



**Comments on the European Commission’s Proposal
for a Regulation of the European Parliament and of the Council
establishing a European Asylum Support Office**

1. Introduction

The European Commission presented its Proposal for a Regulation establishing a European Asylum Support Office¹ (hereafter EASO) on 18 February 2009, thereby taking forward the Hague Programme’s call for a European office to support cooperation among Member States relating to the Common European Asylum System (CEAS).²

As demonstrated by the responses to the European Commission’s Green Paper on the future CEAS³, there is broad stakeholder backing for a Support Office. In the Commission’s Policy Plan on Asylum⁴ the establishment of an EASO was therefore included as the preferred option for strengthening practical cooperation. The European Pact on Immigration and Asylum reiterated Member States’ support for an EASO “with the task of facilitating the exchange of information, analyses and experience among Member States, and developing practical cooperation between the administrations in charge of examining asylum applications.”⁵

The Commission’s proposal follows a feasibility study on the establishment of an EASO, which included consultations with Member States and other stakeholders, including the

¹ European Commission, *Proposal for a Regulation of the European Parliament and of the Council Establishing a European Asylum Support Office*, COM (2009) 66 final, 18 February 2009, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0066:FIN:EN:PDF>.

² European Council, *The Hague Programme Strengthening Freedom, Security and Justice in the European Union*, Annex I to the Presidency Conclusions, 5 November 2008, available at: http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/doc/hague_programme_en.pdf.

³ Contributions on the Green Paper on the future of the Common European Asylum System available at: http://ec.europa.eu/justice_home/news/consulting_public/gp_asylum_system/news_contributions_asylum_system_en.htm.

⁴ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Policy Plan on Asylum. An Integrated Approach to Protection Across the EU*, COM(2008) 360, 17 June 2008, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0360:FIN:EN:PDF>.

⁵ Council of the European Union, *European Pact on Immigration and Asylum*, 13440/08, 24 September 2008, available at: <http://register.consilium.europa.eu/pdf/fr/08/st13/st13440.fr08.pdf>.

UNHCR and selected NGOs. The outcome of the feasibility study has not yet been made public, but it has no doubt informed the impact assessment⁶ which was published with the proposal. The impact assessment describes the EASO as a “centre for expertise in asylum at European level” which “will help Member States become familiar with the systems and practices of others, to develop closer working relations between asylum systems at operational level, build trust and confidence in each others’ systems and achieve greater consistency in practice.”⁷ UNHCR supports these ambitions for the EASO, with priority to improving not only the consistency but also the quality of asylum decision-making.

UNHCR set out its views on a future EASO in its response to the European Commission’s Green Paper on the CEAS.⁸ UNHCR welcomed the proposal to establish an Office which, without having normative or formal monitoring responsibilities, could help the Commission to gather information on Member States’ practices and assist Member States to fulfill their obligations in the asylum field. UNHCR expressed its readiness to support the EASO in an advisory capacity.

UNHCR welcomes the Commission’s proposal, although there will be scope for discussion of several provisions, in particular in the context of developing the annual work plans. Generally, however, UNHCR supports the proposal as regards the governance, operation and tasks of the EASO, with the ultimate objective of promoting high quality asylum decision-making and greater consistency in the outcomes of asylum procedures across the EU.

2. UNHCR Role

UNHCR considers that the proposed Regulation takes due account of the organization’s supervisory role and responsibilities based on its mandate and Declaration 17 to the Amsterdam Treaty. UNHCR welcomes the proposal that it sit as a (non-voting) member of the EASO Management Board. This will help UNHCR to discharge its mandate responsibilities at EU level, in addition to its active involvement in the asylum process in individual EU Member States.⁹

⁶ European Commission, *Commission Staff Working Document accompanying the Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers: Impact Assessment*, SEC (2008) 2944, 3 December 2008, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2008:2944:FIN:EN:PDF>.

⁷ See European Commission, *Commission Staff Working Document Accompanying document to the Proposal for a Regulation of the European Parliament and of the Council establishing an European Asylum Support Office: Impact Assessment*, {SEC(2009) 153}, 18 February 2009, page 54, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2009:0153:FIN:EN:PDF>.

⁸ UNHCR, *UNHCR’s Response to the European Commission’s Green Paper on the Future Common European Asylum System*, September 2007, available at <http://www.unhcr.org/refworld/docid/46e159f82.html>.

⁹ See the following examples of UNHCR involvement in and engagement with national asylum processes in EU Member States:

- UNHCR’s formal role in the asylum process in France, Greece, Italy and Spain;
- UNHCR’s role in the airport admissibility procedure in Austria;

According to its Statute, UNHCR fulfils its mandate *inter alia* by “[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto.”¹⁰ This responsibility is reiterated in article 35 of the 1951 Convention¹¹ and article II of the 1967 Protocol relating to the Status of Refugees¹² and extends to all EU Member States, as all are States Party to these instruments. In keeping with this supervisory role, UNHCR’s Executive Committee¹³ (“ExCom”) issues Conclusions on International Protection, which serve as “international guidelines to be drawn upon by States, UNHCR and others when developing or orienting their policies on refugee issues.”

UNHCR’s supervisory responsibility has been reflected in European Community law, including by means of a general reference to the 1951 Convention in article 63(1) of the Treaty establishing the European Community¹⁴ and in Declaration 17 to the Treaty of Amsterdam, which provides that “consultations shall be established with the United Nations High Commissioner for Refugees (...) on matters relating to asylum policy.”¹⁵ Secondary EC legislation also emphasizes the role of UNHCR. For instance, recital 15 of

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- In Belgium, the law foresees the possibility for UNHCR to provide the asylum instances with advisory opinions at every stage of the procedure;
 - UNHCR’s involvement in the asylum process in the United Kingdom through Quality Initiative;
 - UNHCR’s role in the asylum process in Austria, Bulgaria, the Czech Republic, Germany, Hungary, Poland, Romania, the Slovak Republic, Slovenia through the Asylum Systems Quality Assurance and evaluation Mechanism Project.

¹⁰ UN General Assembly, *Statute of the Office of the United Nations High Commissioner for Refugees*, 14 December 1950, A/RES/428(V), paragraph 8(a), available at: <http://www.unhcr.org/refworld/docid/3ae6b3628.html>.

¹¹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations Treaty Series No. 2545, vol. 189, p. 137, available at: <http://www.unhcr.org/refworld/docid/3be01b964.html>. According to Article 35(1) of the 1951 Convention, UNHCR has the “duty of supervising the application of the provisions of this Convention”.

¹² UN General Assembly, *Protocol Relating to the Status of Refugees*, 30 January 1967, United Nations Treaty Series No. 8791, vol. 606, p. 267, available at: <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

¹³ The Executive Committee of the High Commissioner’s Programme (“ExCom”) was established in 1958 and functions as a subsidiary organ of the UN General Assembly. It has both executive and advisory functions. Its terms of reference are found in UN General Assembly Resolution 1166(XII) which states *inter alia* that it is “to advise the High Commissioner, at his request, in the exercise of his functions under the Statute of his Office.” This includes issuing Conclusions on International Protection (often referred to as “ExCom Conclusions”). See: UNHCR, *General Conclusion on International Protection*, ExCom Conclusion No. 55 (XL) – 1989, 13 October 1989, paragraph (p), available at: <http://www.unhcr.org/excom/EXCOM/3ae68c43c.html>. ExCom Conclusions are adopted by consensus by the States which are Members of the Executive Committee and can therefore be considered as reflecting their understanding of legal standards regarding the protection of refugees; see: G. Goodwin-Gill, J.

McAdam, *The Refugee in International Law*, Oxford University Press, 2nd Edition, 2007, p. 128. At present, 76 States are Members of the UNHCR Executive Committee.

¹⁴ *Consolidated version of the Treaty establishing the European Community* [OJ C 321 E/65, 29.12.2006], at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:pdf>.

¹⁵ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities, 2 September 1997, *Declaration on Article 73k of the Treaty establishing the European Community* [OJ C 340, 10.11.1997] at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:11997D/AFI/DCL/17:EN:HTML>.

the Qualification Directive¹⁶ states that consultations with the UNHCR “may provide valuable guidance for Member States when determining refugee status according to article 1 of the Geneva Convention.” The supervisory responsibility of UNHCR is specifically articulated in article 21 of the Asylum Procedures Directive.¹⁷

3. Review of the proposed Regulation

3.1. Chapter 1: Establishment and purpose (Articles 1-2)

UNHCR considers the description of the EASO’s purpose sufficient to incorporate a broad range of activities, with a view to strengthening practical cooperation among Member States and to improving the implementation of the CEAS. UNHCR welcomes in particular recital 9 and article 2(5), which emphasizes the foreseen close cooperation between the EASO and UNHCR, which would allow UNHCR to make a substantial contribution to the work of the Support Office.

3.2. Chapter 2: Tasks (Articles 3 -7, 8 -10, 11-12)

The proposal groups the EASO’s tasks into three broad categories:

3.2.1. Supporting practical cooperation on asylum (Articles 3 - 7)

This section addresses the EASO’s future work on exchange of best practice (article 3), country-of-origin information (article 4), supporting intra-Community transfers of persons accorded international protection (article 5), support for training (article 6) and support for the external dimensions of asylum policy, including resettlement (article 7). UNHCR will be pleased to make its expertise available to the EASO in all of these areas. UNHCR believes that the EASO would also benefit from the active participation of other external experts, including from intergovernmental organizations, NGOs and academia, and urges consideration of their inclusion in this context. UNHCR further suggests to include in article 6 a reference to the fact that general training should cover international refugee and human rights law as well as the EU asylum *acquis*.

3.2.2. Support for Member States under particular pressure (Articles 8-10)

¹⁶ Council of the European Union, *Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted* [OJ L 304/12, 30.09.2004, p 12-23], at:
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>.

¹⁷ Council of the European Union, *Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status* [OJ L 326/13, 13.12.2005, p 13-34],
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:EN:HTML>. Article 21(c) obliges Member States to allow UNHCR “to present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure.”

Article 8 defines the concept of “particular pressure” as well as related tasks for EASO, which include gathering and analysing information and coordinating action to support Member States under particular pressure. The EASO’s tasks as described in article 10 raise a number of questions.

Article 10 (b) foresees that the EASO will be responsible for “coordinating action to help Member States under pressure to carry out an **initial analysis of asylum applications** under examination by the competent national authorities.” It will be helpful to elaborate in an appropriate way the method and objectives of such activities. UNHCR is ready to continue to contribute to discussions on this. In its response to the Green Paper on the future CEAS, UNHCR suggested that such initial analysis can be a useful tool, but should be a non-binding process which remains distinct from the asylum procedure itself.

Article 10(c) refers to the role of the EASO with respect to the provision of “**emergency accommodation**” for asylum-seekers in cases of particular pressure. Reception of asylum seekers is regulated in the Reception Conditions Directive¹⁸, which does not contain the concept of “emergency accommodation”. It would be important to ensure that the minimum standards of the Reception Conditions Directive apply to such emergency accommodation.

3.2.3. Contribution to the implementation of the Common European Asylum System (Articles 11 – 12)

This section addresses the EASO’s tasks with respect to **gathering and exchanging information**. Information-gathering is to focus on national legislation and on the processing of asylum applications.

In its response to the EC Green Paper on the Future Common European Asylum System¹⁹, UNHCR emphasized the importance of information collection by the EASO. When EASO annual work-plans are developed, UNHCR recommends that this task be elaborated in detail. UNHCR believes it should enable identification not only of best practices, but also of areas where improvements are needed.

Article 12 on reports and other documents refers *inter alia* to the drafting of guidelines and operating manuals. UNHCR would wish to be involved in the process of developing such documents, in order to draw on the organization’s expertise with respect to international refugee law and practice. In its response to the EC Green Paper, UNHCR wrote: “UNHCR should be a leading participant in the development of EU guidelines, to ensure consistency with international standards. For topics where UNHCR Guidelines

¹⁸ European Commission, *Proposal for a directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum-seekers (Recast)*, COM(2008) 815 final, 3 December 2008, available at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008PC0815:EN:HTML>.

¹⁹ *Op.cit.*, note 8.

already exist, these should serve as the starting point for practical cooperation to narrow the gaps in practice.”²⁰

3.3. Chapter 3: Asylum Support Teams (Articles 13-21)

UNHCR endorses the Commission’s proposal to include asylum support teams in the activities of the EASO. Indeed, in its response to the Commission’s Green Paper, UNHCR had suggested that the responsibilities of the EASO could include setting up and administering expert teams to assist Member States facing particular challenges or in need of specific support.²¹

Article 14 stipulates that asylum support teams shall provide technical assistance in particular regarding interpretation, country of origin information and management of case files. UNHCR welcomes these provisions and proposes that the teams could provide other forms of support, in particular upon the initial arrival and reception of persons seeking international protection, including at border points. Such teams could for example also include experts on child welfare and health personnel. The asylum support teams could provide assistance in gathering initial information from/on new arrivals, identifying persons with special needs and in providing information to new arrivals on asylum procedures. These activities would be prior to and distinct from the substantive examination of asylum applications, which would remain the responsibility of the Member State.

Article 15 provides for the creation of a pool of personnel from which the members of the asylum support teams would be drawn. Member States would contribute through the secondment of national experts. UNHCR urges inclusion in the pool of experts from international and non governmental organizations as well.

3.4. Chapter 4: Organization of the Office (Articles 22 – 32)

In this Chapter, the four bodies of the EASO (**Management Board, Executive Director and his/her staff, Executive Committee and Consultative Forum**) are introduced. In addition, the possibility is created in article 31 for the EASO to set up working parties.

UNHCR welcomes the proposal that it take part in the EASO’s **Management Board**, as a non-voting member (recital 14, article 23(4)). This would enable UNHCR to continue to play its mandated role at EU level (see also point 2 above).

Article 30 sets out the composition and role of the **Executive Committee**, which will advise the EASO’s Executive Director and issue opinions to the Management Board. UNHCR confirms its willingness to attend sessions of the Executive Committee on request, and finds it positive that other persons “whose opinion may be of interest” may be also invited to attend as observer.

²⁰ *Op.cit.*, note 8.

²¹ *Op.cit.* note 8, p. 37.

Similarly, UNHCR welcomes the proposal that it attend meetings of **working groups** (article 31), depending on the topics under discussion. UNHCR also welcomes the proposal that others may also be invited. Particular areas where UNHCR could assist might include country of origin information, training, and dealing with vulnerable asylum seekers, along with any and all issues relating to the interpretation of international refugee law.

With respect to the **Consultative Forum** for cooperation with NGOs and civil society, UNHCR notes that the rules pertaining to this forum are not very detailed. UNHCR will be pleased to engage as *ex officio* member and hopes that the Forum will function in such a way as to provide genuine opportunities for engagement of civil society with the EASO, to enable the EASO to benefit from their input.

3.5. Chapter 5: Financial Provisions (Articles 33 – 37)

In the Explanatory Memorandum to the proposed Regulation, the European Commission explains that some of the budgetary resources currently allocated to the European Refugee Fund (ERF) for Community actions would be transferred to the EASO, in order to avoid parallel financing for similar activities.²² UNHCR hopes that this will not be to the detriment of funding available to civil society partners.

UNHCR hopes that the European Parliament will support the creation of the EASO and notes that the European Commission in its March 2008 Communication entitled “European agencies – The way forward”²³ excluded the establishment of a “European Support Office for Asylum” from the announced moratorium on the creation of new regulatory agencies. UNHCR understands that the European Parliament supports creation of the EASO, as it has on a number of occasions adopted resolutions in plenary which express such support.²⁴

3.6. Chapter 7: General Provisions (Articles 40 – 52)

UNHCR supports the objective of “**transparency**” which is mentioned in article 2(4) but believes that further detail would be helpful to explain how the transparency of the EASO’s operating procedures and methods is to be achieved. Inspiration can be found in

²² European Commission, *Proposal for a Decision of the European Parliament and of the Council amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 by removing funding for certain Community actions and altering the limit for funding such actions*, COM/2009/0067 final, 18 February 2009, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52009PC0067:EN:HTML>.

²³ European Commission, *Communication from the Commission to the European Parliament and the Council: European Agencies – The Way Forward*, COM(2008) 135 final, 11 March 2008, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52008DC0135:EN:HTML>.

²⁴ See European Parliament resolution of 10 March 2009 on the future of the Common European Asylum System, 2008/2305(INI), point 23, available at : <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0087+0+DOC+XML+V0//EN&language=EN>; European Parliament resolution of 2 September 2008 on the evaluation of the Dublin system, 2007/2262(INI), point 3, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2008-0385+0+DOC+XML+V0//EN&language=EN>.

article 17 of the Regulation establishing a European Union Agency for Fundamental Rights²⁵ on transparency and access to documents. Article 45 on evaluation and review could also usefully include an explicit commitment that external evaluations of the EASO's work will be made public. The same should naturally apply to the EASO's annual report (article 12).

Recitals 17 and 18 and article 47 of the proposed Regulation relate to the EASO's **cooperation with third and associate countries**. Article 7 also refers to external cooperation. The wording of article 47(2) is not very precise. UNHCR recommends more specific wording to clarify that the purpose of such cooperation is to contribute to the provision of international protection to persons in need of it, in accordance with international law.

Article 48 of the proposed Regulation governs the EASO's **cooperation with UNHCR**. As stated above, UNHCR welcomes the manner in which the proposal takes account of the organization's mandated role and responsibilities. UNHCR also welcomes the draft Regulation's proposed creation of a legal basis for providing financial support, where appropriate, for UNHCR's engagement in activities related to the EASO. Such support would indeed be critical to UNHCR's ability to provide the EASO with expertise on a sustainable basis.

4. Closing remarks

UNHCR is looking forward to its co-operation with a future European Asylum Support Office. It considers that this innovative Office has the potential to take practical cooperation forward in such a way as to contribute to harmonisation of practices in Member States, with a view to ensuring a consistently high standard of international protection in the European Union. With this outcome in mind, UNHCR hopes that negotiations among Member States and between the Council and the European Parliament will proceed swiftly and successfully.

UNHCR
April 2009

²⁵ European Council, *Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights*, [OJ L 53, 22.2.2007, p 1-14], available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:053:0001:01:EN:HTML>.