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Comments on the European Commission's Green Paper on *the future Common European Asylum System COM (2007) 301 final*

Introduction

Our organisations represent Churches throughout Europe - Anglican, Orthodox, Protestant and Roman Catholic - as well as Christian agencies particularly concerned with migrants and refugees. As Christian organisations, we uphold the dignity of the human individual and we are deeply committed to the concept of global solidarity and the promotion of a society that welcomes strangers. The movement of individuals and groups has been a constant feature of the historical reality of building societies, and this always provides for opportunities as well as challenges. We have followed the development of the EU area of freedom, security and justice closely over the last years, and thus, we highly appreciate this opportunity to comment on the future Common European Asylum System based on the European Commission's Green Paper.

We appreciate the aims set out in the Green Paper, *"to achieve both a* ***higher common standard of protection and greater equality in protection across the EU and to ensure a higher degree of solidarity between EU Member States.****"* The Green Paper underlines a concern expressed by our organizations several times, to increase *"the EU's contribution to a more accessible, equitable and effective international protection regime."* **Access to protection** is a key concern when we look at the plight of the again increasing number of refugees today, as well as at the rise of **protracted refugee situations** in many parts of the world.

In our response we broadly follow the European Commission's questions raised in the Green Paper:

2. LEGISLATIVE INSTRUMENTS

2.1. Processing of asylum applications

(1) How might a common asylum procedure be achieved? Which aspects should be considered for further law approximation?

In order to ensure a comprehensive approach to asylum of the European Union, the monitoring of the complete and timely implementation of the directives which constitute thus far the EU's asylum system is of utmost importance. All provisions allowing EU Member States the discretion

to limit access to a fair and efficient asylum determination procedure should be abolished (art. 6 – 22).

Further law approximation is needed concerning the procedural standards for appeals in order to ensure that they have suspensive effect, regarding the convergence of the provisions concerning time limits and with regard to the quality of the examination of the applications and the decisions taken. The consequences of accelerated procedures (art. 23 IV) may not result in a downgrading of safeguards and should therefore be harmonised in accordance with the 1951 Geneva Refugee Convention. Derogations from basic procedural standards e.g. for procedures at borders or in transit zones (art. 35) should be deleted.

A common asylum system needs to guarantee access to an asylum determination procedure in one of the EU Member States. It would require common standards for decision taking. It would benefit from regular joint training and exchange programmes between persons in charge of the determination procedure as well as representatives of NGOs and legal counsellors.

It is essential that all parties at courts are granted comprehensive and unrestricted access to country-of-origin information used in the determination process of an individual case. Until such information is secured, determination, particularly in fast track procedures, should be suspended.

(2) How might the effectiveness of access to the asylum procedure be further enhanced? More generally, what aspects of the asylum process as currently regulated should be improved, in terms of both efficiency and protection guarantees?

The effectiveness of access to the asylum procedure can only be enhanced if there is an absolute respect for the right to apply for asylum according to Article 14 of the 1948 Universal Declaration of Human Rights, as well as to Art 18 of the European Union Charter of Fundamental Rights, full compliance with the 1951 Geneva Refugee Convention and the European Convention on Human Rights, especially strict compliance with the principle of non-refoulement and protection from torture and inhuman or degrading treatment or punishment.

In addition to assessing the impact of all asylum related directives as well as of others which might have an impact, such as border control related instruments, it is of paramount importance to undertake a thorough and comprehensive review, particularly of the articles containing exceptions and derogations from the minimum safeguards on procedures of Council Directive 2005/85/EC in order to identify areas for further approximation and to avoid that the principle of non-refoulement is undermined. Moreover a comprehensive assessment of the different stages of implementation of the directive in the EU Member States should be undertaken involving the expertise of NGOs and churches.

There should not be any derogation from the principle laid down in art. 4 (1) of the asylum procedures directive that there is only one competent authority examining the asylum application as it is currently foreseen in paragraph (2). In particular letters (d) and (e) shall be eliminated, as they concern art. 35, one of the provisions our organisations suggest to delete.

The idea of accelerated (art. 23 IV) and border procedures (art. 35) and inadmissible applications (art. 25) should be revised as not in all the cases mentioned in these provisions there is an objective reason why asylum applicants should be treated differently from others under these circumstances. Despite some progress with curriculum development for border guards, there is reason to doubt that border guards are sufficiently knowledgeable to determine whether a person may be in need of protection.

To guarantee a fair and efficient procedure, the transfer of asylum applicants to third countries ought to be avoided and thus the safe-third country notion be deleted from the procedures directive. It is apparent that there is no consensus on which countries can be considered "safe"

third countries. The system would be fairer and more efficient, if every asylum claim was considered on its own ground as quickly as possible.

Persons applying for asylum shall not be detained for illegal entry in line with Art 31 of the Geneva Refugee Convention.

(3) Which, if any, existing notions and procedural devices should be reconsidered?

The concept of "safe third countries" and "safe countries of origin" needs urgent revision as applicants do not have the opportunity to challenge the presumptions underlying the concept. Moreover it prevents a thorough and substantial examination of each individual case and delegates responsibility for refugees to third countries not always capable of dealing with the cases in accordance with the principles of the Geneva Convention. In this context the right to an effective remedy must include suspensive effect (art.39).

Access to free legal advice, access to NGOs, to free qualified and impartial interpreters, a personal interview, and a suspensive right of appeal are a must and the respective provisions in directive 2005/85/EG need urgent improvement as they currently allow for wide derogations and exceptions.

Moreover the provisions on detention are much too vague (art. 18) and do not provide the essential safeguards to ensure that detention is applied in a proportionate way, only as a last resort. In accordance with UNHCR Guidelines on detention of asylum seekers, alternatives to detention, in particular: "*monitoring requirements, provision of a guarantor/surety, release on bail and open centres*"[1], should be promoted. The EU legislation should be amended with provisions encouraging alternative measures to the detention of asylum seekers and listing the different alternatives.

The Dublin II Regulation has serious repercussions on a considerable number of asylum seekers and their applications. Strict compliance with the reception conditions directive ought to be ensured also for Dublin referrals, detention ought to be avoided and a fair procedure guaranteed. We are not at all convinced that the Dublin II mechanism provides for efficient and effective procedures.

(4) How should a mandatory single procedure be designed?

A single procedure determining whether an asylum applicant qualifies for protection under the Geneva Refugee Convention (1951) or whether the person is in need of complementary protection, subsidiary protection or other humanitarian protection, could be the most effective and efficient approach. A mandatory single procedure has the advantage of being easier, faster and more transparent. Therefore we are in general favourable towards such an approach.

However, the risk of endangering the Geneva Convention by not granting a fair, efficient and transparent procedure and therefore undermining the protection needs must be tackled by safeguards ensuring that a single procedure does not mean lesser examination or less international protection. In this context is seems useful to scrutinize the current practices in Member States to assess best-practices which then might serve as a model for a mandatory single procedure.

It will be important to guarantee an appeal procedure against a decision within the EU no matter where the decision has been taken. To be effective, an appeal needs to have suspensive effect. All courts taking decisions on asylum should have the right to refer decisions to the European Court of Justice.

[1] Guideline 4: Alternatives to Detention

(5) What might be possible models for the joint processing of asylum applications? Under what circumstances could a mechanism for joint processing be used by Member States?

If a joint processing model for asylum was introduced it must be ensured that all EU Member States take a certain degree of responsibility within their capacities and expertise and contribute to the concept. By no means should a joint processing approach become a trade-off instrument to "sneak out" of the commitments to make the European Union a single protection area for refugees. Joint processing may combine and pool resources for a fair and efficient protection determination. In line with the position of the European Council on Refugees and Exiles, ECRE, we would be opposed to the idea of establishing "joint processing centers", but would be in favour of developing decentralised offices or dispatch common teams competent for asylum determination by pooling resources such as interpreters and competent and well-qualified interviewers to assist the national determination. As an added value a joint processing model could lead to more consistency and reliability in all, but most importantly initial, decision-making. This should be accompanied by training and monitoring which encourage the development of a culture of trust among immigration staff.

In principle, joint teams could also be deployed temporarily outside the EU to assist in resettlement missions in cooperation with UNHCR.

2.2. Reception conditions for asylum seekers

(6) In what areas should the current wide margin of discretion allowed by the Directive's provisions be limited in order to achieve a meaningful level-playing field, at an appropriate standard of treatment?

In principle we want to stress that as long as there is no final decision on an asylum claim according to international obligations, the person concerned must be treated as a presumptive refugee and in a way that respects her or his dignity.

Consideranda 7 and 8 of Directive 2003/9/EC refer to the need for a dignified standard of living and comparable living conditions in all Member States for asylum seekers (7) and for harmonization of conditions of reception (8). Some changes to the Directive's provisions are necessary if these goals are to be seriously pursued

Asylum applicants should be informed about their rights and the reception conditions the soonest as possible. Article 5(1) of the Council Directive 2003/9/EC provides for a *"reasonable time not exceeding 15 days"*. They should be informed in a language they clearly understand and not *„as far as possible in a language that the applicants may reasonably be supposed to understand"*, as worded by Article 5(2) of the Council Directive 2003/9/EC. Interpreters should be selected with a view to avoiding bias or maliciously conflicting translation against an applicant by the appointment of inappropriate persons.

Art 7 (1) of directive 2003/9/EG leaves it up to Member States whether they grant applicants freedom of movement within the territory or in a specific area only. In the absence of compelling reasons to the contrary, the right to free movement within the State must not be curtailed. We strongly urge that asylum applicants and their accompanying family members should have free movement throughout the territory of the Member State in which they apply for asylum.

As the Green Paper already indicates it is evident that the conditions and the timeframe for access to the labour market (art. 11) need a more precise regulation. The directive leaves it up to Member States to lay down the conditions for the access to the labour market. In practice it enables Member States to block access of asylum seekers to the labour market – and constitutes a hidden opt-out-clause. We would like to see a much stronger commitment to offering asylum applicants the earliest opportunity to earn their own living and become self-sufficient as we have

already underlined in earlier statements. The timeframe of up to one year before granting access to the labour market is much too long; taking into consideration psychological effects of unemployment on a person, integration and rehabilitation measures are severely undermined by this provision.

Access to vocational training should also be promoted. This access should be granted as soon as possible in order to facilitate access to the labour market. Vocational training as well as employment may also be beneficial for reintegration upon return if a person is not granted a protection status.

Also concerning access to education we are in favour of harmonising the timeframes foreseen in art. 10. Access should be granted at the earliest stage (art. 10 (2)) and Member States should be required to offer different education arrangements where access to the education system is not possible, art. 10 (3).

Asylum applicants should be granted access to language courses as soon as possible so as to improve their future integration in the host society as well as in the labour market. Language training should be adapted to the divergent learning capacities of asylum seekers and convey key information about the host society and its functioning.

Identification of vulnerable asylum applicants must be clearly regulated. Articles 15 and 20 leave too much room for diverging interpretations in the different Member States when it comes to the definition of "necessary medical assistance" or "necessary treatment". Provisions on resources, capacities and expertise to provide especially torture victims with the adequate support must urgently be introduced at European level. Access to psychological care should be an essential part of an adequate treatment. Moreover, a proper screening mechanism should be set up to identify as early as possible victims of torture and degrading treatments as well as victims of sexual abuses.

We regard it necessary to underline that the list included in art 17 (1) of the Reception Conditions directive should not be regarded as an exhaustive list of persons who may have special needs. In particular, we are concerned about the omission of traumatised persons. The principle of individual evaluation should be further promoted.

Finally we recommend that residence in large-scale accommodation centres (art. 14 (1) (b)) should be limited in time as they are more likely to institutionalise occupants and hamper integration. We argue for a diversification of housing systems (smaller scale accommodation centres for a couple of days, private houses etc.) as it is for example the current practice in Belgium where there are different forms of housing and where at the same time permeability between the different types of housing is possible according to the needs of the asylum seekers. The conditions of accommodation (art. 14) need further approximation within the European Union and access to the outside world be guaranteed as part of an "adequate standard of living" (art. 14 (b)). In the same spirit we recommend to delete provision 8 of article 14. It must be ensured that staff working in the accommodation centres (art. 14 (5)) is well trained and has an inter-cultural competence. Therefore specific training programmes, including sensitisation on human rights and refugee rights as well as on intercultural issues and identification and response to psychological concerns, should be designed in cooperation with UNHCR, NGOs as well as with faith-based organisations.

(7) In particular, should the form and the level of the material reception conditions granted to asylum seekers be further harmonised?

We are strictly opposed to any voucher or non-cash system. Experience has shown that providing material reception conditions in the form of vouchers or comparable assistance of that kind has in fact not created dignified living conditions for asylum seekers and their accompanying family members. Material reception conditions should always be provided in the form of financial

allowances sufficient to cover basic needs, and within a reasonable time. The provision of social assistance in kind or food is only appropriate in emergency situations of mass influx or at the first, temporary point of reception.

Conditions for families and children need specific attention and would require more possibilities for asylum seekers to have access to kitchen facilities, a concern particularly in bigger accommodation centers.

In particular, material reception conditions in detention facilities should be clarified. Article 13(2) of the Council Directive 2003/9/EC, according to which: "*Member States shall ensure that standard of living is met in the specific situation (…) of persons who are in detention*", remains too vague. The "standard of living" it refers to should be detailed. The UNHCR Guidelines on detention of asylum seekers give relevant information and ought to be used as strict guideline.

Moreover it is worrying that material reception conditions may be reduced or withdrawn as punishment for "negative behaviour" as set out in Article 16 of the directive. The different points of discretion listed in article 16 should be revised to be in line with the principle of proportionality and international human rights standards. In principle nobody should be deprived of basic supply.

(8) Should national rules on access to the labour market be further approximated? If yes, in which aspects?

Yes, the national rules should be approximated allowing a speedy and effective access to the labour market instead of fostering a lengthy and bureaucratic procedure discouraging the asylum seekers willing to contribute to the labour market of the host society. Establishing such rules is in the interests of both Member States and asylum applicants. Employment allows asylum seekers to become self-sufficient and independent from social assistance and facilitates integration as well as possible re-integration upon return to the country of origin. It helps to prevent exclusion from the host society and can positively impact public opinion in the way that asylum seekers are not regarded as a burden to society. Moreover such rules preserve public money and therefore are in the interests of the receiving state. Finally employment promotes respect towards the contribution of asylum applicants but also self-respect among themselves as active participants in society. So allowing them to work as soon as possible is to the mutual benefit of both sides. The time limits for access to the labour market of three to maximum six months as recommended by UNHCR may be helpful in this respect and could be a compromise.

Language acquisition plays a crucial role as language skills are important for finding job opportunities. Specific language programmes ought to be developed and offered to the asylum applicants. Moreover we urge the creation of a coherent system for the swift recognition of asylum applicants' professional qualifications (e.g. as in the Republic of Ireland), accompanied by any assistance necessary to align an individual's skills to the needs of the EU labour market.

Such instrument ought to be established in the context of reception conditions and be applied as soon as a person is admitted to an asylum determination procedure.

(9) Should the grounds for detention, in compliance with the jurisprudence of the European Court of Human Rights, be clarified and the related conditions and its length be more precisely regulated?

Yes, they should. In principle detention should not be a part of the reception of asylum applicants. Persons applying for asylum may have already suffered imprisonment and torture in the country from which they have fled. Therefore, the consequences of detention may be particularly serious, causing severe emotional and psychological stress and may amount to inhuman and degrading treatment. Member States should consider less far-reaching alternatives like non-custodial measures.

Detention can only be applied as a last resort and as an absolute exception when less restrictive alternatives or unconditional release are shown to be insufficient and non-custodial measures have proven on individual grounds not to achieve the lawful and legitimate purpose.

Grounds for detention must be set out clearly. To that extent, Article 7 of the Council Directive 2003/9/EC should precisely indicate what it means by "legal reasons" (art 7(3) to detain asylum applicants and should list these reasons in light of UNHCR Guidelines. Guideline 3 states: *"detention of asylum seekers may only be resorted to, if necessary, in order: (i) to verify identity; (ii) to determine the elements on which the claim for refugee status or asylum is based; (iii) to deal with cases where refugees or asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum; or (iv) to protect national security or public order."*

Conditions in detention should reflect the non-criminal status of the detainees and be in compliance with all international standards. In particular, asylum seekers should be informed upon their arrival in detention centres about their rights, especially the right to challenge the detention order taken against them.

The right to judicial review provided by Article 18(2) of the Council Directive 2005/85/EC should be accompanied with the right to free legal aid and free linguistic assistance (if needed) without which there is no „effective" review.[2]

UNHCR Guidelines emphasise the possibility for detainees to receive "*psychological counselling when appropriate*"[3]. Given the psychological harm caused by detention, the EU legislation should be amended in that sense. In particular, victims of torture, degrading treatment and sexual violence, who apply for asylum, should have access to psychological care[4].

Article 16 (2) of the Council Directive 2005/85/EC states: *"Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant."* In addition, Article 21 (a) obliges Member States *"to allow the UNHCR to have access to applicants for asylum, including those in detention and in airport and port transit zones."* However, none of these provisions provides detained asylum applicants with the right to receive regular visits *"from friends, relatives*[5] *(…) and religious counsel"* as recommended by the UNHCR Guidelines[6]. The EU legislation should be amended to allow relatives, friends and religious counsels to have regular access to detained asylum seekers.

Article 5/(1) of ECHR, for its part, allows the detention of minors only "*by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority*". This provision limits considerably the possibility to detain minors. To that extent, minors applying for asylum should be detained in very exceptional cases. Article 37 of the International Convention on the Rights of the Child, which EU Member States are parties to, require indeed to ensure that the detention of minors be used only as measure of last resort and for the shortest appropriate period of time. All appropriate alternatives to detention should be considered in the case of minors applying for asylum. If this proves impossible, they should be separated from adults, unless there are accompanied by family members. In that case, family sections should be created in detention facilities.[7]

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[2] See: European Court on Human Rights, *Amuur v. France* Judgement

[3] Guideline10 (v)

[4] It would complement Article 20 of the Reception Directive, which states: *"Member States shall ensure that, if necessary, person who have been subjected to torture, rape, or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts."*

[5] The Council Directive 2003/9/EC only speaks about the possibility for detained asylum seekers to "communicate" with relatives.

[6] Guideline 10: Conditions of Detention, (iv)

[7] Article 9 of the Convention on the Rights of the Child grants children the right not to be separated from their parents against their will

Finally, the detention of asylum applicants, if deemed necessary at all, should be as short as possible. The European Court of Human Rights also judged in the *Amuur v. France* Case[8], that the prolongation of detention "*requires speedy review by the courts, the traditional guardians of personal liberties.*"

In particular, asylum seekers detained under the application of the "Dublin II Regulation"[9] should not be detained for extended periods of time as it happens in many EU Member States. In their cases, alternatives to detention should be particularly encouraged if not prescribed.

The European Convention on Human Rights sets out principles for arrest and detention, and the Council of Europe has developed further standards and recommendations for the conditions of detention. As all EU Member States are bound by the ECHR, these recommendations and monitoring mechanisms need to apply to the detention of third country nationals. The conditions of detention must never be worse than those of convicted criminals, thus clear time limits for detention, judicial review of administrative detention, freedom of communication with legal advisors, relatives and friends need to be ensured. Clarification with European Court of Human Rights could benefit from a speedy ratification of the European Convention on Human Rights by the European Union.[10]

2.3. Granting of Protection

(10) In what areas should further law approximation be pursued or standards raised regarding
– the criteria for granting protection
- the rights and benefits attached to protection status(es)?

The Qualification Directive 2004/83/EC is supposed to ensure that, throughout the EU, the same criteria apply for the identification of persons who are genuinely in need of international protection and that a minimum level of rights and benefits (including residence permits, access to education and employment, healthcare and social welfare, family unity and integration) are available for these persons in all Member States. The deadline for transposition of the Qualification Directive by the Member States has expired on 10 October 2006. Still twelve Member States have not communicated to the Commission their measures transposing the Directive and four Member States have communicated only partial measures. This already indicates that the EU is still far from granting a level playing field for getting international protection.

As the examples of the Iraqi refugees, but also the Chechen refugees across Europe illustrate, there are widely diverging practices of the Member States with regard to the assessment of protection needs. E.g. asylum recognition rates for Russian citizens (mostly Chechens) vary from 0% (Slovakia) to 3% (Germany) to over 90% (Austria).

The complexities and divergences regarding the assessment of protection claims and return practices must immediately be reduced to improve the situation particularly of Iraqi refugees and to ensure that there is more consistency in decision-making throughout the EU. As the grounds for protection invoked are very often mixed, Member States are giving different weight to each ground in different cases. Also the margin of interpretation of subsidiary protection grounds according to art. 15 c of the Qualification Directive is much too broad and must be harmonised on a higher level of protection. Currently Member States assess very differently the individual nature, the seriousness and intensity of the alleged threat of persecution or serious harm, which

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[8] Judgment of the European Court of Human Rights No 17/1995/523/609 of 25 June 1996, *Mahad Lahima, Lahima, Abdelkader* and *Mohamed Amuur v. France*

[9] Council Regulation No 343/2003 of 18 February 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"

[10] This section is equally informed by the separate JRS Europe submission to the consultation focusing on the issue of detention.

may justify granting a protection status. When it comes to the assessment of the existence of an internal flight alternative and of the availability of protection, but also persecution by non-state agents, diverging interpretations exist across the EU. In order to achieve a real common European Asylum system such differences must be tackled by raising the standards taking countries who are effectively granting a high level of protection as a model.

We welcome that the European Commission already identifies in the Green Paper further areas of approximation like residence permits, social welfare and healthcare, education and employment.

Uniform single status

(11) What models could be envisaged for the creation of a "uniform status"? Might one uniform status for refugees and another for beneficiaries of subsidiary protection be envisaged? How might they be designed?

We are in principle in favour of the introduction of a uniform single status as we regard the distinctions of the rights according to status as not helpful. If Member States agree among themselves on recognizing expulsion orders they should also be able to accept decisions by other Member States granting protection.

While not an obligation, Member States may still restrict the rights attached to a protection status and thus create classes of protection. We are convinced that this is counterproductive as it divides and disintegrates, rather than fostering societal integration. We cannot see a good reason for restricting access to the labour market for persons granted subsidiary forms protection, or to limit their right to family life. Churches and Christian organisations would be in favour of a secure status for all persons in need of international protection, which allows them to rebuild their lives. Therefore changes in e.g. articles 26(3) (employment), 28(2) (social welfare), 29(2) health care) and 33(2) (integration) are required. Refugees as well as persons granted subsidiary protection status should be eligible to a long-term resident status after five years of stay. This could be achieved through amendments to the directives on family reunification 2003/86/EC as well as long-term resident status 2003/109/EC, as the latter has already been partially proposed by the European Commission.[11]

We would encourage the European Commission to first closely monitor the transposition of the Qualifications Directive, and insist on compliance with the stipulations, and to assess the impact of different treatment in some of the Member States, in order to arrive at clear recommendations. The European Commission may also wish to assess whether secondary movement of persons granted protection in an EU Member State is taking place, as it may turn out not to be as big a problem as perceived. Depending on such an assessment, the status and freedom of movement throughout the EU could be improved.

(12) Might a single uniform status for all persons eligible for international protection be envisaged? How might it be designed?

We would welcome the development of a uniform status provided it upgrades the status of persons granted subsidiary protection. If a uniform status would only be possible at the loss of rights accorded to refugees, we would rather maintain the system of diverse sets of rights.

It is our conviction that all persons in need of international protection deserve the chance to rebuild their lives and enjoy as much opportunity for self-determination as possible. Thus, certainty about their status is the most important issue. In addition, the right to family reunification, access to employment and integration measures ought to be granted without delay

[11] The group of Christian organisations will comment on the Commission's proposal for amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection, COM (2007) 298 final separately and in detail

as soon as a person is granted a protection status. Vulnerable persons, particularly minors, persons with disabilities or traumatised persons, should receive the services they require to facilitate as far as possible a life determined by themselves. A uniform international protection status should lead to a long-term resident status after three, at the latest after five years of legal stay, even if the person remains dependent on social assistance for reasons beyond his/her control (inability to work for health reasons or trauma, difficulties to acquire language skills due to age and/or low education levels)[12].

(13) Should further categories of non-removable persons be brought within the scope of Community legislation? Under what conditions?

The Green Paper already names some categories of people who are not removable on grounds of ill health and unaccompanied minors. In our view, vulnerable people in general should never be removed. According to the draft report of MEP Manfred Weber on the Commission's proposal for a "directive on common standards and procedures in Member States for returning illegally staying third-country nationals", this category comprises minors, unaccompanied minors, disabled persons, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.[13]. This definition is in line with international refugee and human rights instruments and should therefore be unconditionally applied in Community legislation.

Beyond people who cannot be removed for humanitarian reasons, there are also rejected asylum seekers as well as migrants who cannot be removed on factual grounds (e.g.: there is no country ready to accept them). These persons, deprived of a legal status, live often in destitution. There is a need for a new EU instrument dealing with the situation of destitute rejected asylum seekers (as well as irregular migrants who cannot be removed). These people should be provided with a temporary status with basic rights (residence status, access to labour market, right to contribute to and benefit from social assistance), which, eventually, may also allow them to be eligible to a long-term residence status. This new temporary status could be of 2 or 3 years, renewable one or two times. When their situation is re-examined by the administration and prior to a long term status, their will to integrate in the host society may be taken into account.

More clarity among EU Member States would be desirable also for granting a status to war resisters or persons who cannot return to their home after natural disasters.

(14) Should an EU mechanism be established for the mutual recognition of national asylum decisions and the possibility of transfer of responsibility for protection? Under what conditions might it be a viable option? How might it operate?

Generally the national decisions on a protection need and asylum ought to be recognised by all EU Member States, as is already the case for the expulsion decisions. Ideally, such a mechanism ought to guarantee the same set of standards of protection throughout the EU. We would hope that persons granted protection by one EU Member State could enjoy the right to move to another EU Member State on similar conditions as EU nationals, e.g. if they are offered employment, if they have sufficient resources, or if (wider) family members offer accommodation. The protection status ought then to remain valid.

There must be safeguards that the transfer of responsibility does not lead to trade-off deals between Member States. A transfer system may benefit from regular monitoring and reporting mechanisms, which could evaluate and advise on enhancing such a system, as well as help to avoid tensions among Member States.

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[12] These concerns need to be considered in the above mentioned proposal for amendments

[13] see also "Common principles on removal of irregular migrants and rejected asylum seekers" issued by a group of non-governmental organisations on 1 September 2005

2.4. Cross-cutting issues

(15) How could the provisions obliging Member States to identify, take into account and respond to the needs of the most vulnerable asylum seekers be improved and become more tailored to their real needs? In what areas should standards be further developed?

The Green Paper indicates the way to proceed: by getting civil society more involved at all stages of the process: by including specialised NGOs in the identification process to assess and address special needs of vulnerable persons, and by relying on the expertise of NGOs in identifying adequate medical/ psychological assistance or counselling to respond to the people's needs. Moreover their knowledge and experience is an asset when it comes to training the staff to fulfil these tasks and to developing appropriate interview techniques. Civil society organisations and churches should also be invited to contribute when it comes to setting up training programmes for all the professionals involved at national and EU levels. We consider it appropriate to gather best-practice examples to identify areas of improvement and to develop common standards which should be monitored independently.

For the needs of survivors of torture and ill-treatment, highly traumatised persons, we would recommend to draw on the experience and recommendations provided by the International Rehabilitation Council for Torture Victims. If their recommendations were taken into consideration for interview techniques and medical and care requirements, the asylum system and protection capacities would be considerably improved.[14]

(16) What measures should be implemented with a view to increasing national capacities to respond effectively to situations of vulnerability?

The development of a system of targets or quotas for the reception of particularly vulnerable persons may be a tool to increase the capacity. The European Refugee Fund could grant higher amounts for the reception of vulnerable persons, a certain percentage of the national allocation could be earmarked for these tasks. We refer in particular to the situation of separated or unaccompanied children arriving at EU borders.

Cooperation between NGOs and state bodies should be more formalised and become compulsory, regular rather than on an ad-hoc basis. Member States should provide secure funding for NGOs specialised in providing services for torture victims and traumatised persons. Especially for those groups of people a consistent and continued support is of utmost importance to be able to regain confidence and to re-integrate in society.

2.4.2. Integration

(17) What further legal measures could be taken to further enhance the integration of asylum seekers and beneficiaries of international protection, including their integration into the labour market?

Integration for beneficiaries of international protection and asylum seekers should start immediately after their arrival. They should find a welcoming society offering them various tools to integrate: language classes, cultural or sports activities or work, possibilities for encounter with citizens. Here governments, parties, the media and our educational institutions all have a role to play in fostering understanding and solidarity, and ensuring accurate and balanced public information on refugee issues. Anti-discrimination legislation must also be applied and implemented to achieve this aim.

Beneficiaries of international protection should be able to contribute to the labour market as soon as possible after their arrival. Therefore a residence permit including the permit to work is

[14] Comments by the International Rehabilitation Council of Torture Victims (IRCT) to the Green Paper on the future Common European Asylum System, Brussels, 18 July 2007

one important prerequisite, which is already practiced in some Member States. Giving beneficiaries a secure legal status and durable residence permits, as opposed to temporary permits that may be subject to repeated review, is essential for integration. This would improve their access to social and economic rights as well as their freedom of movement. Therefore we welcome the proposal to extend the protection of the long-term residents directive to refugees and beneficiaries of subsidiary protection granting them a set of uniform rights as near as possible to those enjoyed by EU citizens. [15]

Recognition of previous experience and qualifications should be set up that promotes equal and fair recognition standards for third country qualifications throughout the EU. Beneficiaries of international protection should moreover be able to access tailor-made and mainstream vocational training and education in a learned profession or sector and have opportunities to re-qualify, in order to adapt their skills and experience to the host country's labour market.

We are in favour of enhancing civic participation as well as participation in the social and cultural environment for beneficiaries of international protection as well as for asylum seekers by granting these persons respective rights and offering them opportunities to get actively involved in these areas[16].

2.4.3. Ensuring second stage instruments are comprehensive

(18) In what further areas would harmonization be useful or necessary with a view to achieving a truly comprehensive approach towards the asylum process and its outcomes?

The Council of Ministers has looked into cooperation on country of origin (of refugees and asylum seekers) information. It would be important to enhance cooperation with other actors in this field and to arrive at common standards how this information is applied. Transparency is crucial in this field while acknowledging the sometimes sensitive nature of this information. As mentioned above, particularly courts in all EU Member States need to have full access to the information used in asylum determination procedures.

As mentioned above, training of persons in comprehensive asylum determination procedures could be done with joint curricula development, participation in a joint EU training course for asylum determination procedures, prepared in a tripartite approach of government/institutions – UNHCR – NGOs, may prove beneficial for persons serving in this decisive area.

3. Implementation - Accompanying measures

(19) In what other areas could practical cooperation activities be usefully expanded and how could their impact be maximised? How could more stakeholders be usefully involved? How could innovation and good practice in the area of practical cooperation be diffused and mainstreamed?

All action should contribute to increase quality of procedures and practices, ranging from registration of asylum applications at the border (training of border guards) over adequate interpretation (training of interpreters) and reliable Country of Origin Information[17] to good quality of legal representation. Some countries include NGOs at various stages in the procedures and related work, which proves effective and ought to be at least recommended as a standard to all Member States.

Information sharing, with respect to the principles of accountability and transparency, need to be improved from national to the EU level. Regular reports to the European Parliament may be a

[15] see footnotes 10 and 11
[16] see also: ECRE: The way forward: towards the integration of refugees in Europe, 2007
[17] Data needs to be updated and information double-checked on a regular and timely basis

helpful instrument, if these reports seek to analyse and give reasons for different decisions taken with regard to asylum cases.

Monitoring the impact of various legislative instruments – beyond the transposition, which is the task of the European Commission – may benefit from more formal cooperation with research institutions and taking into consideration the experience of NGOs.

(20) In particular, how might practical cooperation help to develop common approaches to issues such as the concepts of gender- or child-specific persecution, the application of exclusion clauses or the prevention of fraud?

Improved training on the basis of an EU curriculum based on all relevant UNHCR guidelines as well as study visits, with active involvement of UNHCR may improve the situation. Regarding the concepts with regard to determining gender or child-specific persecution, but also determining the best interest of the child according to the International Convention on the Rights of the Child, the expertise of specific organisations should be included, such as Save the Children, the European Women's Lobby, but also experience from networks against trafficking in women or against violence against women and children.

(21) What options could be envisaged to structurally support a wide range of practical cooperation activities and ensure their sustainability? Would the creation of a European support office be a valid option? If so, what tasks could be assigned to it?

Structural support could take the form of specific exchange programmes and common trainings for asylum determination and evaluating and applying country of origin information. The development of curricula modules based on UNHCR guidelines and the EU Qualifications Directive, as well as models for training in cooperation with various actors including NGOs may be helpful as well.

An EU support office could have an added value by providing capacity building and by monitoring practice in Member States. Adequate funding for training and related activities is required. However, the office should not take over the responsibility of the European Commission to monitor Member States' compliance with EU legislation.

(22) What would be the most appropriate operational and institutional design for such an office to successfully carry out its tasks?

Ideally, a support office would need to link to existing networks of governmental and non-governmental actors as well as to legal and research networks. It would benefit from some independence regarding the structure. To be effective, sufficient resources and capacities to travel and organise meetings of various actors, as well as to develop relevant communication tools and instruments need to be ensured. The experience of the ENARO network **http://www.enaro.eu** as well as of the Equinet, the European Network of Equality Bodies could be used to develop a support office.

4. Solidarity and Burden Sharing

4.1 Responsibility Sharing

The European Council on Refugees and Exiles (ECRE) and UNHCR have produced reports on the experience with the Dublin Regulation. We broadly share the position of ECRE which regards Dublin more as a problem than a solution. Our organisations are increasingly called upon to assist with complicated Dublin referrals, medical needs, unreasonable detention etc. While we agree that Member States should not escape their responsibility for asylum determination, we would still advocate that an asylum claim is assessed where it is lodged. Such a system will be less time consuming and more effective than organising the transfers between countries. In addition

financial compensation might be offered if countries opted for assessing a claim even if another was responsible.

In a situation where a national asylum system temporarily cannot cope with all the applications, assistance could be provided through mobile teams and expertise for high quality and fast determination with noted safeguards for fairness.

For an EU burden sharing mechanism we do not think resettlement (one of the durable solutions of providing protection) is the right instrument, but some relocation mechanism may be envisaged by EU Member States. However, relocation to other EU Member States needs to take into consideration the opinion of the persons concerned, should be voluntary in nature and be based as far as possible on whether a person might have relatives or friends in one of the EU Member States.

5. External dimension of Asylum

5.1. Supporting third countries to strengthen protection

(27) If evaluated necessary, how might the effectiveness and sustainability of Regional Protection Programmes be enhanced? Should the concept of Regional Protection Programmes be further developed and, if so, how?

Considering that the majority of refugees are being hosted in third countries which have very limited resources to do so, the objective of the EU to enhance the protection capacity of the regions involved - both regions of origin and transit regions alike - and to improve refugee protection through durable solutions (return, local integration or resettlement in a third country) is welcomed and considered necessary Whether the present RPP structures and financing mechanisms are adequate, is still early to judge since little information has been brought forward on the results of the two ongoing RPPs. However, certain comments can be made with respect to assessing the effectiveness of such programmes.

According to principles of Project Cycle Management, it should be possible to bring back the objectives of the RPP into one single goal, which is to **improve refugee protection through durable solutions**. Enhancing the protection capacity is a means through which to achieve this single objective.

The European Commission has included a multiple action plan to be part of the Regional Protection Programmes.Only by clearly specifying objectively verifiable indicators[18] it will be possible to measure their effectiveness in meeting their objectives and sustainability i.e. reaching durable solutions.

The coordination within the Commission services needs to be improved. Areas to be taken into account include:

- Consultation processes in programme design for the beneficiary countries (UNHCR, beneficiary countries, delegations, local partners, refugees).
- Implementation of projects needs to start speedily since delays risk that programmes are alienated from the reality and obsolete before starting date.
- Involvement of the European Union must be based on a long term commitment to assist in resolving protection situations and not through ad hoc, programmatic responses, which lead to unpredictability in involvement and response. The bi-annual RPPs may therefore be considered inadequate.

[18] How any refugees are affected and targeted, what specific outputs of achieving durable solutions are set and achieved being either: local integration, return or resettlement

(28) How might the EU best support third countries to deal with asylum and refugees issues more effectively?

Provide financial and other resources to set up/improve asylum system: accommodation capacity, interview capacity, advice for the legal framework. However, such measures would benefit from more coherence within the EU asylum system: It will be difficult to convince third country governments to enhance protection if protection gaps are obvious within the EU.

In terms of emergency or humanitarian crises, Echos' humanitarian assistance is the most appropriate mechanism to bring **relief** to both refugees and host countries. However, Echos' mandate is to bring relief and humanitarian assistance and is therefore limited in responding to protracted refugee crises needing longer term interventions (housing, secondary education, more sophisticated medical care). Longer term commitment and engagement, but also effective and quicker responses are necessary to address the many refugee crises.[19]

The development instruments and the geographical instruments can be used in some refugee contexts and are used occasionally (see: response to IDPs in Uganda) however, governments are often not prioritising to allocate financial resources to refugees programmes. The geographical instruments have important financial resources and seem the most evident instrument to be used for developing relevant Refugee Protection Programmes. E.g. the Middle East region has urgent needs requiring a coordinated response, covering humanitarian, development (particularly education, health) and specific protection needs. Existing responses and instruments are so far inadequate and incoherent in those countries considered as 'European Neighbourhood countries'. With respect to the refugee situation of Iraqis, the ENPI[20] would seem the logical instrument available to adequately address this structural refugee problem in all its facets at the medium longer term; however, it would need to be more clearly defined.

A positive exception in EU instruments has been the Aid to Uprooted Peoples Programmes for Asia and Latin America, specifically targeting to respond to refugees and internally displaced persons crises *after the emergency phase and still prior to the reconstruction/ rehabilitation phase (return).* Providing protection to refugees is an intrinsic part of these programmes, which are managed at delegation level. The programmes offer a more holistic approach to refugee situations and achieving durable solutions and can also include health & education, community development, reconciliation, skills development and micro credits etc. This instrument might be taken as a best practice example to be adapted for other regions.

(29) How might the Community's overall strategies vis-à-vis third countries be made more consistent in the fields of refugee assistance and be enhanced?

The Commission Green Paper rightly points to the need for policy coherence with development services. However, coherence will also be needed for conflict prevention, conflict management, reconciliation, return to and reintegration of refugees in countries of origin after a conflict has been resolved.

In its function as a tool of protection, of providing durable solutions and of establishing an effective mechanism for responsibility sharing, resettlement forms an important part of the external dimension of EU refugee protection policy. A larger number of resettled refugees would clearly signal the EU's commitment to international solidarity with the countries in the regions of origin which accommodate the vast majority of refugees.

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[19] It has taken Echo and the European Parliament almost 2 years to adopt an Aid Decision to respond to the situation of the Iraqi refugees: Humanitarian Assistance for vulnerable refugees from Iraq in neighbouring countries (ECHO/ME/BUD/2007/020000), 6.2 million Euros

[20] 2007-2011-implementation of Action Plan Jordan amounts to € 265 million for Jordan. This Action Plan does not include assistance for refugees.

5.2. Resettlement

(30) How might a substantial and sustained EU commitment to resettlement be attained?

Our organisations had hoped for the speedier development of an EU resettlement scheme in the past years. However, we appreciate the European Commission's effort to enhance resettlement. [21]

With only 6 EU Member States currently engaged in resettlement on a regular basis, there is still limited support in the Council, however, this year at least 3, perhaps even 6 or 7 countries may join in resettlement activities.

In addition to providing financial support for resettlement activities as foreseen in the European Refugee Fund as of 2008, the European Commission could establish a **tripartite expert group** on resettlement, drawing on the experience of resettlement in the current resettlement countries. The twinning projects and the exchange of the MOST as well as of the ERF funded projects of the International Catholic Migration Commission and the Churches' Commission for Migrants in Europe may feed into such an expert group. The task for the group could be to develop possibilities for shared operations to make resettlement operations more cost effective.

In the context of the present Regional Protection programme for Tanzania, the resettlement component needs to be underlined as urgent:[22] EU Member States ought to be encouraged to resettle beyond their national quotas and to engage emerging resettlement countries in this exercise, either on an ad hoc basis or through a proper programme. [23]

With respect to the other RPP, the Western Newly Independent States (WNIS) Belarus, Moldova and Ukraine, UNHCR has indicated that around 500 persons in Ukraine are in urgent need of international protection requiring resettlement. Although there are apparently sensitivities among some EU Member States to receive Chechens, there is a pressing need for continuous engagement from the EU to ensure protection.

Placing resettlement in a durable solutions context can be more complex in countries of e.g. the Middle East (Palestinians or Iraqi refugees), where other durable situation, local integration or return, are no viable option. Jordan and Syria receive disproportionate numbers of refugees and resettlement can help to attain protection benefits for the refugee community in these countries.

Whether the Aeneas (Thematic Programme for Migration and Asylum) can be developed to become an adequate instrument to respond to resettlement needs in such a situation remains to be seen. Echo could be a better response mechanism, although the agency is understandingly hesitant to engage in resettlement in situations with such pressing humanitarian needs.

31. What avenues could be explored to achieve a coordinated approach to resettlement at EU level? What would be required at financial, operational and institutional level?

In order to come to a coordinated response at EU level, it is necessary to align the needs of the experienced resettlement countries with those of emerging resettlement countries. Even among the EU resettling countries there is no common understanding on which caseloads to focus. Cooperation could increase the value of resettlement for the regions where refugees are currently hosted. If expanded and managed in good cooperation between various actors at EU level, including UNHCR, governments as well as non-governmental organisations, resettlement could contribute to actually resolve some of the protracted refugee situations around the world.

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[21] European Commission Communication of June 2004, Improving access to durable solutions

[22] It seems that so far only UK and Netherlands have indicated some resettlement interest

[23] Tanzania is facing one of the worlds most protracted refugee situations, approximately 409.419 refugees live in eleven camps assisted by UNHCR. With respect to resettlement the US is at present resettling 10.000 1972 Burundians from Tanzania and the European Union is looking to resettle a caseload of around 1.800 Congolese refugees, from Kivu within the RPP.

As mentioned above, an expert group invited by the Commission might start to work on improved coordination. Some areas need special attention:

- The **capacity of UNHCR to submit an additional number of refugees for resettlement needs to be increased.** [24]
- In view of new resettling countries with limited numbers of refugees, **dossier based submissions** for resettlement would be the most cost efficient. However, this would require closer coordination and understanding at administrative level.
- Cooperation in selection missions. Currently the Netherlands, Finland, Sweden, Denmark have planned selection missions to select Burmese refugees from Thailand; Netherlands, Finland and Sweden plan missions to Jordan and Turkey, etc. Cooperation could limit the administrative burden on UNHCR to prepare for each mission separately.
- Transparency on criteria: Member States should inform each other and UNHCR on the grounds of not accepting a case. It may be difficult for a refugee to be accepted by another state if resettlement had been rejected by one mission, although this decision might solely be based on available places and not on substantial grounds.

The European Council for Refugees and Exiles has developed a set of recommendations "Towards a European Resettlement Programme" which is a good basis for further thoughts.[25]

(32) In what other situations could a common EU resettlement commitment be envisaged? Under what conditions?

In addition to the priority resettlement from regional protection programmes, the regions identified by UNHCR as priority to resolve protracted refugee situations ought to be targeted. At the Annual Tripartite Consultation 2007 in June, the fact was highlighted that an increasing percentage of refugees live in long-term protracted situation, more than ten year with no political solution in sight.

The resettlement of Bhutanese from Nepal might be a case in which coordinated responses would be useful. The case of Bhutanese in Nepal is one of the most protracted refugee situations in the world and with a coordinated response between development actors, EU Member States, other resettlement countries and UNHCR it could be resolved.

5.3. Addressing mixed flows at the external borders

(33) What further measures could be taken to ensure that protection obligations arising out of the EU *acquis* and international refugee and human rights law form an integral part of external border management? In particular, what further measures could be taken to ensure that the implementation in practice of measures aimed at combating illegal migration does not affect the access of asylum seekers to protection?

Generally high quality training of border guards is an important aspect as indicated above. In addition support needs to be provided to border guards at all times to be able to call on specialised persons for asylum day and night and 7 days a week. Full, direct and unlimited access to all border areas needs to be granted to UNHCR.

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[24] Both interviewing for durable solutions and filling in the Resettlement Referral Forms are very time consuming processes. At present about 2/3 of resettlement referrals are done through the UNHCR ICMC deployment scheme, a roster of individuals working at UNHCR field offices. The US having a key interest in receiving adequate numbers of referrals is a major contributor to the scheme.

[25] The Way Forward: Towards a European Resettlement Programme" Recommendations of the European Council on Refugees and Exiles (ECRE), www.ecre.org, or in: A. Passarelli/D. Peschke (eds): Resettlement: Protecting Refugees – Sharing Responsibility, pp 41-46, CCME Brussels, 2006

We would recommend the UNHCR 10 point plan of action to address mixed migratory flows to form a basis of action taken.

Our organisations are concerned that the mandate of FRONTEX and its missions to monitor borders South of the Mediterranean Sea as well as at the Western coast of Africa leave a protection gap for refugees, particularly if persons found outside EU territory are returned with no identification at sea. We are convinced that the EU needs to focus more on rescuing lives than scaring people off as people are desperate in their search for safety. In that spirit we welcome the plan of the Commission to establish a code of conduct to prevent abandonment of irregular migrants at sea. The UNHCR – IMO publication "Rescue at Sea"[26] provides an excellent overview of international legal obligations in this field.

(34) How might national capacities to establish effective protection-sensitive entry management systems be increased, in particular in cases of mass arrivals at the borders?

Mass arrivals are a sensitive issue, as the interpretation of "mass" arrivals is rather different. The EU directive for temporary protection in the case of mass influx provides responses for such a situation. However, as some EU Member States, particularly at the borders, may indeed receive more persons, a system of relocation within the EU could provide possibilities. Thus we would advocate increasing short term reception capacity and a referral mechanism to accommodate asylum seekers inside the country or in other EU Member States to decrease pressure on border services and facilities. A coordination mechanism ought to be developed in close cooperation with UNHCR and NGOs.

5.4. The role of the EU as a global player in refugee issues

(35) How could European asylum policy develop into a policy shared by the EU Member States to address refugee issues at the international level? What models could the EU use to develop into a global player in refugee issues?

If in the next phase the EU was able to address some of the shortcomings in the current refugee protection system, and if the EU became active and visible in providing all durable solutions for refugee protection by increasing the quality and consistency of the asylum system, increasing resettlement to EU Member States, and investing in sustainable return programmes, the European Union and its Member States would be recognised as an important global player. This will require consistency between declarations and actions in various policy fields.

The Commission' Green Paper touches on a wide range of issues and we appreciate the attention given to all areas of refugee protection. While we would much appreciate a common asylum system to be developed as speedily as possible, we would like to underline the need to identify first and second steps and to elaborate a comprehensive action plan with clear steps in the coming years. In addition to quality work on the legal framework, cooperation and coordination as well as monitoring capacities of the European Commission need to be strengthened. We would hope that the communication capacity of the Commission at European, national and international level could be enhanced to this effect.

August 2007

[26] Recue at Sea, A guide to principles and practice as applied to migrants and refugees, UNHCR and IMO, 2007