

TOOL BOX 2: THE INSTRUMENTS

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UNHCR calls for a fair and coherent EU asylum policy,
1 May 1999**

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TAMPERE EUROPEAN COUNCIL, 15 AND 16 OCTOBER 1999

- Setting the European asylum agenda : UNHCR recommendations to the Tampere Summit
- Presidency Conclusions at the Tampere Summit (October 1999)
- UNHCR comments 'Asylum after Tampere: The EU asylum agenda following the Tampere Summit
- EU Declaration on the 50th Anniversary of the 1951 Convention relating to the status of Refugees

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- UNHCR's recommendations to the Laeken Summit
- Presidency Conclusions at the Laeken Summit (December 2001)
- UNHCR comments 'Asylum after Laeken : EU reviews and reaffirms Tampere orientations'

3. EUROPEAN CHARTER ON FUNDAMENTAL RIGHTS, December 2001

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4. ASYLUM

European Commission Communication "Towards a common asylum procedure and uniform status, valid throughout the European Union, for persons granted asylum", COM (2000) 755 final of 22 November 2000

UNHCR's Observations (November 2001)

European Commission Communication on the common asylum policy and the Agenda for protection, COM (2003) 152 final, 26 March 2003

Council Directive on 'minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of effort between member States in receiving such persons and bearing the consequence thereof' 2001/55/EC, 20 July 2001

Overview of the Council Directive on Temporary Protection

UNHCR's Commentary on the Commission draft Directive

UNHCR's Summary Observations (September 2000)

Press Release (June 2001)

UNHCR annotated comments on the Council Directive

Council Directive 'laying down Minimum Standards on the Reception of Applicants for Asylum in Member States' 2003/9/EC, 27 January 2003

Overview of the Council Directive

UNHCR's Comments (July 2001)

Press Release on the Commission draft Directive (April 2002)

UNHCR's annotated comments on the Council Directive

Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, 343/2003/EC, 18 February 2003

Overview of the Council Regulation determining the Member State responsible for examining an asylum application

UNHCR's Observations (February 2002)

Press Release (December 2002)

Council Regulation concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, 2725/2000/EC, 11 December 2000. Entry into force 15 January 2003

UNHCR's Comments (January 2003)

Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection

UNHCR's Observations (November 2001)

UNHCR's annotated Comments to the first part (Articles 1 to 19) of the draft Council Directive (December 2002)

Council Directive on minimum standards on procedures for granting and withdrawing refugee status

UNHCR's Summary Observations (January 2003)

UNHCR's annotated Comments on the Commission draft Directive (February 2003)

Council Decision establishing a European Refugee Fund (2000/596/EC), 28 September 2000

UNHCR's Comments (October 2000)

Commission staff Working Paper: the relationship between safeguarding internal security and complying with international protection obligations and instruments, COM (2001) 743 final, 5 December 2001

Addressing security concerns without undermining refugee protection: a UNHCR perspective (November 2001)

UNHCR's Comments on the European Commission's Working Document on the relationship between safeguarding internal security and complying with international protection obligations and instruments (May 2002)

Communication from the Commission to the Council and the European Parliament "Towards more accessible, equitable and managed asylum systems", COM (2003) 315 final, 3 June 2003

UNHCR summary observations on the European Commission Communication "Towards more accessible, equitable and managed asylum systems" (June 2003)

5. MIGRATION

European Commission Communication on a Community Immigration Policy COM (2000) 757 final of 22 November 2000

UNHCR's Observations (November 2001)

Commission Communication on a Common Policy on Illegal Immigration, COM (2001) 672 final of 15 November 2001

UNHCR's Observations (July 2002)

Council Directive on the Right to Family Reunification

UNHCR's Comments on the Commission draft Directive (September 2002)

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Council Framework Decision on Combating Trafficking in Human Beings, 2002/629, 19 July 2002

Observations by the United Nations High Commissioner for Human Rights and the United Nations High Commissioner for Refugees (June 2001)

Council Directive defining the facilitation of unauthorised entry, transit and residence, 2002/90/EC, 28 November 2002

Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, 2002/946/JHA, 28 November 2002

UNHCR's Comments (September 2000)

UNHCR's Observations (March 2001)

Council Directive supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 ('Carriers Sanctions' Directive), 2001/51/EC, 28 June 2001

UNHCR's Comments on the Commission draft Directive

Council Directive concerning the status of third-country nationals who are long-term residents

UNHCR's Comments (October 2001)

Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities

**Council Decision adopting an action programme for administrative co-operation in the fields of external borders, visas, asylum and immigration (ARGO programme)
2002/463/EC, 12 June 2002**

Commission Green Paper on a Community Return policy on Illegal Residents, COM (2002), 175 final, 10 April 2002

UNHCR's Comments (July 2002)

Communication on a Return Policy of illegal Residents, October 2002

Commission Communication on Migration and Development "Integrating migration issues in the EU's relations with third countries", COM (2002), final, 3 December 2002

UNHCR Preliminary Positions: protection and durable solutions for refugees in the context of migration and development (September 2002)

Introduction: The EU Acquis on Asylum

The acquis communautaire

The European integration process has been marked by the adoption of a constantly expanding body of European Community legislation, joint policies and actions which have accumulated, and been constantly revised over the past four decades. It comprises more than 100,000 pages of regulations, directives and decisions, in addition to non-binding recommendations and opinions. This body has been expanded with the introduction under the Maastricht Treaty, later revised by the Amsterdam Treaty, of new – mostly non-binding – instruments of common policy and joint actions adopted within the framework of the common foreign and security policy and intergovernmental co-operation in justice and home affairs.

This body is commonly called the *acquis communautaire* when reference is made to the Community standards developed according to the Community method within the so-called First Pillar. It represents the sum of legislation, standards and practices which govern Member States' actions in matters within the competence of the Community and which cannot be disassociated from the achievements of the Community. This body includes the founding Treaty of Rome as revised by the Single European Act and subsequently by the Maastricht, Amsterdam, and Nice Treaty as well as judgements of the European Court of Justice, which has jurisdiction over the application of the treaty provisions.

If one also includes the results of co-operation within the Second and Third Pillar the body of standards is normally called the *acquis* of the European Union and its Member States or the EU *acquis*. Under the third pillar, Member States can adopt conventions (example the 1990-1997 Dublin Convention), common positions, decisions and framework decisions (example the Framework Decision on Combating Trafficking in Human Beings in 2002). Most of the JHA *acquis* (Third Pillar) elements of this wider set of standards is therefore of non-binding nature. With the entry into force of the Amsterdam Treaty, the present non-binding EU asylum standards will be gradually codified into binding legislation and become part of the *acquis communautaire*. This process is called '*communautarisation*' or '*communitisation*'.

International Conventions and other binding international and regional instruments are also part of the *acquis* as they are inseparable from the attainment of the objectives of the Treaty on European Union. In the asylum field the 1951 Convention and the 1967 Protocol, as well as the European Convention on Human Rights (ECHR), are part of the EU asylum *acquis*. As per Article 63 of the Amsterdam TEC, the various EU asylum instruments are to be adopted in accordance with relevant provisions of the 1951 Geneva Convention. According to Article 6 of Amsterdam TEU, the fundamental rights enshrined in the ECHR are considered to be general principles of Community law.

The EU Acquis on Asylum

The first identification of the asylum *acquis* was made in May 1998, when COREPER (Council) agreed to a list of the EU *acquis* in the field of JHA which was made available to EU candidate countries for the first screening / evaluation exercise. This list was usually referred to as the '*TAIEX list*' and was divided into three categories :

- International Conventions to be regarded as indissociable from the achievements of the objectives of the EU related to asylum ;
- Instruments adopted by Member States before the entry into force of the Maastricht Treaty (example 1992 London Council Resolutions on a harmonised approach to questions of host third country, on manifestly unfounded applications for asylum, on countries in which there is generally no serious risk of persecution,..)
- Instruments adopted by the Council after the entry into force of Maastricht (1995 Council Resolution on minimum guarantees for asylum procedures, 1997 Joint Position on harmonised application of the refugee definition, 1997 Council Resolution on unaccompanied minors who are nationals of third countries..)

This list codifying the JHA acquis has been regularly updated and recently has been made accessible to the public. It comprises also the instruments adopted by the Council after the entry into force of the Amsterdam Treaty (example; 2000 Regulation on the European Refugee Fund, 2001 Directive on Temporary Protection..), the adoption of which renders obsolete previous existing instruments in the same area (i.e. in the case of temporary protection, the 1995 Council Resolution on burden sharing with regard to the admission and residence of displaced persons on a temporary basis).

**In June 2002, the European Commission published an updated list of EU legislation on justice and home affairs on its website :
www.europa.eu.int/comm/justice_home/acquis_en.htm.**

The EU acquis on asylum and EU candidate countries

The EU acquis on asylum contains instruments relevant for the development of asylum systems in candidate countries. Candidate countries to the European Union must accede to these instruments without reservations, in order to honour the international obligations to which Member States are – and future ones should be- committed.

Since the issuance of the 1998 'Taiex' list of the JHA acquis, each year the Commission has updated it and forwarded it to candidate countries for information and for the adoption and implementation of the new elements of the acquis.

In this folder, you will find all relevant texts related to the asylum and migration policy of the European Union. It comprises Directives, Regulations and Decisions adopted under the First pillar structure as of early 2003. Relevant instruments adopted under the third pillar structure are also integrated in the folder. When a new instrument is adopted, the folder structure allows you to insert the final text after each binder.
