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Guarding Standards - Shaping the Agenda

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Foreword

The year 1999 is decisive for the future direction of migration, asylum, integration and anti-discrimination policy within the European Union. Most notably, the Treaty of Amsterdam entered into force on 1st May 1999, activating a new set of institutional arrangements for dealing with the agenda which the EU has set itself. 1999 will also see a special Justice and Home Affairs Heads of State and Government Summit (Tampere Summit) held in Finland in October, which is likely to draw a great deal of public and political attention to these issues. The European Parliament and an Inter-Parliamentary Conference in March prepared the parliamentary contribution to this Summit. And meanwhile a special 'High Level Working Group on Asylum and Migration' has been created with a mandate to produce action plans which will inform the Summit discussions.

Recognising that Declaration No. 17 to the Amsterdam Treaty, relating to consultation with UNHCR and other international organisations, provides civil society with context for presenting its views clearly in this challenging year, offering a window of opportunities, 3 organisations, each with a particular area of expertise, have joined together in order to compile the following paper. It is our NGO blueprint for how governments can implement the Amsterdam Treaty agenda in a humane and just way, in compliance with international human rights standards.

The European Council on Refugees and Exiles (ECRE) is an umbrella organisation for co-operation between European NGOs concerned with refugees. ECRE campaigns, on behalf of its pan-European membership, for humane, fair and comprehensive asylum policies. Founded in 1974, ECRE is still a growing organisation with close to 70 member agencies in 25 European countries, including all the national refugee councils, other refugee-assisting organisations in the legal and social field, national branches of international networks, human rights and church organisations. The ECRE Secretariat is based in London and Brussels, with a particular expertise in monitoring and analysing the policies of the EU institutions in relation to asylum.

The European Network Against Racism (ENAR) is a network consisting of non-governmental organisations working to combat racism from all the EU Member States. It originated during the 1997 European Year Against Racism with a Conference of anti-racist organisations in November 1997, followed in 1998 by a series of national and European Round Tables. The 1998 Constitutive Conference created a European Secretariat (based in Brussels) and adopted a programme of action which includes information exchange on policy developments and budget lines, linking initiatives among networks and organisations, and lobbying at the European and international levels for anti-racist policies (such as anti-discrimination legislation and equal treatment of migrants and minorities). The elimination of racist aspects of European immigration and asylum policies is also a priority for ENAR.

The Migration Policy Group (MPG), based in Brussels, is an independent organisation committed to improving policy development on international migration and integration issues through the promotion of facilitated exchange between key stakeholders and through the production of substantive, comparative policy analysis. MPG bases its activities on the belief that debates among representatives of all sectors of society - public, private, and voluntary - can contribute to the identification and implementation of innovative and effective responses to the challenges and opportunities posed by increasing diversity in Europe.

The authors of this paper have done more than simply combine these organisations' established policy positions. We have provided, for the first time, a paper based on genuine cross-analysis: considering migration policies from a refugee protection angle, and asylum policies from a migration, integration and anti-discrimination angle. While we believe firmly in the need to distinguish in policy making between refugees and migrants, we also believe that solutions to one problem need not be developed to the detriment of another. A comprehensive approach is required.

We hope that officials of Member States and EU institutions, advocates, parliamentarians and other decision makers will find this paper a useful contribution to what is certainly a complex debate. We also hope that the refugees, migrants and ethnic minorities to whom we, as organisations, are ultimately accountable will find their interests and views well represented by our proposals. With thanks to all those who have helped in the drafting, translation and publication of this document, and with special thanks to the Joseph Rowntree Charitable Trust and the European Commission for their generous support,

- Mr Peer Baneke, General Secretary of the European Council on Refugees and Exiles (ECRE)
- Mr Sukhdev Sharma, Chairperson of the Migration Policy Group (MPG)
- Mrs Sukhvinder Kaur Stubbs, Chairperson of the European Network Against Racism (ENAR)

Introduction

ANALYSIS OF THE TREATY OF AMSTERDAM AND PRESENT EU POLICY ON MIGRATION, ASYLUM AND ANTI-DISCRIMINATION

The following paper relates to the Amsterdam Treaty, the Third Pillar acquis as it stands, the *Action Plan of the Council and the Commission on how best to implement the Provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice* and, in part, to the tasks set for the High Level Working Group on Asylum and Migration. We believe that the European Union has set itself an exciting and promising agenda of work for the coming years and that some unique opportunities lie ahead for States to take a creative and principled approach. Long term vision is required, and political bravery in the face of the forces of xenophobia and extreme nationalism which can so easily overtake even the most affluent and democratic of continents. Leadership is also needed in managing increasingly diverse societies and new identities will need to be based on new definitions of 'borders', 'community' and 'shared responsibility'. This is a matter not only of helping immigrants and ethnic and racial minorities to a better life and refugees to protection, but of truly establishing future freedom and security (and prosperity) for all people who reside within the Union. The Heads of State Summit in October 1999 could be the starting point for such leadership. The non-governmental organisations which have compiled this paper firmly believe that Member States now have it within their power not only to guard standards but also to shape a new public discourse.

The 1996-7 Inter-Governmental Conference commenced amid high expectations from many non-governmental organisations that it would mark a new era of democratic and judicial accountability in EU decision-making in these fields. In this context, the Amsterdam Treaty text can be interpreted both as a disappointing postponement of the necessary reforms, and as an important step towards their eventual achievement. What is clear is that the Treaty creates an imperative for Member States to develop a series of Community instruments, within a short deadline, which will govern the lives of many millions of migrants, asylum seekers, refugees and other third country nationals within and beyond the borders of the Union. It should also be noted that EU harmonisation will indirectly shape policy and practice in the Accession States of Central Europe, in Iceland, Liechtenstein, Norway and Switzerland, and in those Member States (Denmark, UK and Ireland) which, to the detriment of a comprehensive approach in the region, have 'opted out' of future EU harmonisation in these areas.

Institutional Powers

A **Title IV** (textual references to the Treaty establishing the European Communities (TEC) referring to the Consolidated Version) on "visas, asylum, immigration and other policies related to free movement of persons" is included in the Treaty with the stated aim of creating "an area of freedom, security and justice". This is an extension of competence, placing migration and asylum firmly within the concern of the Community. The shift from inter-governmental ('Third Pillar') to supra-national ('First Pillar') co-operation also enhances several elements of democratic and judicial control, in particular:

- The European Parliament must now be "consulted" on new measures; and
- The European Court of Justice (ECJ) has a new role regarding interpretation of this Title at the request of highest level courts or governments.

However, other decision-making procedures from the Third Pillar have been retained during a 'transition period' of five years dating from the Treaty's entry into force, making the transfer a less effective step forward. Specifically, the following limitations shall continue:

- Not only the European Commission but also individual Member States will retain the right to take the initiative on any of the issues collected under the new Title
- Decisions on these measures will continue to be taken by unanimity voting only, an ineffective decision making procedure which increases the likelihood that outcomes will tend towards the lowest common denominator
- The European Parliament's right of consultation falls far short of its powers elsewhere in the First Pillar which allow it to amend or veto; and
- On matters of immigration and asylum, the European Court of Justice (ECJ) will be unable to issue rulings to lower level national courts on any "question of interpretation", which will mean that the implementation of Community measures in these areas may remain variable among Member States and that asylum and migration cases will not be able to benefit from such rulings until the expensive, final appeal stage.

At the end of this five year 'transition period' the first of these limitations will be removed and a further Council decision will be taken as to whether to abolish the three latter limitations. By the placing of Title IV in the First Pillar, the course towards full communitarisation of asylum and migration, without limitation, would seem to be set.

What is most immediately significant is the commitment of Member States to deliver Community law

according to a specified agenda and to do so within the set time limit of five years. There is a good record of the EU meeting its self-imposed deadlines on issues relating to free movement. However, the authors of this paper continue to feel concern that these additional pressures and powers have been introduced without the correspondingly forceful democratic and judicial controls which apply to other areas of Community law and which generally apply at the national level.

The Treaty of Amsterdam also provides for the incorporation of the Schengen acquis into the European Union. It remains to be seen which provisions will be placed under the First Pillar and which under the Third Pillar. This incorporation may enhance the degree of transparency and European Court of Justice (ECJ) control. It is complicated by the fact that the United Kingdom and Ireland have decided not to be party to the relevant Protocol, while Iceland and Norway are Schengen States but not EU Member States.

The presumption of commentators is that the numerous agreements and pieces of 'soft law', which were adopted under the Third Pillar, and various proposals for Directives and Regulations already made by the Commission will be taken as the basis for much of the new EC legislation. The concern of the organisations which have compiled this paper is to ensure that this is not done without some hard critical re-thinking and a principled commitment by Member States to avoid the 'lowest common denominator' approach. We believe that national and European parliamentary scrutiny and well-informed public debate, often lacking when the original non-binding resolutions and joint actions were adopted, should be encouraged.

The extent to which the new measures will conform with international law and global standards (in particular the *1951 Convention relating to the Status of Refugees* and the *1967 Protocol,* the standards established by the UNHCR Executive Committee, the norms set by the *1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Family,* and the *International Convention on the Elimination of all Forms of Racial Discrimination)* is also a litmus test for the European Union's commitment to human rights.

Towards a comprehensive approach

The global mobility of goods, capital and services is rapidly increasing and facilitated by the removal of barriers hampering mobility. The movement of persons has increased in parallel. In greater numbers than ever before, people move internationally for business and employment purposes, study, family visits and tourism, but also to seek protection against persecution, wars and violence.

The complex nature of current migratory movements world-wide is posing new policy challenges, necessitating the development of comprehensive approaches. This has been acknowledged in many official EU documents and policy statements, which make reference to three separate but related policy areas:

- **Management of refugee and migratory movements**. This includes, on the one hand, the establishment of an effective and just system for the protection of refugees and, on the other, the adoption of policies which regulate the admission, residence and settlement of temporary or permanent migrants and members of their families.

- **Integration policies.** The adoption and implementation of policies promoting equal treatment of immigrants and refugees and protection against racial or ethnic discrimination.

- **Foreign aspects of international migratory and refugee movements.** In this context, references are made to the need to address root causes of forced migration: the protection of human rights and the promotion of socio-economic development in countries of origin.

That the European Union seeks to manage migration is entirely justified. The establishment of a more effective migration and refugee regime is in the interest of receiving and sending countries as well as the migrants and refugees themselves. However, the European Union has narrowed considerably the meaning and the scope of 'management'. It has come to mean restricting immigration and most of the measures taken aim only to limit the number of immigrants and refugees, facilitate the return of rejected asylum-seekers and undocumented or irregular migrants, strengthen control mechanisms, and assist neighbouring States with putting similar controls in place. Having largely closed the labour migration channel in the 1970s, and similarly restricted the asylum channel in the 1980s and 1990s as well, this third, clandestine channel is now the focus of attention for the early 2000s.

EU policies concerning the integration of immigrants (from outside the European Union) and refugees still lack a firm legal basis in the EU Treaties. However Association and Co-operation Agreements have established the principle of equal treatment in a number of areas. In addition, the Amsterdam Treaty

includes a new Article 13 which empowers the European institutions to act against discrimination on grounds of race and ethnic origin and religion or belief.

When references are made to the foreign aspects of (forced) migration, they focus almost invariably on prevention. Prevention has come to mean "keeping migrants and refugees out" rather than "reducing the need to move". From this perspective foreign policy instruments have tended to support restrictive policies, instead of fully utilising instruments such as preventive diplomacy and peacekeeping, socio-economic co-operation and development, and enforcement of international human rights commitments. New initiatives which promise a less defensive approach have recently been instituted.

We are of the opinion that the Amsterdam Treaty offers opportunities to design EU policies in these three areas which go far beyond the restrictive interpretation of the concept of migration management, which act forcefully on integration and anti-racism, and which prioritise the protection of human rights in and the socio-economic development of countries of origin.

The Present Agenda

Since the Treaty of Amsterdam was signed in October 1997, a number of EU actions and documents have put some flesh on the bones of the Amsterdam Treaty agenda.

Firstly, in July 1998, the Austrian Presidency of the European Union cast a shadow over the Treaty of Amsterdam's agenda with its *Strategy Paper on Migration and Asylum Policy*. Despite the fact that the most alarming elements in this paper, such as a reference to replacing or amending the 1951 Geneva Convention, have been revised, its general approach remains focused on how to deny procedural and legal safeguards to refugees and how to work towards 'zero toleration' of irregular migration. In the area of asylum, this paper reveals just how vital it is to guard even the most well-established, tried and tested standards. In the area of migration policy it is dangerously eurocentric, based on a 'carrot and stick' approach (making economic aid conditional on the signing of readmission agreements, for example) and conveys little sense of global responsibility. As a whole the paper contrasts sharply with the Commission's *Communication Towards an Area of Freedom, Security and Justice* (July 1998), which is sensitive to issues such as social integration and the need for consistency with overall Union policy. As with the 1994 Communication on Immigration and Asylum Policies, the Commission proves itself able to take an objective and comprehensive approach to these issues which is all too often lacking in proposals of the Council or individual Member States. Throughout the following paper, where we call for new initiatives, the authors of this paper feel greater confidence in the Commission's ability to balance divergent interests. In the last few years the Commission has, in the view of the authors of this paper, submitted various proposals which do properly balance the different interests, and which should be adopted at the earliest opportunity. It seems that there is not so much a lack of creative and comprehensive thinking, but more a lack of political will to agree on a common approach.

Fortunately, the Austrian Strategy Paper did not greatly influence the content of the EU *Action Plan of the Council and the Commission on how best to implement the Provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice* (December 1998). The Action Plan refers briefly to the crucial question of "which, if any, of the present provisions (Third Pillar *acquis*) should be replaced by more effective ones" (Par 29) and it is on this question that we here concentrate our attention, applying a criteria not only of effectiveness but also one of improving respect for humanitarian principles and human rights law. We would note that the *1997 EU Decision on monitoring the implementation of Third Pillar instruments* was itself never fully implemented so that many adopted measures remain unevaluated. We urge Member States to conduct such evaluation before communitarising the Third Pillar measures.

In the Action Plan, the Council lays out two categories: measures to be taken within two years, and those to be taken within five. We believe that this prioritisation should be determined not only by "existing plans and the need to continue taking forward present medium-term work programmes" (Par 27) but also by what migrants, refugees and ethnic minorities in Europe presently feel to be in need of most urgent resolution. Nor should institutional momentum override the opportunity presented by the 'transitional period' for innovative thinking and fundamental re-examination of previous policies. By this criteria, we would argue that the issues of refugee definition and the standards attached to complementary forms of protection require handling within two years, while development of a new instrument related to the Dublin Convention and safe third country returns could be postponed until a clearer evaluation of this Convention is available. Similarly, we would argue that the priority in the migration field should be to adopt measures which regulate the entry and residence of migrants and which promote the equal treatment of third country

nationals in terms of free movement within the Union, rather than EU energy being invested, as The Action Plan suggests, "particularly in the areas of external borders control and combating illegal immigration". Finally, we stress the importance of the adoption of legislative measures against racism. These alternative priorities are clearly set out at the end of this paper in our **Alternative Action Plan**.

The EU Action Plan also refers to "Assessment of countries of origin in order to formulate a country specific integrated approach" (Par 36a). For this purpose a High Level Working Group on Asylum and Migration has been formed by the EU to prepare action plans on Afghanistan/Pakistan, Albania and the neighbouring region, Morocco, Somalia, and Sri Lanka. The establishment of this Working Group, which enhances co-operation across the three EU Pillars, is welcomed by the organisations who have drafted this paper, and seen as an important step towards a more comprehensive approach. It raises the prospect that EU management of migration may begin to mean more than merely deterrence. We would hope that a long term set of measures are developed, with the emphasis more on alleviation of root causes than was the case in the *1998 Action Plan on the Influx of Migrants from Iraq and the Neighbouring Region.*

An increase in extra-territorial EU immigration control is likely to be derived from these Plans, and this raises both principled and practical dilemmas with regard to the need to simultaneously 'externalise' refugee protection. External efforts at refugee protection can range from disastrously vulnerable safe havens to constructive programmes of overseas training and capacity building. Reception in the region can comply with human rights standards and enhance their implementation, or it can in itself constitute a human rights violation. This subject which is, literally, uncharted territory for most European commentators is briefly considered in this paper under the section on Foreign Aspects of Migration, but in general the Treaty of Amsterdam is an inadequate framework within which to address it. While creating its "area of freedom, security and justice", it is what the EU will be doing outside this area that is likely to prove most controversial in the new millennium.

The structure of the present paper is based on the Amsterdam Treaty text, organised according to the three policy areas, and includes references to elements in the developing EU agenda.

Issues

I. Management of migratory and refugee movements

1 . INTERNAL BORDER CONTROL

***Article 62(1)*: "...measures with a view to ensuring, in compliance with Article 14, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders."**

The Article 14 which is referred to here is the famous Article introduced by the *European Single Act* which states that the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. This Article has been subject to many disputes among the Member States and between Member States and the European Commission. Partly as a result of these disputes, a limited - but over the years increasing - number of Member States have intensified their co-operation on this matter within the framework of 1985 and 1990 Schengen Agreements. The Schengen countries agreed to abolish their internal border control.

In 1995 the European Commission proposed a Directive on border controls on persons, be they EU nationals or third country nationals, crossing internal borders. The proposal spells out the scope of the ban on controls and formalities at internal frontiers. The crossing of an internal border may not in itself give rise to controls or formalities, but does not affect the exercise of police authorities in accordance with the legislation of Member States within its territory. The Member States must also abolish any legislation obliging airlines or shipping companies to carry out controls at internal borders. Furthermore, the proposal for a Directive confirms that all persons, irrespective of their nationality, will be covered by the abolition of controls. The proposal can be seen as an important step forward to facilitate free travel within the Union, but unfortunately it is still in the Council of Ministers waiting for adoption.

Although the incorporation of the Schengen *acquis* (see Section 4) may overtake the Commission Directive, introducing nearly identical provisions, this will only apply to thirteen of the fifteen Member States and there the Commission Directive still has a role to play should the UK and Ireland choose not to 'opt in' on this issue.

Recommendation:

- Adopt, at the earliest opportunity, the 1995 Commission proposal for a Directive on the elimination of controls on persons crossing internal frontiers.

2. EXTERNAL BORDER CONTROL

***Article 62(2)*: "... measures on the crossing of external borders of the Member States which shall establish":**

(a) standards and procedures to be followed by Member States in carrying out checks on persons at such borders;
(b) rules on visas for intended stays of no more than three months,..."

The Convention on Crossing of the Community's External Borders never reached the stage of ratification. In 1994, the European Commission launched its *Proposal for a decision based on Article K.3 of the Treaty on European Union establishing the Convention on the crossing of the external borders of the Member States.* The text of this proposal is similar to that of the Convention, except that it gave the European Court jurisdiction. The recommended deadline for the signing of the Commission's proposal of a Convention (December 1994) has long since passed. If a new First Pillar measure is now developed to serve the same purpose, we believe this should not be done without deletion of the provision relating to carriers' liability (see also Section 4) and other amendments in line with the European Parliament's recommendations.

In May 1997 EU Justice and Home Affairs Ministers took note of a *Guide on Effective Practices for the Control of Persons at External Frontiers* which is already used for instruction of Associated States' border authorities. The complete absence of information in this Guide on how to recognise and handle an asylum claim should be corrected immediately if its content is to be in any way transposed into a new instrument.

We call for the role of border guards with regard to asylum claims to be clarified within the new instruments developed on asylum procedures, reception conditions, determining the State responsible for a claim, and crossing of external frontiers. All such instruments should highlight the fact that a decision on the substance of an asylum claim, even on return to a 'safe third country', needs to rest with a central competent authority and not with border officials. Reference could be made by the EU to the

Recommendation on the training of officials who first come into contact with asylum seekers, in particular at border points, which was adopted by the Council of Europe's Committee of Ministers in December 1998.

With regard to visa policy, we urge Member States to reassess the binding EU measures which have been adopted in this area since September 1995. While visas are a legitimate means by which a State controls entry of non-nationals to its territory, it is a matter of serious concern that the present list of 101 countries, in several cases, ignores UNHCR's repeated plea for visas not to be imposed on countries in which there are civil wars, generalised violence or widespread human rights violations which produce refugees and displaced persons. Indeed, frequent and transparent review of such a list is necessary so that persons who can not obtain documentation without putting themselves at increased risk of persecution are not prevented from fleeing their country.

EU visa policy is undoubtedly acting as a deterrent and barrier to potential asylum seekers. Not only does this logically lead to an increased reliance on illegal entry, but surely results in a certain number of persons in fear of persecution being contained inside their countries of origin. This is a violation of Article 14 of the *Universal Declaration of Human Rights* ("the right to seek and enjoy asylum").

Many EU governments currently send immigration officers overseas in order to enforce border controls extra-territorially, for example through 'gate checks' in foreign airports. Their role appears to be purely one of enforcement and their actions are not held accountable to international law or to democratic scrutiny.

We would argue that this extension of border control beyond the external borders of the EU should logically be accompanied by obligations upon Member States and their delegated officials to receive asylum requests and even to offer persons who need to flee without legal documents some assistance with exiting the country or region of origin. Since in practice such assistance is almost impossible to implement, we believe that the issue of externalising and 'exporting' border control requires urgent reconsideration from a legal, democratic and refugee protection perspective.

Similarly, the fiction of certain 'zones' within EU airports being outside of Member States' jurisdiction should be absolutely abolished. Rulings of the European Court of Human Rights have made it clear that international obligations apply to Member States' actions within these zones as surely as elsewhere on their territory.

Recommendations:

- Include the role of border guards in receiving and referring asylum claims in instruments on the crossing of external borders including the Guide to Effective Practices for the Control of Persons at External Frontiers (with reference to the Council of Europe Recommendation adopted on this subject in December 1998).

- Regularly revise the Common Visa List to exclude countries experiencing civil war, generalised violence or widespread human rights abuse.

- Reconsider the enforcement of EU border controls extra-territorially, particularly in countries producing significant numbers of asylum seekers.

- Abolish the legal 'fiction' of international zones in airports of EU Member States.

3. FREE TRAVEL

***Article 62(3)*: "...measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months."**

Such measures are already applied within the Schengen area. In 1995, the European Commission proposed a Directive that establishes the right of third country nationals, legally residing on the territory of a Member State, to travel to another Member State for a short period but not longer than three months. This right is also granted in the Directive to a person who holds a visa which is valid throughout the Community and which is mutually recognised for the purpose of crossing the external frontiers of the Member States. As is the case with the proposal for the abolition of frontier control, this proposal is still in the Council awaiting adoption.

As with internal border control, the draft Directive may be overtaken by the incorporation of the Schengen acquis (see Section 4) but this would unfortunately only establish the right of free travel among thirteen of the fifteen EU States.

Recommendation:

- Adopt, at the earliest opportunity, the 1995 Commission proposal for a Directive on the right of third country nationals to travel in the Community.

4. *INCORPORATION OF THE SCHENGEN ACQUIS*

Protocol integrating the Schengen acquis into the framework of the European Union.

All Member States, except Ireland and the United Kingdom, will incorporate the Schengen *acquis* into the EC Treaty and the Treaty on European Union. The Council of Ministers, acting unanimously shall determine the legal basis for each of the provisions of the 1985 and 1990 Schengen Agreements or Decisions of the Schengen Executive Committee. Some parts of the Schengen *acquis* will go to the Third Pillar (probably those on police co-operation) and others to the First Pillar (probably those related to border control, admission for short term stay and visa). Matters related to asylum are overtaken by the provisions of the Dublin Convention (see Section 5). In case the Council does not succeed in deciding the legal basis of the provisions and decisions, the *acquis* shall be regarded as acts based on Title VI of the Treaty on European Union.

The following issues will have to be dealt with: control at external borders, free travel of third country nationals, standards and procedures for carrying out checks at external borders, rules for visas of no more than three months, including the lists of countries who must be in possession of visas, procedures and conditions for issuing visas, uniform format for visas and the carrier liabilities.

Within the Schengen area, control at the internal borders is abolished and third country nationals legally residing in a Schengen State have the right to travel freely between Schengen countries. The European Commission has proposed Directives to the same effect (see Sections 1 and 3). It seems logical to bring these proposals together with the incorporation of these parts of the Schengen acquis.

Concerning border control and visa policies, the European Commission has made a number of proposals for binding measures, namely the *Proposal for a decision based on Article K.3 of the Treaty on European Union establishing the Convention on the Crossing of the External Borders of the Member States*, the proposal for a *Regulation Determining the Third Countries whose nationals must be in possession of a visa* when crossing the external borders of the Member States and the proposal for a Regulation laying down a uniform format of visas. These proposals could be seen as an attempt of the Commission to transpose Schengen arrangements on these matters to the whole of the European Union. The first measure was never adopted, the second was annulled by the European Court and the third was finally adopted after many concessions were made to Member States which are not part of Schengen. The question arises then whether the incorporation of these parts of the Schengen *acquis* will meet with more success. We recommend that the comments made by the European Parliament while giving their opinion on the three Commission's proposals, such as highlighting the need for all visas issued by one Member State to become truly applicable across the EU, should be taken into consideration.

We also believe that the process of incorporation offers also the opportunity to rescind provisions relating to carrier liability for carrying undocumented passengers. Combined with stringent visa policy, carrier liability has undoubtedly led to the containment of potential refugees inside the country where they are persecuted, as airlines and other carriers refuse to allow those without visas and other valid documentation to embark. We share the concern expressed by the UN Human Rights Committee in its November 1998 report about: "sanctions against passenger carriers and other pre-frontier arrangements that may affect the rights of any person to leave any country, including his or her own, in violation of Article 12, paragraph 2 of the *International Covenant on Civil and Political Rights"*. In the case of refugees, we believe these provisions also constitute a violation of Article 14 of the *Universal Declaration of Human Rights* (the right to seek and enjoy asylum).

According to the Protocol on incorporation of Schengen, Ireland and the United Kingdom may at any time request to take part in some or all of the provisions of the Schengen *acquis*. We consider that it is essential for these two States to at least take part in those measures which would bring concrete benefits to third country nationals within their territories; for example, they should abandon their policies of internal border control and barriers for the free travel of third country nationals.

Recommendations:

- Link the incorporation of Schengen with the Commission Directives on internal border control and free travel so that all fifteen Member States may introduce these provisions.
- Amend the Schengen acquis in line with European Parliament recommendations, making all visas truly applicable throughout the EU.
- Rescind provisions relating to carriers' liability as they may lead to violation of international human rights law.

5. THE DUBLIN CONVENTION AND SAFE THIRD COUNTRY PRACTICE

***Article 63(1)(a)*: "criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States"**

This article presumably refers to transposing the *Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities* (The Dublin Convention) into a First Pillar instrument, though the wording ignores the fact that this Convention, through its Article 3(5), provides that States retain the right to send applicants to so called "safe third countries". Therefore the Convention does not guarantee that any EU Member State will finally be responsible for considering an application. The 'safe third country' practice was disseminated throughout European national legislation following the adoption of the *1992 London Resolution on a Harmonised Approach to Questions Concerning Host Third Countries.*

The process of adopting First Pillar measures is a valuable opportunity for scrutinising the effectiveness and justice of safe third country policies. It is also a time for reconsidering the Dublin Convention's whole "raison d'être". An examination of the complex derivative measures adopted to regulate its practical implementation (i.e. means of proof, travel routes, time limits for conducting transfers and exchanges of notifications) is enough to raise questions regarding whether this instrument is worthwhile. Current statistics suggest that it is intensifying 'burdens' on certain countries rather than sharing them more equitably, as was one of the explicit objectives of the Convention, and from the asylum seekers' point of view it is restricting their freedom without enhancing their protection. On the other hand, it is at least a step towards guaranteeing access to asylum procedures, by reducing situations of 'refugees in orbit' which existed previously. We recommend that the development of EC legislation replacing the Dublin Convention (and/or extending its application to third country nationals applying for complementary or temporary protection) should be postponed until - with the benefit of full guidelines and greater administrative experience - the Convention's implementation can be fully and fairly evaluated, and until other areas of asylum law and policy are more fully harmonised. We would not, in other words, agree with the German Presidency statement in its *Draft Position on asylum-related aspects of the strategy paper on migration and asylum policy* of February 1999, that "The Dublin Convention is a cornerstone of asylum law".

In the meantime, the Convention should be implemented in a flexible and humane manner by invoking the 'opt out' clause and the 'humanitarian' clause in the interests of the asylum seeker, and operative guidelines on these clauses should be established as a matter of urgency. The EU Action Plan mentions that there is a need for the new First Pillar measure to be supplemented "by provisions enabling the responsibility for dealing with the members of the same family to be conferred upon one Member State where the application of the responsibility criteria would involve a number of States...". Certainly this aspect of the present Dublin Convention should not be lost and could be strengthened in a new instrument for the sake of both the human right to family unity and operational efficiency. We support the current work of the Council on this subject and, in this context, would emphasise that overly high thresholds or criteria of 'dependency' should not be set with regard to family unity, that a broad definition of 'family' should be adopted and that guidance should be provided also on procedures and means of proof.

In addition, we recommend that any EC legislation replacing the Dublin Convention should: address the failure of its predecessor to provide for the socio-economic rights of asylum seekers awaiting a decision under its terms; provide all asylum seekers with a suspensory right of appeal against a decision to transfer their application to another Member State; and establish greater transparency with regard to procedures and decisions.

It is unclear which Article of the Treaty of Amsterdam may provide a legal basis for remedying the very great variance in 'safe third country' practice which exists among Member States. In general, the authors of this paper believe that the EU should discontinue the practice of deporting asylum seekers to so-called 'safe third countries' until a detailed set of safeguards have been adopted. Several monitoring studies have revealed that if the Council desires uniform application within the EU, then clarification is needed and this presents the opportunity also to introduce additional safeguards. The areas of review are clearly laid out by the Commission in their *Working Document - Towards common standards on asylum procedures* (1999). In addition we would mention the need to further harmonise criteria for establishing that a given country is 'safe' or 'unsafe', democratic and judicial controls over these decisions, the procedure to be followed in deportations, and the definition of humanitarian reasons to halt return. Certainly it seems timely to reconsider the low standards of 'safety' currently applied to third countries by several Member States.

Recommendations:

- Postpone the development of a new instrument under Article 63(1)(a), or the direct transposing of the Dublin Convention to the First Pillar, until implementation of that Convention may be fully evaluated from the perspective of responsibility sharing, administrative efficiency and, most importantly, refugee protection.

- Implement the Dublin Convention (and any new instrument which may replace it) humanely and flexibly, making greater use of the 'humanitarian' and 'opt out' clauses.

- Ensure that any new instrument developed for determining State responsibility should at least respect the family unity of applicants, their socio-economic rights, and grant them a suspensory right of appeal against a decision to transfer their claim.

- Discontinue the practice of safe third country returns at least until a harmonised range of additional guarantees are introduced. Clarify common EU criteria and procedures for determining the 'safety' of a third country.

For a more detailed position on the implementation of the Dublin Convention and safe third country practice, please refer to:

> ECRE 'Position on the implementation of the Dublin Convention, in the light of lessons learned from the implementation of the Schengen Convention' (December 1997)
>
> ECRE Report 'Safe third countries - myths and realities' (February 1995)

6. RECEPTION CONDITIONS FOR ASYLUM SEEKERS

***Article 63(1)(b)*: "minimum standards on the reception of asylum seekers in Member States"**

International protection is not just about safety but also about restoring respect for human rights, including socio-economic human rights. Reception conditions which provide an adequate means of subsistence are also, in our view, a precondition for a fair and efficient asylum procedure. In summary, asylum seekers must be able to live in dignity until a final decision has been taken on their claim. At present, several Member States not only deny asylum seekers access to the means to secure legal advice and representation, but also forcibly limit their freedom of residence, deny social security payments absolutely or have recently reduced them as a deterrent measure, deny access to other than emergency healthcare, and access to education (including language courses) for asylum seekers over the age of sixteen. Such policies have created 'perverse incentives' which currently encourage asylum seekers to live and work illegally in order to support themselves or in order to avoid forcible separation from their families and friends by national dispersal systems.

The authors of this paper urge the Commission to take an initiative in this area within the next two years which, despite the wording of Article 63(1)(b), is not based only on minimum standards but on the need for harmonisation of good practice. We maintain that such an approach to harmonisation, if adopted, will both prevent exclusion from the host society and facilitate re-integration following return. Positive reception conditions are essential to creating the conditions in which recognised refugees are able to settle well into their host societies in the longer term, and the EU should recognise the inherent contradiction in wishing on the one hand for greater social integration of refugees and migrants, while on the other hand pursuing deterrent tactics during the asylum determination period which impose unnecessary hardships upon the same people.

Such an instrument should differ from previous drafts of Third Pillar instruments in that it should reflect the principle of non-discrimination, making no distinction as to where an asylum application is lodged, and ensuring that the rights afforded to asylum seekers apply from the moment of arrival (including the period while determination of State responsibility for the claim is considered - for example, under the Dublin Convention) and until the last opportunity for appeal is exhausted. In particular, such an instrument should ensure, *inter alia:*

- access to the refugee determination procedure, information on those procedures in writing, independent legal advice and the means to obtain that advice, and the services of a competent interpreter;
- that any limitations on the freedom to reside in any area of a host country meet important criteria, such as respecting the right to family unity;
- that asylum seekers are given access to education, including language and vocational training;
- that asylum seekers are given early access to the labour market in order to promote self-sufficiency;
- that asylum seekers have access to health care, including specialist care for survivors of torture and treatment of trauma;
- that asylum seeking children are granted exactly the same rights as other children living within the host State;

- specific provision to address the physical safety of asylum seeking women in EU States, particularly where they are living in collective accommodation.

We believe that the conditions in which asylum seekers are detained and the legal basis for such detention in EU States should not be included within an instrument on reception conditions under Article 63(1)(b). The deprivation of liberty is of a seriousness that demands separate standard setting by human rights bodies. It should only be applied to asylum seekers in very exceptional circumstances and therefore does not require an EU instrument of harmonisation. The currently widespread use of detention as a deterrent measure is unacceptable and requires urgent reform. If detention were included in an instrument governing reception conditions, there need only be a single statement referring to the primacy of the *European Convention on Human Rights and Fundamental Freedoms* (ECHR), other international human rights law, UNHCR Excom Conclusions and Guidelines, and in particular the well established principle that asylum seekers should "only be detained as a last resort, in exceptional cases and where non-custodial measures have proven in an individual case not to achieve the lawful and legitimate purpose".

Recommendations:

■ Adopt a binding instrument on reception of asylum seekers which sets common standards relating to, inter alia: place of residence and freedom of choice, maximum periods in collective accommodation, social assistance, employment, education, healthcare, the treatment of women and children, and which does not discriminate between different categories of asylum seekers. Ensure that this instrument is in full conformity with international legal standards.

■ Exclude from this instrument the issue of detention of asylum seekers.

For a more detailed position on conditions for the reception of asylum seekers, please refer to:

> ECRE 'Position on the reception of asylum seekers' (June 1997)
>
> ECRE 'Research Paper on the Social and Economic Rights of Non-Nationals in Europe' (November 1998)

7. REFUGEE DEFINITION

***Article 63(1)(c)*: "minimum standards with respect to the qualification of nationals of third countries as refugees"**
***Article 63(2)(a)*: "minimum standards...for persons who otherwise need international protection"**

With regard to Article 63(1)(c), we believe that it is not the role of the EU nor any other regional body to define who should qualify for protection under the 1951 Geneva Convention. This is the supervisory role of UNHCR under Article 35 and of the International Court of Justice under Article 38 of that Convention. Declaration 17 of the Amsterdam Treaty, which formalises EU-UNHCR relations, is relevant in this context. The EU should accept the universal UN standards on interpretation of the refugee definition as sufficient minimum standards and, based upon evolving jurisprudence, should elaborate upon these standards within the fora of UNHCR. At present some EU States' interpretation of the law has no basis in the wording of the 1951 Geneva Convention, is not in the spirit of that Convention and is in contradiction to UNHCR official advice. The EU should seek additional guidance from UNHCR on:

- issues where certain EU Member States currently implement illegitimate legal doctrines - e.g. overemphasis on the intent of the persecutor and whether that intent is justified by a 'legitimate aim', or unreasonable emphasis on whether the single individual was personally targeted (e.g. a woman who is repeatedly raped by soldiers indiscriminately terrorising a town of a certain ethnic group);
- the distinction between persecution and prosecution, especially with respect to refusal of military service, conscientious objection and desertion;
- claims involving persecution due to sexual orientation, recommending use of the 'social group' ground (Sexual orientation is not dealt with by the UNHCR Handbook);
- determining gender-related claims, recommending use of all five grounds of the 1951 Geneva Convention as appropriate to the case, and considering the relationship of gender to: 'serious harm' and the meaning of persecution, agents of persecution and indirect State responsibility, and determining the 'safety' of countries of origin. If such guidelines can not yet be developed at a global level, the EU may have reason to develop such a set of Guidelines in a First Pillar instrument.

However, if the EU, as a supra-national body, does persist in re-interpreting the 1951 Geneva Convention definition, we believe that it should at least pay due respect to the opinion of UNHCR in drafting such legislation. Given UNHCR's objections to the *1996 EU Joint Position on the harmonised application of the definition of the term 'refugee' in Article 1 of the Geneva Convention*, this text can not,

therefore, simply be transposed as it stands into EC legislation. The European Court of Justice, under its new powers in the asylum field, should be requested to examine such a new instrument in terms of its compliance with other international laws.

Specifically, any new instrument should accept that a person who risks persecution by non-State agents, even where the State is willing but simply unable to control these agents, may qualify as a refugee. This amendment will ensure protection to many refugees fleeing from countries where the central government is losing or has lost effective control of its territory. Persecution that does not involve State complicity is still, nonetheless, persecution.

It should be emphasised that, within a correct interpretation of the Convention, many persons fleeing "inter-ethnic persecution and displacement by non-governmental power brokers" referred to by the Austrian Presidency Strategy Paper as falling beyond the scope of the 1951 Geneva Convention are (if all other grounds are satisfied) protected by that Convention, which includes ethnicity (synonymous with 'race') as a ground and where the determination of persecution should be unbiased by the setting, whether a civil war or a repressive regime. Tens of thousands of Bosnians who sought protection in Europe were thus found to qualify for refugee status under the 1951 Geneva Convention.

Complementary forms of protection

On the other hand, a supplementary refugee definition, to protect only those who fall beyond a correct interpretation of the 1951 Geneva Convention definition, may be legitimately developed in a regional forum. Indeed this is an important and urgent task for the EU.

At the time when the EU *Joint Position on the harmonised application of the definition of the term "refugee" in Article 1 of the Geneva Convention* was adopted, for example, only 43 100 persons had been granted Convention status in all of Western Europe in contrast to an estimated 600 000 de facto refugees, though very many of these people in our view were persons deserving but wrongly denied Convention status. The EU has since that time continued to shy away from the pressing issue of providing a secure legal status to de facto refugees, with specified rights. We believe that this matter should be handled as a matter of urgency, aiming at completion within two years.

While some may suggest the amendment of the 1951 Geneva Convention definition, the authors of this paper join many other experts and advocates in believing that this Convention must remain untouched as it is a basic text of human rights law. Whatever other standards are developed these must be supplementary and complementary.

Article 63(2)(a) is drafted in a way that confuses temporary protection and complementary forms of protection. On the other hand, the EU Action Plan and the February 1999 strategy paper on migration and asylum from the German Presidency make it commendably clear that these are distinct harmonisation projects to be handled at different times and through different instruments. In our view there is a clear distinction between temporary protection as an emergency measure to deal with sudden large scale arrivals, and complementary forms of protection which are granted to applicants as the result of a determination procedure.

We certainly advocate, in line with the European Parliament's *Resolution on the harmonisation of forms of protection complementing refugee status in the European Union* (February 1999), the following supplementary refugee definition for Europe:

"a) persons who have fled their country, and/or who are unable or unwilling to return there because their lives, safety or freedom are threatened by generalised violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order; and
b) persons who have fled the country and/or are unwilling to return there, owing to a well-founded fear of being tortured or of being subjected to inhuman and degrading treatment or punishment, or violations of other fundamental human rights."

Part (b) of such a definition would provide a status for those who are protected from deportation under Article 3 ECHR / *Convention against torture (*CAT) for refugee-like reasons. On the other hand, neither part should be read as in any way diminishing the claims of persons fleeing from the context of civil war or generalised violence but who nonetheless risk persecution within the meaning of the 1951 Geneva Convention.

As explained above, certain categories of refugee do not require a complementary form of protection because they should be protected under the 1951 Geneva Convention - for example, persons persecuted by non-State agents, persons making claims related to their gender or sexual orientation, persons whose claims are based on kinship or membership of other social groups, and certain conscientious objectors. A supplementary refugee definition should also exclude those persons whose claims are reject-

ed after a fair determination procedure but who can not be returned for practical reasons such as the non-cooperation of their country of origin. Such rejected asylum seekers should instead have eventual recourse to an immigration status in the context of full respect for their human rights.

In terms of operationalising the complementary protection attached to the supplementary definition, we recommend that each EU State should offer a single national asylum determination procedure to all persons seeking international protection and then determine the status as appropriate. A single determination procedure would logically imply that the Dublin Convention or its successor should apply to all asylum seekers, but our concerns about the Dublin Convention system should be considered in this context. Finally, in order to promote social cohesion and prevent social exclusion, there needs to be broad parity of social, economic, cultural and civil rights between Convention refugees and those protected under the supplementary refugee definition.

Recommendations:

- Ensure that, if a new instrument interpreting the existing refugee definition is developed, it does not transpose the 1996 EU Joint Position on the harmonised application of the definition of the term 'refugee' in Article 1 of the Geneva Convention without amendment in relation to the issue of agents of persecution in compliance with UNHCR guidance.

- Develop guidance on gender-related claims through UNHCR or in a set of EU Guidelines.

- Propose a new instrument containing a supplementary refugee definition for Europe within the next two years, from which a harmonised complementary form of protection may be derived.

- Ensure that instruments developed under other Treaty Articles on procedural harmonisation and on social integration of refugees apply equally to this complementary form of protection.

For a more detailed position on refugee definition please refer to:

> ECRE 'Note on the harmonisation of the interpretation of Article 1 of the 1951 Geneva Convention' (June 1995)
>
> ECRE 'Working Paper on the Need for a Supplementary Refugee Definition' (April 1993)
>
> ECRE 'Position on Asylum Seeking and Refugee Women' (December 1997)

8. ASYLUM PROCEDURES / CESSATION PROCEDURES

Article 63(1)(d): "minimum standards on procedures in Member States for granting or withdrawing refugee status"

The above Treaty Article's reference to "refugee status" should be interpreted with reference to both 1951 Convention status and complementary forms of protection. Asylum procedures will certainly operate most effectively if a single procedure can result in granting either type of status. Persons in need of international protection should not have to choose between different procedures as if gambling with their own lives, and persons fleeing from armed conflict and human rights violations need no fewer legal safeguards against deportation than those fleeing persecution for reasons set out in the 1951 Geneva Convention.

A new Directive on asylum procedures is already under preparation by the Commission, which has issued a *Working Paper - Towards common standards on asylum procedures* in March 1999. We welcome this initiative, but urge the European Union to make such an instrument applicable, in the short term, to both the granting of Convention status and other national statuses, and in the longer term, to an EC legislated complementary form of protection.

Granting refugee status

The Action Plan makes it clear that this Treaty Article is to be implemented "with a view, inter alia, to reducing the duration of asylum procedures." On this point we would like to distinguish between administrative efficiency which would reduce currently excessive waiting times, and removal of legal safeguards which may put applicants at risk of refoulement. UNHCR Excom Conclusion No.30 explains why procedural safeguards must be maintained even in 'manifestly unfounded' cases because of the grave consequences of an erroneous determination.

If the EU does persist in further legislating on the implementation of accelerated procedures, we strongly support the Commission's indication that the Member States ought to resist the temptation to transfer the 1995 *EU Resolution on Minimum Guarantees for Asylum Procedures* without amending its terms. The Resolution is in fact deficient both with regard to the definition of cases which may enter accelerated procedures and with regard to the safeguards for such procedures. A new instrument should guarantee a right to appeal to an independent court, with suspensive effect, on all decisions, includ-

ing those taken on 'safe third country' and 'manifestly unfounded' cases. As the Resolution presently stands, the lack of suspensive effect on appeal for accelerated cases makes a mockery of an asylum case, where the action of deportation is very often irreversible and may constitute refoulement. UNHCR Excom Conclusion No.8 states that the asylum seeker should "be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending". It should also be guaranteed that decisions on such claims lodged at the border will be taken by a central competent authority.

We recognise that there may be manifestly well-founded and other applications which deserve priority. This does not mean that the procedure should be accelerated, it simply means that they should be handled with urgency within the normal asylum system. All the procedural safeguards and legal rights should apply. If the EU persists in implementing accelerated procedures for 'manifestly unfounded' cases, vulnerable cases or cases raising complex issues such as application of the exclusion clauses should certainly be exempted from such procedures.

We believe that an effective asylum procedure depends on good quality initial decision-making. Better initial decisions will discourage appeals, or refine issues to be dealt with at appeal, reducing the length and expense of the system as a whole. Efficiency can also be attained only if supported by institutional capacity, good quality independent and accurate information, and continuous training. With the allocation of sufficient resources, speedier decisions could be achieved without compromising procedural fairness.

We welcome the statement in the Action Plan that "special attention shall be paid to the situation of children". The *1997 EU Resolution on unaccompanied third-country national minors* is in fact one of the few pieces of Third Pillar 'soft law' which could be transposed to the First Pillar without significant amendment. The only concerns relating to this Resolution's standards are that the treatment of children at borders is described in very basic terms and that unaccompanied children are not excluded from 'safe third country' return.

In the same manner, we call on the EU to pay "special attention" to the situation of female asylum seekers, and to elaborate upon the special procedural safeguards proposed in the Minimum Guarantees Resolution. We would suggest that both issues are best dealt with as provisions under the mainstream instrument on asylum procedures currently prepared by the Commission, and should be incorporated throughout the text rather than dealt with in 'extra' provisions.

Finally, we fully support the intention expressed in the EU Action Plan to initiate a study of the feasibility of a single European Union procedure for the longer term future. We would note, in this context, ECRE's recently updated comprehensive *Guidelines on Fair and Efficient Procedures*. These Guidelines provide an alternative blueprint for how a procedure should be designed and includes sections on: the request for asylum, the role of border officials, temporary protection in relation to the procedure, admissibility procedures, determination of State responsibility in relation to the procedure, provisions in legislation, the competent authorities for determining claims, providing information on the procedure, determining the age of young asylum seekers, legal advice, social support and other assistance, interpreters, interviews (including establishing the facts and the credibility of the asylum claim), decisions, priority applications, accelerated procedures and exemptions from such procedures, appeals, and finally implementation issues (training of officials, country of origin information, legal aid, data protection and transparency).

Withdrawing refugee status

In interpreting this aspect of the Treaty Article, the authors of this paper do not imagine the EU to refer to technical cancellation when it later transpires, for example, that a grant was made on the basis of false information (which is too rare an occurrence to merit an EU measure), but rather to cessation of refugee status as defined under Article 1(c) of the 1951 Geneva Convention, where the person is deemed to no longer be in need of international protection. While the 1996 EU Joint Position on Article 1 did cover this issue, it did so in a very vague and general manner, and not in relation to procedures.

We recommend that any new EU measure intended to harmonise cessation procedures should be based upon UNHCR Excom Conclusion No. 69 and the recent guidance of UNHCR in its *Note for the Eighth Standing Committee* (30 May 1997). Such a measure should include a provision formalising the requirement for EU Member States to seek UNHCR advice whenever applying the cessation clauses. It should take account of the fact that refugees should not be subjected to constant reviews of their refugee status, and that the procedures must include a fair hearing of the individual with the same right to legal assistance and a suspensive right of appeal as afforded in an asylum determination procedure.

With regard to non-1951 Geneva Convention refugees, covered by a new instrument on complementary forms of protection, we call for identical or analogous cessation procedures, based on the 'ceased circumstances' clauses of Article 1(c) of the 1951 Geneva Convention. These decisions are usually taken with regard to groups of refugees, against which the individual may appeal if necessary.

With regard to Temporary Protection, the withdrawal of this emergency measure when return in safety and dignity is assured merely indicates that access to refugee determination procedures can no longer be suspended. It should not trigger cessation under the 1951 Geneva Convention.

As in the case of rejected asylum seekers who have strong family, social or economic links established in the host country, the use of cessation clauses should link into the availability of a secure form of permanent residence under immigration law for those who have been in the host country for many years but are not yet naturalised. Article 34 of the 1951 Geneva Convention requires States to "as far as possible facilitate the assimilation and naturalisation of refugees".

Recommendations:

- Continue development of a comprehensive instrument on minimum guarantees for national asylum procedures, and ensure that this instrument applies to determination and cessation of all refugee statuses (1951 Convention, harmonised complementary and/or national subsidiary forms of protection).

- Ensure that this new instrument at least avoids the deficiencies of the Resolution on Minimum Guarantees with regard to accelerated procedures.

- Include in this new instrument provisions which emphasise the need for good quality initial decisions, and the need to prioritise certain vulnerable and manifestly well-founded cases.

For a more detailed position of on asylum procedures, please refer to:

> ECRE 'Guidelines on fair and efficient procedures for determining refugee status' (July 1999)
>
> ECRE 'Position on Refugee Children' (November 1996)
>
> ECRE 'position on Asylum Seeking and Refugee Women' (December 1997)

9. TEMPORARY PROTECTION/ EMERGENCY MEASURES

***Article 63(2)(a)*: "minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin..."**

***Article 64(2)*: "In the event of one or more Member States being confronted with an emergency situation characterised by the sudden inflow of nationals of third countries and without prejudice to paragraph 1 [on maintenance of law and order and safeguarding national security], the Council may, acting by qualified majority on a proposal from the Commission, adopt provisional measures of a duration not exceeding six months for the benefit of the Member States concerned"**

It is unclear why Article 64(2) is so detached from the Treaty of Amsterdam's reference to Temporary Protection under Article 63(2)(a). Certainly it is regrettable that Article 63(2)(a) makes no reference to the "sudden inflow of nationals of third countries", but this omission does not prevent a future instrument based on this Treaty provision from adding this specificity. Indeed, the present draft *EU Joint Action concerning temporary protection of displaced persons* already does. Certainly the authors of this paper believe that Member States should harmonise and use Temporary Protection only as an administrative policy in an emergency situation where individual refugee status determination is not immediately practicable, and where Temporary Protection will enhance admission to the territory.

The term "displaced persons" therefore needs to be understood as inclusive: a category that may contain, among others, Convention refugees. It is extremely worrying that there is reference to compliance with the 1951 Geneva Convention only under Article 63(1), and not under Article 63(2)(a) or Article 64(2). Any future instrument developed to harmonise Temporary Protection must ensure that it respects the 1951 Geneva Convention, in particular with regard to granting access to determination procedures. We support the current draft EU proposal for access to be granted as soon as administratively possible and certainly within a maximum of three years.

On the other hand, Temporary Protection is suitable for dealing with many kinds of mixed movements in emergency conditions, including persons migrating due

to sudden economic collapse or environmental disaster. In general terms, we believe that the EU's present work on a draft Joint Action is a sound basis for a new First Pillar instrument on Temporary Protection. In particular, we strongly support the 1998 Commission text's proposed standards of treatment and urge Member States to leave as little as possible to be governed by national law. Standards of Temporary Protection should rest on the principle that temporarily denying refugees access to status determination procedures is not a legitimate basis for the denial of 1951 Convention rights. Therefore, in addition to the rights of asylum seekers, Member States are legally obliged to afford beneficiaries, as a minimum, 1951 Convention rights to access to wage-earning employment and employment in the liberal professions, social security and social assistance, healthcare and housing. Even if the beneficiaries are not Convention refugees, the standards of treatment proposed by the Commission in 1998 are broadly commensurate with the 3-5 year timeframe proposed. It is a matter of promoting not integration but self-sufficiency, which in turn will facilitate either integration or return. Also, for the sake both of perceived fairness and administrative simplicity, socio-economic rights should not be removed from persons whenever they are permitted to enter the asylum determination procedure.

Amendments should be made in the draft EU Joint Action texts, in order to make the future instrument even more protective and effective. For example, it lacks guidance for States on a common entry and admission policy; it places unnecessary and divisive emphasis on whether "protection...in the region of origin" can be found; it risks over-use where an emergency is only probable but not yet manifest; it lacks sufficiently clear commitment to the durable solution of local integration if return remains impossible after 5 years; and unfairly threatens to remove certain entitlements from beneficiaries of Temporary Protection is they decide to apply for asylum.

Article 64(2) can best be understood as enabling the EU to continue with ad hoc responses until such a time as more coherent and permanent Temporary Protection and responsibility sharing arrangements are adopted. Such emergency action is the understandable prerogative of Member States but should be implemented without sacrifice of democratic transparency and accountability. It is also vital that such action does not violate States' obligations under international refugee and human rights law.

In general, Article 64(2) merely demonstrates that the Treaty of Amsterdam is an inadequate framework for emergency action in such areas, especially where action beyond EU territory is required.

Recommendations:

- Adopt an instrument based upon the EU draft Joint Action on temporary protection of displaced persons, which is currently under discussion, at the earliest opportunity.

- Ensure that any ad hoc emergency measures taken by the EU in advance of adopting this instrument are respectful of obligations under international refugee and human rights law.

For a more detailed position on temporary protection, please refer to:

> ECRE 'Temporary protection, in the context of the Need for a Supplementary Refugee Definition' (March 1997)
>
> ECRE 'Comments on the proposal of the European Commission concerning temporary protection of displaced persons' (April 1997)

10. RESPONSIBILITY SHARING

***Article 63(2)(b)*: "promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons"**

Responsibility sharing is an important issue not because it directly improves refugee protection but because its resolution would allow many other areas of harmonisation to progress in a far more positive atmosphere, and could prevent deterrent measures being imposed in future refugee crises. The lack of responsibility sharing mechanisms in Europe during the war in the former Yugoslavia resulted in several EU States bearing a clearly disproportionate share of the reception responsibility. This was a major factor in the decision of those States to impose visa requirements on Bosnians and then to impose premature return of rejected asylum seekers to the region. At present, agreement among Member States on the EU draft Joint Action on temporary protection of displaced persons is blocked by the issue of responsibility sharing.
However, historical precedents (e.g. *the Comprehensive Plan of Action for Vietnamese Refugees,* post-World War II dispersal of refugees, etc.) suggest that responsibility sharing only works to facilitate refugee protection where States' interests in involvement are forceful enough to draw them together. A solidarity scheme which dramatically increases the responsibility 'share' of certain EU States may result in them trying to define refugee emergencies out of existence altogether, declaring

mass influxes to be economic migrants and not displaced persons at all. We believe that the priority should be to develop a regime which will demonstrably increase the capacity for refugee protection, rather than to reach unanimous agreement on this issue within a set time limit. However, whereas the EU Action Plan's reference to action "as soon as possible" may have been drafted as an admission that agreement remains a distant prospect, we would interpret this phrase as an instruction to urgency.

If such a mechanism can be agreed, we believe that financial solidarity schemes are, as a general rule, preferable to measures which involve the physical redistribution of persons. Where such physical redistribution of persons is deemed truly necessary, organised either by a 'quota' or 'pledging' system, it should nevertheless be done in a way which respects family unity and takes into account, where possible, the cultural, historical and linguistic links of asylum seekers. Such repartition should only take place in circumstances of direct evacuation or shortly after arrival in a host State, and should never be imposed by force or through the threatened denial of social support.

In the light of these several conditions, the authors of this paper can generally support the current EU draft texts concerning *solidarity in the admission and residence of beneficiaries of the temporary protection of displaced persons*, and recommend the adoption of a suitable First Pillar measure. The most important draft Joint Action is the commitment to financial solidarity via new budget lines. We have supported the recent creation of a European Refugee Fund by the European Parliament of 15 million EURO, and have called on Member States to further develop this element of financial solidarity. We therefore welcome the Spanish Prime Minister's proposal to launch a spending programme of 3 billion EURO which would offset the costs to Member States in receiving asylum seekers and refugees, particularly from the Balkan region.

Finally, it is unfortunate that the terms of the Treaty of Amsterdam's Article 63(2)(b) do not include mechanisms for global responsibility sharing. Currently the primary mechanisms for such responsibility sharing at the global level are (a) UNHCR as an institution and in particular the operation of the UNHCR Resettlement Division, and (b) EU bilateral and multilateral humanitarian aid. ECRE believes that it is nonsensical, in the context of comprehensive harmonisation in all other areas of the asylum field as laid down by the Treaty of Amsterdam agenda, to have only four of the fifteen Member States participating regularly in the UNHCR resettlement system. Specifically, there is a need for a collective EU commitment, by means of a non-binding instrument, to establish and maintain annual resettlement quotas for refugees from other regions of the world into all Member States. Such quotas need not be large initially, but could be used to assist UNHCR with cases best integrated into Europe (with its welfare tradition) such as refugees with serious medical needs. In this way the EU States would not only demonstrate their commitment to global responsibility sharing but would also harmonise their own systems more closely with those of Australia, Canada, New Zealand and the United States.

Recommendations:

- Develop, as soon as possible, a regional agreement on responsibility sharing which demonstrably increases the capacity for refugee protection within the Union.
- Prioritise financial solidarity schemes and further develop the European Refugee Fund for an enlarged European Union.
- Adopt a non-binding agreement on EU participation, as a bloc, in the UNHCR resettlement system as a first step towards global responsibility sharing.

For a more detailed position on sharing the responsibilities of receiving refugees, please refer to:

> ECRE 'Position on sharing the responsibility: protecting refugees and displaced persons in the context of large scale arrivals' (March 1996)
>
> ECRE 'Comments on the 1995 "Burden Sharing" resolution and decision adopted by the Council of the European Union' (March 1996)

11. SAFE COUNTRIES OF ORIGIN AND PROTOCOL 29 ON ASYLUM

***Protocol 29* on asylum for nationals of Member States of the European Union - Sole Article: "...Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters. Accordingly, any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State only in the following cases...[derogation by State from ECHR, breach of the human rights principles mentioned in Article F.1(1) of the**

Amsterdam Treaty, unilateral decision of a Member State]"

This Protocol represents a serious threat to international principles of refugee protection and is the most notable failing of the Treaty in the area of asylum and immigration. UNHCR has publicly disputed the EU assertion that the Protocol is consistent with the 1951 Geneva Convention. In fact it constitutes a geographical limitation to the implementation of that Convention, despite the fact that all EU States are signatories to the 1967 Protocol.

In theory the Protocol is dependent upon Article 7 (which concerns human rights within the Union). In practice, however, it seems unlikely that this Article's politically charged and cumbersome sanctioning procedures will be sensitive enough to identify persecution where it occurs at an individual level. Thus the Protocol seeks to replace impartial examination of the evidence by means of an asylum determination with assertions that countries are safe merely because they have human rights obligations. In the long term, as EU enlargement and political agreements move outwards, the consequence of this approach will be to squeeze the viable 'asylum space' in the world continually down to size. We therefore strongly recommend that this Protocol should be removed from the TEC at the first opportunity (the next Intergovernmental Conference on reform of the Union).

In the interim, we urge other Member States to follow the initiative of Belgium and publicly commit themselves, in Parliament or at the UNHCR Executive Committee meetings, to carrying out individual examinations of all asylum requests made by nationals of other EU Member States.

Safe Countries of Origin

EU States have developed lists of 'safe countries of origin' which, in accordance with the *1992 Conclusions on countries in which there is generally no serious risk of persecution*, "can be clearly shown...normally not to generate refugees". They hope to establish a common approach to applicants from countries which give rise to a high proportion of unfounded claims, and to channel such applications into accelerated refugee determination procedures.

We strongly believe that the safe country of origin criteria for accelerating claims is dangerous and, in any case, ineffective at relieving pressure on the asylum determination system. We recommend that this criteria, and the practice of keeping 'safe country of origin lists' is not included in the harmonisation of asylum procedures. While the analysis that a country is 'safe' is important, it is but one element to be taken into account. Governments should never resort to applying the notion of 'safe country of origin' in a way which effectively excludes certain nationals from having their asylum claim examined. As a minimum, individuals should always have the right to rebut the presumption of safety with reference to the facts of their own case, and EU 'joint assessments' and other country of origin information used in determinations should always be in the public domain where its impartiality and reliability can be contested.

Recommendations:

- Remove Protocol 29 from the Treaty at the first opportunity (i.e. the next Intergovernmental Conference on reform of the Union) and, in the interim, continue to carry out individual examinations of all asylum requests made by nationals of EU Member States.

- Resist definition of asylum seekers as 'third country nationals' or any other reference in new instruments developed under the First Pillar which excludes EU nationals from seeking asylum.

- Ensure that no asylum seeker is excluded from a fair and efficient refugee determination procedure by declaring a country or part of a country safe.

For a more detailed position on the Protocol, please refer to:

> ECRE 'Spanish Proposal - ECRE note for the press on the Council proposal to deny EU citizens the right to apply for asylum in any other member state' (February 1997)

12. IMMIGRATION, ENTRY AND RESIDENCE

***Article 63(3)(a)*: "... conditions of entry and residence, and standards on procedures for the issue by Member States of long term visa and residence permits, including those for the purpose of family reunion."**

Migration between Member States has been on the agenda of the European institutions since the early years of the European Community. However, the term migration is not used, but rather free movement for persons, as one of the four freedoms to be established alongside free movement for services, capital and goods. Free movement of persons includes the right of EU citizens to reside and seek employment and to be treated equally in a Member State other than their own. In other words free movement is not so much an immigration instrument but more an

instrument promoting the integration of EU nationals when they move within the European Union.

In 1997, the European Commission published its *Proposal for a Council Act establishing the Convention on rules for the admission of third country nationals to the Member States*. The Convention defines common rules for the initial admission of third country nationals for the purposes of employment, self-employment activity, study and training, non-gainful activity and family reunification. In addition, the Convention defines basic rights for long-term residents, including provisions related to the possibility of accepting employment in another Member State. This proposal is a fairly comprehensive instrument and it is the Commission's intention to present a new draft in the form of a Directive as soon as the Amsterdam Treaty has entered into force.

The Convention or future Directive is not proposing an overall European immigration policy, but designs measures to regulate admission and defines some rights of long-term residents. There are good reasons why the European Union needs to develop such an overall European immigration policy; the global liberalisation of trade and the removal of barriers for the movement of capital, services and goods on a global scale will inevitably lead to increased international mobility of persons, requiring accompanying measures to facilitate this mobility. In addition, in order to maintain its present level of economic and social performance while its economically active population is ageing, the European Union may well need migrants in the near future. It is impossible (as well as undesirable) for the EU to attain 'zero immigration', and therefore a labour migration channel is required in order to ease pressure both on the asylum channel and on clandestine entry channels.

A European immigration policy needs to be adopted alongside the promotion of mobility within the Union, namely the free movement of EU citizens and the gradual extension of free movement rights to legally resident third country nationals. A European immigration policy will be based on assessments of developments in the labour market - in terms of employment, self-employment and provision of services - and demographic trends. On the basis of these assessments an adjustable immigration limit can be set. Various categories of immigrants can be included and an order of priority can control admission of these categories.

A first category should consist of certain persons who, although close relatives of immigrants with permanent residence status, are not eligible for family reunion under its current definition - in other words, the opportunity for family reunion should be expanded.

A second category should consist of persons admitted on the basis of a temporary residence and work permit. Temporary work permits do not exceed a period of three years and, by extension of contract, temporary migrants are entitled to apply for a permanent status.

A third category should consist of candidates for immigration for economic reasons, as employed or self-employed persons or as providers of services, on the basis of certain deficits in the labour market. This could include students who have finalised their studies in a Member State.

A fourth category should consist of migrants without residence permits but who have been regularly employed for a period of two years or more. It should also include rejected asylum seekers whose country of origin continually refuses to accept them back or who can not be deported for reasons such as serious medical need.

The implementation of such a policy requires a process of continuous consultation and co-operation. The European Commission should make the assessments of the national labour market and demographic trends on the basis of national reports prepared by the Member States. The Commission then should make a proposal on the number of immigrants to be annually admitted (and in which category), over a period of five years, after having consulted the Member States, the European Parliament, intergovernmental agencies and non-governmental organisations. The Council of Ministers should take a decision on the Commission's proposal and the Commission should report annually to the Council of Ministers and the European Parliament.
Recruitment and employment should take place in compliance with international law, such as the *1990 Convention on the Protection of all Migrant Workers and Members of their Families and the European Convention on the Legal Status of Migrant Workers*. Immigrants should gradually acquire the same rights as EU nationals and become entitled to family reunion in parity with EU citizens. The Convention or future Directive on rules for the admission of third-country nationals to the Member States should be adapted in the light of these proposals.

Recommendations:

- Adopt a Directive establishing the rules for admission of third country nationals to the Member States and include in this Directive the basis for an adjustable immigration channel for family reunion, temporary and permanent labour migration, and the regularisation of the status of certain persons who can not be deported.

- Implement this Directive by means of European Commission proposals, developed after consultation with Member States, the European Parliament, intergovernmental and non-governmental organisations.

- Ensure that recruitment and employment take place in full compliance with norms established in human rights law.

13. FAMILY REUNION

***Article 63(3)(a)*: "... conditions of entry and residence, and standards on procedures for the issue by Member States of long term visa and residence permits, including those for the purpose of family reunion."**

The fundamental right to family life is enshrined in various international human rights instruments. The European Commission's proposal for a *Decision on Establishing a Convention on Rules for the Admission of Third Country Nationals to the Member States of the European Union* recognises that third country nationals have the right to family reunion. In the Explanatory Memorandum the Commission rightly states that unlike admission for employment, family reunion is a matter of fulfilling international obligations; it is an individual right to which all Member States subscribe. However, during the last ten years these Member States have taken, individually or jointly, measures which undermine this right. A great number of third country nationals are deprived from this right and they have to go through various lengthy and often expensive administrative procedures with no guarantee of successful reunion at the end.

In order to uphold international standards and to counter the erosion of the right to family reunion, the authors of this paper propose the adoption of a Directive uniquely dealing with family reunion. Third country nationals legally resident in a Member State, including employed and self-employed persons, all people in need of international protection and students, should benefit from this right. The ultimate goal is that third country nationals enjoy these rights in the same way as European citizens do. In its *Communication Towards an Area of Freedom, Security and Justice*, the European Commission stressed that the concept of freedom cannot be exclusively reserved for EU citizens and that it must include lawfully and permanently resident third country nationals. The Commission argues that the Union must develop a common understanding of the extent to which third country nationals and EU citizens should be treated equally, suggesting that difference in treatment could be justified on the length of time that third country nationals are living in a Member State. This is a legitimate principle that is applied in many international instruments as well as in Community legislation.

A Directive on Family Reunion could, therefore, make a distinction between temporary and long term residents. Temporary residents (including students) should be entitled to family reunion at the latest after they have been legally resident in a Member State for one year and have the right of residence in that Member State for at least one further year. These persons should include the third country national's spouse and children under 21 years of age or dependants of the third country nationals or of his or her spouse. These persons should also acquire the right to take up a gainful activity. After three years of employment or self-employment, long term residents would acquire the right to family reunion equivalent to that of EU citizens exercising their free movement rights. This includes the spouse, children under 21 years of age and relatives of all generations who are dependent upon them. Such family members should be entitled to work or engage in self-employed activities.

The same Directive on Family Reunion could address the reunification of the families of refugees, not limiting this right to people meeting the criteria of the 1951 Geneva Convention, but including all refugees whose de facto circumstances mean that their stay is officially sanctioned and ongoing, independent of a formal declaration of a Convention status or the right to permanent residence (persons with subsidiary or complementary forms of protection). No restrictions on this right to family reunion should be imposed concerning the length of residence, employment status, access to housing and earning capacity. Family members should be granted the same legal status and entitlements as the individual refugee(s) they are joining, including equal access to the labour market, educational facilities and other benefits.

Many immigrants and refugees wish to maintain relations with their countries of origin. Measures could be included in the Directive on Family Reunion or in other binding measures which (while respecting the cessation provisions of refugee law) facilitate family visits, transfer of savings and the fulfilment of other responsibilities immigrants and refugees have in their country of origin.

Recommendations:

- Adopt a Directive which ensures that third country nationals benefit from the right to family reunion.

- Temporary residents (including students) should be entitled to this right after one year of legal residence and have a residence permit for another year. Long term residents should acquire this right equivalent to that of EU citizens exercising their free movement rights.

- Resist distinguishing between Convention refugees and other refugees granted a subsidiary or complementary form of protection when implementing this right.

- Where possible, assist migrants and refugees with maintaining contacts with their countries of origin.

For a more detailed position, please refer to:

> The Starting Line 'Proposals for legislative measures to combat racism and to promote equal rights in the European Union' (June 1998)

14. IRREGULAR MIGRATION, RESIDENCE AND REPATRIATION

***Article 63(3)(b)*: "... illegal immigration and illegal residence, including repatriation of illegal residents."**

The establishment of a more effective migration and refugee regime is in the interest of all parties concerned: the migrants and refugees themselves and the sending and receiving countries. A system of refugee protection and well-defined immigration policies are the core elements of such a regime. Policies to enforce human rights and to promote socio-economic development will contribute to reducing asylum and migration pressures. Within such an overall approach, combating irregular migration and the trafficking in human beings will find its proper place and should be given less attention than it presently receives in public and policy debates.

Given the fact that regular migration is always accompanied by irregular migration and that movements of people can never be totally controlled, governments of liberal democracies should accept the idea that there will always be people on their territory who are not in the possession of all required documents. Future control measures are expected to include more targeted identity checks (at external borders and at such public services as health and education) and at random checks (behind internal borders and in the streets). These could easily lead to infringements of civil liberties of all citizens and, in particular, of those who belong to visible minorities. It contributes to the emerging hostile climate towards ethnic minorities and those who appear to be foreigners, and thus will have a negative impact on integration policies.

In many European countries, irregular migrants are regularly employed, although they are not in the possession of proper residence documents. In some Member States small or larger scale regularisation programmes are carried out. We welcome these programmes because they are built upon rights acquired over the course of years as irregular employees and/or residents.

The introduction of employers' sanctions, like the introduction of carrier liabilities, is part of a tendency to privatise migration control. We can not support such measures. Employers' sanctions may have the effect that employers refuse to hire people they think are irregular or, to avoid any possible trouble, do not want to employ persons belonging to ethnic minorities altogether. The great majority of irregularly employed persons are nationals of Member States and combating this phenomenon should not focus only on those who entered or reside irregulary. Employers are supposed to respect (labour) laws and are subject to normal labour inspections.

Many measures taken to control irregular migration have made it impossible or extremely difficult for refugees and other persons in need of protection to apply for asylum. Article 31 of the 1951 Geneva Convention was drafted in recognition that the refugees who escaped Nazi persecution had relied on traffickers and illegal routes. To enter illegally implies nothing about the credibility of an individual's claim to need asylum, and efforts to assist asylum seekers entering illegally need to coexist with efforts to control migrant trafficking. Therefore it is important that any measure taken to combat irregular migration and trafficking in human beings makes a clear distinction between punishing the traffickers and protecting the victims (often refugees). Also in accordance with Article 31, detention should never be based solely upon an asylum seeker's illegal entry or irregular residence on the territory and claims from irregular entrants should never be classified as 'manifestly unfounded' solely for that reason.

More positive steps which may be taken to reduce irregular migration include: the creation of resettlement opportunities from specific areas; the initiation of a permanent political dialogue with refugee and migrant community groups on the issue; information campaigns in transit countries and countries of origin which not only describe the rules of admission and the penalties for illegal entry but also inform foreign nationals of their right to seek asylum, the safe third country rules which may govern where they

are obliged to do so, and their right to exemption from penalties for illegal entry if they are asylum seekers. Also, the European Union should adopt a new First Pillar measure which ensures Member States' compliance with UNHCR Excom Conclusion No. 53 regarding the treatment of stowaway asylum seekers.

Return

Persons who can not be accepted as immigrants or refugees should leave the country in safety and with dignity. Those who have no choice but to leave should be assisted to do so, and voluntary return attempted first in preference to coercive methods. Reintegration assistance should, where appropriate, be offered to such returnees and where return following temporary protection takes place, some form of international monitoring of return is essential. There is a need for the development of minimum standards for involuntary return, which includes the respect of basic human rights during the return process.

Regarding repatriation of migrants in an irregular situation, we wish to highlight the fact that readmission agreements are inappropriate vehicles for 'safe third country' returns. Mixing, in practice, migrants and rejected asylum seekers with asylum seekers being returned on safe third country grounds (whose claims for asylum have not yet been substantively examined) increases the risk of *refoulement*. UNHCR has criticised Council Recommendations on readmission agreements for lack of data protection (the only protection relates to information on claimants not being passed directly back to their country of origin) and for the fact that they do not require both States to be signatories of the 1951 Geneva Convention and 1967 Protocol. In our view, the implementation of these Third Pillar Recommendations needs to be fully evaluated before the Union takes further steps to transpose them into First Pillar measures.

Recommendations:

- Set policies relating to irregular migration and trafficking in persons within a proper context alongside policies aimed at promoting human rights and socio-economic development, as well as humanitarian and labour migration policies, and avoid disproportionate restrictionism in response to these problems.

- Refrain from unnecessary internal controls (identity checks etc.) which may infringe civil liberties and discriminate against ethnic minority populations.

- Distinguish between the issues of illegal employment in general and illegal entry or residence. Employers should be subject to labour inspections which are not focused only on irregular migrants.

- Ensure that policies which combat irregular migration are formulated with due respect for Article 31 of the 1951 Geneva Convention (for example refraining from detention of asylum seekers who enter illegally and from categorising such persons' claims as 'manifestly unfounded').

- Adopt more positive measures to combat irregular migration (for example, objective information campaigns in countries of origin and transit, and a First Pillar measure regarding reception of asylum seeking stowaways).

- Engage the refugee and migrant communities in a permanent political dialogue in order to find and implement joint solutions to issues of trafficking and illegality.

- Adopt minimum standards for involuntary returns, which recommend the use of non-coercive methods and reintegration assistance wherever possible.

- Refrain from utilising readmission agreements for the return of asylum seekers on safe third country grounds until a range of additional safeguards are guaranteed.

II. Integration and combating racism

15. *CONDITIONS OF RESIDENCE OF THIRD COUNTRY NATIONALS*

***Article 63(4):* "... measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States."**

Free movement of persons includes the right of EU citizens, their spouses - irrespective of their nationality - and citizens of the Member States of the European Economic Area, to seek employment and to be treated equally in a Member State other than their own as well as the right to reside in that Member State. Nationals from other States who are legally resident in a Member State do not possess these rights. In addition, a certain amount of inequality exist between groups of third country nationals as a function of their nationality and of the different agreements concluded between their country of origin and the European Union. The Association and Cooperation Agreements usually include clauses on

equal treatment and anti-discrimination with regard to working conditions, remuneration and social security. However, there are significant differences between the elaboration of these clauses in the Agreements themselves and in the Decisions of the Association or Co-operation Councils. The Association Agreement which grants more rights than any other Agreement is the EC-Turkey Association Agreement and Decisions of its Association Council.

In order to promote equal treatment of EU citizens and third-country nationals and to facilitate mobility within the European Union, the authors of this paper propose that measures are taken to bring about the free movement of third country nationals. This should take the form of a Directive.

This Directive should establish the right of third country nationals, duly registered as belonging to the labour market of a Member State, to renew, after one year's legal residence, his or her work and residence permit. After two years of legal work, access should be granted to any paid employment. After three years of paid employment or self-employment, third country nationals should enjoy free access to any paid employment or self-employment in any Member State. There should be no restriction on a third country national's rights to provide and receive services on the territory of the European Union.

In terms of working conditions and remuneration third country nationals should be afforded treatment equal to that of nationals of Member States. Concerning social provisions, third country nationals who are entitled to free access to the labour market of any Member State should enjoy the same treatment as European citizens with regard to social and tax advantages, access to employment or self-employment, vocational guidance or training, trade union rights, right of association, access to housing, social welfare, education, health care, provision of goods and services. Third country nationals and their families who enjoy free access to paid employment or self-employment should be granted a five year residence permit which should be automatically renewable.

Recommendations:

- Adopt a Directive which brings about the free movement of third country nationals after three years of regular employment.

- Ensure that, in terms of social provisions, third country nationals who are entitled to free access to the labour market enjoy the same treatment as European citizens.

For a more detailed position, please refer to:

The Starting Line 'Proposals for legislative measures to combat racism and to promote equal rights in the European Union' (June 1998)
ECRE "Position on the integration of refugees in Europe" (Septembre 1999)

16. ANTI-DISCRIMINATION

***Article 13*: "Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."**

The European institutions have always maintained that, until the Treaty of Amsterdam, they had no competence to act on racism and xenophobia. The inclusion of Article 13 into the Treaty establishing the European Community is a tremendous step forward. It is a general clause covering different grounds of discrimination. It does not, however, have direct effect and any EU actions based on this clause will require unanimity.

In December 1998, the European Commission announced that it is preparing two different measures based on Article 13. The first measure is a framework Directive dealing generally with all grounds of discrimination in the field of employment. The second measure is a Directive specifically dealing with racial discrimination covering goods and services, health, education and sport. In the same month, the European Parliament requested the European Commission to consider the proposals made by the Starting Line Group. The Group's proposals for a Directive are inspired by existing European legislation concerning equal opportunities for men and women and concerning the shift of the burden of proof in cases of discrimination. They include the following principles:

- prohibition by legal sanctions of direct and indirect discrimination, victimisation, incitement or pressure to racial or religious discrimination, establishment or operation of any organisation which promotes such incitement or pressure, and institutionalised racism as acts or practices of public authorities or institutions;
- equal protection for European citizens and third country nationals;
- assistance to complainants (effective investigation,

fair adjudication, access to relevant information, judicial decisions);
- provision of judicial remedies (adequate compensation for both pecuniary and non-pecuniary damages);
- establishment of appropriate bodies to which complaints can be submitted and establishment of reconciliation procedures.

The Directives should ensure protection against racial and religious discrimination in the following areas: exercise of a professional activity, whether salaried or self-employed, access to any job or post, dismissals and other working conditions, social security, health and welfare benefits, education, vocational guidance and vocational training, housing, provision of goods, facilities and services, and participation in political, economic, social, cultural, religious life or any other public field.

Recommendation:

■ Ensure that the proposed Directives in the field of anti-discrimination adhere closely to the recommendations of the Starting Line Group, and provide a comprehensive framework of legal sanctions, complaint and reconciliation procedures.

For a more detailed position, please refer to:

> The Starting Line 'Proposals for legislative measures to combat racism and to promote equal rights in the European Union' (June 1998)

17. EUROPEAN CITIZENSHIP AND POLITICAL RIGHTS

***Article 17:* "Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship."**

The Treaty on European Union introduced European citizenship, which among other rights entitles nationals of Member States to vote and stand as candidates in municipal elections in the Member States in which they are legally resident. Nationals from non-Member States are denied such rights. In order to promote equal treatment between EU nationals and legally resident third country nationals, steps should be taken to eliminate this form of discrimination.

A first step forward would be the ratification and implementation, without reservation, of the *European Convention on the Participation of Foreigners in Public Life at Local Level*. However, this Convention does not include any provision on participation in elections on the European level. Therefore, action at the European level is required to draw up common rules defining the rights of third country nationals residing lawfully in a Member State to exercise political rights in freedom and in dignity. Based on Article 308, the European Commission should propose a measure which would grant voting rights on the local and European level to third country nationals after five years of legal residence in a Member State.

Recommendation:

■ Propose a measure which would grant voting rights at the local and the European level to third country nationals after five years of legal residence in a Member State.

For a more detailed position, please refer to:

> The Starting Line 'Proposals for legislative measures to combat racism and to promote equal rights in the European Union' (June 1998)

III. Foreign aspects of migration

International migration is usually considered as principally a matter for Justice and Home Affairs. However, regular or irregular movements of people from one country to another, on a temporary or permanent basis - for political, economic or social reasons - are also matters of international relations, as recognised in many European policy statements and action plans. It is only more recently that European institutions have begun to look at how this issue can actually be incorporated into the foreign policy agenda. Examples are the 1998 Action Plan on the Influx of Migrants from Iraq and the Neighbouring Region and the creation of the High Level Working Group on Asylum and Migration which has been requested to prepare a paper for the Tampere Summit on cross-pillar approaches to asylum and migration.

A comprehensive approach linking migration and asylum with foreign policies should take as a starting point the existing framework of the European Union's foreign relations and its policy agenda. The European Community has concluded many treaties which regulate the economic, financial and trade relations between the Community and non-member countries. These treaties often include provisions on migration (for example, on equal treatment and non-discrimination of nationals of the contracting parties). Increasingly, matters related to what is called migration prevention or reducing migratory pres-

sures are being included in the revision of existing agreements or in the conclusion of new agreements. Examples are the Co-operation and Association Agreements with Mediterranean countries (the Euro-Mediterranean Association Agreements), the African, Caribbean and Pacific countries (the Lomé Treaties) and countries in central and eastern Europe (the European Agreements).

18. THE EURO-MEDITERRANEAN AGREEMENTS

The new Euro-Mediterranean Association Agreements set as their objective the creation of a free-trade area and they also contain provisions on the movement of persons. In addition, the Agreements call for the creation of a 'dialogue in the social domain'. This dialogue will have a particular bearing on problems relating to: the living and working conditions of migrants, migration, irregular immigration and the conditions of return of persons in an irregular situation, initiatives and programmes furthering equality of treatment between nationals of the contracting parties, mutual understanding of cultures and civilisations, as well as the development of tolerance and the abolition of discrimination. Priorities are the reduction of migratory pressures, particularly through job creation and the development of training in the emigration zones, the combat of irregular migration and the readmission of repatriated persons (irregular migrants and rejected asylum seekers). In the framework of Mediterranean policies, we feel it necessary for the European Union to adopt measures which indeed reduce migratory pressures, facilitate human exchanges and ensure that the liberalisation of trade is accompanied by a liberalisation of the movement of persons.

Within the scope of decentralised co-operation, the MED-Migration programme aims to promote co-operation and the development of trans-Mediterranean networks and partnerships between local communities in the Union and the Mediterranean non-Member States, and between organisations concerned with migrants and migration in both regions. The authors of this paper strongly support this process, in particular the involvement of civil society.

19. THE LOMÉ TREATIES

There is a long tradition of economic and financial co-operation between the European Community and the African, Caribbean and Pacific (ACP) States through the adoption and implementation of co-operation agreements, the so-called Lomé Conventions. In an annex to the Fourth Lomé Convention equal treatment is granted to nationals of the signatory ACP States living in EU Member States, in terms of working conditions, remuneration and social security benefits linked to employment. However, these provisions do not have direct effect and remain weaker than those contained in certain other association agreements. The Fourth Lomé Convention should be amended to elaborate and extend these provisions, including them in the main body of the text.
Also, with regard to the proposed revision of this Convention, references are made to the question of international migration. It is suggested that this issue should become one of the subjects for the political dialogue between contracting parties. Moreover, it affirms that large-scale inter-African migration constitutes a positive element for economic integration but at the same time, due to the fact that this is often uncontrolled, may also create political instability. A European Parliament report on the revision of the Lomé Convention quite rightly recognises the potential role that migrants could play in development, either in the host country or upon their return to their countries of origin.

20. THE EUROPEAN AGREEMENTS (EU ENLARGEMENT)

The European Agreements are the framework for bilateral relations between the central and eastern European countries, the European Community and the Member States. Their ultimate purpose is to facilitate accession to the Union by helping the Associated States to bring their laws into line with Community legislation. To this end, co-operation has been established across a wide range of sectors, with the backing of technical assistance under the Phare Programme. The Agreements provide for the progressive opening up of the Community market to goods, capital and services from the countries concerned. Parallel to the aim of instituting the free movement of goods, European Agreements include provisions on the movement of workers and self-employed persons.

In Agenda 2000, the European Commission concluded that the central challenge of enlargement was connected to the domains of the Third Pillar and, in particular, asylum policy, free movement of persons and organised crime. Control of the Union's future external eastern borders is, according to the Commission, unlikely to meet the current control standards. Therefore, candidate countries will, after their accession, have to be submitted to transition periods before benefiting from the effective free movement of persons. In this context, the Union has adopted certain programmes to assist candidate

countries with strengthening their border controls. The horizontal programme for Justice and Home Affairs finances numerous measures for implementing the *acquis communautaire* and for establishing institutions in the fields of justice, asylum, immigration and police co-operation. Other programmes finance training, particularly for customs officers. Training, exchange and co-operation in the matters of immigration, asylum and crossing external borders, are ensured through the Odysseus programme. We believe that the implementation of the enlargement process should not focus on border enforcement to the detriment of training and assistance relating to the right to seek asylum. In its evaluations of whether an Associated State meets the Justice and Home Affairs accession criteria, the EU should ensure that conformity with international human rights and refugee law standards is not merely a matter of legislation but also of consistent State practice. There should be far greater transparency and consultation with non-governmental organisations in the negotiations and preparations related to enlargement of the EU's migration and asylum system.

We are of the opinion that accession itself will not lead to increased movement of new EU citizens to older Member States. These fears have been expressed every time the Community/Union enlarged and have been proven wrong. Free movement rights facilitate but do not set in motion the movement of EU citizens. Therefore the transition periods should not exceed two years.

Finally, we feel that while the Third Pillar *acquis* is, at least partially, renegotiated as it is transposed to the First Pillar, and as fresh measures are proposed, the position of the Associated States should be fully taken into account in order to create regional systems that are truly sustainable and equitable in an enlarged European Union. At the same time, assistance to the 'second tier' of Associated States and to other central and eastern European States should at least be maintained at current levels in recognition of the strains that will be put upon their migration and asylum systems following EU enlargement.

21. REFUGEE 'RECEPTION IN THE REGION'

Part of the brief of the High Level Working Group on Asylum and Migration is to look at proposals on the "assistance in the reception of displaced person in the region" of origin, and the German Presidency's February 1999 position paper on asylum policy refers to: "joint efforts by the international community to ensure that refuge can be provided chiefly in the home region". These are the latest in a long line of proposals on this theme, such as those which originated from the Inter-Governmental Consultations in Geneva during the mid-1990s. Some proposals build upon the humanitarian and protection work of UNHCR, and are admirable supplements to the current system of providing asylum in Europe. Other plans give the impression of being motivated by the wish to rid Europe of foreigners from other continents and to reduce the European responsibility for refugee protection merely to a financial responsibility. It is not easy to generalise about reception in the region, though the assumption on which it is based - that refugees are always better integrated nearer to their home countries and should flee by land rather than by boarding an international flight or boat - is highly questionable.

We agree that, if Member States continue to extend their extra-territorial border controls, it is also proper for the EU, with the support of UNHCR and other international bodies, to devise mechanisms of extra-territorial protection or refugee reception. Such mechanisms are often dangerously fragile, however, and the lessons of the past (Bosnian safe havens, for example) should never be forgotten. As a minimum, we recommend that EU States should ensure the physical integrity, rights and interests of all persons received or protected by any EU sponsored plan of 'reception in the region', and guarantee that displaced persons are not forced into such reception locations against their will nor prevented from leaving such locations in search of protection elsewhere.

Recommendations:

- Support a comprehensive approach which links migration and asylum policies with foreign policies, where the existing framework of the European Union's foreign relations and its policy agenda are taken as the starting point.

- Set up a cross-pillar working group consisting of representatives of the Member States and the European Commission, which further develops policies linking asylum and migration issues and foreign affairs, with particular emphasis on tackling the root causes of forced migration.

- Strengthen the European Union's commitment to upholding world-wide human rights and monitoring the implementation of both public instruments (international conventions, etc) and private instruments (business sector mission statements or codes of conduct) which enforce human rights. Involve NGOs in this monitoring.

- Implement trade policies which are consistent with EU commitments to human rights and the

social and economic development of non-EU countries.

- In the framework of Euro-Mediterranean policies and co-operation between the EU and African, Caribbean and Pacific (ACP) States, adopt measures which facilitate human exchanges and ensure that the liberalisation of trade is accompanied by a liberalisation of the movement of persons.

- Include the subject of migration among those tackled within EU-ACP political dialogue, and develop policies which consider migrants as resources, both to receiving countries and upon their return to their countries of origin.

- Assist developing countries in the design and implementation of policies relating to the movement of people, protection of refugees and societal integration of migrants and refugees.

- Refrain from returning asylum seekers on safe third country grounds via readmission agreements (or association and co-operation agreements containing readmission articles) intended for return of rejected asylum seekers and other illegal migrants.

- With regard to the accession of central European States to the EU, adopt measures which allow for full freedom of movement after a period of not longer than two years following accession.

- Involve the Associated States in EU debates concerning new measures under Title IV, particularly regional solidarity schemes or the Dublin Convention's transposition to the First Pillar.

- Conduct the evaluations of Associated States from a migration and asylum perspective with far greater transparency and NGO involvement.

- Assist the Associated States to fulfil their obligations under international refugee and human rights law, with particular reference to ECHR and UNHCR standards and best practice among EU Member States.

- Introduce extra-territorial refugee protection or reception 'in the region of origin' with caution and only where the physical integrity and rights of all persons received or protected are ensured.

- Ensure that displaced persons are never forced into reception in the region of origin against their will nor prevented from leaving in search of protection elsewhere.

For more detailed positions, please refer to:

MPG and Churches' Commission for Migrants in Europe 'EU external relations and international migration' (January 1999)
MPG 'Recommendations of the NGO Round Table on Euro-Mediterranean Policies' (February 1999)

ECRE 'Position on the Enlargement of the European Union in relation to Asylum' (September 1998)

ECRE 'Observations on the Establishment of the High Level Working Group on Asylum and Migration (June 1999)

Summary: Alternative Action Plan of ECRE, MPG and ENAR on how best to implement the provisions of the Treaty of Amsterdam on policies related to Migration, Asylum, Integration and Anti-Discrimination

PRINCIPLES

In implementing the provisions of the Treaty of Amsterdam on policies related to asylum, immigration and anti-discrimination the following principles need to be respected:

A. The principles and obligations of **universal human rights and refugee law**, and the tradition of **humanitarian policy and democracy.**

B. The principle of maximising the protection and well-being of refugees, migrants and other third country nationals wherever possible, including the principles of **equal treatment and non-discrimination**, and the promotion of cultural diversity.

C. The principle of **solidarity and partnership**, both among EU States, between the EU and other European States, and between Europe and developing countries.

D. The principles of **democratic and judicial scrutiny** over decision making, and the principle of **transparency and consultation with civil society** - including with asylum seekers and refugees, migrants and other minority communities.

E. The principle of **operational efficiency**, based on careful evaluation of existing measures, and weighed against the principles and obligations cited above.

POLICY RECOMMENDATIONS

General Measures

1. Implementation of the asylum and immigration agenda of the Amsterdam Treaty as a whole should be in full conformity with, inter alia:

   (a) The 1951 Convention relating to the Status of Refugees and the 1967 Protocol

   (b) The standards established by the UNHCR Executive Committee as well as those set out in the UNHCR Handbook on procedures and criteria for determining refugee status

   (c) The 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Family, and

   (d) The International Convention on the Elimination of all Forms of Racial Discrimination.

   (e) The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.

2. An analysis of which measures require incorporation of global standards, which should be harmonised via global fora, and which are the proper subject of EU standard-setting should be undertaken.

3. The 1997 EU Decision on monitoring the implementation of Third Pillar instruments should be used as the basis for further monitoring and evaluation, from a human rights as well as a technical perspective, of existing Third Pillar measures before further codifying them.

4. The Union should prepare to vote in 2004 for these subjects to be treated as other Community Law, with adequate judicial and democratic controls.

5. The Conference of European Affairs Committees (COSAC), which includes representatives of national parliaments, should examine any legislative proposal or initiative under the new Title which might have direct bearing on the rights and freedoms of individuals.

6. Member States should allow expert NGOs, UN bodies and other international organisations to fulfil their consultative role by transmitting all relevant documents and working documents well in advance of final Council decisions.

Specific Measures/ Actions

Internal Border Control

7. Adopt, at the earliest opportunity, the 1995 Commission proposal for a Directive on the elimination of controls on persons crossing internal frontiers.

External Border Control

8. Include the role of border guards in receiving and referring asylum claims in instruments on the

crossing of external borders including the Guide to Effective Practices for the Control of Persons at External Frontiers (with reference to the Council of Europe Recommendation adopted on this subject in December 1998).

9. Regularly revise the Common Visa List to exclude countries experiencing civil war, generalised violence or widespread human rights abuse.

10. Reconsider the enforcement of EU border controls extra-territorially, particularly in countries producing significant numbers of asylum seekers.

11. Abolish the legal 'fiction' of international zones in airports of EU Member States.

Free Travel

12. Adopt, at the earliest opportunity, the 1995 Commission proposal for a Directive on the right of third country nationals to travel in the Union.

Incorporation of Schengen

13. Link the incorporation of Schengen to the Commission Directives on internal border control and free travel so that all fifteen Member States may introduce these provisions.

14. Amend the Schengen acquis in line with European Parliament recommendations, making all visas truly applicable throughout the EU.

15. Rescind provisions relating to carriers' liability as they may lead to the violation of international human rights law.

The Dublin Convention and Safe Third Country Practice

16. Postpone the development of a new instrument under Article 63(1)(a), or the direct transposing of the Dublin Convention to the First Pillar, until implementation of that Convention may be fully evaluated from the perspective of responsibility sharing, administrative efficiency and, most importantly, refugee protection.

17. Implement the Dublin Convention (and any new instrument which may replace it) humanely and flexibly, making greater use of the 'humanitarian' and 'opt out' clauses.

18. Ensure that any new instrument developed for determining State responsibility should at least respect the family unity of applicants, their socio-economic rights, and grant them a suspensory right of appeal against a decision to transfer their claim.

19. Discontinue the practice of safe third country returns at least until a harmonised range of additional guarantees are introduced. Clarify common EU criteria and procedures for determining the 'safety' of a third country.

Reception Conditions for Asylum Seekers

20. Adopt a binding instrument on reception of asylum seekers which sets common standards relating to, inter alia: place of residence and freedom of choice, maximum periods in collective accommodation, social assistance, employment, education, healthcare, the treatment of women and children, and which does not discriminate between different categories of asylum seekers. Ensure that this instrument is in full conformity with international legal standards.

21. Exclude from this instrument the issue of detention of asylum seekers.

Refugee Definition

22. Ensure that, if a new instrument interpreting the existing refugee definition is developed, it does not transpose the 1996 EU Joint Position on the harmonised application of the definition of the term 'refugee' in Article 1 of the Geneva Convention without amendment in relation to the issue of agents of persecution in compliance with UNHCR guidance.

23 Develop guidance on gender-related claims through UNHCR or in a set of EU Guidelines.

24. Propose a new instrument containing a supplementary refugee definition for Europe within the next two years, from which a harmonised complementary form of protection may be derived.

25. Ensure that instruments developed under other Treaty Articles on procedural harmonisation and on social integration of refugees apply equally to this complementary form of protection.

Asylum Procedures and Cessation Procedures

26. Continue development of a comprehensive instrument on minimum guarantees for national

asylum procedures, and ensure that this instrument applies to determination and cessation of all refugee statuses (1951 Convention, harmonised complementary and/or national subsidiary forms of protection).

27. Ensure that this new instrument at least avoids the deficiencies of the Resolution on Minimum Guarantees with regard to accelerated procedures.

28. Include in this new instrument provisions which emphasise the need for good quality initial decisions, and the need to prioritise certain vulnerable and manifestly well-founded cases.

Temporary Protection and Emergency Measures

29. Adopt an instrument based upon the EU draft Joint Action on temporary protection of displaced persons, which is currently under discussion, at the earliest opportunity.

30. Ensure that any ad hoc emergency measures taken by the EU in advance of adopting this instrument are respectful of obligations under international refugee and human rights law.

Responsibility Sharing

31. Develop, as soon as possible, a regional agreement on responsibility sharing which demonstrably increases the capacity for refugee protection within the Union.

32. Prioritise financial solidarity schemes and further develop the European Refugee Fund for an enlarged European Union.

33. Adopt a non-binding agreement on EU participation, as a bloc, in the UNHCR resettlement system as a first step towards global responsibility sharing.

Safe Countries of Origin and The Protocol on Asylum

34. Remove Protocol 29 from the Treaty at the first opportunity (i.e. the next Intergovernmental Conference on reform of the Union) and, in the interim, continue to carry out individual examinations of all asylum requests made by nationals of EU Member States.

35. Resist definition of asylum seekers as 'third country nationals' or any other reference in new instruments developed under the First Pillar which excludes EU nationals from seeking asylum.

36. Ensure that no asylum seeker is excluded from a fair and efficient refugee determination procedure by declaring a country or part of a country safe.

Immigration, Entry and Residence

37. Adopt a Directive establishing the rules for admission of third country nationals to the Member States and include in this Directive the basis for an adjustable immigration channel for family reunion, temporary and permanent labour migration, and the regularisation of the status of certain persons who can not be deported.

38. Implement this Directive by means of European Commission proposals, developed after consultation with Member States, the European Parliament, intergovernmental and non-governmental organisations.

39. Ensure that recruitment and employment take place in full compliance with norms established in human rights law.

Family Reunion

40. Adopt a Directive which ensures that third country nationals benefit from the right to family reunion.

41. Temorary residents (including students) should be entitled to this right after one year of legal residence and have a residence permit for another year. Long term residents should acquire this right equivalent to that of EU citizens exercising their free movement rights.

42. Resist distinguishing between Convention refugees and other refugees granted a subsidiary or complementary form of protection when implementing this right.

43. Where possible, assist migrants and refugees with maintaining contacts with their countries of origin.

Irregular Migration, Residence and Repatriation

44. Set policies relating to irregular migration and trafficking in persons within a proper context alongside policies aimed at promoting human rights and socio-economic development, as well as humanitarian and labour migration policies,

and avoid disproportionate restrictionism in response to these problems.

45. Refrain from unnecessary internal controls (identity checks etc.) which may infringe civil liberties and discriminate against ethnic minority populations.

46. Distinguish between the issues of illegal employment in general and illegal entry or residence. Employers should be subject to labour inspections which are not focused only on irregular migrants.

47. Ensure that policies which combat irregular migration are formulated with due respect for Article 31 of the 1951 Geneva Convention (for example refraining from detention of asylum seekers who enter illegally and from categorising such persons' claims as 'manifestly unfounded').

48. Adopt more positive measures to combat irregular migration (for example, objective information campaigns in countries of origin and transit, and a First Pillar measure regarding reception of asylum seeking stowaways).

49. Engage the refugee and migrant communities in a permanent political dialogue in order to find and implement joint solutions to issues of trafficking and irregularity.

50. Adopt minimum standards for involuntary returns, which recommend the use of non-coercive methods and reintegration assistance wherever possible.

51. Refrain from utilising readmission agreements for the return of asylum seekers on safe third country grounds until a range of additional safeguards are guaranteed.

Conditions of Residence of Third Country Nationals

52. Adopt a Directive which brings about the free movement of third country nationals after three years of regular employment.

53. Ensure that, in terms of social provisions, third country nationals who are entitled to free access to the labour market enjoy the same treatment as European citizens.

Anti-Discrimination

54. Ensure that the proposed Directives in the field of anti-discrimination adhere closely to the recommendations of the Starting Line Group, and provide a comprehensive framework of legal sanctions, complaint and reconciliation procedures.

European Citizenship and Political Rights

55. Propose a measure which would grant voting rights on the local and the European level to third country nationals after five years of legal residence in a Member State.

Foreign Aspects of Migration

56. Support a comprehensive approach which links migration and asylum policies with foreign policies, where the existing framework of the European Union's foreign relations and its policy agenda are taken as the starting point.

57. Set up a cross-pillar working group consisting of representatives of the Member States and the European Commission, which further develops policies linking asylum and migration issues and foreign affairs, with particular emphasis on tackling the root causes of forced migration.

58. Strengthen the European Union's commitment to upholding world-wide human rights and monitoring the implementation of both public instruments (international conventions, etc) and private instruments (business sector mission statements or codes of conduct) which enforce human rights. Involve NGOs in this monitoring.

59. Implement trade policies which are consistent with EU commitments to human rights and the social and economic development of non-EU countries.

60. In the framework of Euro-Mediterranean policies and co-operation between the EU and African, Caribbean and Pacific (ACP) States, adopt measures which facilitate human exchanges and ensure that the liberalisation of trade is accompanied by a liberalisation of the movement of persons.

61. Include the subject of migration among those tackled within EU-ACP political dialogue, and develop policies which consider migrants as resources, both to receiving countries and upon their return to their countries of origin.

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The mandates and constituencies of the three organisations which have published this Paper are different, and therefore primary responsibility for the statements and recommendations in each section can be attributed as follows:

- ECRE - The Dublin Convention and Safe Third Country Practice; Reception Conditions for Asylum Seekers; Refugee Definition; Asylum Procedures and Cessation Procedures; Temporary Protection and Emergency Measures; Responsibility Sharing; Safe Countries of Origin and the Protocol on Asylum.

- ENAR & MPG - Internal Border Control; Free Travel; Immigration, Entry and Residence; Family Reunion; Conditions of Residence of Third Country Nationals; Anti-Discrimination; European Citizenship and Political Rights.

- ECRE & MPG - External Border Control; Incorporation of Schengen; Family Reunion; Irregular Migration, Residence and Repatriation; Foreign Aspects of Migration.

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