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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE  
EUROPEAN PARLIAMENT**

**On the common asylum policy, introducing an open coordination method**

**First report by the Commission on the application of  
Communication COM(2000)755 final of 22 November 2000**

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## INTRODUCTION

The Community's competence in the field of asylum and immigration dates from the Treaty of Amsterdam. In October 1999 the Tampere European Council called for a common European policy on asylum and migration, which would specifically entail the introduction of a common European asylum system which would, in time, lead to a common asylum procedure and a uniform status, valid throughout the Union, for those granted asylum.

The Charter of Fundamental Rights of the European Union, proclaimed in December 2000, contains two articles on the right of asylum (Article 18), which is guaranteed in compliance with the Geneva Convention of 1951 and the 1967 Protocol on the status of refugees and in accordance with the Treaty establishing the European Community, and on protection in the event of removal, expulsion or extradition (Article 19).

In line with the programme agreed in Tampere and presented in the "Scoreboard to review progress on the creation of an area of freedom, security and justice in the European Union", the Commission has already framed all of the proposals for the first stage. The proposals for directives on asylum procedures, reception conditions for asylum-seekers and the Community instrument to improve the system of determining the Member State responsible for examining asylum requests, created by the Dublin Convention, are all being examined by the Council. The Commission's latest proposal, adopted on 12 September 2001, on defining the concept of refugee, subsidiary forms of protection and the types of status to which they give rise, completes the series of modules which will together form the first stage of the common European asylum system. The proposals for directives on family reunification and the status of third-country nationals with long-term residence also cover certain aspects of refugee status. In the meantime, the Decision establishing the European Refugee Fund, an instrument of financial burden-sharing between Member States in matters of asylum, the Eurodac Regulation, which seeks to improve the working of the Dublin Convention, and finally the Directive on temporary protection in the event of a mass influx of displaced persons have been adopted by the Council.

The number of asylum-seekers in the EU has continued to rise since 1997. Annex 1 gives a brief overview of the figures for certain trends in the number of applications for asylum and decisions granting asylum by the Member States.

In its Communication of 22 November 2000 on the common asylum procedure and uniform status (COM(2000)755 final), the Commission set out its views on this long-term objective of European asylum policy, identifying objectives and options, stressing the need to find common ground in analysing the issues and proposing a method. The Communication was widely debated; the main thrust of the reactions is summarised in Annex 2, which also indicates the current status of the four research studies announced in the Communication.

In its Communication the Commission also pointed out that although the two-stage legislative programme represented the core element and the main contribution to the establishment of a common European asylum system, the nature of asylum policy also necessitated flanking measures and techniques for convergence. It therefore recommended the use of an open coordination method, specially adapted to the asylum issue, to complement the legislative framework. This approach implies drawing up strategic guidelines, benchmarking, target-setting and the introduction of monitoring to evaluate progress. This communication gives a more precise definition of the machinery of this method as applied to asylum and presents the

Commission's initial suggestions for European guidelines for consultation prior to its formal proposal.

The Commission suggested that it should issue a regular report to review ongoing developments and present its recommendations. The first such report, published on the eve of the Laeken European Council, is the subject of this Communication. The Commission report on the common asylum policy in the EU, which will initially be an annual publication, should provide continuity in the common European asylum policy. It will serve the interests of transparency and stimulate public debate. At the same time, without in any way detracting from the Commission's right to initiate legislation at any time or from the specific examination of the workings of the acts of secondary legislation in the appropriate forums, the report will distil the lessons to be learnt from the work in progress and the application of the various instruments. Among other recommendations for achieving progress in the future, it introduces the idea of applying to asylum issues the sort of open method of coordination already proposed for immigration policy. The form and content of the report will evolve gradually, as the common European asylum system progresses.

## **PART I. IMPLEMENTATION OF THE LEGISLATIVE PROGRAMME OF THE FIRST STAGE AND FLANKING MEASURES**

### **1.1. Legislation in the first stage**

#### **Eurodac**

Council Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention was adopted on 11 December 2000.<sup>1</sup> Preparatory work is under way with a view to having a fully operational system by the end of 2002, provided that Member States act quickly to introduce implementing rules and take the necessary measures to enable them to participate in the system. The Regulation stipulates that Eurodac activities will start only when every Member State has informed the Commission that it is ready. The launch of Eurodac thus depends on the last notifying Member State.

On 15 March 2001, an agreement was concluded between the European Community and Norway and Iceland,<sup>2</sup> which essentially reproduces the obligations and rights contained in the Dublin Convention and Eurodac.

#### **Temporary protection in the event of a mass influx of displaced persons**

On 20 July 2001 the Council adopted Directive 2001/55/EC<sup>3</sup> on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. This entered into force in August 2001 and must be incorporated into national legislation by 31 December 2002. The Commission presented its proposal in May 2000.

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<sup>1</sup> OJ L 316, 15.12.2000, pp. 1-10.

<sup>2</sup> Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or Iceland or Norway (OJ L 93, 3.4.2001 pp. 38-46).

<sup>3</sup> OJ L 212, 7.8.2001, p.12.

On 20 September 2001, as part of the EU strategy in response to the events of 11 September in the United States, the Council agreed to examine the situation in countries and regions where there were likely to be large-scale population movements as a result of heightened international tension and asked the Commission, in conjunction with the Member States, to consider the possibility of provisionally invoking the Council Directive on temporary protection if special protection arrangements proved to be necessary within the EU. The Commission has taken steps to monitor the situation in conjunction with the Member States.

### **Proposal for a Directive on asylum procedures**

Following an analysis of the replies to its working document 'Towards common asylum procedures' of March 1999, and of relevant resolutions of the EU *acquis* and legislation and practice in Member States, the Commission presented its proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status on 20 September 2000.<sup>4</sup>

The Economic and Social Committee adopted a favourable opinion on 26 April 2001, while suggesting certain more liberal procedural safeguards for asylum-seekers. On 20 September 2001 the European Parliament adopted its resolution on the draft directive. Its amendments clarify and strengthen the position of asylum-seekers, including those appealing against decisions, while tightening up the definition of safe countries and reducing the scope for detention. The UNHCR issued a position paper in July 2001.

Under the Belgian Presidency the discussions in the Council have focused on the need to differentiate procedures (admissibility, accelerated and regular procedures), the number of appeals, the suspensive effect of appeals, time limits and the penalties enforcing them, standards relating to the quality of the decision and the decision-making process, border procedures and subsidiary protection. The Commission welcomes the intention of the Belgian Presidency to reach a political agreement on a number of these issues and on related issues connected with the following two draft proposals.

### **Proposal for a Directive on the reception of asylum-seekers**

At the beginning of December 2000 the Council adopted conclusions on the reception of asylum-seekers. Three important issues remained unresolved: the target group of any future legislative instrument on reception, freedom of movement and its limits, and access to the labour market. In December 2000 the Commission launched bilateral consultations on a Community legislative instrument in this field with the Member States, the UNHCR and the NGOs most closely involved.

In May 2001 the Commission presented the Council with its proposal for a Directive laying down minimum standards on the reception of applicants for asylum in Member States.<sup>5</sup> The main issues addressed are the following: definition of the target group that will benefit from the future Community instrument (scope), information, documentation, freedom of movement, material reception conditions (housing, food, clothing, daily expense allowance), health care, schooling for minors, employment, reduction or withdrawal of reception, persons with special needs and actions to improve the efficiency of the reception system.

The proposal is under consideration in the Council and the European Parliament.

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<sup>4</sup> COM(2000)578 final, 20.9.2000.

<sup>5</sup> COM(2001) 181 final.

## **Proposal for a "Dublin II" Regulation**

The Swedish Presidency in the first half of 2001 saw the completion of the strategic debate in the Council on the revision of the Dublin Convention, prompted by the working paper produced by the Commission departments entitled "Revisiting the Dublin Convention: developing Community legislation for determining which Member State is responsible for considering an application for asylum submitted in one of the Member States".<sup>6</sup> At the same time, the Commission completed the evaluation of the working of the Dublin Convention which the Council had asked it to undertake. The conclusions of this exercise, set out in the Commission working paper "Evaluation of the Dublin Convention",<sup>7</sup> explain the difficulties of applying this instrument in practice.

Drawing on the ideas emerging from the debate on its discussion paper and the lessons of the evaluation, the Commission adopted a proposal for a Regulation on 26 July 2001 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,<sup>8</sup> in accordance with Article 63(1)(a) of the EC Treaty. The Commission's proposal is based on the same principles as the Dublin Convention, i.e. it seeks to assign responsibility to a single Member State, determined on the basis of objective criteria: normally, the Member State which played the most important role in the entry or residence of the asylum-seeker. The proposed regulation does, however, contain new provisions aimed at:

- speeding up the process of determining the Member State responsible by setting shorter deadlines for the completion of procedures;
- making the system more efficient by promoting cooperation between Member States in order to determine the Member State responsible;
- helping to keep family groups together.

The proposal is currently being examined by the Council and the European Parliament.

## **Proposal for a Directive on the qualification and status of persons as refugees or as beneficiaries of subsidiary protection**

On 12 September 2001 the Commission adopted a 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.<sup>9</sup> The discussions of the proposal within the appropriate Council bodies should start at the beginning of 2002.

The proposal lays down rules for a common definition of the concept of "refugee", as contained in the Geneva Convention, and a common definition of beneficiaries of subsidiary protection. A minimum standard of subsidiary protection will be available to complement the Geneva Convention in all Member States.

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<sup>6</sup> SEC(2000)522.

<sup>7</sup> SEC(2001)756.

<sup>8</sup> COM(2001)447, 27.7.2001.

<sup>9</sup> COM(2001) 510 final, 12.9.2001.

The proposal deals with ways of assessing the applicant's fears, the needs arising *sur place*, the internal protection alternative and the reasons for persecution. It also considers the issue of the "agent of persecution". Persecution is most clearly evident when it emanates from the state itself. However, the proposal recognises that persecution can also originate from non-state agents when a state is unable or unwilling to provide effective protection. In such cases refugee status can also be granted. The proposal accepts that when part of the state where the applicant comes from is deemed safe, or when a quasi-state body (as in UN administered territories, for example) can be considered as a protector, the applicant has no claim for international protection. Issues of cessation of and exclusion from international protection are also covered.

The proposal also includes provisions on minimum rights and benefits to be enjoyed by the beneficiaries of both refugee and subsidiary protection status. In the main, the rights and benefits attached to both international protection statuses are the same. However, in recognition of the primacy of the Refugee Convention and of the fact that the need for subsidiary protection is in principle more temporary, entitlement to some important rights and benefits, such as the access to work and integration programmes, and the granting of a multi-annual residence permit, is incremental for beneficiaries of subsidiary protection.

### **Common legislation: fair treatment of third-country nationals, entry, residence and freedom of movement within the EU**

The Commission believes that the fair treatment of third-country nationals and beneficiaries of international protection should be provided for in the same legislation, unless there are fundamental reasons for drawing a distinction. There are therefore two further proposals which also apply to refugees within the meaning of the Geneva Convention. These are the amended proposal for a Council Directive on the right to family reunification, presented on 10 October 2000,<sup>10</sup> and the proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, presented on 13 March 2001.<sup>11</sup> These put the finishing touches to the first stage of the status harmonisation.

On 28 June 2001, the Council adopted a Directive supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, dealing with carriers' liability.<sup>12</sup> It contains a safeguard clause ensuring that penalties imposed are without prejudice to Member States' obligations in cases where a third-country national seeks international protection. This clause also applies in the case of the Framework Decision on measures against the facilitation of unauthorised entry and residence (currently being finalised for formal adoption in the Council). As far as the Framework Decision on the fight against human trafficking and penal measures against facilitators is concerned (which is also being finalised for formal adoption), any Member State may decide in its national law and practices not to penalise action if the sole aim is to provide humanitarian assistance.

The Commission's proposal for a Council Directive relating to the conditions for freedom to travel in the territory of the Member States for periods not exceeding three months and the conditions of entry and movement for periods not exceeding six months,<sup>13</sup> presented on 10 July 2001, can also be applied to beneficiaries of international protection in a Member State.

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<sup>10</sup> COM (2000) 624 final.

<sup>11</sup> COM(2001) 127 final.

<sup>12</sup> Council Directive 2001/51/EC, OJ L 187, 10.7.2001, p. 45.

<sup>13</sup> COM(2001) 388.

## 1.2 Flanking measures

### European Refugee Fund (ERF)

The ERF (which has a budget of €16 million) was created by Council Decision 2000/596/EC of 28 September 2000<sup>14</sup> to promote solidarity between Member States in matters of asylum by helping and encouraging the efforts they make in receiving and bearing the consequences of receiving refugees and displaced persons. Resources are distributed in proportion to the burden of expenditure on each Member State, given the different directions taken by the flows of persons in search of protection. To achieve this objective the Fund supports Member States' action in three areas: reception, integration and voluntary repatriation. The ERF also supports actions of Community interest and innovatory or transnational measures. Finally, the Fund may be used to finance emergency measures to provide temporary protection in the event of a mass influx of displaced persons.

The Fund will operate in its present form until 31 December 2004, on the basis of programmes submitted by the Member States annually. This allows for multiannual planning, while at the same time offering flexibility, so that any changes in the flows and numbers of persons in search of protection can be taken into account. Another important element in the Fund's present form is that arrangements for implementation are decentralised: the Member States are responsible for drafting the annual programmes, selecting projects and monitoring, verifying and evaluating the action taken.

The Commission approved the Member States' co-financing requests for 2000 and 2001 on 3 April 2001. A total of €4 million and €2.5 million was distributed among the Member States in the form of ERF contributions in 2000 and 2001 respectively. Annex 3 shows how the Member States' allocations were divided between the three main types of action. As can be seen from the graphs, the largest share of ERF resources in both 2000 and 2001 is being used for improving reception conditions in the Member States, with almost equal shares going towards facilitating integration and voluntary repatriation.

Finally, following the 2000 and 2001 calls for proposals for Community actions, projects were selected for a total budget of €1.3 million and €1.7 million respectively, covering networking activities, awareness-raising and information campaigns, studies on legislation, policy and practice relevant to one of the three ERF types of action. These projects are expected to have a considerable multiplier effect and will contribute to improving and further developing policy at Community and national level.

### ARGO

On 16 October 2001 the European Commission approved a proposal for an action programme to provide much-needed improvements in administrative cooperation between the Member States.<sup>15</sup> The need for such action was also pointed out in both Commission Communications on asylum and immigration. The objective of the action programme, known as ARGO, is to reinforce the effectiveness of the relevant procedures in the fields of asylum, visas, immigration and the control of external borders and assist the national administrations in the implementation of the Community legislation based on Articles 62 and 63 of the EC Treaty, as well as to ensure openness in the application of this legislation.

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<sup>14</sup> OJ L 252, 6.10.2000, p.12.

<sup>15</sup> COM(2001) 567 final.

The actions covered in ARGO must aim at the implementation of the relevant Community rules regardless of which national administration is responsible for undertaking those actions. The ultimate target is to avoid differences in national practices that might prejudice the establishment of an area of freedom, security and justice. The proposal also defines the types of action (training, staff exchange, development of best practices, studies, etc.) to be proposed by the national administrations. Community actions in this field will focus mainly on:

- Developing and promoting use of the best new working methods, with particular attention to computerisation and electronic data exchange, to help Member States' national administrations perform their tasks more efficiently.
- Defining and upgrading a common training policy.
- Developing a common working methodology and culture between the Member States to foster a better understanding of the administrative processes in each Member State.

Support for activities in the area of asylum will cover: promoting the establishment and operation of the common European asylum system, leading to a common asylum procedure and a uniform status; facilitating the determination of the state responsible for examining an asylum application; support for the approximation of rules on recognition and content of protection status; promoting the efficiency and fairness of the asylum procedure and increasing convergence in decisions; developing resettlement programmes, entry facilities and legal means for admission into Member States on humanitarian grounds.

### **1.3. Other measures and legislation connected with asylum policy**

#### **EQUAL**

The Community initiative, EQUAL, seeks to combat exclusion and inequality in the labour market and includes asylum-seekers in its target group. EQUAL is funded by the European Social Fund, which is providing €2.973 million for 2000-2006, which must be matched by contributions from Member States. The initiative is coordinated across the EU and has been developed on a thematic basis, reflecting the need to improve employability, entrepreneurship, adaptability, gender equality and the social and vocational integration of asylum-seekers. The aim is to develop and test innovative approaches, working in cooperation with partners from other Member States, with a view to identifying good practice which can then inform mainstream policies and provision.

Each Member State is responsible for identifying its domestic priorities for EQUAL and reflecting these in its national plan. All Member States were required to allocate resources to meet the needs of asylum-seekers. The EC completed negotiations with all Member States on the content of the national plans for EQUAL in 2001. The proportion of funds allocated to address the needs of asylum-seekers varies across the EU, with an overall allocation of 4% (almost €25 million from 2000 to 2006).

EQUAL will be delivered by development partnerships which draw together a wide range of participants. Networking at EU level will have to ensure that EQUAL takes account of similar work being carried out via other European funding regimes (in particular ERF) and to consider the implications of any wider policy changes related to asylum-seekers.

## **Fighting against discrimination, racism and xenophobia**

The Council, acting on a proposal by the Commission, has adopted a series of instruments since mid-2000 to give effect to the new Article 13 of the EC Treaty. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin<sup>16</sup> must be incorporated into national legislation by the Member States by 19 July 2003. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation<sup>17</sup> must be transposed by the Member States by 2 December 2003 at the latest. At the same time, Council Decision of 27 November 2000 established a programme of Community action to combat discrimination,<sup>18</sup> with a budget of €100 million for 2001-2006.

As part of the cooperation to combat racist and xenophobic crimes, the Commission will present in parallel with this communication a proposal to convert a joint action dating from 1996<sup>19</sup> into a framework decision, with the addition of certain improvements. The aim of the text is twofold: first, to ensure that racism and xenophobia are punishable in all Member States by effective, proportionate and dissuasive criminal sanctions, which may lead to the extradition or handing over of the individual concerned, and, second, to improve and promote judicial cooperation by removing any potential obstacles.

## **PART II. LINK BETWEEN INTERNATIONAL PROTECTION OBLIGATIONS AND SECURITY**

### **2.1. Preliminary remarks**

Conclusion 29 of the extraordinary Justice and Home Affairs Council of 20 September 2001, organised in the wake of the tragic events of 11 September in the United States, invited “*the Commission to examine urgently the relationship between safeguarding internal security and complying with international protection obligations and instruments*”. The Commission's preliminary findings are presented in this section. The Commission is willing to produce a Commission working document to examine the relationship between protection obligations and internal security in greater detail. This will specifically review actual and proposed EC legislation in the field of immigration and asylum and study the mechanisms for excluding those who do not deserve international protection and for dealing with excludable persons. It will also include a "road map" to serve as a guide to the current situation in Europe and provide pointers for the way ahead.

### **2.2 Access to asylum procedures and exclusion from refugee status**

Whatever approach is taken in this regard, it is necessary to ensure that refugees and asylum-seekers do not become victims of recent events. In this respect, the Commission believes that all persons requesting asylum should be granted access to a procedure in the EU Member State responsible for assessing the claim. In order to implement the 1951 Refugee Convention in good faith (and “fully and inclusively”), it is essential to determine whether an applicant fulfils the requirements of the Convention. *Automatic* bars to consideration of asylum claims,

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<sup>16</sup> OJ L 180, 19.7.2000, p. 22.

<sup>17</sup> OJ L 303, 2.12.2000, p.16.

<sup>18</sup> OJ L 303, 2.12.2000, p.23.

<sup>19</sup> 96/443/JAI: Joint Action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia, OJ L 185, 24.7.1996, p. 5.

ie to start the asylum procedure, even of suspected criminals, are therefore not in conformity with the Refugee Convention.

It is equally important to ensure that criminals committing or planning serious crimes, such as terrorists, do not take advantage of the refugee protection system. Member States have a responsibility to implement the exclusion clauses of the Geneva Convention rigorously to fight such abuses. Indeed, the exclusion clauses contained in Article 1(F)<sup>20</sup> of the Refugee Convention not only permit but clearly oblige the contracting states to exclude certain categories of individuals from protection as refugees. The rationale underlying the exclusion provisions is that certain acts are so grave as to render their perpetrators undeserving of protection as refugees, and the receiving country must be protected from persons who present a danger to public safety or national security. However, because exclusion from refugee status may have potentially life-threatening consequences, such decisions should be made *within* the asylum procedure, by an authority with expertise and training in refugee law and status determination.

In line with several United Nations General Assembly recommendations and Security Council resolutions, most recently Resolution 1373 of 28 September 2001, and in accordance with international refugee case law, exclusion of persons involved in terrorist acts from refugee status may be based on either of the three grounds listed in the exclusion clause of Article 1(F), depending on the circumstances of the case.

States have interpreted the phrase “serious reasons for considering”, used in Article 1(F), as meaning that no evidence *stricto sensu*, or full proof, is required. The Commission working document will elaborate on the possibility not to start with examining the “inclusion clauses” of the Refugee Convention, contained in article 1A of the Convention, when examining further the possible applicability of Article 1(F) for terrorist acts. It will also examine issues dealing with the notion of “serious reasons for considering”, the type of investigation or the personal involvement.

### **2.3 Extradition/surrender, prosecution or protection against refoulement**

The international law principle known as *aut dedere aut judicare* provides a solution to the inherent contradiction between the state's need, and indeed obligation, to combat criminal acts such as terrorism, and the individual's entitlement to protection against refoulement. According to this principle, the state is obliged either to surrender or to prosecute those who have lost an appeal against a decision to exclude them from refugee status.

If there is no possibility of trying the person, given the absence of an International Criminal Court, he or she should in principle be extradited, if extradition is legal and practicable, to the country of origin, another EU Member State or another third country. Extradition may, however, be impossible because of legal obstacles: the protection against refoulement provided for in human rights instruments such as the United Nations Convention against Torture, the International Covenant on Civil and Political Rights and the European

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*The provisions of this Convention shall not apply to any person with respect to whom there are **serious reasons for considering** that:*

*(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;*

*(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;*

*(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.*

Convention on Human Rights is absolute in nature, that is to say it admits no exceptions. The European Court of Human Rights has repeatedly affirmed that the European Convention on Human Rights prohibits, in absolute terms, torture and inhuman or degrading treatment or punishment. Nevertheless, extradition must be considered legal when it is possible to reach an agreement with the government that is going to try the person, addressing the concerns connected with potential violations of Article 3 of the European Convention of Human Rights.

As no existing international legal instrument regulates the status and rights of “excludable but non-removable” persons, the question that currently remains unresolved, at EU level too, is what to do with this group of people. Some of them disappear from sight and lead a clandestine existence, others are detained, if the law allows this possibility. The issue is therefore urgently in need of further examination.

#### **2.4 Examination of internal security-related provisions in Commission initiated proposals for directives in the asylum field**

The current proposals for Community legislation in the field of asylum and immigration, submitted by the Commission, all contain standard provisions to allow third-country nationals thought to pose a threat to national or public security to be excluded from the right to international protection and residency or denied access to certain benefits. Attention is drawn in particular to Article 28 of the Directive on temporary protection; Articles 14, 17 and 19 of the proposal for a Directive on refugee status and subsidiary protection; Articles 4, 26, 28, 33(2)(c) of the proposal for a directive on asylum procedures; and Article 22(1)(d) of the proposal for a directive on reception conditions of asylum-seekers. However, the Commission is fully prepared, as part of the current discussions and negotiations, to re-examine the relevant provisions in its proposals in the light of the changed circumstances and consider ways and means of further enhancing the fight against terrorism, without prejudice to the relevant international obligations that underlie the proposals. The results of this review will be included in the working document referred to earlier.

### **PART III. COMMON ANALYSIS**

#### **3.1. Policy on statistics**

The JHA Council of 28/29 May 2001 adopted Council Conclusions regarding common analysis and the improved exchange of statistics on asylum and migration. It was agreed that statistics would be made more widely available to the public and more analysis would be introduced.

The Commission's contribution to this debate took the form of a staff working paper<sup>21</sup> which argued that (a) data should continue to be collected and, where necessary, extended and fine-tuned, (b) the comparability of the statistics should be improved and the data made more available and (c) a reporting system should be established, reflecting the needs of the Member States and the EC institutions, subject to new resources being found. The paper further highlighted the fact that the existing annual collection of migration data was no longer sufficient for the purpose of developing a common EU migration policy.

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<sup>21</sup> Commission staff working paper on the exchange of statistical information in the field of asylum and migration (SEC (2001) 602).

According to the Conclusions, future action required the development of a comprehensive and coherent framework for improving statistics. The Commission was invited to take action, taking into account the principles and objectives laid down in an Annex to the Conclusions. It was to submit its Action Plan early in 2002. This would succeed the 1998 Action Plan, on the basis of which the Statistical Office of the European Communities (Eurostat) started collecting monthly statistics on asylum and illegal entry within the context of the CIREA<sup>22</sup> and CIREFI<sup>23</sup> Council working groups respectively. With the extension of data collection to the candidate countries, Norway and Iceland, the objectives of the 1998 Action Plan were all implemented in 2000.

A new Action Plan could run for the remainder of the transitional period of Article 67 of the EC Treaty and cover *inter alia* the introduction of common methods of statistical confidentiality (protection of the individual), new variables for existing data collection and the introduction of Community legislation to determine the definitions, the scope of data collection and the obligations of the providers and the Commission. The Commission is currently consulting Member States on the approach to take.

However, the focus of work on asylum statistics in 2002 must already be on key issues in the future Action Plan such as the implementation of new publication rules, the preparation of a first public annual report on Community statistics in the field of asylum and migration.

### **3.2. Information, exchange and analysis**

Figures alone are not sufficient for understanding asylum issues and adopting appropriate decisions. This requires further in-depth analysis of root causes, the situation in countries of origin and transit, violations of human rights, consequences for individuals, methods of entry and other related matters. Member States have gathered considerable information and gained expertise in this field, but the European dimension has not yet been sufficiently explored. Although formal and informal networks for exchanging information have been developed for this purpose over the years, further improvements in the exchange of intelligence and information on a European level are required to enable the Community to develop an effective common asylum policy.

The Commission is considering the creation of a European Migration Observatory, which could monitor and carry out comparative analysis of asylum and legal and illegal migratory flows. The Commission also stresses the need to develop adequate structures at EC level in order to allow for more coordinated action by the enforcement agencies of the Member States.

The Commission, will explore these issues further in 2002, in consultation with various partners.

## **PART IV. THE EXTERNAL DIMENSION**

### **4.1. Enlargement**

Issues related to asylum are a key component of EU action in both the pre-accession phase and the negotiation process. Talks are currently under way on Chapter 24 (Justice and Home Affairs) with all the candidate countries negotiating accession to the European Union except with Romania. With this country, negotiations on Chapter 24 are expected to be opened in the

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<sup>22</sup> Centre for Information, Discussion and Exchange on Asylum.

<sup>23</sup> Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration.

course of 2002. The entire *acquis communautaire* on asylum, based on the 1951 Convention on the Status of Refugees, has to be accepted and transposed by the candidate countries. During the negotiations the EU stresses that by the time of accession all candidate countries must have in place a fair, effective and efficient system for the treatment of asylum applications, especially with regard to the safeguards necessary to respect fully the principle of *non-refoulement* and the independent appeal procedure.

Alignment with the *acquis communautaire* on asylum in the candidate countries requires a major effort in terms of institution- building and improvements in implementation capacity in the applicant countries. This implies providing adequate staff and appropriate training in the national services processing asylum claims as well as for border guards, and increasing and improving reception facilities for asylum-seekers. To this effect, the EU is providing extensive assistance to the candidate countries through the Phare Horizontal programme on Justice and Home Affairs, the multidisciplinary programme that targets all candidate countries except Malta and Cyprus. The EU is also providing assistance through the Phare National Programs for each central and eastern European candidate country by means of “twinning” projects between the public administration of the Member States and of the candidate countries.

Under the Phare Horizontal Programme on JHA, a project supporting all candidate countries, except Malta, Cyprus and Turkey, on their adoption and implementation of the *acquis* on asylum has been executed in 1999 and 2000. It resulted in the drafting of a National Action Plan for each candidate country, which has been or is being implemented, either under twinning projects or through international actions. For Turkey, programming has started and pilot projects will be launched in 2002. As far as Cyprus and Malta are concerned, pre-accession funds are supporting the harmonisation process in the field of JHA. Cyprus and Malta are also participating with their own funds in some activities of the PHARE Horizontal programme for JHA.

#### **4.2 High Level Working Group on asylum and migration**

Asylum matters are also of importance to the European Community in its relations with other third countries. In a first effort to develop a comprehensive policy on migration and asylum, the Council created the High Level Working Group on asylum and migration (HLWG) in December 1998. Six action plans (on Afghanistan and the neighbouring region, Iraq, Morocco, Somalia and Sri Lanka, Albania and the neighbouring region) were adopted by the Council in 1999 and 2000. In its analysis of the root causes of migratory flows and flight the HLWG pays special attention to circumstances in the countries concerned that could constitute a well-founded fear of persecution for reasons mentioned in the 1951 Convention relating to the Status of Refugees. In an effort to target the main causes of migratory flows, each of the action plans proposes a set of measures, including some directly or indirectly related to asylum. Measures to promote respect for human rights, the rule of law and minority rights are included, and special attention is given to helping third countries in their efforts to strengthen their institutional capacity to deal with asylum requests that meet the minimum international standards. The HLWG also calls for better cooperation between the EU and the UNHCR and between the EU and those third countries that are faced with large influxes of refugees, like Pakistan and Iran. In the action plans, the Community commits itself to continuing to assist refugees and IDPs by funding actions and programmes. The work of the HLWG has also contributed to the coordination of efforts of the Community and the Member States to assist third countries in dealing with the refugees on their territory.

In an effort to promote the possibilities for implementing the asylum and migration measures contained in the action plans, a new budget line on cooperation with third countries in these areas (B7-667) was created in 2001 (€10 million). A number of projects aimed at developing the asylum systems of certain countries of transit have been selected. This line does not finance humanitarian aid to refugees and IDPs, which are supported by humanitarian aid budget lines.

The HLWG produced a report in November 2000 for the attention of the European Council in Nice. It evaluated its work and proposed ideas and measures for improving the approach and working methods. The work of the HLWG paved the way for an innovative European policy on migration and asylum, taking into account the root causes of migration and its consequences in the countries of origin and transit and in the countries of destination. Improving its working methods, including the method for drawing up any new action plans, will imply *inter alia* greater involvement by the third countries concerned on the basis of genuine partnership and greater coordination and cooperation with Member States and international governmental and non-governmental organisations active in these countries. The availability of the new budget line from 2001 onwards has already helped to improve implementation of the action plans. An increase in this budget will no doubt contribute further to the implementation of the external policies on asylum and migration.

#### **4.3. Other countries**

There have been intensive discussions with countries in regions beyond the candidate countries, particularly the countries of the Western Balkans, the Russian Federation and Ukraine. This dialogue has been conducted on the basis of the contractual relations between the EU and the countries in question, and in some cases the relevant CFSP instruments. The issue of asylum and European standards in this area has been the subject of discussion within the relevant frameworks for political dialogue and has received considerable attention in the corresponding Community budgetary instruments. On 28 March 2001 a ministerial Troika and counterparts from the Western Balkan countries issued the Sarajevo Declaration on regional cooperation and alignment with European standards in the area of asylum and migration. Practical implementation will be supported by the CARDS Regional Programme on the precondition of a continuous strong commitment of the Western Balkans States. A draft action plan for justice and home affairs is currently being developed between the EU and Ukraine, where asylum and migration are at the top of the agenda. Budget heading B7-667 is being used to support pilot projects here and in Albania and the neighbouring region.

Discussions on asylum are also being prepared for the future within the framework of the Barcelona process.

Dialogue with the USA and Canada is also very fruitful. Cooperation in the field of asylum policy is to be stepped up with both these countries.

#### **4.4. Relations with the United Nations High Commissioner for Refugees**

As a result of the closer partnership between the Commission and the UNHCR on asylum matters, the Commission engaged in constant dialogue with the UNHCR throughout 2001 on its legislative proposals and policies and on developments such as the moves within the UNHCR to strengthen the system of international protection. Together with the Member States, the Commission has played an active part in the Global Consultations and has helped to fund the various sessions of these Consultations. It will continue to follow this process very closely in the Ministerial Conference of the State parties to the Geneva Convention of 1951,

to be convened by Switzerland and the UNHCR in mid-December. The Commission also expects to be consulted on the development of an agenda for international protection. The Global Consultations and the establishment of a common European asylum system reinforce each other and are mutually beneficial.

An extra dimension has been added to Community action in relation to the UNHCR by the launch of a strategic dialogue on humanitarian and development issues intended to increase transparency, improve forecasting, cooperation and funding, while supporting the key strengths of the UNHCR. The Community is firmly committed to supporting the UNHCR's international mandate in order to provide better protection for refugees and find lasting solutions. In 2001 the Community was the third largest donor of funds to UNHCR efforts.

## **PART V. APPLYING THE OPEN COORDINATION METHOD TO ASYLUM POLICY**

### **5.1. Background**

In its communication on asylum of November 2000, the Commission referred to the need to develop an open coordination method for asylum policy to support legislative policy and accompany the convergence process. The Commission explained the workings of such an open coordination method in relation to immigration policy in its Communication COM(2001) 387 final of 11.7.2001. This has a number of points in common with asylum policy. The right to grant asylum is still closely linked to national sovereignty and the constitutional history of each Member State. Up until 1999 asylum issues were primarily dealt with by the EU at intergovernmental level. International protection is granted at the level of the individual Member State. Because of the international nature of migratory movements, including those linked with the problem of international protection, and the way different aspects of migration policy are interconnected, a mechanism is needed that allows an evaluation of the progress made towards achieving common European objectives and changes to be made to these objectives if necessary. Finally, the whole issue of exchanging good or best practice is ideally suited to asylum issues.

However, the EC Treaty (particularly Article 63) and the conclusions of the Tampere European Council are much more ambitious as regards harmonisation in asylum matters than in immigration, in terms of both objectives and legal provisions. Moreover, the right of asylum is largely governed by a series of international obligations entered into by the EU Member States, foremost among them the Geneva Convention of 1951 on the Status of Refugees and the 1967 Protocol. The Dublin Convention has raised the issue of asylum within the EU in recent years and introduced a series of binding criteria and mechanisms. At national level, the rulings by courts and appeal bodies have had a decisive impact.

The use of an open coordination method must therefore be specifically adapted to the field of asylum. It will assist and complement the Community legislation required by the Treaty, which is the core element of the entire common policy, accompanying it and smoothing the transition to the second stage of the introduction of a common European asylum system, as described in Communication COM(2000)755. Because of the high degree of convergence sought by the European Union in asylum policy, the Commission also believes that by adopting the guidelines set out in point 5.2, the Council can signal that the targets for applying the open coordination method are more ambitious and detailed in respect of asylum affairs than immigration policy.

The proposal is to apply this method for an initial period up to the presentation of the first instruments of the second phase.

The Commission intends to play its part in applying this open coordination method. At the same time as establishing the legislative framework it will therefore also support the application of this method by formulating proposals for European guidelines and for the content of national action plans, by coordinating national policies promoting the exchange of best practice and monitoring and evaluating the impact of Community policy. It will also organise regular consultations with third countries and the relevant international organisations.

## **5.2. European guidelines on asylum**

The open coordination method is based essentially on the Council approving multiannual guidelines for the Union, together with a timetable for achieving the objectives in the short, medium and long term. These guidelines will then be incorporated into national policy by specific objectives being set to take account of national disparities. In accordance with the conclusions of the Tampere European Council and in the light of the proposals formulated in its Communication on a common asylum procedure and uniform status, the Commission suggests that guidelines be produced in the first instance in the following areas: knowledge of migratory movements; developing an efficient asylum system that offers protection to those who need it, according to a full and inclusive application of the Geneva Convention; returns; relations with third countries; integration. The list could subsequently be amended under the open coordination method.

The following guidelines are the Commission's initial suggestions. There will be consultations on them before the Commission presents a formal proposal.

***First guideline: Improving understanding of migratory flows connected with humanitarian admissions, in particular:***

- a. by contributing fully to improve the collection and analysis of statistics on migration and asylum, with a view to implementing the EU action plan.
- b. by identifying the priorities, sources and research partners for collecting the appropriate information (situation in the countries of origin and transit, human rights violations, personal reasons for migrating, individuals' stories, routes, etc.).

***Second guideline: Developing an efficient asylum system that offers protection to those who need it, according to a full and inclusive application of the Geneva Convention, in particular:***

- a. by encouraging cooperation and exchange of information between the consular services of the Member States in the countries of origin and transit including on matters of visa policy.
- b. by identifying measures and good practice with a view to ensuring a balance between the legitimate objectives of countering illegal immigration and/or trafficking in human beings and providing access to asylum procedures, including the application of controls at external borders.
- c. by identifying the priorities and the resources devoted to fair and efficient treatment at the reception stage, during procedures and for determining the Member State responsible for examining an asylum application.

d. by describing the training objectives for the relevant staff of the bodies responsible for assessing applications, diplomatic and consular officials, police and border guards and members of the appeals bodies. These objectives should include exchanges of officials with other EU Member States.

e. by identifying ways and means, over and above the measures taken to give effect to the Community instruments now being adopted, possibly by setting precise objectives, and evaluating their practical impact in order to:

- ensure the quality of the initial examination of the asylum application;
- speed up the process and enforce the deadlines for completing the various stages of the procedure (for asylum-seekers and for the administration and courts);
- improve the percentage of transfer decisions following the determination of the Member State responsible that are actually enforced;
- improve provision of translation and interpretation (for the benefit of asylum-seekers and of the administrative departments and courts);
- improve access to evidence.

f. by clearly setting out national arrangements for the reception of asylum-seekers, refugees and beneficiaries of subsidiary or temporary protection.

g. by identifying principles and techniques for improving the identification of individuals, covered by the exclusion provisions, who do not deserve international protection.

h. by drafting guides to good practice on various matters raised by the processing of asylum-seekers and their dossiers, which might serve as a basis for producing EU-wide guides (registration, information about applicants, issues of domicile, measures to combat fraud, detection of forged documents, use of evidence, means of determining the credibility of applications, language tests, etc.).

i. by paying particular attention to the situation and needs of unaccompanied minors, people with special needs and gender issues.

j. by evaluating the merits of resettlement programmes, the possibility of processing asylum applications outside the Member State, the use of cessation and exclusion clauses and the system and arrangements for transferring protection.

k. by identifying the means and sources of information that can be used to assess whether a person has ceased needing international protection.

l. by creating a framework which encourages contributions from local and regional authorities and players, the social partners, civil society, NGOs and asylum-seekers themselves.

***Third guideline: Improving the effectiveness of the policy on returns, in particular:***

a. by identifying measures to improve cooperation between receiving states, countries of origin, the UNHCR, IOM and NGOs with a view to facilitating voluntary and involuntary returns.

b. by developing services providing information and helping to prepare people for return. This might include evaluating the merits of trial visits.

c. by looking at ways of improving the number of expulsion decisions that are actually enforced, possibly by setting specific targets and assessing their practical impact.

d. by preparing guides to good practice on the various issues raised by the return of individuals, including involuntary repatriation (escorts, means of transport, detention conditions prior to expulsion, etc.), which might serve as a basis for EU-wide guides.

The Commission will shortly present a Green Paper outlining a policy on returns. On the basis of the consultations which will follow, the Commission will finalise proposals in this area.

***Fourth guideline: Including matters relating to international protection in relations with third countries, in particular:***

a. by supporting measures connected with policies in favour of human rights in the third countries concerned in order to prevent, curb or end violations of such rights.

b. by taking account of the international protection dimension in the third countries concerned when drafting and implementing development cooperation programmes in fields such as education and training, health, environmental protection and social and economic conditions (including conditions for refugees returning to their country of origin), by guaranteeing equal opportunities for men and women.

c. by promoting the efforts of third countries to manage heterogeneous migratory flows and to introduce legislation and facilities to comply with international obligations on international protection.

d. by supporting measures aimed at promoting the return of refugees, for example by facilitating the social and economic reintegration of those who, having enjoyed protection in a Member State, now no longer need it or voluntarily choose to return to their country of origin.

***Fifth guideline: Ensuring that policies are framed to promote the integration or inclusion of beneficiaries of international protection in a Member State, over and above the measures taken to give effect to the Community instruments now being adopted, in particular:***

a. by identifying the priorities and resources for framing a global strategy for ensuring the integration or inclusion of refugees, beneficiaries of subsidiary or temporary protection in the event of a mass influx of refugees, taking account of the special needs of children and unaccompanied minors.

b. by creating a framework that ensures the participation of local and regional players, the social partners, civil society and those concerned in shaping and implementing the national strategy.

c. by promoting the integration or inclusion of those concerned by means of information and public awareness campaigns run in conjunction with all of the parties concerned.

d. by adopting specific measures to promote the social and economic integration or inclusion of women.

e. by setting up programmes to help new arrivals and their families to settle in their new surroundings, including programmes to help minors integrate in schools, suitable language courses, information on cultural, political and social aspects of the host country, including the nature of citizenship and fundamental European values.

f. by introducing measures to provide social and economic assistance and health services to vulnerable individuals and victims of violence, trauma, torture or any other form of inhuman or degrading treatment or those who have suffered at the hands of people smugglers or traffickers.

g. by fostering the active participation of the refugees themselves in designing, developing, organising and assessing integration policy and services.

h. by assessing the validity of the notion of civic responsibility by defining the rights and responsibilities ensuring the fair treatment of third-country nationals who are legally resident in the Member State in question and by identifying the conditions of access to nationality for beneficiaries of international protection, taking into account Article 34 of the Geneva Convention.

This guideline does not apply to asylum-seekers and may be coordinated with the integration strategy for third-country nationals who are legally resident in the Member States.

### **5.3. Instruments**

#### **5.3.1. National action plans**

In order to implement each of the guidelines on asylum, the Member States should draw up national action plans which will be re-examined and adjusted annually. These plans would consist partly of a review of action taken in the previous year in relation to the European guidelines and partly of a presentation of proposals for implementing these guidelines on asylum in the year to come. The review section would also contain information on the interaction between the various measures taken and legal and illegal migration. It would draw attention to interesting experiments and examples of good practice as well as the problems encountered, for example when solutions are clearly needed at European level. It would also look at the application of the relevant pieces of secondary legislation, the incorporation of Community rules into national law and their impact on the national situation. In the second section, dealing with their plans, the Member States would describe the measures proposed at national, regional or local level, as appropriate, to give effect to the guidelines in the year in question, stating their national objectives in each area and the proposed timetable for achieving them.

The action plans will serve as a basis for a comprehensive evaluation of the implementation of the common policy and the results achieved and will help to determine how the guidelines should be adjusted to reflect changing needs. In the light of these reports, the Commission will prepare a summary report (along the lines of the present Communication) to highlight common problems and identify areas where European solutions might be appropriate.

#### **5.3.2 Framing and evaluating a common asylum policy**

The Commission will actively support the framing of a common asylum policy, for example by presenting the necessary Community legislation, monitoring enforcement and compliance and preparing proposals for European guidelines, for measures to promote cooperation, the exchange of best practice, evaluation and follow-up. To this end the Commission will canvas

a wide range of opinions (by taking appropriate measures such as setting up committees and working groups) among senior officials, experts in the Member States, the UNHCR, representatives of the social partners and local and regional government, as well as specialists in particular areas under consideration and other representatives of civil society.

It is important to ensure that the candidate countries are informed of this process and involved from the earliest possible stage in the application of the open coordination method, before their accession, via appropriate mechanisms. This will constitute useful preparation for accession.

In carrying out these activities the Commission must ensure that asylum policy complements and is consistent with other areas of internal and external policy, such as policies on social integration, the EU's anti-discrimination strategy and its external relations and humanitarian aid. Policies should be mutually beneficial in a context of sustainable development. Asylum policy should also promote equality between men and women in accordance with Article 2 of the Treaty.

### 5.3.3 Participation of the European institutions, the UNHCR and civil society

In view of the multidimensional nature of asylum policy, the European Parliament, the Economic and Social Committee and the Committee of the Regions should be closely involved in its elaboration and implementation. The Commission will also present the annual report on asylum to these institutions. Talks must continue with the institutions involved to explore ways of involving them more effectively in the open coordination mechanism, so that they can contribute to the process more fully.

The Commission will also ensure proper consultations with the UNHCR in accordance with Declaration 17 annexed to the Amsterdam Treaty.

The active participation of political leaders, social partners, regional and local players and other organisations involved, such as NGOs and associations representing asylum-seekers and refugees as the parties directly involved, as well as the media at both national and European level, is the key to the success of this policy and the achievement of the objectives laid down in the guidelines. The Member States are asked to take the measures necessary to ensure active participation of this kind at national level. The Commission, for its part, will take steps to promote a dialogue with civil society at European level.

## **Part VI. Recommendations**

The Commission:

- recommends that the Council take note of its first report on the common asylum policy in the EU;
- recommends that the open co-ordination method in asylum matters be endorsed for an initial period, with a view to the adoption of guidelines by the end of the Spanish Presidency. The national action plans would then be sent to the Commission so that a first evaluation cycle can be completed by the end of 2003 at the latest;
- recommends that deadlines be set, by introducing a permanent follow-up mechanism, with a view to the adoption of the instruments of the first stage of harmonisation in asylum matters that still remain to be negotiated, based on the information provided by the Scoreboard;

- calls on the Member States to rapidly introduce implementing measures to ensure that the benefits of the Eurodac system can be felt at Community level as soon as possible;
- calls for the rapid incorporation into national law of the Directive on temporary protection in the event of a mass influx of displaced persons, which entered into force in August 2001;
- calls for the rapid adoption, in the first six months of 2002, of the decision creating the ARGO action programme, with a view to launching the first projects as soon as possible;
- recommends greater efforts to give effect to the conclusions of the JHA Council of 28-29 May 2001 on the collection and analysis of asylum statistics;
- asks the Council to consider ways of strengthening cooperation in the EU partnership context with third countries of origin and transit in the field of asylum and international protection, taking into account the analysis of the work of the High-Level Group on asylum and migration and future developments, and in the light, in particular, of the report on this Group referred to at the European Council in Nice.

Source: Eurostat

**Statistical overview**

FIGURE 1: TOTAL ASYLUM REQUESTS, IN THE EU, 1985 TO THE FIRST HALF OF 2001 (January to June 2001)

FIGURES IN THOUSAND, APPLICANTS FROM ALL COUNTRIES

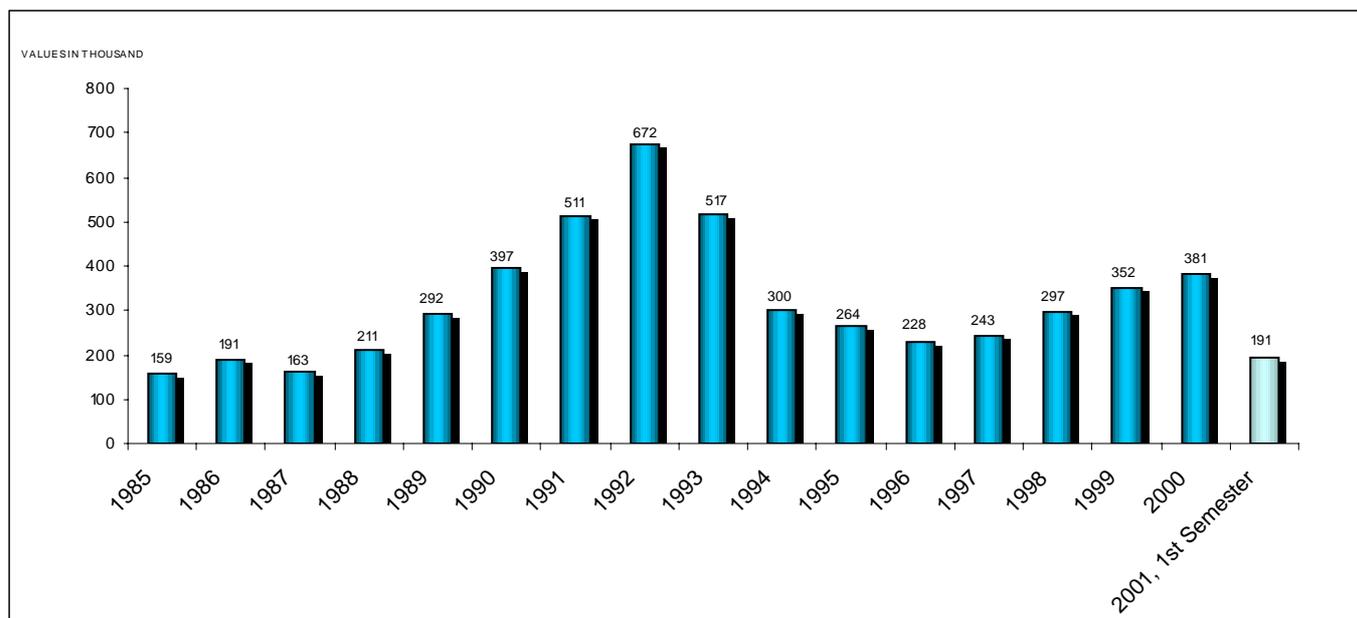


FIGURE 2: DISTRIBUTION OF ASYLUM REQUESTS BETWEEN MEMBER STATES, 1998 TO FIRST HALF OF 2001

APPLICANTS FROM: ALL COUNTRIES

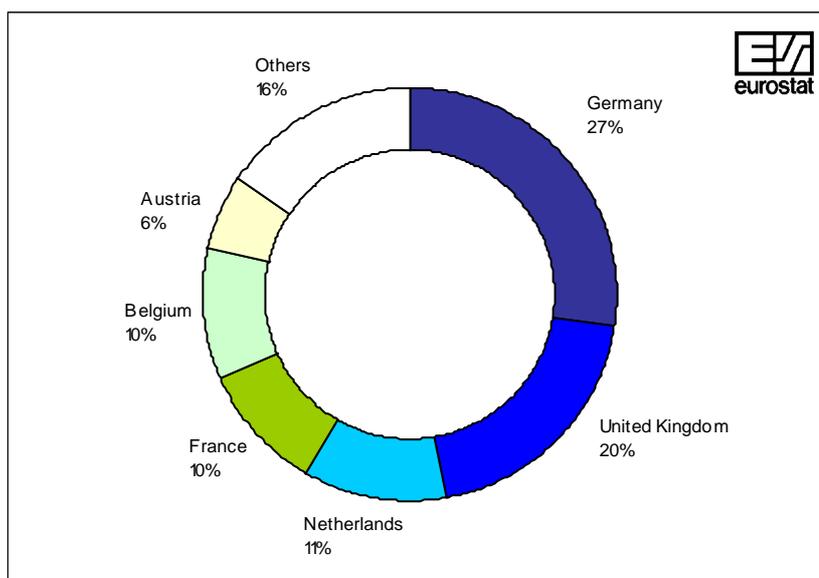


FIGURE 3: TOP 10 COUNTRIES OF ORIGIN FOR ASYLUM-SEEKERS , BETWEEN 1999 AND THE FIRST HALF OF 2001

TOP COUNTRIES OF ORIGIN AS A PERCENT OF TOTAL AND ABSOLUTE NUMBERS

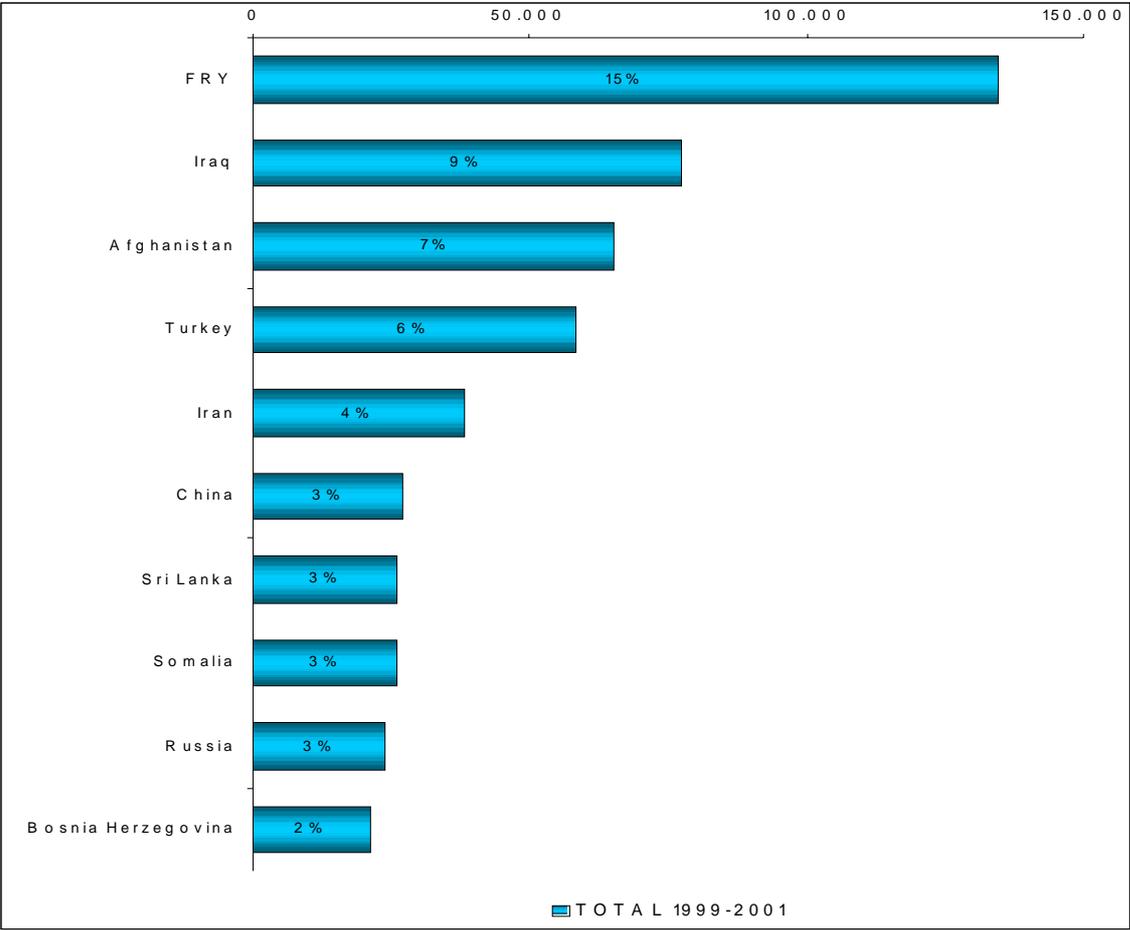


FIGURE 4: DISTRIBUTION OF TOTAL POSITIVE DECISIONS BETWEEN MEMBER STATES, 1999 TO FIRST HALF OF 2001

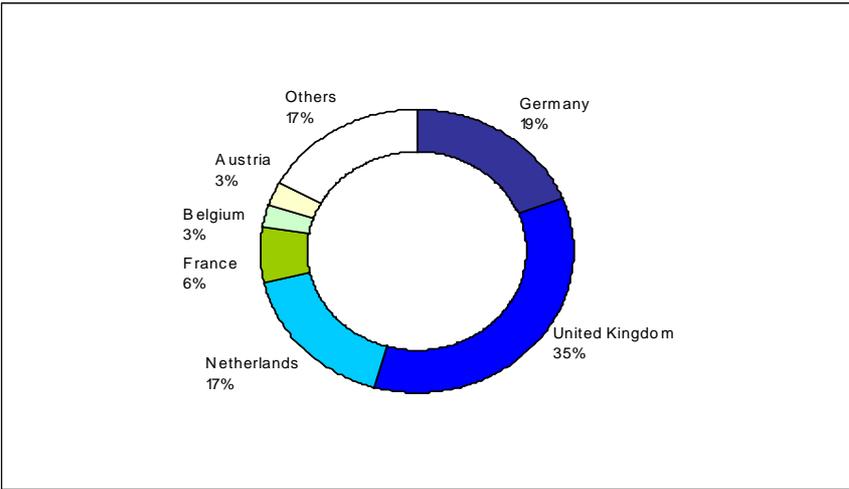


FIGURE 5: CASES OF RECOGNITION UNDER GENEVA CONVENTION, EU 1996-FIRST HALF 2001

CASES OF RECOGNITION, FROM: ALL COUNTRIES

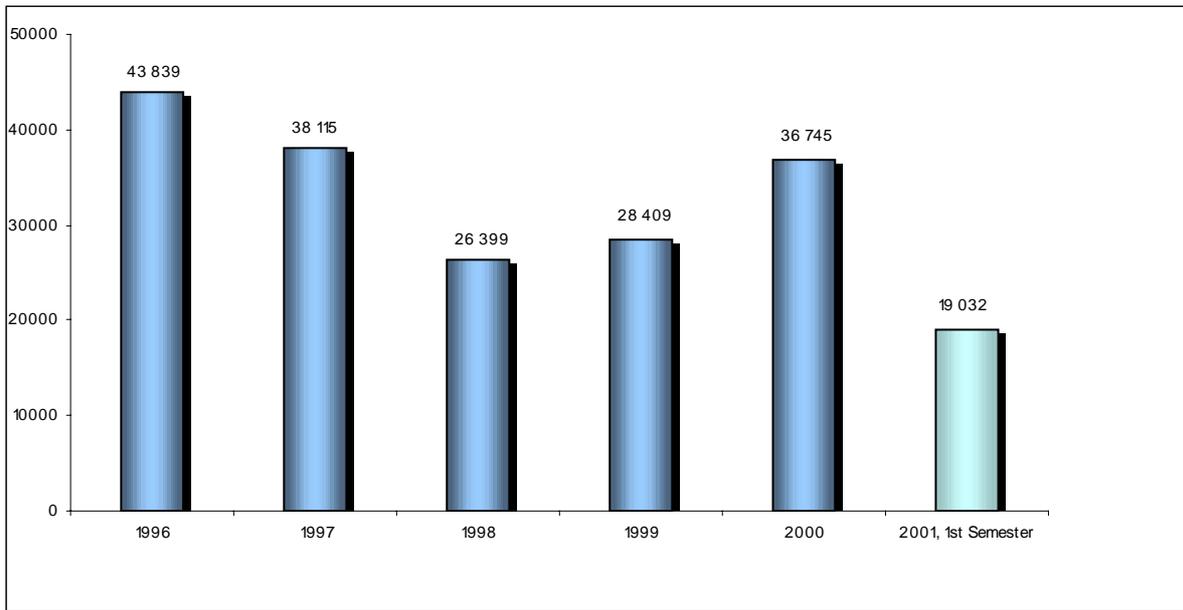
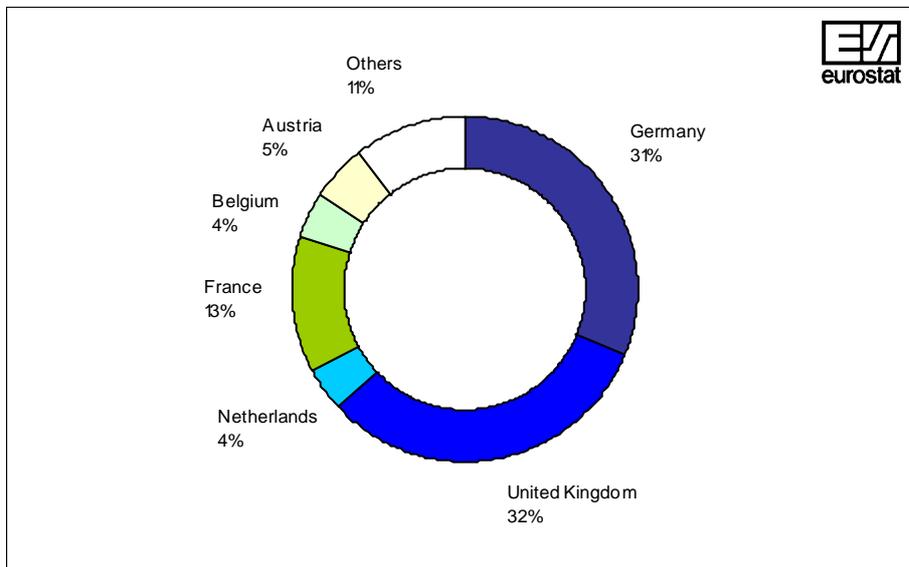


FIGURE 6: DISTRIBUTION OF CASES RECOGNISED UNDER GENEVA CONVENTION BETWEEN MEMBER STATES, 1999 TO FIRST HALF OF 2001

CASES OF RECOGNITION, FROM: ALL COUNTRIES



**Reactions to Communication COM(2000)755 final and Studies****A. Opinion of the European Parliament, the Economic and Social Committee, the Committee of the Regions**

The European Parliament delivered its opinion on 2 October 2001. It set ambitious targets for the standards to be adopted in terms of both their scope and the rights and guarantees to be granted to asylum-seekers and beneficiaries of international protection. Parliament was particularly concerned to ensure the success of the first stage of harmonisation. The majority of its comments related to the content of the instruments under negotiation. It was also extremely interested in ways of improving capacity so that greater convergence can be achieved in interpreting the situations in the countries of origin and transit of asylum-seekers and beneficiaries of international protection.

The Economic and Social Committee delivered its opinion in July 2001. It supported the objectives and principles of the common procedure and uniform status, as proposed by the Commission, while at the same time pointing to a number of factors that should be taken into account, for example as regards the use of safe countries, the creation of a single procedure (one-stop shop), the examination of resettlement programmes and the processing of asylum applications outside the EU. It expressed its support for equal status for refugees under the Geneva Convention and beneficiaries of temporary protection. It endorsed a two-stage process of harmonisation based on the EC Treaty and the introduction of convergence measures and insisted that the Community becomes party to the Geneva Convention of 1951. The opinion underlined the concern, expertise and involvement of the social partners and civil society in matters of asylum policy.

The Committee of the Regions delivered its opinion in September 2001. It stressed the need to recognise the specific nature of the asylum issue, which was different from immigration. It considered the discussion of a one-stop shop/single procedure premature in the absence of harmonisation on subsidiary protection. It supported the introduction of a fair, efficient and quick procedure. It doubted the relevance of options such as resettlement. It argues in favour of better reception arrangements for asylum-seekers throughout the EU and genuine cooperation with the local and regional authorities to implement asylum policy.

**B. Comments of the UNHCR and NGOs**

The UN High Commissioner for Refugees sent a detailed reaction in November 2001. It warmly welcomed the ambitious nature of the Commission approach. It was in favour of a single procedure/one-stop shop provided that the consideration of the need for protection followed a hierarchical sequence, starting with the Geneva Convention. The problem of access to the territory was crucial, and guarantees of protection must be inserted in instruments providing for border controls and the management of migratory flows. It advocated abandoning the current Dublin Convention criteria in favour of applications being examined by the Member State in which they are made. The UNHCR is interested in further Europe-wide analysis of the issues surrounding resettlement, but made clear that this should not be a substitute for the right of asylum in the EU. The UNHCR hoped that the adoption of the legislative package of the first stage of harmonisation would be based on rules of a high standard, which would be detailed in content and based on a broad interpretation which took account of the principles of international protection. It favoured a uniform status with rights at least equal to those provided in the Geneva Convention, while preserving the specific nature of the status provided for by that Convention. It was willing to contribute actively to

developing statistical and analytical tools, if necessary by creating a specialised European Centre, and techniques for ensuring convergence for the purpose of a common asylum policy and a body of case law based on the application of Community law.

A wide-ranging debate took place in NGO circles. A number of organisations formally recorded their comments and sent them to the Commission.

ECRE<sup>24</sup> sent a very detailed reaction in June 2001, welcoming the objectives and principles set out by the Commission. However, it was afraid that the measures to be adopted by the Council might be more influenced by a desire to dissuade asylum-seekers than concern to protect them. It expressed its support for a single procedure and equivalent status for refugees covered by the Geneva Convention and beneficiaries of subsidiary protection. It was interested in Europe-wide consideration of the question of resettlement. It would like to see thought being given to the creation of a central, independent body for documentation and information gathering, for example on the situation in the countries of origin.

In May 2001 a group of churches<sup>25</sup> presented their comments to the Commission. They stressed the difficulties experienced by asylum-seekers and refugees in gaining access to the territory. They called for upward harmonisation, higher standards for examining the substance of asylum applications and a single procedure/one-stop shop. While agreeing that the aim of harmonisation was not to allow a Community body to take individual decisions granting or refusing protection, the churches felt that there was a need to reconsider the restrictions under Title IV of the EC Treaty (Article 68) on the possibilities for seeking preliminary rulings from the European Court of Justice in order to further harmonisation and judicial review.

Amnesty International expressed its support for the Commission's aim in October 2001. AI was concerned about new penalties for illegal immigration and stressed that a high standard should be set for the introduction of a common asylum procedure and uniform status and international rules on human rights and the principle of *non-refoulement* should be respected.

### **C. Update on studies**

In its Communication of November 2000 the Commission announced that it would conduct four pieces of research, into the single procedure/one-stop shop, the processing of asylum applications outside the EC, resettlement and the transfer of protection. The first three studies will be launched before the end of 2001 in order to have the results by the last quarter of 2002. The fourth will be launched before the end of 2002.

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<sup>24</sup> European Council on Refugees and Exiles.

<sup>25</sup> Caritas Europa, Churches' Commission for Migrants in Europe, Commission of Conferences of Bishops in the EC, European Conference of Commissions for Justice and Peace, International Catholic Commission on Migration, Jesuit Refugee Service, Quaker Council.

**ERF – Breakdown of actions by Member State**

