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The Development of a Common European Asylum System

During the afternoon session of the first day of the informal meeting of the Ministers of Justice and Home Affairs in Stockholm on 8–9 February 2001, ministers will be invited to discuss the development of a Common European Asylum System in accordance with the conclusions of the Tampere European Council.

The European Council in Tampere in October 1999 represented an important landmark in the development of a Common European Asylum System. In its conclusions, the European Council called for strong political determination to implement the Treaty of Amsterdam in the field of asylum. The heads of state and government sent a clear message to the JHA Council asking that progress be made towards harmonisation.

The goals set out in the treaty and at Tampere are ambitious. They cover the whole area of asylum, from the entry of a third country national and the lodging of an asylum application to the integration of a person benefiting from international protection or the return of a person having been found not to be in need of protection. More than a year has passed since the Tampere European Council. Much work remains.

Asylum issues are indeed matters of common concern to all the Member States of the Union. Their harmonisation should reinforce common standards for asylum, and other forms of protection, within the Union and ensure good reception conditions for persons seeking international protection throughout the EU. Those seeking international protection should be assured a good standard of reception and a fair and legally certain determination procedure irrespective of the EU Member State in which the claim is processed. Offering protection to victims of persecution, war and internal conflict is a fine European tradition, and we must do our utmost to establish common standards at a high level in order to offer this protection. The fact that a Common European Asylum System as such was mentioned in Tampere but is not included in the treaty gives Member States, and the

Commission, the opportunity to be visionary about the nature of such a system in the future.

In November 2000 the Commission presented its Communication entitled 'Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum' (22.11.2000). This Communication sets out the substantive issues at stake concerning harmonisation in the field of asylum. It will serve as the basis for the informal Council discussion. The discussion will also follow up on the Lisbon seminar 'Towards a Single European Asylum System', held during the Portuguese Presidency.

The year 2001 marks the 50th anniversary of the 1951 Geneva Convention Relating to the Status of Refugees. Accordingly, UNHCR has launched global consultations on issues concerning international protection. The attention drawn to these consultations will be crucial for the debate in the year ahead, at national level as well as in the European Union and in the international context.

Possible topics for discussion

1. The level of harmonisation

European Community legislation in the asylum field means that Member States give up national legislation in return for the benefit of European Community rules. In this process a balance must be sought between, on the one hand, the advantages of common rules and, on the other, the need of the Member States for national action in accordance with the principle of subsidiarity.

Given the mandate from the European Council in Tampere, what should be the level of ambition of the EC legal instruments to be adopted under Title IV of the EC Treaty when harmonising asylum policy?

If important aspects of substance in a Community instrument under negotiation are left open to national legislation, at which point would the efficiency of a Community instrument be eroded?

The Commission Communication on asylum sketches out a second stage of harmonisation. What is your view on the short- and long-term approaches to the harmonisation work?

The work currently carried out in the field of asylum within the European Union sends an important signal to the countries which are candidates for accession. In your view, should this influence the level of harmonisation? If so, how?

2. Subsidiary protection – the scope of harmonisation

Subsidiary protection has been included as a topic for common action for several years. Even before the Treaty of Amsterdam entered into force it was mentioned in Council resolutions on priority action within the third pillar of the Maastricht Treaty, then in the Vienna Action Plan and in the Tampere Conclusions. Point 14 of the conclusions spells out that the Common European Asylum System 'should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection'. Yet, there has been weak support for including subsidiary protection in the instruments currently on the negotiating table. In your view, how, and what types, of subsidiary forms of protection could be included in the development of a Common European Asylum System?

3. Responsibility sharing – the goal of harmonisation

The harmonisation of the legal and institutional frameworks of the Member States in the field of asylum could be seen as a means of achieving a fairer and more balanced reception of persons seeking international protection within the European Union. Considering the difficulties in reaching solutions regarding the sharing of responsibility at European level, is this the way forward? At what level of harmonisation would EC legislation be beneficial and meaningful in order to promote a balance of effort?

Would European Union resettlement quotas be an element of a more balanced reception of persons in need of international protection?

4. The order of adoption of new instruments in the field of asylum

According to the Score Board, the Commission is scheduled to have presented all its proposals for EC legislation in the field of asylum by the summer of 2001. Is it feasible to adopt these legislative instruments one by one? Is there a case for negotiating proposals for EC legislation in parallel in order to address horizontal issues in one package involving several instruments? Or would this risk such delays that the treaty requirement for legislation by 1 May 2004 could not be met?

5. The role of asylum in the prevention of illegal migration

Orderly migration prevents illegal migration. A strong asylum system is crucial for the efficient functioning of a general legal and administrative framework for migration. Is there scope for stronger action in order to promote such a legal and administrative framework within a wider group of neighbouring and transit countries of the European Union as part of a strategy to prevent illegal migration?