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UNHCR REGRETS MISSED OPPORTUNITY TO ADOPT HIGH EU ASYLUM STANDARDS

GENEVA – 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.

Taking a very good European Commission draft as its starting point, the long process of inter-state negotiations has resulted in an Asylum Procedures Directive which contains no binding commitment to satisfactory procedural standards, allowing scope for states to adopt or continue worst practices in determining asylum claims.

UNHCR is disappointed that EU states have failed to live up to the commitments they made at the beginning of the harmonization process in Tampere in 1999. There they affirmed their 'absolute respect of the right to seek asylum' – and commitment to work towards establishing a common European asylum system based on the full and inclusive application of the 1951 Geneva Convention.

The Asylum Procedures Directive regulates how decisions on asylum claims are made in EU member states. It is the last and, along with the Qualification Directive, arguably most important of five major pieces of legislation comprising the first phase of the effort to harmonize European asylum law. In reaching agreement on it, the EU has met the 1 May deadline set by the Amsterdam Treaty for completing this first phase.

UNHCR repeatedly expressed a range of concerns during the negotiating process. Although some improvements were made in reaction to a number of earlier versions, and the Irish Presidency and the European Commission attempted to broker a text acceptable to all concerned, the final document includes serious deficiencies.

The most worrisome of these concern rules permitting the designation – with insufficient safeguards – of so-called "safe third countries," to which asylum seekers may be returned, and rules which allow countries to deport rejected asylum seekers before the results of their appeals are known – thus in practice removing their right to an effective remedy in the event of an error.

Under such rules, asylum seekers may not have access to either an individual examination of their claim or an effective opportunity to rebut the presumption that a given country is safe in their particular case. People can now be denied

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access to an asylum procedure altogether in the EU if they have travelled via so-called “super-safe” third countries.

UNHCR considers the lack of adequate safeguards in the super-safe and safe country provisions to be potentially dangerous to refugees. Refugees may find themselves forced back to their home countries, in direct contravention of international law, as a result of chain deportations by a string of countries, starting with an EU member state.

UNHCR said the restrictions on appeals contain a similar risk, pointing out that in some EU countries between 30 and 60 percent of refugees were only recognized after an appeal.

The directive also permits a number of other restrictive and highly controversial practices that are currently only contained in one or two member states’ national legislation but could, as of 1 May, be inserted in the legislation of all 25 EU states. Examples of this include rules that allow unaccompanied children over the age of 16 to be denied adult representation in the asylum procedure.

Also on Thursday, the EU states formally adopted the Qualification Directive – which lays down the definition of who qualifies as a refugee and who qualifies for subsidiary protection (used for, among others, victims of war). The text of this Directive had been agreed at another ministerial meeting in March.

Although UNHCR has some reservations about this text as well, it nevertheless welcomes the definition of a refugee contained in it. This explicitly includes victims of persecution by entities other than state authorities (who have in the past been rejected in a few European states). Similarly important is an agreement on subsidiary protection, although UNHCR regrets its very narrow scope for persons fleeing armed conflict and generalized violence.

UNHCR stressed that the next stage of the harmonization process will be extremely important. The Directives set only minimum procedural norms. The agency urged all 25 member states to set higher standards as they begin to transpose the EU legislation into their national laws.

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