

20 November 2003

Sir,

I am writing to you in your capacity as President of the European Union to express my concern with the draft Council Directive on Asylum Procedures.

As I had the occasion to say during my visit to Rome in mid-September, this Directive lies at the heart of the EU asylum harmonization process. It is of critical importance not only for the standards set in Europe itself but also for the signal that it will send to other parts of the world. Measures that are perceived to lower standards or to shift burdens will have strong repercussions both on the availability of protection in Europe and, more broadly, on the international protection regime.

As you know, UNHCR has been very supportive of the EU harmonization process. As a first step towards a common asylum system, meaningful harmonization will ensure coherence in the management of asylum claims. This is clearly in the interest of refugees. By helping counter irregular movements within the European Union, it is also in the interest of States.

As I have pointed out in July this year, the Asylum Procedures Directive should aim at high standards of refugee protection and should strive for a truly meaningful level of harmonization. I regret to say that since then, however, there has been further substantial deterioration of the draft directives on both these counts. Moreover, this is in a context where the number of asylum-seekers in Europe has substantially decreased in 2003.

If Member States' main preoccupation is to ensure that the Directive includes exceptions which safeguard their own national asylum provisions and objectives, I fear that this Directive will be reduced to a catalogue of optional provisions, including significant departures from accepted international refugee and human rights law and principles established over more than fifty years, and reaffirmed during UNHCR's Global Consultations on International Protection.

.../...

His Excellency  
Mr. Silvio Berlusconi  
Prime Minister of the Italian Republic

Any lowering of standards of protection in Europe itself would, moreover, inevitably set a negative precedent for acceding countries and those on the periphery of the expanded EU. It may also undermine the Convention Plus initiative and efforts to improve protection in regions of origin. The “safe third country” concept and the border procedures as outlined in the draft Directive will serve to shift the burden from EU Member States to countries further afield. This will do little to convince States in regions of origin and transit that Europe is serious about establishing global burden- and responsibility-sharing arrangements, including improved protection in regions of origin.

I hope that the attached Aide Memoire which sets out our principal concerns will receive your serious consideration and ask that you share it, together with this letter, with your colleagues in the European Council.

If these concerns cannot be taken into account, this may be an indication that the situation is not ripe to conclude a meaningful harmonization instrument. I would suggest then that, rather than open the door to a lowering of standards, the instrument should be taken off the table and governments simply allowed to retain their own existing provisions, reverting to a harmonization instrument at a more propitious moment.

Please accept, Sir, the assurances of my highest consideration.

Ruud Lubbers

