

# ECRE

EUROPEAN COUNCIL  
ON REFUGEES AND EXILES  
CONSEIL EUROPEEN  
SUR LES REFUGIES  
ET LES EXILES

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## Memorandum to the Danish Presidency

### ECRE's Key Recommendations for a Human Rights orientated EU Asylum Policy

The European Council on Refugees and Exiles (ECRE) represents 73 refugee assisting NGOs working in 30 European countries towards humane and fair asylum policies and practice. ECRE is concerned with the needs of individuals who seek protection in Europe and aims at contributing to the development of a comprehensive response to the global refugee situation.

This paper aims at summarising ECRE's main recommendations to the Danish Presidency of the European Union<sup>1</sup>. ECRE believes that a future common EU asylum system should be protection-centred, firmly committed to the safeguarding of human rights and orientated at existing best State practice. Given the persistently reaffirmed commitment of the Danish authorities to support, promote and protect human rights and in light of the enlargement process of the EU, ECRE calls on the Danish Presidency to lead the European Union towards a harmonised asylum system that includes the following core elements:

#### *Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*

#### **1.- A harmonised definition of persons in need of international protection is a key priority**

ECRE has long advocated that a harmonised interpretation of the Refugee Convention should be dealt with sooner rather than later. ECRE welcomes the stated commitment of the Danish Presidency to give the utmost priority to negotiations on this matter.

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<sup>1</sup> ECRE has set out its views on the various proposals leading to the establishment of a common European asylum system on numerous occasions. Full commentaries on these proposals are available at: [http://www.ecre.org/policy/eu\\_developments.shtml](http://www.ecre.org/policy/eu_developments.shtml)

## **2.- A “full and inclusive application” of the Refugee Convention must be ensured**

ECRE considers that in many aspects, the proposal is close to a “full and inclusive” application of the Refugee Convention as advocated by the Conclusions of the Tampere European Council in October 1999. Other draft provisions, however, need to be amended, such as parts of the proposal on the internal flight alternative and on non state agents of protection. ECRE calls on the Danish Presidency to lead the Council’s work towards maintaining a “full and inclusive” approach.

## **3.- Persons in need of international protection who don’t fall under the Refugee Convention definition must be adequately protected**

An EU agreement on a complementary status will in itself be a recognition of Member States obligations under human rights law to provide international protection to persons falling outside a full and inclusive interpretation of the Refugee Convention. ECRE welcomes the definition of subsidiary protection in the proposal as sufficiently broad and inclusive to reflect prevailing human rights norms. It further supports the provision to grant persons enjoying subsidiary forms of protection similar rights as those enjoyed by refugees. ECRE further calls for the amendment of the provisions that do not enshrine this principle (such as those on family reunification), so that all individuals in need of international protection will enjoy the same protection without discrimination.

*Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national*

## **4.- The criteria to allocate responsibility should not be related to the application of migration control measures**

The Proposal has failed to address adequately the shortcomings of its predecessor, the Dublin Convention, as it still allocates responsibility for examining an asylum application to the Member State bearing responsibility for the applicant’s entry or stay in the European Union. ECRE is extremely concerned by the immense human costs of this system, as ever-stricter border control and enforcement measures that don’t take account of the obligations of States towards refugees, increase the risk of *refoulement* of asylum seekers by States at their land and sea borders. ECRE calls on States to base determination of the State responsible for examining an asylum application on two criteria only: (i) where the asylum application is lodged; (ii) where the asylum applicant has a family member, provided s/he agrees and that, in the case of children, the best interest of the child is ensured.

These options would meet the need for clarity, workability and effectiveness and would be in line with Paragraph 4 of the Proposal’s Preamble, which calls for criteria to be fair to both, Member States and asylum seekers. ECRE therefore recommends the deletion of Art. 9 - 13 of the current draft regulation and that Art. 16 of the Proposal permitting another Member States to assume responsibility on humanitarian or cultural grounds be retained. ECRE further

recommends that the principle of family unity be adequately taken into account in the relevant provisions of this regulation (see below under 6-7).

#### **5.- A suspensive right of appeal against their transfer must be ensured to asylum-seekers**

ECRE calls for an amendment of the proposal to ensure suspensive right of appeal is recognised for asylum applicants against a decision to transfer them. While Member States have differing interpretations of Art. 1(A) of the Geneva Convention, a transfer to another Member State which applies a more restrictive interpretation may amount to *refoulement* and a return to human rights violations such as torture or even death.

#### ***Proposal for a Council Directive on the right to family reunification***

#### **6.- An absolute right to family unity must be maintained**

ECRE remains deeply concerned by the low level of standards present in the amended proposal that include a very restrictive definition of family members and wide discretion for Member States in a number of areas.

ECRE therefore considers of paramount importance that the right of Member States to maintain and introduce more favourable family reunification provisions in their national legislation be maintained and that they be prevented from introducing less favourable conditions than those which already exist in each Member State. It strongly recommends that in the period prior to adoption of this and other directives, Member States commit themselves not to pass national laws that conflict with the principles and key provisions of EU proposals under discussion.

#### **7.- The principle of family unity must inform the EU developments in the field of asylum**

ECRE recommends that a link be established between the draft Directive on the right to family reunification and other relevant Community legislation, such as the draft Regulation to determine the Member State responsible to examine an asylum application, in order to ensure that the principle of family unity is consistently applied in all instruments. The principle of family unity requires that due consideration be given to differences in the definition of “family” among different cultures.

#### **8.- Public policy, domestic security and public health as grounds to reject the exercise of the right to family reunification must conform with international law and standards**

Under Article 6, Member States may reject an application for entry or residence of family members on grounds of public policy, domestic security and public health. Member States may also withdraw or refuse to renew a family member’s residence permit on grounds of public policy or domestic security. ECRE is concerned about the way these terms will be interpreted and calls on the Danish Presidency to ensure that express references to the need to comply with

relevant international human rights provisions when applying this Directive (such as for instance Article 8 of the European Convention on Human Rights) are included. In any case, ECRE opposes the use of public health grounds to reject applications of refugees for family reunification.

### *Migration Controls Measures*

#### **9.- Protection principles must inform border controls measures**

ECRE calls on the Danish Presidency to ensure that the protection principles agreed by EU Heads of State and Government as the political guidelines to inform the process of development of common European policies on asylum and migration are fully implemented. The European Council meeting in Tampere in October 1999, affirmed that “*while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes [the Union’s common asylum and migration policies] must be based on principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union*” (Conclusion 3).

#### **10.- Need for a comprehensive strategy that addresses the causes of forced displacement and reinforce global responsibility sharing.**

ECRE calls on the Danish Presidency to ensure that a harmonised European approach to safeguard access and protection for persons fleeing persecutions forms part of a co-ordinated and comprehensive strategy which addresses the causes of forced displacement and reinforce global responsibility sharing. This should include a commitment to increase significantly the European governments’ participation in resettlement programmes and to explore the potential of additional means of access to protection, such as embassy procedures, without prejudice to the right of spontaneous arrivals to seek and enjoy asylum on the EU’s territory, as well as channelling aid to countries of first asylum.

### *Integration of refugees*

#### **11.- EU measures in the field of asylum and migration must ensure that channels exist for refugees to integrate in their host societies**

Certain provisions of the proposals on family reunification, asylum procedures and definition of persons in need of protection are likely to undermine the integration of people who are eventually granted protection and inhibit their ability to contribute fully to host societies. ECRE calls on the Danish Presidency to lead the Council’s work on these proposals in a way that ensures that measures relating to the asylum determination process do not hinder the long-term ability of persons granted protection to integrate into host societies. Recognised refugees and persons with complementary protection should be provided with appropriate services that prepare them to function independently in the host country and make the social, economic and political environment more accessible and welcoming for them.

## **12.- Positive steps must be taken to develop a tolerant inclusive society**

The development of a tolerant inclusive society is a key prerequisite to the successful integration of refugees and the development of a protection oriented asylum system. Politicians and decision makers should provide political leadership and set the tone in public debate on tolerance and non-discrimination. The need for such political leadership is even greater since the events of September 11th.

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