



Brussels, 28 August 2008

Subject: European Commission Policy Plan on Asylum

Opinion of the National Red Cross Societies of the Member States of the European Union
and the International Federation of Red Cross and Red Crescent Societies*

The European Union National Red Cross Societies commend the objectives and the strategy proposed by the Commission and welcome Vice President Barrot's pledge to work closely with international organisations and NGOs to support the realization of the policy plan.

We remain insistent that European governments fully respect the rights of all asylum seekers and other migrants¹, and, in this context, acknowledge the need to establish a Common European Asylum System (CEAS) that upholds humane reception standards and safeguards the right to seek and to enjoy asylum through fair and proper asylum procedures in all Member States, including measures to guarantee safe and legal access to the system. To this end the CEAS must be firmly based on the common and universal values on which the Union is founded.

While appreciating that the "issues raised and the suggestions put forward" during last year's green paper consultation "have provided the basis for the preparation" of the present policy plan, we remain concerned that, as yet, the *evaluation* of the existing legislative instruments envisaged by the Hague Programme is neither complete, nor publicly available².

We note that the measures the Commission intends to propose aim to "*complete the second phase*" of the Common European Asylum System. We believe that this statement is central to the proper understanding of the ambitious project of effectively establishing a common system, which guarantees to persons in need of international protection *access to a high level* of protection under *equivalent conditions* in all Member States. Based on the work undertaken up until now, it would not be realistic to expect that the second phase will achieve this fundamental objective, i.e. it will not "complete the system" as such; to do so will require additional "phases" beyond 2012.

THE OVERARCHING OBJECTIVES OF THE COMMON EUROPEAN ASYLUM SYSTEM

A Common European Asylum System, once completed, must ensure that international protection in the EU is accessible and, as stated by the Commission, that asylum seekers are "treated in the same way, with the same high-standard guarantees and procedures, wherever in the EU they make their asylum claim".

In this perspective, the European Union National Red Cross Societies endorse the proposed *objectives* of the CEAS. The content of the first six objectives is dealt with below.

* The Croatian Red Cross, the Icelandic Red Cross and the Swiss Red Cross align themselves with this position paper.

¹ *The Istanbul Commitments*, adopted by the 7th European Regional Conference of the International Federation of Red Cross and Red Crescent Societies, 2007 (www.ifrc.org).

² With the exception of the Commission's reports on the Dublin Regulation and the Reception Conditions Directive.

While we also support the three “prongs” of the proposed *strategy*, we note with regret that the most critical component of a comprehensive strategy appears to be missing: **effective access to international protection/asylum in the EU**. This point would have deserved a separate section in the policy plan, rather than to be treated as sub-topic under “External solidarity”.

As regards the need to ensure coherence with *return policies*, it is our position that a comprehensive approach towards the asylum process should include measures to support **sustainable return and re-integration in safety and dignity** of asylum seekers whose claims for international protection have been finally rejected and who do not qualify for residence in the EU on any other ground.³

TOWARDS BETTER QUALITY AND ENHANCED HARMONISATION OF STANDARDS OF INTERNATIONAL PROTECTION

The Reception Conditions Directive

We agree that amendments to the Reception Conditions Directive should “contribute to achieving a higher degree of harmonisation and improved standards of reception”, ensuring **humane treatment and decent material conditions** in all Member States. European National Red Cross Societies have adopted *Guidelines on the reception of asylum seekers* aiming at ensuring humane reception conditions⁴.

Promoting **good health** should be a matter of priority. Many asylum seekers have been subjected to severe health threats before and during their flight. Upon reception and during the whole asylum process (i.e. until a secure legal status has been granted or return has taken place) they require health care that is appropriate to their needs, going beyond mere “emergency care and essential treatment of illness”. This includes providing information about the health care system in a language that the applicant understands.

Empowerment should be an essential aspect of reception activities, e.g. through language training and other meaningful daytime activities. Language training also facilitates the asylum process as well as integration. Moreover, where asylum seekers are accommodated in centres, access to mainstream housing and education should be facilitated. In order to promote **self-reliance**, asylum seekers should have immediate access to the labour market.

It should be understood that **detention** increases the vulnerability of persons who are *already in a vulnerable situation*. Detention of asylum seekers should therefore be avoided. *Particularly* vulnerable persons should never be detained⁵. At a minimum, EU law should reaffirm that detention may be considered only as a *measure of last resort*, only if necessary and only if it is clearly prescribed by national law in conformity with Member States’ obligations under international refugee and human rights law; it should only be imposed for a minimal period of time. Furthermore, Member States must ensure that asylum seekers may not be arbitrarily deprived of their liberty; a detention decision has to be lawful, non-discriminatory and subject to proper judicial review. All detainees must receive fair and humane treatment, including proper health care, and be informed about their rights, the reason for their detention and have access to independent legal advice, have their right to seek asylum respected and enjoy conditions of detention adequate for their health, physical and mental well-being. If kept in detention, particularly vulnerable persons must receive care adequate for their special needs.

³ For Red Cross and Red Cross action in favour of returnees, see the PERCO guide [Return: Policy and Practice](#), Platform for European Red Cross Cooperation on Refugees, Asylum Seekers and Migrants, 2008 (www.redcross-eu.net).

⁴ [Guidelines on the reception of asylum seekers](#), International Federation of Red Cross and Red Crescent Societies, 2001 (www.ifrc.org/perco).

⁵ E.g. traumatised persons, victims of torture and ill treatment, victims of human trafficking, unaccompanied or separated minors, people with disabilities, pregnant women, elderly persons, etc.

In some Member States National Red Cross Societies visit asylum seekers and other migrants in detention with a view to helping improve their detention conditions and their treatment when necessary, as recognized by the 30th International Conference of the Red Cross and Red Crescent⁶. Ensuring *independent humanitarian access* to detained asylum seekers is thus imperative.

We welcome the Commission's intention to ensure that the **special needs of particularly vulnerable asylum seekers** are "identified immediately and that adequate care is available". To this end, we recommend the introduction of clear and detailed rules and a system of quality control that ensures uniform implementation. Appropriate mechanisms and safeguards have to be in place to guarantee identification and proper treatment. In order to improve response capacity and raise standards *common guidelines* for the identification of particularly vulnerable asylum seekers and their needs as well as mandatory training programmes should be developed. In addition, specialist resources are required for the treatment of severely traumatised persons.

The Asylum Procedures Directive

Asylum seekers are typically in a *vulnerable situation*. Common provisions on **access to the asylum procedure**, which ensure "equal access to procedures throughout the Union", must take this into account, not creating unnecessary legal or practical obstacles such as undue time limits for application or allowing designation of locations where an application can be lodged in a way that reduces availability. Admissibility or border procedures that impede access must be reconsidered, allowing for effective access and proper procedural guarantees⁷. Critically, asylum seekers must be informed about their rights and the requirements of the asylum procedure in a language they understand.

As recognised by the Commission, *additional* safeguards are needed for **particularly vulnerable applicants** for asylum.

Existing notions and procedural devices which undermine the **individual examination** of asylum applications should be abolished. All claims are unique and should accordingly be processed individually and considered on their individual merits without resort to generalised assessments based on e.g. nationality. Any measures to address "fraud or abuse" of the asylum process must be designed as to not infringe on the right to seek and enjoy asylum.

The amended Asylum Procedures Directive must ensure that all asylum seekers have the **right to remain** in the asylum country (i.e. appeals must have suspensive effect) and have access to independent legal counsel throughout the process, until a secure legal status has been granted or return has taken place.

A single, common procedure must also be efficient, **avoiding negative consequences of long and unwarranted waiting periods on asylum seekers' health and well-being**. To this end, there should be clear and uniform time limits for the authorities within which they have to decide on an asylum application⁸. If they fail to do so within the set time limits, a secure legal status should normally be granted pending further individual protection status determination.

Moreover, in order to ensure a **uniform interpretation and application of EU law**, a common procedure should include a Common Asylum Court of Appeal as part of the Court of Justice of the European Communities.

⁶ Declaration *Together for Humanity* (Annex Resolution 1), adopted by the 30th International Conference of the Red Cross and Red Crescent, 2007 (www.ifrc.org).

⁷ Respecting the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and relevant case-law of the European Court of Human Rights (see in particular *Gebremedhin [Gaberamadhien] v. France* (application no. 25389/05), www.echr.coe.int).

⁸ Cf. Article 5.4, [Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification](http://ec.europa.eu) (ec.europa.eu).

The Qualification Directive

We agree that the “criteria for qualifying for international protection” need to be amended. The provisions on **subsidiary protection** must be strengthened, with the aim of ensuring that no one in need of international protection is denied such protection, in particular persons fleeing *situations of international or internal armed conflict*. In this regard, it is imperative that EU law is implemented and applied in conformity with relevant international law, including case-law⁹.

In this context, we also welcome the launch of a study on the “possible **alignment of national types of protection status**” not yet covered by the Qualification Directive. A comprehensive study should also examine emerging and hitherto neglected situations which could give rise to international protection needs, with a view to ensuring that EU law provides adequate protection for persons displaced by inter alia *environmental degradation and disasters*.

Moreover, all persons who cannot be removed should be afforded an **appropriate status** that guarantees access to fundamental rights. Based on individual needs, this would include persons who for humanitarian reasons cannot reasonably be required to return or where return is indefinitely postponed for practical reasons, but also (as an additional protection category) persons who, under the Qualification Directive, are not entitled to international protection, but who nevertheless are protected by the principle of *non-refoulement*. In any event, no rejected asylum seekers should be left to a life in destitution in the country of asylum.

We support the introduction of a **single uniform status** for *all* persons eligible for international protection, building as far as possible on the rules and standards pertaining to refugee status, and ensuring timely family reunification and equal access to e.g. health and social care, training and the labour market. Indeed, measures facilitating early family reunification improve the chances of successful integration. Likewise, access to appropriate health care which promotes good health, language training and employment during the asylum process assists integration.

PRACTICAL COOPERATION IN THE FIELD OF ASYLUM

The European Union National Red Cross Societies welcome enhanced **practical cooperation** in the field of asylum and strongly recommend that it is extended beyond national asylum authorities by strengthening collaboration between appeal and higher instances in the asylum process and by including international organisations and NGOs with expertise and experience that could further improve the added value of trans-national cooperation.

In this context, we are encouraged by the *Council Conclusion on practical cooperation in the field of asylum* (18 April 2008), which calls on the Commission and Member States to consult with relevant international organisations when undertaking further work on strengthening practical cooperation.

We support the creation of a **European Asylum Support Office (EASO)**, which would operate in a transparent manner and liaise closely with relevant organisations and extend its services to *all* stakeholders in the asylum process, including asylum seekers and their representatives. In this regard, we urge the Commission to recognise that *equal access* to the relevant assistance and activities – i.e. practising the *principle of equality of arms* at the EU level – would enhance the potential for high-quality asylum decisions.

⁹ In applying the Qualification Directive, the authorities in some Member States have referred to the scope of application of the *1977 Additional Protocol II* to the 1949 Geneva Conventions in order to define the term “internal armed conflict”. While there is no single agreed definition of non-international armed conflict in treaty law, the main sources of interpretation are *Common Article 3* of the 1949 Geneva Conventions and relevant international jurisprudence, such as the case-law of the International Criminal Tribunal for the former Yugoslavia (ICTY). See [How is the Term “Armed Conflict” Defined in International Humanitarian Law?](#), Opinion Paper, ICRC, 2008 (www.icrc.org).

We underline, in particular, the need to guarantee equal access to professionally and objectively researched **country of origin information (COI)**. Country of origin information is a core tool for asylum authorities and appeal instances; asylum seekers rely on it to help verify their claim for international protection.

Aiming at ensuring **consistent high quality decision-making in all Member States**, the activities of the EASO should include: establishing training programmes and organising joint training of national migration officials and legal representatives; providing access to relevant country of origin information (COI) services; promoting exchange of good practice; developing common guidelines facilitating accurate and uniform assessment of asylum claims as well as ensuring adequate reception conditions; and closely monitoring implementation and application of relevant EU legislation and case-law (supporting the Commission's role as guardian of the Treaties).

PROMOTING RESPONSIBILITY AND SOLIDARITY

We welcome the Commission's affirmation of the *principle of solidarity and fair sharing of responsibility*, within and beyond EU borders.

Fair sharing of responsibility and solidarity within the European Union

As the Commission rightly points out, "*in the long term*, the higher common standards of protection resulting from the *completion* of the CEAS will eliminate most of the concerns regarding the operation of the current [Dublin] system, by ensuring that persons transferred to other Member States have *equal access* to protection".

While the "underlying principles" of the **Dublin system** – subject to the adoption of the amendments proposed by the Commission and ensuring full respect of the right to family life – may thus be justified once the establishment of the CEAS is *completed*, this is certainly not the case in the present situation of significant differences between Member States' national asylum provisions and widely diverging national asylum practices.

A revision of these principles is therefore urgently needed. As we have previously stated, *in the short term*, i.e. until the Common European Asylum System has been effectively established, the most fair criteria for assigning responsibility would be the *intention of each asylum seeker* as regards the preferred country of asylum, bearing in mind that the ultimate aim of any responsibility assigning mechanism must be to guarantee international protection to those in need of it.

Extending the **right to free movement** within the EU to all persons granted international protection without imposing undue qualification periods and with the possibility of transferring responsibility for international protection, would, in addition to contributing to more fair responsibility-sharing, reduce the alleged need of unblocking "data on refugees" in Eurodac.

Whether through a new "overarching instrument" or a "series of mechanisms", the Common European Asylum System must ensure that the Member States and the EU institutions allocate **sufficient resources**, including adequately trained staff, to the processing of asylum applications and reception of asylum seekers.

In our view, any initiative relating to **joint processing** of asylum applications – whether inside or outside the territory of the EU – raises serious questions about the legal basis as well as practical concerns and requires thorough assessment.

We strongly support the creation of mechanism which would allow for the possibility of **suspending the application of the Dublin rules**, should the “underlying principles” of the system remain in place.

Protection-focused **asylum expert teams** should help to safeguard access to asylum procedures and ensure protection against *refoulement*. In this respect, they would contribute to properly “accommodating the particular situation of mixed arrivals” (referred to by the Commission in relation to the Asylum Procedures Directive).

While the “general objective” of the **European Refugee Fund (ERF)** is to “*support and encourage* the efforts made by the Member States in receiving, and in bearing the consequences of receiving, refugees and displaced persons”, it is clear that the ERF has only a very limited impact in terms of financial solidarity. Conversely, a genuinely common asylum system, which guarantees international protection to all in need of it regardless of in which Member State an asylum claim is lodged *and* where responsibilities are shared equitably, requires **common funding** through the EU budget. In this regard, the “initiative on extended solidarity” launched in 2006 by the Finnish EU Presidency could be revisited and serve as a basis for further discussions¹⁰.

External solidarity

The EU should actively promote universal accession to, and full implementation of, the 1951 Refugee Convention and its 1967 Protocol, as well as respect for and due application of the principle of *non-refoulement*. We also urge Member States to become parties to the 1990 International Convention on the protection of the rights of all migrant workers and members of their families¹¹. In this context, we strongly encourage EU support for **capacity-building** with a view to *strengthening protection and assistance capacity* in third countries. It is essential, however, that such support is not only afforded to (or through) States, but also to other actors, including National Red Cross and Red Crescent Societies, that address the needs of refugees and asylum seekers. Furthermore, protection capacity-building in third countries should always be complementary to – not substituting – measures to ensure access to international protection in the European Union.

National Red Cross and Red Crescent Societies worldwide are committed to encouraging their respective government to accept refugees for **resettlement** and support the resettlement process through facilitating the reception and integration of refugees.¹²

We agree that “there is *much to be gained from a higher degree of cooperation* on resettlement among Member States, UNHCR and NGOs” and, indeed, the International Red Cross and Red Crescent Movement. This applies equally to other aspects of the CEAS.

Resettlement is and should remain a complementary *tool of protection* that provides durable solutions to persons in need of international protection and takes into consideration the situation of particularly vulnerable refugees. Resettlement is also a mechanism for responsibility sharing and as such a concrete *demonstration of international solidarity*. In this context, we support the Commission’s intention to develop an EU resettlement scheme, with the emphasis on solving protracted refugee situations in a strategic way in cooperation with UNHCR and other relevant stakeholders, complementing existing national programmes.

It should come as no surprise that strengthened and externalised border controls have had the effect – intended or not – of preventing access to asylum in the European Union. As a result, and

¹⁰ [Migration management; extended European solidarity in immigration, border control and asylum policies](#), Informal Justice and Home Affairs Ministerial Meeting, Tampere, 2006 (www.eu2006.fi).

¹¹ [The Istanbul Commitments](#), adopted by the 7th European Regional Conference of the International Federation of Red Cross and Red Crescent Societies, 2007 (www.ifrc.org).

¹² [International Red Cross aid to refugees](#) (Resolution XXI), adopted by the 24th International Conference of the Red Cross, 1981 (www.ifrc.org).

as the Commission points out, “Disorderly movements are a *significant route to safety* in the EU, with human smugglers acting as important facilitators for entry”.

It is thus *critical for the functioning of the CEAS* that measures facilitating the arrival of asylum seekers “on the territory of the Member States”, with a view to “**providing legal and safe access to protection**” in the EU, are adopted. As noted above, effective access to international protection should be an integral part of the Union’s asylum strategy.

Having repeatedly expressed our grave concern about serious situations of vulnerability caused by irregular migration, inhumane treatment of migrants attempting to enter the EU and the risk of asylum seekers being unable to gain access to asylum procedures¹³, we welcome the Commission’s intention to “examine ways and mechanisms” to alleviate the present situation, including through Protected Entry Procedures and “a more flexible use of the visa regime, based on protection considerations”. In addition, we would encourage the Commission to consider the recommendation by States within the “Berne Initiative” to *waive visa requirements* “in the case of certain refugees and others in need of international protection in order to help them to escape persecution or other serious human rights violations”¹⁴, with a view to introduce the necessary amendments to the Visa Regulation.

As regards migrants who are *not* in need of international protection, we urge the EU and the Member States to adopt fair and humane immigration policies, which decrease irregular migration and resulting vulnerability by creating **opportunities for legal migration in conditions of safety and dignity**.¹⁵

CONCLUSION

The European Union National Red Cross Societies welcome strengthened cooperation and dialogue on asylum and immigration in the EU. We support the establishment of a Common European Asylum System based on fair and proper asylum procedures and humane reception standards in all Member States.

The 30th International Conference of the Red Cross and Red Crescent, gathering National Red Cross and Red Crescent Societies, the International Committee of the Red Cross (ICRC), the International Federation of the Red Cross and Red Crescent Societies and the 194 States party to the Geneva Conventions of 1949, acknowledged the role of National Red Cross and Red Crescent Societies, based on the Movement’s Fundamental Principles of humanity and impartiality, and in consultation with public authorities, to **provide humanitarian assistance to vulnerable migrants (including asylum seekers), irrespective of their legal status**.¹⁶

When responding to the needs of asylum seekers, refugees and other migrants, the International Red Cross and Red Crescent Movement strives to adopt a global approach, addressing all stages of the displacement and migration process, as well as the needs of local communities. Within this framework, the roles of National Red Cross Societies in the European Union are manifold, reflecting diverse needs and capacities in the Member States.

European National Red Cross and Red Crescent Societies are committed to address the needs and vulnerabilities of people affected by international migration and forced displacement in order

¹³ Position paper [The European Council and the Global Approach on Migration](#), Red Cross/EU Office, 2006 (www.redcross-eu.net).

¹⁴ [International Agenda for Migration Management](#), IOM/Federal Office for Migration, Switzerland, 2005 (www.bfm.admin.ch).

¹⁵ Position paper [The European Council and the Global Approach on Migration](#), Red Cross/EU Office, 2006 (www.redcross-eu.net).

¹⁶ Declaration [Together for Humanity](#) (Annex Resolution 1), adopted by the 30th International Conference of the Red Cross and Red Crescent, 2007 (www.ifrc.org).

better to protect, support and assist them. In particular, we pay attention to the **promotion of respect for the rights and needs of individuals**, including persons in detention and to the delivery of needs-based services and assistance with a special priority for asylum seekers, refugees, irregular migrants, unaccompanied minors, and victims of trafficking in human beings.¹⁷

We therefore urge all EU Member States to ensure that National Societies have **unconditional access to vulnerable migrants** regardless of their status for the purposes of providing humanitarian assistance.¹⁸

European National Red Cross and Red Crescent Societies insist on governments respecting the rights of all migrants, including in particular respect for and due application of the principle of *non-refoulement* and the provisions of the 1951 Refugee Convention and its 1967 Protocol, and implementation by governments of all their international and national legal and human rights obligations.¹⁹

This position paper has been prepared by the Red Cross/EU Office, which represents the National Red Cross Societies of the EU Member States and the International Federation of Red Cross and Red Crescent Societies to the EU institutions.

¹⁷ [The Istanbul Commitments](#), adopted by the 7th European Regional Conference of the International Federation of Red Cross and Red Crescent Societies, 2007 (www.ifrc.org).

¹⁸ Ibid; see also Resolution 5 [International Migration](#), adopted by the Council Of Delegates, 2007 (www.ifrc.org).

¹⁹ Ibid.