

## **ECRE RECOMMENDATIONS ON THE OCCASION OF THE POLISH PRESIDENCY OF THE EU (JULY – DECEMBER 2011)**

### **1. General Remarks**

As Poland takes over the Presidency of the EU, asylum and migration issues seem to dominate the public and political debate to a large extent in Europe. The EU sees itself confronted with multiple challenges in this field. Ever since the uprisings in various countries in North-Africa and the Middle-East, the EU seems to be grappling with both the internal and external dimensions of the migratory flows resulting from the Arab Spring. Despite discussions at the highest political levels and a series of Commission communications dedicated wholly or partly to the migratory aspects of the recent events, the EU's efforts so far in assisting both persons in need of international protection and the countries in the region most directly affected have been relatively poor. Also within the EU the increasing numbers of asylum seekers, refugees and migrants arriving at the shores of Italy and Malta seem to have provoked a loss of faith in a European approach on migration and asylum.

Meanwhile negotiations on the asylum package linger with little prospects of immediate success, although further progress has been made under the Hungarian Presidency with regard to the recast proposal on the Qualification Directive and discussions are ongoing on the Commission proposal recasting the Dublin Regulation. In addition a new episode in the second phase of harmonization has started with the publication of the Commission's modified recast proposals on the Asylum Procedures Directive and the Reception Conditions Directive on 1 June 2011.

EASO has been inaugurated officially on 19 June and is expected to become fully operational during the second half of 2011. As an agency dedicated to promoting and developing practical cooperation between EU Member States' asylum authorities it will play a key role in developing a Common European Asylum System (CEAS). The need to have a CEAS by 2012 has been stated time and again by the EU institutions.<sup>1</sup> The question may be raised as to what is meant by establishing a CEAS by 2012. When considering the CEAS, not only is clear legislation based on high standards of protection in full respect of Member States' human rights obligations required but also effective implementation at the national level to ensure and maintain a sufficiently high quality of decision-making in practice. In 2012 a comprehensive evaluation is required of what still needs to be done to ensure a fully effective CEAS that offers protection to those who need it.

At the start of the Polish Presidency the European Council on Refugees and Exiles (ECRE) presents a number of recommendations to the EU institutions and the EU Member States on key aspects of the EU's common asylum policy. ECRE is supportive of a CEAS that is built on high standards and a full and inclusive interpretation of the 1951 Refugee Convention and other relevant human rights instruments. However, such a CEAS must ensure access to the territory of the EU Member States for those in need of international protection as the best protection regime in the world will be of little use to refugees are unable to reach it.

## 2. Legislative Harmonisation

According to Article 78 TFEU the EU must develop common policy on asylum and a CEAS comprising *inter alia* a uniform status for those granted protection, common asylum procedures, criteria and mechanisms for determining the Member States responsible for considering an asylum application and standards concerning the reception of asylum applicants. The Stockholm Programme further specifies that "*it is crucial that individuals, regardless of the Member State in which their application for asylum is lodged, are offered an equivalent level of treatment as regards reception conditions, and the same level as regards procedural arrangements and status determination*". The CEAS should be based on "high protection standards" and the ultimate objective should be that "similar cases should be treated alike and result in the same outcome".<sup>2</sup>

The existing EU asylum legal instruments are clearly not sufficient as a legal basis for the development of a common policy as defined in the TFEU and the Stockholm Programme, if only because they merely set minimum standards. The asylum directives and regulations adopted during the first phase of harmonization set a generally low level of protection for asylum seekers and refugees, created ambiguity and allowed Member States to derogate from basic procedural guarantees while granting wide discretion in the implementation of minimum standards. ECRE believes that there is a clear need for considerable improvement of the protection standards that are currently in place. More than 10 years of harmonization have not prevented the existence of widely diverging practices and law between the EU Member States today. The legal framework in the field of asylum needs to be improved in order to create a level playing field and achieve a true common area of protection and solidarity as stipulated in the Stockholm Programme.

ECRE has generally welcomed the Commission proposals recasting the four building blocks of the CEAS that were published in December 2008 and October 2009 as positive steps towards building a common policy based on high standards. However, due to strong opposition in the Council, negotiations on the proposals recasting the Asylum Procedures Directive and the Reception Conditions Directive stopped in 2010 and modified proposals were submitted by the Commission on 1 June 2011.<sup>3</sup> As mentioned above, the 2012 deadline for establishing a CEAS has become highly ambitious and it is important that it does not undermine the objective to establish high standards of protection. ECRE urges all institutional actors to remain equally ambitious with regard to the quality and implementation in practice of the legislation adopted.

## 2.1. Commission Proposal recasting the Dublin Regulation

The application of the Dublin Regulation continues to cause hardship and injustice for asylum seekers arriving in the EU as well as additional burden on the Member States located at the external borders of the EU. In the aftermath of the European Court of Human Rights judgment of *M.S.S. v Belgium & Greece* most Member States have formally suspended transfers to Greece.<sup>4</sup> However at the national level Courts still face challenges to transfers to other Member States such as Italy and Malta due to the low level of reception conditions and procedural standards there.<sup>5</sup> It is clear that the Dublin system as it now exists is not working and will continue to do so as long as there is a lack of equivalent high standards of protection across Europe. The negotiations on the recast proposal must set high procedural standards for effective protection within this system of allocating responsibility for asylum applications in light of the right to seek asylum as affirmed in Article 18 of the Charter of Fundamental Rights along with Member States' other human rights obligations.

It remains ECRE's opinion that the Dublin Regulation is an obstacle to an efficient and protection-orientated CEAS based on solidarity between EU Member States and should eventually be replaced with a more equitable and efficient system. Nevertheless, it is acknowledged that the Commission proposal recasting the Dublin Regulation introduces a number of significant improvements to the operation of this system which will have a positive impact on asylum seekers. The debate thus far has concentrated mainly on the politically sensitive issue of the emergency mechanism allowing for temporary suspension of Dublin transfers to a Member State facing particular pressure. It is clear, however, that the negotiations must also focus upon the inclusion of important procedural safeguards such as access to effective remedies as highlighted in the *M.S.S. v Belgium and Greece* judgment. Such procedural safeguards are essential to ensure the protection of asylum seekers' fundamental rights in practice as well as in law.<sup>6</sup>

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

- Ensure that the right to information (recast Article 4) and the right to be heard within a personal interview (recast Article 5) is guaranteed in all circumstances before a transfer decision is taken and therefore refrain from introducing broad 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 and be conducted under anxious scrutiny.
- 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 and Member States to intervene effectively and in a coherent manner 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.

## 2.2. Commission Proposal recasting the Qualification Directive

During the Hungarian Presidency the trilogue between the Presidency, the Commission and the European Parliament commenced after the orientation vote in the LIBE Committee in February 2011. As a result, of the four main legislative files under negotiation in the field of asylum the discussions on the recast Qualification Directive proposal is at the most advanced stage. As the trilogue discussions come to a close ECRE hopes that any compromises reached properly reflect international refugee and human rights law and improve the rights of asylum seekers, refugees and subsidiary protection beneficiaries both within the context of the qualifying criteria and also the content of rights granted.<sup>7</sup>

## 2.3. Amended Commission Proposals recasting the Reception Conditions Directive and the Asylum Procedures Directive

According to the Commission its amended proposals recasting the Reception Conditions Directive and the Asylum Procedures Directive presented on 1 June 2011 aim to “*boost up the work towards achieving a true Common European Asylum System (CEAS)*”. While the EP had adopted its position in plenary on both proposals in May 2009 and April 2011 respectively, the Council failed to adopt a position. A number of Member States opposed various aspects of the Commission proposals as they feared that those proposals would raise the financial costs of the asylum procedure and did not include sufficient tools to prevent so-called ‘abuse’ of the asylum system. ECRE has long promoted the frontloading of asylum systems, a policy aimed at enhancing the quality and efficiency of first instance decision-making so as to reduce the number of appeals procedures and facilitate the examination of appeals lodged.<sup>8</sup> Such a policy is not only cost-saving in the long term but also fair to asylum seekers as it guarantees a correct and full examination of their protection needs while treating them humanely and with dignity, which makes a possible negative outcome of their application easier to accept.

While it is regrettable that no agreement was possible on the basis of the Commission recast proposals as initially drafted, it is encouraging to see that some of the key human rights safeguards are maintained or only slightly modified in the amended recast proposals. These include *inter alia* the provisions with regard to the grounds for detention and procedural guarantees for detained asylum seekers, access to the labour market in principle no later than 6 months after lodging the asylum applications or the right to an effective remedy and the right to a personal interview. ECRE also welcomes the fact that the Commission explicitly reaffirmed the frontloading approach as the underlying rationale for its amended proposal recasting the Asylum Procedures Directive.

However, ECRE notes with concern that a number of essential safeguards for asylum seekers have been weakened compared to the initial Commission Proposals. These include *inter alia*, the prohibition of detention of unaccompanied minors; diluted provisions with regard to judicial review of detention decisions; derogations from safeguards against arbitrary detention in vaguely defined “exceptional” circumstances or locations; the possibility to deny asylum seekers access to the labour market for up to one year in certain circumstances; broader scope for accelerated procedures including at the border; less safeguards with regard to the registration of asylum applications at the border or in detention and weakened provisions with regard to the right to free legal assistance and representation at the first instance, including for unaccompanied children. Also the proposed increased flexibility for Member States to derogate from procedural safeguards in the case of “large numbers of third country nationals or

stateless persons that simultaneously request international protection” is reason for concern.<sup>9</sup> In particular the proposed possible postponement of a decision because of an uncertain situation in the country of origin which is expected to be temporary is worrying.<sup>10</sup> Such an approach would not only be detrimental to asylum seekers as it may deprive them from the protection status they are entitled to and therefore undermine the right to asylum as laid down in Article 18 EU Charter on Fundamental Rights as well as unnecessarily prolong their asylum procedure. It would also be incompatible with the Member States’ concerns with fast and efficient decision-making in asylum cases and cost of reception conditions for asylum seekers.<sup>11</sup> Furthermore it is particularly disappointing that the concept of European safe third country is maintained in the amended Commission proposal recasting the Asylum Procedures Directive whereas this is incompatible with Member States’ obligations under international human rights law.

ECRE calls on the Council and the European Parliament to:

- Ensure that the recast reception conditions directive includes the strongest possible safeguards to protect asylum seekers against arbitrary detention, allows access to the labour market no later than six months after the asylum application has been lodged and provides for transparent procedures to identify vulnerability and accommodate the special needs of vulnerable asylum seekers.
- Ensure that the recast Asylum Procedures Directive reflects sufficiently high procedural standards, in particular with regard to the right to a personal interview, legal assistance and representation, access to the asylum procedure, the use of medical reports and accelerated procedures.
- Reject the possibility to postpone decisions on asylum applications in anticipation of an “expected change in the situation of the country of origin” of the asylum seeker as it undermines the right to asylum and fair and efficient decision-making.

### 3. Practical cooperation and responsibility-sharing between EU Member States

Since the entry into force of the Lisbon Treaty solidarity and fair sharing of responsibility has become a matter of primary EU law. Article 80 TFEU explicitly states that the policies of the Union on border checks, asylum and immigration shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States.<sup>12</sup> The challenges posed by the recent events in North Africa and the Middle East will further test the existence of true solidarity between EU Member States in the field of asylum. At the same time, the European Asylum Support Office (EASO) may give a further boost to practical cooperation and coherent support between EU Member States’ asylum administrations.

#### 3.1. Towards a fully operational EASO

The EASO will become fully operational during the second half of 2011 and will continue work on the priorities as set by the management board. Implementation of the Greek National Action Plan on Asylum and Migration in cooperation with the Greek Government has been marked as a high priority for EASO during this first year.<sup>13</sup> The judgment of the ECHR in the case of *M.S.S. v Belgium and Greece* has once again highlighted the flaws and deficiencies of the Greek Asylum system and the need to

address its protection gaps urgently. ECRE welcomes the efforts undertaken to set up a functioning asylum system in Greece and encourages the EASO and the EU Member States to continue these efforts in close cooperation with UNHCR, NGOs and other civil society actors. The situation in Greece requires a concerted effort from all actors involved and should focus on enhancing capacity of the Greek asylum bodies as well as capacities of NGOs and lawyers to provide legal assistance and other support to asylum seekers and refugees in Greece. As the Court in *MSS* found that the lack of reception conditions for asylum seekers in Greece amounted to inhuman and degrading treatment, the situation should be urgently dealt with to ensure that Greece complies as soon as possible with its obligations under the ECHR and the EU asylum acquis not only in the context of Dublin returnees but for the benefit of all asylum seekers in Greece. The deployment of asylum support teams in Greece last May is a positive step in this regard.<sup>14</sup> In ECRE's view these teams should not only focus on the administrative backlog but also on the improvement of reception conditions for asylum seekers in Greece. ECRE urges EASO and the Member States to conduct a proper evaluation of their activities and results in an open and transparent way and share the results of this evaluation with the Consultative Forum. At the same time, the mere deployment of asylum support teams should not be used as a justification for resuming transfers of asylum seekers to Greece any time soon. The reform and implementation of the national asylum system in line with international human rights law and standards as well as the EU asylum acquis will take time. Full respect of asylum seekers' human rights and compliance with EU minimum standards in practice are eventually the criteria to be taken into account by Member States when deciding on Dublin transfers.

While the priority given to remedying the situation in Greece in the workplan of EASO is justified, it should allow for sufficient flexibility to address the situation in other Member States facing particular pressures as well, such as Italy and Malta. While numbers of arrivals in both EU Member States may be still manageable, the situation remains extremely unpredictable and may in the foreseeable future require increased support of other Member States. EASO would be the most obvious actor to channel such support in order to ensure that those persons with protection needs are identified within mixed migration flows. It could also contribute to ensure that the ongoing FRONTEX-operation in Italy and Malta is carried out in a protection sensitive manner.

ECRE acknowledges the potential added value of an EASO that is committed to the overall improvement of the quality of asylum systems in the EU. As EU Member States resolved in the Stockholm Programme to develop a CEAS based on high standards, EASO's role in contributing to this objective should be fully explored. This will require first and foremost full cooperation of national administrations and governmental authorities in providing the agency with accurate and complete information on the implementation of the asylum acquis. However, it will be equally crucial to ensure that the expertise and analysis of all actors involved in asylum policies at national and European level, including NGO's and academics are duly taken into account.

While the Consultative Forum is one channel of providing such information, ECRE is convinced that the work of EASO would benefit from involvement of NGOs and academic experts in the activities of working parties that may be set up by the EASO. The EASO Regulation<sup>15</sup> provides for the creation of working parties for the purposes of COI analysis in a transparent manner and technical documents on the implementation of the asylum instruments of the Union, including guidelines and operating manuals. ECRE encourages the EASO to make full use of the possibility to involve external experts, including NGOs. Non governmental actors have through their daily work in assisting asylum seekers and refugees established unique expertise in various aspects of asylum

policy that will be covered by the three operational units of EASO, ranging from protection needs of particularly vulnerable groups to the provision of legal assistance and accommodation of asylum seekers.

ECRE calls on the EU Member States and EASO to:

- Continue to support Greece in implementing its Action Plan on Asylum, addressing immediate needs with respect to access to reception conditions for asylum seekers and developing a long term strategy to establish a fair and efficient asylum system.
- Provide for sufficient flexibility and resources in the working plan of EASO to allow it to provide practical support to other EU Member States where necessary in light of increased pressure on their asylum systems.
- Ensure a meaningful role for NGO's assisting asylum seekers and refugees and other relevant non governmental stakeholders in the activities of the EASO.

### 3.2. Further exploring intra EU-solidarity

The issue of solidarity and responsibility-sharing in the area of immigration and asylum within the EU has become very topical in the first semester of this year due to the migratory flows resulting from the recent developments in North-Africa and the Middle East. While numbers of refugees, asylum seekers and migrants arriving in the EU remain low compared to the influx in Tunisia and Egypt, Italy and Malta are most directly affected by the recent events within the European context. As the pressure on their asylum systems is growing, other EU Member States should take concrete measures to assist those countries in a spirit of solidarity and responsibility sharing as required under Article 80 TFEU. There are many ways in which EU Member States can show concrete solidarity. These include intra-EU relocation of those granted protection in Southern EU Member States and the provision of technical support as regards reception conditions and the processing of asylum applications, either bilaterally or through EASO. During a Ministerial Pledging Conference in May 2011 EU Member States and a number of Associate States made pledges for about 300 relocation places to other Member States for persons granted international protection in Malta.<sup>16</sup> While ECRE welcomes this as a concrete expression of intra-EU solidarity with Malta, whether additional relocation places will be required will need to be evaluated on a regular basis in light of the changing pattern of arrivals at the Southern borders of the EU. However, relocation should also always take place with the full consent of the persons concerned, take into account capacities of receiving states to accommodate and integrate the most vulnerable persons and should not result in mere shifting of the benefiting State's responsibilities under international and refugee law. In particular with regard to Malta, ECRE believes that further commitments with regard to relocation should be made conditional on a fundamental review of Malta's systematic detention policy and substantial improvement of detention conditions in line with international human rights standards, as well as measures to support the integration of persons in need of international protection and migrants into Maltese society.<sup>17</sup>

Another way of sharing responsibility with EU Member States such as Italy and Malta would be to refrain temporarily from transferring asylum seekers back to these countries under the Dublin Regulation and assume responsibility for processing their claim under

the sovereignty clause (Article 3(2)). Notwithstanding Member States' engagement in intra-EU relocation from Malta, asylum seekers as well as refugees and persons with subsidiary protection are still sent back from other EU Member States to Malta, which obviously undermines the relocation effort. In addition, a more generous application of the humanitarian clause (Article 15) of the Dublin Regulation should be considered. Those arriving in Italy or Malta who have family members residing elsewhere in the EU could thus be taken over by the Member States of residence of those family members. This would not only contribute to alleviating the pressure on the Southern EU Member States of arrival, but also contribute to a more efficient processing of protection needs where cases of family members are linked.

ECRE calls on the EU Member States to:

- Further explore possibilities of intra-EU relocation that is based on the consent of the persons concerned, prioritizes the most vulnerable cases and is made conditional on full respect for asylum seekers' and refugees' fundamental rights in the Member State benefiting from relocation.
- Refrain from transferring asylum seekers and beneficiaries of international protection who travelled on to other Member States back to Malta and Italy under the Dublin Regulation or bilateral agreements in view of the particular pressures these countries are currently facing and the risk of subjecting returnees to violations of their human rights.

## 4. A more robust cooperation with third countries in the area of asylum

### 4.1 The need for increased resettlement efforts at EU level

Resettlement is a concrete way for the EU and its Member States to express solidarity and share responsibility in providing a durable solution to the world's refugees. Yet EU Member States' share in global resettlement efforts remain low with the 27 providing resettlement places for only 4,4 % of the number of refugees resettled in 2010.<sup>18</sup>

With regards to the refugees emerging from the conflict in Libya in particular, some Member States have already responded positively to the UNHCR Global Resettlement Solidarity Initiative, pledging in total 700 places. These offers are a first step, but they need to be broadened. UNHCR estimates that close to 7,000 refugees will need resettlement from Libya, Tunisia and Egypt in 2012, which remains a relatively modest number. ECRE urges EU Member States to make a common effort and increase their resettlement places for this particular caseload.

Although discussions on the adoption of a Joint EU resettlement Programme have resumed in 2011, no political agreement has been found thus far between the European Parliament and the Council. A European Resettlement Programme could help better match specific refugee needs to Member States in Europe, support the Member States that are less experienced through exchange of best practices, lead the way for quality reception and integration programmes to be developed, and even create more cost

effectiveness and efficiency through coordinated and joint efforts. This becomes even more urgent in view of the current refugee crisis in Libya and the neighbouring countries, where the adoption of the Joint Programme could provide an enormous support for resettlement of refugees from this region in 2012.

ECRE regrets to see that such an important initiative that, if adopted, would contribute substantially to providing a durable solution for many vulnerable refugees in protracted refugee situations, still remains hostage to an institutional dispute and strongly urges the Council and the European Parliament to reach an agreement as soon as possible.

#### 4.2 Capacity building in the region

Capacity building on asylum and migration in third countries has become an important aspect of the EU's policy on asylum and migration, including through the implementation of regional protection programmes (RPP). While RPPs are continued in Tanzania and Eastern Europe a new RPP has been launched in the Horn of Africa. The implementation of the RPP in Kenya, Yemen and Djibouti started in October 2010 and aims to address the Somali caseload in Kenya and mixed migration flows in the Gulf of Aden. Furthermore an RPP was initially planned for North Africa (Egypt, Libya and Tunisia) but was put on hold due to the difficulties faced by UNHCR in Libya, although there seems to be renewed interest for its implementation following the recent events in North Africa.<sup>19</sup> The aim of the latter RPP would be to enhance the capacities of Egypt, Libya and Tunisia in assisting refugees stranded in these countries, to develop legislation and the administrative capacity in those countries to treat refugees in line with international standards. As for the other RPPs it would also include a resettlement component.

ECRE believes that these RPPs can contribute substantially to capacity building in the regions concerned. However, there is a need for RPP to be closer linked and coordinated with other ongoing capacity building initiatives in the framework of development cooperation and humanitarian aid in these countries, so as to better meet the objective of providing support to third transit countries third countries facing protracted refugee situations. Moreover, the implementation of such programmes can never absolve EU Member States from their obligations under international human rights law and EU law vis-à-vis persons in need of international protection who arrive in the EU from the region concerned.

The current revision of the Global Approach to Migration is an opportunity for the EU to develop a clearer understanding of how refugee protection and capacity building in the field of asylum in third countries relate to EU immigration and asylum policies on the one hand and development cooperation and external relations on the other hand. ECRE regrets that the recent Commission communications on the Southern Mediterranean<sup>20</sup> and on the Neighbourhood Policy maintain a predominantly Euro-centric perspective with regard to cooperation in the area of migration and asylum with third countries, while much more can and should be done to enhance protection and mobility, in order to reflect the needs of the third countries as well.

ECRE believes that the time has come to develop and implement a more robust and strategic Global Approach to Migration, that is in coherence with development cooperation. The Global Approach should be transformed into an inspired and ambitious policy that is truly global and centred around four key themes: mobility, development, security and protection. Refugee protection and the protection of the fundamental rights of migrants and displaced persons should have a central place in the new phase of the

Global Approach to Migration, to ensure coherence with broader EU policy objectives in cooperation with third countries. Such an approach should also be better integrated in key partnerships of the EU, such as the EU-Africa partnership, the EuroMed partnership and the Eastern Partnership.

ECRE calls on the EU institutions and the EU Member States to:

- increase the number of resettlement places in Europe for 2012, in particular in light of urgent resettlement needs from North Africa.
- adopt the proposal for Joint EU Resettlement Programme as soon as possible.
- open protection space in North Africa by supporting those countries hosting the majority of refugees fleeing the war in Libya with capacity building initiatives, including through the implementation of an RPP as soon as possible.
- promote a more strategic Global approach to Migration that is rights-based and in coherence with EU policies on development cooperation and humanitarian aid.

## 5. Access to Protection in the EU

Persons fleeing persecution or other human rights violations continue to face numerous obstacles in reaching EU territory and finding protection. As the EU is in the process of establishing a CEAS it should ensure that it remains accessible to asylum seekers. Whether it is in the context of arrivals at sea, at land borders or at airports, the necessary safeguards must be in place to ensure that management of the external borders of the EU is conducted in a protection-sensitive manner ensuring the right to asylum in accordance with Article 18 of the EU Charter on Fundamental Rights and respecting the principle of non-refoulement as in Article 19 of the aforementioned Charter. In this respect ECRE is concerned that the recent agreement between Italy and the Libyan National Transitional Council on the immediate repatriation of migrants intercepted at sea to Libya, if implemented, risks violating the right to asylum and non refoulement obligations.

In this context it is essential that ongoing FRONTEX operations such as the Hermes Operation in the Mediterranean as well as Poseidon 2011 Joint operation in the Evros region in Greece include mechanisms to ensure that those wanting to apply for asylum have an effective opportunity to do so, and that their asylum claims are being registered and referred to the competent authorities in line with the Asylum Procedures Directive. The adoption of a fundamental rights strategy for FRONTEX acknowledges the need to take into consideration the particular situation of persons seeking international protection during joint operations. In this respect it sets the explicit objective of *“ensuring that the right to international protection must not be hampered by the law enforcement action and that persons seeking protection are referred to the competent authorities to assess their case”*.<sup>21</sup> ECRE encourages FRONTEX and the Member States involved in FRONTEX operations to ensure that this important objective is complied with in practice. Systematic and independent monitoring of all FRONTEX operations from a human rights perspective is an important tool in this respect.

ECRE calls on the EU institutions, EU Member States and FRONTEX to:

- Develop protection-sensitive border management tools to ensure full respect of the right to asylum and the principle of non refoulement at the EU's borders and guarantee access to a fair and efficient asylum procedure for those wishing to apply for asylum.
- Ensure effective, independent and systematic human rights monitoring of all FRONTEX border operations.

## 6. The Ministerial Conference on the 60<sup>th</sup> anniversary of the 1951 Refugee Convention

This year the world commemorates the 60<sup>th</sup> anniversary of the 1951 Refugee Convention and the 60<sup>th</sup> anniversary of the 1961 Convention on the reduction of Statelessness. As a closing event a Ministerial Conference will be convened by UNHCR in Geneva in December 2011 to review protection gaps and measures to address them. States are being invited to make pledges at this meeting to respond in a concrete and measurable way to important challenges in the field of refugee protection and statelessness. As States can make those pledges individually and/or collectively, ECRE encourages the Polish Presidency and the EU Member States to reflect on possible pledges on behalf of the EU in this field with regard to protection gaps within the EU. Such reflection could already be part of the high level conference on the 60<sup>th</sup> anniversary of the 1951 Refugee Convention that will take place at the beginning of the Polish Presidency.

Possible issues on which pledges could be made include increased engagement in the resettlement of refugees, review of detention policies and promotion of alternatives to detention during the asylum procedure or the development of protection-sensitive entry systems. In addition those EU Member States that have not yet acceded to the 1954 Convention on the status of stateless persons and/or the 1961 Convention on the reduction of Statelessness should be encouraged to include swift accession as well as the adoption of procedures to determine statelessness in national legislation in their pledge for the Ministerial Conference.

ECRE calls on the Polish Presidency and the Member States to:

- Promote accession of all EU Member States to the 1954 Convention relating to the status of Stateless persons and the 1961 Convention on the reduction of Statelessness.
- Make an ambitious EU pledge at the December 2011 Ministerial Meeting with respect to mainstreaming and maintenance of protection-sensitive entry systems and the use of alternatives to detention.

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- <sup>1</sup> Most recently by the June 2011 European Council. See European Council, *Conclusions 23/24 June 2011*, par. 30.
- <sup>2</sup> See European Council, “The Stockholm Programme – An open and secure and secure Europe serving and protecting citizens”, OJ 2010 C 115/1.
- <sup>3</sup> See COM(2011) 320 final, *Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers*, Brussels, 1 June 2011; COM(2011) 319 final, *Amended proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status*, Brussels, 1 June 2011.
- <sup>4</sup> EctHR, *M.S.S. v. Belgium and Greece*, Application No. 30696/09, 21 January 2011.
- <sup>5</sup> ECRE Weekly Bulletin, “European countries urged not to send refugees and vulnerable asylum seekers back to Italy”, 20 May 2011.
- <sup>6</sup> For a detailed analysis of the Commission recast proposal and recommendations see ECRE, *Comments on the Commission Proposal recasting the Dublin Regulation*, April 2009.
- <sup>7</sup> For a detailed analysis of the Commission recast proposal and further recommendations see ECRE, *Comments on the Commission Proposal recasting the Qualification Directive*, March 2010.
- <sup>8</sup> See ECRE, *The Way Forward: Towards Fair and Efficient Asylum Systems in Europe*, September 2005.
- <sup>9</sup> See for instance with regard to the right to a personal interview in Article 14(1) of the amended Commission proposal recasting the Asylum Procedures Directive.
- <sup>10</sup> See Article 31(3) of the amended Commission proposal recasting the Asylum Procedures Directive.
- <sup>11</sup> See *MSS v Belgium* on the right to be granted refugee status when qualifying for it. See CJEU cases on delay in administrative decision-making.
- <sup>12</sup> For an analysis of the scope of Article 80 TFEU see European Parliament, *The Implementation of Article 80 TFEU - on the principle of solidarity and fair sharing of responsibility, including its financial implications, between Member States in the field of border checks, asylum and immigration*, April 2011.
- <sup>13</sup> See European Commission, “Statement of Cecilia Malmström, European Commissioner for Home Affairs, following the judgement of the European Court of Human Rights on the transfer of asylum seekers under the EU Dublin Regulation”, Memo/11/35, Brussels, 21 January 2011.
- <sup>14</sup> *Idem*.
- <sup>15</sup> See Articles 4(e) and 32 Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.
- <sup>16</sup> See European Commission, “Statement by Cecilia Malmström, EU Commissioner in charge of Home Affairs, on the results of the Ministerial Pledging Conference 12 May”, Memo/11/295, Brussels, 13 May 2011 and ECRE Weekly Bulletin, “European countries commit to take 300 refugees from Malta and 700 from North Africa”, 13 May 2011.
- <sup>17</sup> See Council of Europe, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Malta from 23 to 25 March 2011, CommDH(2011)17, Strasbourg, 9 June 2011.
- <sup>18</sup> UNHCR, *EU Resettlement Fact Sheet*, 2011.
- <sup>19</sup> COM(2001) 292 final, *A dialogue for mobility, migration and security with the southern Mediterranean countries*, Brussels, 24 May 2011.
- <sup>20</sup> COM(2011) 200 final, *A Partnership for Democracy and shared Prosperity with the Southern Mediterranean*, Brussels, 8 March 2011.
- <sup>21</sup> See FRONTEX, *Fundamental Rights Strategy*, par. 14.