European Union

Group 484

ECRE
EUROPEAN COUNCIL ON REFUGEES AND EXILES

European-Serbian Cooperation on (Forced) Migration (ESCoM)

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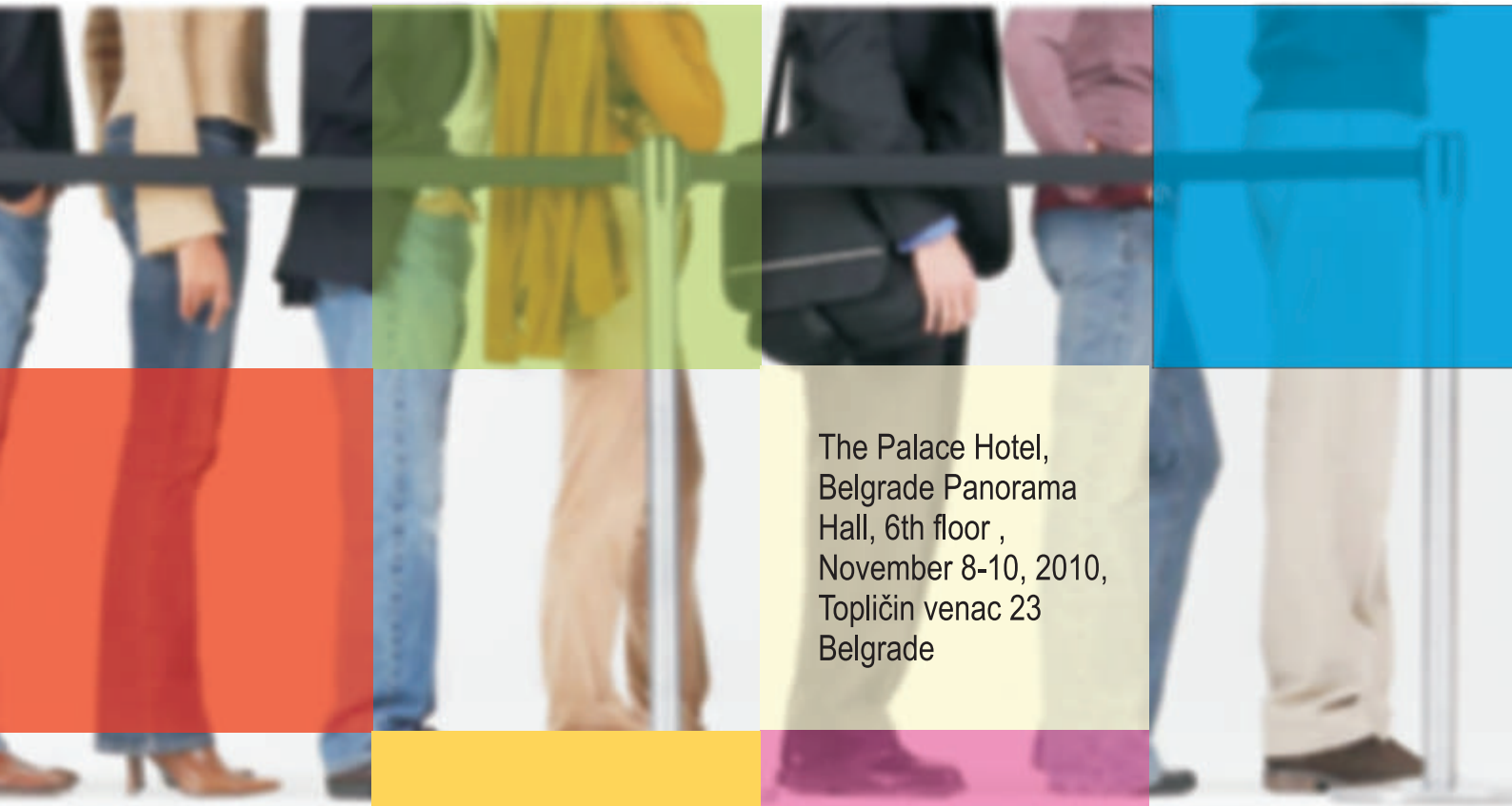
TRAINING HANDBOOK
Migration Challenges in Serbia



The Palace Hotel,
Belgrade Panorama
Hall, 6th floor ,
November 8-10, 2010,
Topličin venac 23
Belgrade

Evropsko-srpska saradnja u
oblasti prinudnih migracija

European-Serbian
Cooperation on (Forced) Migration

TRAINING HANDBOOK

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TRAINING HANDBOOK
To accompany the training Migration Challenges in Serbia:

PART ONE: A compilation of key EU Standards In the area of forced migration

Containing:

- Extracts from relevant EU documents and regulations
- ECRE's position regarding these documents and regulations
- Examples of good and bad practice from EU member states

PART TWO:

A template for a policy/advocacy document to be produced according to ECRE standards.

Containing:

- Elements of an effective policy/advocacy document
- A guide to the most important issues to be included in the policy/document to be drafted and agreed in the overall project.

A. CONTENTS: (Agenda related)

1 Stabilisation and Association Agreements
2 Returns Directive
3 EU Acquis on Asylum
4 Readmission Agreements

B. CONTENTS (Other key documents and regulations.)

5 Dublin
6 Green paper on Asylum
7 Treaty of Lisbon
8 Stockholm Programme
9 EU legislative 'Recasting'

C. LIST OF INTERNET LINKS TO KEY EU LEGISLATION ON MIGRATION AND ASYLUM ISSUES.

INTRODUCTION

This training handbook is intended as a complementary tool for participants attending the training organised by Grupa 484 and the European Council on Refugees and Exiles (ECRE). The training, held in Belgrade between 8-10 October 2010, is titled *Forced Migration Challenges in Serbia.* It is part of a larger project funded by the European Commission: *Strengthening Serbia-EU Civil Society Dialogue*. This one year project is managed and lead by Grupa 484. ECRE is the project partner agency.

Participants in this three day training include members of civil society organisations (CSOs) and state institutions engaged in the field of forced migration. The aims are two-fold: Firstly, to bring participants up to date with key EU legislation regarding forced migration in Serbia. Secondly, for the CSO group to establish the groundwork and structure of a policy/advocacy document on a range of key concerns. This policy/advocacy document will be written in a way that it is consistent with standards employed by ECRE, both in terms of its relevance to EU legislation and in terms of style and qualitative content.

A series of important follow-on activities will build on the outputs of this training. They include: a) A training on advocacy/lobbying and campaigning standards; b) A visit by a CSO delegation to European institutions in Brussels. c) A national campaign for the improvement of Serbian Forced Migration Policy.

STABILISATION AND ASSOCIATION AGREEMENT BETWEEN EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

INTRODUCTION: On 7 November 2007, Serbia initialed a Stabilisation and Association Agreement1 (SAA) with the European Union. This represented an agreement on the final version of the text to which 'no or little changes' are to be made, which is the step immediately preceding the official signing.

According to the Commissioner for Enlargement, the Council decided on 14 June 2010 to:

" - unblock the ratification process of the Stabilisation and Association agreement (SAA) between the EU and Serbia. Recalling in the Council Conclusions that cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) is an essential element of the SAA, Ministers agreed to submit the agreement to their respective parliaments for ratification, as well as to the European Parliament for its approval."

The Commissioner stated that ***"the decision brings Serbia another step closer to the EU, putting our relation on a strong legally binding and institutional basis".***

1 http://ec.europa.eu/enlargement/pdf/serbia/key_document/saa_en.pdf

HISTORY: The negotiations for a Stabilisation and Association Agreement between the EU and Serbia were initially launched in October 2005 and the agreement was signed in April 2008. However, the Council decided that ratification, as well as the implementation of the Interim Agreement of the SAA, were subject to Serbia's progress on ICTY cooperation. Following ICTY Prosecutor's positive report to the UN Security Council in December 2009, the Council agreed to unblock the Interim Agreement which subsequently entered into force on **1 February 2010**. At the same time Ministers decided to unblock the ratification process in June 2010 if Serbia maintained its cooperation with ICTY. The decision implied that the Member States launch their internal ratification procedures for the SAA.

WHAT ARE THE STABILIZATION AND ASSOCIATION AGREEMENTS?

They are part of the EU Stabilization and Association Process (SAP) and the European Neighbourhood Policy (ENP). At present, the countries of the western Balkans are the focus of the SAP. Specific Stabilization and Association Agreements (SAA) have been implemented with various Balkan countries which explicitly include provisions for future EU membership of the country involved.

SAAs are based mostly on the ***EU's acquis communautaire*** and

predicated on its promulgation in the legislation of cooperating states. The depth of the policy harmonisation expected by SAA is less than for EU member states; some policy areas in the Acquis may not be covered by a given SAA.

Association agreements must be ratified by the associating state and all EU member states. The EU's relations with the Western Balkans states were moved from the "External Relations" to the "Enlargement" policy segment in 2005. These states currently are not recognised as candidate countries, but only as "potential candidate countries". This is a consequence of the advancement of the Stabilization and Association process.

"The EU's political strategy towards the Western Balkans relies on a realistic expectation that the contract it enters into with individual countries will be fulfilled satisfactorily. Careful preparation with each country before the EU offers such a contract has been and remains a vital component of the Stabilisation and Association Process.

The Stabilisation and Association Agreements are tools which provide, much as the Europe Agreements did for the candidate countries in Central Europe, the formal mechanisms and agreed benchmarks which allow the EU to work with each country to bring them closer to the standards which apply in the EU."

KEY ARTICLES AGREED IN THE SAA BETWEEN SERBIA AND THE EC (MEMBER STATES) RELATING TO: Visa; border management; asylum and migration; prevention and control of illegal immigration; readmission.

"ARTICLE 82

Visa, border management, asylum and migration

The Parties shall cooperate in the areas of visa, border control, asylum and migration and shall set up a framework for the cooperation, including at a regional level, in these fields, taking into account and making full use of other existing initiatives in this area as appropriate.

Cooperation in the matters above shall be based on mutual consultations and close coordination between the Parties and should include technical and administrative assistance for:
(a) the exchange of statistics and information on legislation and practices;
(b) the drafting of legislation;
(c) enhancing the capacity and efficiency of the institutions;
(d) the training of staff;
(e) the security of travel documents and detection of false documents;
(f) border management.

Cooperation shall focus in particular:

(a) on the area of asylum on the implementation of national legislation to meet the standards of the

Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol relating to the Status of Refugees done at New York on 31 January 1967 thereby to ensure that the principle of "non-refoulement" is respected as well as other rights of asylum seekers and refugees;

(b) on the field of legal migration, on admission rules and rights and status of the person admitted.

In relation to migration, the Parties agree to the fair treatment of nationals of other countries who reside legally on their territories and to promote an integration policy aiming at making their rights and obligations comparable to those of their citizens.

ARTICLE 83

Prevention and control of illegal immigration; readmission

1. The Parties shall cooperate in order to prevent and control illegal immigration. To this end, Serbia and the Member States shall readmit any of their nationals illegally present on their territories and agree to fully implement the Agreement on readmission between the Community and Serbia and bilateral Agreements between Member States and Serbia in so far as the provisions of these bilateral Agreements are compatible with those of the Agreement on readmission between the Community and Serbia, including an obligation for the readmission of nationals of other countries and stateless persons.

The Member States and Serbia shall provide their nationals with appropriate identity documents and shall extend to them the administrative facilities necessary for such purposes. Specific procedures for the purpose of readmission of nationals, third country nationals and stateless persons are laid down in the Agreement on readmission between the Community and Serbia and bilateral Agreements between Member States and Serbia in so far as the provisions of these bilateral Agreements are compatible with those of the Agreement on readmission between the Community and Serbia.

2. Serbia agrees to conclude readmission Agreements with the Stabilization and Association process countries and undertakes to take any necessary measures to ensure the flexible and rapid implementation of all readmission Agreements referred to in this Article.

3. The Stabilization and Association Council shall establish other joint efforts that can be made to prevent and control illegal immigration, including trafficking and illegal migration networks."

EU DIRECTIVE ON COMMON STANDARDS AND PROCEDURES FOR THE RETURN OF IRREGULARLY STAYING THIRD COUNTRY NATIONALS

"Clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well managed migration policy."

BACKGROUND: The Directive on common standards and procedures for the return of irregularly staying third country nationals (http://register.consilium.europa.eu/pdf/en/08/st10/st10737.en08.pdf) was endorsed by the European Parliament in June 2008 and officially adopted by the Council on 9 December 2008. EU Member States need to incorporate it into national law before December 2010.

CONTEXT: The Directive aims to set out common standards and procedures in the Member States for returning irregularly staying third-country nationals, *'in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations'.* Illegal stay is defined as the presence on the territory of a Member State of a third-country national who does not fulfil, or no longer fulfils the conditions of entry, stay or residence in that Member State.

OVERVIEW OF THE RETURNS DIRECTIVE DEFINITION: The preamble to the Directive asserts that '*decisions taken under this Directive should be adopted on a case-by-case basis and based on objective criteria implying that consideration should go beyond the mere fact of an illegal stay',* and that it is legitimate for Member States to return irregularly staying third country nationals, '***provided that fair and efficient asylum systems are in place which fully respect the principle of non-refoulement'.***

The Directive lays down common rules on a number of issues relevant to return proceedings. It regulates the issuing of return decisions and entry bans and stipulates that irregularly staying third country nationals should be granted a period ranging between seven and thirty days to independently organise their departure before measures to carry out forced return are taken. A number of procedural safeguards are granted to persons subject to return procedures, for example the right to appeal or seek review of decisions related to return and to receive essential health care and, in the case of children, to access education while removal is pending. The Directive sets out provisions on the detention of third country nationals pending removal, including the maximum length of time during which a person can be detained and the conditions of detention and establishes particular rules for the detention of children and families. In addition, it provides that Member States would have to possibility to derogate from some of their obligations towards detained third

country nationals in the event of emergency situations.

The Directive stipulates that detention is justified only *'if the application of less coercive measures would not be sufficient'*, and emphasises that persons under detention '*should be treated in a humane and dignified manner with respect for their fundamental rights'.* The best interest of the child and respect for family life should be a primary consideration of Member States when applying the Directive, and implementation should be '*without prejudice to the obligations resulting from the Geneva Convention relating to the Status of Refugees'.* Respect for the rights included in the Charter of Fundamental Rights of the European Union is also reaffirmed.

Human Rights Concerns About the "Returns Directive": While ECRE supported the establishment of harmonised standards safeguarding the rights of individuals subject to returns procedures, it considers that the Returns Directive falls well short of this objective.

ECRE believes that the basic requirement is that fair asylum systems are in place, which properly examine whether a person will face a risk of persecution if returned. But current shortcomings in Member States' asylum systems mean that it cannot be taken for granted that a person whose asylum claim has been rejected in a European country does not have a case for refugee or other forms of humanitarian or subsidiary protection status.

ECRE concerns about the Returns Directive include:

- The imposition of **entry bans** which will prohibit deported asylum seekers from coming to the EU for up to 5 years, without taking into account possible changes in the circumstances of their countries of origin which may force them to leave again (Article 11);
- That Member States are not obliged to apply the Directive to third country nationals refused entry or who are apprehended or intercepted in connection with the irregular crossing at a Member State's external border (Article 2): i.e safeguards such as the right to an effective remedy would not be guaranteed for these people.
- The obligation for Member States to issue a return decision to any irregularly staying third country national as a principle of European law (Article 6(1)), while there is no obligation for Member States to grant legal status to those people for whom return is not feasible.
- Allowing an extremely short period for a person to prepare to return: between seven and thirty days (Art. 7(1)).
- The non-suspensive character of legal remedies and the

insufficient safeguards concerning access to legal assistance (Article 13).
- The lack of an obligation for Member States to provide for an automatic judicial review where detention is ordered by administrative authorities (Article 15 (2)).
- The possibility to detain third country nationals, including families, unaccompanied children as well as other vulnerable persons, for up to eighteen months for reasons beyond their control (Article 16 (6)).

Monitoring:
The Directive lacks provisions guaranteeing that returns will be properly overseen in order to evaluate whether they are safe, dignified and sustainable. ECRE reaffirms that in the absence of systematic monitoring mechanisms examining the outcome of return policies, it is impossible to know if the persons returned have been *refouled* (directly by the sending state or indirectly by the country of return) and if they have been able to (re-) integrate in the receiving community. ECRE believes that collecting information on the outcome of return is necessary as a check on the correctness of return decisions and on Member States' compliance with their international obligations. Such monitoring would also be useful on a pragmatic basis, since it would instill confidence in potential returnees and help evaluate the success of return policies by revealing whether returns have been sustainable or the persons concerned had to migrate again. It is therefore crucial that specific mechanisms be developed and maintained in the Member States for the effective monitoring of returnees within the countries of origin.

KEY RECOMMENDATIONS ON RETURN:

(REFERENCE TO **-** The Way Forward: The return of asylum seekers whose applications have been rejected in Europe PP3/06/2005/EXT/PC 8 © ECRE 2005 www.ecre.org)

ECRE proposes the use of three definitions of return:

- **Voluntary return/repatriation**: the return of persons with a legal basis for remaining in the host state who have made an informed choice and have freely consented to repatriate.

- **Mandatory return**: refers to persons who no longer have a legal basis for remaining in the territory of the host state and who are therefore required by law to leave the country. It also applies to individuals who have consented to leave, or have been induced to leave by means of incentives or threats of sanctions.

- **Forced return**: the return of those who have not given

their consent and therefore may be subject to sanctions or the use of force in order to effect their removal.

Over-simplistic comparisons are often drawn between the number of asylum seekers whose claims have been rejected and the smaller number of people removed. Yet return is not always possible or desirable. Some states refuse to take back their nationals, particularly where their identity is in doubt. There are also humanitarian reasons for not returning a person, such as vulnerability or a long period of residence in the host country.

ECRE recommends that:

- States should prioritise voluntary repatriation and ensure that all returns are carried out in a safe, dignified and sustainable manner.
- Detention should only be used as a last resort, as long as removal arrangements are in progress and when other alternatives have been proven ineffective.
- ECRE is opposed to the notion of a 5-year entry ban being imposed on asylum seekers whose applications have been rejected and who are facing return. Removal should be considered a sufficient resolution to their situation.
- EU countries should ensure that the persons crossing the border irregularly are given the possibility to express their protection needs, in order for them not to be returned - directly or indirectly - to countries where they would be at risk of persecution
- Where return is not possible or where it would be inhumane, people should be granted a legal status to remain in the country of residence.
- ECRE reminds Member States that the implementation of the Directive must take place in compliance with those international human rights obligations that they have signed up to, including the principle of non-*refoulement*, as laid down in Article 33 of the 1951 Refugee Convention, Article 7 of the 1966 International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the 1984 Convention against Torture (CAT) and other instruments.

ECRE believes that: (Way Forward)

- **The credibility of a removal system and an asylum system is fundamentally undermined if it fails to protect those in need of international protection.** ECRE does not dispute the

fact that governments have the right to return asylum seekers whose claims have been correctly rejected following a proper and fair asylum procedure. However, at present it cannot be confidently assumed that if someone's asylum claim has been rejected by a European country they are necessarily a person not in need of international protection in view of procedural deficiencies in European asylum systems or restrictive interpretations of the refugee definition.

- **Fair and efficient asylum systems are a pre-requisite to return.** If states are concerned with being able to undertake successful returns they must address the fairness of their asylum procedures first, as wrong decisions may lead to people being persecuted and having to flee from their countries of origin again.

- **States must not enforce returns prematurely.** Asylum seekers, those who are granted a status and those who are not granted a status in Europe all face the threat of return and experience the fear of premature return. There is an increasing trend across Europe to reduce the period of time between the declared end of hostilities in a given country/region and commencing or threatening return to that region. States sometimes also delay determination of asylum claims until the declared end of hostilities in the country of origin when claimants can be deemed not to be in need of international protection. Asylum seekers whose claims have been rejected, have therefore been returned to unsafe conditions.

- **Obstacles and alternatives to return** Obstacles to the return of persons whose claims have been rejected can exist for a variety of reasons. These can be technical such as the practical impossibility of transporting a person to a country with no functioning airport. They can also be related to countries of origin being unwilling or feeling unable to cooperate with returns, although it is an established principle of international law that states have an obligation to receive back their own nationals.

- **International cooperation with countries of origin in a spirit of solidarity at all stages of the return process is a pre-requisite to achieving sustainable return.** It is in the best interests of all parties for host countries to maintain a supportive relationship with countries of origin, through offering political, financial and economic support, to ensure

that returns can take place and that returnees have a good chance of successful re-integrating in their home countries. The use of punitive measures, such as the threat of withdrawing development aid and support, is unlikely to achieve this and ECRE strongly opposes it. States should also resist penalising individuals for matters that are very often beyond their control where return is not possible. Instead, developing alternatives to return will often constitute a better solution for certain individuals as well as for the state that has considered and rejected their asylum application.

- **European states should not enforce removals and should grant a legal status to certain categories of persons, especially those who cannot be returned for reasons beyond their control.** This would avoid asylum seekers whose cases have been rejected being left in unacceptable limbo situations, without support and with few rights in the host country. Legal statuses granted could be either temporary or permanent, as appropriate, and should in particular be considered for people who have been resident for 3 years or more in the host country, and for people considered 'vulnerable', namely the sick, older people, children (especially separated children), single women or female heads of households.

- **Increased efforts to enforce returns** An increase in efforts to enforce returns from Europe has resulted in increased returns. State authorities have no interest in making the process of return more distressing or difficult than necessary, so while return procedures should be efficient, all returns should be undertaken in a manner that is safe, dignified and humane**.** Individuals should be allowed to retain a sense of self-sufficiency and control over their own lives.

- **In undertaking returns European states must ensure their actions do not breach any of their human rights obligations under international and European law.** ECRE has defined three different categories of return: voluntary, mandatory and forced. Enabling voluntary returns is always preferable but this term, according to ECRE, only applies in the case of persons with a legal basis for remaining in a host country. ECRE defines forced return as the return of those who have not given their consent and who may be subject to sanctions or the use of force on removal.

Cases where the use of force in deporting an individual has resulted in their death or serious injury have shocked the European public and led to legal actions against state authorities. If implemented by European states, forced return must be carried out in accordance with their human rights obligations. In developing European legal frameworks on return procedures the European Union should help ensure the implementation of such human rights standards within its Member States.

Some people who no longer have a legal basis for remaining in the host country for protection-related reasons consent to return. But it is increasingly common for European states to use methods to induce or coerce such people to consent to return. ECRE defines all these situations as mandatory return. Methods for inducing return can include: threat of detention or continued detention and withdrawal of support in the host country. Where consent to return is coerced in this way it cannot be said that a person has freely chosen to leave their host country.

- **Detention should only be used as a last resort, and should be in full compliance with international human rights law.** Detention for the purposes of preventing absconding prior to return should only be used when absolutely necessary, for the minimum period required to organise return. Alternatives should always be explored. The trend in European states, however, is increasingly to detain, sometimes for indefinite periods, as a standard part of any removal procedure. There is little supporting statistical evidence, however, that people who are not detained will necessarily disappear and it is highly unlikely in the case of certain vulnerable persons such as the sick, older people or families with young children.

- **The denial of human rights and the withdrawal of support as a means of forcing asylum seekers whose applications have been rejected to cooperate with return procedures or compel them to leave of their own accord is unacceptable.** Through such withdrawal of support states risk violating their obligations under the European Convention on Human Rights. Instead asylum seekers whose applications have been rejected should be adequately supported by the government of the host country through the provision of basic socio

economic benefits until it is really possible for them to leave that country. Some European governments extend positive incentives such as financial assistance, available through voluntary repatriation programmes, to asylum seekers whose applications have been rejected. This is to be welcomed and should be developed across all European countries. However, it is important that states ensure that consent is informed and no coercive methods are used. States should also seek the increased participation of NGOs and refugee representatives, including those working in countries of origin, in assisted return. ECRE strongly opposes in principle transfers to third countries of persons whose asylum applications have been rejected as a measure to enforce return.

- **Follow up to return** It is very often not known whether a person returned to their country of origin has arrived safely and has been able to re-integrate into the community. Systematic monitoring would provide a check on the correctness of decisions on asylum claims and would instil confidence in potential returnees. It could also be used to evaluate the success of return policies.

- **Sending states should set procedures in place to check that returnees have reached their destination safely. There should also be follow-up and monitoring of returns to identify whether return policies are safe, effective and sustainable**. States should establish their own monitoring systems, but it is important for NGOs and refugees to be involved in monitoring returns. The support of the host country must not end once return has taken place. In order to ensure sustainable return, it is important for states to assist in reconstruction and development in countries of origin and to support the re-integration of returnees. Successful reintegration in the country of origin is a key factor in ensuring the sustainability of return.

EU ACQUIS ON ASYLUM

1 THE ACQUIS IN THE CONTEXT OF ENLARGEMENT.

"Established in 1957, the European Union has now grown from six to twenty-seven Member States as a result of five enlargements.[2] Enlargement is an important driving force for integration. Nevertheless, it was the fifth enlargement, which occurred on an unprecedented scale in two successive waves in 2004 and 2007 to welcome twelve new Member States, that defined the contours of the enlargement policy. This now covers the countries applying for EU membership and the potential candidates of the Western Balkans. The former come under the enlargement process and the latter under the stabilisation and association process.

UNHCR welcomes asylum law in Serbia and Montenegro." (UNHCR)

Understanding The Impulses Encouraging Enlargement

Enlargement can be seen as one of the EU's more influential advocacy tools. It can be argued that the desire to join the EU has helped to encourage and transform countries of Central and Eastern Europe into modern, well-functioning democracies. Similarly, there is a strong body of opinion that all European citizens benefit from having neighbours that are stable democracies. Enlargement is a carefully managed process which helps the transformation of the countries involved, extending peace, stability, prosperity, democracy, human rights and the rule of law across Europe.

Accession Process And The Requirement To Adopt The Acquis.

According to the Treaty on European Union, any European country may apply for membership if it respects the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law. Accession, however, can only follow if the given European country fulfils all criteria of accession, also known as the **Copenhagen Criteria**, which were fixed by the European Council in Copenhagen in 1993. The Copenhagen criteria were reinforced by the European Council in Madrid in 1995, with a further one added: ***"Adoption of the* Acquis Communautaire *(the entire European legislation) and its effective implementation through appropriate***

Negotiations

The first step in negotiations is the so-called "screening". It is an analytical examination of the *Acquis* to explain it to the candidate countries and, with them, to identify areas where there may be problems to be addressed.

[2] There are four 'Candidate countries'. Serbia is now a 'potential' Candidate country.

Monitoring

The Commission keeps the Council and the Parliament duly informed about the candidates' preparations for membership with the help of "Monitoring Reports". They also serve to guide the candidate countries in their preparations. A "Comprehensive Monitoring Report" serves as a basis to decide on any possible remedial measure to be taken by the Commission.

2 OVERVIEW OF THE EU ACQUIS ON ASYLUM

The relationship between the SAA Agreements and the Acquis

The SAAs are the formal framework of contractual relations between the EU and the individual states of the Western Balkans. They follow the same format, and in many articles have identical wording. The agreements are structured along the same lines as the long list of **'chapters'** negotiated with accession candidates. *The difference is that for accession candidates all chapters have to be brought to a state of legal compliance with the EU acquis, and proof of implementation; whereas the SAAs are more of a warming-up exercise, inviting the partner state to move gradually into compliance and otherwise to 'cooperate' in various domains*.

Five *main* legal instruments make up the EU acquis on asylum[3]:

- **Temporary Protection**
- **Determining Responsibility (Dublin)**
- **Qualifying for Protection**
- **Reception of Asylum Seekers**
- **Asylum procedures**

According to ECRE's assessment, while some measures within these instruments clearly aimed at improving standards, many others unfortunately allowed the lowest possible standards to prevail.

3

1 TEMPORARY PROTECTION:

Temporary protection is a procedure of an exceptional character during an emergency situation that involves a mass influx of displaced persons. Individual refugee status determination is not immediately practicable in such a situation, because of the time and evidence required to do a full and fair evaluation of protection needs.

Under such conditions it may be necessary to provide a generalised form of protection to all members of a large group, until they are able to enter a regular refugee status determination process.

EU Rules

In July 2001 the EU introduced the Temporary Protection Directive one of five legal instruments that make up the EU acquis (body of law) on asylum.

This Directive aims to harmonise temporary protection for displaced persons in cases of mass influx on the basis of solidarity between Member States. It applies to all Member States except Denmark and Ireland and came into force in December 2002. However, the temporary protection mechanism established by the Directive has not been used yet.

The directive envisages a number of obligations towards beneficiaries of temporary protection. These include: a residence permit for the entire duration of the stay (Article 8), access to employment (Article 12), access to suitable accommodation (Article 13), access to education for minors (Article 14) as well as the possibility of family reunification (Article 15).

ECRE favours the Directive as it stresses the exceptional character of temporary protection and preserves access to the asylum determination procedure. ECRE remains nevertheless concerned with certain points such as the fact that the Directive does not ease admission to the territory for persons arriving outside evacuation programmes, nor does it contain any general provision for procedures, and in particular it contains no reference to a right to appeal against the denial of temporary protection.

ECRE's position

- ECRE believes that temporary protection represents a reasonable administrative policy only in an emergency situation where individual refugee status determination is not immediately practicable and where the implementation of temporary protection will enhance admission to the territory.
- Persons under temporary protection should have access to individual refugee

determination procedures as soon as it is practicable and certainly prior to any subsequent return.

2 DETERMINING RESPONSIBILITY (DUBLIN)

The 'Dublin Regulation' establishes a hierarchy of criteria for identifying the EU Member State responsible for processing an asylum claim. Usually this will be the state through which the asylum seeker first entered the EU. The Regulation aims to ensure that each claim is examined by one Member State, to deter repeated applications, and to enhance efficiency.

Application of this regulation can seriously delay the presentation of claims, and can result in claims never being heard. Causes of concern include the use of detention to enforce transfers of asylum seekers from the state where they apply to the state deemed responsible, the separation of families, the denial of an effective opportunity to appeal against transfers, and the reluctance of Member States to use the sovereignty clause to alleviate these and other problems. The Dublin system also increases pressures on the external border regions of the EU, where states are often least able to offer asylum seekers support and protection.

The Dublin system impedes integration of refugees by delaying the examination of asylum claims, by creating incentives for refugees to avoid the asylum system and live 'underground,' and by uprooting refugees and forcing them to have their claims determined in Member States with which they may have no particular connection.

ECRE's position

- The Dublin system fails to ensure that refugees are protected and wrongly assumes that there is a level playing field in the EU.
- The determination of the country responsible for a claim should not result in transfers to Member States that cannot both guarantee a full and fair hearing of asylum claims, and provide reception conditions that at the very least comply with the EU Reception Directive.
- Applicants must have a right to remain in the country where they have requested asylum while appealing against transfer.
- The definition of a family should be extended, and refugees should be able to join any family member lawfully present in the EU.
- The Dublin system should allow Member States to prevent the transfer of vulnerable persons that may require specialised treatment.

ECRE has called for an immediate improvement of the system in practice. Ultimately the Dublin

Regulation should be abolished and replaced by a more humane and equitable system that considers the connections between individual asylum seekers and particular Member States.

3 QUALIFYING FOR INTERNATIONAL PROTECTION

The 1951 Refugee Convention envisages protection for any person unable to return to his/her country due to "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion."

Even where this standard is not met, European states may not return individuals in breach of international obligations such as the absolute prohibitions on torture, execution or inhuman or degrading treatment contained in the European Convention on Human Rights (ECHR).

EU Rules

In April 2004 the EU introduced the Qualification Directive, one of five legal instruments that make up the EU acquis (body of law) on asylum. The Directive, which applies to all Member States except Denmark, came into force in October 2006, and only Sweden and Spain have not yet transposed it into national law.

This Directive aims to harmonise the way Member States provide refugee protection, and requires Member States to provide "subsidiary protection" to people at risk of serious harm. At the same time, it sets minimum rights that persons qualifying for international protection should receive.

A person's chances of being granted asylum still vary hugely according to the country where the asylum seeker has his or her asylum claim processed. For example, Iraqis who flee their home country and end up in Germany have a 85% of being recognised as a refugee at first instance and those who apply for asylum in Slovenia do not get a protection status at all.

The Qualification Directive has raised standards by for an example introducing a European subsidiary protection and by requiring the recognition of non-state actors of persecution, but in many other respects it has encouraged Members States to lower their standards.

ECRE's position

- Any rights afforded to refugees by the 1951 Geneva Convention should also be granted to all persons under subsidiary protection, as both categories of protected persons have similar needs and circumstances.
- ECRE welcomes the recognition of child-specific and gender-specific forms of persecution and provisions aimed specifically at the needs of unaccompanied minors (see also section on Vulnerable groups).

- States should assess asylum applications in keeping with a full and inclusive application of international refugee and asylum law, while using the new European subsidiary protection status to extend protection to those in need of it who fall outside the refugee definition.

4 RECEPTION OF ASYLUM SEEKERS

Reception conditions constitute the material support offered to asylum seekers while they await a decision on their applications. Such support usually includes food, housing, education, health care, language training and access to employment.

Asylum seekers may have recently escaped from traumatic experiences, sometimes involving the disappearance or death of family members and friends, torture or armed conflicts. Upon arrival they generally need rest, space and respect. Reception facilities should therefore seek to meet these needs. Adequate conditions of reception are also essential to the functioning of a fair and efficient procedure, as they allow asylum seekers to have a dignified standard of living while they are awaiting a decision on their applications.

EU Rules

In January 2003, the European Union adopted a Directive laying down minimum standards for the reception of asylum seekers in the Member States. ECRE considers that the Directive has contributed to strengthening the legal framework of national reception practices, particularly in those countries with under-developed reception systems. Nevertheless, Member States have sometimes used the ambiguity of some of the Directive's provisions to derogate from their obligations concerning reception conditions. As a result, in many countries asylum seekers are not provided with an adequate standard of living in terms of acceptable housing and sufficient financial allowances to cover their basic needs. They also face significant legal and practical obstacles to access employment, education and health care. ECRE regards the Proposal to recast the Directive put forward by the Commission in December 2008 as an opportunity to address these flaws (read ECRE Comments on the Proposal).

ECRE's position

- An adequate reception policy should prepare persons seeking asylum simultaneously for either return to their country of origin or integration into the host society.
- Basic reception conditions should be offered from the moment an asylum seeker arrives to the country of destination until a final decision has been made.
- Where another State is deemed to be responsible for the examination of the asylum application under the Dublin Regulation the period of reception extends until the

moment of departure to that State.

- Asylum seekers should be in a position to have control over their own daily lives, be as self-sufficient as possible and encouraged to contribute to the host community, irrespective of the length of their stay. To this end, they should be allowed to work within a maximum period of six months from the moment they lodge their applications.

- While reception should first and foremost be a responsibility of the host state, civil society can also provide support during the reception process.[4]

[4] As Belgium takes over the Presidency of the EU time is running for achieving a Common European Asylum System (CEAS) by 2012 as has been confirmed by the European Council in the Stockholm programme and in the Stockholm Action Plan. ECRE therefore very much welcomes the fact that the Belgian Presidency has made asylum one of its priorities.

5 ASYLUM PROCEDURES

A refugee's chances of gaining protection depend greatly upon the procedures used to assess asylum cases. Even the most compelling claim for international protection can fail, if it is not fully and fairly considered. Border and immigration authorities must understand the obligation to receive asylum seekers, while legal aid and interpretation services must be available to asylum seekers.

Fair and thorough procedures benefit both refugees and host states by producing high quality asylum decisions at first instance. A right to appeal asylum decisions, and the right to remain in the host country during the appeals process, provide safeguards to ensure that first instance decisions are legally correct. Accelerated procedures should generally not be applied, except to speed up the granting of protection to those in particular need of it.

EU Rules

On 1 December 2005 the EU Asylum Procedures Directive came into force. It was the fifth piece of legislation flowing from the asylum agenda of the Amsterdam Treaty. The deadline for transposition of the Directive, which applies to all Member States except Denmark, passed in December 2007.

The purpose of the Directive is to establish minimum standards for Member State procedures for granting and withdrawing refugee status. It deals with issues such as access to procedures (including border procedures), detention, the examination of applications, personal interviews, and legal assistance. It also defines concepts such as the first country of asylum, safe countries of origin, safe third countries, and European safe third countries.

In ECRE's view the Directive falls short of standards conducive to a full and fair examination of an asylum claim. For example, it provides only severely limited rights to remain pending the examination of an application, to a personal interview, and to free legal assistance.

Further issues of concern include inadequate safeguards for detention, the significant scope for accelerated procedures, failure to require that appeals have suspensive effect, and the sanctioning of border procedures that derogate from the principles and guarantees of the Directive itself. Finally, international refugee law properly focuses on individual circumstances, making the Directive's inclusion of ‘safe third country' and ‘safe countries of origin' concepts alarming.

[3] As Belgium takes over the Presidency of the EU time is running for achieving a Common European Asylum System (CEAS) by 2012 as has been confirmed by the European Council in the Stockholm programme and in the Stockholm Action Plan. ECRE therefore very much

welcomes the fact that the Belgian Presidency has made asylum one of its priorities.

ECRE's position

- Everyone who applies for asylum in the EU should be able to access an asylum procedure as soon as they arrive.
- Everyone should have the right to stay until a final decision has been reached on their case. In order to receive a fair hearing they must also have the right to an interview, interpreter and legal advice.
- Asylum expert teams should be set up to channel resources to countries with less developed asylum infrastructures.
- The quality of asylum decision-making should be improved by sharing expertise, information and best practices among Member States.
- The adoption of minimum standards and the establishment of quality assessment mechanisms as well as the involvement of UNHCR, NGOs and other independent experts, can help raise the quality of asylum decision-making

READMISSION AGREEMENTS BETWEEN EU AND THIRD COUNTRIES.

BACKGROUND: On 1 January 2008, the visa facilitation and readmission agreement between Serbia and the EU came into force.

DEFINITION: Readmission agreements are agreements between States in which they undertake to readmit into their territory their own nationals who have been found in an irregular situation in the territory of the other signatory, as well as other third country nationals and stateless persons who are not their own nationals but who have crossed their territory in transit before being intercepted in the other signatory's territory.

CONTEXT: Bilateral RAs have been used for many years between many European countries, but only when the 1997 Treaty of Amsterdam came into force in 1999 did the (then) European Community have the power to conclude readmission agreements in its own name. The legal basis for concluding RAs was Article 63(3)(b) of the Treaty establishing the European Community (TEC), which provided for the Council to adopt measures concerning "*illegal immigration and illegal residence, including repatriation of illegal residents*". In the Hague Programme (2004-2009) the European Council agreed to appoint a Special Representative for a common readmission policy to facilitate negotiations and improve cooperation of third countries in RAs.

The (2010-14) Stockholm Programme continues to view RAs as an important element in EU migration management and seeks to ensure that "the objectives of the EU's efforts on readmission should add value and increase the efficiency of return policies, including existing bilateral agreements and practices."[5] It calls on the Commission to evaluate EU readmission agreements in 2010 and to propose a mechanism to monitor their implementation.

On 1 December 2009, the Treaty of Lisbon entered into force, which clarifies the competence of the Union in the field of readmission by stating that "The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third country nationals who do not or who no longer fulfill the conditions for entry, presence or residence in the territory of one of the Member States."[6]

The new treaty provides for measures *on illegal immigration and unauthorized residence, including removal and repatriation of persons residing without authorization* to be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure.

(With the entry into force of the Treaty of Lisbon, the European Parliament has also acquired enhanced power to give its consent to international agreements which cover fields to which the ordinary legislative procedure applies, including therefore readmission agreements (Art. 218(6)(a)(v) TFEU). The terms of the European Parliament's involvement in negotiations of all international agreements are subject to an inter-institutional agreement currently being negotiated with the Commission.[7])

THE EU'S READMISSION POLICY:

Since the adoption of the Treaty of Amsterdam, 18 negotiating mandates were granted by the Council to the Commission. To date, 11 RAs are in force and another one, with Pakistan, has been signed. With two countries (Morocco, Turkey) negotiations are ongoing, whereas mandates for the Commission to negotiate readmission agreements exist also in respect of China, Algeria and Cape Verde.

5 Stockholm Programme, Section 6.1.6.
6 Article 79.3 TFEU.

[7] Draft Framework Agreement on relations between the European Parliament and the Commission, Council Document 12717/10, 29 July 2010.

EU RAs in South East and Eastern Europe:

Countries/Entities	Status Readmission Agreement
Albania	Entered into force on 1 May 2006 (on 18 Sept 2007 a visa facilitation agreement was signed with Albania; proposal for visa exemption by end 2010)
Russian Federation	Entered into force on 1 June 2007 - for third country nationals 1 June 2010.
Ukraine	Entered into force on 1 January 2008 - for third country nationals 1 January 2010
Bosnia and Herzegovina	Entered into force on 1 January 2008 (visa facilitation agreement – proposal for visa exemption by end 2010)
Montenegro	Entered into force on 1 January 2008 (visa liberalisation since 19 December 2009)
Serbia	Entered into force on 1 January 2008 (visa liberalisation since 19 December 2009)
Former Yugoslav Republic of Macedonia	Entered into force on 1 January 2008 (visa liberalisation since 19 December 2009)
Moldova	Entered into force on 1 January 2008 (including a visa facilitation agreement)
Georgia	Negotiations concluded. RA shortly to be signed. Visa facilitation agreement already signed.

Criteria for the identification of countries with which to conclude RAs were defined by the Council in 2002. These include: (i) migration pressures on the EU, (ii) regional coherence, and (iii) geographical proximity. **They are not subject to considerations regarding the human rights situation in the target countries and may therefore raise issues in terms of coherence with the fundamental rights principles that the EU seeks to advance in its external relations.**

Although, in principle, RAs are reciprocal arrangements, in practice they serve the EU's interest to curb and control migration flows. To induce third countries to cooperate on readmission, they are therefore generally linked to visa facilitation agreements or other incentives[8], such as mobility partnerships[9].

8 The most common incentives used by the EU-27 MS include special trade concessions, preferential entry quotas for economic migrants, technical cooperation and assistance, increased development aid and short-term visa exemption.

9 Mobility partnerships are tailor made and encompass a broad range of issues ranging from development aid to temporary visa facilitation, circular migration schemes etc. Pilot mobility partnerships have been signed with Cape Verde, Moldova and Georgia. Another one is under discussion with Senegal.

Therefore, RAs are very much part of the current debate focusing on migration and development.
IMPLEMENTATION OF READMISSION AGREEMENTS: In practice, EU readmission agreements are implemented between each Member State and the third country concerned. This might be though previous bilateral arrangements or agreements which Member States had in place with the third country or through the negotiation of implementing protocols. Often, the actual decision about sending a person back and the operation it involves is within the competence of the Member State.

However, it is important to remember that in the implementation process of these agreements or arrangements, Member States have to comply with the **Charter of Fundamental Rights (CFR) and EU law**, **including standards set out in the Return Directive, which provides a common minimum set of legal safeguards which must accompany the issuing of a return decision, and includes a requirement to provide for an effective forced return monitoring system.**[10]

Readmission application Any transfer of an individual to be readmitted must follow an application known as a "readmission application" submitted by the requesting State to the requested State. However, no application is required when the person is in possession of a valid travel document or an identity card and, where necessary, a visa or a residence permit issued by the requested State.

Evidence For the readmission of third-country nationals, the readmission agreements list the documents which constitute evidence making it possible to establish:

- proof that the readmission conditions have been fulfilled;
- prima facie evidence that the readmission conditions have been fulfilled. In such cases, the Member States and the partner country shall consider that the readmission conditions have been fulfilled unless there is proof to the contrary

Time limits :

- The requesting State must submit readmission applications for third-country nationals at most one year after becoming aware of the facts.
- Replies to applications shall be provided in writing within a set time limit from the date of receipt of the readmission application.
- Accelerated Readmission procedures: For some readmission agreements, such as that with Serbia, this time limit is reduced if the individual is apprehended in

10 Directive 2008/115/EC of 16 December 2009 on common standards and procedures in Member States for returning illegally staying third country nationals, Art.8(6).

the border region of the requesting State.

- If there is no reply within the extended time limit, the transfer shall be deemed to have been approved. If the application is rejected, the readmission shall not take place. Rejection decisions must be justified by the requested State. If the application is accepted, the readmission shall take place. In principle, transfers are organised within the three months following acceptance.

THE HUMAN RIGHTS IMPLICATIONS OF READMISSION AGREEMENTS

Key principle: Readmission agreements should be implemented in full compliance with the principle of **non-refoulement**. In the implementation of readmission agreements, EU Member States should ensure that the persons crossing the border irregularly are given the possibility to express their protection needs, in order to avoid being returned – directly or indirectly – to countries where they would be at risk of persecution.

Lack of Human Rights Safeguards

A major concern about readmission agreements is that human rights priorities are often overlooked when organising the technical aspects of readmission procedures.

- First of all, countries are selected with no considerations of their human rights record and their respect for the rule of law.
- Human rights and procedural safeguards, as well as guarantees against *refoulement,* are not sufficiently incorporated or clearly defined in RAs.
- Accelerated readmission procedures pose a particular serious concern as they result in people who have irregularly crossed the border being immediately returned to the third country and prevent asylum seekers from applying for international protection. **It is not unusual for people to be returned without their presence having been recorded, let alone their protection needs or even fear of persecution in the country to which they are being returned having been ascertained.**
- When persons are readmitted to a country with underdeveloped or non-existent asylum systems, it also increases the risk of chain *refoulement* to the country of origin.
- Failing to protect individuals and guaranteeing their right to asylum as a consequence of RAs, could be worsened by the provisions on re-entry bans of up to five years for individuals subject to a removal order or a return

decision in the Return Directive.[11]

NEGOTIATIONS & LACK OF TRANSPARENCY:
Readmission agreements are mandated by the Council and negotiated by the Commission, and subsequently implemented at a bilateral level between each Member State and the concerned third country.
Limited information is available on the negotiating process of Readmission agreements and its content. When negotiations are completed a final text is initialled and the Commission formally submits this text to the Council and (now) to the European Parliament. A joint readmission Committee (JRC) is set up to monitor the implementation of the RA. JRCs are composed of representatives from the Commission, Member States and the other contracting third country.
The European Parliament has criticised shortcomings in RAs concluded to date, particularly from the point of view of human rights protection.[12]
LACK OF MONITORING No monitoring system is in place in order to make sure that EU Member States' international obligations are fully respected. This is problematic since RAs do not propose any measures to support the reintegration of returnees and, with some exceptions, do not stipulate the conditions for reception in a humane manner in the country of transit or origin. It is also important that RAs are accompanied with resources to ensure the sustainability of return since there are issues concerning the capacity of third countries to implement the RA. Generally, RAs are accompanied by provisions for financial assistance. The use of EU funds, allocated to support implementation by the Member States of the removals carried out in the framework of an EU RA, should be monitored by the EP in the exercise of its budgetary functions. Political control on the spending stemming from RAs would be facilitated if the EP were represented in the JRCs and had access to information relating to the implementing phase of EU RAs.
LACK OF EVALUATION: To date there are no accurate data allowing a comprehensive evaluation of readmission agreements in terms of their effectiveness and human rights implications. The Commission collects data from Member States on returns/removals under Regulation 862/2007 (on Community statistics on migration and international protection). However, reported data do not provide any information regarding the impact of EU RAs on the overall number of third country nationals who were removed from the EU.
As part of the evaluation to be undertaken by 2010, the Commission sent a questionnaire following the structure of RAs to the

[11] Return Directive, Article 11.
[12] See for instance, oral question submitted on 8 January 2010: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+OQ+O-2010-0001+0+DOC+XML+V0//EN&language=EN

Member States and the third countries with which the EU has RAs in place. The information received through the questionnaires is being analysed and will be part of the evaluation which will be published in the form of a Communication.

ECRE RECOMMENDATIONS

[ECRE always ensures that its policy documents/publications are disseminated to the concerned target group and to a wider audience working on the issues. This is a strategic view based on the notion that a good policy paper should aim to have the widest dissemination to its various advocacy targets.]

1. Explicit Human Rights safeguards and guarantees against refoulement should be included in all EU RAs
2. EU RAs should ensure access to protection at the external borders of the EU for all asylum seekers. The practice of simplified or accelerated procedures, whether under the RAs and their implementing agreements or under informal arrangements, should be closely monitored against possible infringements of the right to asylum.
3. The EU should consider the human rights situation and the availability of a well-functioning asylum system in third country before entering into negotiations on, or implementing, readmission agreements with that country.
4. The European Parliament should be fully involved in the implementation phase of EU RAs.
5. NGO input to the JRCs should be encouraged
6. Follow-up and monitoring should take place for people readmitted and include access to all holding facilities
7. Where returns in the context of readmission agreements have led to human rights abuses or refoulement they should be suspended until the risk of such treatment can be eliminated
8. The Commission should adopt an evaluation process of EU RAs that assesses not only their effectiveness from the point of view of returns, but also their implications in terms of respect for the EU Charter on Fundamental Rights.
9. Statistics on readmission should be comprehensive by including data on returns further to bilateral readmission arrangements and more readily available

For more information see report by the Justice Freedom and Security department: "Readmission policy in the European Union" 2010 at www.europarl.europa.eu/studies

DUBLIN II REGULATION [DETERMINING RESPONSIBILITY]

Act Entered into force: 17.3.2003

This regulation **replaces** the provisions of the **1990 Dublin** Convention with Community legislation. Its objective is to identify as quickly as possible the Member State responsible for examining an asylum application, to establish reasonable time limits for each of the phases of determining the Member State responsible, and to prevent abuse of asylum procedures in the form of multiple applications.

SUMMARY

"In accordance with the Dublin Regulation, Member States have to assess which Member State is responsible for examining an asylum application lodged on their territory on the basis of objective and hierarchical criteria. The system is designed to prevent "asylum shopping" and, at the same time, to ensure that each asylum applicant's case is processed by only one Member State.

Where another Member State is designated responsible under the criteria in the Regulation, that State is approached to take charge of the asylum seeker and consequently to examine his/her application. If the Member State thus approached accepts its responsibility, the first Member State must transfer the asylum seeker to that Member State.

In the case where a Member State has already examined or begun to examine an asylum application, it may be requested to take back the asylum seeker who is in another Member State without permission.

The Member State responsible where the applicant is transferred must then complete the examination of the application.

GENERAL PRINCIPLES

An asylum application is to be examined by only one Member State. Any Member State may decide to examine an asylum application, even if such examination is not its responsibility under the criteria of this Regulation.

The situation of a minor must be indissociable from that of his/her parent or guardian lodging an asylum application."

ECRE'S POSITION ON THE DUBLIN 'SYSTEM'

The 'Dublin Regulation' establishes a hierarchy of criteria for identifying the EU Member State responsible for processing an asylum claim. Usually this will be the state through which the asylum seeker first entered the EU. The Regulation aims to ensure that each claim is examined by one Member State, to deter repeated applications, and to enhance efficiency.

ECRE argues that the application of this regulation can seriously delay the presentation of claims, and can result in claims never being heard. Causes of concern include the use of detention to enforce transfers of asylum seekers from the state where they apply to the state deemed responsible, the separation of families, the denial of an effective opportunity to appeal against transfers, and the reluctance of Member States to use the sovereignty clause to alleviate these and other problems. The Dublin system also increases pressures on the external border regions of the EU, where states are often least able to offer asylum seekers support and protection.

The Dublin system impedes integration of refugees by delaying the examination of asylum claims, by creating incentives for refugees to avoid the asylum system and live 'underground,' and by uprooting refugees and forcing them to have their claims determined in Member States with which they may have no particular connection.

"The Dublin system fails to ensure that refugees are protected and wrongly assumes that there is a level playing field in the EU."

ECRE recommended that:

- The determination of the country responsible for a claim should not result in transfers to Member States that cannot both guarantee a full and fair hearing of asylum claims, and provide reception conditions that at the very least comply with the EU Reception Directive.
- Applicants must have a right to remain in the country where they have requested asylum while appealing against transfer.
- The definition of a family should be extended, and refugees should be able to join any family member lawfully present in the EU.
- The Dublin system should allow Member States to prevent the transfer of vulnerable persons that may require specialised treatment.

ECRE has called for an immediate improvement of the system in practice. Ultimately the Dublin Regulation should be abolished and replaced by a more humane and equitable system that considers the connections between individual asylum seekers and particular Member States

THE COMMISSION PROPOSAL RECASTING[13] THE DUBLIN REGULATION

The Dublin Regulation continues to create hardship and unfair consequences for asylum seekers and persons in need of international protection. Based on the myth that protection standards are equivalent throughout the EU and the associated states, the Dublin system

[13] proposed amendments. Please see briefing paper on 'recasting.'

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 national courts across Europe as in numerous cases transfers of asylum seekers under the Dublin Regulation have been suspended on the basis that they would result in such human rights violations, including refoulement. While it remains ECRE's position that the Dublin system is an obstacle to an efficient, harmonised and humane CEAS, the organisation acknowledges that the Commission proposal recasting the Dublin Regulation introduces a number of significant improvements to the existing system. These amendments would, if adopted, indeed mitigate some of the negative effects that its operation may have on asylum seekers.

In relation to the recasting of the Dublin regulation ECRE calls upon the Council and the European Parliament in particular to:

- Ensure that the right to information (recast Article 4) and a personal interview (recast Article 5) is guaranteed in all circumstances before a transfer decision is taken and therefore refrain from introducing exceptions to these rights.
- Ensure that the right to an effective remedy against a Dublin transfer is guaranteed in the recast Regulation. In line with Member States legal obligations, such a remedy must have a suspensive effect.
- Seek consensus on the need for a temporary suspension mechanism as an integral part of the Dublin system in order to allow the EU institutions to intervene effectively whenever asylum seekers may become the victim of dysfunctional asylum systems in the Member States.
- Ensure that detention of asylum seekers within the Dublin system remains a measure of last resort by upholding the principle in recast Article 27 (2) that individuals can only be detained for the purpose of carrying out a transfer after the Dublin decision has been taken and only if there is a significant risk of absconding

THE HAGUE PROGRAMME

THE ACT: *"Communication from the Commission to the Council and the European Parliament of 10 May 2005 – The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice [COM(2005) 184 final – Official Journal C 236 of 24.9.2005]."*

The Hague Programme, adopted at the European Council of 4 and 5 November 2004, sets out 10 priorities for the Union with a view to strengthening the area of freedom, security and justice in the next five years.

*"The Commission feels that efforts should be **concentrated on 10 priorities**[14]:*

The following are the Commission's priorities vis a vis migration and refugees:

***Defining a balanced approach to migration**. The Commission intends to come up with a new, balanced approach to dealing with legal and illegal immigration. This involves fighting illegal immigration and the trafficking of human beings, especially women and children. The Hague Programme provides for the adoption of a communication and a plan for legal immigration.*

The proper management of migration flows also involves greater cooperation with third countries in all fields, including the readmission and return of migrants. The measures introduced by the Commission to achieve this include the "Solidarity and Management of Migration Flows" framework programme, which covers the creation of an External Borders Fund, an Integration Fund, a Return Fund and a European Refugee Fund.

***Developing integrated management of the Union's external borders**. Within the Union, the free movement of persons is made possible by the removal of internal border controls. This requires greater efforts to strengthen the integrated management of external borders. The FRONTEX-Agency has been set up to manage external borders and may be given additional tasks in the future. Equally important is the creation of an effective visa policy through development of, for example, a visa information system and, in the future, a common European consular service. One of the short-term priorities is to make identity and travel documents more secure by*

[14] 1 Strengthening fundamental rights and citizenship. Anti-terrorist measures. 2 Defining a balanced approach to migration. 3 Developing integrated management of the Union's external borders. 4 Setting up a common asylum procedure. 5 Maximising the positive impact of immigration. 6 Striking the right balance between privacy and security while sharing information. 7 Developing a strategic concept on tackling organised crime. 8 A genuine European area of justice. Sharing responsibility and solidarity

equipping them with biometric identifiers.

***Setting up a** common asylum procedure. The Commission aims to set up a harmonised and effective asylum procedure. In the short-term, it will be submitting a proposal for a directive concerning long-term resident status for refugees and in the medium-term, once the way in which existing legislation is being applied has been assessed, it will propose a common procedure and status for refugees. Operational cooperation in the field of asylum will be continued and maintained, notably by way of the European Refugee Fund.*

***Maximising the positive impact of immigration**. Immigrant communities must be integrated if they are not to become isolated and excluded from society. The Commission encourages Member States to push ahead with their integration policies in order to help improve mutual understanding and dialogue between religions and cultures. It also intends to set up a **European framework for integration** and to promote a structural exchange of experience and information on integration."*

CONTEXT

At the Tampere Council in 1999 the European Council decided to create a Common European Asylum System, based on certain principles, including the promise of protection. Building on the decisions made at the Tampere Council, the European Council adopted the **Hague Programme** for the area of Freedom, Security and Justice on 5 November 2004. The Hague Programme highlights the EU policy priorities for the period of 2005-2010.[15]

The Hague Programme included a commitment to change the **decision-making system** for most EC immigration and asylum law no later than 1 April 2005, increasing Qualified Majority Voting (QMV) in the Council and the use of the co-decision procedure with the European Parliament.

Some observers argued that new asylum measures could already be adopted with QMV/co-decision if they do not refer to asylum procedures. But the consensus seems to be that no asylum measures will be introduced under the QMV/co-decision procedure until after the Council has adopted the Procedures Directive. Under the co-decision procedure the influence of the Parliament is expected to increase substantially. Under the consultancy procedure the Council had to consult the Parliament but was not obliged to do more than to take their views under consideration. The use of co-decision means the Parliament will have increasing powers and no longer be only consultative. The Parliament will share the legislative power with the

[15] ECRE, 'ECRAN Advocacy Manual: ECRE's Advocacy positions and activities relating to issues on the EU asylum agenda and related matters', July 2005.

Council, which will no longer be able to ignore or not take on board the views of the Parliament.

ECRE's INITIAL RESPONSE:

"The aim of the Common European Asylum System in its second phase is the establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection", based on "the full and inclusive application of the Geneva Convention on refugees and other relevant Treaties".

- The Procedures Directive should be adopted "as soon as possible".
- The Commission should evaluate the legislation of the first phase by 2007.
- Second phase instruments should be adopted by 2010, i.e. the deadline for the Common European Asylum System is set on 2010.
- The Commission should prepare two feasibility studies; i.e. on joint processing of asylum applications both within and outside the EU.
- The Commission and the Council should establish "appropriate structures involving the national asylum services of Member States with a view to facilitating practical and collaborative cooperation".
- Funds should be made available to assist Member States in the processing of asylum applications and in the reception of categories of third-country nationals.
- Partnership with third countries is important for improving their capacity for refugee protection.
- The Commission should develop Regional Protection Programmes.
- An effective removal and repatriation policy should be established, including the adoption of a Returns Directive, the establishment of a European Return Fund and a common Readmission Policy.
- All measures in JHA, except for legal migration, will be decided upon by Qualified Majority Voting in the Council with co-decision with the Parliament.[16]

The Commission adopts the report on implementation of the Hague Programme (July 2008)

The European Commission adopted its third annual report on the implementation of the Hague Programme, assessing the achievements in the area of Justice, Freedom and Security in the year 2007.

The report, also referred to as the 'Scoreboard', found that that the achievements were "rather

[16] ECRE, 'ECRAN Advocacy Manual: ECRE's Advocacy positions and activities relating to issues on the EU asylum agenda and related matters', July 2005.

unsatisfactory", revealing a lower rate of achievement (38%) compared to 2006 (53%). With regard to the Common European Asylum System, "some progress" was reported, but "overall the results in this fields are nonetheless mixed". As achievements in the field, the Commission identified the evaluation of the transposition and implementation of the legal instruments of the first phase of a Common European Asylum System, the completion of the Policy Plan on Asylum and the proposal for an amendment of the Long Term Residence Directive in order to extend its scope of application also to the beneficiaries of international protection.

GREEN PAPER ON THE FUTURE COMMON EUROPEAN ASYLUM SYSTEM

CONTEXT (*Europa* Press release: 06/06/2007)

Green Paper on the future Common European Asylum System

*"The Common European Asylum System (CEAS), as defined in the Tampere and the Hague Programme, was intended to be built in two phases. The first one, comprising four main legal instruments, is now complete. According to the Hague Programme, the second phase instruments should be adopted by the end of 2010. Before coming forward with the new proposals, the Commission is launching, with the present **Green Paper**, a wide debate on the future architecture of the Common European Asylum System, inviting all relevant stakeholders to express their views and make constructive suggestions on the form the CEAS should take."*

*The four building blocks of the first stage of the Common European Asylum System are now in place: Regulation (EC) 343/2003 **("Dublin Regulation**"), Directive 2003/9/EC ("**Reception Conditions Directive**,") Directive 2004/83/EC ("**Qualification Directive**") and Directive 85/2005/EC ("**Asylum Procedures Directive**"). These legislative instruments aim at establishing a level playing field: a system which guarantees to persons genuinely in need of protection access to a high level of protection under equivalent conditions in all Member States while at the same time dealing fairly and efficiently with those found not to be in need of protection.*

The ultimate objective of the Common European Asylum System, as envisaged by the Hague Programme, consists in the establishment of a common asylum procedure and a uniform status for persons in need of international protection valid throughout the EU. For this objective to materialize, the Hague Programme invited the Commission to submit the second phase instruments to the Council and European Parliament with a view to their adoption before the end of 2010.

*The **Green Paper** presents comprehensively a broad range of issues that will have to be addressed in the **second phase**. In particular, it identifies four main areas where further action is necessary and these areas form its four main chapters, i.e **Legislative instruments; Implementation- Accompanying measures; Solidarity and burden-sharing and the External dimension of asylum.***

*The goal pursued in the first stage was to harmonise the Member States' legal frameworks on the basis of common minimum standards. The goals in the second stage should be to achieve both a **higher common standard of protection and greater equality in protection across the EU and to ensure a higher degree of solidarity between EU Member States.***

Achieving these objectives will mean filling existing gaps in the current asylum acquis and pursuing legislative harmonisation based on high standards. This could imply further approximating national rules regarding aspects such as border procedures, appeals procedures or rights and benefits attached to the protection status granted.. Significant progress towards the establishment of a common asylum procedure may furthermore be achieved by including as a mandatory element in the CEAS a single procedure for assessing applications for refugee status and for subsidiary protection.

To complement the harmonisation of legislation it is also necessary to harmonise asylum practices with a view to improving the quality of decision-making; this can be achieved by further approximating national practices and jurisprudences, for instance through the development of common guidelines on the interpretation and application of different procedural and substantial facets of the EU asylum acquis, like gender- or child-specific persecution or detection and prevention of fraud or abuse. It is also necessary to ensure adequate structural support for all rapidly expanding practical cooperation activities. One option to be explored could be the transformation of the structures involved in practical cooperation into a European support office, as envisaged by the Hague Programme,. Such an office could for instance incorporate a training facility and provide structural support for any processing activities that Member States may undertake jointly in the future and support Member States' joint efforts to address particular pressures on their asylum systems and reception capacities resulting from factors such as geographical location.

Furthermore, there is a pressing need for increased solidarity in the area of asylum, so as to ensure that responsibility for processing asylum applications and granting protection in the EU is shared equitably.

Finally, ways also need to be explored for increasing the EU's contribution to a more accessible,

equitable and effective international protection regime."

ECRE'S POSITION

ECRE initial response to Commission's Asylum package (Brussels, 6 June 2007) The European Council on Refugees and Exiles today welcomed the publication by the European Commission of a Green Paper on the future of the Common European Asylum System (CEAS), together with a long overdue evaluation of the Dublin System, and proposal for a Directive on long-term residence for beneficiaries of international protection.

ECRE EU Representative said:

"It is good to see refugee protection and human rights back on the EU agenda, which for too long has been dominated by the fight against irregular migration. Recent tragedies in the Mediterranean have exposed the lethal consequences of an approach geared to deterrence and responsibility-shifting. Europe needs a sensible discussion on how to live up to our international duties, to share responsibility for refugee protection fairly between member states, as well as with the rest of the world, and to set common standards consistent with fundamental rights for an asylum system that we can be proud of. The aim of a common asylum system must be to create a level playing field, where any person seeking protection will be treated in the same way, according to the same high standards, wherever they apply for asylum in the EU."

ECRE's 2004 assessment of the **first stage** of the creation of a CEAS warned that the legislation adopted would not ensure that refugees would be guaranteed protection across **the whole** of the European Union. Nor would it effectively share the responsibility for receiving refugees between member states or contribute significantly to the approximation of national practices. While the harmonisation process has resulted in improvements in some member states, with several countries having to introduce major new legislation in order to meet the minimum standards required, serious flaws and divergences remain.

ECRE is pleased that the **Green Paper on the future Common European Asylum System (CEAS**) puts **refugee protection** back on the EU agenda, which for too long has been dominated by the fight against irregular migration. In its response to the Green Paper ECRE welcomed that the Green Paper opened up this discussion to **all stakeholders**, including **NGOs and refugees and asylum seekers themselves**.

ECRE's interest lies more in member states adhering to their international obligations, than in whether they are unfairly burdened by doing so. But the absence of any mechanism to share responsibility equitably between member states simply encourages responsibility-shifting.

The introduction of a mechanism for **sharing responsibility** more equitably would discourage member states from pursuing policies aimed at deterring asylum seekers or deflecting them to another member state.

The goal of the second stage of the creation of a Common European Asylum System, as formulated by the Commission, is **"to achieve both a higher common standard of protection and greater equality in protection across the EU and to ensure a higher degree of solidarity between EU Member States."** Given the low current standards in a number of areas, the aim of achieving "higher" standards may be rather modest.

The **primary** objective must be to ensure that EU asylum law is in accordance with the **1951 Geneva Convention** and other relevant treaties.

A **secondary aim** must be to ensure that no person who would be recognised as in need of protection in one part of the Union would face a risk of **refoulement** in another. **Europe needs to recognise that the system fails not when a member state fails to expel a person who is in breach of immigration rules, but when a person is wrongly sent to a place where they face persecution, torture, serious harm as a result of armed conflict, inhuman or degrading treatment.** People seeking protection should not be forced to risk their lives in order to reach a place of safety in the EU, and should not be left in a limbo, without a legal status or passed 'in orbit' from one member state to another, or to a third state.

GREEN PAPER PUBLIC HEARING

The Commission organised a public hearing on the future of the Common European Asylum System (CEAS) on 7 November 2007. This hearing marked the end of the public consultations on the future of the CEAS that started with the publication of the Green Paper in June 2007.

About 280 participants attended the event, which focused on three thematic areas*: the Legal Framework and integration issues; Dublin, burden sharing and practical cooperation; and the external dimension, resettlement and mixed flows*. Justice, Liberty and Security Commissioner Franco Frattini opened the hearing by ensuring that the second stage of the establishment of a Common European Asylum System will aim at achieving higher standards and greater equality. He identified seven major lines that have emerged from the 82 responses to the Green Paper:

- A preference towards evolution rather than revolution: fill gaps in the existing instruments;
- Confirmation of the need for a common procedure, further harmonisation of

reception conditions and a uniform status;
- Legislation is not all: improve practical cooperation as well. Establish a
European Asylum Support office;
- More should be done to address the needs of vulnerable groups;
- The Dublin system needs to be fine-tuned;
- Resettlement: we do need a new way to express solidarity between Member
States and third countries;
- The asylum-migration nexus. Access to protection should be guaranteed:
Need to avoid border control measures resulting in obstacles to access protection.

Bjarte Vandvik, Secretary General of ECRE, said that ''Preventing asylum seekers
from choosing their host country represents an obvious injustice. We often hear talk
of "asylum shopping" but the reality is more a dangerous "asylum lottery", he added.

THE LISBON TREATY

The Lisbon Treaty was signed by the 27 European Union Member States on 13 December 2007. [17]

"*The Member States who drew up the Lisbon Treaty together recognised that the existing treaties did not equip the European Union with the tools it needs to face these challenges and deal with these changes.*

The Lisbon Treaty amends and updates earlier EU treaties

• It takes account of the fact that the EU has grown from the six founding Member States to its present 27 and the many developments in the last 50 years.

• The Lisbon Treaty, if approved in all 27 EU countries, will improve working methods to ensure that the Union does its business as efficiently and effectively as possible in the 21st century.

• It helps the EU to serve your interests better, and gives you a direct say in European matters through the new Citizens' Initiative.

• It protects your rights with the Charter of Fundamental Rights.

• It strengthens the role of the European Parliament and gives new powers to national parliaments.

• It makes decision-making at the European level more efficient.

• It helps the EU to speak with a single voice in the world.

• It introduces new measures to tackle pressing issues that affect our

[17] For the Treaty to enter into force, all of the EU countries must approve it in accordance with their national procedures.

quality of life, like climate change, cross-border crime and energy.

• *At the same time, it protects the rights of each Member State, especially in sensitive areas such as taxation and defence.* " **© European Communities, 2009**

THE LONG ROAD TO RATIFICATION

A declaration issued at the EU's Laeken summit in 2001 called for a Convention on the future of Europe to look into the simplification and reorganisation of the EU treaties, and raised the question whether the end result should be a constitution.

The Convention began work in February 2002 and a constitution was signed in Rome two-and-a-half years later, in October 2004. But that text became obsolete when it was rejected by French and Dutch voters in 2005.

Work began in earnest on a replacement treaty during the German EU presidency, in the first half of 2007, and agreement on the main points of the new treaty was reached at a summit in June that year.

Negotiations continued behind the scenes over the following months, until a final draft was agreed by the leaders of the 27 member states in October 2007.

The Lisbon Treaty went into effect eight years after European leaders launched a process to make the EU "more democratic, more transparent and more efficient".

The last country to ratify the treaty was the Czech Republic, which completed the process on 3 November 2009. The treaty became law on 1 December 2009.

Like the proposed European constitution before it, the treaty is often described as an attempt to **streamline EU** institutions to make the **enlarged bloc of 27** states function better. But its opponents see it as part of a federalist agenda that threatens national sovereignty.

The planned constitution was thrown out by French and Dutch voters in 2005. The Lisbon Treaty which succeeded it was rejected by Irish voters in June 2008, but got overwhelming support in a second referendum on 2 October 2009.

THE KEY ASPECTS OF THE TREATY

- A politician is chosen to be **President** of the **European Council** for two-and-a-half years. But ministerial meetings will still be chaired by the country holding the six-month rotating EU presidency.
- Creation of a new post - called **High Representative** - combining the jobs of the existing foreign affairs supremo and the external affairs commissioner to give the EU more influence on the world stage.

- The European Commission will continue to have **27 commissioners** - one from each member state. The previous Nice Treaty envisaged a smaller commission - but this idea was dropped as a concession to the Irish Republic in 2008.
- A redistribution of voting weights between the member states, phased in between 2014 and 2017 - **qualified majority voting** (QMV[18]) based on a "double majority" of 55% of member states, accounting for 65% of the EU's population.
- New powers for the **European Commission, European Parliament and European Court of Justice,** for example in the field of justice and home affairs.
- The **parliament** will be on an **equal footing** with the **Council** - the grouping of member states' governments - for most legislation, including the budget and agriculture. This is called "co-decision".
- Removal of national vetoes in a number of areas, including fighting climate change, energy security and emergency aid. Unanimity will still be required in the areas of tax, foreign policy, defence and social security.

POSSIBLE IMPLICATIONS OF THE LISBON TREATY ON IMMIGRATION AND ASYLUM LAW

- Legislative competences of the European Union in immigration and asylum law **have not been** fundamentally extended or modified by the Lisbon Treaty. It should be noted that **Article 79** obliges the Union to develop a **common immigration policy** "aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat illegal immigration and trafficking in human beings."
- The Lisbon Treaty introduced several changes to EU policy making processes and may have repercussions for the way in which the **Stockholm** programme is implemented. For example, with regards to **integration** the treaty sets out the legal basis for developing EU policies, specifically *'measures to provide incentives and support'* for the integration of third-country nationals. This should make integration policies included in the Stockholm programme easier to push forward.

[18] Asylum policy is subject to QMV (Co-decision) Art. 78 TFEU

THE STOCKHOLM PROGRAMME

"An open and secure Europe serving and protecting the citizen."

*The Stockholm Programme is a **five-year plan** with guidelines for justice and home affairs of the member states of the European Union for the years **2010 through 2015**.*

The European Parliament approved the Stockholm programme on 25th November 2009.

PURPOSE

"To define the framework for EU police and customs cooperation, rescue services, criminal and civil law cooperation, asylum, migration and visa policy for the period 2010–2014."

GOALS

Regarding asylum and forced migration are to:

- create a single area of protection
- share responsibilities and uphold solidarity between the Member States
- achieve solidarity with non-member countries to remove the need to seek international protection
- further action and cooperation on combating the trafficking of human beings.

CONTEXT

After the **Tampere Programme of 1999** and the **Hague Programme of 2004** (which expired in December 2009) it is the third programme of its kind for the states of the European Union. It has been prepared by the Swedish Presidency of the Council of the European Union on its informal meeting on July 15 through 17 of 2009 and was named after the place of its publication. After decisions-making by the ministers of the interior and the ministers for justice on the first of December it was presented to the European Council on 10th and 11th that month for the final referendum on its summit in Brussels for the period 2010-2014.

OVERVIEW

There are two notable new elements added into the Stockholm Programme:

The first is the strategy to prepare a Communication on an EU agenda for integration for late 2010, which will set out the priorities for integration programmes in the next 5 years.

The second is the Communication on the social and economic integration of the Roma in Europe,

ECRE POSITION

The Stockholm Programme determines the EU's priorities and action on international protection from 2010 to 2014. It aims to provide an opportunity to bring the Common European Asylum System (CEAS) closer to what it should be: a fair and efficient common asylum system across the Union, which could also serve as a model to other regions of the world. So far, the EU has been able to set common minimum standards in the field of asylum.

However, these standards are still subject to varying interpretation and derogations, and the way they are implemented in EU countries varies widely. Moreover, building a CEAS will be meaningless if persons seeking protection are not able to reach the EU. Border control measures must therefore be sensitive to the needs of people seeking protection.

What matters

- Persons seeking protection should be able to access Europe and asylum procedures. The sovereign right of States to control their borders must be reconciled with the individual right to seek and enjoy protection from persecution. Methods employed to prevent unauthorised entry of migrants in the EU should allow for those seeking protection to be identified so that they can claim asylum.

- Good initiatives to ensure compliance with human rights standards at the borders and better access for asylum seekers to the asylum procedure exist in the EU. For example, tripartite border monitoring agreements, which provide UNHCR and NGO partners with permission to visit border areas and detention centres, are in place in Hungary, Slovenia, Romania and the Slovak Republic. The European Parliament should support the expansion of such border monitoring activities to all countries, with assistance from the External Borders Fund.

- Decisions made on asylum claims should be consistent and of high quality Is it acceptable that two persons of the same nationality, with similar histories, receive different decisions on their claims for asylum, depending on which EU country takes the decision? Given the continuing disparities in the quality of national asylum systems and positive decisions (so-called recognition rates), better and more systematic monitoring of compliance with the EU legislation is required. Mechanisms guaranteeing the quality of EU asylum procedures should be developed in cooperation with UNHCR and NGOs. EU countries should increase their practical cooperation and share information on asylum practices to address problems of consistency and quality. This will support the fundamental rights of people needing protection, discourage secondary movements and help the EU to reach its harmonisation objective.

- Responsibility sharing must focus on offering the best possible level of protection

A number of options are possible to answer certain Member States' calls for assistance in the face of significant numbers of people arriving irregularly at their frontiers and straining the capacity of their asylum, reception and integration systems (so-called "particular pressure"). Responsibility-sharing could include relocating people recognised as refugees, or in need of other form of international protection, to another EU Member State; family reunification, the suspension of returning of an applicant back to the point of entry into the EU, and sending asylum support teams to reinforce the capacity of a particular Member State. Intra-EU solidarity should not come at the expense of solidarity with third countries (including through resettlement). Member States benefiting from responsibility-sharing mechanisms must continue to strengthen and improve the capacity and quality of their asylum and reception systems.

- The EU shows solidarity by resettling refugees. The number of EU countries involved in resettlement and the numbers of refugees resettled in the EU remains low but is slowly rising. While UNHCR identified 121,000 people in need of resettlement in 2008, EU countries offered a home to only 5,603 people that year through resettlement programmes in ten countries. By comparison, over 60,000 refugees were resettled to the US. A Common European Resettlement Programme would be a welcome development as it should lead to a greater number of resettlement places in the EU and as a result offer a new future to more refugees in need, and show the EU's solidarity vis-à-vis countries in the developing world which host large numbers of refugees.

THE QUALIFICATION DIRECTIVE

"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 and the content of the protection granted."

In April 2004 the EU introduced the Qualification Directive, **one of five legal instruments** that make up the **EU acquis (body of law) on asylum**. The Directive came into force in **October 2006.**

BACKGROUND:

This Directive aims to **harmonise** the way Member States provide

refugee protection, and requires Member States to provide "subsidiary protection" to people at risk of serious harm. At the same time, it sets minimum rights that persons qualifying for international protection should receive. A person's chances of being granted asylum still vary hugely according to the country where the asylum seeker has his or her asylum claim processed. The Qualification Directive has raised standards by introducing a European subsidiary protection and by requiring the recognition of non-state actors of persecution, but in many other respects it has encouraged Members States to lower their standards

DEFINITION/PURPOSE

The purpose of the Qualification Directive is to harmonise the criteria by which Member States **define who qualifies as a refugee**, as well as other forms of protection for persons who face serious risks in their country of origin (subsidiary protection).

CONTEXT

The original objective of the Directive is to ensure that persons fleeing persecution are identified and have access to the same level of protection, regardless of the Member State where they lodge their asylum application. In ECRE's view the Qualification Directive has not achieved its objectives. UNHCR and ECRE's studies on the application of this Directive clearly demonstrated that the possibility of finding protection varies dramatically from one Member State to another. At present, the Directive allows for extensive divergence in practice among Member States, undermining not only the EU's harmonization objective, but also the rights of people needing protection. It is imperative to guarantee that people fleeing persecution can find protection and enjoy the same level of rights across Europe.

THE HUMAN RIGHTS IMPLICATIONS OF THE QUALIFICATION DIRECTIVE

The Qualification Directive largely reflects pre-existing Member State practice, with notable exceptions such as the introduction of non-state persecutors and gender-based persecution in states that did not previously use them, and the institution of EU-wide subsidiary protection. The directive leaves considerable scope for states to use evidentiary rules to deny protection, leading some to fail to thoroughly investigate each claim. In applying subsidiary protection, states are increasingly redefining concepts such as "internal armed conflict" to deny protection. The directive's exclusion clauses do not reflect international law, and leave dangerous scope for states to deny protection to deserving refugees. The binding provisions requiring social rights for refugees are mostly respected, probably because they reflect obligations already present in the Refugee Convention. By contrast, the Directive leaves almost complete discretion to deny rights to subsidiary protection beneficiaries.

Most states have chosen not to exercise this discretion, choosing instead to provide
the same social rights to subsidiary protection beneficiaries as to refugees. One key conclusion, it is that considerable scope remains for future harmonisation of EU qualification standards.

The directive provides Member States with many opportunities to exceed its minimum standards – expand the definition of "particular social group"; reduce the scope for procedural penalties; fill the protection gaps opened by the IPA (Internal Protection Alternative) ; and more - in ways that would make little difference to most states, but would greatly improve individual lives. States that apply restrictive evidentiary rules or use the IPA or exclusion clauses to refuse protection, for example, have not seen a dramatic change in the number of asylum applications they receive. Rather than exploring the lowest limits of protection it requires, Member States should recall the Directive's fundamental purpose, and use it as a tool for "the full and inclusive application" of the Refugee Convention.8

KEY ECRE RECOMMENDATIONS:

Conditions for granting refugee status should be harmonised at a higher level
Despite the adoption of the Directive, there are still very different interpretations of the refugee definition across the EU. Certain provisions of the Directive should be amended to ensure that the right to seek and enjoy asylum is applied according to the same high standards in all Member States.

- The current provisions on "**actors of protection**" are a source of particular concern as they inappropriately envisage that a militia or a clan can provide protection to a person in the same way as a State.

- The notion of **"internal protection"** in the country of origin is also problematic. There is no guarantee that people can safely access an area in their country of origin where they would not be at risk, as required by the European Court of Human Rights.

- Persons who do not meet all the conditions to be recognised as a refugee may nonetheless need protection (so called subsidiary protection). Persons fleeing a situation of "indiscriminate violence" should not have to demonstrate that this violence is directed at them as individuals. Generalised violence in some countries is so serious that it should be a sufficient argument to be granted protection.

- **Refugee status should only end when all reasons for persecution have ceased**

Refugees may cease to need protection when the circumstances in the country of origin which led to the granting of protection have ceased to exist or have changed fundamentally. The so-called cessation clauses included in the Directive should be amended to be fully consistent with the 1951 Refugee Convention. They should include exceptions to cessation of refugee status when the person faces new threats of persecution despite the change of situation in the country of origin.

- **Reasons for refusing refugee status to persons who have committed crimes should be more closely aligned with international law**

The 1951 Refugee Convention sets out the circumstances in which States may exclude persons from refugee status because the crimes they have committed are so serious that they do not deserve protection (so-called "exclusion clause"). Provisions on exclusion in the Directive require amendment so that the Directive does not go beyond the exhaustive criteria for exclusion as set in the 1951 Refugee Convention.

- **Persons fleeing persecution and other forms of serious harm should have access to an equivalent level of rights**

Refugees and other persons needing protection are often fleeing equally serious situations and for long periods of time. Their rights should be equivalent.

- **Applicants should enjoy the benefit of the doubt**

Accelerated procedures appear to be based on a 'culture of disbelief' whereby most asylum seekers are presumed to be abusing the system. The focus should be on fair and efficient procedures able to identify persons in need of protection. Lack of documents or late submission of claims should not automatically be considered as evidence of insufficient cooperation or lack of credibility.

'RECASTING' THE QUALIFICATION DIRECTIVE

ECRE welcomes the opportunity provided in the recast proposal of the Qualification Directive to ensure higher protection standards and to increase the harmonisation of existing protection standards across Europe. However, the recast proposal does not address all the issues surrounding the implementation of this Directive. Accordingly, Member States should ensure that they utilise their ability to adopt more favourable standards under Article 3 of the Directive. During negotiation, rather than exploring the lowest limits of protection it requires, Member States and the EU institutions should recall the Directive's fundamental purpose and use it as a tool for "the

full and inclusive application" of the 1951 Refugee Convention.

ECRE has published its assessment of the European Commission Proposal to recast the Qualification Directive.
http://www.ecre.org/files/ECRE_Position_Recast_Qualification_Directive.pdf

ECRE generally welcomes the proposal and acknowledges that it raises the standards of protection and constitutes a step forward in harmonising eligibility criteria for international protection and its content at EU level. ECRE particularly welcomes the alignment of rights granted to refugees and subsidiary protection beneficiaries and the amendments to the definition of a family member, the actors of protection and the internal actors of protection. Notwithstanding this ECRE provides recommendations to further strengthen the Qualification Directive in line with international refugee and human rights law.

ECRE calls on the Council and the European Parliament in particular to:

- Ensure that the content of rights for refugees and beneficiaries of subsidiary protection status are aligned in the Qualification Directive thus resulting in a uniform status for all beneficiaries of international protection across the EU.
- Further amend recast Article 7 of the Commission proposal with regard to actors of protection and international protection alternative to ensure that only State actors can be considered as actors of protection.
- Further amend recast Article 8 on internal protection alternative to insert a strong presumption against the existence of an internal protection alternative when States or actors associated with States are actors of persecution or serious harm.
- Maintain the requirement in recast Article 8 that the applicant can be "reasonably expected to stay" in order to ensure that the person concerned can relocate to the country of origin and lead a relatively normal life there, without undue hardship.
- Maintain the deletion of the possibility to apply the internal protection alternative despite technical obstacles in recast Article 8.
- Adopt the amended Articles 11 and 16 incorporating an exception to cessation of protection in relation to compelling reasons derived from previous persecution.

EU-SERBIA RELATIONS

Serbia is a potential candidate country for EU accession following the Thessaloniki European Council of June 2003. On 29 April 2008, the EU and Serbia signed the Stabilisation and Association Agreement (SAA) and the Interim Agreement on Trade and Trade-related issues. On 1 January 2008, a visa facilitation and a readmission agreement between Serbia and the EU came into force. On 15 July the European Commission proposed to grant visa liberalisation to Serbia.

On 18 February 2008 the Council adopted the new European partnership for Serbia. Consultations with the Serbian authorities across the range of reform issues are conducted through the Enhanced Permanent Dialogue process (EPD).

KEY DATES IN SERBIA'S PATH TOWARDS THE EU

14 June 2010 - EU member states decide to start the ratification process of the SAA

22 December 2009 *- Serbia officially applied for the EU membership. The government of Serbia has the goal for the EU accession in 2014 per the Papandreou plan - Agenda 2014.*

15 July 2009 - European Commission proposes to grant Serbia visa liberalisation.

7 July 2008 - Following 11 May parliamentary elections, formation of a new government; European integration set as a key priority.

7 May 2008 - Commission hands over to the Serbian government the *road map* on visa liberalisation, set up with the aim of achieving a visa free regime for Serbian citizens wishing to travel to Schengen countries.

29 April 2008 - The Stabilisation and Association Agreement (SAA) and the Interim Agreement on Trade and Trade-related issues between Serbia and the EU is signed in Luxembourg.

18 February 2008 - Council adopts the revised European partnership for Serbia.

1 January 2008 - Entry into force of the Visa Facilitation and Readmission Agreement between Serbia and the EU.

7 November 2007 - The SAA with Serbia is initialled.

13 June 2007 - SAA negotiations with Serbia resumed, following a clear commitment by the country to achieve full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), and concrete actions undertaken by the country that have matched this commitment.

3 May 2006 - SAA negotiations called off due to lack of progress on Serbia's co-operation with the ICTY.

October 2005 – Launch of the negotiations for a Stabilisation and Association Agreement.

October 2004 - Council conclusions open up a process for a Stabilisation and Association Agreement.

June 2003 - at Thessaloniki European Council, the Stabilisation and Association Process (SAP) is confirmed as the EU policy for the Western Balkans. The EU perspective for these countries is confirmed.

2001 - First year of the new Community Assistance for Reconstruction, Development and Stabilisation (CARDS) programme specifically designed for the SAP countries.

November 2000 - Zagreb Summit launches the Stabilisation and Association Process (SAP) for five countries of South-Eastern Europe.

November 2000 - "Framework Agreement Federal Republic of Yugoslavia-EU for the provision of Assistance and Support by the EU to the Federal Republic of Yugoslavia". Serbia benefits from Autonomous Trade Preferences from the EU.

June 2000 - Feira European Council states that all the SAP countries are "potential candidates" for EU membership.

1999 - The EU proposes the new Stabilisation and Association Process (SAP) for five countries of South-Eastern Europe, including Serbia.

1997 - Regional Approach. The EU Council of Ministers establishes political and economic conditionality for the development of bilateral relations.

PREPARING POLICY RECOMMENDATIONS

PROJECT OBJECTIVE

Agreeing standards regarding the development of Advocacy/Policy documents on the subject of Forced Migration in Serbia.

The specific project commitment is to structure a document 'according to ECRE standards'. This document will be structured in the following way:

- **Introduction**
- **Identify links between EU legislation and Serbian laws that determine the situation for refugees, IDP's, returnees and asylum seekers**
- **Describe the gaps in the existing provisions and practices**
- **Make recommendations**

The Third Day training session will attempt to achieve the above.

KNOW YOUR TARGET

1 EU

The main institutional actors to lobby on European issues are: the European Commission, the European Parliament, the European Council, the Economic and Social Committee, National Permanent Representations in Brussels and National Governments.

The Commission

This is the key target of influence because it initiates legislation. The Treaty of Lisbon envisages that the Commission should consult widely but no system of accreditation for Non Governmental Organisations (NGOs) is foreseen as it is the case in other international organisations like the Council of Europe or the UN.

For the moment, there are three forms of consultation used by the European Commission:

- Consultative committees in different policy areas. The Brussels based platforms can act as advisers together with other stakeholders before the issuing of a legislation.
- Structured on-going dialogue with civil society does take place in some policy fields but it is up to each Directorate General to organise it and so practices vary. DG Trade, Employment and Development for example organise regular meetings with interested parties on specific issues or on horizontal issues.
- Consultation processes where the policy or legislative proposal is put on the web page of the respective Directorate General and public contributions are welcomed.

The Commission has adopted "General principles and minimum standards for consultation of interested parties".

The European Parliament

If the NGOs are not satisfied with the EC's legislative proposal, they can lobby Members of the European Parliament for amendments to the text. This is a key task for NGO's, Europe, especially since the Parliament's role has increased over the recent years in parallel to the increase of its competencies (in adopting legislation; monitoring the activities of the Commission and deciding the budget).

The European Council

This body is considered to be the most non-transparent of all decision-makers and the most difficult to lobby from Brussels because its members can be effectively influenced only at national level. That requires having effective partners nationally that are committed and skillful enough to transfer the policy agenda to the national decision-makers. Thus the national governments remain very important in terms of political communication in Europe.

The Presidency of the EU
It is also very important to lobby the rotating presidency on specific key issues, if the country holding the Presidency for six months is willing to take it on board and make it one of its priorities. To do so, you need to talk to national contacts, at early as a year before the Presidency starts. Note that some organisations (e.g. Amnesty International and the larger NGOs) submit papers to the Presidency stating what their policy or legislative expectations are from it.

The Permanent Representations to the EU
These are very useful information and contact channels. Most NGOs do not have close contacts with all 27 Perm Reps but are of course eager and willing to pursue specific contacts on the basis of members' interests and networks.

The European Economic and Social Committee (EESC)
The EESC works with the NGO networks and it is useful in terms of information and contacts. A Liaison group has been established between the Committee and the Brussels based platforms as a structure for political dialogue on different initiatives of common interest.

(With thanks to Culture Action Europe for the above section.)

2 WORK THROUGH YOUR NGO PLATFORM

The approach and the extent to which communications have been developed between the Commission (primarily) and the NGOs depend very much on the thematic area. In the areas where the EU is competent and therefore where there is economic interest, lobbying and advocacy tend to be more structured. In other areas, where there is no or a limited legal basis, the Open Method of Coordination is gaining ground and civil society participation increasingly organized.

NGOs and NGO Platforms can seek to:

- Follow the policy and legislative agenda of the Commission and react to certain issues of interest. Some of the Brussels based platforms want to change this approach in order to develop more membership driven agenda (proactive approach).
- Identify issues that are important for the organisation (its members respectively if it is a network) but are not yet on the EU agenda and try to influence their incorporation.
- Identify issues from the agenda of the Commission that are important for the organisation and that the Commission is dealing with but in an unsatisfactory way and try to influence its approach.

The most successful NGO platforms enjoy almost “insider” status and have multiple entry points, thus influencing the process through informal contacts at the earliest possible stage – before the document is even drafted and presented for consultation. The informal contacts help a lot because they can open a “policy window” for something new – e.g. if the Commission is going for a feasibility study or an impact assessment.

For the Commission NGO Platforms are the preferable partners because they are representative, have high expertise and are transparent in terms of their governance. Outside of the platforms, it is very difficult for individual NGOs to make their cases heard (except for the very biggest who have considerable media presence).

3. ENGAGE IN DIALOGUE, NOT JUST LOBBYING

Lobbyists have a bad press but in fact they are just trying to protect the interests of their members, which is a perfectly legitimate ambition. Much lobbying, especially in smaller organisations, takes place when change is already happening! Often, unless you are a very powerful group, it is too late to make a difference. But effective dialogue should happen all the time. If it does it can predict change, notice shifts in policy, explain the on the ground situation, educates, inform the decision makers and build genuine alliances. This approach is particularly important for the cultural sector, because we are small, because our issues are not always priority and because we have impacts in so many different policy areas.

There are some key elements of a successful dialogue:

- Know who are the key players, names, position and responsibilities
- Find out how decisions are taken
- Develop a tailored approach to each of the players.
- Consider timing: the European agenda is so full, badly timed documents get nowhere.
- Consider the political orientation of both the European and National parliaments.
- If you want to get your point into the policy agenda, you need to build a coalition (networks, think tanks, trade unions, etc.).
- Proposals should be practical, and very clear in terms of political and technical arguments.

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4 ADVOCACY AND LOBBYING FROM THE EU PERSPECTIVE

Successful lobbyists have established at least four strategic capacities:

- the ability to identify clear and focused policy goals;

- develop relationships and credibility in the policy process;
- understand the nature of the policy process and institutional access;
- look for natural allies and alliances to develop profile and access[19].

***"The lobbyists working Tools**:*

1) Practical Stages: 2) Fact Finding 3) Analysis 4) Influencing And Follow-Up.

" Most legislation is written by experts and officials at lower levels. In many cases, these experts are the starting point for the lobbyist. Higher level officials are only called on when there is a deadlock, an unwillingness to deal with the issue, or when there is a high political stake. Direct advocacy of a case to policy makers is merely one element of a lobbying campaign. Many consultants do no or very little lobbying themselves. The complete catalogue of activities may be summarised as follows

***Information transparency** is a problem in the EU, and obtaining timely information will be a major challenge. Specialised media, including electronic, cover EU political and legislative developments. Nevertheless, your own network within EU institutions, other associations, and among your oversee members will provide you with an indispensable alert system and a means of accessing vital information.*

***Be proactive:** The earlier you intervene in the legislative process, the more effective you will be. Build your relationships before you actually need something. Schedule introductory meetings with officials and other contact persons to get to know each other and exchange views. This will also help you to adopt the right approach with every official*

***Know your audience**: Before approaching a government department, understand that particular department's agenda and interests. Adapting your message to their interests will help you gain their attention and influence their decision-making.*

***Form alliances**: know your opponents It is very rare that a single interest group can make a strong enough case. Building alliances with related groups is indispensable to your lobbying campaign. In some cases, you would set up an ad hoc organisation to present a certain alliance lobbying a particular issue. Find out who your opponents are. Your argument will be more effective if it takes your opponents into account.*

***Respect the level principle of decision-making:** Most legislation, at some stage, is written by experts and officials at a lower level. In many cases, these experts are your main starting point. Include them in your approach, and you will gain their respect. Calling in the higher political echelon will be productive when there is a deadlock, an unwillingness to deal with your issue, or high political stakes. Play the reciprocity*

game Never take without giving. The best way to capture the EU official's interest and also indirectly influence decision-makers is to provide these data. You may even find your information being used by the European legislator. Always offer an acceptable alternative when you are trying to prevent or change a regulation.

Always follow up: *One secret to successful lobbying is to follow up every lead, every letter you write, every contact you make, and every initiative you take. Write a thank-you letter to an official you have met. It will give you the opportunity to restate your arguments and repeat what you expect from him or her. Be aware of cultural differences An official of Portuguese origin will express himself differently from a German. A UK Member of Parliament will have different expectations from his or her Greek colleague.*

Try to understand what is wanted: *The Commission cannot push through directives without the agreement of the Council and; in the case of codecision, the Parliament was well.*

Don't be negative: *Pressure groups simply cannot turn their back on the process and hope that draft directives will go away. They do occasionally go away but only after a very long time. The saying 'the devil is in the detail' is one to bear in mind. Often it is in mind. Often it is the detail of draft directives (such as annexes laying down technical specifications) which leads to 'the law of unintended consequences'. Officials and parliamentarians will be grateful to anyone who can help them to avoid making fools of themselves.*

Attention to detail *also means making sure that you are following all developments throughout the full co-decision procedure. Use permanent representations Permanent representations are a valuable resource. They regard it as part of their job to get the best possible deal for their country. Within the limits of their professional obligation to be impartial, as between one national interest and another, they can be very helpful in keeping you informed about what is going on and even on occasion be prepared to make suggestions as to tactics.*

Always to be absolutely up-to-date *with the progress of a piece of draft legislation as it makes it way through the Brussels process."*

ABOVE EXCERPTS FROM: 'Lobbying in the European Union' http://ec.europa.eu/civil_society/interest_groups/docs/workingdocparl.pdf

5 DEVELOPING ADVOCACY/POLICY DOCUMENTS:

FIRSTLY AGREE ON:

- **your audience. (advocacy/lobbying targets)**

- **your key message and ideal outcome.**
- **The structure of your advocacy document/s**
- **who will do what**
- **a SMART[19] action plan**

ECRE'S APPROACH TO DRAFTING POLICY/ADVOCACY DOCUMENTS:

- ECRE's advocacy potency derives from the fact that it is an influential and highly respected **representative** membership network. Thus, it is acutely aware that because its policy statements have the support of a **Europe wide network** it will be listened to and taken seriously. Member agencies should therefore **take advantage** of ECRE's advocacy leverage by seeking their support when they are advocating at the national and EU levels.

- ECRE is meticulous in its approach with regards to its research methodologies as well as the potency and style of its drafting. It is has developed a reputation as being an **'expert organisation.'** Therefore, although its advocacy targets may not necessarily agree with the its message they would struggle to find fault with the accuracy of the information provided. ECRE avoids polemic, politicking and propaganda as they always detract and weaken the intended message.

- ECRE consults widely and aims to find a consensus amongst its stakeholders. On the one hand its policy outputs need to reflect the general views of its wide ranging membership, but on the other it cannot afford to advocate on a compromised position simply to please everyone. This is a difficult balance but critically important.

- ECRE's policy documents almost always form an essential part of a wider advocacy campaign. They are never written in isolation, ie. for their own sake. As with the Grupa 484 project the ECRE policy/advocacy work is carefully structured and planned, with clear outputs and identifiable advocacy targets.

- ECRE's policy documents usually have a single author responsible for the overall publication (however, often with the assistance of colleagues and interns.). It is not necessary that a single person drafts the entire document but it is critical that a single person has overall responsibility for ensuring the

[19] Systematic. Measured. Achievable. Realistic. Timed

standards and consistency of the contents.

- ECRE always ensures that its publications are checked by others; either colleagues in the Secretariat or/and experts from its member agencies. ECRE publication projects usually involve a 'working group', drawn from the membership, and they are consulted on a regular basis during the drafting process. *Never publish a policy/advocacy document without ensuring that all stakeholders are satisfied with it.*

A MODEL STRUCTURE FOR A POLICY/ADVOCACY DOCUMENT:

1) Design. Depending on the target audience it is important to agree on the overall style and look of the document. One must remember that information overload is a factor in modern society and that irrespective of one's readership one should always aim to produce a professional and attractive document.. A document intended solely for academics and legislators will of course have a very different look to publications intended for donors or the general public; nonetheless, you should always aim to produce a document that **discourages** its reader to discard it at the earliest opportunity. (Ask yourself truthfully; will this document end up on my bookshelf or in my waste-paper basket?)

2) Contents list. It is not always necessary to include a list of contents although it is almost always appreciated by the reader. If it is decided to include this list then do so on a single page, with short headings that reference and number the headings in the main body of the text.

3) The Introduction.

This should be brief and very clear; ideally no longer than a **single page**. The introduction should aim to do no more than provide the reader with a description of the paper's aims, a background to the organisation who has been responsible for its drafting, any highly relevant dates or historical references and a list of stakeholders. (i.e. those who have contributed to and support the document; including a credit to the donors who paid for it!)

4) An Executive Summary

It has become a common technique to include an **Executive Summary** in documents of this nature. This needs to be a reader-friendly list of findings and/or recommendations, drawn from the main body of the document. It is a fact that the vast majority of readers will not read the full text. Most journalists wont, most politicians wont and most of the general public wont. And yet it is often these three groups who one wants to influence the most. An **Executive Summary** can often serve the purpose of quickly identifying for the reader the key advocacy points. This summary should ideally be no longer than a single page.

3) The 'Body'. This is where you'll include the main text of the book. It is the main section of the publication. (The chapter headings and contents will in all probability be guided by the discussions and recommendations following the group sessions on Day Three of the training.)

When drafting the main section the following into consideration:

- Your strength as experts in the field with unique information and facts that your readership and advocacy targets will value
- The importance of using up-to-date, various and primary research (When researching the internet only use trusted sources.)
- The use of case studies and examples
- The inclusion of accurate and useful statistics (ideally also using your own sources.)
- When making recommendations to different stakeholders try to always reference them to a legislative framework
- Source all quotes
- Make sure that copyright is not infringed when including large amounts of quoted text.

DAY THREE GROUP TASK:

Preparing the policy Document and identifying key recommendations

1 Plenary discussion:
Agreeing:
- Aims of document and advocacy target group/s
- Drafting process
- Structure and contents

2 **Separate into four thematic groups**: ***Asylum seekers; Refugees; IDP's; Returnees.***
Aim: Each group identifies the shortcomings in the asylum practice in relation to national and EU legislation and identifies key recommendations for legislative amendments. [Map these initial findings on flip charts.]

3 **Plenary**: Presentation by each group on mapping and recommendations.

INTERNET LINKS TO KEY DOCUMENTS.

Qualification Directive:
http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML

ECRE RESPONSE:
The Impact of the EU Qualification Directive on International Protection
http://www.ecre.org/files/ECRE_QD_study_summary.pdf

Comments from ECRE on the Commission Proposal to Recast the Qualification Directive
http://www.ecre.org/files/ECRE_Position_Recast_Qualification_Directive.pdf

Justice Freedom and Security "Readmission policy in the European Union" 2010
www.europarl.europa.eu/studies

Dublin 11 Regulation
http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm

The Stockholm Programme
http://www.se2009.eu/polopoly_fs/1.26419!menu/standard/file/Klar_Stockholmsprogram.pdf

The EU Acquis
http://ec.europa.eu/home-affairs/doc_centre/intro/docs/jha_acquis_1009_en.pdf

ECRE's comments on recasting the Reception Conditions Directive
http://www.ecre.org/files/ECRE_Comments_on_Reception_Conditions_Directive_recast_2009.pdf

Access to European Union Law: EUR-Lex
http://eur-lex.europa.eu/en/index.htm

EU guide to the Lisbon Treaty
http://www.europa.rs/upload/documents/publications/Your%20guide%20to%20the%20lisbon%20treaty%20EN.pdf

Lobbying in the European Union
http://ec.europa.eu/civil_society/interest_groups/docs/workingdocparl.pdf

Briefing on the Commission proposal for a Regulation amending Council Regulation (EC) 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States
of the European Union (FRONTEX)

http://www.ecre.org/files/2010_09%20ECRE%20and%20AI%20Joint%20Briefing%20on%20the%20Commission%20proposal%20amending%20the%20Frontex%20regulation.pdf

Policy Briefing On Border Monitoring In Bosnia And Herzegovina, Croatia, Former Yugoslav Republic Of Macedonia and Serbia.
AND SERBIA
http://www.ecre.org/files/ECRE_Border_Policy.pdf