



Brussels, 12 November 2008

**Subject: "Freedom, Security and Justice: What will be the future?" – Consultation on priorities of the European Union for the next five years (2010-2014)**

*Opinion of the National Red Cross Societies of the Member States of the European Union and the International Federation of Red Cross and Red Crescent Societies*

The European Union National Red Cross Societies welcome the European Commission's initiative to launch a consultation process on the future priorities of the EU in the area of freedom, security and justice that will result in the adoption of a new five year programme – the *Stockholm Programme*. We view this process as a part of a continuous dialogue with the Commission, the European Parliament and the Member States on issues of mutual interest. The present paper summarizes our opinion in the following priority areas: fundamental rights, immigration, asylum, external borders and police cooperation (in relation to access to Eurodac).

As National Red Cross Societies we are part of the International Red Cross and Red Crescent Movement, which is the world's largest humanitarian network. The Movement is neutral and impartial, and provides protection and assistance to people affected by disasters and conflicts. National Red Cross and Red Crescent Societies act as auxiliaries to the public authorities of their own countries in the humanitarian field and provide a range of services including disaster relief, health and social programmes. We promote humanitarian values and respect for international human rights law, refugee law and international humanitarian law.

The 30<sup>th</sup> International Conference of the Red Cross and Red Crescent, gathering National Red Cross and Red Crescent Societies, the International Committee of the Red Cross (ICRC), the International Federation of the Red Cross and Red Crescent Societies and the 194 States party to the Geneva Conventions of 1949, acknowledged the role of National Red Cross and Red Crescent Societies, based on the Movement's Fundamental Principles of humanity and impartiality, and in consultation with public authorities, to provide humanitarian assistance to vulnerable migrants, irrespective of their legal status.<sup>1</sup>

European National Red Cross and Red Crescent Societies are committed to address the needs and vulnerabilities of people affected by international migration and forced displacement in order better to protect, support and assist them. In particular, we pay attention to the promotion of respect for the rights and needs of individuals, including persons in detention and to the delivery of needs-based services and assistance with a special priority for asylum seekers, refugees, irregular migrants, unaccompanied minors and victims of trafficking in human beings. We are fully engaged in the fight against racism, xenophobia, discrimination and social exclusion and for respect for diversity and human dignity.<sup>2</sup>

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<sup>1</sup> Declaration [Together for Humanity](#) (Annex Resolution 1), adopted by the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent, 2007 ([www.ifrc.org](http://www.ifrc.org))

<sup>2</sup> [The Istanbul Commitments](#), adopted by the 7<sup>th</sup> European Regional Conference of the International Federation of Red Cross and Red Crescent Societies, 2007 ([www.ifrc.org](http://www.ifrc.org))

## Improve the protection of fundamental rights

We welcome the European Union's increased engagement in the promotion of fundamental rights, complementing the work of the Council of Europe to protect human rights throughout Europe and creating an area in which all persons, irrespective of their legal status, enjoy **respect of their rights**. In this spirit, the EU and its Member States should affirm their commitment to guarantee high standards of protection and assistance to asylum seekers, refugees and other vulnerable migrants across the Union, respecting *inter alia* the EU Charter of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In order to provide EU institutions and Member States with expertise relating to fundamental rights, the EU has set up the Fundamental Rights Agency (FRA). Key functions of the FRA include **promoting dialogue with civil society** and **raising public awareness of fundamental rights**. To ensure close cooperation between the FRA and civil society organisations, the Fundamental Rights Platform has been created, with the main tasks of making suggestions for FRA's Annual Work Programme and to give feedback and suggest follow-up on its Annual Reports. We urge the FRA to use this opportunity to interact with civil society stakeholders in order to ensure proper attention to the rights, needs and vulnerabilities of people affected by international migration. This would be an important contribution to the effective protection of fundamental rights in the EU.

## Develop a common immigration policy for Europe

We take note of the assertion in the *European Pact on Immigration and Asylum*<sup>3</sup> that "International migration is a reality that will persist as long as there are differentials of wealth and development between the various regions of the world ... The hypothesis of zero immigration is both unrealistic and dangerous". Moreover, as reaffirmed by the European Council, EU and national "**migration and asylum policies must comply with the norms of international law**, particularly those that concern human rights, human dignity and refugees".

We urge the European Union and its Member States to adopt **fair and humane immigration policies**, which decrease irregular migration and resulting vulnerability by creating opportunities for legal migration in conditions of safety and dignity. At the same time, root causes in countries of origin and conditions in Member States that contribute to irregular migration should be addressed.

The **right to family reunification** in the EU should be strengthened, putting an end to diverging practices and obliging Member States to authorise and facilitate the entry and residence by family members of *all* beneficiaries of international protection, including refugees and persons granted subsidiary protection in accordance with EU and national law<sup>4</sup>. Measures facilitating early family reunification improve the chances of successful integration.

The EU also needs to increase its focus on **humanitarian concerns generated by international migration**. To this end the Union and its Member States must take effective measures to address the needs of persons negatively affected by migration, including families and communities, ensuring that migrants and members of their families receive fair and humane treatment and that their human rights and dignity are protected and respected, irrespective of their legal status.<sup>5</sup>

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<sup>3</sup> [European Pact on Immigration and Asylum](http://www.consilium.europa.eu), 13440/08, Council of the European Union, 2008 ([www.consilium.europa.eu](http://www.consilium.europa.eu))

<sup>4</sup> The *right to family reunification* is recognised by EU law (Article 1 Family Reunification Directive); it must be applied in conformity with *inter alia* the fundamental right to respect for family life (Article 7 EU Charter of Fundamental Rights).

<sup>5</sup> The 30<sup>th</sup> International Conference of the Red Cross and Red Crescent "recognize[d] that migration may generate issues of humanitarian concern in all regions of the world. We are particularly concerned that migrants, irrespective of their status, may live outside conventional health, social and legal systems and for a variety of reasons may not have access to processes which guarantee respect for their fundamental rights". It further "acknowledge[d] the role of governments, within the framework of national laws and international law ... to address the humanitarian needs of persons negatively affected by migration"; see Declaration [Together for Humanity](http://www.ifrc.org) (Annex Resolution 1), adopted by the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent, 2007 ([www.ifrc.org](http://www.ifrc.org)); Position paper [The European Council and the Global Approach on Migration](http://www.redcross-eu.net), Red Cross/EU Office, 2006 ([www.redcross-eu.net](http://www.redcross-eu.net))

Measures to support **sustainable return and re-integration** in safety and dignity of persons who are obliged to return to their countries of origin should be reinforced. This would include enhanced pre-departure counselling, re-integration assistance and monitoring of conditions of return.<sup>6</sup>

### Further develop a Common European Asylum System

We remain insistent that European governments fully respect the rights of all asylum seekers and other migrants<sup>7</sup>, and, in this context, acknowledge the need to establish a Common European Asylum System (CEAS) that upholds humane reception standards and safeguards the right to seek and to enjoy asylum through fair and proper asylum procedures in all Member States, including measures to guarantee safe and legal access to the system.

We take note of the recognition by the European Council in the *European Pact on Immigration and Asylum* “that the time has come to take new initiatives to complete” the CEAS and “thus to offer a **higher degree of protection**, as proposed by the Commission”.

As underlined by the *Future Group*<sup>8</sup>, in “a common space based on the respect of fundamental rights, it is not admissible that the national application of one of them, **the right to asylum**, varies so much between the Member States”<sup>9</sup>. Consequently, once completed, the CEAS must ensure that international protection in the EU is accessible and, as stated by the Commission in its *Policy Plan on Asylum*, that asylum seekers are “treated in the same way, with the same high-standard guarantees and procedures, wherever in the EU they make their asylum claim”.

Common standards on **reception conditions** must ensure humane treatment and decent material conditions in all Member States. Promoting good health should be a matter of priority and empowerment an essential aspect of reception activities. In order to promote self-reliance, asylum seekers should have immediate access to the labour market. Detention should be avoided and considered only as a measure of last resort. *Particularly* vulnerable asylum seekers should never be detained; any special needs should be identified without delay and adequate care ensured.

Common **procedural provisions** must take into account that asylum seekers are typically in a *vulnerable situation*, guaranteeing effective access to the asylum procedure and individual examination of all asylum applications; and ensuring that all asylum seekers enjoy the right to remain in the asylum country and have access to independent legal counsel throughout the process. Additional safeguards are needed for *particularly* vulnerable persons.

In order to ensure a uniform interpretation and application of EU law, a common procedure should include a Common Asylum Court of Appeal as part of the Court of Justice of the European Communities (ECJ). As acknowledged by the *Future Group*, the ECJ “must be granted sufficient means to be able to meet the requirements for swift processing”. Additionally, it needs to be granted sufficient competencies.

The common provisions on **subsidiary protection** must be strengthened, with the aim of ensuring that no one in need of international protection is denied such protection, in particular persons fleeing *situations of international or internal armed conflict*. EU law should also provide adequate protection for persons displaced by *environmental degradation*. Moreover, all persons who cannot

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<sup>6</sup> See [Return: Policy and Practice](#), Platform for European Red Cross Cooperation on Refugees, Asylum Seekers and Migrants (PERCO), 2008 ([www.redcross-eu.net](http://www.redcross-eu.net))

<sup>7</sup> [The Istanbul Commitments](#), adopted by the 7<sup>th</sup> European Regional Conference of the International Federation of Red Cross and Red Crescent Societies, 2007 ([www.ifrc.org](http://www.ifrc.org))

<sup>8</sup> [Freedom, Security, Privacy - European Home Affairs in an open world](#), Report of the Informal High Level Advisory Group on the Future of European Home Affairs Policy (“The Future Group”), 11657/08, Council of the European Union, 2008 ([www.consiliium.europa.eu](http://www.consiliium.europa.eu))

<sup>9</sup> According to the EU Charter of Fundamental Rights, “The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community” (Article 18 *Right to asylum*).

be removed should be afforded an appropriate status that guarantees access to fundamental rights; in any event, no rejected asylum seeker should be left to a life in destitution.

A **single uniform status** for *all* persons eligible for international protection should build as far as possible on the rules and standards pertaining to refugee status in accordance with the 1951 Refugee Convention and its 1967 Protocol and ensure timely family reunification and equal access to e.g. health and social care, training and the labour market.

We welcome enhanced **practical cooperation** and strongly recommend that it is extended beyond national asylum authorities by strengthening collaboration between appeal and higher instances in the asylum process and by including international organisations and NGOs with expertise and experience that could further improve the added value of trans-national cooperation.

We support the creation of a European Asylum Support Office (EASO), which would operate in a transparent manner and liaise closely with relevant organisations and extend its services to *all* stakeholders in the asylum process, including asylum seekers and their representatives. Equal access to the relevant assistance and activities – i.e. practising the *principle of equality of arms* at the EU level – would enhance the potential for high-quality asylum decisions.

The activities of the EASO should include: establishing training programmes and organising joint training of national migration officials and legal representatives; providing access to relevant country of origin information services; promoting exchange of good practice; developing common guidelines facilitating accurate and uniform assessment of asylum claims as well as ensuring adequate reception conditions; and closely monitoring implementation and application of relevant EU legislation and case-law (supporting the Commission's role as guardian of the Treaties).

A revision of the “underlying principles” of the **Dublin system** is urgently needed. Until the CEAS has been effectively established the most fair criteria for assigning responsibility would be the *intention of each asylum seeker* as regards the preferred country of asylum, bearing in mind that the ultimate aim of any responsibility assigning mechanism must be to guarantee international protection to those in need of it. Should the current principles remain unchanged, we strongly support the creation of mechanism which would allow for the possibility of suspending the application of the Dublin rules; in addition, the amendments outlined by the Commission in the *Policy Plan* should be adopted without delay, ensuring *inter alia* full respect of the right to family life and strengthening the protection of particularly vulnerable persons.

The CEAS must ensure that the Member States and the EU institutions allocate **sufficient resources**, including adequately trained staff, to the processing of asylum applications and reception of asylum seekers. A genuinely common asylum system, which guarantees international protection to all in need of it regardless of in which Member State an asylum claim is lodged *and* where responsibilities are shared equitably, requires common funding through the EU budget.

As regards the **external dimension of asylum**, the EU should actively promote universal accession to, and full implementation of, the 1951 Refugee Convention and its 1967 Protocol, as well as respect for and due application of the principle of *non-refoulement*. In this context, we strongly encourage EU support for capacity-building with a view to *strengthening protection and assistance capacity* in third countries.

Resettlement is and should remain a complementary *tool of protection* that provides durable solutions to persons in need of international protection and takes into consideration the situation of particularly vulnerable refugees. Resettlement is also a mechanism for responsibility sharing and as such a concrete *demonstration of international solidarity*. In this context, we support the Commission's intention to develop an EU resettlement scheme, with the emphasis on solving protracted refugee situations in a strategic way in cooperation with UNHCR and other relevant stakeholders, complementing existing national programmes.

For more detailed comments on the further development of a Common European Asylum System, see our [position paper](#) on the European Commission's *Policy Plan on Asylum*.<sup>10</sup>

### **Strengthen the protection of external borders: access to asylum in the EU**

As the *Future Group* has pointed out, and as acknowledged in the *European Pact on Immigration and Asylum*, the EU has to ensure “that those with a genuine right to asylum are able to claim it”.

It should come as no surprise that **strengthened and externalised border controls** have had the effect of preventing access to asylum in the Union; as a result, and as the Commission explains in its *Policy Plan on Asylum*, “Disorderly movements are a *significant route to safety* in the EU, with human smugglers acting as important facilitators for entry”. It is thus critical for the functioning of the CEAS that measures which ensure legal and safe access to protection in the EU are adopted.

Having repeatedly expressed our grave concern about serious situations of vulnerability caused by irregular migration, inhumane treatment of migrants attempting to enter the EU and the risk of asylum seekers being unable to gain access to asylum procedures<sup>11</sup>, we welcome the Commission's intention, announced in the *Policy Plan*, to examine ways to alleviate the present situation, including through Protected Entry Procedures and “a more flexible use of the visa regime, based on protection considerations”. We would also encourage the Commission and the Member States to consider the recommendation by States within the “Berne Initiative” to *waive visa requirements* “in the case of certain refugees and others in need of international protection in order to help them to escape persecution or other serious human rights violations”<sup>12</sup>, with a view to introduce the necessary amendments to the Visa Regulation.

In situations where people travel and arrive at the external borders in “mixed flows” everyone must be treated humanely and receive information about their rights and those who express protection concerns must be guaranteed access to fair and proper asylum procedures. In cases of interception or rescue at sea, it must be made clear that final disembarkation may only take place where such procedures and adequate reception services are available, i.e. at a place of safety. To this end, all public officials involved should be properly trained and conditions monitored by independent organizations. In the context of border control operations coordinated by Frontex, properly trained teams of *protection-focused* asylum experts could constitute an important complement, further safeguarding access to asylum procedures and ensuring respect of fundamental rights, including protection against *refoulement*.

### **Reinforce the effectiveness of police cooperation: access to non-police data at EU level**

In this context we note that the purpose of the **Eurodac system**<sup>13</sup>, which operates a central database of fingerprint data, is “to assist in determining which Member State is to be responsible pursuant to the Dublin [Regulation] for examining an application for asylum”. The Dublin Regulation, in turn, according to its preamble, “seeks to ensure full observance of the right to asylum guaranteed by Article 18” of the EU Charter of Fundamental Rights.

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<sup>10</sup> Position paper [European Commission Policy Plan on Asylum](#), Red Cross/EU Office, 2008; see also Position paper [European Commission Green Paper on the future Common European Asylum System](#), Red Cross/EU Office, 2007 ([www.redcross-eu.net](http://www.redcross-eu.net))

<sup>11</sup> Position paper [The European Council and the Global Approach on Migration](#), Red Cross/EU Office, 2006 ([www.redcross-eu.net](http://www.redcross-eu.net))

<sup>12</sup> [International Agenda for Migration Management](#), IOM/Federal Office for Migration, Switzerland, 2005 ([www.bfm.admin.ch](http://www.bfm.admin.ch))

<sup>13</sup> 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 ([ec.europa.eu](http://ec.europa.eu))

At the same time, and as we have previously noted, the current application of the Dublin Regulation has turned European asylum into a protection lottery, leaving many vulnerable asylum seekers without access to an adequate level of protection and assistance<sup>14</sup>. Providing law enforcement authorities with access to Eurodac – thus circumventing its original purpose – would risk further undermining the credibility and proper application of any responsibility assigning mechanism, while, as the use of detention, reinforcing the perception of asylum seekers and other migrants being linked to criminality.

### **Develop the area of Freedom, Security and Justice in a globalized world**

We encourage the European Union to lead by example through committing to high standards of protection and assistance to asylum seekers, refugees and other vulnerable migrants and respect for fundamental rights, across and beyond the Union. In terms of international solidarity, global responsibility-sharing through enhanced capacity-building, timely and adequate support to major refugee hosting countries, increased opportunities for resettlement and strengthened re-integration assistance, would be important components.

### **Actions that should be a priority for 2010-2014 in the area of Freedom, Security and Justice**

In conclusion, the future priorities of the EU in the area of freedom, security and justice, to be set out in the *Stockholm Programme*, should include:

- The creation of the EU as an area in which all persons, irrespective of their legal status, enjoy **respect of their fundamental rights**;
- The establishment of a **Common European Asylum System** that upholds humane reception standards and safeguards the right to seek and to enjoy asylum through fair and proper asylum procedures in *all* Member States, including measures to guarantee safe and legal access to the system;
- The adoption of **fair and humane immigration policies**, which decrease irregular migration and resulting vulnerability by creating opportunities for legal migration in conditions of safety and dignity.

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*This position paper has been prepared by the Red Cross/EU Office, which represents the National Red Cross Societies of the EU Member States and the International Federation of Red Cross and Red Crescent Societies to the EU institutions.*

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<sup>14</sup> Position paper [European Commission Green Paper on the future Common European Asylum System](#), Red Cross/EU Office, 2007 ([www.redcross-eu.net](http://www.redcross-eu.net))