

Memorandum to the French Presidency

Seizing the opportunity to create a meaningful Common European Asylum System



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ECRE's Calls for Action to the French Presidency

1. Defending refugees' access to protection in Europe

Support and introduce initiatives to review and adapt all border management policies and operations in order to ensure the full respect of the principle of *non-refoulement* at its external borders.

2. Increasing the quality and harmonisation of asylum systems

Increase the political will amongst Member States to seriously address the wide divergences between the different national asylum systems.

3. Addressing the flaws of the Dublin System

Agree urgent short-term reforms to the Dublin II Regulation in Council, including a mechanism to suspend the system.

4. Improving the Reception of Asylum Seekers throughout the EU

Agree changes to the Reception Directive in Council that address the outstanding gaps in the current Directive and promote further approximation in national reception conditions on the basis of higher standards.

5. The Integration of Refugees and their rights as Long Term Residents of the EU

Achieve an agreement in Council that extends rights under the Long term Residence Directive to refugees and persons with a subsidiary form of international protection.

6. Developing EU countries' capacity to protect refugees through resettlement

Increase the number of resettlement places made available to refugees in the EU and take concrete first steps towards the establishment of a European Resettlement Programme.

Introduction

France will hold the Presidency of the European Union at an important time in the process of building a Common European Asylum System (CEAS). Immigration and asylum policies do not only determine the fate of refugees and migrants, they also determine whether Europe is building tolerant, open societies and the image Europe projects to third countries, in relation to upholding universal human rights. As a country with a long tradition in offering asylum and in view of the importance it will give to immigration and asylum issues during its Presidency through its forthcoming Pact, France has the potential to make a significant contribution to improving Europe's role in the global refugee protection system.

The Commission has just issued its policy plan for the development of a CEAS over the next few years. This policy plan has been informed by a wide variety of views from different stakeholders in the field of asylum gathered during the Green Paper consultation, and it should be fully embraced by the French Presidency. While one of the main challenges ahead will be to effectively address the current gaps and flaws in the current asylum *acquis*, the overall objective of increasing protection standards across the EU must be at the heart of the CEAS process in order to add real value.

The so-called Returns Directive, recently adopted at first reading, is an example of an EU instrument that fails to properly balance states' interests, in relation to controlling who enters, stays on, and leaves its territory, with the fundamental rights of individuals.¹ It will, for example, facilitate the greater use of pre-removal detention and legitimise detention of up to 18 months for persons who have committed no crime, including children. As long as EU legislation continues to fail to require standards that can fully ensure adherence with international and European human rights and refugee law, the onus remains on each individual Member State to ensure they respect such standards through their own laws and practices. The French Presidency now has the opportunity to lead by example, through, for instance, not lowering its standards in the area of detention. Equally it has the opportunity to lead the EU into taking a more balanced approach and creating a meaningful Common European Asylum System.

1. Defending refugees' access to protection in Europe

Persons fleeing persecution have no more means to legally travel to the EU than any other category of persons, despite the right to seek asylum established under the Universal Declaration of Human Rights, which celebrates its 60th anniversary in December 2008. Refugees are therefore forced into irregular channels, creating so-called 'mixed flows'. The response of Member States to date has been to implement an increasing array of border control measures, most of which lack mechanisms to identify persons in need of international protection. This leads to some refugees being denied access to EU territory and protection in Europe.² Any efforts by the French Presidency to intensify coordination amongst Member States in relation to the management of EU external borders should be accompanied by concrete measures to ensure that refugees can, in reality, still reach sanctuary in Europe.

¹ ECRE, *Comments on the Proposal for a Directive of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third country nationals*, May 2006, ECRE letter to LIBE MEPs on the Return Directive, 6 September 2007, ECRE and Amnesty International joint press release on the Returns Directive, 20 May 2008, ECRE press release *EU fails to uphold human rights*, 18 June 2008.

² Pro Asyl and the Greek Group of Lawyers for the Rights of Refugees and Migrants, *'The truth may be bitter, but it must be told'*, 29 October 2007.

The ongoing development of guidelines on joint operations at sea and disembarkation is an opportunity to encourage greater cooperation between Member States in order to avoid the all too frequent situations where migrants and refugees are left stranded at sea. In the course of rescue and interception operations, priority should be given to ensuring the safety of the people on board. This will imply their transfer to a safe place, which should not be a ship but rather must involve disembarkation to dry land.

Moreover much more general scrutiny is required of FRONTEX and its responsibilities for ensuring operations are respectful of human rights. There is a lack of clarity and transparency regarding the exact scope of FRONTEX's coordinating role and the way in which its operations are conducted at land, air and sea borders. The urgent creation and deployment of the proposed asylum expert teams is needed as an important step towards ensuring that asylum seekers are properly identified and treated during operations. Furthermore important questions arise around the role of FRONTEX beyond the EU's external borders, in terms of whether it can legally be involved in these kinds of operations but also whether it can do so with guarantees that its actions remain in full compliance with relevant European Community (EC) law, namely the Schengen Borders Code, the Asylum Procedures Directive and its own founding Regulation.

➤ ECRE calls on the French Presidency to:

- support and introduce initiatives to review and adapt all border management policies and operations in order to ensure the full respect of the principle of *non-refoulement* at the EU's external borders;
- ensure in the forthcoming guidelines on joint operations at sea and disembarkation that the safety of the people on board is prioritised and that those in need of protection are identified;
- ensure the external evaluation of FRONTEX addresses the many concerns regarding the extent of FRONTEX's responsibilities in ensuring Member States human rights obligations are not violated, and that it is undertaken in a transparent manner in consultation with a wide range of stakeholders, including NGOs that have expertise on the practical problems encountered by asylum seekers at the EU's borders.

2. Increasing the quality and harmonisation of asylum systems

The French Presidency will oversee the first steps towards completing the 2nd phase of the CEAS. Such a process must aim at finally reducing the wide divergences between the different asylum systems of Member States. For example in terms of recognition of refugees, it is unacceptable that an Iraqi asylum seeker in Germany has an 85% chance of being recognised as a refugee but in Slovenia he/she has a 0% chance.

Divergences do not only exist in terms of recognition rates but also in terms of the types of protection statuses granted and what rights are attached to each status. For example persons

recognised under the Refugee Convention can have access to greater rights than those with a subsidiary form of protection. Unfortunately the EU's Qualification Directive allows such variances to continue and this will need to be addressed in its forthcoming revision,³ as persons with subsidiary protection have similar experiences and needs to those with Convention status. Also of concern is the fact that EU states are granting subsidiary forms of protection to a far greater proportion of refugees than Convention status. France bucks this trend by having one of the highest rates of recognition of refugees under the 1951 Refugee Convention in the EU. The EU presidency is therefore an opportunity to share information with its EU partners on its interpretation of the Refugee Convention and encourage Member States to put the Convention back at the heart of their asylum systems.

An important way to address these problems is through greater practical cooperation between Member States, namely the sharing of best practices, capacity - building and training, as well as the systematic monitoring of the implementation of EU standards. In the coming months a proposal to develop a EU Asylum Support Office (EASO) will be finalised. ECRE supports the creation of such a structure as it could play a key role in developing and coordinating a range of activities to improve the quality of asylum and ensuring they can be sustainable. The creation of Asylum Expert teams, Quality Monitoring teams and greater consistency in the production and assessment of COI are important elements of what a EASO could achieve. In order to make progress in tackling divergences, such an office should draw on all available expertise and perspectives and thus work closely with UNHCR and other independent experts, including NGOs. It should also be subject to democratic oversight by the European Parliament.

➤ ECRE calls on the French presidency to:

- ensure a full application of the 1951 Refugee Convention;
- increase the political will amongst Member States to seriously address the wide divergences between the different national asylum systems and ensure the level of protection is raised;
- support the creation of a EASO which prioritises monitoring of the implementation of EU asylum instruments and increasing the quality of asylum systems across the EU, and fully involves all relevant independent experts.

3. Addressing the flaws of the Dublin System

The European Commission will propose reforms to the Dublin II Regulation during the French Presidency. This will be a key opportunity to address crucial flaws in the system. The Dublin system pledged to “guarantee” asylum applicants that their applications will be examined by one of the Member States. But in fact, far too often, this is not the case. While ECRE has made the case for why and how the whole Dublin system should be completely reconsidered in the long-term,⁴ it believes that a wide range of urgent short-term reforms are required given the scale and scope of current injustices caused by the interaction of the Dublin system with disparities in asylum systems.

³ Commission of the European Communities, *Policy Plan on Asylum; An integrated approach to protection across the EU*, COM(2008) 360/3, Brussels 17 June 2008, p.6.

⁴ ECRE, *Sharing Responsibilities for Refugee Protection in Europe: Dublin Reconsidered*, March 2008.

Individuals should not be forcibly transferred back to a state which does not offer a comparable prospect of protection or which lacks adequate reception facilities. The ad hoc suspensions of transfers to Greece by individual states over the last months, based on documented lack of access to asylum procedures in Greece for people returned under Dublin (including minors) demonstrates why reforms must look at how to facilitate suspensions of the system. Other reforms needed include ensuring that individuals are afforded a full suspensive right of appeal against transfer, that the humanitarian clause and use of the sovereignty clause for humanitarian reasons are expanded, and that due consideration is given to the needs of unaccompanied minors and other particularly vulnerable persons.

- ECRE calls on the French Presidency to
 - agree urgent short term reforms to the Dublin II Regulation that address those flaws demonstrated to have an unduly negative impact on asylum seekers, including children and families;
 - prioritise the introduction of a mechanism to allow the suspension of the Dublin system in cases where asylum seekers face the risk of *refoulement*, lack of access to an asylum procedure or to adequate reception conditions.

4. Improving the Reception of Asylum Seekers throughout the EU

Revisions to the Reception Directive will also be proposed and discussed under the French Presidency. While the application of the Directive may have led to the adoption of more favourable measures in a number of Member States, ECRE believes that the provision of dignified and comparable living standards to asylum seekers is still far from being a reality in EU countries bound by the Directive. ECRE has repeatedly stressed that adequate reception standards are necessary to prepare applicants for both possible outcomes of the asylum procedure, namely return or integration, they are also a prerequisite for due process of law and a fair and efficient procedure.⁵

The reality is that, without appropriate reception standards, persons with protection needs are often confronted with detention or are forced into destitution. In this regard, common European measures should be instrumental for improving the welcoming of asylum applicants in the Member States, as well as for reinforcing the legal framework of national reception policies.⁶ It is important to bear in mind that reception is not only about the provision of accommodation and the bare minimum needed for survival, but that it is also about the social well-being of asylum seekers. Poor material reception conditions coupled with a lack of access to employment during the asylum procedure can lead to a vicious circle of isolation, discrimination and poor integration prospects.

ECRE calls on the French Presidency to ensure that amendments to the Reception Directive address outstanding gaps in the current rules and:

- promote further approximation in national reception conditions on the basis of higher standards;

⁵ECRE, *Position on the Reception of Asylum Seekers*, November 2001; *The Way Forward - Europe's Role in the Global Refugee Protection System: Towards the Integration of Refugees in Europe*, July 2005;

⁶ ECRE, *Proposals for revisions to the EC Directive on the Reception of Asylum Seekers*, CO2/5/2008/Ext/MDM/PC, May 2008.

- better promote the self-sufficiency of asylum seekers, for example with regard to access to the labour market and access to housing outside collective centres.

5. The Integration of Refugees and their rights as Long Term Residents of the EU

We welcome the French Presidency's plan to look more closely at issues of integration. Supporting the successful integration of refugees in European societies is essential not only so that refugees can find a durable solution to their plight and rebuild their lives, but also to ensure political and public support for governments' legal obligation to protect those who flee persecution.

Introduction programmes are potentially an important tool for the integration of refugees and migrants. It is clearly in the interest of both receiving societies and refugees and migrants that such programmes are effective. Basic knowledge of the host society's language, history, and institutions is indispensable to integration; and enabling migrants to acquire the basic knowledge is essential to successful integration. However in most countries, asylum seekers are excluded or have limited access to introduction programmes. This has a negative impact on their integration process and that of their children. Also, those with subsidiary forms of protection are sometimes excluded from introduction programmes despite the fact that they have exactly the same needs as recognised refugees.

European governments are increasingly placing the onus on newcomers to demonstrate their willingness to integrate, and attaching sanctions to non-compliance with certain integration measures. ECRE recalls the important and widely recognised principle⁷ that integration is a dynamic two-way process, which begins from the day a refugee arrives within the new host society. While a refugee clearly has responsibilities to adapt to a host country's rules and values, the host society must also take steps to be welcoming and to offer support and opportunities that promote their integration. The Long Term Residence Directive is an important legal instrument that grants a more stable status to third-country nationals who have legally resided on the territory of a Member State for five years. ECRE believes that extending the scope of the Directive to refugees and other beneficiaries of international protection is a crucial and necessary development that would demonstrate that EU Member States are serious about promoting the integration of refugees into their societies. However despite ongoing negotiations no consensus on amending the Directive has yet been reached by Member States.

➤ ECRE urges the French Presidency to:

- encourage Member States to offer introduction programmes to all refugees and migrants, including asylum seekers and those with subsidiary forms of protection and to have an integration strategy with a coherent and consistent national introduction programme.
- address the substantial increase in funding necessary in most Member States to increase the availability and quality of introduction programmes and the need for resources to be allocated effectively and strategically to facilitate the provision of the introduction programmes and language courses in both urban and rural areas.

⁷ See the EU Common Basic Principles on Integration, Doc. 14776/04 MIGR 105

- prioritise achieving consensus in the Council on the extension of the Long Term Residence Directive so that refugees, including those with a subsidiary form of protection, are included within the Directive's scope.

6. Developing EU countries' capacity to protect refugees through resettlement

ECRE is very active in promoting the greater use of resettlement as an international protection and responsibility-sharing tool. A few Northern Europe countries have maintained the resettlement tradition and created specific programmes to receive the most vulnerable. Other states, such as France, recently announced they would establish national resettlement programmes. Given the significantly increased interest in undertaking resettlement activities by EU Member States, the French Presidency is well-placed to re-explore proposals for establishing a EU Resettlement Programme. Such a programme would allow for a much more coordinated approach and the provision of more resettlement places to the EU as well as add value to existing national programmes. The idea of a EU programme is supported by the European Commission, UNHCR and ECRE. In fact ECRE has published a detailed proposal of how such a programme could be developed and the potential roles of all relevant actors including the EU, UNHCR, Member States, NGOs and refugees.⁸ A European Asylum Support Office could usefully help to coordinate expanding resettlement activities. NGOs have extensive expertise in different aspects of resettlement programmes⁹ and are keen to support governments in starting or expanding their resettlement activities.

ECRE urges the French Presidency to increase the number of resettlement places made available in the EU by:

- actively encouraging EU Member States to offer more resettlement places in accordance with established procedures and criteria set by UNHCR;
- supporting the proposal for a European resettlement programme and the active inclusion of NGOs in EU discussions on designing such a programme.

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⁸ ECRE, *The Way Forward – Towards a European Resettlement Programme*, April 2005.

⁹ ECRE, *Survey: Resettlement by Europe – The actual and potential role of European NGOs*, July 2007.