



**Communication from the European Commission**  
**“Towards a common asylum procedure and a uniform status, valid**  
**throughout the Union, for persons granted asylum”**

**UNHCR’s preliminary observations**

1. UNHCR welcomes the publication of the Communication on a common asylum procedure and a uniform status for persons granted asylum, and a Communication on a Community immigration policy, issued by the European Commission on 22 November 2000.<sup>1</sup> The joint publication of these documents represents an important step in the direction of a more strategic and outward-looking approach to the development of coherent policies on the separate but closely inter-connected issues of asylum and immigration. The preliminary observations that follow relate to the Communication on a common asylum procedure and uniform status.

2. The Communication examines the challenges and objectives of a common asylum procedure and a uniform status against the background of the contextual concerns about the increase in asylum applications in the European Union and the legislative and policy responses to date both at the Community level and by the Member States. It then sets out the Commission’s thinking as regards the various ingredients of a common asylum procedure and the possible content of a uniform status that persons determined to be in need of protection by operation of such a procedure should enjoy throughout the Union. The development of better mechanisms for data collection and analysis, in particular in respect to country of origin information and asylum and migration statistics, is stressed as a crucial prerequisite to the proper functioning of the common asylum procedure and the fair granting or withdrawal of the uniform status. Finally, the Communication touches on the ways and means of effecting the transition from the short-term minimum level of harmonisation of asylum procedures and refugee status to the long-term objective of establishing a common procedure and a uniform status. In this connection, the Communication highlights the importance of the partnership with UNHCR, other relevant international organisations and national governmental and non-governmental players concerned with the common asylum policy.

3. The Communication explores the adoption of a system whereby all international protection needs arising from all forms of risks would be considered within a single common procedure. That is, the claim of a refugee applicant will be examined in one procedure both in terms of 1951 Convention-based protection and under subsidiary or complementary forms of protection. UNHCR strongly favours

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<sup>1</sup> Documents COM(2000) 755 final and COM (2000) 757 final.

such approach. The circumstances that force people to flee their country are complex and, often, of a composite nature. Many times, those fleeing a country affected by war or conflict can also validly claim to fear persecution on 1951 Convention grounds. The identification of the person's protection needs cannot, therefore, be made in a compartmentalised fashion. The case must be examined in its totality, and this can be better achieved if the claim is considered in a single procedure. Furthermore, UNHCR believes that a single asylum procedure will help to increase speed and reduce the costs of decision-making in asylum matters.

4. The operation of a single asylum procedure must be premised on a common understanding of what constitutes a valid asylum claim. In other words, while it is clear that to be eligible for asylum a person must be a refugee, the question that arises is who should be considered a refugee for the purposes of asylum. From UNHCR's perspective, the term "refugee" applies both to persons coming within the scope of the 1951 Convention and 1967 Protocol, and to people fleeing the indiscriminate effects of armed conflict or generalised violence, albeit with no specific element of persecution. The United Nations General Assembly and UNHCR's Executive Committee have for many years called upon UNHCR to provide protection and assistance to such persons coming within the "broader" refugee definition.

5. UNHCR supports the view that the standards of treatment of persons falling under the broader refugee definition should be assimilated as much as possible to those applicable to Convention refugees. The question of what rights and benefits refugees should be accorded in order to live in dignity until a durable solution is found for them should be based on their needs rather on the grounds on which their refugeehood has been established. The common argument frequently made about the temporary nature of subsidiary protection as grounds for lesser rights for the beneficiaries of such protection does not seem persuasive. A change in circumstances in the country of origin that can justify the termination of Convention refugee status is equally fully applicable to refugees fleeing the indiscriminate effects of armed conflict.

6. At the same time, UNHCR finds it difficult to support the introduction of a single status system under which the specificity and distinct nature of Convention obligations may be diluted. Such risk would be particularly present in a system granting the same undetermined status to all persons found to have a valid claim against deportation, whether they are refugees or not.<sup>2</sup> Refugee status under the 1951 Convention has an international dimension and produces extra-territorial effects. If such status is not formally declared by the State of asylum, this State will not fulfil its obligations under the Convention, and the refugee will be deprived of the international entitlements that are attached to the possession of that status.

7. In UNHCR's view, the question of access to territory is key to a common asylum procedure and a uniform status. Having the best asylum procedure and the most generous refugee status is of no use unless refugees can actually gain access to

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<sup>2</sup> UNHCR acknowledges that persons who are not refugees by any definition, including some that are specifically excluded from the protection of refugee law instruments, may also be protected against forcible return to their countries of origin, or otherwise provided with some relief from deportation, by the legislation of EU Member States.

territory and admission to the procedures. The Tampere European Council's commitment to the absolute respect of the right to seek asylum cannot be fulfilled so long as the European Union maintains an increasingly tight "migration fence" around its external borders without putting in place adequate safeguards to mitigate the negative effects of migration control on people who need international protection.

8. In this connection, UNHCR welcomes the Commission proposal to undertake a study into the establishment of a common policy of resettling refugees from regions of origin, in conjunction with an EU programme for setting up processing centres in those regions. Yet such policies and programmes must always be seen as a complement to, not a replacement of, Member States' continued obligations to examine asylum applications of those who seek protection on their territory. Likewise, while UNHCR agrees that a co-ordinated policy on the return of unsuccessful asylum applicants may help preserve the integrity of the institution of asylum, Member States' fulfilment of their obligations regarding refugees cannot be made dependent on the existence or effective implementation of return programmes.

9. UNHCR welcomes the Commission's recognition of the importance of consulting with UNHCR on European Union initiatives for a common procedure and uniform status, and stands ready to engage in such process.

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