

ILPA's Response to the UK Presidency of the European Union

1. The Immigration Law Practitioners' Association welcomes the UK Presidency of the European Union which will run until December 2005. This is a particularly important time for the European Union in the field of EU asylum and immigration law and policy. We trust that the UK Government will make a positive contribution to the rule of law and the respect for human rights in this most sensitive field.
2. The UK Presidency's programme on asylum and immigration states that it will focus on three main issues: stronger EU engagement with the rest of the world in migration issues; strengthening border security, including dealing with organised immigration crime; and practical cooperation to manage migration. All three are central issues of the European Union and engage both the main concerns of this association: rule of law and human rights.
3. As regards the EU engagement with the rest of the world in migration issues, the UK Presidency intends four main actions: (1) action plans for partnership; (2) regional protection (including resettlement) (3) migration and development (4) readmission agreements. This Association has expressed its views on numerous occasions on all four issues. We would refer you to our response to the Hague Programme where some detail is provided. We would, nonetheless, take this opportunity to make the following comments.
4. Any action plans for partnerships in this field must take place within the context of multilateral cooperation within existing international fora. The EU should not seek to use its economic strength to undermine international cooperation in this field which is designed to increase human rights protection and rule of law. One of the best starting places for partnership is the signature and ratification of existing international human rights conventions which cover the field such as the European Convention on the Legal Status of Migrant Workers and the UN Convention on the same issue. Willingness to undertake commitments is the best evidence of good faith in this sensitive field. Existing multilateral agreements which have been the subject of long negotiation and consideration provide a solid basis for the treatment of migrants whether lawfully present or entering the territory and irregularly doing so.
5. Regional protection and resettlement of refugees must not become (or be seen to be) a rubric for shirking EU Member States' commitments under the UN Convention relating to the status of Refugees and its Protocol. Of course this association supports efforts to bring pressure to bear on all countries to respect international human rights commitments so that abuses do not take place and where they do that individuals receive the protection to which they are entitled in international law as quickly and comprehensively as possible. However, the wealthy states of the European Union must accept their responsibilities as rich and stable

democracies to give refuge to persons in need of protection. It is unseemly for these states to appear to be attempting to avoid their undertakings in this field by putting pressure on poorer, weaker and less stable countries elsewhere to provide protection.

6. From the Government's own experiences with resettlement it seems questionable whether from a protection perspective these can be considered a substantial success (see Presidency Conference 5 and 6 July 2005). Spontaneous arrival of refugees is the main source of protection seekers in the EU and will continue to be so as individuals respond to their persecution directly. It is very difficult in the world of international relations and state interests in region stability for EU states to provide protection through resettlement programmes in a way which can respond fully to the needs of the world's refugee population.
7. Migration and development are issues which have a very complex relationship. Our concern here is again that the interests of development projects and programmes should not be distorted by European concerns about irregular migration. Development aid must not be conditional on poor states abusing the right of their citizens (or the citizens of other countries) to leave their country. In the discussion which is currently taking place at the EU level there is a worrying preoccupation with ensuring return (and the emphasis in the EU is very much on forced return) - EU funding under the head of development should not be linked to return and particularly not forced return.
8. Readmission agreements do not, so far as we have been able to determine, provide much added value either as regards the protection of refugees or the expulsion of those irregularly present on the territory of the Member States. Further, we understand that these agreements are extremely difficult to negotiate as the states with which the EU has sought to negotiate such agreements see no advantage whatsoever in entering into them. We wonder then, whether this is really a fruitful avenue for further endeavour.
9. The second theme of the UK Presidency is strong borders. While we recognise that this is an important issue for the EU, the position of the UK is somewhat ambiguous not least as the UK Government has consistently refused to abandon border controls with the other Member States as foreseen in Article 14 EC. Indeed, it has used its right to opt out of the common border policy in every circumstance and indicated that it intends to continue to do so.
10. The Presidency states that it will support the new European Border Agency's (Frontex) efforts to set up its risk analysis function and structures for co-ordinating joint operational activity. However, the UK's request to participate in the EU Border Agency was rejected by the other Member States and the UK has brought an action before the European Court of Justice demanding that it be permitted to participate. In light of the on going legal challenge it does not seem particularly profitable for the UK Presidency to invest quite so much effort into leading the development of the Borders Agency.
11. The UK Presidency also intends to work on the Visa Information System,

from which it is also excluded on account of its sovereign borders policy. The UK Presidency also intends to work on biometrics and detection technology. We would note here as well that the UK has been excluded from participation in the EU measure on EU passports and has also challenged this decision before the European Court of Justice.

12. The final field in which the UK Presidency has indicated it will place emphasis is practical cooperation. As this association has frequently commented, practical cooperation must take place within the rule of law. It must not become a mechanism to seek to avoid the exigencies of rule of law and legality. This includes legality not only at the national level and the EU level but also compatibility with the European Convention on Human Rights. Similarly, practical cooperation in the field of asylum must comply with the UN Convention relating to the status of refugees and its protocol.
13. We have noted the proliferation of practical cooperation in the field of information exchange. This has not been accompanied by the necessary emphasis on protection of information. We urge the Government to prioritise the adoption of EU measure on data protection during its Presidency. The exchange of information, one of the themes the UK Presidency notes under this heading, must respect the right of privacy of the individual. Any interference with that right must be justified on the limited grounds set out in the European Convention on Human Rights and consistently with the jurisprudence of the Human Rights Court.
14. The UK Presidency comes at a time when the Government is much concerned with anti-terrorism measures. It is very important that the EU agenda is not unduly influenced by counterterrorism concerns. The vulnerability of refugees and migrants seeking protection must not be exploited as an unjustified target for coercive antiterrorism measures. Border security is not a panacea and it will not necessarily be an appropriate general tool in antiterrorism measures.
15. We trust that the UK Government will use its Presidency wisely to promote the rule of law and the protection of human rights not only within the European Union but worldwide through the signature and ratification of the key UN and Council of Europe conventions and through the promotion of their respect.

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