this stage and the application referred to the competent authority for determination. Border guards should not be responsible for determining asylum claims and substantive interviews should never be conducted at a border or transit zone. States should permit NGOs and UNHCR access to border areas and transit zones at ports of entry.

Recommendation 35
Asylum seekers should not be penalised for arriving without valid travel or identity documents and ECRE reminds states that such practices may result in violation of Article 31 of the 1951 Geneva Convention.

Recommendation 36
Vagueness and/or absence of information and documents regarding travel route, identity, and/or nationality should not lead to conclusions on the merits of the claim. The asylum applicant must always be able to rebut the presumption of a lack of credibility. All aspects of his/her statement must be considered in light of the overall substance of the asylum claim and the individual circumstances of the claimant.

4.3 Reception Conditions

Asylum systems should include open and well-resourced reception centres for the initial phase of the procedure but thereafter it should not be mandatory for applicants to remain in reception centres. Whether supported in a centre or within the community asylum seekers should receive information on how to access services, including the provision of health care, education facilities and legal advice. Where states provide reception in centres, these should not be located in remote areas in order to ensure that they remain accessible to lawyers and other professionals and do not result in the isolation or quasi detention of asylum applicants.

ECRE believes that as a general rule asylum seekers should not be detained. They should only ever be detained, as a last resort, in exceptional cases and where non-custodial measures have been proven on individual grounds not to achieve the stated, lawful and legitimate purpose. Under no circumstances should persons seeking protection be detained in penal institutions holding convicted criminals. Unaccompanied minors should not be detained on immigration grounds under any circumstances. Asylum seekers should be accommodated in reception centres or supported in the community. Reporting conditions should be applied if necessary to ensure compliance with immigration controls.

Recommendation 37
States should set up open and well-resourced reception centres for the initial phase of the asylum procedure but thereafter it should not be mandatory for applicants to remain in reception centres.

Recommendation 38
As a general rule asylum seekers should not be detained and should never be placed in penal institutions. Unaccompanied minors should never be detained on immigration grounds.

4.4 Prioritisation

In general, prioritisation mechanisms are to be preferred to acceleration mechanisms as a caseload management tool. Prioritising means that the determining authorities try to deal with the asylum request as soon as possible, but with the same legal safeguards and within the same time limits provided for by law. The acceleration of procedures means that for certain cases more stringent time limits can apply or that a more simplified procedure is followed than in other cases.

ECRE believes that certain cases such as particularly vulnerable or traumatised individuals, when properly identified, as well as manifestly well-founded cases should be prioritised if the applicant consents. This allows for the special needs of torture survivors or unaccompanied minors to be adequately and immediately addressed. However, this must not prejudice the proper consideration of such cases and therefore asylum systems must be resourced with the necessary medical expertise. The UNHCR Handbook, in paragraphs 206 to 210, deals with "cases giving rise to special problems in establishing the facts", particulary "mentally disturbed persons" (the language reflects the time of writing [1972]). The Handbook recommends that expert medical advice be sought. This is also best practice in regard to other physical and psychological evidence where such evidence may make a material difference to the outcome of the asylum claim. Too often such expertise is not provided for, or not available within procedural timescales. This can potentially result in, for example, the *refoulement* of torture survivors to further torture. A benefit of prioritising well-founded cases is that it keeps the cost of the asylum procedure, including reception facilities, as low as possible and provides refugees with an opportunity to integrate as early as possible.

Authorities may also wish to prioritise the rare cases that raise particular security concerns through specialised refugee exclusion procedures. However, precisely because such cases can also raise complicated issues, it must be emphasised that prioritisation should not jeopardise a thorough examination or respect for all relevant safeguards and obligations under international law, including the absolute prohibition on return of an individual at risk of torture or inhuman or degrading treatment under Article 3 of the European Convention on Human Rights (ECHR).

Recommendation 39
Asylum systems should include prioritisation mechanisms for particularly vulnerable and manifestly well-founded cases.

Recommendation 40
Asylum systems should allow for the prioritisation of cases raising security concerns through specialised refugee exclusion procedures. However, these must ensure a thorough examination and respect for all relevant safeguards and obligations under international law, including the absolute prohibition on the return of individuals at risk of torture or inhuman or degrading treatment under Article 3 of the European Convention on Human Rights.

4.5 Acceleration

The current prevalence of accelerated procedures in European asylum systems is of major concern. ECRE takes the view that accelerated procedures should only be applied to cases within the scope of UNHCR's EXCOM Conclusion No. 30[77] which are 'clearly abusive' (i.e. clearly fraudulent), or 'manifestly unfounded' (i.e. not related to the grounds for granting international protection). The decision to accelerate must be based on facts relating to the individual case not on presumptions that an individual case *may* belong to a broader group of cases generally considered 'manifestly unfounded', for example that an applicant is considered to come from a safe country of origin.[78] This means that when the substance of the claim does not indicate that the request is manifestly unfounded or fraudulent, there is no reason for acceleration. It is thus vital that acceleration of an asylum procedure should only take place after a full and individual examination of the substance of the claim, and following a procedure including all necessary legal safeguards. If the above criteria are satisfied then ECRE takes the view that the acceleration of manifestly unfounded or clearly abusive cases could most effectively occur at the appeal level, through shorter but reasonable time limits for hearing an appeal. This must be without prejudice to the fair examination of such appeals.

Within such a procedure, in order to provide for judicial supervision of the application of manifestly unfounded/acceleration mechanisms, and to avoid the inappropriate acceleration of cases, the decision to accelerate a procedure should itself be reviewed at the appeal hearing. If the court finds that the decision to accelerate the appeal procedure was not justified, the case would be re-channeled into the ordinary appeal procedure allowing greater prepararation time etc.

Recommendation 41
The asylum procedure should not contain any acceleration mechanisms during the first instance stage of decision-making. If states choose to accelerate asylum procedures, this should be through accelerated appeal proceedings, provided that the necessary legal safeguards are in place and the overall procedure is fair.

Recommendation 42
The criteria for the accelerated appeal procedure should be informed by EXCOM Conclusion No. 30, i.e. should either relate to clearly fraudulent cases or to cases that are not related to the criteria for the granting of refugee status

[77] UNHCR Executive Committee Conclusion No. 30 (XXXIV) of 1983, *The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum.*
[78] ECRE Comments on the *Amended proposal for a Council Direcive on minimum standards on procedures in Member States for granting and withdrawing refugee status* March 2005.

laid down in the 1951 Geneva Convention, the EU Qualification Directive or any other criteria justifying the granting of protection.

4.6 Essential safeguards

ECRE believes there are five minimum guarantees/safeguards from which there should *never* be derogation (even in so-called accelerated procedures): access to free legal advice, access to UNHCR/NGOs, a qualified and impartial interpreter, a personal interview and a suspensive right of appeal. [79]

4.6.1 Legal assistance

ECRE recommends that applicants have the right to legal assistance at all stages of the procedure, and that representation should be free to those who lack resources. The right to legal assistance and representation is an essential safeguard in the asylum process.[80] Legal aid is also an aspect of EU fundamental rights law, as is evident in the formulation of Article 47 of the Charter of Fundamental Rights (EUCFR).[81] In practice, refugee law has become so complex that often it may not be possible for applicants to make their case without legal assistance.

Asylum seekers are often in a particularly vulnerable situation. By their nature, asylum laws and procedures affect individuals who tend not to be well-versed in the law of the asylum state, who frequently do not speak the language of the asylum state, and who are, due to their past traumatic experiences, often particularly distrustful of persons in authority.[82] Asylum seekers may face particular practical difficulties in complying with their duty to establish the facts and present their personal history. Contact with state officials may be psychologically difficult for refugees, in particular traumatised, tortured and abused refugees, who had to flee their countries of origin either because state officials were persecuting them or were unwilling to protect them. Refugee women, who have suffered rape, sexual assault or other violence, often feel unable to tell officials or others in authority the full account of the persecution they have suffered and to articulate the devastating effects this has had on their lives.

Most asylum seekers are not aware of the intricacies of the procedure and issues of burden of proof. They might not be aware that they have to give a complete account of their history, failing which they are usually considered not credible and statements made afterwards will mostly be considered to be false and concocted. They may omit matters which they do not realise are important. Indeed, those with the strongest cases may be those most in need of legal advice: they may not trust officials, or interpreters from their own country, and if tortured or abused, may find those

[79] Ibid.
[80] See Immigration Law Practitioners' Association (ILPA) *Analysis and Critique of Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status,* July 2004, p 59.
[81] Article 47 EUCFR provides that "*Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice*".
[82] See Para 190 of the *UNHCR Handbook* which states*: "It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. [S/]He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his [her] case to the authorities of a foreign country, often in a language not his [her] own".*

experiences difficult to recount. The quality of argument with which an individual asylum seeker may need to present the merits of the case can easily surpass the abilities of the average asylum seeker. The asylum seeker's ability to present his/her personal account can in many cases be undermined by an adversarial attitude[83] and existing 'culture of disbelief' of the asylum authorities whereby most asylum seekers are presumed to be abusing the system. And because decisions are often taken and implemented speedily, the affected individuals may be wholly unaware of the scope for legal challenge.[84]

The provision of legal assistance to the asylum seeker is essential for the fair and efficient determination of the asylum application.[85] However, it is likely that asylum seekers may be unable to afford legal representation, as they often do not have sufficient financial means at their disposal and the cost of legal assistance in Europe is considerable. In most European countries, asylum seekers are not permitted to pursue salaried employment, and the allowances States grant to asylum seekers cover only basic subsistence needs. Therefore, the provision of free legal services is critical in ensuring access to legal assistance, and consequently access to a fair and full examination of their application.

4.6.2 Access to UNHCR/NGOs

In view of UNHCR's privileged supervisory role under Article 35 of the 1951 Geneva Convention it is important that states guarantee asylum applicants access to UNHCR. States should equally guarantee and facilitate contact between asylum seekers and other refugee-assisting organisations who can help ensure that applicants are provided with sufficient information to enable them to comply with prescribed procedures as well as fully exercise their rights.

4.6.3 Interview

ECRE notes that the centrality of the interview to the asylum determination process is reflected in EXCOM Conclusions No 8 and 30 and in the case law of the European Convention of Human Rights (ECHR), the United Nations Human Rights Committee (HRC) and the United Nations Committee against Torture (CAT). This principle was explicitly reflected in the 1995 Council Resolution on Minimum Guarantees for Asylum Procedures, which provided that '*before a final decision is taken on the*

[83] In the view of the International Association of Refugee Law Judges, an adversarial process "*presupposes that the applicant has full access to all material information; the time to prepare his case; and adequate advice and advocacy to prepare and present his appeal. All time-limits must be realistic and should never have priority over the justified interest of an asylum seeker.*". See Interim Reports of Inter-Conference Working parties, Asylum Procedures, available under www.iarlj.nl/wp/wp5.htm.

[84] See UNHCR's Global Consultations on International Protection, Third Track Executive Committee Meetings, 2nd meeting, Asylum Processes (Fair and Efficient Asylum Procedures), EC/GC/01/12, at: www.ch/issues/asylum/globalconsult/GC01_12e.pdf p 10, para 43.

[85] The International Association of Refugee Law Judges are of the view that, in particular in accelerated procedures "*[L]egal aid including some form of free legal advice is highly recommended*", Interim Reports of Inter-Conference Working parties, Asylum Procedures, available under www.iarlj.nl/wp/wp5.htm.

asylum application, the asylum seeker must be given an opportunity of a personal interview with an official qualified under national law'. [86]

The interview should only be waived where the competent authority considers it possible to grant protection status simply on the basis of documentation submitted. The substantive interview should usually only be conducted in the presence of the applicant's legal representative. Female asylum-seekers who have suffered trauma or sexual violence should normally be interviewed by a female officer and in the presence of a female interpreter.

4.6.4 Interpretation

Unless the asylum seeker speaks fluently a language fully understood by the interviewing officer and the legal representative, a competent, professionally qualified, trained and impartial interpreter should be made available. Asylum seekers should be made aware of this right and enabled to exercise it. This service should be provided out of public funds and should be available at all phases of the asylum procedure, including initial screening interviews with border officials.

4.6.5 Appeals

The right to an effective remedy before a court or tribunal is embodied in EC Law,[87] Article 47 of the Charter of Fundamental Rights of the European Union and in Article 13 of the European Convention of Human Rights. As held by the European Court of Human Rights, it implies the right to remain in the territory of a state until a final decision on the application has been taken.[88] Thus the right of asylum applicants to remain pending a final decision on their cases is essential for states to comply with their *non-refoulement* obligations and international law provisions relating to the right to an effective remedy.[89] The appeal body must conduct a thorough scrutiny of the first instance decision on points of both fact and law.

It is vital that asylum seekers have a right to remain on the territory until their appeal is decided because a right to appeal becomes meaningless if the asylum seeker has already been sent to the country where they face persecution, torture, inhuman or degrading treatment. Moreover, it becomes impossible to assess at a distance essential elements of a case, such as the credibility of the applicant.

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[86] *Council Resolution of 20 June 1995 on minimum guarantees for asylum procedures*, [1996] OJ C274/3, para 14.

[87] According to the case law of the European Court of Justice (ECJ) individuals must be able to invoke before a national court the rights which Community law confers to them (e.g. C-222/84). The requirement of judicial control regarding those rights is a general principle of law, which underlies the constitutional traditions common to the EU Member States (*Johnston).*

[88] See *Conka vs. Belgium*, Judgement of 5 February 2002, stating as regards the deportation of asylum seekers: "*it is inconsistent with Article 13 for such measures to be executed before the national authorities have examined whether they are compatible with the Convention*".

[89] UNHCR also supports the view that in order to ensure compliance with the principle of *non-refoulement*, appeals should, in principle, have suspensive effect, and the right to stay should be extended until a final decision is reached on the application. Executive Committee Conclusions No. 8 (XXVIII) of 1977 and No. 30 (XXXIV) of 1983 confirm that the automatic application of suspensive effect can be waived only where it has been established that the request is manifestly unfounded or clearly abusive. In such cases, a court of law or other independent authority should review and confirm the denial of suspensive effect, based on a review of the facts and the likelihood of success on appeal.

Recommendation 43
All asylum applicants should be guaranteed access to free legal advice, access to UNHCR/NGOs, a qualified and impartial interpreter, a personal interview and a suspensive right of appeal. There should be no derogation from these rights even in accelerated procedures.

4.7 A single procedure

ECRE has consistently advocated that it is both in the interests of Member States and asylum applicants that the same procedure, with the same minimum guarantees, determines whether an applicant may qualify for protection under the 1951 Geneva Convention or whether s/he may qualify for subsidiary or complementary protection on international human rights grounds. A single procedure is the clearest and quickest means of identifying those in need of international protection.

While such a 'one stop' procedure has been adopted by an increasing number of states, the discussion regarding a potential uniform status for all asylum applicants is still ongoing. The Hague programme now calls for the adoption of a uniform protection status. ECRE has maintained that there is no legal or logical reason to grant a refugee under a subsidiary form of protection fewer or lesser rights than Convention refugees.[90] ECRE believes that the most logical approach is for the procedure to have two possible outcomes: one, a status reflecting recognition as a refugee in accordance with the 1951 Convention and two, a status reflecting that someone is in need of international protection but falls outside a correct interpretation of the terms of the 1951 Convention. The type of status granted should be based on a full determination (reviewing firstly the applicant's claim for refugee status under the 1951 Convention and only subsequently proceeding to examine his/her subsidiary protection needs).

If the reasons for granting the status are correctly and clearly set out, and if the rights attached to each status were the same, there would normally be little incentive to appeal against the grant of one status as opposed to the other. However, for a correct interpretation of the 1951 Convention and other international obligations and in order for relevant jurisprudence to develop, it is important that principled decisions and judgements are made. A review mechanism should therefore be accessible for refugees who feel that they were not granted the appropriate status.

Recommendation 44
Asylum procedures should allow for the granting of two possible statuses with the same set of rights attached to them. Applicants may be recognised either as refugees in line with the 1951 Convention and 1967 Protocol, or considered in need of subsidiary protection as defined under the Qualification Directive, or under a more broadly defined form of complementary protection. Subsidiary protection should only be considered after it has been determined that an applicant does not qualify under the 1951 Geneva Convention. Precise reasons for non-recognition of 1951 Convention status should be given when granting another form of status.

[90] ECRE's *Position on Complementary Protection*, September 2000.

4.8 Efficiency

ECRE shares states' concerns that asylum procedures should be efficient and workable. An asylum procedure based on the above elements meets the requirements of both efficiency and fairness.

The model procedure outlined[91] is the same for every asylum seeker up to the point of the first instance decision. From the moment of registration a first instance decision should be made after six weeks. At this stage the model allows manifestly unfounded cases to be processed in an accelerated appeals procedure (still with suspensive effect) and heard within two weeks of the lodging of the appeal following the first instance refusal decision. In other cases appeals would be heard six to twelve weeks after an appeal had been lodged with a final determination being promulgated by the appeal body a maximum of four weeks after the appeal hearing. These timeframes would naturally be dependent on adequate resources being allocated. Equally, the model allows for the fact that particularly complex cases could take longer. The proposed model thus prevents undeserving requests from becoming embroiled in lengthy asylum procedures. The model aims to facilitate generally short but high quality procedures. The focus on the quality of the first instance decision (frontloading) and the potential acceleration of the appeal procedure are essential elements of this.

High-quality asylum procedures would facilitate a more efficient identification of persons in need of protection, thus avoiding the wasting of time and resources on unnecessary appeal procedures. In the United Kingdom in 2004 18% of Home Office first instance refusal decisions (21% in 2003) were overturned by the second tier appeal body, and the figure for some nationalities was even higher, for example 43% of Somali refusals and 39% of Sudanese and Eritrean refusals.[92] This is very inefficient. Similarly, the model does not include first instance admissibility procedures for manifestly unfounded cases (but only for allocating state responsibility according to ECRE's proposed alternative criteria) as these are not only unfair but are often highly resource-intensive and inefficient. For example, in Belgium nearly half of those cases forced to go through admissibility procedures are ultimately found to justify proceeding to the substantive procedure.[93]

Recommendation 45
States should avoid the use of accelerated and admissibility procedures which are often resource-intensive, inefficient and ultimately cause delays in asylum systems.

[91] See Section 5 below.
[92] These figures are from Home Office asylum statistics: 1st quarter 2005 United Kingdom - http://www.homeoffice.gov.uk/rds/pdfs05/asylumq105.pdf.
[93] *Annual Report of the Commissioner-General for Refugees* (2004).

5 ECRE's Model Asylum Procedure

The model asylum procedure proposed below by ECRE contains seven steps that are the same for all asylum applicants. All time indicators are based on minimum periods unless otherwise stated. It is understood that time limits may on an individual basis be extended if exceptional circumstances arise. Cases without any particular vulnerabilities or complexities should take a minimum of 8 weeks when channelled through the accelerated appeals procedure for an appeal decision to be reached and a minimum of 16 weeks when going through the normal appeals procedure. Individuals with special needs or complex cases, however, will require longer periods for research and preparation, as well as sometimes for trauma-related counselling or assessment.

Processing cases within the time limits identified will also be dependent to a large degree on the willingness of states to commit the necessary resources to their asylum systems. States that fail to allocate sufficient resources will likely continue to experience significant backlogs which will inevitably result in longer application processing times and increase the overall cost of the system. As well as causing great distress and hardship to asylum applicants themselves, such delays also fuel public anxieties about the issue of asylum and perpetuate perceptions of abuse. Delay is therefore in the interests of neither states nor individuals in need of protection. In an effort to try to help remedy this situation, ECRE has proposed that applicants who, for reasons beyond their control, have been waiting for more than 15 months for a final decision should be granted a residence permit.

Cases where the authority wishes to assert that another state should be responsible for examining the claim will follow a special third country admissibility procedure prior to the normal asylum procedure. This is the only first instance admissibility or special (accelerated) mechanism included at the first instance decision-making stage. This procedure would only determine state responsibility according to ECRE's stated criteria, ie. the Member State where a claim has already been lodged (barring compelling humanitarian factors), or where the applicant has a family member in another state, provided he/she consents. Thus any examination would usually only be necessary to establish the existence of any such family member or to reveal whether a previous claim had already been lodged in another Member State.

5.1 Registration

Every asylum applicant is registered upon his first contact with the state authorities. Applicants who declare themselves at the border or airport should be taken to an official registration point where a screening interview will be conducted to establish their identity, nationality and the fact that they wish to claim asylum. Applicants should be informed about the asylum procedure that is to follow and issued with a document confirming their registration. Applicants should not be substantively interviewed about their claims at this stage.

5.2 Preparation Period

Most asylum applicants arrive in the host country after a long and tiring journey. They therefore need a period of rest before they can physically and mentally be considered able to enter the substantive asylum procedure. The period should usually last for four

weeks (however should be extendable in exceptional circumstances such as the need for a psychiatric assessment to be carried out) and would provide the asylum applicant with an opportunity to contact a legal adviser or NGO in order to prepare for the interview. It would also provide time to obtain documents from the country of origin, gather evidence to support his/her claim or to seek medical advice or treatment. The applicant would then be called for a normal asylum interview (following step 3).

The exception to this would be where the authority intends to transfer the applicant to another country that it considers responsible for his/her asylum claim. The authority would be required to notify the applicant of its decision as soon as possible after registration to enable legal advice on relevant issues to be obtained where necessary. The file would be passed to the specialised Third Country Unit and a Third Country interview (following step 2a) would follow in order to establish the state responsible for examining the claim.

5.2.a Third country interview

The Third Country Unit interviews the applicant in the presence of his/her lawyer. The interview is aimed at establishing whether another State is responsible for the examination of the claim and whether it is safe and appropriate for the applicant in his/her particular circumstances to be transferred to this other country. The criteria for establishing responsibility for determining the claim would be ECRE's proposed alternative to current Dublin II arrangements.[94] As outlined in section 3 of this paper this proposal is envisaged as functioning in conjunction with the future development of improved protection standards across the EU that would reduce both the incentive for secondary movement itself and also the instances where protection considerations might be a pertinent factor. It is therefore anticipated that the number of third country cases would significantly reduce and thus the third country procedure would come to play a relatively incidental part in ECRE's model system. In the short term, however, it might be necessary for the third country procedure to additionally address protection concerns relating to whether the applicant would receive a thorough and fair examination in the other Member State.

5.2.b Third country decision

After a maximum of two weeks following the referral (extendable in exceptional circumstances), the Third Country Unit takes a decision as to which state is responsible and informs the asylum applicant, indicating its decision in writing. The decision will either be:

a) the host state itself is responsible for examining the asylum claim; the claim is transferred into the normal asylum procedure, and continues at step 2 (Preparation Period).
b) another state is responsible for examining the asylum claim; the other state is contacted and transfer arrangements are initiated.

The applicant is informed about the opportunity/process to appeal the decision b).

[94] As outlined above in Section III (4) ECRE's alternative system for determining state responsibility is based on two criteria only: where the applicant has a family member, provided s/he agrees; or where an asylum application has already been lodged in another EU Member State, provided no humanitarian ground exists which would indicate another Member State's responsibility.

5.2.c Preparation of third country appeal

The applicant prepares his/her appeal against the decision to transfer him to another country.

5.2.d Third country appeal

This appeal would usually be held within two weeks of the third country decision. The Independent Appeal Body reviews the case on points of fact and law as to which state should be responsible. The applicant should be entitled to legal assistance during the appeal hearing.

5.2.e Final third country decision

The Independent Appeal Body promulgates a final decision. The case is either transferred into the normal asylum procedure of the host state (starting at step 2) or his/her transfer to the other state is enforced after confirmation of agreement to readmit has been secured. The applicant is issued with a document stating that his/her request for asylum has not yet been examined in substance (in the language of the receiving country).

5.3 Asylum interview

The asylum applicant is invited for an interview, in the presence of his/her lawyer, which focuses on a substantive examination of the claim for asylum.

At the end of the interview, the transcript of the interview should be read back in its entirety to the applicant who should be given the opportunity to correct any errors/misrepresentations, and add information. Following the interview the applicant should be given a week to submit any further evidence for consideration to the first instance decision-making authority.

5.4 First instance decision

The asylum applicant would typically be informed of the first instance decision between 6 and 12 weeks following the initial lodging of the claim, and usually within 4 weeks of the interview itself (extendable in exceptional circumstances[95]). If successful then the applicant is informed of the status granted and any ensuing rights or benefits, including integration assistance.

If refused then the applicant must be issued with a notice of refusal fully explaining and outlining the reasons why the claim has been rejected. This notice must inform the applicant that s/he has a right to appeal, and provide information as to how to do this, including details of any time limits in which to lodge the appeal. Applicants should be given at least 10 working days in which to lodge notice of appeal, and the appeal must have suspensive effect. The notice must explain whether the appeal will

[95] Some cases may be particularly complex and thus require further expert advice, for example, as to the authenticity of presented evidence. It may also be necessary in some cases to hold a second interview.

be carried out under normal or accelerated appeal procedures, assuming states choose to operate such manifestly unfounded procedures at all.

The decision may thus be:
a) recognition of status.
b) rejection of status and normal appeal procedure.
c) rejection of status and accelerated appeal procedure.

5.5 Preparation of appeal

The asylum applicant is given the opportunity to prepare and lodge an appeal on points of both facts and law. In the case of decision c), s/he explains why s/he does not agree with the negative decision and with the assessment of manifestly unfoundedness/channelling through the accelerated appeal procedure.

5.6 Appeal hearing

In c) cases, the appeal hearing takes place a minimum of two weeks after notice of appeal has been lodged against the first instance refusal decision. The Independent Appeal Body undertakes a review of the points of fact and law, considering whether the claim is indeed manifestly unfounded and was therefore rightly channelled through the accelerated appeals procedure. If successfully challenged the case is transferred into the normal appeals procedure, i.e. the asylum applicant is given more time to prepare the appeal and a new hearing date is set. Alternatively, the appeal is rejected.

In b) cases, negative decisions channelled through the normal appeals procedure, the appeal hearing would usually takes place between 6 and 12 weeks after notice of intention to appeal has been lodged by the applicant. This gives both the applicant and the first instance determining body sufficient time to properly prepare for the hearing, identify the points at issue and ensure that all relevant information is available at the hearing. The Independent Appeal Body should have the power to adjourn hearings in certain circumstances, for example if a medical or expert report is still being awaited. The appeal is conducted orally with both the appellant and the first instance decision-making body having the opportunity to submit supporting documentary evidence beforehand. At the appeal hearing the Independent Appeal Body reviews the first instance decision on all relevant points of fact and law. The appellant should be entitled to legal representation both prior to and at the appeal hearing. An accredited and competent interpreter must be provided at the hearing wherever necessary.

5.7 Second instance decision

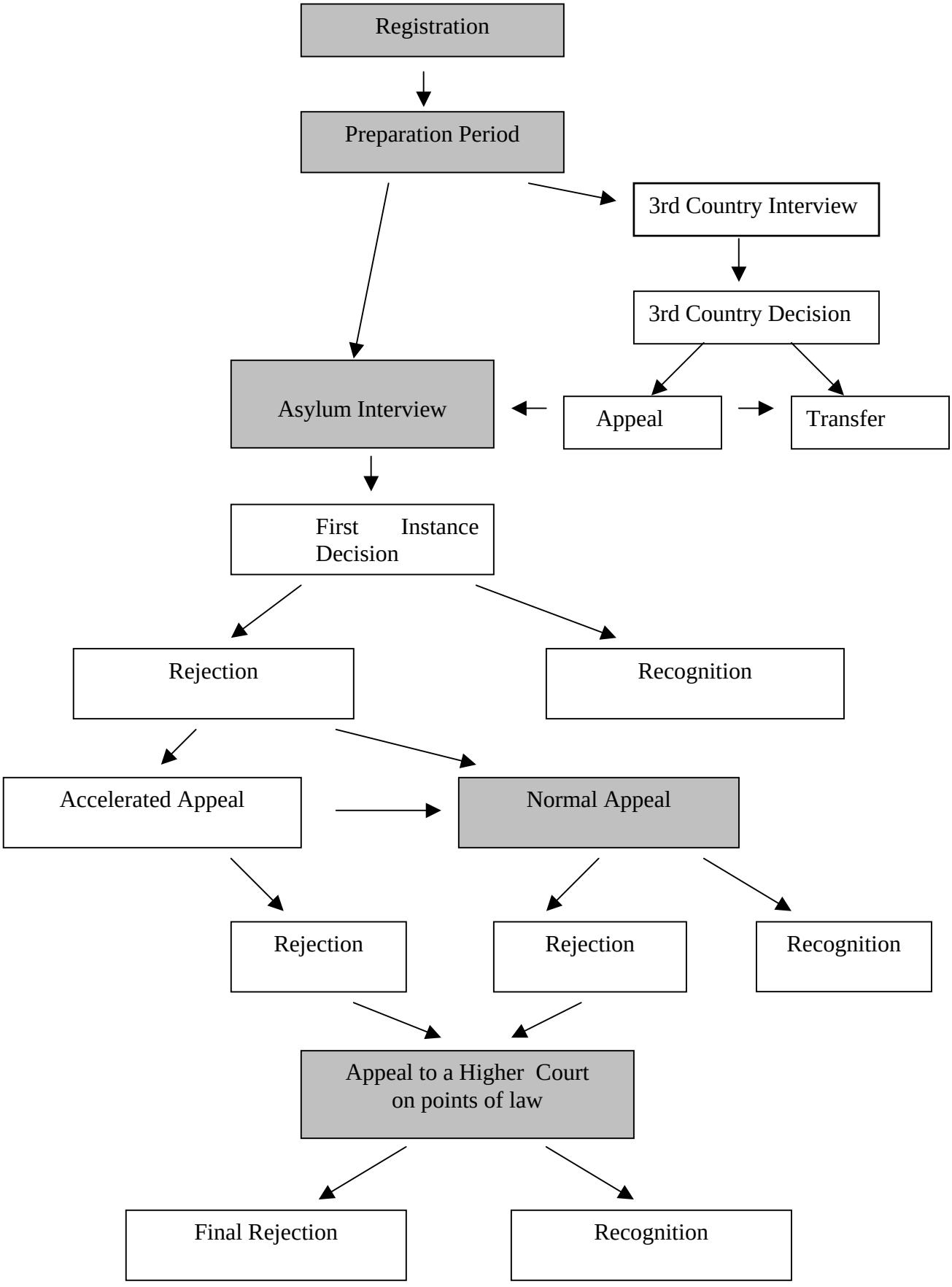
The Independent Appeal Body should promulgate its second instance decision within four weeks of the hearing (ie. within 10-16 weeks of notice of appeal having been lodged). The decision will be either a recognition of protection status or a rejection.

5.8 Access to a higher court

If refused by the second instance body, the asylum seeker should have access to a higher court to review the second instance decision on points of law only. Legal

assistance should again be provided for such reviews where they can be demonstrated to have sufficient merit, and there should be the possibility to apply for court orders suspending any removal decision where an appeal is outstanding.

ANNEX 1 Diagram of ECRE's Model Asylum Procedure



ANNEX 2 List of Recommendations

The Situation Facing Asylum Seekers in Europe

Recommendation 1
EU Member States need to co-operate more extensively in order to increase capacity and achieve greater harmonisation of their asylum systems.

Recommendation 2
States should allocate sufficient resources to their asylum systems in order to reduce existing backlogs and should desist from 'stalling' techniques as a deliberate instrument of deterrence.

Recommendation 3
All asylum applications should be registered immediately and adequate reception facilities provided for the full duration of the asylum determination process, which should at the very least comply with minimum standards under the EU Reception Conditions Directive.

Recommendation 4
All asylum claims should be individually and thoroughly assessed at first instance under a single procedure which is the same for all applicants rather than under special border procedures or accelerated procedures for certain categories of applicant.

Recommendation 5
The right to seek asylum must be fully respected and all asylum seekers must have access to a fair determination procedure.

Recommendation 6
States should work to end the current 'culture of disbelief' endemic in asylum systems and should instead focus on developing quality determination processes capable of accurately identifying individuals who qualify for protection. This necessarily requires respect for all relevant rights and safeguards.

Practical Co-Operation to Achieve Better and More Equal Refugee Protection across EU Member States

Recommendation 7
Common EU mandatory minimum qualifications should be introduced for all officials involved in the asylum determination process, and states should exchange best practice (including study visits) on recruitment and staffing issues.

Recommendation 8
Common EU guidelines should be developed concerning the rotation of staff to avoid 'burn-out', compassion fatigue or symptoms of secondary traumatisation.

Recommendation 9
A common website/database should be established to provide details of current European training activities/courses and links to common as well as national training manuals/materials.

Recommendation 10
A common training programme and manual should be developed for staff involved in asylum determination and could include elements such as interview technique, working with interpreters, working with vulnerable and traumatised applicants, researching and assessing country of origin information, assessing credibility, international refugee and human rights law and drafting decisions. In developing this programme sufficient account should be taken of the existing expertise and resources of UNHCR and NGOs in the field.

Recommendation 11
Training courses providing professional development should be delivered on a continuous basis covering elements of the common training programme and a common accreditation scheme should be introduced to ensure that all asylum staff have the requisite skills and knowledge.

Recommendation 12
A centralised EU training body should be set up to co-ordinate the implementation of the common training programme. It could also oversee the training of interpreters and members of second tier review bodies.

Recommendation 13
Common EU guidelines should be prepared to assist decision-makers and promote consistency, fairness and transparency in certain types of complex case such as those involving gender-related persecution, civil war, torture survivors and children.

Recommendation 14
States should start sharing and providing greater access to existing national country of origin information (among decision makers and practitioners) thereby cutting the cost to individual states and leading to greater approximation of country of origin information used.

Recommendation 15
States should develop common guidelines on the researching, collection and application of COI, improve methods for approving the accuracy and presentation of COI, and explore the increased and more co-ordinated use of joint fact-finding missions.

Recommendation 16
An EU Documentation Centre should be established to oversee the common provision of COI. In addition to producing generic country reports it should also employ a team of experts to respond to specific information requests from decision makers. All information should be provided on a public website/database. A directory of independent country experts should also be established, either by the Documentation Centre and/or as an interim measure.

Recommendation 17
Independent National Advisory Boards comprising independent experts/academics and representatives from UNHCR and NGOs should be set up as an interim measure to improve COI provision while common structures are established.

Recommendation 18
Quality assessment mechanisms including monitoring teams should be established to assess the quality of national asylum determination procedures by analysing a randomly selected sample of decisions.

Recommendation 19
Monitoring teams should be independent and comprise representatives of UNHCR (as mandated by its supervisory role under Article 35 of the 1951 Geneva Convention) and a range of other specialist personnel working in the field, including representatives of NGOs and other independent experts. Periodic public reports would ensure transparency and accountability.

Recommendation 20
Expert support teams could be set up consisting of state officials, UNHCR representatives and other independent experts to help meet any capacity shortfall in a state experiencing backlogs or unexpected increases in asylum numbers.

Recommendation 21
In addition to assisting with volume-related capacity problems states should also engage in a mutual sharing of resources to address situations where certain states might lack expertise in relation to a particular asylum caseload or sufficient interpreters competent in a particular language.

Recommendation 22
In the short term existing EU structures such as EURASIL and the Committee on Immigration and Asylum (CIA) could start the process of co-ordinating increased practical co-operation among Member States. EURASIL should create subgroups tasked to deliver on particular initiatives, comprising both government and independent experts (including representatives of UNHCR and NGOs). The European Commission should be provided with extra resources to strengthen its Secretariat function in EURASIL, and transparency and accountability should be improved through increased reporting functions.

Recommendation 23
In the medium and long term it will be necessary to establish an independent EU office to implement the Hague Programme, and to facilitate a truly common and unified EU approach. The office could assume responsibility for monitoring and evaluation functions, the co-ordination of expert support teams and quality assessment mechanisms and the supervision of project-led initiatives to implement the Hague Programme. Calls for project proposals should be designed to allow sufficient access for applications from NGOs and other independent organisations.

A Common European Asylum System?

Recommendation 24
The Dublin II Regulation should be replaced with an alternative system for determining the state responsible for processing a claim according to two criteria: 1) the state where the asylum seeker has a family member, provided s/he consents to the transfer; or 2) the state in which an asylum claim was first lodged, unless there are compelling humanitarian considerations to prevent this.

Recommendation 25
ECRE's alternative system for allocating state responsibility for determining asylum claims should be complemented with improved burden sharing and other measures to support states receiving higher numbers of asylum applicants. In order to evaluate true rather than perceived asylum pressures it will be necessary to develop functions which can provide more accurate and comprehensive asylum statistics.

Recommendation 26
A well-resourced financial burden sharing instrument should be established based on the real costs of hosting and processing asylum claims which could compensate Member States receiving higher numbers. This should include a mechanism designed to dispense additional funds to enable states with less developed asylum systems to catch up with more developed states.

Recommendation 27
There should be a well-resourced Integration Fund to promote the integration of refugees and beneficiaries of subsidiary protection and a well-resourced Return Fund to help facilitate the efficient and sustainable return of those found not to be in need of international protection.

Recommendation 28
The financial burden sharing instrument could also fund common structures co-ordinating the despatch of expert support teams and quality monitoring teams as well as concrete programmes for joint responses to large-scale humanitarian crises.

Recommendation 29
The EU should adopt legislation granting freedom of movement within the Union (to reside, work etc) to all individuals recognised as being in need of international protection.

Recommendation 30
Any system of joint processing must accord with all relevant human rights standards and guarantee full respect for asylum seekers' rights under international law. It should not involve the forced transfer of asylum seekers to centralised processing centres or the unnecessary and disproportionate use of detention. The need for joint processing should only be assessed after a comprehensive evaluation of the first phase instruments and progress in implementing the Hague Programme.

Towards More Fair and Efficient Asylum Procedures in Europe

Recommendation 31
States should adopt a policy of frontloading by investing sufficient resources in order to enhance the quality and efficiency of first instance decision-making thus avoiding unnecessary appeals.

Recommendation 32
The first phase of an asylum procedure should include minimum time limits in order to enable every asylum applicant to properly prepare his/her claim.

Recommendation 33
States should work to eradicate delays from their determination systems. A residence permit should automatically be granted to an asylum seeker who has been in the procedure for 15 months and, for reasons beyond his/her control, has not received a final decision on the asylum request.

Recommendation 34
All border applicants should be taken to a designated registration point for a formal screening interview to be conducted with the assistance of a qualified interpreter. The applicant must be provided with documentation at this stage and the application referred to the competent authority for determination. Border guards should not be responsible for determining asylum claims and substantive interviews should never be conducted at a border or transit zone. States should permit NGOs and UNHCR access to border areas and transit zones at ports of entry.

Recommendation 35
Asylum seekers should not be penalised for arriving without valid travel or identity documents and ECRE reminds states that such practices may result in violation of Article 31 of the 1951 Geneva Convention.

Recommendation 36
Vagueness and/or absence of information and documents regarding travel route, identity, and/or nationality should not lead to conclusions on the merits of the claim. The asylum applicant must always be able to rebut the presumption of a lack of credibility. All aspects of his/her statement must be considered in light of the overall substance of the asylum claim and the individual circumstances of the claimant.

Recommendation 37
States should set up open and well-resourced reception centres for the initial phase of the asylum procedure but thereafter it should not be mandatory for applicants to remain in reception centres.

Recommendation 38
As a general rule asylum seekers should not be detained and should never be placed in penal institutions. Unaccompanied minors should never be detained on immigration grounds.

Recommendation 39
Asylum systems should include prioritisation mechanisms for particularly vulnerable and manifestly well-founded cases.

Recommendation 40
Asylum systems should allow for the prioritisation of cases raising security concerns through specialised refugee exclusion procedures. However, these must ensure a thorough examination and respect for all relevant safeguards and obligations under international law, including the absolute prohibition on the return of individuals at risk of torture or inhuman or degrading treatment under Article 3 of the European Convention on Human Rights.

Recommendation 41
The asylum procedure should not contain any acceleration mechanisms during the first instance stage of decision-making. If states choose to accelerate asylum procedures, this should be through accelerated appeal proceedings, provided that the necessary legal safeguards are in place and the overall procedure is fair.

Recommendation 42
The criteria for the accelerated appeal procedure should be informed by EXCOM Conclusion No. 30, i.e. should either relate to clearly fraudulent cases or to cases that are not related to the criteria for the granting of refugee status laid down in the 1951 Geneva Convention, the EU Qualification Directive or any other criteria justifying the granting of protection.

Recommendation 43
All asylum applicants should be guaranteed access to free legal advice, access to UNHCR/NGOs, a qualified and impartial interpreter, a personal interview and a suspensive right of appeal. There should be no derogation from these rights even in accelerated procedures.

Recommendation 44
Asylum procedures should allow for the granting of two possible statuses with the same set of rights attached to them. Applicants may be recognised either as refugees in line with the 1951 Convention and 1967 Protocol, or considered in need of subsidiary protection as defined under the Qualification Directive, or under a more broadly defined form of complementary protection. Subsidiary protection should only be considered after it has been determined that an applicant does not qualify under the 1951 Geneva Convention. Precise reasons for non-recognition of 1951 Convention status should be given when granting another form of status.

Recommendation 45
States should avoid the use of accelerated and admissibility procedures which are often resource-intensive, inefficient and ultimately cause delays in asylum systems.

ANNEX 3 FURTHER ECRE READING

Position on the Detention of Asylum Seekers, April 1996

Position on Refugee Children, November 1996

Position on Asylum Seeking and Refugee Women, December 1997

Guidelines on Fair and Efficient Procedures for Determining Refugee Status, September 1999

Position on the Interpretation of Article 1 of the Refugee Convention, September 2000

Position on Complementary Protection, September 2000

Comments on the Proposal for a Council Regulation 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, December 2001

Position on Return, October 2003

ECRE 2003 Country reports

Position on Exclusion from Refugee Status, March 2004

Questionnaire and Guidelines for the treatment of Iraqi asylum seekers and refugees in Europe, April 2004

Guidelines for the treatment of Afghan asylum seekers and refugees in Europe, May 2004

Broken Promises – Forgotten Principles, An ECRE Evaluation of the Development of EU Minimum Standards For Refugee Protection, Tampere 1999 – Brussels 2004, June 2004

Comments on the Communication from the Commission to the Council and the European Parliament on "A more efficient common European asylum system – the single procedure as the next step", COM (2004) 503 final, September 2004

Comments on Future Orientations for an Area of Freedom, Security and Justice, September 2004

Renewing the Promise of Protection: Recommendations to the Brussels European Council, 5 November 2004 on the Multi-Annual Programme '*Strengthening Freedom, Security and Justice in the European Union'* and recent proposals to establish camps in the Mediterranean region, October 2004

Information Note on the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, October 2004

Information Note on the Council Decision establishing the European Refugee Fund for the period 2005-2010, December 2004

Comments 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, March 2005

The Way Forward. Europe's role in the global refugee system. Towards a European Resettlement programme, April 2005

Guidelines on the Treatment of Chechen Internally Displaced Persons (IDPs), Asylum Seekers & Refugees in Europe, June 2005

The Way Forward. Europe's role in the global refugee system. Towards the Integration of Refugees in Europe, July 2005