

ECRE MEMORANDUM ON THE OCCASION OF THE HUNGARIAN PRESIDENCY OF THE EU (JANUARY – JUNE 2011)



1. General Remarks

In 2011, the world will commemorate the 60th anniversary of the 1951 Convention relating to the status of Refugees, which continues to be the foundation of the global protection regime. The 1951 Refugee Convention has served as a protection tool for several thousands of persons fleeing persecution and will no doubt continue to perform this central role for many years to come. During the recent High Commissioner's Dialogue in Geneva, many states, including the EU Member States, renewed their commitment to uphold their obligations towards refugees and at the same time identified gaps to be addressed in the global protection regime.

As Hungary takes over the Presidency of the EU, the European Commission, the European Parliament and the Council are involved in a complex discussion on the creation of a Common European Asylum System (CEAS). Despite the fact that asylum was a priority for the preceding Belgian Presidency, the progress made was not as substantial as hoped. Apart from reaching a political agreement on the content of the extension of the scope of the long term residence directive to beneficiaries of international protection, none of the other legislative files prioritised by the Belgian Presidency were successfully concluded.

At the same time the importance of practical cooperation in the field of asylum has been emphasised on several occasions by a number of Member States. While the European Asylum Support Office is tasked to streamline and reinforce practical cooperation, it will not be fully operational until the second half of this year at the earliest. Meanwhile, an initiative on practical cooperation between Member States to support and reinforce the asylum system in Greece has been taken. In addition, the first ever RABIT operation was also launched in Greece in order to stem irregular migration flows at the border between Greece and Turkey.

ECRE has always supported the concept of a CEAS that is based on high standards and ensures effective and durable protection. This must be based on a full and inclusive interpretation of the 1951 Refugee Convention and other relevant human rights instruments. At the same time, ECRE has been advocating at EU level for a CEAS that ensures access to the territory for persons in need of international protection. The best protection regime will be of little use if refugees are unable to reach the EU's territory.

At the start of the Hungarian Presidency, ECRE presents its views on what steps need to be taken in order to uphold the EU's commitment of establishing a CEAS which ensures that the rights of asylum seekers and of persons in need of international protection are fully respected. This includes not only progress with regard to the legislative agenda but also clear commitments to ensure access to the EU for those in need of international protection, a protection-oriented agenda in the field of practical cooperation and solidarity between EU Member States as well as a meaningful commitment as regards resettlement of refugees.

2. Legislative harmonisation on asylum

At the end of the Belgian Presidency, the four upcoming Presidencies of the European Union, together with Belgium, adopted a common statement in which they expressed their commitment to continue to work towards a CEAS and finding agreement on the Commission proposals recasting the EU asylum acquis.¹ At the same time, Commissioner Malmström has announced the adoption of amended Commission proposals with regard to the Asylum Procedures and Reception Conditions Directive in 2011. While these proposals are yet to be published, the Commission has already indicated that the amended proposals will take into account concerns expressed by the Member States with regard to the previous recast proposals. These concerns relate primarily to the potential financial implications of certain aspects of the initial Commission proposals, the level of detail, as well as the lack of provisions addressing so-called “abuse” of the asylum system.

ECRE had generally welcomed both Commission proposals as they considerably enhanced the level of reception conditions and procedural safeguards. In particular with regard to the right to an effective remedy against a negative decision, the right to a personal interview, the right to legal assistance and representation and the limitation of the use of accelerated procedures, access to the labour market and guarantees against arbitrary detention of asylum seekers, the Commission proposals contained substantial improvements of current EU standards.² Such safeguards, which reflect to a large extent jurisprudence of the European Court of Human Rights and the Court of Justice of the European Union, should continue to form the basis of the discussions at EU level. Furthermore, the principle of frontloading of asylum procedures should remain at the core of the review of the Asylum Procedures Directive.³ Otherwise, the second phase of harmonisation risks having little added value for the rights of asylum seekers in the EU.

Without any doubt, the fundamental revision of first phase EU asylum legislation remains necessary. It is crucial to ensure that EU legislation in the field of asylum complies with international refugee and human rights law and promotes a sufficiently high standard of protection in all aspects of asylum policy that can therefore serve as a model of protection for other regions in the world. The EU as one of the most prosperous regions in the world is under a moral and political obligation to set the good example when it comes to the protection of those fleeing persecution, human rights violations and generalised violence. Moreover, such revision is also necessary in order to uphold Member States’ commitments laid down in the European Pact on Immigration and Asylum, the Stockholm Programme and the Lisbon Treaty.

As the amended proposals recasting the Asylum Procedures Directive and the Reception Conditions Directive have not been published yet, this section focuses exclusively on the Commission proposals recasting the Dublin Regulation and the Qualification Directive.

2.1. Commission proposal recasting the Dublin Regulation

The Dublin Regulation continues to create hardship and unfair consequences for asylum seekers and persons in need of international protection.⁴ Based on the myth that protection standards are equivalent throughout the EU, the Dublin system results in asylum seekers being transferred to states where their basic human rights are violated, access to protection is *de facto* denied or access to specific treatment for asylum seekers with special needs is non-existent. This is increasingly being recognised in the jurisprudence of national courts across Europe as in numerous cases, transfers of asylum seekers under the Dublin Regulation have been

suspended on the basis that they would result in such human rights violations, including refoulement.⁵

While it remains ECRE's position that the Dublin system is an obstacle to an efficient, harmonised and humane CEAS, it is acknowledged that the Commission proposal recasting the Dublin Regulation introduces a number of significant improvements to the existing system. These amendments would, if adopted, indeed mitigate some of the negative effects that its operation may have on asylum seekers⁶.

ECRE calls upon the Council and the European Parliament in particular to

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

2.2. Commission proposal recasting the Qualification Directive

Research conducted by ECRE and UNHCR on the implementation of the Qualification Directive has shown the need for amendments to this core instrument of the CEAS in order to bring it in line with international refugee and human rights law and standards. ECRE considers that the Commission recast proposal, notwithstanding the fact that it leaves a number of important flaws in the directive untouched, generally constitutes an important step forward in particular in approximating the rights attached to refugee and subsidiary protection status⁷. The approximation of rights is necessary as refugees and beneficiaries of subsidiary protection have similar protection needs and there is no reason why they should not equally benefit from the content of rights granted in the Qualification Directive. Differentiation between both statuses is not only an obstacle in the integration process of beneficiaries of subsidiary protection but also creates additional administrative burdens for the authorities of the host Member States with regard to, for instance, renewal of residence permits.

As far as the eligibility criteria in the Qualification Directive are concerned, ECRE regrets that the Commission has not taken the opportunity to amend provisions relating to exclusion clauses and to the grounds for subsidiary protection in Article 15. In particular Article 15(c) concerning situations of generalised violence continues to result in divergent practices in the Member States notwithstanding the ruling of the Court of Justice of the European Union in the *Elgafaji* case.⁸

ECRE generally welcomes the EP draft report on the Commission's recast proposal as it supports the alignment of rights of refugees and beneficiaries of subsidiary protection under the directive, the extension of the definition of family members to married and unmarried minors and siblings and further amends the Commission proposal inter alia with regard to the definition of particular social group and internal protection. While a number of the amendments tabled by members of the LIBE Committee further strengthen the rapporteur's draft report, other amendments, such as those aiming at maintaining different levels of rights for refugees and beneficiaries of subsidiary protection or at maintaining the current unsatisfactory definition of actors of protection in the Qualification Directive, are reason for concern.⁹

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

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

3. Access to protection in the EU

In their joint statement at the end of the Belgian Presidency, the four upcoming Presidencies have solemnly expressed their commitment to "achieve a Common European Asylum System where solidarity exists between Member States and which is efficient, realistic and pragmatic and to strengthen practical cooperation under EASO and between Member States while fully protecting the rights of individuals, offering genuine safeguards for asylum seekers and protection to those in need."¹⁰ ECRE welcomes this commitment but reminds states that a Common European Asylum System based on the highest possible standards will be of little use to refugees if it becomes impossible for them to reach the EU. Today persons fleeing persecution and other human rights violations face numerous obstacles in reaching EU territory and submitting a claim for international protection. Visa regulations, posting of immigration liaison officers at airports in third countries, readmission agreements, strengthened border controls and carrier sanctions have a major impact on the ability of persons in need of international protection to leave their country or region of origin or to enter the territory of an EU Member State to seek protection. During the Hungarian Presidency the issue of access to protection must be addressed in particular in the context of the ongoing RABIT operation at the Greek-Turkish border, the negotiations on the Commission proposal amending the mandate

of FRONTEX and the co-operation on immigration and asylum with third countries, in particular Libya.

3.1. RABIT operation at Greek-Turkish border

For the first time ever, a RABIT operation was launched on 2 November at the request of the Greek government. The RABIT deployment to the Greek-Turkish land border, initially planned for two months, has recently been extended until 31 March 2011. The 175 border guards from 26 Member States are assisting the Greek government in controlling this EU external border where according to estimations by the Greek government “up to 350 migrants try to cross the 12,5 km area near the Greek city of Orestiada every day”.¹¹

So far concrete information about the operation is scarce. While FRONTEX press releases provide details of the equipment and the number of RABIT officials involved in the operation, little or no public information is available about the migrants, asylum seekers and refugees who have been affected by the operation. It is only stated that most irregular migrants detected in the area of Orestiada claim to be nationals of Afghanistan, Somalia or Arab-speaking countries in the Middle East and/or Northern Africa. Nevertheless, according to a recent FRONTEX press release the “detections of illegal entry at the Greek land border with Turkey have fallen with 44 % since October”.¹²

Although the RABIT operation is carried out by border guards who have received awareness training with regard to fundamental rights and “a zero tolerance policy is applied with regard to infringements of fundamental rights”, in particular with regard to people in need of international protection,¹³ it is unclear how this is ensured in practice. For instance, the officials involved in the RABIT operation drawn from FRONTEX Rapid Pool include mainly false documents experts, stolen vehicle experts, experts in clandestine entry, while no mention is made of experts in asylum and refugee law. It is unclear what procedure is followed for those who express a wish to apply for asylum, in particular in light of the difficulties with which the Greek asylum system is faced. Moreover, there is little or no information as to the conditions in which those apprehended at the border trying to cross the Greek-Turkish border irregularly are held. Are they held in detention centres or open reception facilities? Do they have access to legal assistance and representation in case of detention and to challenge effectively a decision to refuse entry to the territory or a negative decision on an asylum application? Meanwhile, the fact that German border guards involved in the RABIT operation have expressed concerns over the inhuman conditions under which irregular migrants and asylum seekers are held and the use of unacceptable physical force by Greek officials is extremely worrying and requires further investigation.¹⁴

As it is now clear that the RABIT operation will continue in 2011, ECRE urges the Hungarian Presidency to ensure that a thorough and transparent evaluation is carried out of this first RABIT operation and that measures are taken to ensure that those who wish to apply for asylum are given an effective opportunity to do so. This requires *inter alia* that those apprehended at the border are properly informed about the possibility to apply for asylum and have access to UNHCR, NGO's and legal assistance and representation. Involvement of Asylum Expert Teams, to be established under the EASO Regulation, in the current and future RABIT operations should be organised as soon as possible in order to better ensure compliance with the right to asylum.

ECRE calls on the Hungarian Presidency to

- Carry out an in-depth evaluation of the RABIT operation in particular with regard to its impact on access to the asylum procedure, legal assistance and detention.
- Initiate discussions with FRONTEX, EASO and the Member States so as to ensure involvement of asylum experts in the current and future RABIT operations, inter alia through Asylum Expert Teams and ensure access to UNHCR, NGOs and legal assistance and representation to those apprehended at the border.

3.2. Commission proposal amending the FRONTEX Regulation

As the RABIT operation in Greece unfolds, the discussion on the third substantive revision of FRONTEX' mandate will continue in the Council and the European Parliament during the Hungarian Presidency. The Commission proposal includes important assertions of the applicability of EU standards, as well as international refugee and human rights law to all border operations carried out by Member States under the auspices of FRONTEX and to all other activities entrusted to the Agency. It also proposes to make financial support by FRONTEX to return operations conditional upon the full respect of the Charter of Fundamental Rights and requires the elaboration of a Code of Conduct for return operations and an independent and comprehensive monitoring system for joint return operations, which ECRE welcomes¹⁵.

However, in ECRE's view, the Commission proposal requires further amendment in order to resolve the ambiguities with regard to accountability for possible human rights violations during border control operations coordinated by FRONTEX. The additional powers envisaged for the Agency suggest that FRONTEX would exercise a sufficient degree of control over operations to render it liable for possible violations of fundamental rights that might occur. Nevertheless, the Commission proposal does not include a clear provision establishing proper political and legal accountability of FRONTEX. Furthermore, the expanded role for FRONTEX in cooperating with third countries in border management raises serious questions from a human rights perspective. In particular the proposed possibility for FRONTEX to deploy its own immigration liaison officers may raise concerns regarding the right of individuals to leave a country and the principle of *non-refoulement*. Therefore, the performance of tasks by FRONTEX' immigration liaison officers should be explicitly subjected to compliance with fundamental rights and human rights training. Moreover, ECRE believes that the Commission proposal could benefit from introducing a requirement of independent monitoring and reporting to EU institutions of all FRONTEX operations with a focus on compliance with fundamental rights and EU law.

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

- Clarify the ambiguities with regard to the accountability for possible human rights violations during border control operations coordinated by FRONTEX.
- Include FRONTEX' ILOs explicitly in the categories of staff which should receive training on fundamental rights.
- Insert a mandatory independent monitoring mechanism of all FRONTEX operations from the perspective of compliance with fundamental rights and EU law.

3.3. EU cooperation with Libya in the field of immigration and asylum

Access to protection should be a primary consideration for the EU and its Member States when negotiating agreements with third countries which include cooperation in the field of immigration and asylum. Currently, the EU is in the process of negotiating a framework agreement with Libya which includes a chapter on migration and asylum. The EU's interest in cooperating with Libya in this field is mainly in assisting Libya to better control its borders and prevent onward migration to the EU. Capacity building in the field of asylum is also part of the negotiating mandate for the Commission but it is clear that so far this has not been the first priority. Recently, the Libyan authorities forced UNHCR to close its office in Tripoli and end its already limited operation in Libya. Meanwhile UNHCR obtained permission to continue its operation in Libya but the incident illustrates the extremely difficult nature of UNHCR's activities in a country, which is not party to the 1951 Refugee Convention.

At the same time, human right organisations such as Amnesty International and Human Rights Watch have repeatedly reported serious human rights violations inflicted upon asylum seekers, refugees and migrants in Libya, including arbitrary detention, ill treatment and *refoulement*.¹⁶ As Libya does not have an asylum system in place, many refugees and asylum seekers from countries such as Eritrea, Somalia, Sudan and Iraq find themselves stranded in Libya, without having access to a legal status or work permit and under the constant threat of being detained in inhumane conditions or returned without their protection needs being properly assessed. Moreover, while a framework agreement with Libya may already be problematic in itself from a human rights perspective because of the country's worrying human rights record, the negotiations are marked by a lack of transparency vis-à-vis the European Parliament. Despite an explicit request from the European Parliament, it has not been fully informed of the negotiating mandate of the Commission and at all stages of the procedure, notwithstanding the obligation to do so in Article 218 (10) of the TFEU.

ECRE believes that the EU and its Member States should seriously reconsider their "dialogue" with Libya and acknowledge that the current regime is totally unreliable when it comes to the protection of fundamental rights of refugees, asylum seekers and migrants. There should be sufficient guarantees that Libya will become party to and apply the 1951 Refugee Convention, will allow UNHCR to become fully operational and will establish and implement a functioning asylum system. In addition, any cooperation with Libya with regard to border management should be made conditional on the full respect of human rights of asylum seekers, refugees and migrants and should include effective and transparent monitoring mechanisms. ECRE believes that those aspects should be clear benchmarks in the negotiations on the framework agreement between the EU and Libya.

ECRE calls on the Council, the Commission and the European Parliament to

- Make the conclusion of the framework agreement conditional on Libya's accession to the 1951 Refugee Convention and sufficient guarantees with regard to UNHCR's presence and role in Libya and the implementation of an effective asylum system.
- Make cooperation with Libya in the area of border and migration management conditional on the full respect of human rights of asylum seekers, refugees and migrants and the establishment of effective and

4. The asylum crisis in Greece as a test case for the European Support Office (EASO)

Preparations for making EASO fully operational will continue during the Hungarian Presidency. Nevertheless, it has already become clear from the first meeting of the Management Board of EASO that priority will be given in the coming months to continuing ongoing initiatives in the area of training of asylum authorities and country of origin information as well as supporting Member States facing particular pressures and in particular Greece.

ECRE welcomes the current focus on Greece and initiatives that contribute to the development of a functioning asylum system there which fully respects the rights of asylum seekers and refugees. The concrete support of the EU Commission, EU Member States as well as countries such as Norway to improve access to the asylum procedure as well as reception conditions for asylum seekers and unaccompanied minors in particular is indispensable to effectively address specific and urgent needs in the Greek asylum system. However, it is also clear that ad hoc emergency measures will not solve some of the fundamental problems of the Greek asylum system relating to quality of decision-making, training of staff responsible for taking asylum decisions, inadequate legislation and insufficient legal assistance. While the Action Plan of the Greek government may constitute an important first step in the right direction, it is clear that a number of those problems will require considerable time and effort to be solved. ECRE urges the EU Member States and the EASO to work together with the Greek government in developing a long-term strategy for the creation of a fair and effective asylum system in Greece.

Meanwhile, asylum seekers continue to suffer the consequences of the dysfunctional asylum system in Greece such as considerable delays in the registration of asylum applications, lack of reception conditions and legal assistance. Moreover, the recognition rate (0,3 % in 2009) remains extremely low in Greece. As a result, the European Court of Human Rights has imposed interim measures on EU Member States in 2010 ordering them not to transfer of asylum seekers to Greece under the Dublin Regulation. Recently, both the Commissioner for Human Rights of the Council of Europe as well as the UN Special Rapporteur on Torture have expressed serious concern as regards the treatment of asylum seekers in Greece and have accordingly called upon EU Member States to suspend all Dublin transfers to Greece. ECRE reiterates its call to suspend all Dublin transfers to Greece so as to avoid sending asylum seekers back to a dysfunctional asylum system where their rights under EU and international law are not fully respected. In addition to financial support to Greece, abstaining from applying the Dublin Regulation to asylum seekers who transited through Greece would constitute a concrete way of expressing solidarity between EU Member States, as called for in the Stockholm Programme.

ECRE has repeatedly acknowledged the potential added value of a European Asylum Support Office that is determined to work towards an improvement of the overall quality of asylum systems in the EU. In ECRE's view this will require a meaningful role for civil society, including NGOs assisting asylum seekers and refugees, academic experts and UNHCR. The Regulation establishing EASO provides not only for NGO-involvement through the Consultative Forum but also allows NGO-input in the framework of its working parties. NGOs are involved in various aspects of asylum policy at the national and EU level, including as implementing partners of governments and should therefore be seen as valuable

stakeholders in the various activities of the EASO. Existing best practice of constructive cooperation between governmental and non-governmental actors, such as in the context of the European Asylum Curriculum, should be continued within the EASO. Also the expert seminars during the Ministerial Conference on Asylum organised by the Belgian Presidency, in which both governmental and non-governmental experts, discussed various aspects of practical cooperation, have shown the potential of such a dialogue. Moreover, Hungary has specific expertise on such cooperation within the context of training activities which have been developed with the participation of non-governmental organisations as well as its tripartite border monitoring scheme which are considered as examples of best practice. Although the EASO, including the Consultative Forum and the working parties, are not yet functioning, the Hungarian Presidency could play a key role in advocating for a meaningful role for NGOs in the work of the EASO.

ECRE calls on the Hungarian Presidency to

- Continue working together with the Commission, EASO and the EU Member States to support Greece in implementing its Action Plan on Asylum and develop a long term strategy to establish a fair and efficient asylum system.
- Promote an EU-wide suspension of all Dublin transfers to Greece in light of its dysfunctional asylum system and until access to a fair and efficient asylum procedure can be guaranteed in Greece.
- Actively support a meaningful role for NGOs assisting asylum seekers and refugees in the activities of the EASO.

5. The EU and resettlement of refugees.

According to UNHCR estimates, about 172.000 persons will be in need of resettlement in 2011 alone. Notwithstanding a modest increase in resettlement places in 2009, which includes one time resettlement places for Iraqi refugees, the number of available resettlement places remains insufficient to meet current needs.¹⁷ The number of available places remained the same in 2010 and covered only 40% of the identified resettlement needs.¹⁸ Still according to UNHCR, this means that more than 90,000 vulnerable refugees in need of resettlement will be left without solution. Although a number of EU Member States have recently set up resettlement programmes or have indicated their intention to start such programmes such as Hungary, the overall share of EU Member States in global resettlement efforts remains relatively modest. According to the latest statistics available, in 2009 worldwide 84,657 refugees were effectively resettled, of which 8,4% departed to EU Member States.

ECRE believes that the EU can and must contribute more significantly to refugee resettlement as one of the durable solutions to protracted refugee situations and as a strategic tool to create additional protection space in those regions most affected by refugee situations. In this respect ECRE has welcomed the Commission proposal to set up a Joint EU Resettlement Programme as an important incentive for EU Member States to fully engage in this durable solution. ECRE urges the Council and the European Parliament to remove the remaining obstacles for adoption of the Joint EU Resettlement Programme as soon as possible under the Hungarian Presidency.

ECRE calls on the Hungarian Presidency to

- Step up efforts to find an agreement on the proposed Joint EU Resettlement Programme in order to more effectively support increased involvement of EU Member States in global resettlement efforts.

6. Statelessness

Together with the 60th anniversary of the 1951 Refugee Convention, 2011 will mark the 50th anniversary of the 1961 Convention on the Reduction of Statelessness. Today, the total number of stateless persons worldwide is estimated at 12 million, with considerable numbers of stateless persons residing also in EU Member States. Nevertheless, while 21 EU Member States have ratified the 1954 Convention relating to the Status of Stateless Persons, only 14 EU Member States ratified the 1961 Convention. Moreover, of those Member States, only a few operate an effective protection system for stateless persons. As it is taking over the Presidency of the EU Hungary has a unique opportunity to raise awareness about statelessness within and outside the EU and promote good practice in addressing situations of statelessness. One example of such good practice has been set by Hungary when it adopted in 2007, as one of the few countries in Europe,¹⁹ a procedure to identify and determine statelessness as well as a separate status for those who are identified as being stateless. This resulted in a protection mechanism which is effectively functioning and has raised interest from ECRE calls on the Hungarian government to make use of its role as President of the EU to fully promote accession to the two international treaties dealing with statelessness and the adoption of procedures in national law to identify and determine statelessness as well as a solid protection status for stateless persons.

ECRE calls on the Hungarian Presidency to

- Promote accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
- Promote the adoption in national legislation of effective procedures for the determination of statelessness as well as a solid protection status for stateless persons, based on existing good practice in certain EU Member States.

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¹ See Council of the European Union, *Common Statement by Belgium, Hungary, Poland, Denmark and Cyprus on Immigration and Asylum (hereinafter Common Statement on Immigration and Asylum)*, 17223/10, Brussels, 30 November 2010.

² For detailed analysis and comments see ECRE, [Comments on the European Commission Proposal to recast the Reception Conditions Directive](#), April 2009 and ECRE, [Comments on the Commission proposal recasting the Asylum Procedures Directive](#), May 2010. For a recent overview of legal aid systems for asylum seekers in selected European countries see ECRE/ELENA, [Survey on Legal Aid for Asylum Seekers in Europe](#), October 2010.

³ ECRE defines frontloading as the policy of financing asylum determination systems with the requisite resources and expertise to make accurate and properly considered at the first instance stage of the procedure. Ensuring quality first instance decision-making reduces unnecessary appeals and enables appeal bodies to hear appeals more quickly and saves time and resources. See ECRE, [The Way Forward: Towards Fair and Efficient Asylum Systems in Europe](#), September 2005, p. 38.

⁴ This is illustrated in numerous reports. See for instance ECRE, [Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered](#), March 2008 (“Dublin Reconsidered”); NOAS, *A gamble with the right to asylum in Europe – Greek asylum policy and the Dublin II Regulation*, April 2008; ECRE, [The Dublin Regulation: Twenty Voices - Twenty Reasons for Change](#), March 2007; Amnesty International, *The Dublin II Trap. Transfer of asylum-seekers to Greece*, March 2010, AI Index: EUR 25/001/2010.

⁵ For a recent overview of developments in national jurisprudence, see UNHCR, *UNHCR Information Note on National Practice in the Application of Article 3(2) of the Dublin II Regulation in particular in the context of intended transfers to Greece*. Brussels, 16 June 2010.

⁶ For detailed analysis and recommendations, see ECRE, [Comments on the Commission Proposal recasting the Dublin Regulation](#), April 2009.

⁷ For detailed analysis and recommendations ECRE, [Comments on the Commission Proposal recasting the Qualification Directive](#), March 2010.

⁸ European Court of Justice, Case C-465/07, Meki *Elgafaji*, *Noor Elgafaji v. Staatssecretaris van Justitie*, Judgment of 17 February 2009.

⁹ See ECRE, *Briefing on amendments tabled in the European Parliament LIBE Committee to the Commission Proposal Recasting the Qualification Directive (COM(2009)551 final)*, December 2010.

¹⁰ See Common Statement on Immigration and Asylum, at p. 6.

¹¹ FRONTEX Press Release, “FRONTEX deploys Rapid Border Teams to Greece”, 25 October 2010”. Available at http://www.frontex.europa.eu/rabit_2010/news_releases/.

¹² FRONTEX Press Release, “Frontex RABIT Deployment to Greece Extended Until March 2011”, 7 December 2010, available at http://www.frontex.europa.eu/newsroom/news_releases/.

¹³ FRONTEX Press Kit, RABIT 2010 Deployment, available at http://www.frontex.europa.eu/rabit_2010/background_information/.

¹⁴ See Migration Newsheet, “Germany expresses concern over the way irregular migrants and asylum-seekers are treated by Greek officials”, January 2011, at p. 12.

¹⁵ For a detailed analysis and recommendations see Amnesty International and ECRE, [Briefing on the Commission proposal for a Regulation amending the Council Regulation \(EC\) 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union \(FRONTEX\)](#), September 2010.

¹⁶ See Amnesty International, *Seeking Safety, Finding Fear. Refugees, Asylum-Seekers and Migrants in Libya and Malta*, December 2010; Amnesty International, *Libya of Tomorrow. What Hope for Human Rights?*, June 2010; Human Rights Watch, *Italy/Libya. Pushed Back, Pushed Around. Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*, September 2009.

¹⁷ See UNHCR, *UNHCR projected Global Resettlement Needs 2011. Including overview of UNHCR resettlement achievements in 2009, operational challenges and strategic directions for 2010-2011*, 16th Annual Tripartite Consultation on Resettlement, Geneva, 8-10 July 2010, available at <http://www.unhcr.org>.

¹⁸ UNHCR, Executive Committee of the High Commissioner's Programme, *Progress report on resettlement*, 31 May 2010, p.2.

¹⁹ Alongside countries such as France, Italy and Spain.