



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

Memorandum to the Portuguese Presidency

Balancing Protection and Control in the Common European Asylum System

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Portugal is about to take over the Presidency of the European Union, just weeks after the Commission published a green paper initiating a process of reflection on how to achieve the ever more ambitious sounding goal of a Common European Asylum System by 2010. Meanwhile, news headlines have recently been dominated by tragedies in the Mediterranean. Together with the Iraqi refugee crisis, those incidents have again exposed the serious shortcomings of the EU's asylum and refugee policy: barriers to protection, burden-shifting and rock-bottom standards.

The task for Portugal is to secure a radical shift in Member States' approach to asylum and refugee policy, so that Member States commit to working towards common rules, consistent with international human rights standards, based on a willingness to share responsibility with each other and with the rest of the world.

One of the main events of the German Presidency was a meeting of ministers responsible for the integration of migrants. ECRE acknowledges that integration, alongside irregular migration, presents great challenges: a coherent approach is vital. Regrettably, integration is often ignored when the EU addresses asylum and the most important challenge is too often forgotten or sidelined: that of safeguarding fundamental rights, including the right to seek and enjoy asylum. The EU needs to approach asylum in a balanced way, considering the need to help integrate asylum seekers whose claims are well-founded, and not only deterring those with unfounded claims. If not, it risks alienating future citizens, institutionalising social exclusion and encouraging racism and xenophobia.

In its relations with Africa and countries of transit or origin in other regions, the EU must demonstrate tangibly that it is interested not only in pursuing restrictive policies of migration control, aimed at putting a stop to the irregular movement of people, but also committed to high standards of refugee protection and a genuine willingness to share the global burden and responsibility for refugee protection. Otherwise, poorer countries hosting the majority of the world's refugees may be tempted to follow suit, with grave consequences for the international protection system.

1. Deaths at the EU's borders
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1. Deaths at the EU's borders

The last JHA Council of the German Presidency failed to reach agreement on a practical response to the humanitarian crisis in the Mediterranean. Urgent steps are needed to prevent the recurrence of recent tragedies, where the authorities of Member States as well as the masters of individual ships have apparently been reluctant to go to the assistance of boats that were clearly in difficulty. The root of the problem lies in Member States' unwillingness to disembark migrants, and to share the international responsibility for identifying those amongst them who may be refugees or otherwise in need of protection, and duly to provide them with that protection.

The Commission's recent study highlighted that the interrelation between the law of the sea, refugee law and human rights law is particularly complex. At a very practical level, for example, the commander of a Frontex ship will be aware of his duty to disembark people he has rescued from drowning at the 'nearest safe port'. But for refugees, the meaning of 'safe' includes not being exposed to persecution or the risk of *refoulement* to a place where they fear persecution.

The situation is exacerbated by the confusion and conflation of two different objectives of the EU and its Member States: rescue at sea and prevention of irregular migration by means of interception. Moreover, measures taken in the EU's fight against illegal immigration may force migrants to take bigger risks with their lives.

The law may not explicitly address all the challenges faced when rescue/interdiction activities of EU Member States and/or Frontex take place in the territorial waters of another State, often in a partnership with the government of that State. But the principle is straightforward: with power comes responsibility. Member States should acknowledge that, if they or the EU choose to project their power to control entry to their territory, responsibility for refugee protection has to accompany it.

The approach taken by the Council so far, of increasing resources for Frontex and establishing new Rapid Border Intervention Teams, is unlikely to be effective without agreement on responsibility-sharing. The principle of non-*refoulement* has long been understood to embrace not only forcible return from within a state's territory, but also non-admittance at its border¹. The EU must find a way not only of sharing the burden of patrolling Europe's external borders, but also of sharing the duty to save human lives and the responsibility for refugee protection.

If international agreements on search and rescue are lacking, as some States have argued, a regional solution must be found. A suitable forum would be the Presidency's planned Euro-Mediterranean Ministerial Meeting on migration in Lisbon on 17-18 November.

- *The Portuguese Presidency should broker agreements between Mediterranean countries, so that their responsibilities under the Search and Rescue Convention (SAR) and the SOLAS Convention, including the amendments which came into force in 2006, are properly understood and implemented. It should cooperate with the European Commission and other relevant stakeholders, including NGOs and the UNHCR, to agree guidelines amongst EU states on issues not regulated by international law, such as the state responsible for receiving rescued passengers.*
- *The Portuguese Presidency should ensure that any agreements and guidelines facilitate states' ability to adhere to their protection obligations and preserve the right to seek asylum, and underline the imperative to preserve life at sea.*

European countries are extending their border controls beyond their physical frontiers, without acknowledging that it is the duty of every government to ensure that all individuals on their territory or under their effective control enjoy full respect for their human rights, including protection against *non-refoulement*. Some European States have rescued (or intercepted) migrants outside of their territory and

¹ UNHCR Exclusion No. 6 (XXVIII) 1977 reaffirmed that the principle of non-*refoulement* applies "both at the border and within the territory of a State."

then detained them, without clearly acknowledging their jurisdiction. A case in point were the passengers of the *Marine I*, some of whom were detained for some weeks by Spanish authorities in a centre in Mauritania. Moreover, unless the EU makes a visible commitment to a high standard of refugee protection and respect for human rights at home, it will struggle to dissuade its partners abroad from closing their borders and expelling people in need of protection.

- *The Portuguese Presidency should foster a debate which leads to a better shared understanding of the responsibility that accompanies the exercise of extraterritorial jurisdiction, which is in line with relevant case-law.*

2. The Common European Asylum System (CEAS)

Malta's call for a mechanism to share the responsibility for protection of persons rescued at sea points to a fundamental flaw in Member States' approach to developing a Common European Asylum System: the absence of solidarity. The pressure on Malta and Cyprus would be far more manageable if asylum seekers were not forced to stay there, simply because that country was their first point of contact with the EU, and/or if persons qualifying for protection had the right to move elsewhere in the Union.

Far from taking a European perspective, the political sensitivities around immigration and asylum are such that Member States remain wedded to national policies of deterrence and deflection. That approach has left the EU with the Dublin Regulation, a system for shifting, rather than sharing responsibility, and wide disparities in the quality of protection. Iraqis, for example, can be almost sure of finding protection in Sweden and fairly certain of not being forcibly returned by most Member States. But Germany has stripped around 20,000 of their refugee status on the grounds that they fled the regime of Saddam Hussein, which no longer exists. A few countries enforce returns to Iraq, despite the evident security problems and the scarcity of resources.

ECRE welcomed the recent publication of the Commission's Green Paper on asylum, as it put refugee protection and human rights back on the EU agenda, which for too long has been dominated by the fight against irregular migration. Europe needs a sensible discussion on how to live up to its international duties, to share responsibility for refugee protection fairly between member states as well as with the rest of the world, and to set common standards on asylum that are consistent with fundamental rights.

- *The current and incoming Presidency troikas have already begun working on a successor to the Hague Programme, dubbed by some the Stockholm Programme. ECRE urges them to engage in the debate initiated by the Commission in an open and transparent way.*

The Green Paper provides an opportunity for a structured discussion on the completion of the Common European Asylum System. However, this necessarily requires a thorough and comprehensive evaluation of the transposition and implementation of the first phase asylum instruments. That will require the investment of sufficient resources and the full cooperation of all Member States. It will also need to be done in a timely fashion if it is to meaningfully inform the development of the next phase of the Common European Asylum System.

While it is important that a level protection field is achieved, a process of levelling down to the lowest common denominator must be avoided. The negotiations on the Asylum Procedures Directive showed how real that risk is. Greater urgency is required to address current divergences in the quality of refugee status determination from one country to another if EU states are to live up to the commitments made at Tampere and reiterated in the Hague Programme². Consistent high quality decision-making among EU

² *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union* (2005/C53/01). Para 1.3 calls for the 'establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection [...] based on the full and inclusive application of the Geneva Convention on Refugees and other relevant Treaties'.

states is essential when the Dublin system means that asylum seekers are unable to choose the country where they lodge their claim and where refusal of asylum from one state means expulsion from all. From an integration perspective, quick, fair and high quality decisions would enable those who are granted asylum to find the security and stability they need to rebuild their lives.

The Commission's Communication on strengthened cooperation among Member State' asylum services, on which the European Parliament has just adopted a resolution³, presents an opportunity to begin to move towards a more level playing field, by developing practical tools that will help to create asylum systems that are both fair and efficient. Best practice could usefully be shared among member states in relation to training, identifying survivors of torture, interviewing children, assessing claims of persecution based on gender or sexual orientation and gathering and using country information. In early 2007, the Commission will take forward work to achieve greater collaboration in compiling, assessing and applying country information.

- *ECRE calls on the Presidency and the Commission to facilitate expert contribution from various sources, including international and non-governmental organisations, in order to make use of existing resources while respecting fundamental principles to ensure relevant, reliable, accurate and transparent country information.*

Any new structures created under the practical cooperation programme must operate in a transparent manner, with public terms of reference and proper reporting functions. This should include oversight by the European Parliament and must ensure that democratic accountability and transparency govern all developments leading up to and including the creation of an EU Support Office. ECRE welcomes the Commission's recognition of the importance of involving NGOs and UNHCR in activities to improve the quality of first instance decisions.⁴ Involving independent experts would not only improve quality but would increase confidence in the management of asylum, thereby facilitating a less adversarial and therefore more efficient process. The key to better quality decisions is transparency and monitoring. ECRE supports the creation of independent monitoring mechanisms to identify gaps in existing decision-making procedures and the appropriate training and resources needed to fill these gaps. Austria and the United Kingdom, in cooperation with UNHCR, already have good practice on this which could be shared with and developed in other states.

- *The Portuguese Presidency should invite the Council to state clearly and unequivocally that the objective of practical cooperation on asylum procedures is the sharing of best practice with a view to achieving high quality asylum decisions consistently across the EU. This process must involve independent experts and be verified by transparent, effective monitoring mechanisms.*

Furthermore, the events the experience of Malta and Spain (in the Canary Islands) demonstrate the need to address the disproportionate and sometimes sudden pressures on asylum services and reception capacities experienced by some Member States. In its Communication on strengthened practical cooperation, the Commission suggests creating expert support teams. According to the Communication these could support '*the processing of asylum systems through the rapid provision of interpretation services, case working and COI expertise*'. By contrast, the legal base of the Rapid Border Intervention Teams (RABITs) that has just been adopted by the Council⁵ does not give them a mandate to support Member States' asylum services. Indeed, the Commission's proposed Regulation establishing RABITs explicitly stated that they would be "*distinctly different from [...] the proposal for the creation of a cooperation network in the field of asylum which will, inter alia, facilitate the pooling of experts in the*

³ European Parliament resolution of 21 June 2007 on asylum: practical cooperation, quality of decision-making in the common European asylum system (2006/2184(INI))

⁴ Para 12, Annex B of the *Communication from the Commission to the Council and the European Parliament on Strengthened Practical Cooperation. New Structures, New Approaches: Improving the Quality of Decision Making in the Common European Asylum System*, COM (2006) 07 final.

⁵ Proposed *Regulation establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism*, 19.7.2006 COM(2006) 401 final

field of asylum, which the Commission intends to present in the course of 2006". If the EU is to develop a credible and human rights-respecting response to the challenge of mixed flows, the proposal for border control-orientated Rapid Border Intervention Teams needs urgently to be complemented by one for protection-focussed expert support teams.

- *The Commission should be invited to present as soon as possible its proposal for the creation of expert support teams⁶ to provide support for the processing of asylum applications. Teams should include independent as well as state experts.*

One of the themes of the review of the Hague Programme during the Finnish Presidency was the need for better evaluation of JHA policies. NGOs wish to be involved in that process, but their resources are extremely limited. Evaluators need to be adequately funded and encouraged to reach out to NGOs, and not rely exclusively on NGOs responding to written questionnaires, or coordinating themselves into providing a single common response.

- *ECRE urges the Portuguese Presidency to support the Commission in ensuring that all possible methods are used to engage the broadest range of NGO contributions both to the consultation on the CEAS and on the various evaluations in the area of Justice, Freedom and Security due to take place in 2007.*

3. Dublin II Regulation

The wide divergence in the quality of protection available in the EU means that the Dublin system is currently a dangerous lottery. The Commission's evaluation of the Dublin system published earlier this month supports many of the findings made by ECRE⁷ and UNHCR⁸ in 2006 on the operation of the Dublin II Regulation. The ECRE and UNHCR reports revealed that some states were denying access to a full asylum procedure to individuals transferred under the Dublin system, placing them at risk of being returned to their home countries to face persecution. In its report ECRE highlighted the human cost of the Dublin system resulting in greater use of detention and causing unnecessary suffering to families, children and survivors of torture. In 2006, the European Parliament called on the Commission to take the initiative as soon as possible to revise the Dublin II Regulation and to introduce a fair mechanism for sharing responsibilities among the Member States.⁹

While greater efficiency and consistency of existing provisions are important goals, they should not be at the expense of individuals or families who face uncertainty and restrictions on their fundamental rights. Immediate amendments to the Regulation must additionally be aimed at reinforcing the system in protection terms.

In the longer term the solution lies in re-designing the Dublin system to ensure genuine responsibility-sharing, guarantee full access to protection in which ever state a claim is lodged, and support the EU's wider integration objectives. This should form an integral part of the discussion facilitated by publication of the Commission's Green Paper. Any alternative system for allocating responsibility would need to be complemented by a burden-sharing instrument that would support those Member States which received higher numbers of asylum claims, based on the real costs of hosting asylum seekers, determining claims and funding for integration and returns. The Finnish Presidency's idea of

⁶ Paras 5 and 6, Annex D of the Communication on Practical Cooperation.

⁷ *Summary Report on the Application of the Dublin II Regulation in Europe*, ECRE/ELENA, March 2006 is available at www.ecre.org

⁸ *The Dublin II Regulation, a UNHCR Discussion Paper*, UNHCR, April 2006

⁹ See *European Parliament Resolution on the situation with refugee camps in Malta*, 6 April 2006, P6_TA(2006)0136, paragraph 15.

using EU funding to cover a significant part of the actual costs incurred by Member States during the asylum process¹⁰, is a helpful contribution to this discussion.

If given the choice, refugees would live in the country where they have the best chance of integrating, whether due to the presence of family members, social networks, employment opportunities or to cultural or linguistic ties. A system that delivers quick, efficient and fair status determination, wherever a claim is lodged, followed by an opportunity for recognised refugees to relocate within the EU would provide an incentive to asylum seekers to claim asylum immediately upon entry into the Union and would facilitate the integration of successful claimants. Both asylum seekers and Member States would benefit from a system where asylum seekers have an incentive to register with the authorities rather than transit or reside irregularly, and which maximises refugees' potential to integrate into the EU.

- *The Portuguese Presidency should invite the JHA Council to take immediate steps to amend the Dublin II Regulation and related legislation, in order to meet the protection gaps identified by the European Commission, UNHCR and ECRE. In response to the Green Paper, the Council should consider devising a new system for allocating responsibility for asylum claims that takes full account of Europe's integration objectives.*

4. Integration

Until now Member States have approached asylum almost exclusively from the perspective of needing to deter asylum seekers and prevent people from allegedly abusing the asylum system by making claims that are eventually rejected. This has resulted in a lowest-common-denominator approach to the harmonisation of asylum law, the Dublin system which takes too little account of integration policy objectives, increasing use of detention, the exclusion of asylum seekers from the labour market, political pressure to enforce returns and a plethora of measures to tackle irregular migration that effectively prevent refugees from reaching EU territory or force them to take ever greater risks with their lives. An asylum seeker who is recognised as a refugee and eventually becomes a citizen of a Member State may well feel she has succeeded only in beating a system geared to keeping her out. Such feelings are far from ideal ground on which to foster integration and cultivate loyalty to a new country.

The approach might be counterproductive in other ways. While the number of asylum claims has fallen dramatically in recent years, there is little evidence that only non-refugees have been prevented or deterred from reaching the EU. Indeed the latest UNHCR figures show that, internationally, the number of asylum claims has risen for the first time in five years, while the number received by the EU has plummeted to a 20 year low. Anecdotal evidence indicates that some people with grounds for refugee status are choosing to remain undocumented, rather than claim asylum and risk being detained, refused and returned. They are being pushed into excluding themselves from mainstream society and exposing themselves to exploitation, rather than enter a system which could result in them becoming productive, tax-paying citizens. Meanwhile unbalanced government and media rhetoric about the need to tackle illegal immigration and abuse of the asylum system risks exacerbating community tensions.

- *The Portuguese Presidency should follow up May's ministerial meeting on integration by initiating an assessment of the coherence of asylum policy with integration objectives. As a second step, ECRE urges the Portuguese Presidency to call upon governments, politicians and their parties to promote positive public attitudes towards migrants, asylum seekers and refugees.*

As ECRE has observed in memoranda to past Presidencies, it is deeply unjust that refugees currently have fewer rights under EC law than do other long-term resident third country nationals. The Commission's long-awaited proposal to broaden the scope of the Long Term Residents Directive is therefore to be welcomed. The proposal would provide refugees with the same rights as other legally resident third country nationals, including free movement and residence rights in other EU states, as well as entitlements to work, to receive education and training, and to have their professional qualifications recognised.

¹⁰ *Migration management; extended European solidarity in immigration, border control and asylum policies*, www.eu2006.fi

However, ECRE strongly regrets that the proposed qualification period for long-term residence status is as long as five years, given the particular situation of refugees and subsidiary protection beneficiaries. European countries should instead be aiming to provide refugees with rights similar to those enjoyed by nationals as soon as possible following recognition. Granting refugees a secure legal status and durable residence permit is essential for them to gain the stability and predictability required in order to proceed with their lives and contribute fully to the social, political and economic life of their host country.¹¹ ECRE is also concerned that some of the proposed conditions attached to long term residence may not be consistent with refugees' rights under international law.

- *ECRE calls on the Portuguese Presidency to adopt the Commission's proposal as quickly as possible, with a reduced qualification period and subject to other changes necessary to ensure that it is consistent with international refugee law.*

5. Global Approach to Migration

The EU has recognised that a comprehensive, coherent or 'global' approach to migration must offer economic migrants legal alternatives to irregular entry into the EU. But Member States continue to ignore that people seeking protection have a similar, if not greater, need of legal routes into the EU. They are quick to condemn abuse of the asylum system, but slow to point to any correct means by which refugees should reach EU territory, despite their assertion in Tampere in 1999 that migration policies must be based on principles which 'offer guarantees to those who seek protection in or access to the European Union'.¹²

ECRE looks forward to participating in July's global forum on migration, to be held in Brussels, and welcomes the dialogue that Europe has established with African countries on the important issues of migration and development, a dialogue that the Council has just agreed to extend to countries to the east and south east of the EU. That the EU and Africa are finding common ground in areas such as legal migration is to be welcomed, but other areas of cooperation give rise to grave concerns.

The EU is currently negotiating with Libya in order to secure the same cooperation in stopping irregular migration by sea as it has with Mauritania and Senegal. Libya, however, would like assistance with preventing irregular migration from its neighbours, Chad, Niger, Algeria and Sudan. ECRE is deeply concerned that any such assistance might prevent refugees from fleeing those countries, particularly the crisis in Darfur.

- *The Presidency is urged to ensure that no agreements are entered into in the Global Approach framework that would restrict refugees' access to protection.*

WNIS

The EU's extensive support and assistance on the Ukraine's western border is not matched by similar efforts along the eastern border with Russia and Belarus. Increased assistance in this area is urgently needed to ensure that refugees are properly identified from amongst the migrants who are arriving from Russia and Belarus in significant numbers, and that those refugees are duly provided with protection. The level of protection available to asylum seekers and refugees in the region is woefully inadequate. Problems include the lack of routine access to interpretation or legal representation and the disruptive effects of frequent restructuring of the migration authorities, which impede access to protection.

- *The Portuguese Presidency should ensure that protection concerns are addressed when implementing the EU's Regional Protection Programme in the Western Newly Independent States*

¹¹ *The Way Forward: Europe's role in the global refugee protection system - Towards the Integration of Refugees in Europe*, ECRE, 2005, www.ecre.org

¹² Presidency Conclusions, Tampere European Council, 15/16 October 1999.

(WNIS) and ensure that the safeguarding of the human rights of refugees and asylum seekers remains of primary concern.

Access to protection for asylum seekers from Chechnya is a major problem in states neighbouring the EU. Belarus did not recognize a single refugee from the Russian Federation in 2006, nor has Ukraine recognised any Chechen refugee. The Belarus authorities still refuse to allow Russian citizens to register asylum applications. Chechen asylum seekers have reportedly been prevented from crossing into the Ukraine from the east. Chechen asylum seekers are not afforded protection from *refoulement* in Belarus or Ukraine and are in danger of being sent back to Russia and Chechnya where they face serious harm. 2007 saw a significant increase on xenophobia and racially motivated crimes in Ukraine. UNHCR, Amnesty International, IOM and Ukrainian NGOs have all expressed concerns regarding recent attacks on foreign citizens.

- *The Portuguese Presidency should engage Ukraine and Belarus in a discussion about their obligations under international law, stressing the need to afford fair and efficient standards of protection to all asylum seekers, regardless of their country of origin, and to uphold their commitments to avoid sending a person back to a country where they could face persecution, torture or degrading or inhuman treatment or punishment. The Ukrainian authorities should be urged to investigate the incidents of alleged hate crime carefully and put mechanisms in place to combat xenophobia and racism.*

Russian Federation

In 2006 the Russian government introduced and implemented legislation on non-governmental organizations, which curtails free speech and the activities of non-governmental organizations working on human rights issues, particularly in Chechnya. Human rights defenders in the Russian Federation are being exposed to severe and increasing pressure. The murder of journalist Anna Politkovskaya in October 2006 dealt a severe blow to the human rights community in Russia. Other NGO workers helping migrants and refugees have also received death threats in recent months, including members of the Memorial Human Rights Centre, an ECRE member agency.

- *The Portuguese Presidency must emphasise to the Russian Federation the importance of preserving the independence of Russia's civil society and urge it to provide effective protection to human rights defenders (HRDs).*
- *The Portuguese Presidency should put into effect the commitment made by the Council in June 2006 to "developing protection tools for situations where the life or physical and mental integrity of HRDs may be at immediate risk" and "consider issuing of emergency visas for HRDs in grave danger, building on the experience and good practice of some member states."¹³*

The Russian Federation has recently violated international commitments to *non-refoulement* on a number of occasions, secretly deporting to China Falun Gong practitioners who were recognised as refugees by UNHCR, where they face torture and serious harm.¹⁴

- *The Portuguese presidency is urged to seek an explanation for these violations of international law and seek assurances that Russia intends to comply with international commitments not to send refugees or asylum seekers to countries where they are at risk.*

¹³ First Review of the Implementation of the EU Guidelines on Human Rights Defenders, endorsed in the Council Conclusions on EU Guidelines on human rights defenders of 12 June 2006. <http://www.protectionline.org/spip.php?article527>

¹⁴ On May 13th, 2007, Professor Gao Chunman, a Falun Gong practitioner with UN refugee status was forcibly carried away from his home by agents of the Russian Federal Immigration Service's St. Petersburg branch, taken to Moscow and deported back to China. Gao had had a stroke two years previously and has limited mobility so was literally physically carried out of his home. This was the second deportation by Russian authorities after Falun Gong practitioner Ma Hui and her eight-year-old daughter were deported to China in March.

South East Europe

Serbia hosts almost 208,000 internally displaced persons (IDPs), the majority Serbs (68%), followed by Roma and Montenegrins. There are 21,000 IDPs in Kosovo and UNHCR estimates that a further 85,000 people remain at risk of displacement. A decision on Kosovo's future status will directly affect the displaced, in particular their citizenship status and rights deriving from it. IDPs in Serbia already experience numerous problems in accessing their rights because of the lack of cooperation between UNMIK and the Republic of Serbia and non-recognition of official documents. An agreement on a new status for Kosovo may well lead to new displacement, particularly if it is reached without the participation or consent of the Serbian government.

- *ECRE urges the Portuguese Presidency to ensure that any agreement on the future status of Kosovo does not produce a new wave of displacement in the region and that the voluntary return of IDPs be properly planned and facilitated.*

6. Returns

The June JHA Council invited the EU Border Management Agency (Frontex) to expand its role in coordinating, facilitating and enforcing returns, while the EU is also trying to establish readmission agreements with a number of third countries. Member States continue to want to develop greater cooperation with each other and with third countries on border management issues and return operations. On the other hand there appears to be little desire amongst Member States to reach a compromise with the Parliament on the proposal for an EU Returns Directive to establish common rules on return procedures, which has the potential to facilitate cooperation while respecting the fundamental rights of persons being returned from all EU countries.

- *ECRE calls on the Portuguese Presidency to take an active role in the process of developing EU rules on return procedures on the basis of the European Commission's 2005 draft proposal and drawing on ECRE's recommendations¹⁵ in order to ensure that persons whose asylum applications have been rejected are treated humanely, returned in safety and dignity and in a manner which supports the sustainability of their return.*

ECRE members participating in our South East Europe programme repeatedly underline the need for an integration element to return activities, in order to ensure the sustainability of returns. The EU has now negotiated readmission agreements with all the countries in the region, including one with Serbia, which is due to come into force in 2008. The Council of Europe has estimated that between 50,000 and 100,000 citizens of Serbia and Montenegro are to be returned from Western Europe¹⁶, most of them Roma. Those who have already returned, often without any accommodation, property or documents, struggle to find work, or access health care and social welfare services. Organisations in Serbia and Montenegro lack the financial, technical and human resources to offer even the most basic support, in line with fundamental human rights. Returnees often do not understand the system, their children cannot speak either Serbian or Roma, cannot have their qualifications recognised and cannot enroll into schools.

Especially problematic is the return of certain minorities to parts of Kosovo and central Serbia, who have been refused asylum on the grounds that that part of the country is safe and that they have an 'internal flight alternative'. Both the Parliamentary Assembly of the Council of Europe and UNHCR have called for restraint in the use of this concept. The practice simply adds to the number of internally displaced, shifts

¹⁵ See ECRE's comments on the proposed Directive on common standards and procedures in Member States for returning illegally staying third country national, May 2006 www.ecre.org

¹⁶ CoE, DoC. 9990, Report of the Committee on Migration, Refugees and Population (Rapporteur: Mr Einarsson), October 2003

the burden and responsibility from the EU to the state concerned, and places individuals in situations of great hardship, deprived of basic human rights. Consequently, many are attempting to get back to western Europe through irregular channels. It is in the EU's interest, as well as that of returnees, for returns to be voluntary, dignified and sustainable. This requires international cooperation in a spirit of solidarity with Serbia and Montenegro, as with other countries of origin.

- *The Portuguese presidency should work with Serbia, Montenegro and other countries of origin in a spirit of solidarity to create conditions conducive to voluntary, dignified and sustainable returns, including by adequately supporting integration programmes for returnees.*

Member States are often reluctant to offer asylum seekers assistance with integration for fear that those whose claims are eventually rejected are less likely to return. Indeed asylum seekers and refugees are explicitly excluded from the scope of the proposed Integration fund for 2008-2013. Nevertheless the experience of ECRE's members is that integration assistance, such as vocational training, encourages independence and self-sufficiency and provide asylum seekers with valuable skills with which to rebuild their lives and make a contribution, either to their host country, or, should their claim be rejected, to their country of origin. Conversely, policies such as detention, exclusion from the labour market and deprivation of reception conditions are demoralising, encourage dependency or destitution and undermine return.

- *The Portuguese Presidency should invite the Council to review its approach to returns, in particular the returns directive, with a view to achieving greater sustainability of returns and greater coherence with the EU's objectives of promoting integration at home and reconstruction and development in asylum seekers' countries of origin.*

7. Resettlement

Resettlement is an important tool of international protection, as well as a practical mechanism for sharing more equitably the international responsibility for hosting the world's 10 million refugees. Resettlement schemes can also support the integration of refugees in countries outside of the EU. By offering a comprehensive package of assistance to countries with large, long-term refugee populations that includes resettling a relatively small number of some of the most vulnerable, the EU can reasonably ask those countries to do more to protect refugees and to help them integrate locally. Tanzania, for example, hosts 550,000 refugees, but refuses to allow any to integrate locally.

Some European countries have been engaged in resettlement for many years (e.g. Denmark, Finland and Sweden) while others have more recently established resettlement programmes (e.g. UK and Ireland). However, altogether only six of the Union's 25 Member States resettle refugees, with a total annual quota of less than 4,000. Clearly there is the potential for Member States to do much more, both individually and by working together.¹⁷ ECRE is ready and willing to support them and draws the Presidency's attention to projects being implemented by its member agencies CCME and ICMC¹⁸ in 2007 supported by the European Refugee Fund.

- *ECRE calls on the Portuguese Presidency to promote practical cooperation amongst Member States on resettlement, particularly the sharing of good practice, in line with the Hague programme and the European Commission's 2004 proposals on resettlement¹⁹ as well as in anticipation of the financial support to undertake resettlement activities that will be made available through the European Refugee Fund to Member States in 2008.*

¹⁷ *The Way Forward: Europe's Role in the Global Refugee Protection System - Towards a European Resettlement Programme*, ECRE, 2005, www.ecre.org

¹⁸ www.ecre.org

¹⁹ *Improving Access to Durable Solutions*, COM (410) 2004

- *As a country which at present occasionally resettles refugees, we ask the Portuguese Presidency to set an example by establishing a national resettlement programme and promoting the benefits of a European resettlement programme.*
- *We call on the Presidency to urge its EU colleagues to respond positively in 2007 to the proposal for the resettlement of Congolese refugees from Tanzania as part of the pilot EU RPP in the Great Lakes region.*

ECRE, June 2007

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