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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE
EUROPEAN PARLIAMENT**

**Towards a common asylum procedure and a uniform status, valid throughout the
Union, for persons granted asylum**

PREFACE

Point 15 of the Presidency Conclusions of the Tampere European Council (15 and 16 October 1999) states: 'In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union'. The Commission was asked to prepare a communication on this matter.

In June 2000 the Portuguese Presidency organised a European Conference on the issue of a common European asylum system. The discussions on a common asylum procedure and a uniform refugee status provided many leading political figures, including a number of Ministers, the Office of the United Nations High Commissioner for Refugees (HCR) and other international organisations, representatives of the academic world and NGOs, with an opportunity to explore a variety of avenues on an informal basis.

This Communication sets out the Commission's thinking on this procedure and this status. Its purpose is not to propose one or more ready-made systems but to launch a debate in the Community on the longer-term prospects. The range of solutions and tools is quite extensive. The Commission's intention is to take an ambitious approach to all the questions and certain possible scenarios so that the Council, Parliament and the various organisations concerned by asylum policy can engage in a full discussion and come up with precise guidelines.

The Communication begins by looking at the context and objectives of the common procedure and the uniform status; it is important to take account of the flows confronting the Member States and the nature of the legal environment before considering common objectives and proposing a scope suitable for the European Union. It goes on to consider the possibilities of a common procedure, either through a limited procedural approach or through a more fully integrated approach, and the possibilities of a uniform status. It stresses the need to reach common analysis underlying the procedure and the status. Finally, the Commission proposes a general structure and a method for examining the communication.

In asylum matters, the Commission recalls that since May 1999 it has laid the following initiatives before the Council and Parliament: EURODAC Regulation on finger-printing asylum-seekers (which the Council will be adopting in the coming weeks), Directive on family reunification, Decision on a European Refugee Fund (adopted by the Council in September 2000), Directive on temporary protection in the event of a mass influx of displaced persons, Directive on asylum procedures (grant and withdrawal of refugee status). Its intention is to add the following items to this legislative package by the end of 2001: reception of asylum-seekers, criteria and mechanisms for determining the State responsible for examining an asylum request (Community instrument to succeed the Dublin Convention), rules on the recognition and content of refugee status and subsidiary forms of protection offering an appropriate status.

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PART I: THE CONTEXT AND OBJECTIVES OF A COMMON PROCEDURE AND A UNIFORM STATUS VALID THROUGHOUT THE UNION

1.1 The asylum situation in the European Union

The sources of international protection in the Member States of the European Union are, of course, the Geneva Convention of 1951 on the status of refugees and the 1967 Protocol, national constitutional and legislative provisions and other international Conventions and the consequences in asylum terms of compliance with the European Human Rights Convention (ECHR - Article 3) and the Convention against Torture (Article 3 again), and in certain cases the Convention on the Rights of the Child. In some Member States administrative practices are of considerable importance in terms of the general offer of protection. The role of national court and of the European Court of Human Rights decisions are vital in developing the law relating to asylum in the Member States. Generally speaking, the presence of individual persecution (the key element of the Geneva Convention) is not in fact the sole ground on which asylum is granted in Europe, even if the Geneva Convention is the central pillar of the edifice.

Article 18 of the Charter of Fundamental Rights in the European Union provides that the right of asylum is guaranteed in compliance with the rules of the Geneva Convention and in accordance with the Treaty establishing the European Community, and Article 19(2) provides that ‘No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment’.

Any attempt to grasp the reality of the phenomenon of asylum in Europe has to be based on a medium- and long-term analysis. The number of asylum requests in the Union declined sharply from its peak in 1992-93, but rose again from mid-1996. The Member States, moreover, are affected by incoming flows in varying degrees: while some experienced stable or even declining demand (Germany’s share fell to no more than 25% of the EU total in 1999), others (UK, B, for example) have faced a sharp rise in demand in the last two years or so.

Graphs – Eurostat Estimates: Sources - Member States and Eurostat

Fig.1 – Asylum requests (thousand), EU-15, 1985-2000



Fig.2 – Percentage of asylum requests by Member State, average between 1997 and 1999 (total = 892 381)

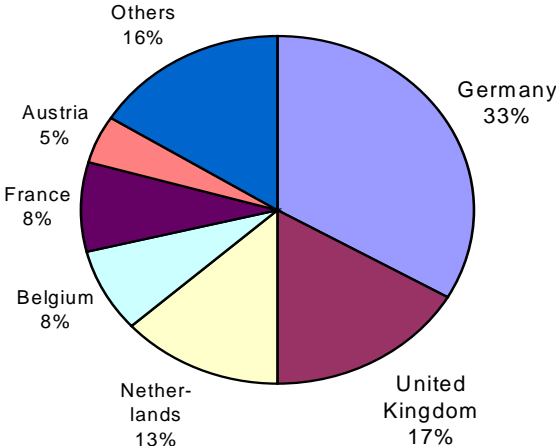


Fig.3 – Percentage of cases recognised under the Geneva Convention between Member States, average between 1997 and 1999 (total: 89 576)

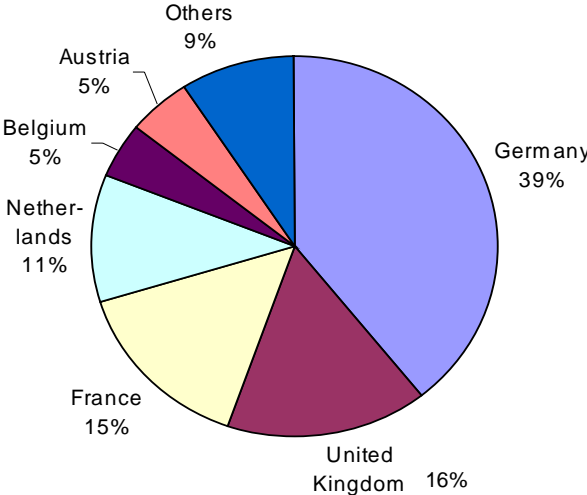
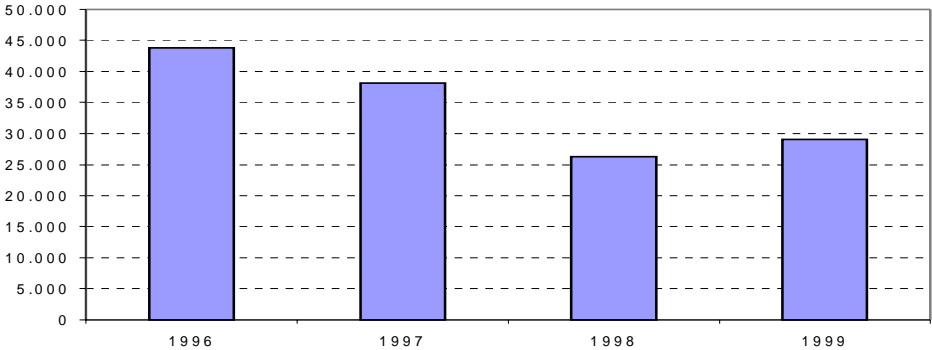


Fig.4 – Cases of recognition under the Geneva Convention, EU-15, 1996-1999



Admissions to refugee status as defined in the Geneva Convention were fairly stable in absolute terms in the early 1990s, despite variations in demand, but in the last few years there has been something of a decline. This may be explained by the following reasons:

- measures adopted by the Member States or the European Union which diverted certain flows of refugees to other destinations or deterred certain refugees from seeking asylum;
- the hypotheses put forward by some that migratory flows are actually mixed, with economic migration underlying asylum requests and inevitably raising the rejection rate;
- a growing mismatch between the nature of demand and the criteria of the Geneva Convention. The major cause for this is the proliferation of armed conflicts generating situations of widespread insecurity and human rights violations that are difficult to fit within the definition of persecution as traditionally interpreted for the purposes of the Geneva Convention in Europe. It would be unreliable to try to explain the decline in admissions to refugee status as a proportion of total admissions in the Union by a more and more

restrictive interpretation of the Geneva Convention in such situations. For one thing, requests emanating from countries where individual persecution comes in easily identifiable forms continue to correspond to high rates of admission to refugee status. For another, trends in decisions given by appellate courts suggest that new situations are being brought within the Geneva Convention. But these trends generate problems of divergence in case-law that are not conducive to the emergence of a European area.

In any event, consideration also has to be given to the other means whereby the Member States meet expressed needs for protection. The Member States have developed additional or subsidiary forms of protection so as to give asylum-seekers proper protection where they are not covered by the Geneva Convention but still need international protection. Article 3 of the ECHR plays a vital role here. These forms of protection have emerged without any coordination, and are constantly evolving in all the Member States. In many of them, subsidiary forms of protection are more numerous than the number of cases of recognition of refugee status under the Geneva Convention.¹

1.2 The challenges and objectives of a common asylum procedure and a uniform status

The definition of guidelines for a common procedure and a uniform status demands a consensus on the challenges and objectives to be met. The Commission proposes the following as a basis:

- Following on from the Tampere conclusions, adopt clear principles offering guarantees to those who are legitimately seeking protection in the European Union and seeking access to its territory. These principles must remain firmly attached to respect for the Geneva Convention and other relevant human rights instruments and supply the basis for a capacity to meet humanitarian needs on the basis of solidarity;
- Absolutely respect the right to seek asylum; apply the Geneva Convention in full and inclusively; ensure that nobody will be sent to a country where he faces the renewed risk of persecution, in other words maintain the principle of non-refoulement.
- Allow the Member States to identify those who genuinely need protection and respond properly to situations of vulnerability. The rules adopted must be fair and effective and underlie rapid high-quality decision-making;
- Develop a procedure and a status within the context of common migration policy that covers all aspects (partnership with countries of origin, fair treatment for third-country nationals, management of migratory flows). In particular:
 - preserve the specificity of humanitarian admission and asylum in the European Union as distinct from other grounds for admission;
 - balance absolute respect for the specificity of humanitarian admission against the legitimate objectives of preventing and combating illegal immigration.

¹ For example, in 1998 and 1999, the proportion of subsidiary statuses in relation to Geneva Convention statuses at least doubled in the Netherlands, Greece, Finland, Sweden, Denmark and Portugal. In other Member States that have recently introduced subsidiary forms of protection (Austria, France, Spain), there has been a steady increase. In Germany and the United Kingdom, subsidiary statuses account for a constant substantial proportion of positive protection decisions.

In this context, the Commission believes that the Member States would be better placed to combat what is presented as a real abuse of the asylum system if they had a wide range of open and transparent immigration management policies taking better account of the economic and demographic situations of the Member States. The complex links between these dimensions will be explored in a separate communication.

- Limit secondary movements influenced solely by the diversity of applicable rules. Divergent asylum policies in the different Member States must disappear and an effort must be made to harmonise conditions in order to avoid negative effects for the Member States' interests. Refugees and persons seeking protection must be eligible overall for the same conditions as to examination of their request and for the same conditions as to protection and residence, whichever Member State is concerned. Those who do not need protection or no longer need it must also receive equivalent treatment.

- Consider the first stage referred to in paragraphs 14, 16 and 17 of the Tampere conclusions and in the scoreboard presented in spring 2000 as the pillar on which a common procedure and a uniform status can be built.

- Base the rules on the Treaty and respect the principles of subsidiarity and proportionality. Since these rules fall within the general context of the development of the European Union as an area of freedom, security and justice, they must help to secure the broadest possible freedom of movement of persons.

- Consult the relevant international organisations, in particular the HCR on the basis of Declaration No 17 annexed to the Amsterdam Treaty.

1.3 Scope

Given the available information on migratory flows, the elements set out at point 1.1, the different types of needs for international protection, the very terms of the Treaty and the Tampere conclusions regarding a common European asylum system, the objectives set out above, and in particular the objective of efficiency and balance, the common procedure and uniform status must be applied to all international protection needs and not only those covered by the Geneva Convention.

The Commission believes it is important to begin by clarifying one point in particular: the purpose of the common procedure and the uniform status is not to organise the recognition of Geneva-Convention refugee status or subsidiary protection by means of individual positive or negative decisions taken by a Community body. This option would be utterly incompatible with the proportionality and subsidiarity principles. And it would entail the establishment of a specific judicial body to hear appeals against individual decisions.

In the context of a common procedure and a uniform status, it might be possible at a second stage to envisage deepening the mechanisms and content of temporary protection in the event of a mass influx of displaced persons. The objective of the directive proposed in May 2000 is to establish fair and balanced minimum rules and mechanisms enabling the Member States to deal with a mass influx. The Commission nevertheless addresses these issues in this communication.

PART II: FROM A LIMITED COMMON PROCEDURE TO AN INTEGRATED COMMON PROCEDURE

2.1 Second-stage procedural standards

The purpose of the proposal for a directive on minimum standards on procedures in Member States for granting and withdrawing refugee status is to establish in the short term a minimum level of harmonisation of the rules applicable in the matter in the Community. It does not require the Member States to apply uniform procedures. They thus retain their national systems subject to respect for certain norms and conditions regarding competent authorities and the applicable procedures. This is an initial measure in that it also leaves the Member States free to decide whether or not to apply the norms in subsidiary protection procedures for persons who have been determined not to be refugees.

At a second stage, the definition of a common procedure implies restricting the possibilities for options in the areas where the first stage allows a degree of flexibility or the possibility of derogating from certain provisions. With a view to laying down a common procedure, it would be necessary to restrict the scope for flexibility given to the Member States as regards powers at first instance and on appeal (common concept of independence from political authorities, for example), procedures governing admissibility, expedited procedures and procedures at borders. And it might be possible to achieve some convergence in national interpretations of flexible norms, such as those governing time limits.

Certain concepts, such as those of safe countries of origin and third countries, would remain to be defined at a future date. Several options are possible: the adoption of common lists or the abandonment of the concepts. Enlargement of the European Union is one factor to be taken into account.

Finally, the need to legislate on other aspects not covered by the first stage will have to be considered (e.g. rules on the quality of the examination of requests and of decisions, treatment of documents filed by the applicant, translation of documents, method and duration of interviews, hearing on appeal).

2.2 The single procedure

Certain Member States have already opted for the “one-stop-shop” type of procedure and many of those that are preparing amendments to their asylum legislation are moving this way. The purpose of the one-stop-shop is to centralise the examination of all protection needs at a single place so as to assure the applicant that no form of persecution or risk is ignored and also to reduce the time taken to examine the request for international protection. In addition to the examination of the asylum application under the Geneva Convention, if the application is rejected, the body will examine the application in terms of one or other complementary form of protection. This is in distinction to a practice whereby the examination under the Geneva Convention, if the result is rejection at the final appeal stage, is followed by fresh examination in terms of subsidiary protection, in many cases by another authority. Thus could be seen as a great contribution to the common procedure.

Even so, establishing a procedure such as this entails consideration of several questions:

- Is there a risk of downgrading recognition of refugee status under the Geneva Convention, and if so, how can this be avoided: perhaps through obligations to examine applications at various hierarchical levels (obligation to examine an application first of all on

the basis of the Geneva Convention's criteria and to close the case if they are met, followed by other forms of protection if they are not), accompanied by obligations as to the reasons to be given?

- How should the appeal procedure and the procedure for objections by the applicant if his request under the Geneva Convention is rejected be handled, even where subsidiary protection is granted?

- Should certain obstacles to removal from the territory be excluded from this procedure?

The Commission will launch a study to serve as a basis for further reflection.

2.3 Access to the territory

2.3.1 Visas and external border controls

Certain common approaches could be adopted to policies on visas and external border controls to take account of the specific aspects of asylum. The questions to be looked at in depth include re-introducing the visa requirement for third-country nationals who are normally exempt, in order to combat a sudden mass influx, facilitating the visa procedure in specific situations to be determined, and taking account of international protection needs in legitimate measures to combat illegal immigration and trafficking in human beings, along the lines of the protocols to the United Nations Convention on transnational organised crime.

2.3.2 Requests for asylum made outside the European Union and resettlement

Processing the request for protection in the region of origin and facilitating the arrival of refugees on the territory of the Member States by a resettlement scheme are ways of offering rapid access to protection without refugees being at the mercy of illegal immigration or trafficking gangs or having to wait years for recognition of their status.

Only four Union Member States currently operate resettlement schemes, in conjunction with the HCR. The USA has a typical two-tier asylum procedure: one for spontaneous arrivals and one, very different, based on a resettlement scheme, based on tight internal coordination between the various public authorities involved and cooperation with NGOs and the HCR. This option, as the Commission sees it, must be complementary and without prejudice to proper treatment of individual requests expressed by spontaneous arrivals.

The examination of these options in the context of a common asylum procedure requires prior consideration of a number of questions: role of the authorities in the Member States, diplomatic missions in regions of origin, Community institutions and the HCR, resultant costs and investments, conditions for examination of requests, choice of regions or countries of origin, scope in terms of protection (confined to refugees within the meaning of the Geneva Convention or extension to persons needing another form of international protection), quotas and distribution over the Member States, relationship with requests made in the context of the resettlement programme and spontaneous requests made in a Member State of the European Union, etc. The Commission will conduct feasibility studies.

2.4 The consequences for the conditions for reception of asylum-seekers

A common procedure as such does not mean a uniform system of conditions for the reception of asylum-seekers. The Commission considers that the need to harmonise reception

conditions is tied up with two main objectives: offering asylum-seekers an equivalent level of living conditions throughout the Community (irrespective of the Member State where they are) and avoiding secondary movements based on a difference in the conditions in different Member States. The Commission will make a first-stage legislative proposal early in 2001.

At a second stage, it will be necessary to consider whether, if the objectives considered above have been attained by the adoption of minimum standards regarding reception conditions, it is also necessary to embark on further stages of standardisation of national reception systems on the basis of the same method as described at point 2.1 (limitation of options, convergence of national interpretations of flexible rules, introduction of new elements). A common procedure will bring more people than before within the scope of reception systems upstream of a final decision on the need for protection, particularly if the option of a single procedure is selected. All applicants for international protection (and not just asylum-seekers under the Geneva Convention) would follow an identical procedure and receive the same treatment in reception terms.

2.5 The criteria and mechanisms for responsibility for examination of asylum requests

The adoption of a common procedure and a uniform status should help to put the question of solidarity between Member States in a new perspective. It would reduce the impact of the phenomenon of “asylum shopping” that is widely criticised in many quarters and the frequency of the secondary movements that are associated with it. But the Commission is aware that the demand for solidarity is present today. An initial response was offered by the establishment of the European Refugee Fund, and the debate should continue in the negotiations on the proposal for a directive on temporary protection in the event of a mass influx of displaced persons.

Establishing common standards regarding reception conditions, asylum procedures and rules for admission to international protection will thus help to reduce secondary movements. But this will not remove the need to set up clear and efficient mechanisms governing responsibility for examining asylum requests. There will still be factors that cause flows of asylum-seekers to be unequal as between Member States, such as the language factor and the presence of relatives or a national community. The Commission is currently engaged in evaluating the implementation of the Dublin Convention and in spring 2001 will be proposing a first-stage Community instrument to replace it. Several solutions are possible; they were described in Commission working document SEC(2000)522.

The instrument to replace the Dublin Convention is likely to follow the same underlying principles as the current Convention with improvements based on experience. But in the context of establishing a common procedure and a uniform status, a system where the only criterion is the place where the request was made, backed up by a simple mechanism for taking applicants back with support from Eurodac, would be easier to envisage than it is now.

2.6 Returns

A policy on returns or effective removal from the territory is an absolute necessity for the credibility of the common asylum system and the common procedure. Where an applicant for protection has had the benefit of a fair and full procedure in which all forms of need for international protection and all obstacles to return have been considered, his application has been rejected and he has no other right of residence, he must leave the territory and return to his country of origin or go to a third country. Otherwise the entire procedure for admission and examination of the asylum request is in jeopardy, especially when a large number of

persons file unwarranted asylum requests. The effective implementation of this principle of return will contribute to the effectiveness of the asylum system and protect its integrity. Common principles could, if necessary, be developed for the European Union.

Priority must be given to voluntary returns. The Commission's hope is that the use of the European Refugee Fund will provide an incentive to the development of programmes here. But voluntary returns must be accompanied by enforced returns where this is necessary, to lend credibility to the asylum system and the policy of effective removal.

It may be that recognised refugees and persons enjoying forms of international protection wish to return voluntarily although they are still legally entitled to remain in the host country. While bearing in mind that the return is based on the personal wish to leave the host country, the returnee's efforts can be given proper support by the Community. Common guidelines could also be adopted at Union level to accompany such returns in coordinated fashion where appropriate.

PART III: ONE OR MORE UNIFORM STATUSES VALID THROUGHOUT THE UNION

3.1 Common interpretation of refugee status and of the need for international protection

In 2001 the Commission will present legislative proposals to approximate the rules governing the recognition and content of refugee status and forms of subsidiary protection offering an appropriate status. At the end of this first stage, and whatever the result, it will be necessary to consider whether mechanisms can be developed to correct certain differences that might remain or to prevent the phenomenon of divergent interpretation of Community rules.

An applicant for protection must be able to be reasonably certain that, whichever Member State he approaches, he will enjoy equivalent chances of obtaining proper protection. Part IV suggests a number of elements that could help to limit differences of interpretation. However one of the status options would be for the Member States to have at their disposal at least one form of subsidiary protection enabling a person to obtain this status while he would be able to obtain refugee status in another Member State and thus ensure that he will not be seriously penalised. The level of the rights attaching to this subsidiary protection is thus of capital importance.

The Member States will have to bring their arrangements for identifying needs for protection and their conditions for ceasing to provide it into line if the common system is to work, especially if there is a movement towards mutual recognition of negative decisions and common forms of cooperation for implementing such decisions. A common interpretation of the grounds for removing protection is therefore crucial. Taking the case of subsidiary protection given to a major category of persons from the same third country and then removed in one Member State but not in another, there would be a negative effect in terms of secondary movements and the whole concept of a uniform status valid throughout the Union would be distorted.

The global consultations process on which the HCR recently embarked will, of course, influence the European Union's process.

3.2 The outlines of one or more uniform personal statuses

3.2.1 Transpose the Geneva refugee status into Community law?

Recognition of refugee status is mandatory for all parties to the Geneva Convention. The rights and entitlement enjoyed by refugees within the meaning of the Geneva Convention are prescribed by the Convention, and all the Member States are bound to respect them. The point is not to replace them with a regional scheme but to transpose them as appropriate into Community law, in particular in the light of the harmonisation of third country nationals' rights, the objective of uniform application of these rights, freedom of movement and the right of residence in another Member State and progress in constructing a Community corpus of fundamental rights.

3.2.2 One or more subsidiary statuses?

Although refugee status is not necessarily definitive under the Geneva Convention, the needs for protection that subsidiary forms of protection meet are generally available for shorter time-spans. They also commonly meet individual protection needs that can be highly specific and, in parallel, collective situations (situations of widespread violence, for example). Several uniform forms of protection, modulated as to the terms on which they cease, can thus be envisaged. The point will be to consider whether the form or forms of subsidiary protection should contain rights that vary according to the grounds or duration of admission or whether such variations would make the asylum system unnecessarily complicated.

3.2.3 A single status?

A single status, conferring the same types of rights on refugees recognised under the Geneva Convention and on persons enjoying subsidiary protection might be an option as a means of simplifying the system and practice and of amplifying the one-stop-shop option in order to avoid systematic appeals against rejection of requests for recognition on the basis of the Geneva Convention. The point will be to consider how to avoid such a status distorting the rights attaching to conventional refugee status, the obvious option being to confer the same type of rights as are conferred by, in particular, the Geneva Convention. Consideration might also be given to the question of modulating the duration.

3.3 Documents, rights, freedom of movement and right of residence in another Member State

The basic reference set of rights conferred on persons enjoying protection must be the rights conferred on third country nationals residing lawfully in the European Union, which must in their turn be comparable to the rights of the citizens of the Union. But it will be necessary to consider to what extent the rights conferred on persons enjoying protection should reflect specific considerations in view of the protection situation, the vulnerability of these persons and the fact that they have not left their community of origin of their own free will.

Access to employment or to self-employed activities, conditions for acquisition of a work permit or exemption from it, access to social rights (social protection and assistance), education and health care (sometimes calling for a special approach in view of the vulnerability of certain protected persons due to the experience of political persecution or prison, torture and the circumstances of their flight) are components of the status to be harmonised, along with family reunification and the type of status to be given to reunited family members. The Commission made proposals here in December 1999.

One or more uniform statuses would also entail residence and travel documents with harmonised duration, format and renewal conditions.

The conditions for residence in a Member State will have to be considered. For example, in the case of a refugee in the conventional sense who is eligible for long-term residence, the uniform status valid throughout the Union might entail the possibility of settling in another Member State after a certain number of years or travelling there to pursue studies or training. The conditions should be equivalent to those imposed on European Union citizens (conditions as to resources or employment might be imposed). Questions concerning transfers of protection between Member States or cessation of protection will have to be studied in this context, as will mechanisms for the provision of information and the transmission of documentation built up during the examination of the refugee's request if he changes his place of residence. In the context of a uniform status valid throughout the Union, there are legitimate questions about the need for the continued existence of all the mechanisms for transferring responsibility established by the European Agreement on Transfer of Responsibility for Refugees² or by bilateral agreements between Member States. The Commission will launch a study.

These rights do not exclude the application of measures linked to preservation of public order and national security in the Member States, always in compliance with the principle of non-refoulement.

In the context of the uniform status, it is also necessary to consider the problem of combating discrimination on the basis of Article 13 of the Treaty establishing the European Community. The Commission recalls in particular that, following the Council agreement on the package of non-discrimination measures, the Community has undertaken to give effect to the principle of equal treatment without distinction on the basis of race, ethnic origin, religion or beliefs, disability, age or sexual orientation. The two Directives implementing the principle apply also to third-country nationals and stateless persons residing lawfully in the Union and thus supply a sound basis for protection of persons enjoying international protection.

3.4 Integration and access to nationality

Refugees and persons enjoying protection should benefit from and contribute to integration policies in such conditions that there is equivalent equality of opportunities in all the Member States, taking account of the diversity and specific features of initiatives in local communities and civil society. The right to employment is obviously crucial here, but sometimes there will have to be targeted measures to help persons enjoying protection to integrate into the labour market, for example special education and training measures. Community initiatives such as the Equal programme and the European Refugee Fund could accompany national measures. The European Union must take advantage of the talents that refugees have to offer, including their professional skills.

At the same time, integration measures need to be balanced with the need for certain refugees and persons enjoying protection to prepare their return to their country of origin. Common approaches could be adopted in order to offer a long-term solution where it is not possible to return, even after several years.

There are no provisions in the EC Treaty relating to access to nationality. But the Tampere conclusions state that the European Council 'endorses the objective that long-term legally resident third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident'. The Geneva Convention requires States parties to

² Council of Europe, Strasbourg, 1980; the Member States of the European Union are not all parties.

facilitate the acquisition of nationality (article 34). The Commission is favourably disposed towards the development of a common thinking on this. In the longer term, this common thinking could extend to offering a form of civic citizenship, based on the EC Treaty, inspired by the Charter of Fundamental Rights and consisting of a set of rights and duties offered to third-country nationals.

Successful integration of refugees and other persons enjoying protection demands a propitious political environment. Some Member States have recently experienced racist and xenophobic reactions against refugees and asylum-seekers. Political leaders and the media have a crucial role in leading public opinion and must avoid all statements that might provoke racist feeling.

PART IV: COMMON ANALYSES

The points set out at Parts II and III will call for a large-scale effort in terms of information, evaluation, statistics and integration of certain aspects of external policies so that common analyses can underlie the common procedure and the uniform status.

4.1 Information, exchanges and common evaluations

The national authorities and appellate bodies must have access to a great variety of sources of information and evaluation in order to apply the norms and principles adopted by the Community and to gain a convergent awareness of the risks, protection needs and situations in countries of origin, to review the quality of their decisions in depth, to compare practices and to adopt the best of them. This depends on development of common rules on the exchange of information on countries of origin and transit, a harmonised policy on the purpose of such information in individual decisions and the asylum procedure in general, and the conclusions to be drawn from the information in the examination of requests.

Common information exchange rules would enable the authorities in the Member States to share in full trust information gathered in countries of origin and transit on the general situation and human rights violations observed there. To that end, networks will have to be set up to facilitate permanent contacts and, where necessary, day-to-day relationships between basic authorities responsible for examining asylum requests in the Member States and the Member States' embassies in third countries. Subsequent initiatives for joint reporting on the basis of a range of information sources, including international and non-governmental organisations, could also help prepare the ground for a common approach.

If this exchange of information is to serve a useful purpose, the result must be available to case-workers in basic authorities as a basis for decisions in individual cases. Common rules could be devised on confidentiality and references to sources in the decisions.

Looking beyond the gathering, dissemination and utilisation of all this information, thought might be given to developing mechanisms for the joint evaluation of its consequences for the treatment of cases. A common assessment of the risks for certain categories of asylum-seekers could engender guidelines for action at European level. This would require close cooperation between national authorities. These mechanisms might then generate Council decisions identifying the groups or situations where there are or are not special risks. The effect of these decisions would not be to confer an automatic right to protection or to prompt automatic rejections, but they would enlighten the daily practice of the authorities responsible for processing requests.

New mechanisms for cooperation between national authorities, bodies responsible for the examination of requests and appeals will be indispensable. The functions of these mechanisms could be: compiling and exchanging information (using computerised tools), analysing statistics, early warning systems, rapid information on national and Community administrative and judicial decisions, the exchange of good practice, and case-studies extending to “sentencing”,³ the ongoing training of staff processing requests, common evaluation of the situation in countries of origin and transit and specific situations of persecution or otherwise generating a need for international protection. A long-term objective might be a database coupled with a translation facility. The Commission would take these objectives into account when preparing the administrative cooperation instrument to succeed the Odysseus programme in 2002.

In 1992, the Council set up an informal information exchange and consultation group (with no decision-making powers) called CIREA.⁴ Its objective is to facilitate the coordination and harmonisation of asylum policies and practices. The Commission is actively involved. There are good grounds for wondering whether the CIREA still meets the need of a common European asylum system and *a fortiori* a common asylum procedure and a uniform status. Clearly it is becoming more and more difficult to achieve common evaluations, and the results so far have rarely filtered through to the staff who actually process requests.

4.2 An area for priority action: statistics

Establishing and implementing the common European asylum system require an in-depth analysis of the scale of migratory flows, their origins and the characteristics of requests for protection and the response to them. These analyses must be a tool in the service of asylum policy as a means of preparing the requisite instruments or reacting to flows more quickly and even in advance, or of making such reforms as are found to be necessary. In the European Union, statistics on asylum have been gathered gradually in the CIREA context. In mid-1998, the Council called on the Commission to do the actual gathering and to give greater depth to the work of bringing the underlying concepts into closer convergence. The work is done on a restricted-access basis, but Eurostat publishes all public data in its New Cronos database, which is universally accessible.

Although data-gathering is gradually improving, much remains to be improved. For one thing, it inevitably reflects the lack of a common procedure and of comparable statuses. But there is more to it than that. The statistical exercise has not yet been acknowledged to deserve priority in many Member States. In some Member States, even in the purely national context, the national authorities have only a superficial perception of the data on asylum, since they lack the tools or have not gathered certain data. The Commission receives data that come late or are incomplete, or sometimes not at all. The first stages of implementation of the European Refugee Fund as regards the allocation of funds as between the Member States have highlighted a large number of difficulties in supplying data and then in drawing meaningful comparisons.

Apart from improvements to the process of gathering data on the basis of the evaluation already made by the Commission, the time now seems ripe for strategic thinking on the needs for statistics in support of decision-making and the development of analytical capacities. In this context, sound cooperation with international organisations such as the HCR or the

³ Technique allowing divergences in case-law to be corrected.

⁴ Centre for Information, Reflection and Exchange on Asylum

Geneva-based Inter-Governmental Consultations (IGC) that are also working on the statistical aspect would also be helpful for the European Union.

4.3 External policy aspects

A common procedure and a uniform status entail even greater mobilisation of the external policy means of action available to the Union, for example in gathering and exchanging information on countries of origin, monitoring flows and the human rights situation, monitoring reconstruction and humanitarian aid in countries and regions of origin. The Union's diplomatic missions could be asked to play a role here.

The examination of the specific situation in a given country or area of origin, following an integrated method, can offer valuable new insights for the authorities that examine requests.

And the common procedure and the uniform status could have the effect of further developing the Community's external powers.

PART V: A POSSIBLE ARCHITECTURE AND AN EXAMINATION METHOD

5.1 The concept of "the longer term"

In the run-up to the Tampere European Council, the Commission supported the establishment of a single European asylum system. The European Council saw fit to specify that the European asylum system should begin with a first (short-term) stage, followed by a second stage ('in the longer term'). Beginning in 2001, the Union's legislative agenda, based on Commission proposals, should provide the Council with the opportunity to demonstrate its capacity to give effect to its short-term commitments under the Treaty, the Vienna action plan and the Tampere conclusions. The instruments must be adopted before 1 May 2004, but they must also be transposed into national law.

The life expectancy of the provisions currently proposed or in preparation must be long enough to permit an initial pattern of convergence and to found a certain number of conclusions, possibly proceeding from an initial series of Community court decisions. This is not to say that the first-stage instruments will ignore the longer-term objective. The ambitiousness of the first series of proposed minimum standards is and will remain high. In each of its proposals, the Commission plans possible links with subsequent stages.

The duration of the first stage will be predicated on the rhythm of the work done. But the Council will always, if it so wishes, be able to move to the second stage ahead of time.

Can a common procedure and a uniform status be devised on the basis of the current text of the Treaty? As the Commission sees it, the concept of minimum standards does not necessarily imply an unambitious approach as to the scope of the measures taken on the basis of the Treaty. But it must be borne in mind that responding adequately to the Tampere European Council's mandate will depend on a broad interpretation of the concept of minimum standards.

5.2 Means

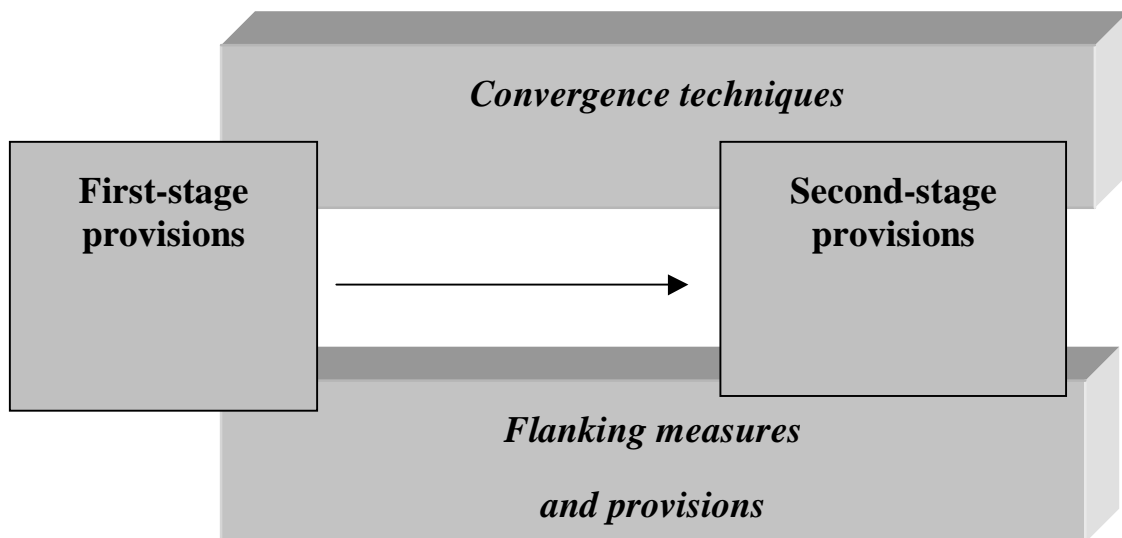
The Commission believes that a common procedure and a uniform status cannot be based on legislative instruments and techniques alone. It has identified a series of instruments and actions whose development will enable the content of the common procedure and the uniform status to be built up gradually. These instruments and actions include:

- the first-stage initiatives. The harmonisation that is sought will, at this first stage, have the typical features of Community law. Implementation reports (provided for by the basic instruments) must be prepared at regular intervals. The Commission can also organise ad hoc meetings of experts;
- the operation of contact committees or coordination groups set up to monitor the application of the legislative instruments (see the recent proposals on temporary protection in the event of a mass influx of displaced persons and on asylum procedures). These committees can facilitate the transposal and harmonised application of the relevant provisions by means of regular consultations on possible practical problems. They can facilitate consultations between Member States on more stringent or additional national measures which they may have taken;
- the development of the case-law of the national and European courts. Monitoring the application of Community law (notification of national measures by the Member States, followed by complaints, infringements and caselaw of the European Court of Justice) will inspire a process of convergence and harmonisation in the service of the common procedure and the uniform status;
- studies on a number of options;
- the development of analytical tools;
- the development of forms of administrative cooperation.

The Commission could undertake to take stock each year of progress in implementing these various actions and to produce recommendations for future action.

The objective of preserving the specific features of humanitarian admission to the European Union must be safeguarded, but that does not prevent the Community from using, in its rules and measures, common instruments governing the admission and residence of third-country nationals where there is no valid reason for making a distinction. This has always been the spirit behind Community action, for example when refugees were brought into the scope of the 1971 Social Security Regulation⁵ and when the Commission recently presented its proposal for a directive on family reunification. This could be done either by including them within the scope of an instrument or by a form of cross-reference.

⁵ Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, OJ No L 28, 30/01/77 (consolidated version).



5.3 Partnership with the Office of the High Commissioner for Refugees and civil society

The HCR will have to be consulted on European Union initiatives for a common procedure and a uniform status. The Commission notes that the HCR has started a global consultations process on reinforcing the international protection system and that European thinking on the common procedure and uniform status is relevant to that process. Thought will have to be given to the role of the HCR in implementing the various components (rules or mechanisms) of the common procedure and uniform status.

A common procedure and a uniform status should be the occasion for reconsidering the relationship between the Community, the Geneva Convention and the international organisations that draft the basic documents on protection (e.g. the HCR Executive Committee, International Committee of the Red Cross). Common positions will have to be worked out in all cases. The effect of the common procedure and the uniform status could be to extend the Community's external powers.

Representatives of civil society, associations, non-governmental organisations and local authorities and communities must also be partners in the new system as actors and vectors of asylum values in Europe.

5.4 Resolute follow-up to the communication

The adoption of a common asylum procedure and a uniform status, valid throughout the Union, for persons who are given asylum, is one of the most ambitious objectives set by the Heads of State or Government and is a core component of the area of freedom, security and justice. The aim is to give practical expression to the fundamental values that are so attractive to those who are deprived of them elsewhere in the world. Based on the international human rights instruments, in particular the Geneva Convention, they will round off the establishment of a common European asylum system reconciling the needs for simplification, fairness, transparency, effectiveness and speed, the contradictions between which are often no more than superficial. There will inevitably be an impact on other aspects of asylum policy, particularly in terms of the way in which solidarity between Member States is expressed and of the conditions for reception and integration. Assuming that new analytical tools are

developed and that administrative cooperation is enhanced, the new architecture can draw valuable input from the first efforts at alignment that began immediately after the Tampere conclusions. Careful basic preparation will be needed, but it should then be possible to move rapidly towards the objective, especially as it has become apparent that the right of asylum badly needs consolidating in the changing world at the start of this new millennium.

With this communication the Commission is seeking to respond to the mandate given by the European Council in paragraph 15 of the Tampere conclusions. It wishes the debate to be conducted resolutely and regularly in all the proper forums so that clear guidelines can emerge. The European Council, which gave the mandate, should in any event return to the question when the time comes for the mid-term review at Brussels in December 2001 and, if appropriate, before the end of the transitional stage provided for by Article 67 of the EC Treaty. There should also be an annual strategic review by the Council, as described at point 5.2, on the basis of a Commission report.

In parallel with these follow-up activities, the Commission will embark on a series of practical measures:

- ⇒ very early in 2001, a joint technical and political initiative with the Member States, at the instigation of the Swedish Presidency, in conjunction with other relevant organisations, to substantially improve the quality of statistics on asylum;
- ⇒ in 2001 an initiative for a new Community programme to succeed ODYSSEUS in 2002, focusing primarily on cooperation between national authorities with responsibilities for asylum in particular;
- ⇒ studies on the “one-stop-shop” option; asylum requests made outside the European Union and a resettlement scheme at EU level; the question of transfers of responsibility for protection between Member States.

The Commission accordingly proposes that for the development of the common procedure and uniform status there should be a method involving the establishment of strategic guidelines, the definition of “landmarks”, the setting of objectives and agreement on an assessment procedure for progress reporting, without prejudice to the exercise of Community legislative powers, following as closely as possible the policy objectives set. In this context, the Commission could prepare annual reports containing recommendations. This method presupposes not only mobilising the Community institutions and the Member States but also the development of close partnership with international and national governmental and non-governmental players concerned with the common asylum policy.

To conclude, the Commission emphasises that in asylum matters, short-term measures must always be set in the context of a stable, foreseeable policy that is guided by long-term objectives. The framework designed at Tampere, for both the first and the second stages, provides the possibility of doing so. This process must also be guided by a concern for transparency so that there can be a wide-ranging public debate involving the European Parliament and civil society, which will reinforce support for the measures adopted.

Towards a common European asylum system

- EURODAC Regulation on finger-printing asylum-seekers, which should be adopted in the coming weeks (Commission proposal: spring 1999);
- Directive on family reunification, which also covers refugees (Commission proposal: December 1999);
- Decision on a European Refugee Fund (adopted by the Council in September 2000, proposed by the Commission in December 1999);
- Directive on temporary protection in the event of a mass influx of displaced persons (Commission proposal: May 2000);
- Directive on asylum procedures (granting and withdrawal of refugee status), (Commission proposal: September 2000);
- Directive on reception conditions for asylum-seekers (Commission proposal: before March 2001);
- Regulation on criteria and mechanisms for determining the State responsible for examining asylum requests (Community instrument to replace the Dublin Convention), (Commission proposal: spring 2001);
- Directive on recognition and content of refugee status (Commission proposal: second half of 2001);
- Directive on subsidiary forms of protection offering appropriate status (Commission proposal: second half of 2001);
- Third countries of origin and transit: follow-up to Nice European Council report;
- Mobilisation on collection of statistics relating to asylum on the basis of the collection which started in late 1998 (first half of 2001);
- Initiative on a new Community programme to replace the ODYSSEUS programme in 2002 (end of current programme: 2001), focusing principally on cooperation between national authorities in the field of asylum (Commission proposal: in 2001);
- Launching of studies on: the one-stop-shop option; requests for asylum outside the European Union and an EU-level resettlement programme; the question of transfers of responsibility for protection between Member States.