



**UNHCR's Recommendations
to the Slovenian Presidency of the European Union
January – June 2008**

Introduction

Slovenia takes up the European Union Presidency at an important juncture for EU asylum policy. The Reform Treaty is due to be signed in Lisbon by Heads of State and Government on December 13, 2007. UNHCR welcomes the proposal in the current text to give legal force to the Charter of Fundamental Rights, including Article 18 guaranteeing the right to asylum. The European Commission's Green Paper on the future of the Common European Asylum System, issued in June 2007, was the subject of intensive discussion during the second half of 2007, in particular at the Public Hearing in Brussels in November. UNHCR published detailed comments on the Green Paper¹ and participated in the Hearing.² A Policy Plan for completion of the Common European Asylum System (CEAS) is to be issued by the Commission in 2008. Discussions continue at EU level on the development of legal migration programmes, and on controlling irregular migration. In this broad and dynamic context, UNHCR encourages the Presidency and the Council to focus on two important objectives: to ensure that the asylum space in the European Union remains accessible, and to maintain the Union's leadership role in standard-setting on international protection.

International migration and refugee protection

International protection can only be provided if asylum-seekers have access to the territory of States where their protection needs can be assessed properly. As work proceeds to develop a Common European Asylum System, concern has been mounting about the accessibility of EU territory and EU asylum procedures for persons seeking international protection. Although the Charter of Fundamental Rights reiterates the right to asylum, border and migration control measures make it increasingly difficult for persons fleeing persecution and armed conflict to reach safety in the EU. One of UNHCR's principal concerns is that measures introduced to curb irregular migration, whether by land, sea, or air, or to prevent smuggling and trafficking, are often indiscriminate in their application, and may prevent refugees from gaining access to EU territory and asylum procedures.

¹ UNHCR, *Response to the European Commission's Green Paper on the Future Common European Asylum System*, September 2007, <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?docid=46e159f82>.

² Remarks by Ms. Erika Feller, Assistant UN High Commissioner for Refugees, Public Hearing on the future of the Common European Asylum System, 7 November 2007, Brussels, <http://www.unhcr.org/admin/ADMIN/47319b362.pdf>.

UNHCR urges the EU, under leadership of the Slovenian Presidency, to make an explicit commitment to ensuring that asylum-seekers and refugees are properly identified in the context of broader migration movements. UNHCR has issued a “Ten Point Plan”³ on refugee protection and mixed migration, which provides suggestions to States on how to integrate refugee protection considerations into migration management policies. This document is equally relevant to the EU's Southern and Eastern borders, and UNHCR has proposed actions to respond to specific, often difficult, situations at both frontiers.

Further, UNHCR believes that clear guidance is needed which delineates Member States' protection responsibilities when their vessels intercept or rescue persons outside their Search and Rescue (SAR) areas, whether on the high seas or in the territorial waters of third countries.⁴ UNHCR urges scrupulous respect for the principle of *non-refoulement*, and draws attention to its January 2007 Opinion on the extraterritorial application of *non-refoulement* obligations under the 1951 Convention and its 1967 Protocol.⁵

Recommendation: UNHCR strongly encourages Slovenia to ensure that discussions on border control and migration management address the need to incorporate safeguards to ensure respect for the rights of people seeking international protection, including in particular the principle of non-refoulement. This applies to measures at land, air and sea borders, including interception and rescue at sea outside Member States' territorial waters.

International protection in the European Union

Next steps toward completion of the Common European Asylum System

UNHCR is aware that the Commission's Policy Plan for completion of the Common European Asylum System is likely to be tabled only at the end of the Slovenian Presidency. However, an important process of reflection will continue during the first half of 2008. UNHCR urges particular attention to the divergent approaches taken to protection claims by EU Member States, including on the basis of national policies on specific issues or groups. The quality of decision-making also differs within the EU. Wide discrepancies in policies and practice are observed in relation to many persons with evident protection needs, including Chechens, Iraqis, Somalis, Sri Lankans and others. UNHCR has recommended amendment of some important provisions of the Qualification Directive, as well as intensified training of decision-makers, development of EU Guidelines, and quality control mechanisms to ensure that persons who are in need of and claim international protection in the EU can be assured of receiving it.⁶

³ UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, revision January 2007, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=45b0c09b2>.

⁴ UNHCR Executive Committee Conclusion on Protection Safeguards in Interception Measures, No. 97 (LIV) of 2003, deals with interception at sea in States' territorial waters. See: <http://www.unhcr.org/excom/EXCOM/3f93b2894.html>.

⁵ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=45f17a1a4>.

⁶ UNHCR, *Asylum in the European Union. A Study of the Implementation of the Qualification Directive*, November 2007, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=473050632>.

Recommendation: Discussions on completing the Common European Asylum System should address the key challenges of improving the quality of asylum decision-making and reducing discrepancies, including those based on divergent policies. The Presidency is encouraged to lead discussions on how to address this, through legislative and other means that can ensure high standards of protection across the European Union.

The Dublin II and Eurodac Regulations

UNHCR remains concerned about various aspects of the Dublin system, including its uneven allocation of responsibility for examining asylum claims. The most fundamental concern arises from the fact that the system is predicated on the assumption that the asylum laws and practice of EU Member States produce comparable results, when in reality tremendous disparities remain.⁷ This means that the application of Dublin II can in some cases result in asylum-seekers being sent from a State which would most likely have recognized their international protection needs, to a State where their cases have a significant likelihood of rejection. UNHCR encourages all States participating in the Dublin system to ensure high-quality decision-making, and to strive for consistency in decision-making practice. Until this objective is reached, participating States should make more frequent use of their right to refrain from transferring applicants and to take responsibility for claims.

UNHCR has also recommended a number of amendments to the Dublin II Regulation, including a prohibition on removal of an asylum-seeker to a third country not participating in the Dublin system, before a full and fair examination of his or her claim. Among other things, UNHCR recommends inclusion of an explicit obligation fully to inform the applicant about the Dublin process, and broadening of the criteria for family reunification. Further, careful consideration should be given to a “responsibility-sharing” mechanism to offset imbalances created by the current system. UNHCR is also concerned about the increasingly widespread practice of detaining asylum-seekers awaiting transfer to another State.

With respect to the proposed amendment of the Eurodac Regulation to give law enforcement authorities access to asylum-seekers’ fingerprint data,⁸ UNHCR regrets that it is proposed to discuss amendments before a wider discussion on the future of the Dublin II system has taken place. UNHCR draws attention to the need for clear safeguards to make sure that data is not transmitted directly or indirectly to the authorities of asylum-seekers’ countries of origin.

Furthermore, providing access to this database for law enforcement authorities exposes asylum-seekers to a greater likelihood of criminal suspicion than others in the population, and thereby may violate the principle of non-discrimination expressed in the European Convention for the Protection of Human Rights and Fundamental Freedoms. UNHCR draws attention to the risk that this may also fuel misperceptions about links between asylum and crime, and

⁷ UNHCR, *The Dublin II Regulation. A UNHCR Discussion Paper*, April 2006, <http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?docid=4445fe344>, and UNHCR, Response to the European Commission’s Green Paper on the Future Common European Asylum System, see above footnote 1.

⁸ Council Regulation (EC) no. 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention, http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_316/l_31620001215en00010010.pdf.

exacerbate xenophobia and intolerance. UNHCR shares the concerns expressed by experts about the consistency of the proposed amendments with the purposes of Eurodac.

Recommendation: Proposals for amendment of the Dublin system should be discussed comprehensively, to address significant concerns around its application and outcomes. The Presidency and Member States are urged to ensure that effective safeguards accompany any extension of access to Eurodac data for law enforcement authorities, and to take steps to prevent misperceptions about asylum-seekers and criminality.

Balancing human rights and security

UNHCR is aware of the Slovenian Presidency's interest in discussing issues related to asylum in the context of the fight against terrorism. Any such discussion should underline the importance of preserving the institution of asylum. UNHCR cautions against the tendency among certain sectors of the media and some politicians to link asylum with terrorism and organized crime, and urges the EU and its Member States to make every effort to ensure that global insecurity does not impact negatively and disproportionately on public attitudes toward refugees and asylum-seekers, as this could undermine the integrity and nature of the institution of asylum.

The 1951 Convention relating to the Status of Refugees contains in its Article 1F provisions which are designed to exclude individuals from refugee protection if there are serious reasons for considering they have committed a crime against peace, a war crime, a crime against humanity or a serious non-political crime, or have been guilty of acts contrary to the purposes and principles of the United Nations.

However, UNHCR is concerned that a number of otherwise legitimate counter-terrorism measures may be applied in a manner that undermines core principles of refugee protection. In particular, some States interpret the Qualification Directive as establishing a low threshold for exceptions to the principle of *non-refoulement* under Article 33(2) of the 1951 Convention, and broadening the scope of crimes deemed to be "particularly serious".⁹ Similarly, it would appear that exclusion clauses are applied in some Member States in a manner that broadens their scope and narrows procedural and substantial rights, or are applied collectively rather than on an individual basis.

UNHCR has closely followed the discussion, including among the Ministers of Interior of the G6 States in October 2007, about the removal from EU territory of persons suspected of terrorist intent or affiliation. The Office wishes to reiterate its appeal for caution in the use of 'diplomatic assurances' as a basis for removal of asylum-seekers and refugees. Such returns may amount to *refoulement*, as noted in the 'UNHCR Note on Diplomatic Assurances and International Refugee Protection,' issued in August 2006.¹⁰

⁹ UNHCR, *Asylum in the European Union: A Study of the Implementation of the Qualification Directive*, see above footnote 6.

¹⁰ UNHCR, *UNHCR Note on Diplomatic Assurances and International Refugee Protection*, 10 August 2006, <http://www.unhcr.org/cgi-bin/tevis/vtx/refworld/rwmain?docid=44dc81164>.

Recommendation: The Slovenian Presidency is urged to ensure that discussions on combating terrorism take full account of the fundamental importance of respecting international protection principles. EU Member States should recall the provisions in Articles 1F and 33(2) of the 1951 Convention, and refrain from extending the scope of these provisions through national law or practice.

Addressing statelessness

UNHCR has a mandate to contribute to the prevention and reduction of statelessness, and to promote the protection of stateless persons,¹¹ defined in international law as persons who are not nationals of any State.¹² The sixtieth anniversary of the Universal Declaration of Human Rights will be commemorated in 2008, and the Office of the UN High Commissioner for Human Rights and UNHCR will use this occasion to promote the right to a nationality. UNHCR actively encourages accession to the 1954 Convention relating to the Status of Stateless Persons, and to the 1961 Convention on the Reduction of Statelessness. Most EU Member States are Parties to the 1954 Convention, but only 11 are Parties to the 1961 Convention. UNHCR appeals to the Slovenian Presidency to promote accession to and implementation of these instruments. In a recent European Parliament hearing on statelessness, UNHCR also recommended that the European Commission which has agreed to provide financial support to UNHCR's activities in this area work towards harmonizing implementation of the 1954 Convention within the EU. UNHCR has also worked extensively with the Council of Europe, which has adopted regional conventions containing safeguards to prevent and reduce statelessness, such as the 1997 European Convention on Nationality and the 2006 Council of Europe Convention on Avoidance of Statelessness relating to State Succession.

Recommendation: EU Member States are encouraged to support UNHCR's efforts to reduce statelessness, including through advocacy for more extensive and consistent adherence to the relevant international and regional instruments and principles.

Integration

UNHCR welcomes the EU's attention to the integration of third country nationals, including refugees. There is a particular need for effective integration support for refugees in countries which have recently joined the European Union. This could also help to reduce secondary movements.

Adoption of the proposed amendment to the Directive on the status of third-country nationals who are long-term residents¹³ would be a significant contribution to the integration of

¹¹ General Assembly Resolution 428(V) of 14 December 1950 (Annex, Chapter II, Article 6A).

¹² Article 1 (1) of the 1954 Convention Relating to the Status of Stateless Persons.

¹³ Council Directive 2003/109/EC of 25 November 2003 (OJ L16/44, 23.01.2004), http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_016/l_01620040123en00440053.pdf; and Proposal for a Council Directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection (COM(2007)298final), http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0298en01.pdf.

beneficiaries of international protection. UNHCR urges early adoption of this amendment, which will complete the first legislative phase of the CEAS. In UNHCR's view, it is important to include beneficiaries of subsidiary protection in the scope of this amendment, as their protection needs may be as profound and lasting as those of 1951 Convention refugees. UNHCR believes that the requirements for obtaining long-term resident status should not be overly onerous for people in need of international protection, in view of the overarching goal of enabling them to integrate in and contribute effectively to their host societies.

Recommendation: UNHCR encourages the Slovenian Presidency to pursue actively the adoption of the proposed amendment to the Directive concerning the status of third-country nationals who are long-term residents, to bring refugees and subsidiary protection beneficiaries within its scope, and thus enhance the opportunities for their integration in EU societies.

Returns

Discussions are expected to continue during the Slovenian Presidency on the draft Directive on Common Standards and Procedures in Member States for returning Illegally Staying Third Country Nationals.¹⁴ UNHCR's comments on the initial draft were published in 2005.¹⁵

UNHCR has consistently recognized that the credibility and viability of asylum systems depend in part on the return to their countries of origin of persons who are found not to be in need of international protection. UNHCR advocates for sustainable return of such persons to their home countries, rather than removal to countries through which they transited. Return to countries of origin reduces the risk of people being held indefinitely and irregularly in a country of transit. Detention pending removal from EU territory should be for the shortest possible time, and detention of children and other vulnerable persons should be avoided.

While UNHCR supports the adoption of common standards for return which ensure respect for basic rights, it remains worried that the proposed Directive may apply to persons whose protection needs have not been examined in substance in the European Union. UNHCR calls for particular safeguards in this respect.

UNHCR has also expressed concern about the current proposal for a wide-ranging re-entry ban, which would apply on a mandatory basis, *inter alia*, to all persons removed involuntarily from the EU. The application of a re-entry ban should not prevent persons who, at a later date, may be in need of protection from gaining access to the territory and asylum procedures in the EU.

¹⁴ *Proposal for a Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals* (COM(2005)391 final), http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0391en01.pdf.

¹⁵ UNHCR, *UNHCR Observations on the European Commission's Proposal for a Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals* (COM(2005)391 final), 16 December 2005, <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=43a2a58f4>.

Recommendation: The Council, under the Slovenian Presidency, is encouraged to work towards agreement on common standards for return which incorporate essential safeguards for people who may have international protection needs.

The external dimension of EU asylum policy

Resettlement

The 2004 Hague Programme¹⁶ encouraged greater EU involvement in refugee resettlement, as an important protection tool, a durable solution, and a concrete manifestation of responsibility-sharing. Resettlement is a valuable complement to any asylum system. UNHCR stresses the need to ensure a greater number of resettlement opportunities in the EU, and strongly encourages partnerships, not only among governments, but between central and local authorities and between these authorities and NGOs and other civil society actors.

The EU contribution to the global resettlement effort remains modest, with just seven countries implementing annual resettlement programmes at present. Several additional Member States have indicated interest in launching new programs, and the EU has amended the European Refugee Fund to enable more support for resettlement. UNHCR encourages Member States which have not undertaken resettlement in the past to consider doing so, with experienced resettlement countries offering support and sharing expertise and best practices. In this respect, UNHCR highlights the importance of ensuring appropriate orientation, reception and integration arrangements for resettled refugees. Because resettlement is first and foremost a protection tool, selection criteria should not focus on integration potential. UNHCR hopes that the Slovenian Presidency will devote increased attention to the subject of refugee resettlement and will encourage more Member States to engage in resettlement activities.

Recommendation: Recent discussions have revealed significant interest in and potential for further cooperation among Member States on refugee resettlement. The Presidency is urged to maintain the momentum of these discussions, and Member States are encouraged to take advantage of opportunities created by the availability of additional funding for resettlement through the ERF.

Regional Protection Programs (RPPs)

UNHCR has supported the RPP concept, with its dual aims of building refugee protection capacity in regions of origin and transit on the one hand, and promoting resettlement from those regions on the other. The Office has implemented two capacity-building projects with AENEAS funds in RPP target regions in 2007, in Tanzania and Belarus.

¹⁶ Council, *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union* (OJ C53/1, 03.03.2005), http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/c_053/c_05320050303en00010014.pdf.

In addition, UNHCR has carried out extensive programs in Ukraine with TACIS support, and in Tanzania and its neighboring regions with significant financial assistance from ECHO. Member States have also contributed to all of these programs.

UNHCR believes that the RPP concept will continue to have only limited impact unless it will dispose of significantly larger amounts of EC funding, and is coordinated more effectively with development and humanitarian assistance programs in the regions concerned. Ownership and commitment of the target countries are crucial. If the resettlement component of RPPs is to have added value, it needs to be supported by more offers of resettlement places in EU Member States. UNHCR hopes these considerations will be taken into account in the planned evaluation of RPPs in the course of 2008.

Recommendation: To maximize their impact, Regional Protection Programmes should be supported in future by more substantial funding, and be coordinated more effectively with other EC assistance to the relevant regions. Member States should provide resettlement places for refugees from RPP countries, in accordance with the Hague Programme and other relevant Council Conclusions.

Humanitarian aid and development

Slovenia is the first of the countries which acceded to the European Union in 2004 to hold the Presidency. As such, it has an opportunity to demonstrate the potential for 'new' Member States to contribute substantively and constructively to the EU's humanitarian and development policies and programmes. The adoption of the European Consensus on Humanitarian Aid,¹⁷ the attention it gives to principles of Good Humanitarian Donorship, and the inclusion in the Reform Treaty of a Chapter on humanitarian aid,¹⁸ highlight the important place of humanitarian action in EU policy. UNHCR particularly welcomes the priority given by the Slovenian Presidency to the situation of women and children in armed conflict, in view of the fact that the majority of refugees and internally displaced persons are women and children.

UNHCR's annual budget is funded nearly entirely through voluntary contributions from governments and private sector donors. Approximately half of UNHCR's funding comes from EU sources, including the European Commission, Member States, and the private sector. However, just 12 countries account for 98% of the EU Member States' contributions. UNHCR urges the Presidency to show leadership in this field, and to encourage all EU Member States, including the newer members, to provide more substantial support and to become actively engaged in the work of UNHCR worldwide. UNHCR also urges the Commission and Member States to strive toward policy coherence in the areas of humanitarian and development

¹⁷ The Statement on the European Consensus on Humanitarian Aid was approved by Council on 19 November 2007 and the European Parliament on 29 November 2007 and will be signed by the Presidents of the Commission, Council and European Parliament on 18 December 2007. The text of the Consensus is available at <http://register.consilium.europa.eu/pdf/en/07/st15/st15099.en07.pdf>.

¹⁸ New Chapter 3, Article 188J of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community ('Reform Treaty'), <http://www.consilium.europa.eu/uedocs/cmsUpload/cg00014.en07.pdf>.

assistance, and in particular to put in place programmatic and financial mechanisms to stimulate early recovery and to support peace and stability in areas to which refugees and other displaced people return, in the aftermath of conflict.

Recommendation: UNHCR urges implementation of the European Consensus on Humanitarian Aid and welcomes the active support of all EU Member States for the agency's work worldwide.

UNHCR
10 December 2007