



## Amnesty International's response to the Commission's Proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office (COM(2009)66 final).

### General remarks

The proposal to establish a European Asylum Support Office (EASO) is the fourth in a series of Commission proposals that are to be presented in the course of 2009 in the field of asylum<sup>1</sup>. The idea of creating an EASO was launched in the 2004 Hague Programme<sup>2</sup> and has been endorsed on several occasions. While Justice and Home Affairs Ministers in April 2008 called for a feasibility study that should examine the conditions necessary for the timely establishment of a European Support Office<sup>3</sup>, Heads of State and Government clearly expressed the wish in the European Pact on Immigration and Asylum that a European Support Office be established in 2009. At the same time, the European Council has already indicated the type of tasks the support office should have. The support office should have "the task of facilitating the exchange of information, analyses and experience among Member States, and developing practical cooperation between the administrations in charge of examining applications", but should not have a role in taking decisions on individual asylum applications<sup>4</sup>.

The Commission proposal on the establishment of an EASO does not simply respond to the call of the European Council and the Council of Justice and Home Affairs Ministers. Other stakeholders in the debate on the development of a European asylum policy, including UNHCR and Amnesty International have encouraged the idea of a structure at European Union (EU) level that could effectively support Member States in cooperating together with a view to improving protection standards throughout the EU. Amnesty International, in its contribution to the European Commission's Green Paper on the future of the Common European Asylum System (CEAS), has indicated that it sees added value in a European Asylum Support Office that is independent, transparent and accountable<sup>5</sup>.

Practical cooperation between asylum authorities in the Member States is already taking place within the context of ad hoc structures such as EURASIL and the Committee on Immigration and Asylum, coordinated by the European Commission and the General Directors' Immigration Services Conference (GDISC), a member state-led project, financed by the European Commission<sup>6</sup>. These forms of practical cooperation are of a predominantly informal nature and often not open to participation by non-governmental experts. Results of the discussions within EURASIL or the Committee on Immigration and Asylum, relating in many cases to the assessment of the situation in

---

<sup>1</sup> Together with the EASO-proposal the Commission presented a proposal amending the existing European Refugee fund resulting in a transfer of some of the budgetary resources currently allocated to the ERF to the EASO in order to ensure financing of practical cooperation on asylum matters. See COM(2009) 67 final, Proposal for a Decision of the European Parliament and of the Council amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 by removing funding for certain Community actions and altering the limit for funding such actions, Brussels, 18 February 2009.

<sup>2</sup> See Council, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, OJ L 2005 C/53: "After a common asylum procedure has been established, these structures should be transformed, on the basis of an evaluation, into a European support office for all forms of cooperation between Member States relating to the Common European Asylum System".

<sup>3</sup> See Conclusions of the meeting of Justice and Home Affairs Ministers, 18 April 2008.

<sup>4</sup> See European Pact on Immigration and Asylum, Chapter IV.

<sup>5</sup> See Amnesty International EU Office, Response to the European Commission's Green Paper on the future of the Common European Asylum System – COM(2007)301 final, September 2007.

<sup>6</sup> See SEC(2009) 153, Commission Staff Working Document. Accompanying document to the Proposal for a Regulation of the European Parliament and of the Council establishing an European Asylum Support Office. Impact assessment, p. 29.

countries of origin of asylum-seekers seeking protection in EU Member States remain equally confidential<sup>7</sup>.

While the second phase of harmonization needs to establish high protection standards in EU legislation as a solid basis for the CEAS, Amnesty International acknowledges that legislative initiatives will not suffice in order to achieve a common asylum policy based on high standards. Practical cooperation which takes the form of exchange of best practice, shared analysis of the situation in countries of origin, common approaches to the production and evaluation of country or origin information, is and will be an essential complementary tool to achieve real convergence in decision-making as well as to improve the quality of decision-making.

Overall, Amnesty International welcomes the Commission Proposal and believes that the EASO has potential to provide added value in order to support member states to enhance protection standards through practical cooperation as well as analysis of administrative practice. However, Amnesty International also believes that there must be enhanced transparency with regard to its activities and the collection of information on countries of origin, that the role and involvement of NGOs in EASO's bodies and activities should be more firmly consolidated, and that its cooperation with other EU agencies and third countries should be properly defined and clarified.

## 1. Tasks and purpose of the EASO

According to Article 1 of the Commission proposal, the EASO's purpose is twofold: (i) to help to improve the implementation of the Common European Asylum System and (ii) to strengthen practical cooperation among Member States on asylum. In Amnesty International's view, both aspects are equally important in order to achieve a CEAS based on high protection standards.

As evaluations of implementation of EU asylum legislation and the results from the Commission's Green paper consultations have shown, the result of 10 years of harmonization of asylum policies of Member States has not been satisfactory. The combination of legislative initiatives and efforts in the field of practical cooperation have not, so far, resulted in more convergence between Member States' policies and practices, nor in effectively addressing all protection gaps in Member States.

While certain EU standards adopted at EU level are at odds with international refugee and human rights law<sup>8</sup>, protection standards continue to differ considerably<sup>9</sup>. This is not only visible in widely diverging recognition rates in EU Member States but also in the huge gaps between them in the area of reception conditions and procedural guarantees available to asylum-seekers. All stakeholders, including the Member States in the European Pact on Immigration and Asylum, agree that this situation is unacceptable and irreconcilable with the very idea of a common approach. Amnesty International believes that the ultimate goals of the CEAS must be to establish high protection standards throughout the EU for those in need of international protection and the EASO's purpose must be to help achieving this goal.

### Help to improve the implementation of the CEAS

Amnesty International believes that improvement of protection standards in the CEAS is needed at both the level of EU legislation and its implementation at national level. The proposals put forward by the Commission in 2009 to amend the existing EU asylum acquis respond to the need for further legislative activity<sup>10</sup>. As legislative standards are being enhanced at EU level, the need for monitoring

<sup>7</sup> This is different in the case of GDISC that publishes regularly information on its activities at its website.

<sup>8</sup> See for an overview of the most problematic provisions in the EU asylum acquis Amnesty International EU Office, *Response to the European Commission's Green Paper on the future of the Common European Asylum System – COM(2007) 301 final*, September 2007. See also UNHCR's Comments on the EU Qualification Directive and the Asylum Procedures Directive, available at [www.unhcr.org](http://www.unhcr.org) as well as ECRE's information notes to adopted asylum instruments at [www.ecre.org](http://www.ecre.org).

<sup>9</sup> The Commission in its policy plan on asylum clearly stated that "the differences in decisions to recognize or reject asylum requests from applicants from the same countries or origin point to a critical flaw in the current CEAS: even after some legislative harmonization at EU level has taken place, a lack of common practice, different traditions and diverse country of origin information sources are, among other reasons, producing diverging results. This is creating secondary movements and goes against the principle of providing equal access to protection across the EU". See COM(2008)360 final, p. 3.

<sup>10</sup> See COM(2008)815 final, Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (Recast); COM(2008)820 final, Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for

of correct implementation of these standards at the national level will grow. While this remains the competence of the Commission, a European Asylum Support Office can make a useful contribution to this important task. This is acknowledged in Article 11 and 12 of the Commission proposal. Amnesty International believes that gathering and exchanging information on the implementation of the EU asylum acquis and the establishment of databases containing up-to-date information on important case-law and national, European and international asylum instruments should indeed be a fundamental task for the EASO. As these databases will potentially be unique sources of information on how Member States apply the EU asylum acquis, and will give insight in important developments in the case-law in Member States, these databases should in principle be accessible and transparent. However, Amnesty International notes that it is unclear to what extent Article 42 of the proposal on the access to documents held by the EASO will apply to such databases. Obviously, the collection of information with regard to application in practice at the national level of EU protection standards will also be useful to inform EU stakeholders on the necessity of further legislative initiatives at EU level or in the area of practical cooperation.

*Amnesty International recommends to explicitly guarantee public access to information gathered and databases established according to Article 11 and 12.*

The need to improve standards both EU legislation level and at the level of implementation at national level is also acknowledged in Article 2 (3). This provision creates a clear task for the EASO to provide “scientific and technical assistance for Community policy-making and legislation”. In this context, Amnesty International in particular welcomes the fact that the EASO must perform this task as an “independent source of information on all issues in these areas”, while it “shall carry out its tasks in conditions which enable it to serve as a reference point by virtue of its independence, the scientific and technical quality of the assistance it provides ..., the transparency of its operating procedures and methods” (Article 2(4)).

Amnesty International believes that the success or failure of the EASO as an agency that can provide real added value in improving the CEAS will depend on its ability to function as a credible actor towards all stakeholders involved. The extent to which it will be able to perform its tasks independently will be key in this respect and Amnesty International welcomes the explicit reference to the independence of the EASO in Article 2 (4) of the Commission proposal as a precondition for its well-functioning as a centre of expertise. This is particularly important with regard to its role in collecting and producing information on countries of origin.

### **Support of practical cooperation on asylum**

The role of the EASO in the field of practical cooperation on asylum concerns mainly four areas of activity: (i) organizing, promoting and coordinating activities relating to information on countries of origin, (ii) supporting intra-Community transfers of those accorded international protection, (iii) support for training and (iv) support for the external dimensions of asylum policy.

Amnesty International believes that the EASO Regulation should clearly state the ultimate objective of practical cooperation in these four areas, which should be to contribute to the improvement of the quality of protection standards in CEAS. In this respect it should also be noted that the Commission Communication on Strengthened Practical Cooperation emphasized that practical cooperation should not just serve the purpose of administrative efficiency but should in the first place aim at improving the quality of decision-making in asylum procedures<sup>11</sup>. Projects developed by UNHCR, such as the Quality Initiative, aim at assisting states to improve the quality of their first instance decisions and

---

examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and COM(2008)825 final, Proposal for a Regulation of the European Parliament and of the Council concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Regulation (EC) No [...].][establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

<sup>11</sup> “In this view, strengthened practical cooperation will deliver a “common tool box” for asylum authorities of the Member States answering to daily and operational needs of practitioners in the EU. Use of this tool box should lead to an improvement in quality across all aspects of management of asylum in Member States and particularly on decision making, given the focus of the Hague objectives”, COM(2006)67 final, Communication from the Commission to the Council and the European Parliament on strengthened practical cooperation, Brussels, 17 February 2006, p. 3.

have indeed already been successful, for instance in the UK<sup>12</sup>. Practical cooperation developed at EU level as envisaged in Chapter 2 of the Commission proposal should build on this approach and clearly state the overall objective of improving the quality of decision-making in the Member States.

*Amnesty International recommends adding a recital in the preamble stating that the support for practical cooperation serves the purpose of improving the quality of the CEAS, including with regard to decision-making in asylum procedures in the Member States.*

A prerequisite for high quality decision-making in the CEAS is impartial, reliable, independent and high quality **country of origin information** that is common to all EU Member States and accessible to asylum authorities, asylum-seekers and their representatives. Such information should also be impartial and take into account a variety of sources, including from UNHCR as well as from NGOs. A common approach towards the production and collection of country of origin information is fundamental if the EU is serious about creating a harmonized asylum policy. Amnesty International therefore considers the tasks enumerated in Article 4 of the Commission Proposal with regard to country of origin information as essential for the further development of the CEAS and welcomes the explicit reference to non-governmental organizations as relevant sources of information in Article 4(a).

It is important to ensure that country of origin information produced by the EASO meets substantive quality standards. Recently four EU Member States and Switzerland adopted common EU guidelines on country of origin information in the framework of a GDISC project, which focuses on improving quality of country of origin information products that are processed on the basis of public information and factual information<sup>13</sup>. It should be noted that quality standards on COI have also been developed by organizations such as UNHCR, the Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD) and the International Association of Refugee Law Judges (IARLJ)<sup>14</sup>. As these standards have been developed for the specific purpose of production of country of origin information that will be used in the context of asylum procedures, they are particularly relevant for the EASO's activities in this field. Moreover, expertise of human rights organizations such as Amnesty International in documenting and collecting information on human rights violations worldwide should also be used by the EASO when further elaborating quality standards and establishing a methodology for the production of country of origin information.

Equally important, is the accessibility of the country of origin information produced by the EASO. Amnesty International believes that the equality of arms between asylum authorities and the asylum-seeker is crucial, in particular since asylum procedures become increasingly complex and methods for gathering country of origin information at the state's disposal are increasingly sophisticated. Given the importance of country of origin information in the assessment of protection needs of the asylum applicant, it should as a rule be accessible to the asylum-seeker and his or her legal representation. A common portal is potentially a useful and user-friendly tool to ensure access to country of origin information of the asylum-seeker and equality of arms in the asylum procedure. Amnesty International therefore welcomes the proposal in Article 4(b) to develop a portal for gathering information on countries of origin but recommends that the provision makes explicit reference to the need for such a portal to be accessible in principle for all stakeholders in the asylum procedure<sup>15</sup>.

<sup>12</sup> See UNHCR Representation to the United Kingdom in London, "Quality Initiative Project. Key Observations and Recommendations. February-March 2008", June 2008.

<sup>13</sup> See "Common EU Guidelines for processing Country of Origin Information (COI)", April 2008. ARGO Project JLS/2005/ARGO/GC/03 available at [www.gdisc.org](http://www.gdisc.org).

<sup>14</sup> For an overview of these standards see Hungarian Helsinki Committee, *Country Information in Asylum Procedures – Quality as a Legal Requirement in the EU*, November 2007 at p. 13-16. See also Amnesty International's Comments on Hugo Storey & Allan Mackey, "In Search of Judicial Criteria for Assessing Country of Origin Information", paper submitted to a workshop organized by the International Association of Refugee Law Judges, Budapest, 3-5 November 2005.

<sup>15</sup> This does not exclude that sensitive information or information that might endanger the source when made public, could be treated on a more confidential basis and could be behind a password in the portal. However, the content of the information concerned or at least a short summary of it should be shared with the asylum-seeker or his or her counselor when a negative decision is being based on that kind of information in order to confront the asylum-seeker concerned with the information as soon as possible.

*In order to ensure that the common portal for gathering information on countries of origin will be accessible to all stakeholders in the asylum procedure, Article 4 (b) should make explicit reference to principles of accessibility and transparency.*

Permanent **training** of staff of national asylum authorities and judges is a second area where initiatives can usefully be developed at EU level. As the impact of the EU asylum acquis on the practice in the Member States will only continue to grow, the increased coordination and organization of training of decision-makers at EU level is a logical step. This is by definition a task for the EASO and is equally a crucial tool to achieve the overall objective of improving the quality of decision-making in asylum procedures. The management and development of a European Asylum Curriculum (EAC) as provided for in Article 6(2) of the Commission proposal should be built on the existing EAC model and that involves academic as well as NGO experts. However, Amnesty International notes that, according to Article 6, training seems to exclusively target staff members of asylum authorities and judges, while the provision remains silent on the question of who will be involved in providing the actual training.

*Amnesty International believes that the training should be open to other stakeholders in the CEAS such as NGOs and lawyers assisting asylum-seekers at the national level, while the expertise of UNHCR and NGO-representatives in providing training should be acknowledged.*

Amnesty International also supports a coordinating role for the EASO on **intra-Community transfers** of those accorded international protection (Article 5). This may be useful to assist Member States that experience particular pressures and face situations where they have difficulty in coping with arrivals of high numbers of asylum-seekers and irregular migrants. There may be situations where the high number of arrivals puts particular strain on the reception capacities of Member States or risks undermining a fair and satisfactory assessment of protection needs of asylum-seekers. In such circumstances, instruments and mechanisms to facilitate intra-Community transfers of those who have already been granted international protection based on their consent can make a concrete contribution to alleviate those pressures and to create more protection space in the Member States concerned<sup>16</sup>. However, Amnesty International believes that such mechanisms should only apply with the full and informed consent of the persons concerned.

While at this moment no such instruments or mechanisms exist at EU level, the EASO could usefully take up a role of coordination between Member States willing to organize such transfers at bilateral level. If and when such mechanisms or instruments are adopted at EU level, Article 5 of the Commission proposal allows for the EASO to support and coordinate the implementation of intra-Community transfers on that basis as well.

### **Support for Member States under particular pressure and asylum support teams**

The deployment of asylum support teams to Member States whose asylum systems are under a particular pressure, mainly because of a sudden increase in asylum applications is an instrument that has been suggested in the past by NGOs, the UNHCR as well as the European Commission. According to the Commission proposal the deployment of asylum support teams is conceived as an additional tool to the organization of “necessary technical and operational assistance to a Member State or States subject to particular pressure that so requests”. While the latter is not further clarified in Chapter 3 of the Commission proposal, Articles 13 to 21 on the deployment of asylum support teams mirror, to a large extent, corresponding provisions in the EU Regulation establishing Rapid Border Intervention Teams (RABIT)<sup>17</sup>. The deployment of such teams may be requested by a Member State based on a description of the situation, any objectives and estimated deployment requirements (Article 17(1)). The decision to deploy asylum support teams will be taken exclusively by the Executive Director of the Office, who will inform the Member States of the number and profiles of

<sup>16</sup> In this respect, Amnesty International regrets the failure of member states to reach agreement on the Commission Proposal to extend the scope of the Long Term Residence Directive to refugees and beneficiaries of subsidiary protection as this would be an additional tool for refugees to enjoy free movement within the EU while at the same time achieving de facto burden-sharing between member states. See COM(2007) 298 final.

<sup>17</sup> See Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers, OJ 2007 L 199/30. So far no RABIT-teams have been deployed in practice, only operational exercises have been conducted.

experts required according to Article 17(3) and (5)). Consequently Member States must immediately communicate to the EASO the number, names and profiles of experts from their national pool who can be made available within five days to join an asylum support team (Article 15(1)). Asylum support teams can only be deployed for a limited time period and are based on a detailed operating plan setting out the conditions for deployment and the tasks of the members of the support teams (Article 18)). The technical assistance to be provided by the support teams relate mainly to expertise about interpreting services, information on the countries of origin, and knowledge of the handling and management of asylum cases within the framework of the assistance the EASO can generally provide to Member States, subject to pressure as laid down in Article 10 of the Commission proposal.

Amnesty International believes that asylum support teams can provide added value in both assisting Member States to deal with the particular pressure they are facing and ensuring that the fundamental rights of asylum-seekers in crisis situations are fully respected. The latter should be a primary objective of any teams deployed and the technical assistance to be provided by asylum support teams must be used to identify persons in need of international protection in a fair and satisfactory asylum procedure.

However, the criteria to be used by the Executive Director to decide whether or not a member state is subject to such a particular pressure that it may trigger the deployment of asylum support teams remain rather vague and unclear in the Commission proposal. According to Article 8 of the Commission Proposal, particular pressure may arise either from “a Member State’s geographical or demographic situation” or from “a situation characterized by sudden arrivals of large numbers of third country nationals who may be in need of international protection”. The reference to Member States’ demographic situation as such seems not very relevant and in any case inaccurate in this context. From this perspective the Commission proposal seems to mix factors that may exacerbate the existence of a particular pressure on a Member State, with the factors that actually create this pressure. In most cases what creates this pressure is the sudden arrival of large numbers of asylum-seekers. The geographical location of the Member State concerned nor its demographic situation as such constitute such reasons but are conditions that either make such a Member State more “vulnerable” to come under a particular pressure or amplify the scale of the particular pressure.

In Amnesty International’s view, the key factor to identify the existence of a particular pressure on a Member State is whether or not all conditions are in place to ensure a fair and satisfactory asylum procedure and to provide dignified reception conditions in line with EU and international standards. The latter is referred to in Article 9(2) of the Commission Proposal and should be made an integral part of the assessment of whether or not a particular pressure exists in a Member State together with the numbers of asylum-seekers arriving.

Article 10 (a) of the Commission proposal on the “setting up of an early warning system to notify any influx of applicants for international protection” should also be clarified as it contains no further specification on the objective of such a system or the procedure according to which it would operate in practice. This is confusing as Article 10 deals specifically with Member States under pressure while the early warning system envisaged should notify the member states of “any influx of applicants for international protection”. The latter seems to indicate that it concerns a system that would function on a permanent basis and would rather serve scientific purposes to analyze the reasons behind and prepare for fluctuations in flows of asylum-seekers and migrants rather than an operational tool in the context of particular pressures. If this is the real purpose of the early warning system, Article 10 does not seem to be the appropriate provision to deal with an early warning system as it should be dealt with in the context of the general chapter on practical cooperation. If, on the other hand, the early warning system is understood as a tool to be used in situations of particular pressure, the provision should be clarified in order to ensure that the information collected through the system can only be used to better prepare for the arrival of asylum-seekers and does not provoke any measures to deliberately prevent access of persons in need of international protection to asylum procedures within the EU.

*The creation of “an early warning system to notify the Member States of any influx of applicants” should be clarified and should preferably be dealt with under Section 1 of Chapter 2 dealing with support of practical cooperation in general. The existence of a particular pressure that can trigger the deployment of asylum support teams should be objectively assessed on the basis of the capacity of the asylum system in the requesting member to cope with sudden arrivals of large numbers of third-country nationals in accordance with its obligations under EU asylum legislation and international refugee and human rights law and standards.*

Amnesty International welcomes the fact that the EASO will be able to support Member States in establishing appropriate reception facilities, including emergency accommodation and medical assistance. The unacceptable reception conditions in which asylum-seekers are sometimes accommodated in certain Member States have been documented not only by NGOs but also by the Council of Europe Commissioner for Human Rights<sup>18</sup> as well as by the European Parliament during its visits to reception and detention centers<sup>19</sup>. In addition, access to qualitative legal assistance and/or representation for asylum-seekers in such situations of particular pressure is in most cases likely to be problematic as well. This has been clearly illustrated in Lampedusa in January 2009 where, due to a drastic change in policy of the Italian government, up to 2000 migrants and asylum-seekers were to be processed on the island while there was no proper legal assistance available at the island<sup>20</sup>.

*Amnesty International believes that the Commission proposal could usefully be strengthened to make explicit reference to the need to take the necessary measures to ensure that access to legal assistance and representation is ensured in situations of particular pressure, including when asylum support team are deployed. This could be achieved by providing extra funding in the Member State concerned in order to strengthen the local system of legal assistance and representation of asylum-seekers when asylum support teams are being deployed or a situation of particular pressure exists.*

## **2. The role of the Executive Director and the role of NGOs.**

The organizational structure of the EASO mirrors, to a certain extent, the structure of other European Agencies such as the Fundamental Rights Agency (FRA)<sup>21</sup> and FRONTEX<sup>22</sup> as it will have a Management Board with representatives of the Member States and the Commission, an Executive Director and an Executive Committee, advising the Executive Director. The Commission proposal also establishes a Consultative Forum within the administrative and management structure of the Office, where NGOs and civil society institutions will be represented (Article 32).

### **The role and independence of the Executive Director**

In addition to an overall responsibility to establish the EASO's work programmes, implement the work programmes and decisions adopted by the Management Board and handle the day-to-day administration of the EASO, the Executive Director will have the key task of “drafting reports on the countries of origin as provided for in point (d) of Article 4”. As mentioned above, Amnesty International acknowledges that a common approach to high quality country of origin-information is the basis for a

<sup>18</sup> See for instance Comm DH(2008)6, *Report by Thomas Hammerberg, Commissioner for Human Rights of the Council of Europe. Following his visit to Greece on 8-10 December 2008. Issue reviewed: Human Rights of asylum seekers*, Strasbourg, 4 February 2009.

<sup>19</sup> European Parliament Resolution of 5 February 2009 on the implementation in the European Union of Directive 2009/9/EC laying down minimum standards for the reception of asylum seekers and refugees: visits by the Committee on Civil Liberties 2005-2008 (2008/2235(INI)).

<sup>20</sup> See Amnesty International EU Office, Letter to Commissioner J. Barrot on the situation of asylum-seekers and migrants in Lampedusa, 28 January 2009.

<sup>21</sup> See Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ 2007 L 53/1. Civil society is associated with the activities of the Fundamental Rights Agency through the Fundamental Rights Platform which is not an official body of the FRA but is coordinated under the authority of the Director.

<sup>22</sup> Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ 2004 L 349/1.

harmonized asylum policy and the further development of the CEAS. It is of crucial importance that the quality and impartiality of such reports are beyond dispute and therefore safeguards need to be in place to ensure that the Executive Director can perform this task independently. The Commission proposal already includes a number of important safeguards in this respect. According to Article 29(1) of the proposal on the functions of the Director explicitly states that “the Office shall be managed by its Executive Director, who shall be independent in the performance of his/her duties”, while the Executive Director, without prejudice to the powers of the Commission or the Management Board “shall neither seek nor take instructions from any government or from any other body”. In Amnesty International’s view the latter is particularly important with regard to the Director’s task of drafting reports on countries of origin as these need to present an objective analysis of the human rights and security situation in a particular country and should not be influenced by internal or external policy considerations of Member States. This principle could usefully be emphasized in a recital in the preamble.

As the Executive Director of the EASO will have a key role in developing the Common European Asylum System, the rules on his or her appointment and evaluation should guarantee a transparent and democratic procedure. Given this predominant role, the Executive Director should not only be appointed on the basis of his or her managerial skills but also on the basis of his or her expertise on international refugee and human rights law and standards. In this respect Article 28 of the Commission proposal ought to be amended and be modeled on the corresponding provision in the Regulation establishing the Fundamental Rights Agency. Article 15 of the FRA Regulation introduces a cooperation procedure to appoint the Executive Director. According to this procedure, the candidates who are selected by the Commission must first address the Council and the competent European Parliament Committee and reply to questions. Consequently, the European Parliament and the Council give their opinions and state their orders of preference after which the Management Board appoints the Director taking these opinions into account. Furthermore the Director of the FRA may be called upon at any time by the European Parliament or by the Council to attend a hearing on any matter linked to the Agency’s activities. In the Commission’s proposal on the EASO, the European Parliament can only hear the candidates and ask questions before they are appointed, while the right of the European Parliament to hear the Executive Director at any time is not included. Finally, it should be noted that according to Article 15(1) of the FRA-Regulation, the Director “shall be appointed on the basis of his or her personal merit, experience in the field of fundamental rights and administrative and management skills.

*In order to enhance the accountability of the EASO and its director, Amnesty International recommends to allow the European Parliament to give its opinion on the candidates presented by the Commission and to state its order of preference. As it is the case for the Fundamental Rights Agency, the possibility for the European Parliament to hear the Executive Director at any time should be explicitly mentioned in the Regulation. The Executive Director should also be appointed on the basis of his or her personal merit, experience and expertise in the field of EU asylum law and international refugee and human rights law as well as his or her administrative and management skills. Article 28 of the Commission Proposal should be amended accordingly.*

### **Role and involvement of NGOs in the bodies of the EASO**

The EASO will have a management board that will be responsible for, among other things, appointing the Executive Director, adopting the annual general report of the Office and the Office’s work programme. Member States and the Commission will be represented in the management board and will have the right to vote, while at the same time UNHCR will be a non-voting member of the management board. The Executive Committee will be composed of eight members appointed among the members of the Management Board, with the Commission as an *ex officio* member. The main responsibility of the Executive Committee will be to advise the Executive Director and to issue opinions to the Management Board on the Office’s work programme and all its activities, in particular on the deployment of asylum support teams to Member States under particular pressure.

Amnesty International welcomes the acknowledgment of the specific role of UNHCR in the Commission proposal by giving it a seat as a non-voting member of the Management Board. As a UN specialized agency it has indeed an important role to play within the European Agency in order to ensure that the CEAS further develops in a protection-oriented way and in full respect of international

refugee law and standards. It is Amnesty International's understanding that the Commission proposal does not exclude UNHCR from being a member of the Executive Committee and believes that it should be in practice<sup>23</sup>.

Amnesty International believes that the Commission proposal could acknowledge more prominently the valuable role of NGOs and civil society in the development of the CEAS. According to the Commission proposal NGOs and other civil society institutions will only be represented in the "Consultative Forum". Although it is one of the official bodies of the EASO (Article 22), its role and responsibility within the organizational structure of the EASO is far from ambitious. Conceived as a mechanism for the exchange of information and pooling of knowledge it will mainly have three tasks: (i) make suggestions to the Management Board on the annual work programme, (ii) provide feedback to the Management Board and suggest follow-up measures on the annual report and (iii) communicate conclusions and recommendations of conferences, seminars and meetings relevant to the work of the Office to the Executive Director and the Executive Committee. Everyday practice shows that the involvement of NGOs assisting asylum-seekers and refugees in the EU in various ways is crucial in order to establish a credible asylum system. Their role as interlocutors between the asylum-seeker and the authorities deciding on their applications, being responsible for their accommodation, or as experts on country of origin information is invaluable and should be acknowledged properly.

Currently, the proposal provides for a system whereby UNHCR, being an *ex officio* member of the Consultative Forum and a non-voting member of the Management Board, *de facto* liaises between the Management Board and NGOs. Such a system does not sufficiently acknowledge the different role and nature of UNHCR and NGOs active in this field. Allowing a representative of the Consultative Forum as an observer to the meetings of the Management Board would increase transparency of the EASO and would help create a constructive dialogue between the various stakeholders in the CEAS. It would also allow a more direct and constructive exchange of views on the recommendations and suggestions made by the Consultative Forum on the annual work programme and report and the annual report on the asylum situation in the EU as required under Article 32 (4)(b). Currently, the Commission proposal does not provide for the possibility of such a direct exchange of views between the Management Board and the Consultative Forum. Amnesty International welcomes the possibility for active involvement of NGO representatives in the meetings of the Executive Committee and of the working parties under Article 30(9) and 31(3) of the Commission Proposal according to which "any person whose opinion may be of interest to attend meetings" may be invited to attend the meetings of the Executive Committee or the working parties. While there is no obligation upon the Executive Committee and working parties to do so, participation of NGOs with relevant expertise in these meetings should systematically be pursued. Amnesty International believes that the Consultative Forum could play a key role in coordinating NGO input in these meetings.

*In order to organize better communication between the Consultative Forum and the Management Board, Amnesty International suggests including a representative of the Consultative Forum as an observer in the meetings of the Management Board. Systematic involvement of NGOs in meetings of the Executive Committee and the working parties should be pursued in practice. This principle could be reflected in the preamble to the Regulation.*

### **3. Cooperation with third countries and other EU agencies.**

In the Commission proposal, the EASO's role in the context of the external dimension of the CEAS is least developed and may raise a number of questions. Also cooperation between the EASO, the Fundamental Rights Agency and FRONTEX is described in very general terms in the Commission proposal. Cooperation with third countries as well as cooperation with the EU Agency which is responsible for coordinating controls at the EU's external border in the specific context of asylum will necessarily be delicate and consequently its objectives and aims should be clearly defined. Generally, Amnesty International believes that the relevant provisions in the Commission proposal should be clarified in order to stress the fact that activities of the EASO in this field must be undertaken in a spirit of creating more protection space and enhancing protection capacities in other regions of the world.

<sup>23</sup> According to Article 30(1) the eight members of the Executive Committee shall be appointed from among the members of the Management Board. The latter include UNHCR according to Article 23(4), albeit without a right to vote.

## **Support for the external dimensions of asylum policy**

Article 7 of the Commission proposal summarizes the type of action the EASO should be able to implement: (i) coordination of the exchange of information and all other action taken on issues arising from the implementation of instruments and mechanisms relating to the external dimension of the CEAS, (ii) coordination of exchanges of information and all other action taken on the resettlement of refugees within the EU and (iii) establishing forms of cooperation on technical matters, in particular with a view to capacity-building in third countries within the framework of regional protection programmes.

Amnesty International believes that the EASO could play a useful role in coordinating efforts of Member States with regard to resettlement of refugees within the EU, in particular in the context of a future EU resettlement programme the Commission is planning to present later this year. There are clear advantages for developing a European approach to resettlement in terms of pooling of resources with regards to the identification and selection of persons in need of resettlement and the preparation for the integration of resettled refugees etc<sup>24</sup>. The EASO seems to be the appropriate platform for practical coordination of such a common approach. Therefore, Amnesty International welcomes the fact that Article 7 of the Commission proposal explicitly includes a coordinating role for the EASO with regard to resettlement.

Amnesty International notes that the coordinating role of the EASO with regard to “issues arising from the implementation of instruments and mechanisms relating to the external dimension of the CEAS” is at the same time very broad and very vague. Currently the external dimension of the CEAS potentially covers a wide range of measures, including financial instruments managed by the Commission to support the capacity building of protection systems in transit countries as well as measures in third countries to address irregular migration which may have an impact on access to protection in the EU. Amnesty International questions the added value of such a general reference. A more desirable approach, in particular in a section of the proposal on concrete actions the EASO will be able to undertake, would be to limit the role of the EASO to two concrete actions: coordination of resettlement efforts and analysis of the impact and effectiveness of EU initiatives with regard to capacity building in third countries. The explicit reference to regional protection programmes in the Commission proposal seems premature without a proper evaluation of the added value of the programmes being implemented currently<sup>25</sup>.

*Amnesty International recommends clarifying the EASO's role accordingly in Article 7 of the Commission proposal. The EASO should have a clear role in coordinating Member States' activities with regard to resettlement of refugees within the EU and providing analysis of the impact and effectiveness of EU initiatives with regard to capacity building in third countries.*

## **Cooperation with third countries**

The Commission proposal explicitly creates a role for the EASO in enhancing cooperation with third countries in Articles 7 and 47. According to those provisions, the EASO would be able to (i) establish forms of cooperation with third countries on technical matters, (ii) facilitate operational cooperation between Member States and third countries in the framework of the EU's external relations policy and (iii) cooperate with authorities of third countries competent in technical aspects of the areas covered by this Regulation, within the framework of working arrangements concluded with those authorities.

Cooperation with third countries in the field of asylum touches upon a sensitive aspect of the CEAS as it implies engaging with countries that may be refugee-producing countries themselves. As the main focus of the EASO's activities is on strengthening practical cooperation between member states in order to deal more consistently and efficiently with their asylum case-load, any engagement with third countries on the area of asylum should be properly defined. Without such clear definition and

<sup>24</sup> See also ECRE, “The Way Forward. Europe's role in the global refugee protection system. Towards a European Resettlement Programme”, April 2005.

<sup>25</sup> See COM(2005)388 final, Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes, 1 September 2005. Regional Protection Programmes are being implemented in Tanzania, Belarus, Ukraine and Moldova.

delineation, Amnesty International fears that practical cooperation with third countries may weaken the credibility of the EASO as a tool to improve standards of protection in the EU. As it will have an important role in gathering and producing information on the human rights and security situation in countries of origin of asylum-seekers any suggestion of that task being contaminated by considerations of maintaining good working relations with the country concerned should be avoided. Furthermore, it is unclear what exactly the role of the EASO could be to facilitate operational cooperation in the framework of the EU's external policy and what is exactly meant by the working arrangements the EASO would be able to conclude with "authorities of the third countries competent in technical aspects of the areas covered by this Regulation". The facilitation of cooperation with third countries in the field of asylum should never be used as an instrument to merely shift the EU Member States' responsibilities under international refugee and human rights law to provide protection to those in need to third countries. Here too, Amnesty International understands the facilitation of operational cooperation between EU Member States and third countries as mainly relating to resettlement activities and initiatives aimed at enhancing protection capacities in those countries.

*In order to avoid any confusion on the role of the EASO, Article 47(2) should be amended so as to clarify that cooperation with authorities of third countries is developed with a view to enhancing their own capacity to provide protection in close cooperation with UNHCR or to develop practical arrangements to facilitate resettlement from those countries to EU Member States as required under Article 7 of the Commission Proposal.*

### **Cooperation with other EU Agencies**

According to Article 49 of the Commission Proposal the EASO shall cooperate in particular with the Fundamental Rights Agency and FRONTEX. This will be conducted in accordance with the EC Treaty and the provisions on the competence of those bodies and within the framework of working arrangements concluded with those bodies. Such cooperation is expected to create synergies between the bodies concerned and should also prevent any duplication of effort in the work carried out. Apart from these general references, the Commission proposal does not specify the nature and purpose of such cooperation.

Amnesty International notes that an agency such as FRONTEX has the task of coordinating controls at the external borders of the EU Member States but has no protection mandate. Although the EASO, as a coordinating body and centre of expertise, will not have a clear protection mandate either, the structural involvement of UNHCR in its activities is an important factor to ensure that its activities are carried out with a view to increase protection standards throughout the EU. Here close cooperation between the EASO and FRONTEX could help to fill this gap and support FRONTEX in developing a protection-sensitive approach. One area where the EASO could effectively provide added value would be the training of border guards involved in carrying out FRONTEX operations. The EASO could also play a useful role in monitoring observance of international refugee and human rights law in operations, carried out either at sea or on the territories of third countries, as this may lead to the interception of people in need of international protection.

In order for the EASO to effectively play its role to promote high standards of protection in this context, this should be clearly established in any working arrangements that are to be concluded between both agencies. Otherwise, Amnesty International fears that cooperation between the EASO and FRONTEX may function exclusively as a means to increase the credibility of FRONTEX operations and initiatives rather than as a concrete guarantee that international obligations are effectively respected in the course of such operations. In the European Pact on Immigration and Asylum, the European Council rightly stated as a fundamental principle that "the necessary strengthening of European border controls should not prevent access to protection systems by those people entitled to benefit under them"<sup>26</sup>. Cooperation between the EASO and FRONTEX could be one of the tools to achieve this objective in practice on the condition that both agencies both pursue the same objective in close cooperation with UNHCR.

<sup>26</sup> See European Pact on Immigration and Asylum, Chapter IV.

Regarding cooperation with FRA, it should be noted that asylum is among the priority areas in the multi-annual framework of the FRA. While the tasks of both agencies in this field can be similar, Amnesty International considers that the specific fundamental rights mandate of the FRA can add value to the work of the EASO by assisting this new agency in developing a human rights-driven approach to its activities.

*Cooperation between the EASO and FRONTEX must serve the purpose of guaranteeing that FRONTEX operations are being carried out in full respect of the fundamental rights of asylum-seekers and migrants.*

## **Recommendations:**

- *Add a recital in the preamble stating that the support for practical cooperation serves the purpose of improving the quality of the CEAS, including with regard to decision-making in asylum procedures in the Member States.*
- *Include an explicit reference to principles of accessibility and transparency in Article 4 (b) of the proposal in order to ensure that the common portal for gathering information on countries of origin will in principle be accessible to all stakeholders in the asylum procedure.*
- *Clarify the meaning of “an early warning system to notify the Member States of any influx of applicants” in Article 10 (a) and consider such system under Section 1 of Chapter 2 dealing with support of practical cooperation in general.*
- *Clarify Article 8 in order to ensure that the existence of a particular pressure that can trigger the deployment of asylum support teams is objectively assessed on the basis of the capacity of the asylum system in the requesting state to cope with sudden arrivals of large numbers of third country nationals in accordance with its obligations under EU asylum legislation and international refugee and human rights law and standards.*
- *Strengthen the Commission proposal by making explicit reference in the preamble to the need to ensure access to legal assistance and/or representation in situations of particular pressure, including when asylum support teams are deployed.*
- *Amend Article 28 on the appointment of the Executive Director to (i) allow the European Parliament to give its opinion on the candidates presented by the Commission and to state its order of preference; (ii) include the possibility for the European Parliament to hear the Executive Director at any time; (iii) make an explicit reference to need for the Executive Director to be appointed on the basis of his or her personal merit, experience and expertise in the field of EU asylum law and international refugee and human rights law as well as his or her administrative and management skills.*
- *Ensure participation of a representative of the Consultative Forum as an observer in the meetings of the Management Board in order to organize better communication between the both bodies of the EASO.*
- *Clearly define the role of the EASO in Articles 7 and 47(2) with regards to the external dimension of the CEAS and cooperation with third countries. This role should be limited to coordinating Member States’ activities with the resettlement of refugees in close cooperation with UNHCR within the EU and providing analysis of the impact and effectiveness of EU initiatives in capacity-building with third countries.*
- *Clearly emphasize in the Regulation the fact that cooperation between the EASO and FRONTEX must serve the purpose of guaranteeing that FRONTEX operations are being carried out in full respect of the fundamental rights of asylum-seekers and migrants.*

April 2009