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EUROPEAN PARLIAMENT**

on the common asylum policy and the Agenda for protection

**(Second Commission report on the implementation of Communication
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INTRODUCTION

The report period (December 2001 to February 2003) was an important period in getting the common European asylum system up and running. As can be seen from the Annex to this Communication, significant progress was made in implementing the legislative programme for the first phase, determined by the conclusions of the Tampere European Council, and in developing support measures to flesh out this new policy. But progress still lagged behind, even if it met the deadlines set by the Seville European Council. Moreover the price to be paid for it was sometimes a reduction in the effectiveness of the harmonisation or a very low level of agreed standards. The need for unanimous adoption of Community instruments is the main cause, while the difficulty met by the Member States in abandoning their national agendas is another. Beyond the progress made with the Nice Treaty, proceedings at the Convention and the Commission's contribution particularly highlighted this problem. It is very highly desirable that the Council learn the lessons of this stage of the negotiations so that the instruments still on the table can be adopted in 2003. The Directive on asylum procedures is a major item here.

Achievement of the commitments given at Tampere is well in hand. The bases for the second stage of harmonisation, which is ultimately to yield a common asylum procedure and a uniform status, are now being laid by an important series of studies, the reinforcement of forms of administrative cooperation and the establishment of convergence tools such as the Immigration and Asylum Committee and EURASIL. But the crisis in the asylum system is more and more striking in certain Member States, and there is a growing malaise in public opinion. Abuse of asylum procedures is on the rise, as are hybrid migratory flows, often maintained by trafficking practices involving both people with a legitimate need for international protection and migrants using asylum procedures to gain access to the Member States to improve their economic situation. The number of negative decisions after examination of needs for international protection remain significant.

This phenomenon, which is a real threat to the institution of asylum and more generally for Europe's humanitarian tradition, demands a structural response. There is a priority need for more resolute action on the underlying causes; the Commission presented its proposals on 3 December 2002 with its Communication on the integration of migration-related questions in the European Union's relations with third countries. And the Commission has made proposals for controlled legal immigration channels on the basis of its Communication of 22 November 2000 on a Community immigration policy. The Commission will shortly be offering new suggestions on the different forms of interaction between immigration, integration policies and social and employment policies.

Regarding asylum policy, there is now a manifest need to explore new avenues to complement the stage-by-stage approach adopted at Tampere. The question arises whether the Member States could better deploy the major human and financial resources which, partly supported by the European Refugee Fund, they devote to receiving displaced persons in the context of often lengthy procedures that regularly culminate in negative decisions requiring repatriation after a long wait. Three complementary objectives should now be pursued to improve the management of asylum in the context of an enlarged Europe: improvement of the quality of decisions ("frontloading") in the European Union; consolidation of protection capacities in the region of origin; treatment of protection requests as close as possible to needs, which presupposes regulating access to the Union by establishing protected entry schemes and resettlement programmes.

Thinking here falls in the context of the implementation of the Agenda for Protection, established by the international community after two years' worldwide consultations. It aims to offer a response to today's challenges in the governance of the refugee problem around the world faced with difficulties of applying international protection rules in a situation where there are hybrid migratory flows and ongoing persecutions, risks and dangers forcing millions of people to go into exile where they need protection. Now that the European asylum system has reached critical mass, and thanks to its capacities for external action and search for new channels, the European Union now has significant tools with which to improve its responses to the new challenges and to implement the multilateral Agenda for protection in which the Commission identifies three major priorities: access to protection, durable solutions and better responsibility-sharing with third countries. The European Union ought to be a key actor for the Agenda's long-term success.

1. THE BACKGROUND TO THE ADOPTION OF THE AGENDA FOR PROTECTION AND ITS IMPACT ON THE EUROPEAN UNION

The relevance and primacy of the Geneva Convention confirmed

The worldwide consultations launched in December 2000, just before the 50th anniversary of the 1951 Geneva Convention on refugee status, are a response to the new challenges facing international protection and the HCR. There was a particularly urgent need for solutions reaffirming the relevance and universality of the Convention at the dawn of the XXIst Century, and for clarification as regards the application of certain of its provisions and identification of what elements were missing from the Convention which would help to develop better protection and management of migratory flows and durable solutions. The outcome of this process was the approval by the HCR Executive Committee in autumn 2002 of an Agenda for Protection, a multilateral instrument standing on two pillars. The first is a declaration by the States Parties to the Geneva Convention and its Protocol at the Ministerial Conference in Switzerland in December 2001 to mark the 50th anniversary of the Convention. The Declaration reasserts the central role played by the Convention in the international protection system. The second establishes an action programme covering six Goals, each subdivided into several objectives:

- (1) Strengthening the implementation of the 1951 Convention and 1967 Protocol;
- (2) Protecting refugees within broader migratory movements;
- (3) Sharing burdens and responsibilities more equitably and building capacities to receive refugees;
- (4) Addressing security-related concerns more effectively;
- (5) Redoubling the search for durable solutions;
- (6) Meeting the protection needs of refugee women and refugee children.

Beyond certain differences, the first of which is obviously the number of refugees received, many southern or medium-developed countries are facing the same problems of managing hybrid migratory flows and matching protection systems to needs as exist in the western countries. Particular attention has been drawn to the interaction between questions of crisis prevention and management, respect for human rights, development, integration or reintegration of refugee populations.

The proposals of the High Commissioner for Refugees for the Convention Plus

In the context of the adoption of the Agenda for Protection, the United Nations High Commissioner for Refugees rapidly called on the international community to consider his ideas, assembled under the name "Convention Plus". Following up the Agenda, the objective of this concept is to improve the operation of the Geneva Convention, boost solidarity and extend the management of asylum-related migratory flows by means of modernised instruments or policies. It acknowledges that the asylum and international protection system can come under serious threat if it is used for other purposes or repeatedly misused, notably by networks of traffickers in human beings. The High Commissioner more particularly developed this topic when addressing European Ministers and the Commission at the informal Council meeting in Copenhagen in September 2002. Among other things he proposed:

- (1) The conclusion of special agreements with a view to:
 - Plans of action to ensure more effective and predictable responses to mass influx;
 - Targeted development assistance to achieve more equitable burden-sharing and to promote self-reliance of refugees and returnees in host countries and communities, facilitating local integration in remote areas and countries of origin in the context of reintegration;
 - Multilateral resettlement commitments;
 - Roles and responsibilities of countries of origin, transit and destination in "irregular" or "secondary movement" situations (multilateral readmission arrangements; capacity-building; extraterritorial protection arrangements in a responsibility-sharing framework);
- (2) Cooperation from the HCR to help States expedite asylum procedures and improve the quality of the examination of asylum requests by:
 - Identifying safe countries of origin and safe third countries;
 - Information on countries of origin;
 - Monitoring the case-law in the Member States.

The HCR accepts that the concept of special agreements is still rather vague and will have to be clarified, particularly in the Forum set up for the purpose, which is to meet for the first time in Geneva in June 2003.

The issues involved for the European Union and the multilateral protection system

The EU Member States and the Commission were involved in the work and supported the adoption of the Agenda. They welcomed the spirit of the High Commissioner's proposals, and in particular the pro-active approach to finding solutions to difficulties that sometimes tarnished the credibility of the institution of asylum. The European harmonisation process and the Agenda for Protection were mutually boosting. The Tampere conclusions, the negotiations for Community legislation, and the Commission proposals in the communications of November 2000 on the long-term objectives of asylum policy and on the European immigration policy all operated as input for the Agenda.

Today the critical mass attained by the Community in protection policy enable it to implement a large number of objectives already identified by the Agenda. The European Community can

continue to upgrade its body of rules and practice in the near future. For the HCR and third countries, useful precedents can be established on the basis of it. Difficulties met in negotiating or applying it will also provide food for thought.

The second stage of harmonisation in Europe as developed by the Commission in November 2000 calls for more modern means of action and an ever more important interface between the internal process and the external aspect of the governance of refugees. The European common asylum system cannot basically be improved without integrating overall problems and deepening the multilateral protection system. By the same token, the Commission is convinced that the success of the Agenda for Protection depends heavily on Europe's ambition as regards its common asylum policy and the results it generates.

In this context, the question of **burden and responsibility-sharing** must not be seen solely in terms of spreading financial or physical burdens but also of **multifaceted solutions** and in qualitative terms. The objectives here should be to better manage the asylum system in general and to offer effective and appropriate protection solutions on the basis of mastering and regulating asylum-related flows in their European territorial dimension and in regions of origin. It will be decisive that the European Union develop a genuine policy of partnership with third countries and relevant international organisations. Protected entry schemes in the European Union for persons in need of international protection could be developed in parallel. The concept of protection in the region of origin, which has hitherto been behind a large number of misunderstandings and controversies, could be integrated into an overall architecture offering solutions that are not mutually exclusive. **Respect for the European Union's international obligations** and those of its Member States should also underlie such solutions.

2. PRIORITIES FOR THE EUROPEAN UNION

The point now is to implement the Agenda so as to bring about the practical and operational conditions for a better international protection system. Each country, region or organisation concerned must incorporate the programme's objectives in its policy and legislative agenda. But priorities for action need to be defined. The various aims, objectives and measures identified in the action programme are interdependent, but the Commission is proposing three priority themes for the European Union. They should make it possible to deal with most of the questions raised by the Agenda for Protection and the Convention Plus concept and to lay a basis for the development of a better responsibility-sharing with third countries.

2.1 Access to protection

The Agenda for Protection includes a wide range of measures to promote access to protection in order to:

- better apply the Geneva Convention and offer suitable forms of international protection to meet all protection needs;
- improve asylum procedures, reception conditions and registration and identification schemes, respect for refugees and their protection in the management of hybrid migratory flows;
- enhance the fight against trafficking in human beings and knowledge of migratory flows;

- reinforce institutional capacities in cooperation and solidarity and responses to large-scale influxes;
- offer a better response to questions of security and the needs of women and children.

The **basic components put in place by the European Community** for access to protection, directly relevant for the implementation of the Agenda for Protection, are:

- more harmonised, integrated and comprehensive application of the Geneva Convention and a reduction of differing interpretations of the concept of refugee;
- parallel provision of subsidiary protection to cover all the needs for international protection;
- fairer, faster and more efficient asylum procedures;
- basic standards for the reception of asylum-seekers;
- a better identification system using EURODAC, but also a better registration system applying a number of standards included in legislative instruments (asylum procedures, reception conditions, temporary protection);
- a policy against discrimination, racism and xenophobia, through legislation and awareness measures;
- clearer sharing of responsibilities between Member States for the examination of asylum requests;
- a determined fight against trafficking in human beings through Community accession to the Protocols to the UN Convention of Palermo on transnational organised crime and the adoption of legislative and financial instruments;
- establishment of analysis and exchange tools on migratory flows;
- solidarity mechanisms and reinforcement of asylum capacities and, ultimately, capacities for external border controls and the management of illegal migratory flows;
- stronger dialogue and partnership with third countries;
- a common mechanism to manage large-scale influxes of displaced persons through temporary protection;
- domestic security requirements and the situation of minors and gender questions to be taken into account in legislative instruments and in programmes.

Better access to protection in Europe must go hand in hand with a **regulated and more transparent framework for a policy on admissions**, including for employment purposes. The Commission restates the importance it attaches to practical progress on the basis of its proposals here, both for legislation and for the coordination of employment and admission policies, in partnership with third countries.

Various developments are conceivable in a dynamic perspective for the months ahead to promote synergies between the reinforcement of the common European asylum system as an

integrated regional system in context of enlargement from 2004, and the universal implementation of the Agenda for Protection and the practical realisation of the ideas of the High Commissioner for Refugees summed up as the Convention Plus concept.

Regarding the **application of the Geneva Convention**, the Commission recalls that the establishment of the common European asylum system is based primarily on the adoption of Community legislative instruments. One of the objectives of the main Community instrument is to narrow divergences of interpretation in the implementation of the convention's rules on recognition of refugee status. There are different ways of doing this: meetings of contact committees to review the application of the directive on the definition and status of refugee, prerogatives of the Commission and the European Court of Justice in ensuring compliance with Community law. Here the HCR could intervene in cases before the national courts and the European Court of Justice in preliminary ruling proceedings under Article 234 of the EC Treaty. If it is pointed out that there remain wide divergences of interpretation of the rules governing refugee status under the directive, that would be clear evidence that there is inadequate harmonisation in terms of the objective of a uniform status. The Commission should draw the conclusions and produce a legislative proposal. The Eurasil Network (see Annex, point 4) of representatives of appeal bodies in the Member States could also lay a role under Commission guidance. The Commission will consider ways and means of involving the HCR in this.

Regarding **asylum procedures**, and without prejudice to the outcome of the current negotiations on the first phase of harmonisation here, the European Community must go more thoroughly into its response to two major challenges: the quality of the examination of applications, and the speed of procedures. The Commission will intensify its work on "frontloading", in particular through further study of the question of the one-stop-shop begun in November 2000. It will be mindful of the results of a study launched by the Commission, the results of which have been available since January 2003. This study describes the current practices of Member States and a few other countries (Switzerland, Canada) and observes a tendency to include subsidiary protection among the procedures for determining refugee status in the past decade. The study examines the advantages and disadvantages of the one-stop-shop method. It emphasises that there is growing support for this concept in the Member States, the HCR and elsewhere, despite substantial differences of detail between national practices.

The use of the concepts of **safe countries of origin** and **safe third countries** to expedite procedures and focus on the persons with the greatest needs, should be given a legislative basis for the first time by the end of 2003 on the basis of the Commission's amended proposal. The Council adopted conclusions on the two concepts in October and November 2002. On 13 November 2002, Austria took the initiative of proposing a Regulation establishing the criteria for determining the States which qualify as safe third States for the purpose of taking the responsibility for examining an application for asylum lodged in a Member State by a third country national and drawing up a list of safe third States¹ in Europe. The Council has agreed to consider the initiative in connection with its work on the amended Commission proposal on asylum procedures.

As it is stated in its Communication of November 2000, the Commission has an open mind on this question as harmonisation is necessary in the context of the common asylum procedure. The harmonisation method proposed by the Commission in the first phase was realistic in

¹ OJ C 17, 24.1.2003.

view of the divergent practices of the Member States. But the Commission would be glad if discussions in the Council revealed a greater degree of political maturity in this respect and a more ambitious vision of harmonisation. Closer cooperation between the Community and the HCR regarding information about countries of origin and transit is essential. These concepts have been devised hitherto from a purely procedural angle. It is necessary to consider the link between them and the external policy on protection and relations with identified third countries. Thought might be given to adding, on a case-by-case basis, certain forms of partnership with these countries.

The problem of access to protection raises the core question of **access to the territory**.

The implementation of the Agenda for Protection should enable the European Union to study in closer detail the degree of compatibility of reinforcing the protection given to those who need it and respect for the principle of non-refoulement with the measures taken to combat illegal immigration and trafficking in human beings and external border control measures. The Commission made its views on this known in its communication on illegal immigration and its Green Paper and Communication on a Community return policy on illegal immigrants. The question should be on the agenda of the Committee on Immigration and Asylum.

At the same time the Commission is planning to raise in the Council and the European Parliament the question of **protected entry procedures**, to complement the treatment of spontaneous arrivals by asylum-seekers in Europe, dealt with in the communication of November 2000 as possible scenarios in the context of an ambitious and integrated concept of the common asylum procedure.

A study launched for the Commission on **external processing** was delivered in December 2002. The study suggests that EU Member States should consider "protected entry procedures" as part of a comprehensive approach, complementary to existing territorial asylum systems. According to the authors, these procedures would constitute the most adequate response to the challenge of reconciling control objectives with the obligation of protecting refugees. It proposes to enrich existing visa policies with a protection dimension and to jointly create protection places. It also suggests offering a platform for the regional presence of the EU, integrating different dimensions of migration (determination procedures, protection solutions, labour migration and return as well as assistance to the region of origin) into a single tool, thus allowing the EU to manage them in a coordinated way. The study suggests disseminating best practices on an EU level and regulating the allocation of responsibility to process applications for protection visas among member states. The suggestions in this study should be examined and evaluated most carefully, particularly as regards the role of the Member States, who have not yet come to a consensus. The question of the precise role of the HCR will also have to be high on the agenda.

Presently, one third of the fifteen EU Member States practise Protected Entry Procedures on a formalised basis as a complementary channel. Six Member States allow access in exceptional cases and in an informal fashion. However, the present diversity and incoherence of Member States practice diminishes their actual impact. There is therefore a strong case for harmonisation in this area.

In conjunction with work on resettlement (see point 2.2) and more adequate external assistance to countries that first receive refugees, in consultation with the HCR among others, European developments in regulated management of access to international protection in the territory of the Member States should make it possible to make better use of public finances of which a sizeable proportion is currently devoted to meeting needs which go beyond those

involved in receiving persons in need of international protection. At the same time, these developments would be powerful weapons in the fight against trafficking in human beings as traffickers would lose much of their competitive advantage in terms of access to the European Union. The regional platform idea might be worth exploring further as a means of providing effective protection and a response to genuine requests for international protection with offers of durable solutions. The conclusion of special agreements could also be considered here. The Commission will put the topic on the agenda for the Committee on Immigration and Asylum.

2.2 Durable solutions

The search for durable solutions is the objective that unites the Agenda for Protection and the Convention Plus. There are three durable solutions that have traditionally been identified by the international community to the problem of refugees: voluntary return, integration and resettlement.

Return policy

The **Agenda for Protection** states very clearly that priority is to establish the conditions in countries of origin by removing the reasons for leaving and allowing those forced into exile to return safely and durably, priority being given to voluntary returns. That demands both action in countries of origin and transit and a consistent approach in host countries. At the same time, returns may not be the only durable solution, particularly in the event of a protracted refugee situation. The Agenda also states that the long-term credibility of the asylum system must be based on the return of people who no longer need international protection and have no other grounds for residing legally.

The first elements of a **common European approach** were adopted in the plan of action against illegal immigration in February 2002 and the plan on returns in November 2002 following the Commission's Green Paper and Communications² and in the policy on readmission followed by the European Community; the Green Paper and communication on the policy on returns specified conditions for durability and laid the bases for an integrated approach including preparation for the return, training and assistance with employment, various forms of assistance with the journey back to the country of origin and or reintegration, and follow-up and assistance after the return.

The plan of action on returns confirms that the European Union must establish an approach of its own to integrated returns. These programmes should cover all stages of the return procedure, namely the stage preceding departure, return itself, reception and integration in the country of return. These integrated return programmes should be devised country by country, so as to reflect specific situations, the number of persons concerned and the needs of the relevant countries. The adoption of the EU return plan for Afghans in November 2002 must be seen as a first practical attempt to tackle a specific geographical problem. The Commission is particularly attentive to the sustainability of the planned returns, to consistency between Community support and a broader international perspective regarding the reconstruction of Afghanistan and cooperation with the relevant third countries and international organisations, in particular HCR. The results of applying this plan will have to be studied to see what can be learnt in terms of efficiency and partnership with third parties, particularly in the context of the debate on the concept of special agreements.

² COM(2002)175, 10.4.2002; COM(2002)564, 14.10.2002.

Hitherto priority has generally been given to repatriation of illegal residents, but the concept of the return as a durable solution is obviously a broader one. The Commission considers that the European Union must go into further detail as to its approach here in the context of the common asylum policy. This component will have to be taken into account in the discussion on a possible Community financial instrument for returns. With an eye to a common asylum procedure and a uniform status, it would also be worth developing common analyses on the persistence of major obstacles to the return of certain groups of people in the Union to ensure that members of such groups are not repatriated from certain Member States when they probably would not have been from others. The participation of the European Union in genuine international strategies and partnerships for returns could be further developed.

Integration in the host society

The **Agenda for Protection** provides for measures to promote local integration through socio-economic measures, attention for the specific needs of refugees though also of host populations, with the possibility that rights as to status and residence could go so far as naturalisation in countries of asylum and support for autonomy.

A distinction must be made between the problems of integration in host societies in the European Union and in regions of origin. At the same time, if the European Union wishes to remain consistent with its interest in reception policies in regions of origin, it must be attentive to integration needs in host countries there (see point 2.3).

Internally, the basic elements put in place by the Union for the integration of people enjoying protection in the Member States begin with a Community legislative framework consolidating the status and residence rights of persons given protection, plus elements of long-term residence and family reunification. At the present stage of the harmonisation process the need has not been felt to establish wholly comparable norms for refugees and persons enjoying subsidiary protection. This will have to be borne in mind in work on the uniform status. Moreover, the objectives of the European Union set at Tampere and fleshed out in the Council conclusions of 14 October 2002 are fair treatment for third-country nationals residing legally and harmonisation of their legal status on that of Member-State nationals in terms of both rights and obligations.

Although the fact that persons enjoying international protection have been forced into exile, certain specific needs generated by the reasons for which they have opted for exile and the rights conferred by the Geneva Convention are all factors that must be taken into account, the challenges of integration are much the same as for other migrants from third countries and for host societies in relation to questions such as nationality, citizenship and respect for diversity, social policy and access to the employment market, education and training. **In spring 2003** the Commission will make some proposals for an integration policy, setting it in the context of the European social and employment policy. The necessary equilibrium between horizontal measures and specific measures for the integration of these people will have to be examined here.

In 2003, with a view to further facilitating the movement of refugees in the European Union and to feed reflections on the long-term objective of a uniform status valid throughout the Union, the Commission will launch the final study announced in its Communication of November 2000 on the transfer of protection status. Results should be available early in 2004.

Resettlement schemes

Resettlement consists of transferring refugees from a first host country to a second, generally a developed country, where they enjoy guarantees of protection, including legal residence, and prospects for integration and autonomy. The **Agenda for Protection** calls for more strategic use of resettlement schemes to meet objectives of better protection for certain specific individual needs, durable solutions for groups of refugees, greater solidarity in the reception of refugees and better organisation of the legal entry of refugees in host countries.

The Commission contemplates the resettlement option as one of the instruments of the common asylum policy and procedure. It has launched a study, the results of which are expected for the autumn of 2003. **In the European Union**, less than half the Member States have set up structural resettlement schemes, whereas others can be described as emerging resettlement countries. A third group of Member States agree to receive refugees for resettlement on an ad hoc basis in very limited numbers. There are no common guidelines in the Union for the moment.

The Commission accordingly proposes to launch two new lines of activity. First, it proposes using the financial instruments for European solidarity and cooperation in asylum matters. In the implementation of Community financial instruments it will seek to provide support and encouragement for national and Community projects (priority action in the 2003 call for proposals for Community action in the ERF, special budget remark in the 2004 PDB for national ERF programmes, cooperation under the 2003 Argo framework programme, actions under the 2003 call for proposals under line B7-667 for cooperation with third countries on asylum and migration). At the same time the Commission will take the initiative in the Immigration and Asylum Committee of launching a policy debate on the contribution made by resettlement to the common asylum policy, the exchange of good practices and even the feasibility of specific European instruments, including legislative instruments. The role of the HCR and other partners will be considered. The question of resettlement will also have to be taken into account in the debate on integration policy.

The Commission considers that only a common approach will create the necessary political and operational basis that will produce beneficial effects on terms for access to European territory and allow resettlement to be used for strategic purposes both to assist the European Union and to attain the objectives of the Agenda for Protection. It will enable it to enter into such agreements as may be needed. The Commission will announce more detailed conclusions in a communication at the end of 2003.

2.3 Towards shared responsibilities with third countries

Sharing burdens and responsibilities more equitably in managing refugees is another objective of the **Agenda for Protection**. Responsibility-sharing arrangements are mentioned as a means of relieving the burdens borne by the first countries of asylum, as well as more effective cooperation to reinforce the protection capacities of countries receiving refugees, stronger partnership with civil society, the involvement of refugee communities, mainstreaming the question of refugees in national, regional and multilateral development agendas and effective use of resettlement.

The instruments of the European external protection policy

Better access to protection for persons in need of international protection, the search for durable solutions and solidarity with third countries all call for the mobilisation of a vast

range of external actions, be they political, economic or in the form of more effective financial and technical assistance, in the spirit of the Tampere and Seville conclusions. The European Union already has major trump cards which it can play better and better in the light of the various objectives of the programme of action in the Agenda for Protection. They are set out in the **Commission communication of 3 December 2002 “Integrating migration questions in the European Union’s relations with third countries”**,³ which stresses the burden of receiving refugees borne by developing host countries, particularly in the event of protracted situations. Special attention has been paid to this dimension in the management of external financial instruments such as aid to uprooted persons. Measures to assist certain vulnerable groups or reinforce protection or re-integration capacities in host countries or countries of origin have also been programmed on the basis of various other instruments. In the framework of the pilot phase of preparatory measures on co-operation with third countries in the areas of asylum and migration (budget line B7-667), a number of projects relating to protection and capacity-building are being supported (such as assistance to Turkey on the development of the asylum system and assistance to Afghanistan on capacity building and a returnee monitoring data base).

The main aim of **Community humanitarian aid** managed by ECHO is to assist the victims of natural and human disasters in third countries. It is unconditional, neutral and impartial and is supplied solely on the basis of the needs of the populations concerned. One of the specific objectives is to deal with the human consequences of movements of refugees and displaced or repatriated persons in third countries in compliance with the principles set out above. Community action focuses on protection and subsistence needs of refugees so long as the humanitarian needs engendered by the crisis subsist. In appropriate cases Community assistance can also serve to support refugees’ voluntary return to their country of origin with safety and dignity. Likewise, schemes for resettling refugees from a country of refuge to another third country that agrees to take them can also be supported. Community action also serves to support the HCR’s protection and assistance mandate. In October 2002, the Commission took a major decision worth €11 million to support the HCR in the protection and registration of refugees and safety of humanitarian workers, which is within objectives 1 and 4 of the programme of action of the Agenda for Protection.

The means of achieving more effective cooperation and assistance

Active support for a revamped approach to international protection depends on much heavier involvement of third countries of first reception and transit and more serious consideration for constraints linked to returns and re-integration. This priority will have to be taken into consideration in the general effort announced by the Commission in its Communication of 3 December 2002. Following on from its analyses and proposals in the communication, the Commission will endeavour, when necessary, having regard to the guidelines set out in the communication, to **integrate the new dimension brought to the governance of refugees and displaced persons by the Agenda for Protection** into the component features of the common European asylum system, the political dialogue with third countries, the examination of Country and Regional Strategy Papers and the programming and targeting of Community aid.

These different areas of activity could be refocused in a **consistent and structured approach** that would improve international responsibility-sharing in the governance of refugees.

³ COM(2002)703.

Therefore, it is the intention of the Commission to give migration, including international protection concerns, attention on a case by case basis in **the Country and Regional Strategy Papers** process, with which Member States are associated. Incorporating asylum in these papers through the normal programming dialogue process should ensure full involvement and commitment by the country or region concerned as well as differentiation and prioritisation according to needs and policy situation. The Country Strategy Papers mid-term review, which will begin in 2003, will give the opportunity to examine the extent to which greater priority should be given to specific programmes dealing with asylum. But it must be borne in mind that there is only limited room for manoeuvre with the available resources and that competing priorities will have to be offset against each other. In the follow-up to the budget line B7-667, the Commission intends to propose setting up and implementing from 2004 onwards a multi-annual programme designed both to provide a specific, additional response to the needs encountered by third countries of origin and transit in their efforts to manage more effectively all aspects of migration flows, including those related to international protection.

But the Commission will be at pains to emphasise two factors:

- given the Community financial instruments available and the machinery for dialogue and programming with third countries receiving assistance, the initiative must also come from the national authorities there in connection with their commitments for the implementation of the Agenda;
- the Community's commitment must be accompanied by parallel mobilisation of the EU Member States in the bilateral aid context, and the Commission will see that there is closer coordination and consistency between bilateral and Community action.

The Commission also considers that it is for **international financial institutions and United Nations agencies** (not only the HCR but also the UNDP, OCHA, OHCHR, UNRWA, UNICEF, the WFP, WHO etc...), under the supervision of the Secretary-General, to better define the functions of each in improving the governance of refugees and to establish a strategic coordinated action plan to make practical improvements to the prospects for durable solutions in the application of each of these functions, having regard both to the fate awaiting refugees and to the capacities of the host countries and countries of origin concerned by flows related to asylum, integration and durable returns.

At any rate the Commission considers that the **HCR**, in coordination with other partners, should give priority to a clear analysis of the features of the crises linked with forced displacements and identify the management issues this raises and the solutions. The European Union could then identify a number of priorities in relation to the migratory flows that it has to manage but above all geographical priorities for Europe's external action. It considers that the HCR's examination of long-running refugee situations, in particular in Africa, should be dealt with as a matter of urgency.

Lastly, the implementation of the **common European asylum system** and the European Union's **external action** are thus **powerful vectors for the implementation of the Agenda for Protection and the Convention Plus**. The development of internal powers in matters of asylum should also enable the Community to develop **external powers** and to launch or take part in negotiations with third countries or partners on specific problems or situations. A stronger partnership with the HCR could accompany this process on the basis of existing forms of cooperation. The HCR has much to gain from regarding the European Union as a consistent entity in the medium term: this could be an incentive to make the most efficient use

of the human and budgetary resources currently mobilised in the EU and the acceding countries and gradually redeploy them in areas where there is a greater need for protection and support for host countries and countries of origin. This factor could usefully be incorporated in the reflection launched by the High Commissioner in the HCR mandate for 2004. This cooperation could be accompanied by Community participation in special agreements, but the concept as presented by the HCR is at too much an embryonic stage for defining a fully elaborated Community approach. The Forum in June 2003 will be of decisive importance here.

CONCLUSIONS AND RECOMMENDATIONS

2003 will be a crucial year for the consolidation of the common European asylum system on the eve of enlargement of the Union. It will see the end of the first stage of harmonisation on the basis of the Commission's proposals. At the same time the second stage called for at Tampere will be sketched out, with the establishment of a common asylum procedure and a uniform status. In the spirit of the Agenda for Protection and the Convention Plus, the European Union must embark resolutely on a new approach to international protection based on better management of access for persons in need of international protection to the territory of the Member States and on consolidation of the possibilities for dealing with protection needs in the region of origin. The Commission, on the basis of, among other things, the results of a variety of studies already carried out, will embark on this, in close cooperation with the HCR, so as to lay operational proposals before the Council and the European Parliament before the end of the year.

The Commission accordingly requests the Council and the European Parliament to take note of its second report on the common asylum policy and:

- asks the Council to adopt all the first-stage harmonisation proposals in accordance with the deadlines by the Seville European Council, in particular the directive on asylum procedures where the question of safe countries of origin and third countries will demand special attention;
- invites the Council and Parliament to continue considering the question of an instrument to succeed the European Refugee Fund on the basis of the Commission report of 3 December 2002 on the effectiveness of Community financial resources;
- encourages the Member States to make the best use of the machinery for administrative cooperation on asylum (Argo, statistical programme) and to contribute actively to it, and undertakes to pursue the development of the Immigration and Asylum Committee and Eurasil as essential means of comparing analyses and practices to facilitate the identification of new priorities for the establishment of the common European asylum system;
- recommends that a common approach be devised to the implementation of the Agenda for Protection and the Convention Plus and that it be defended in the governing bodies of the Office of the High Commissioner for Refugees and its dialogue with that organisation;
- suggests that serious thought be given to possibilities offered by processing asylum applications outside the European Union and resettlement as instruments to complement a fair and efficient territorial asylum system in compliance with international obligations and with respect for dialogue and partnership with third countries;

- recommends that more detailed serious thought be given to the question of access to the territories of Member States for persons in need of international protection and compatibility between stronger protection for these people and respect for the principle of non-refoulement on the one hand and measures to combat illegal immigration, trafficking in human beings and external border control measures on the other; the Commission will enter this item on the agenda for the Immigration and Asylum Committee, where it will ensure that special attention is paid to the question of protected entry procedures on the basis of the results of the study already available and the separate but related problem of resettlement;
- invites the Council to look beyond the existing European Union action plan and give serious thought to a more operational definition of the content of integrated return programmes in the light of lessons learned from the implementation of the return programme for Afghanistan;
- wishes special attention to be paid to refugees and displaced persons in future work by the Community institutions on integration;
- invites the Council and Parliament to have regard to the contribution of developing countries in receiving refugees and applying international protection instruments and more generally to incorporate the international protection dimension more deeply into Europe's external policy on the basis of the Agenda for Protection; the Commission will consider the question in 2003 in the mid-term review of the country and regional strategy papers and will raise the objectives of the Agenda for Protection in its dialogue on questions of migration and cooperation with the relevant third countries.

ANNEX : IMPLEMENTATION OF THE FIRST-STAGE LEGISLATIVE PROGRAMME AND SUPPORT MEASURES

1. FIRST-STAGE LEGISLATION

Directive on the reception of asylum-seekers

The negotiation of the Reception Conditions Directive was given high priority under the Spanish Presidency. The Council defined a general approach on the text on 25 April 2002. The European Parliament also gave its opinion on the Commission's proposal also on 25 April 2002, proposing some important amendments. A political agreement on the Directive was achieved in December 2002 and the Directive was formally adopted on 27 January 2003⁴.

The Directive is a first step in the approximation of standards. It provides for a legally binding Community framework and it will substantially improve the situation of the reception of asylum seekers. It will also contribute to a broader similarity of the national reception systems. However, there is no harmonisation on the issue of family members nor on the issue of access to vocational training. In addition the harmonisation on the issue of access to the labour market is quite minimal.

Dublin II Regulation

The Seville European Council asked for the regulation to be adopted by the end of 2002. On 9 April 2002 the European Parliament supported the Commission's approach. Political agreement was reached on the text of the Regulation in December 2002. The Regulation was formally adopted on 18 February 2003.⁵

The Regulation is based on the same principles as the Dublin Convention that it supersedes: responsibility for examining an asylum request lies as a general rule with the Member State that played the greatest role in the asylum-seeker's entry. But, learning the lessons from applying the Convention, the Regulation shortens the procedural deadlines to help make asylum procedures more effective overall, lays responsibility at the door of a Member State that allows illegal residence situations to persist and contains new provisions to improve the possibilities for family unity.

At the same time the Joint Committee set up by Article 3 of the Agreement of 19 January 2001 between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or Iceland or Norway met twice in the second half of 2002 so that these two countries, now associated with the Schengen acquis and the Dublin Convention, could make their views known on the proposal. And on 12 August 2002 the Commission adopted a proposal for a negotiating mandate for the conclusion of a Protocol between the parties to the Agreement of 19 January 2001 enabling the Kingdom of Denmark to join the Agreement.

⁴ Council Directive 2003/9/EC, OJ L 31, 6.2.2003.

⁵ Council Regulation (EC) No 343/2003, OJ L 50, 25.2.2003.

Proposal for a directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection

The discussions on the Commission's proposal⁶ within the Council commenced under the Spanish Presidency in June 2002. The Seville European Council of June 2002 set a deadline for adoption of the Directive by June 2003. Negotiations continued under the Danish Presidency and culminated at the November 2002 Justice and Home Affairs Council in a political agreement on a very substantial part of the rules in the Proposal, relating to the qualification for refugee and subsidiary protection status. It is therefore envisaged that the negotiations on the whole of the Directive will be concluded under the Greek Presidency, including the rules relating to the rights and benefits to be attached to a refugee and subsidiary protection status.

In an Opinion of 29 May 2002, the Economic and Social Committee supported the Commission's proposal, and welcomed in particular the concept of subsidiary protection. On 11 June 2002, the Committee of the Regions welcomed in its Opinion the Commission's commitment to the primacy of the 1951 Geneva Convention. The European Parliament adopted on 22 October 2002 a Resolution which proposes to amend the Directive on a number of issues, in particular in relation to the grounds for persecution, by adding the grounds "sexual orientation", "sex" and "membership of an ethnic group", and the grounds for subsidiary protection, by adding a risk of capital punishment or genital mutilation. Finally, it calls for parity of treatment of beneficiaries of refugee and subsidiary protection status, in particular where it relates to the duration of a residence permit, the issuing of travel documents, permission to work.

Proposal for a directive on asylum procedures

Following negotiations at expert level on the Commission proposal of 2000, the JHA Council adopted Conclusions on 7 and 8 December 2001 on the approach to be taken on the Council Directive. At the Laeken European Council, the Commission was then invited to put forward an amended proposal before the end of April 2002. In-depth consultations with the experts of the Member States enabled the Commission to put forward an amended proposal on 18 June 2002.⁷

The amended proposal sets out a different structure for procedures in the first instance, inter alia introducing specific standards for examining applications lodged at the border and a procedure that allows Member States not to re-examine in depth certain repeat applications. Moreover, the obligation to introduce a two level appeal system is replaced with the right to an effective remedy before a court of law. The Council welcomed the amended proposal in an open debate on 15 October 2002. As the Seville European Council called on the Council to adopt a text by the end of 2003, negotiations are expected to continue throughout 2003.

⁶ COM(2001) 510 final, 12.9.2001.

⁷ COM(2002)326 final/2, 18.6.2002, amending COM(2000)578 final, 20.9.2000.

2. Administrative cooperation and accompanying measures

Eurodac

The legal frame for the implementation of the EURODAC information system was completed with the adoption by the Council of the implementing rules in February 2002.⁸ The Commission started operational testing with the Member States in April 2002, the final set of volume tests with all Member States running until the end of 2002. The successful completion of these mandatory tests was a precondition for the declaration of readiness of all Member States, without which EURODAC would not have been able to start operations and to apply the Regulation effectively. The operations started on 15 January 2003. From that date to 2 March 2003, 238 “hits” were obtained and the trend steadily increases week by week.

The European Refugee Fund (ERF)

The resources of the European Refugee Fund (ERF) were increased by the Budgetary Authority in 2002 from the amount originally forecast. Consequently, new requests for cofinancing were presented by Member States at the beginning of 2002, which were approved by the Commission by Decision of 21 March 2002. From the information available on Member States’ implementation of their national programmes, the following trends can be identified:

- as regards the calculation of annual allocations to Member States, the calculation methods contained in Article 10 of the Council Decision⁹ have allowed an evolution of the share of funds between Member States along the evolution of the number of applications for asylum and of persons being granted refugee status or other form of international protection. The fixed amounts defined in Article 10(1) have had a positive effect in balancing the distribution of funds and taking into account the relative burden born by each country;
- in terms of implementation, after a few difficulties encountered by the Member States at the beginning of the programme, which were due in particular to the adoption of the Council Decision in September 2000, programme and project implementation have attained their full rhythm of implementation;
- overall, between 2000 and 2002, 49.44% of the funds were used by Member States to co-finance projects relating to the reception of asylum seekers, 28% to the integration of refugees and persons benefiting from subsidiary forms of protection, and 22.2% were allocated to voluntary return projects. The share of this last measure has substantially increased between 2000 (15.82%) to 2002 (24.45%).

The Commission has commissioned an independent evaluation of the first three years of the ERF, covering a full cycle of actions, which will be available during the third quarter of 2003. Furthermore, the Commission presented to the Council and the Parliament a mid-term report on the implementation of the ERF,¹⁰ on 3 December 2002. In this report, the Commission

⁸ Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention (OJ L62, 5.3.2002).

⁹ OJ L 252, 6.10.2000, p.12.

¹⁰ This report is part of Communication COM(2002)703 on the integration of migration related issues in external relations with third countries which includes a report on the effectiveness of financial resources

underlines that the results of this evaluation and the priorities identified in the course of managing other instruments or preparatory measures will determine the Commission's approach in its proposal on the activities to be pursued after 2004 at Community level for refugees and asylum seekers. The Commission expects the Council and the European Parliament to react in 2003 to this report.

EQUAL

The Community Initiative EQUAL seeks to combat exclusion and inequality in the labour market and includes provision to improve the social and vocational integration of asylum seekers. EQUAL funding runs from 2000-2006 (approximately €13 million for asylum seekers, i.e. 4% of a total of about €2764 million for the programme) and has two funding rounds, the first of which started in 2001, and the second is expected to be launched in 2004. There are over 1500 Development Partnerships selected by Member States in 2001, 45 of which relate to Asylum Seekers. Initial funding from November 2001 enabled the partnerships to clarify their work programmes and to develop their transnational co-operation agreements, and as of May 2002 further funds were approved for the implementation of the work programmes. The activities being taken forward by the partnerships fall into five areas: reception; advice education and training; employment; reintegration and repatriation; and capacity building. Further information about each Development Partnership is available at the EQUAL website.¹¹ A European thematic group on Asylum Seekers is being established to identify and disseminate the good practice developed under EQUAL. Reports and outcomes of this EU-wide work will also be made available on the EQUAL website.

ARGO

On 13 June 2002,¹² the Council adopted the ARGO programme aimed at promoting administrative cooperation in the areas of external borders, visas, asylum and immigration. One of the main goals is to harmonise national practices and is therefore an accompanying measure to the legislative effort made by the Community. The 2002 and 2003 annual work programmes have anticipated in their asylum chapter the needs of the national agencies when applying the new Community acquis. The annual objectives and priorities were therefore mainly inspired by the legislative proposals and studies launched by the Commission.

3. OTHER DEVELOPMENTS

Temporary protection in the event of a large-scale influx of displaced persons

At the extraordinary JHA Council of 20 September 2001, the Council agreed to examine urgently the situation in countries and regions where there was a risk of large-scale population movements as a result of heightened tensions following the attacks on the USA. Furthermore it requested the Commission, in consultation with Member States, to examine the scope for provisional application of the Council Directive on temporary protection in case special protection arrangements would be required within the EU. This led to a specific monitoring in particular of the trends of asylum applications from Afghan nationals in EU Member States

available at Community level for repatriation of immigrants and rejected asylum seekers, for the management of external borders and for asylum and migration projects in third countries, which was requested by the European Council in Seville.

¹¹ http://europa.eu.int/comm/employment_social/equal/index_en.html.

¹² OJ L 161, 19.6.2002.

until spring 2002. On the basis of the analysis of the situation, a special arrangement was felt not necessary. Directive 2001/55/EC¹³ is required to be transposed into national law by 31 December 2002.

Other legislative initiatives

Several proposals relating to immigration contain provisions that directly or indirectly concern the legal situation of persons under international protection. On 2 May 2002 the Commission adopted an amended proposal on the right to **family reunification**¹⁴ as requested by the Laeken European Council of 14 and 15 December 2001. The amended proposal includes a chapter on refugees, providing them with more favourable terms for family reunification. The Council reached political agreement at the end of February 2003. The Seville European Council asked for the Directive to be adopted before the end of 2003, which is also the deadline for the adoption of the proposal for a directive on the **status of third-country nationals who are long-term residents**.¹⁵ Under this proposal, refugees could enjoy long-term resident status after five years' residence in a Member State. This status will then allow them, on certain conditions, to settle in other Member States. On 11 February 2002 the Commission also adopted a proposal for a Council Directive **on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who cooperate with the competent authorities**.¹⁶ This directive states that it applies without prejudice to the provisions governing the protection of refugees, beneficiaries of subsidiary protection and applicants for international protection.

Commission working document on the relationship between internal security and international protection obligations

The main conclusion of the December 2001 document¹⁷ was that the current **EC legislation** or Commission Proposals for such legislation in the field of asylum and immigration all contained provisions to allow for the exclusion of any third country national who may be perceived as a threat to national/public security from the right to international protection, residency or access to certain benefits. However, in the framework of discussions and negotiations of the different proposals, the relevant provisions are revisited in the light of the new circumstances, such as in the case of the Directive on the qualification as refugee or as a person in need of subsidiary protection. During 2002, the Commission organised consultations with all Member States and Candidate Countries, other European Institutions¹⁸, civil society and UNHCR. It was agreed to continue cooperation at practitioners level in Eurasil (see point 4) and with Argo co-funded activities.

¹³ Council Directive 2001/55/CE of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. OJ L 212, 7.8.2001, p.12.

¹⁴ COM(2002)225 final, 2.5.2002.

¹⁵ COM(2001)127 final, 17.3.2001.

¹⁶ COM(2002)71.

¹⁷ (COM(2001)743, 5.12.2001, *The relationship between safeguarding internal security and complying with international protection obligations and instruments*).

¹⁸ Opinions of the Committee of the Regions, CoR 93/2002, and the Economic and Social Committee, CES 519/2002.

4. OPEN COORDINATION METHOD APPLIED TO ASYLUM, INFORMATION EXCHANGES AND COMMON ANALYSIS

New tools for exchanges and analysis

In December 2001 the Laeken European Council acknowledged the need to intensify the exchange of information on the asylum and immigration policy. The Economic and Social Committee and the Committee of the Regions supported the approach proposed by the Commission in its communication of 28 November 2001,¹⁹ in their Opinions,²⁰ calling for cooperation with civil society and local authorities.

At the beginning of 2002, the Commission created a Commission-led exchange and consultation procedure with an **Immigration and Asylum Committee** as a central component. The main aim of this exercise is to identify and analyse common challenges in immigration and asylum policies, spread best practices and achieve greater convergence. The members of the committee are experts of the Member States but also representatives of civil society. Other players are also being invited to participate on a case-by-case basis, depending on the subject matters. In the field of asylum, the following subjects have been discussed during the review period: the relationship between international protection and internal security, the process of transposition of the Temporary Protection Directive, the issue of processing asylum claims outside the EU and the single procedure.

Following the decision by the Committee of the Permanent Representatives in the Council to cease the activities of the CIREA²¹ created in 1992 as a specific Council working group, the Commission established **EURASIL** in July 2002, the EU network for asylum practitioners, chaired by the Commission. The participants who primarily attend these meetings are involved with EU Member States authorities responsible for the adjudication of asylum applications in EU Member States (in first instances and also from appeal bodies). It is therefore a practitioner driven committee. UNHCR, other International or non-governmental organisations and experts on certain issues will be invited when necessary. The aim of the network is to improve convergence in asylum policies, decisions and practice through enhanced exchange of information and best practices among EU Member States asylum adjudicators and the European Commission. The activities should also help practitioners to enhance working relationships with each other. They will focus on information with regards to the situation in countries of origin and transit and treatment of cases by first instances decision-making authorities and review bodies and any other relevant matters of interest for the asylum practice. Its mission and functions will evolve over time, depending in particular on the transposition and implementation of EC legislative instruments. The Commission expects EURASIL to become an essential working tool for the establishment and functioning of the common European asylum system.

The first concrete steps towards the creation of a **European Migration Observatory/Network** by way of preparatory action, were taken in 2002. The specific network will build up a systematic information basis for monitoring and analysing the multidimensional phenomenon of migration and asylum by covering a variety of its dimensions (political, legal, demographic, economic, social, cultural) as well as by identifying

¹⁹ COM(2001)710 final.

²⁰ ESC 684/2002 and CoR 93/2002.

²¹ Center for Information, Research and Exchange on Asylum.

its root causes. A network of national contact points is being set up, consisting of existing agencies or institutions with experience of working in the field of migration and asylum. Austria, Belgium, Greece, Ireland, Italy, the Netherlands, Portugal, Sweden and the United Kingdom were participating in 2002. Spain also designated a national contact point in December 2002. Other Member States will be able to join in the project in 2003.

Statistics

Notwithstanding constant efforts by the Commission to improve the quality, completeness and comparability of statistics on asylum and on migration, in the absence of a legislative framework, the limits of what can be done to improve the statistics have been reached. The Commission is now aiming to ensure that future policy development and implementation is underpinned by a legislative basis for the collection of Community statistics in this field.

The Council Conclusions on 28/29 May 2001 invited the Commission to submit a proposal for a comprehensive and coherent framework for future action on improving statistics. In response, the Commission will adopt a Communication in spring 2003. Enlargement of the Union in 2004 will bring an added geographical and political dimension to the scale of the phenomena associated with asylum, adding impetus to the demand for accurate, timely and harmonised statistical information. The Action Plan is designed to meet the current legal requirements and to implement the Council Conclusions, bringing a new, proactive and dynamic approach to the Commission's activities. In the meantime, asylum data are becoming increasingly available via electronic dissemination, with the introduction in early 2003 of monthly public electronic reports on asylum and with the preparation of the first public annual report on asylum and migration in the EU and the accession countries to be released before mid-2003.