

**ECRE**

EUROPEAN COUNCIL ON  
REFUGEES AND EXILES

**TIME TO SHOW YOUR CARDS**

**The need for a genuine commitment to establish a  
Common European Asylum System based on high  
standards of protection**

**ECRE's recommendations for the Stockholm Programme**

September 2009

## 1. Introduction

With the publication of its Communication 'An area of freedom, security and justice serving the citizen',<sup>1</sup> the Commission has presented its views on the EU's priorities in the field of justice and home affairs, including in the field of asylum, for the next five years. The Communication will be used as the basis for discussions between the various stakeholders at EU level that should result in the adoption in December 2009 by the Heads of State and Government of the so-called Stockholm Programme.

ECRE believes that the Stockholm Programme provides the EU with the opportunity to set ambitious goals for building a fair and efficient common asylum system, which could serve as a model to other regions in the world. The EU has the means and the capacity to construct a model system of protection but it currently lacks the political will to go much beyond rhetoric. The EU's asylum policy is in need of a renewed political commitment and leadership. The new five-year programme in the area of freedom, justice and security is an important occasion to secure such commitment.

The chapter on asylum in the Commission Communication provides a good overview of the issues at stake at EU level in the field of asylum for the coming years. However, as a general remark ECRE warns against a tendency to reduce the debate on the key priorities for the next multi-annual framework in this field to the issue of solidarity between Member States.<sup>2</sup> There are important protection gaps in the EU's asylum policy as it stands today which need to be dealt with urgently. While ECRE acknowledges that a common approach is doomed to fail without solidarity, it remains equally important to address the existing flaws and deficiencies in the current legal framework at EU level and to ensure that the Common European Asylum System (CEAS) fully complies with obligations under international refugee and human rights law.

ECRE welcomes the restated objective of "building a true common area of protection and solidarity based on respect for human rights, high standards of protection and a general improvement in the quality of national systems".<sup>3</sup> The explicit reference to the respect for human rights and quality of national asylum systems is key. ECRE research on various aspects of Member States' national asylum systems as well as research carried out by UNHCR has shown serious problems with regard to issues such as the quality of decision-making at first instance and procedural guarantees as well as with regard to the level of reception conditions for asylum seekers.<sup>4</sup> In addition to stressing the need to improve the quality of national systems, ECRE believes that there would be added value in setting a general objective of improving the quality of the CEAS as a concept covering procedural guarantees, protection standards as well as reception conditions. Including such an objective as a clear political commitment in the Stockholm Programme would also acknowledge that the current legislative framework at EU-level needs considerable improvement and that a

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<sup>1</sup> COM (2009) 262 final, 10.6.2009.

<sup>2</sup> This is also reflected in the fact that the priorities in the field of asylum are dealt with in the Communication under the heading "A Europe of solidarity", whereas the subheading "A Europe that protects" deals with security issues such as organised crime and data protection.

<sup>3</sup> European Commission, COM (2009) 262 final, p. 27, see note 1 above.

<sup>4</sup> See for instance UNHCR Representation to the United Kingdom in London, *Quality Initiative Project. Fifth Report to the Minister*, March 2008 available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unhcreports>. UNHCR recently launched the largest Quality Initiative Project so far in 8 Central and Eastern European EU Member States, see <http://www.unhcr-budapest.org>. ECRE, *Proposals for Revision of the EC Directive on the Reception of Asylum Seekers*, May 2008; ECRE, *The EC Directive on the Reception of Asylum Seekers: Are asylum seekers in Europe receiving material support and access to employment in accordance with European legislation?* November 2005; ECRE, *The Way Forward: Towards Fair and Efficient Asylum Systems in Europe* ("Way Forward Systems"), September 2005.

successful second phase of legislative harmonisation is indeed a precondition for achieving the Tampere commitment to establish a CEAS based on high protection standards.

This paper outlines ECRE's views on the priorities and objectives that should be included in the Stockholm Programme in the field of asylum. The paper follows the structure of sub-headings used in the Commission's Communication along three different sections: a) A single area of protection; b) Sharing of responsibilities and solidarity between the Member States and c) Solidarity with non-member countries: the external dimension.

## 2. A single area of protection

### 2.1. Reform of the Dublin Regulation

The Dublin Regulation continues to create hardship and unfair consequences for asylum seekers and persons in need of international protection.<sup>5</sup> Based on the myth that protection standards are equivalent throughout the EU and the associated states, the Dublin system results in asylum seekers being transferred to states where their basic human rights are violated, access to protection is *de facto* denied or access to specific treatment for asylum seekers with special needs is non-existent. This is increasingly being recognised in the jurisprudence of the national courts as in several cases transfers of asylum seekers under the Dublin Regulation have been suspended on the basis that they would result in such human rights violations.<sup>6</sup>

Furthermore, while the Commission maintains that the Dublin system was never intended to be an instrument of burden-sharing, the reality is that it creates additional pressure on asylum systems of Member States at the external borders of the EU. The financial cost of the application of the Dublin system is also largely unknown. Nevertheless, there are reasons to believe that because of the existence of a wide range of direct and indirect costs, the Dublin system constitutes a significant financial burden for Member States. The 2007 Commission evaluation concluded that "Member States consider the fulfilment of the political objectives of the system as very important, regardless of its financial implications".<sup>7</sup> However, it is only logical that the size of this financial burden should be established and inform the discussion on the future of the Dublin system.

Twenty years after the establishment of a mechanism of responsibility allocation based on the application of administrative criteria, it is time to launch the debate about replacing the Dublin Regulation with a viable alternative. ECRE believes that the Stockholm Programme is the ideal occasion to launch this debate. Drawing on extensive research on the functioning of the Dublin system, in 2008 ECRE published a set of recommendations to repeal the Dublin Regulation and instead create alternative systems for allocating responsibility within the EU.<sup>8</sup> One approach would determine responsibility based on asylum seekers' pre-existing linguistic, cultural or family ties to particular Member States. Another approach would simply consider subjective preferences of the asylum seeker. Both should be combined with mechanisms of financial and administrative responsibility sharing to compensate for possible increases in the caseloads of some Member States. A EURODAC system based on

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<sup>5</sup> This is illustrated in numerous reports. See for instance ECRE, *Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered*, March 2008 ("Dublin Reconsidered"); NOAS, *A gamble with the right to asylum in Europe – Greek asylum policy and the Dublin II Regulation*, April 2008; ECRE, *The Dublin Regulation: Twenty Voices – Twenty Reasons for Change*, March 2007; UNHCR, *The Dublin II Regulation – A UNHCR Discussion Paper*, April 2006.

<sup>6</sup> See for instance, Verwaltungsgericht Frankfurt am Main, Geschäftsnummer: 7 K 4376/07.F.A, 8 Juli 2009 (Germany), Tribunal administratif de Paris, Décision n° 0912502/9-1, 31 Julliet 2009 (France), Raad voor Vreemdelingenbetwistingen, Arrest nr. 25.959 van 10 April 2008 (Belgium).

<sup>7</sup> See European Commission, *Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system*, COM(2007) 299 final, 6.6.2007, p. 13.

<sup>8</sup> See ECRE, *Dublin Reconsidered*, note 5 above.

principles of data-protection and one-purpose could continue to function as an instrument to prevent “asylum shopping”.

- The Stockholm Programme should launch the debate on the need to reform the Dublin system and include a political commitment to replace it with alternative criteria to allocate responsibility for determining asylum claims based on pre-existing linguistic, cultural or family links with particular Member States or subjective preferences of the asylum seeker.
- This should be complemented with a fair system of financial and administrative responsibility sharing between Member States.

## 2.2. The need for high standards of protection in EC asylum legislation

In order to establish a fair and efficient CEAS that effectively respects the fundamental rights of asylum seekers and refugees, it must be based on a solid Community law framework which sets high standards of protection. EC asylum legislation is so far characterised by generally low protection standards. The directives also leave considerable room for Member States to derogate from the rules agreed at the EU level.<sup>9</sup> Moreover, some provisions of the EU asylum *acquis* are at odds with international refugee and human rights law and standards or encourage the use of procedural tools that prevent persons in need of international protection from effectively accessing such protection.

ECRE has largely welcomed the Commission proposals recasting the Dublin and EURODAC Regulations and the Reception Conditions Directive as providing a good starting point for revising the current legal instruments.<sup>10</sup> While the European Parliament has already adopted its position on the proposals, discussions in the Council have been slowed down, primarily because a number of Member States do not agree with the “protection oriented nature” of the recast proposals. This is a cause for concern, in particular as the Commission is also expected to present proposals recasting the Qualification Directive and the Asylum Procedures Directive later this year.

### *Qualification Directive*

ECRE’s and UNHCR’s research on the implementation of the Qualification Directive has shown the need for such amendments.<sup>11</sup> For instance, the implementation of the provisions on exclusion and internal protection alternative of the Qualification Directive has in certain Member States undermined pre-existing protection standards and thus had a downgrading effect. At the same time, practice shows that the grounds for subsidiary protection laid down in Article 15c of the directive must be clarified to sufficiently protect all categories of persons who need protection but do not qualify under the refugee definition. Moreover, the possibility for Member States to grant different sets of rights to refugees and beneficiaries of subsidiary protection according to the Qualification Directive is counterproductive as it prevents integration and is creating additional administrative burdens on Member States.

### *Asylum Procedures Directive*

The Asylum Procedures Directive is even more problematic as it includes a range of procedural tools to speed up asylum proceedings that seriously undermine asylum seekers’ access to fair and efficient claim determination. At the same time it allows Member States considerable room for derogation from basic guarantees for asylum seekers. ECRE believes

<sup>9</sup> See ECRE, *Broken Promises - Forgotten Principles: An ECRE Evaluation of the Development of EU Minimum Standards for Refugee Protection Tampere 1999 - Brussels 2004*, June 2004.

<sup>10</sup> See ECRE, *Comments on the European Commission Proposal to recast the Reception Conditions Directive*, April 2009, and *Comments on the European Commission Proposal to recast the Dublin Regulation*, April 2009.

<sup>11</sup> ELENA, *The Impact of the EU Qualification Directive on International Protection*, October 2008; UNHCR, *Asylum in the European Union. A Study of the Implementation of the Qualification Directive*, November 2007.

that a fundamental revision of the directive is absolutely necessary to establish a sufficiently high level of procedural guarantees at EU level.<sup>12</sup>

#### *A uniform protection status*

Further harmonisation to set common standards on asylum which are fully consistent with fundamental rights should lead to the establishment of “a single asylum procedure and a uniform international protection status no later than 2012”.<sup>13</sup> ECRE welcomes and supports this objective as reaffirmed in the Commission Communication and agrees that the creation of a uniform status must include the mutual recognition of positive national asylum decisions, granting them legal validity throughout the EU. This would redress the unjustified imbalance whereby currently Member States recognise each other’s expulsion decisions, but not each other’s decisions to grant protection.

#### *Detention*

ECRE also believes that EC asylum legislation should include a clear presumption against the detention of asylum seekers in accordance with international law. Detention of asylum seekers during the asylum procedure should only be used as a last resort, for the shortest possible period of time and should be regularly and individually reviewed to ensure that such detention is lawful, necessary and proportionate. The use of alternatives to detention must be prioritised and encouraged at the EU level.<sup>14</sup> The Stockholm Programme should include a commitment to implement an action plan to promote the use of alternatives to detention to be presented by the European Commission, building on existing good practices.

#### *Monitoring and evaluation mechanisms*

Finally, the Stockholm Programme must also endorse the importance of systematic and in-depth monitoring of implementation of the EU asylum *acquis* at the national level. Such monitoring must go beyond the mere legislative transposition of EU directives and also include a methodology to measure their impact on the fundamental rights of asylum seekers and refugees, and be coupled with more rigorous enforcement by the European Commission.

- If the Commission, Council, and European Parliament are serious about the establishment of a CEAS based on high protection standards, the need to adopt amendments to the existing asylum *acquis* with the aim of raising protection standards should be unambiguously endorsed in the Stockholm Programme.
- Mutual recognition of Member States’ positive decisions on asylum applications by the end of the Stockholm Programme must be enshrined in EU legislation as a fundamental principle of the CEAS.
- The Stockholm Programme must set as an objective the adoption of an EU action plan to promote and implement the use of alternatives to detention.
- The Stockholm Programme must emphasise the importance of ongoing and systematic monitoring of the implementation of the EU asylum *acquis* and its impact on the fundamental rights of asylum seekers and refugees.

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<sup>12</sup> See also ECRE, *Information Note on the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*, October 2006.

<sup>13</sup> European Commission, COM (2009) 262 final, p. 27, see note 1 above.

<sup>14</sup> For an overview of workable alternatives on detention see Amnesty International, *Irregular migrants and asylum-seekers: Alternatives to detention: AI Index: POL 33/001/2009*, April 2009.

### 2.3. Develop practical cooperation to improve quality in the CEAS

All stakeholders acknowledge the important role of practical cooperation between the asylum authorities of Member States in the construction of a CEAS. While essential, ECRE agrees that legislative harmonisation alone will not achieve a level playing field in the EU nor resolve the problem of divergent recognition rates and inconsistencies in decision-making.

A wide range of initiatives have been developed in recent years to enhance cooperation between asylum experts in Member States. These include Country of Origin Information (EURASIL), training through the elaboration of the European Asylum Curriculum, exchange of case-workers and decision-makers for example in the context of a planned pilot project through GDISC, etc. Moreover, projects have been launched in a number of Member States aimed at improving the quality of decision-making in cooperation with UNHCR. Such forms of cooperation have been facilitated either by the Commission or developed in a purely intergovernmental framework.

The European Asylum Support Office (EASO) could play a powerful role in ensuring that the CEAS is based on high standards of protection through coordination and streamlining of the various forms of practical cooperation. However, ECRE believes that in order to do so it would need to be founded on the principles of transparency and democratic accountability and guarantee a meaningful role for UNHCR and specialised NGO's assisting asylum seekers and refugees in the field.<sup>15</sup>

#### *Quality of decision-making and frontloading*

The Stockholm Programme should clearly state that practical cooperation in whatever form or shape should primarily serve the purpose of improving the quality of the asylum system in general and individual decision-making in particular. Member States have clearly acknowledged, through their increased cooperation with UNHCR in projects evaluating decisions taken by first instance authorities, that the quality of decisions taken in asylum proceedings can be problematic. Improving quality will necessarily be the result of a combination of measures such as training case workers and decision-makers, better and more specialised Country of Origin Information and professional interpretation services.

In this respect, ECRE believes that the frontloading of asylum procedures can also play an important role in improving quality. Frontloading is the policy of financing asylum determination systems with the requisite resources and expertise to make accurate and properly considered decisions at the first instance stage of the procedure. Frontloading at the same time increases the efficiency of the asylum procedure without accelerating proceedings for its own sake. It reduces the number of unnecessary appeals while well-reasoned and documented first instance decisions enable appeal bodies to hear appeals more quickly and therefore cost-effectively.<sup>16</sup>

- The Stockholm Programme must clearly confirm the need for practical cooperation in the field of asylum to serve the purpose of improving quality of decision-making and consistency of the CEAS. The role and involvement of refugee-assisting NGOs and UNHCR in practical cooperation activities, including in the framework of the EASO, must be clearly established.
- The Stockholm Programme must promote frontloading of asylum procedures as a key component of a fair and efficient CEAS.

<sup>15</sup> See also ECRE, *Comments on the European Commission's Proposal for a Regulation establishing a European Asylum Support Office*, April 2009.

<sup>16</sup> For further information see ECRE, *Way Forward Systems*, see note 4 above.

## 2.4. Integration

The process of trying to integrate newcomers into European societies affects many types of migrants, including refugees and beneficiaries of subsidiary protection. In contrast to other migrants, persons found to be in need of protection have not chosen to leave their country of origin, but were forced to in order to escape persecution and violence. Due to their background and personal experiences, refugees and beneficiaries of subsidiary protection will often have specific needs that have to be met in order to support their integration. Addressing these special needs within an overall policy of mainstreaming would be logical and beneficial.

### *Creating a welcoming society*

Integration of refugees and beneficiaries of subsidiary protection is a dynamic two-way process which begins from the day they arrive within their host society. However, certain aspects of EC asylum legislation, such as rules allowing Member States to impose *de facto* insurmountable restrictions on access to employment during the asylum procedure, seriously undermine the integration prospects of refugees in the long term. Moreover, the creation of a welcoming society requires determined action on various fronts and by various stakeholders, including policy-makers, the media and educational institutions.

### *Including refugees in mainstream EU integration policies*

At the same time, the trend to exclude refugees and beneficiaries of subsidiary protection from mainstream EU integration policies needs to be reversed.<sup>17</sup> For instance, unlike other third country nationals, refugees and beneficiaries of subsidiary protection are still excluded from long-term residence status under EC legislation. Beneficiaries of subsidiary protection are also not covered by the Family Reunification Directive. Similarly, the European Integration Fund explicitly excludes refugees as beneficiaries, which creates significant practical problems as many integration programmes are in fact targeted to both migrants and refugees. ECRE urges all stakeholders to work towards the abolition of such discrimination within the Stockholm Programme.

- The Stockholm Programme must include the successful integration of refugees and beneficiaries of subsidiary protection as a key EU priority, with a view to address their specific needs within an overall policy of mainstreaming.

## 2.5. Returns

The effective return of asylum seekers whose applications have been rejected is often referred to as necessary to uphold the credibility of the asylum system. Recent years have seen an increase in the efforts of Member States to enforce returns, including through joint operations in the framework of FRONTEX. In certain cases the fundamental rights of returnees have not been respected during forced removal procedures, while others have been returned to insecure and unsafe situations.

Recently, a number of European governments have started forcible removals to parts of Iraq that are not considered safe by UNHCR and human rights organisations. Some Member States prefer not to return Iraqis, but leave them in a legal limbo without a proper legal status. This leads to situations where people are left destitute and sometimes “consent” to return.<sup>18</sup>

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<sup>17</sup> ECRE, *Include Refugees and their Families in EU Integration Policies*, October 2008.

<sup>18</sup> See ECRE, *Five Years on Europe is still ignoring its responsibilities towards Iraqi refugees*, March 2008.

Against this backdrop of increasing efforts to enforce returns, ECRE emphasises that it is the failure to protect those in need what fatally undermines the credibility of a removal and asylum system. Therefore, the establishment of fair and efficient asylum procedures in the EU is a precondition for the development of common policy on return.

#### *Sustainable returns*

The EU should ensure that returns are sustainable and are carried out in a way that guarantees the safety and dignity of the persons concerned. Positive incentives with regard to the return of asylum seekers whose applications have been rejected in a fair asylum procedure are more humane and less costly than reliance upon threats, penalties and enforcement. They are also more likely to contribute to sustainable returns.<sup>19</sup>

#### *Monitoring returns*

The recently adopted Return Directive establishes common standards for return of irregularly staying third country nationals, including the requirement for Member States to establish an independent mechanism to monitor forced returns. There is a need to develop independent monitoring at the EU level to ensure that return operations fully respect the fundamental rights of returnees and that a consistent set of criteria guides the monitoring processes. These should include the involvement of independent human rights organisations as well as clear rules on a complaints mechanism and evaluation by the European Parliament.

#### *People who cannot be returned*

ECRE fully supports the Commission's suggestion to address the situation of those third country nationals who cannot be returned to their country of origin. This may be because the country of origin is unwilling to take back its own nationals or because the person has become stateless. Return may also be impossible because of the security situation in the country of origin. In some cases obstacles to return may be temporary while in other cases return may no longer be realistic or fair because of the length of the individual's stay on EU territory.

The Stockholm Programme should include a clear commitment to conduct in-depth analysis of the current situation of third country nationals who cannot be returned in EU Member States and explore ways to address the issue at the EU level.

- The Stockholm Programme must clearly promote the principle that EU and national efforts on return aim at ensuring sustainable return in safety and dignity
- The Stockholm Programme must include a clear commitment to develop and promote independent human rights monitoring mechanisms of forced return operations both at the national and EU levels.
- The Stockholm Programme must set as an objective to analyse and address at the EU level the situation of third country nationals that cannot be returned.

### **3. Responsibility sharing and solidarity between Member States**

The number of asylum applications lodged in different Member States varies considerably as does the capacity in those Member States to process them. This has led Member States on the borders of the EU to argue that they receive a disproportionately high number of asylum claims and to call for greater EU solidarity in handling these caseloads. The importance of solidarity in this field has also been reflected in the European Pact on Immigration and Asylum.<sup>20</sup>

<sup>19</sup> See ECRE, *The Way Forward: The Return of Asylum Seekers whose Applications have been Rejected*, June 2005.

<sup>20</sup> See Council of the European Union, *European Pact on Immigration and Asylum* ("European Pact"), Doc. 13440/08, 24 September 2008.

The Commission equally makes increased EU solidarity a central feature of its Communication. It recommends further analysis of the legal and practical implications behind the joint processing of asylum applications, both inside and outside the EU. It also urges to explore new avenues to promote intra-EU solidarity such as a mechanism for internal relocation of persons enjoying international protection and the review of financial solidarity under the European Refugee Fund.

#### *Raising protection standards through solidarity*

Creating a level playing field on asylum within the EU will remain a key challenge. Effective solidarity and responsibility sharing will certainly play a part in addressing the inequalities between Member States. However, ECRE believes that such systems should always be developed with the objective of improving protection in Europe for those in need. They should not be developed primarily to alleviate the "burden" on certain Member States.

Increased solidarity and responsibility sharing should also never result in Member States shirking their obligations. All EU Member States, including those who currently receive proportionally larger numbers of asylum-seekers, have obligations under international refugee and human rights law that they must comply with. Lack of progress in achieving concrete and meaningful solidarity at the EU-level can never justify violations of asylum seekers' and refugees' fundamental rights.

The Stockholm Programme should unambiguously reaffirm the principle that responsibility sharing and solidarity mechanisms should be developed with the objective of improving protection standards throughout the EU. The positive impact of such systems on the levels of protection offered to persons arriving in the EU should be the primary factor for evaluating their success.

#### *Intra-EU relocation*

In addition to increased financial solidarity, the Stockholm Programme should include a commitment to further analyse and evaluate systems for the intra-EU relocation of recognised refugees and persons granted subsidiary protection. ECRE is not opposed to such relocation mechanisms where they are based on the informed consent of the individuals concerned and accompanied by measures to improve the asylum and integration systems in the Member States from which refugees relocate.

In addition, the extension of freedom of movement rights to both categories within the EU should be established as a priority. This will not only align the situation of beneficiaries of international protection to that of other legally staying third-country nationals, it may also contribute to greater (*de facto*) responsibility sharing among Member States.

- The Stockholm Programme should define responsibility sharing and solidarity between the Member States as tools that effectively protect those in need of international protection. Whilst acknowledging the particular pressures on the asylum systems of certain Member States, any mechanisms must serve the purpose of assisting individual Member States to comply with their obligations under international refugee and human rights law.
- Extension of freedom of movement rights under EC legislation to refugees and beneficiaries of subsidiary protection must be set as a priority in the Stockholm Programme.

## **4. External dimension**

Since the adoption of the Tampere Council conclusions, the EU has been looking at ways to develop the external dimension of the CEAS. Through the establishment of partnerships with third countries in the regions of origin and transit, the EU has been trying to develop a degree

of “management” over migration and refugee flows. This has been supported through mainstreaming migration and asylum in its external policies.

#### *Partnerships with third countries*

Whilst EU external dimension policies are primarily presented as strengthening the capacity of transit countries to offer protection to those in need, they also have the effect of preventing persons in need of international protection from reaching the EU. This creates additional strains on countries that are already hosting the majority of the world’s refugees.

The Hague Programme explicitly stated the need for the EU to “contribute in a spirit of shared responsibility to a more accessible, equitable and effective international protection system in partnership with third countries and to provide access to protection and durable solutions at the earliest possible stage”.<sup>21</sup> However, it is equally important to acknowledge that effective protection for refugees is largely non-existent in many of the regions where the EU is active. Financial and technical support from the EU in a country does not mean that protection needs can or will be met. Initiatives such as the regional protection programmes that are currently being implemented in Tanzania, the Ukraine, Moldova and Belarus should be evaluated in this respect. These and future regional protection programmes should be designed to create more protection space and should never function as a tool to prevent persons from seeking protection in the EU.<sup>22</sup>

#### *Access to the EU*

As the recent push-backs of asylum seekers from Italy to Libya clearly illustrate, the objective of ensuring access to protection in the EU remains as relevant for the Stockholm Programme today as it was for the Hague Programme five years ago.<sup>23</sup> As rightly stated in the European Pact on Immigration and Asylum “the necessary strengthening of European border controls should not prevent access to protection systems by those people entitled to benefit under them”.<sup>24</sup> The Stockholm Programme not only needs to reaffirm this important principle but also call on the Commission to present a concrete action plan to ensure such access in practice.

Ensuring access will require a set of measures aimed at making external border controls protection-sensitive. Such measures will necessarily include adjusted training programmes of border guards in the framework of the EU’s integrated border management as well as independent monitoring of border controls. The use of protected entry procedures and systems of issuing humanitarian visas should also be further explored at the EU level.

Particular attention should be devoted to the sea borders of the EU. The Stockholm Programme should set as a key objective the adoption of guidelines on the disembarkation of asylum seekers and refugees rescued or intercepted at sea, including in the context of FRONTEX operations. Such guidelines should be firmly rooted in international maritime and refugee and human rights law and should fully respect the principle of non-refoulement. There should always be a proper and individual assessment of the protection needs of those rescued or intercepted.<sup>25</sup>

#### *Resettlement*

Last year UNHCR made submissions of more than 120,000 refugees for resettlement. Worldwide 65,596 refugees were resettled, of which less than 7 % departed to EU Member

<sup>21</sup> Council of the European Union, *The Hague Programme: strengthening freedom, security and justice in the European Union*, Doc. 16054/04, 13 December 2004, p. 12.

<sup>22</sup> See ECRE, *The Way Forward: Guarding Refugee Protection Standards in Regions of Origin*, December 2005.

<sup>23</sup> ECRE, *Memorandum to the JHA Council of 4/5 June 2009: Guaranteeing refugee protection and safeguarding respect for fundamental rights*, May 2009.

<sup>24</sup> Council of the European Union, *European Pact*, p. 11, see note 19 above.

<sup>25</sup> For further information, see ECRE, *Defending Refugees’ Access to Protection in Europe*, December 2007.

States. It is time for the EU to show concrete and greater solidarity with those countries hosting the majority of refugees and dealing with protracted refugee situations by seriously engaging in resettlement.

The adoption of the Stockholm Programme is an opportunity to build on the commitments made in the Hague Programme, the recent resettlement initiatives for Iraqi refugees and the Commission proposal for a Resettlement Programme. The Stockholm Programme must include a strong commitment to significantly increase the numbers of refugees resettled to the EU. Such a commitment should function as an important political incentive for the EU as a whole to take its fair share of global responsibility towards refugees. Continued financial incentives from the EU are needed to support the costs of the current resettlement activities undertaken by Member States as well as those of emerging resettlement countries. The resettlement of the most vulnerable cases should be prioritised in close cooperation with specialised NGO's and UNHCR. Increasing engagement in resettlement is not and should not be considered a potential substitute for Member States' obligations to consider applications for asylum lodged on their territory.

- The Stockholm Programme must set the development of a comprehensive action plan on access to protection and implementing protection-sensitive border controls as a concrete objective.
- The Stockholm Programme must set clear goals to step up the EU's global engagement in resettlement of vulnerable refugees in close cooperation with UNHCR and NGO's.

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