



Joint Refugee Council, Scottish Refugee Council and Welsh Refugee Council submission:  
House of Commons Home Affairs Committee inquiry on EU issues

September 2006

## 1. Introduction

1.1 The Refugee Council is the largest non governmental organisation in the United Kingdom working with asylum seekers and refugees. We not only give help and support to asylum seekers and refugees, but also work with them to ensure their needs and concerns are addressed by decision-makers. Our members range from small refugee-run community organisations to international NGOs, such as Christian Aid, Save the Children and Oxfam. We are a leading member of the European Council on Refugees and Exiles (ECRE), a network of 80 non-governmental refugee-assisting organisations in 33 countries working towards fair and humane policies for the treatment of asylum seekers and refugees.

1.2 The Scottish Refugee Council provides help and advice to those who have fled human rights abuses or other persecution in their homeland and now seek refuge in Scotland. We are a membership organisation that works independently and in partnership with others to provide support to refugees from arrival to settlement and integration into Scottish society. We campaign to ensure that the UK Government meets its international, legal and humanitarian obligations and to raise awareness of refugee issues. We are a member of ECRE.

1.3 The Welsh Refugee Council (WRC) empowers refugees and asylum seekers to rebuild their lives in Wales. It provides advice, support and information to asylum seekers and refugees and advocates and campaigns for refugee rights as enshrined in international law. WRC has four offices located in Cardiff, Newport, Swansea and Wrexham and currently has over 40 members of staff. It is a charity and company limited by guarantee and is a member of ECRE.

1.4 The Refugee Councils welcome the Committee's short inquiry into current issues relating to justice and home affairs (JHA) at the EU level. Our submission refers to the Commission's mid-term review of the 'Hague Programme'<sup>1</sup> and covers issues relating to the development of a common European asylum system (CEAS), as well as EU border control and migration management issues as they impact on asylum seekers and refugees.<sup>2</sup>

1.5 We believe that a European Union of 25 states has the potential to use its influence in the world to strengthen the international refugee protection regime, improve the quality of protection for millions of refugees and help to resolve the world's protracted refugee situations. However, if Europe is serious about improving refugee protection and respect for human rights internationally, we believe that it must first embrace its responsibilities to those who seek protection in the EU. There is much evidence that significant improvements are still required in relation to: access to the EU for those in need of protection; national asylum procedures; reception conditions of asylum seekers; and promoting the integration of refugees and asylum seekers. In this submission, we set out our assessment of progress made so far with the Hague Programme, and our proposals for the future direction that EU asylum and migration management measures should take if refugees are to be protected and the international refugee protection system upheld.

## 2. Assessment of progress made in implementing the Hague Programme and the first phase asylum legislation

### 2.1 Evaluation

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<sup>1</sup> Commission Communication, 28/06/06 *Implementing the Hague Programme: the way forward*. COM (2006) 331 final.

<sup>2</sup> Here, and throughout this submission, the term 'refugee' should be understood to include persons otherwise in need of international protection.

2.1.1 Evidence from the Refugee Councils and our sister organisations across Europe reveals that despite some progress having been made in harmonising EU asylum laws and policies since the 1999 Tampere Council,<sup>3</sup> there are still substantial inconsistencies in member states' asylum laws, policies and procedures. The EU is a long way from achieving a 'level playing field' whereby asylum seekers would receive similar treatment and the same outcome on their application for asylum, regardless of the member state in which the application is made.

2.1.2 We draw the Committee's attention to the Commission's assessment that in certain areas of the Hague Programme results barely reach the lowest common denominator and fail to meet some of the initial objectives.<sup>4</sup> In relation to asylum, we believe that the asylum procedures directive, the last of the main first phase legislative instruments to be agreed by member states, represents the clearest example of minimum standards being set so low that the objective of introducing a level playing field across Europe cannot be met. Some of the standards in the directive were driven down so far that they fail to meet the commitments of the EU as set out in the Charter of Fundamental Rights, and even permit fundamental breaches of international refugee and human rights law.<sup>5</sup> The directive has been widely criticised by NGOs and by the UNHCR for being fundamentally flawed: we are gravely concerned that the minimum standards are not sufficient to prevent *refoulement*, and that compliance with the directive will require member states to breach their international obligations<sup>6</sup>. As a result, we predict that costly and time-consuming legal procedures before national and international fora are likely to ensue.

2.1.3 The Refugee Councils support the substantial emphasis placed by the Hague Programme on evaluating progress made with the first stage of asylum measures before proceeding to the second stage. We note that the Commission is expected to present its evaluations on the Dublin II regulation and the reception directive later this year. We are concerned, however, that the Commission's evaluations will rely heavily on the limited and partial information provided by member states themselves. In relation to the Dublin II regulation, we note that the UK has not shared its report to the Commission with NGOs. The Government has, however, made it clear that it is pleased with the regulation and the opportunity provided to the UK to shift responsibility for determining asylum claims to other EU member states through which asylum seekers have passed.<sup>7</sup> The Home Office submission is highly unlikely to contain information about the human impact of the regulation, or to reflect the Refugee Councils' particular concerns about its impact on separated children who are transferred back from the UK to other EU states, regardless of whether such transfer is in their best interests.<sup>8</sup> ECRE has submitted a report to the Commission drawing on evidence from its members about the impact of the regulation on refugees and

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<sup>3</sup> EU Heads of State held a summit in Tampere, Finland, on 15-16 October 1999, and adopted the political guidelines that constituted the framework in which the EU's policies and legislation on asylum and immigration were to be developed. Amongst other things, the Tampere conclusions affirmed an "absolute respect of the right to seek asylum" and of the need to ensure that nobody is sent back to persecution. ECRE's June 2004 assessment of progress made against the Tampere objectives is available at [http://www.ecre.org/positions/Tampere\\_June\\_04.shtml](http://www.ecre.org/positions/Tampere_June_04.shtml) (accessed 20/9/06).

<sup>4</sup> See *Implementing the Hague Programme: the way forward*, which refers to Commission communication 28/06/06 *Strengthening freedom, security and justice in the European Union: report on the implementation of The Hague Programme for 2005*.

<sup>5</sup> *Ibid.*

<sup>6</sup> For UNHCR's position see, for example UNHCR press release 30/4/2004 *UNHCR regrets missed opportunity to adopt high EU asylum standards*. The press release reads 'The UN refugee agency expressed concern on Friday that a key piece of European Union asylum legislation, agreed by EU Justice and Home Affairs ministers the previous day in Luxembourg, may lead in practice to breaches of international refugee law.' Available at <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=40921f4e4> ECRE positions, including (2005) *Comments from the European Council on Refugees and Exiles on the Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, as agreed by the Council on 19 November 2004*, and the joint ECRE/Human Rights Watch/Amnesty International letter to the European Commissioner for Justice and Home Affairs calling for the withdrawal of the proposal for the Procedures Directive, are available at [www.ecre.org](http://www.ecre.org).

<sup>7</sup> In response to a Parliamentary Question on the Dublin II Regulation, the then Home Office Minister stated 'Dublin II and Eurodac enabled us to return 1,982 applicants in 2004 to other European countries without considering their claims ourselves.' House of Commons, 8 November 2005, Written Answers *Column 335W*.

<sup>8</sup> For case studies of children who have been returned from the UK see ECRE (March 2006) *Report on the application of the Dublin II Regulation in Europe*. Pp 188 – 190. Available at <http://www.ecre.org/positions/ECRE%20Dublin%20Report%2007.03.06%20-%20final.pdf> (accessed 20/9/06).

asylum seekers, but it remains to be seen whether the evidence and recommendations from the report will be reflected in the Commission's evaluation.<sup>9</sup>

2.1.4 We welcome the current Finnish Presidency's view that a reliable and transparent evaluation of the legislation adopted in the first phase of the creation of a CEAS should be conducted.<sup>10</sup> We believe that stage one instruments must be evaluated to ensure that they are consistent with international human rights and refugee law standards, and evidence about the impact of their implementation is reflected in the developing CEAS. Evaluation should take stock of progress made against the Tampere and Hague Programmes, identifying inconsistencies such as varying definitions of 'family' in different instruments, and gaps, such as the exclusion of persons qualifying for subsidiary protection from many provisions.<sup>11</sup>

2.1.5 We agree with the recommendation of the House of Lords EU Committee that evaluation of progress made in the first stage of the CEAS 'should be carried out by an independent body of experts, whose findings should be published'.<sup>12</sup> We strongly believe that such independent evaluation should draw on the expertise of NGOs and other non-governmental bodies that have extensive, first hand experience of the impact legislation has on refugees and asylum seekers in the EU.

## 2.2 Transposition and implementation

2.2.1 The Refugee Councils regret that progress in agreeing the instruments of the first phase of the CEAS has been slow, and states' compliance with the provisions of the regulations and directives so mixed. Our experience as members of the ECRE network supports the Commission's finding that member states have failed to transpose European asylum law in a timely and comprehensive fashion.<sup>13</sup> It is of great concern that some states have failed to implement the minimum standards required by EC legislation, despite agreement having been reached at, or near, the lowest common denominator. This leads to continued hardship and suffering of asylum seekers and contributes to the likelihood that asylum seekers will be forced to move irregularly to other member states, defeating the objective of reducing secondary movements. We believe that the Commission needs adequate resources in order to monitor state compliance with legislative instruments and progress towards a CEAS.

2.2.2 We note that states have not consistently complied with deadlines for providing the necessary information to the Commission about their implementation of Community legislation. For example, the UK missed the deadline for submitting information to the Commission on its application of the reception directive.<sup>14</sup> We believe that states must redouble their efforts to ensure that they not only comply with EC legislation in a timely manner, but also comply with their reporting requirements.

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<sup>9</sup> *Ibid.* Summary report available at

<http://www.ecre.org/positions/ECRE%20Summary%20Report%20on%20Dublin%2007.03.06%20-%20final.pdf>

<sup>10</sup> *Next steps in the development of a common European asylum system*, Finland's EU Presidency, Sept 2006. [www.eu2006.fi](http://www.eu2006.fi)

<sup>11</sup> For ECRE's recommendations on evaluation see ECRE (September 2006) *Recapturing the Tampere Spirit. Memorandum to the Informal Justice and Home Affairs Council, Tampere, 20-22 September 2006*. Available at

<http://www.ecre.org/statements/Memo%20to%20informal%20JHA%20sep%2006%20-%20final.doc>. (accessed 20/9/06)

<sup>12</sup> House of Lords European Union Committee (March 2005) 10th Report of Session 2004-05 *The Hague Programme: a five year agenda for EU justice and home affairs*.

<sup>13</sup> See Commission Communication, 28/06/06 *Implementing the Hague Programme: the way forward*. COM (2006) 331 final, as well as the 'Scoreboard Plus' Communication which found, in relation to the first phase of the common European asylum system, that 'it can be concluded from certain persistent gaps in the notification of transposal measures that the rate of implementation is not yet ideal'. ECRE's report on states' compliance with the reception directive *The EC Directive on the Reception of Asylum Seekers: Are asylum seekers in Europe receiving material support and access to employment in accordance with European legislation?* found that many member states failed to transpose the Reception Directive by the 6 February 2005 deadline.

<sup>14</sup> *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*. Article 25 of the directive states that 'By 6 August 2006, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up the report, including the statistical data provided for by Article 22 by 6 February 2006.' We note that the Commission has missed this August 2006 deadline.

2.2.3 Non-governmental organisations have valuable information and expertise that is essential in informing a full and transparent evaluation of progress made with the Hague Programme agenda. We would welcome the creation of systems and provision of resources to enable NGOs to input into the monitoring and evaluation process, and we regret that the recent Commission communication implementing the Hague Programme makes no mention of NGO involvement in this regard.<sup>15</sup>

## 2.3 Outstanding gaps in the CEAS

2.3.1 The Refugee Councils note that some elements in the first phase of the creation of a CEAS are not yet complete. Negotiations on the proposed returns directive, which the UK has decided not to opt into at this stage, are progressing extremely slowly through the legislative process.<sup>16</sup> Further, the proposal for an amendment to the long term residents directive, to include persons in need of protection, is long overdue.<sup>17</sup> We urge the Commission to table its proposal without further delay and draw the Committee's attention to ECRE's position that:

*It is perverse that refugees currently have fewer rights as long term residents under EC law than do other third country nationals. Granting refugees a secure legal status and durable residence permit is essential for them to gain the stability and predictability required in order to proceed with their lives and contribute fully to the social, political and economic life of their host country.*<sup>18</sup>

## 2.4 Transparency and accountable decision-making

2.4.1 We strongly support the Commission's assertion that 'more effective transparent and accountable decision-making procedures are needed' in order to make further progress in establishing an area of Freedom, Security and Justice.<sup>19</sup> We draw the Committee's attention to the recent House of Lords European Union Committee report of its inquiry into the meeting of the G6 interior ministers at Heiligendamm, in which the Committee criticised the lack of transparency surrounding the meetings.<sup>20</sup> As highlighted in the Committee's report, these are regular meetings of the six most powerful member states, at which ministers decide how they want to take forward EU policy on justice and home affairs. The Committee concluded that parliament, as well as the public and other EU member states, has a right to be told in detail what has been decided. We note that we have not had any feedback on G6 meetings at our regular stakeholder meetings with the Home Office, nor are we provided with any opportunity to contribute our expertise in advance of the meetings. We look forward to the Home Office's response to the House of Lords EU Committee's inquiry and to its proposals for how it will ensure effective parliamentary and public scrutiny of UK decisions about, and positions on, EU Justice and Home Affairs issues.

2.4.2 The Refugee Councils find it increasingly difficult to obtain information about EU developments on JHA issues, and the UK's position in negotiations on them. The Home Office

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<sup>15</sup> Commission Communication, 28/06/06 *Implementing the Hague Programme: the way forward*. COM (2006) 331 final.

<sup>16</sup> European Commission Proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals (COM(2005)291 final). The Refugee Council and Amnesty International submitted joint evidence to the House of Lords EU Committee inquiry into this draft directive. The written evidence is available at [http://www.refugeecouncil.org.uk/policy/responses/2005/eu\\_return.htm](http://www.refugeecouncil.org.uk/policy/responses/2005/eu_return.htm). The Committee's May 2006 report is available at <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldcom/166/16602.htm>

<sup>17</sup> The Commission's recent 'Scoreboard plus' states that the proposal has been delayed again, until the second phase of the development of the CEAS.

<sup>18</sup> See ECRE (September 2006) *Recapturing the Tampere Spirit. Memorandum to the Informal Justice and Home Affairs Council, Tampere, 20-22 September 2006*.

<sup>19</sup> Commission Communication, 28/06/06 *Implementing the Hague Programme: the way forward*. COM (2006) 331 final.

<sup>20</sup> House of Lords European Union Committee (July 2006) *Behind Closed Doors: the meeting of the G6 Interior Ministers at Heiligendamm*. 40th Report of Session 2005-06.

places Explanatory Memoranda on EU asylum policies and legislation before Parliament. These memoranda assert that discussions take place with NGOs at stakeholders meetings. In reality, however, the information we are provided with is scant, and the contents of the Explanatory Memoranda are never shared with us as a matter of course. Where formal consultation with NGOs does take place, this happens only after legislation has been agreed and our feedback is sought as to whether the Home Office plans for implementation are sufficient.<sup>21</sup> We would welcome more meaningful discussion and consultation with the Home Office, both formal and informal, on EU asylum issues and the wider Hague Programme agenda, particularly in advance of decisions being made. Strengthened consultation and discussion with devolved administrations in Scotland and Wales is also required where they are responsible for ensuring that devolved legislation, policy and practice are compatible with European legislation.

2.4.3 We urge the Commission and EU member states to make concerted efforts to ensure that the accountability and transparency of decision making on EU Justice and Home Affairs is improved. In particular, we would welcome the creation of enhanced opportunities for civil society to input into progressing and evaluating the Hague Programme agenda.

## 2.5 Practical cooperation

2.5.1 In developing the second phase of asylum harmonisation, the Commission emphasises further action in the area of practical cooperation between administrations, with a view to achieving a convergence in member states' asylum systems. The Refugee Councils, along with our partners in the ECRE network, recognise the importance of practical cooperation as a means of reducing the large gaps between the quality of national asylum systems, and member states' recognition rates and integration capacities.<sup>22</sup> We share ECRE's belief that legislation alone is clearly not sufficient to create a level playing field with systems that are fair, efficient and can achieve high quality asylum decisions. However, we are concerned that, as with negotiations on the asylum procedures directive, the practical cooperation process risks facilitating states sharing the worst elements of their national procedures. We call for the involvement of non governmental agencies in contributing to practical cooperation and draw the Committee's attention to ECRE's practical cooperation proposals, which include establishing best practice guidelines for training and accreditation of decision-makers, for the treatment of unaccompanied minors and other vulnerable groups such as torture survivors, and the provision of accurate, transparent and up to date country of origin info. These proposals have the explicit objective of improving the quality of asylum decisions, thus creating a fairer system and reducing the length and expense of asylum procedures.<sup>23</sup>

2.5.2 We are concerned that EU member states and institutions are placing far greater emphasis on practical cooperation in border control than on refugee protection. Recent events in those EU states bordering the Mediterranean highlight the need to address the pressures faced by their asylum services and reception capacities. We note, however, that the UK has responded to the pressures faced by Malta and the Canary Islands by providing UK Immigration Officers to assist in interviewing migrants to determine their nationalities and the routes they have used to reach the EU. This information is presumably intended to be used in order to effect returns and enhance border control. We regret that the UK is not providing support to these member states so that they can identify migrants who have a right to international protection under the 1951

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<sup>21</sup> For example, the Home Office has conducted formal public consultations on its proposals for implementing the EU reception and qualification directives. The consultations were carried out immediately before the deadlines for UK compliance with the directives.

<sup>22</sup> Asylum seekers cannot currently be assured that their protection needs will be provided for in the same way wherever they apply for asylum in the EU. Prima facie evidence of this can be seen in comparative recognition rates across EU member states. The Slovak Republic, for example, recognises 0% of Chechen asylum seekers as being in need of international protection, whilst 84% of Chechens applying for asylum in Austria are granted status. (Recognition rates taken from ECRE (June 2005) *Guidelines on the treatment of Chechen internally displaced persons (IDPs), asylum seekers and refugees in Europe.*)

<sup>23</sup> See ECRE (September 2005) *The Way Forward: Europe's role in the global refugee protection system. Towards Fair and Efficient Asylum Systems in Europe.*

Convention and other international human rights instruments. States at the EU's external borders need assistance to meet their international obligations towards refugees and asylum seekers, and it is regrettable that their EU partners are not cooperating to enhance their ability to do so.

2.5.3 The recent Commission Communication on rapid border intervention teams (RABITs) explicitly excludes from their mandate support for member states' asylum systems. We endorse ECRE's position, that *If the EU is to develop a credible and human rights-respecting response to the challenge of mixed flows, the proposal for border control-orientated Rapid Border Intervention Teams needs urgently to be complemented by one for protection-focussed expert support teams.*<sup>24</sup> As ECRE points out, such expert teams were envisaged in the Commission's Communication on strengthened practical cooperation. The Commission should present its proposal for their creation as soon as possible.

## **2.6 Border controls, migration management, and access to the EU for those in need of international protection.**

2.6.1 The Refugee Councils and our partner ECRE agencies are concerned that in recent years the need to observe the fundamental principle of non-refoulement appears to have been subordinated to the desire of EU states and institutions to prevent irregular migrants from reaching the EU. EU states have made significant progress in strengthening their national migration controls. In addition, the EU has established the FRONTEX agency and implemented a plethora of border management measures. Such measures have not, however, been matched by efforts to identify and respond to the needs and entitlements of the proportion of irregular migrants who are refugees. We are alarmed by the lack of any evidence that EU member states have attempted to reconcile their actions to combat irregular migration with the right to seek and enjoy asylum from persecution.

2.6.2 We draw the Committee's attention to the joint Refugee Council/Oxfam submission to the Committee's recent inquiry into immigration control.<sup>25</sup> The submission provides evidence that the immigration controls introduced by the UK and other EU states are a blunt instrument that do not distinguish between those fleeing persecution and irregular migrants seeking to enter a country for other purposes. The submission highlights the impacts of border controls and migration management initiatives on refugees, including their ability to reach a safe country in which to exercise their fundamental human rights to seek and enjoy asylum from persecution.

2.6.3 We believe that there is an urgent need to assess and rectify the impact that EU border control initiatives are having on those fleeing persecution and other human rights abuses. We are concerned that the further action that will be taken by EU member states and institutions to prevent illegal crossings into the EU, in accordance with the Hague Programme objectives, is likely to intensify the risk that the rights of people in need of international protection will be violated.

## **2.7 The external dimension of migration and asylum**

2.7.1 The Commission is proposing to further strengthen the EU's action on the external dimension of migration. We believe that there is a pressing need for EU action to support third countries to meet their obligations towards refugees and asylum seekers, particularly where the

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<sup>24</sup> ECRE (September 2006) *Recapturing the Tampere Spirit. Memorandum to the Informal Justice and Home Affairs Council, Tampere, 20-22 September 2006.*

<sup>25</sup> Joint Refugee Council and Oxfam GB response to the Home Affairs Committee Inquiry into Immigration Control, December 2005. Available at [http://www.refugeecouncil.org.uk/NR/rdonlyres/9370C2B1-5A82-4083-A11C-397801EE1553/0/immigration\\_controlsNov\\_05.pdf](http://www.refugeecouncil.org.uk/NR/rdonlyres/9370C2B1-5A82-4083-A11C-397801EE1553/0/immigration_controlsNov_05.pdf)

EU and its member states are supporting those countries to strengthen their borders and prevent onward movements to the EU. The EU, for example, has intensified cooperation with Libya in recent months and is taking forward measures to reinforce Libya's border controls and to send Immigration Officers from EU member states to Libya to intercept irregular migrants and prevent them moving on to the EU. This cooperation is progressing despite the fact that Libya is not a signatory to the 1951 Convention, does not have an asylum law, and routinely violates and disregards its obligations towards refugees and asylum seekers, including by being responsible for *refoulement*.<sup>26</sup> The Refugee Councils believe that the EU must act urgently to ensure that it is not complicit in enabling Libya to put refugees' lives at risk by preventing them from reaching a safe territory where they can exercise their human right to seek and enjoy asylum from persecution.

### 3. Finding a new impetus for the second phase of the Common European Asylum System

3.1 The Refugee Councils support the Commission's assertion that there is an urgent need to find a new impetus in the area of Freedom, Security and Justice and we welcome the current Finnish Presidency's attempt to move forward with the process of creating a Common European Asylum System.<sup>27</sup> We are concerned, however, that while there appears to be little political appetite for further progress on harmonising asylum standards to ensure that refugees are protected, EU border controls continue to be strengthened and the EU encourages their spread in third countries. We fear that the opportunity to create a balanced asylum system in the EU, based on respect for human rights and international law may be lost. The consequences for the safety of those seeking international protection cannot be ignored.

3.2 The Refugee Councils hope that the EU institutions and member states will give serious consideration to ECRE's *Agenda for Change*. This is a series of recently-published papers that have been developed in conjunction with the ECRE membership. The papers provide constructive recommendations on efficient asylum systems in Europe; resettlement; protection in regions of origin; integration; and return. They offer a set of practical and workable proposals for moving forward with the Tampere and Hague Programme agendas and establishing a European asylum system that is based on high, common standards.

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<sup>26</sup> Human Rights Watch's recent report documents the treatment of refugees, asylum seekers and other migrants in Libya. HRW (September 2006) *Libya: Migrants Abused, But Europe Turns Blind Eye*. [www.hrw.org](http://www.hrw.org)

<sup>27</sup> *Next steps in the development of a common European asylum system*, Finland's EU Presidency, Sept 2006. [www.eu2006.fi](http://www.eu2006.fi). The Hague Programme sets 2010 as the deadline for the establishment of a common asylum procedures and a uniform status for those who are granted asylum or subsidiary protection, based on the full and inclusive application of the Refugee Convention and other relevant Treaties.