ILPA's Scoreboard on the Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national

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Part I: Executive Summary

This proposal for a Council Regulation is the intended replacement to the Dublin Convention in laying down the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national.

There has been considerable debate, to which ILPA has contributed, on the Dublin Convention and its possible successor which was instigated by the Commission's working paper entitled "*Revisiting the Dublin Convention: developing Community legislation for determining which Member State is responsible for considering an asylum application submitted in one of the Member States*". In that paper the Commission set out a number of options for the successor to the Dublin Convention in terms of the criteria to determine the State responsible for processing an asylum claim. ILPA's view has long been that the Dublin Convention was unworkable, in so far as it seeks to tie responsibility for examining an asylum application with responsibility for the applicant's entry into the European Union and that it should instead be based on where the asylum application is in fact lodged.

It is very disappointing that the Commission has not taken the opportunity to revise the criteria for determining responsibility and that the proposed Regulation based on the same principles as the Dublin Convention. Whilst it might be considered that the tightening up of mechanisms in the proposed Regulations will lead to the more successful operation of the

Regulation than its predecessor, ILPA doubts that to be the case. Not only is the current proposed Regulation unlikely to be successful in terms of reducing multiple applications or secondary movements within the European Union, it lacks the scope to respond to the humanitarian concerns and to address the complex and uncertain situation in which many asylum applicants find themselves.

Scoreboard		
1)	**Compliance with the European Convention on Human Rights (ECHR)**	**3/10**
2)	**Compliance with other international treaties**	**3/10**
3)	**Compliance with the principles of EU migration and asylum policy**	**4/10**
4)	**Safeguarding and strengthening rights at national level**	**3/10**
Total		**13/40**

1) This proposal does not comply with the European Convention on Human Rights (the ECHR) and in particular the obligation under Article 3 taken together with Article 1 to secure rights within a Contracting State. Just as with the Dublin Convention, an agreement between certain States which seeks to transfer a person from one State to another without examination of the individual case, will risk transferring that person in breach of the ECHR.

As the European Court of Human Rights observed in the case of **T.I. v United Kingdom** (7 March 2000) "*where States establish international organisations, or mutatis mutandis international agreements, to pursue co-operation in certain fields of activities, there may be implications for the protection of fundamental rights. It would be incompatible with the purpose and object of the Convention if Contracting States were thereby absolved from their responsibility under the Convention in relation to the field of activity covered by such attribution*". For as long as there remains difference in interpretation of international refugee law amongst Member States of the European Union, it must be the case that there is a risk that removal to one of the States with more restrictive interpretation will lead to removal in breach of Article 3 ECHR.

In addition the lack of family reunification rights for those who have been granted subsidiary protection may constitute a breach of Article 8 ECHR. Finally the failure to recognise the wishes of asylum applicants, their social, cultural and other needs, may further be breach their rights under the ECHR.

2) As regards other international human rights instruments, as observed below, whilst the 1951 Convention on the Status of Refugee (the 1951 Convention) envisages a degree of choice for applicants about where to claim asylum, the proposed regulation does not. UNHCR Executive Committee Conclusion 15 makes clear that an asylum applicant with close links or connections in a particular Member State should be allowed to claim asylum there.

The right to seek asylum contained in the Universal Declaration on Human Rights is drastically undermined by a system, which links allocation of responsibility for asylum applications to responsibility for entry controls. This is because such a system encourages individual Member States to prevent asylum applicants from ever reaching their territory through an ever increasing variety of control measures, including for example the extensive use of stringent sanctions against carriers

3) At the European Council in Tampere the importance of both the European Union and individual Member States respecting the right to seek asylum was reaffirmed, as was the offer of guarantees to those who seek protection in, or access to, the European Union. This is seriously undermined by mechanisms, which effectively seek to punish those States who allow asylum applicants to gain access to the EU territory.

4) Far from contributing to the safeguarding of rights at national level, this proposed regulation undermines those rights. It does so because it encourages Member States to externalise their borders, to take repressive measures against those seeking entry into their territory and to encourage asylum applicants to move quickly on to other Member States. In so far as a Member State can be fined for knowingly tolerating asylum applicants on its territory, this inevitably leads to Member States denying access to basic social and living conditions, rather than acknowledging their presence through offering reception facilities.

Part II: Detailed Anaylsis

Chapter I: Subject Matter and Definitions

Article 2

1. Article 2(i) - ILPA welcomes the expanded definition of "family member" to include persons with a blood relationship and in unmarried relationships. This is clearly in keeping with the wider definition of family endorsed by the European Court of Human Rights as well as UNHCR in its Handbook on Procedures and Criteria for Determining Refugee Status. However, ILPA is concerned at the introduction of the concept of dependency and the necessity for the asylum applicants to demonstrate that they lived in the same home in the country of origin as another relation. This fails to take into account complex and wide concepts of "family" and de facto relationships which exist in different cultures.

2. Furthermore, ILPA would seek to avoid a situation where a family split up by the difficult circumstances in which they left their country of origin was required to establish "dependency" or other familial relationships by laborious means. The simpler the definition of family members, the less need there would be for inefficient and inhumane systems and concepts for testing family relationships.

Chapter II: General Principles

Article 3

3. Article 3 refers to the criteria for determining which Member State will be responsible for examining an asylum claim. Commentary on such criteria is set out in detail below.

4. It is notable that unlike the Dublin Convention there is no reference in this provision to Member States' international obligations. ILPA is extremely concerned that Member States are reminded of their obligations under international law, such as the European Convention on Human Rights and the Convention against Torture, when they undertake to examine asylum applications.

5. Article 3(3) replicates a similar provision in the Dublin Convention and permits a Member State to derogate from the normal criteria and to examine an asylum claim even if it is not that State's responsibility to do so. This is an important provision, which allows for derogation where humanitarian or other concerns compel a State to consider an asylum application outside the normal criteria for determining responsibility. However, in practice, the equivalent provision of the Dublin Convention was rarely invoked. This was due to the non-binding nature of the provision, the lack of enforceability and in the lack of guidance about appropriate cases for its application.

5. ILPA is therefore concerned that such issues are not addressed in the current Regulation. Article 3(3) is silent as to the circumstances in which such derogation might be appropriate (for example for humanitarian reasons). .

6. Moreover, the proposed Article 3(3) is considerably weaker than the existing provision because of the lack of requirement to obtain the consent of the asylum applicant for derogation from the normal criteria. Whilst the explanatory memorandum notes that it is unnecessary to obtain such consent, since the asylum application is lodged in the Member State concerned by the applicant, ILPA considers this to be a necessary safeguard which should be included in the proposed Regulation. An asylum applicant may be compelled to lodge an asylum application for a number of reasons. This might not preclude there being valid reasons for preferring the asylum application to be considered in another Member State.

7. In **R (Ahmed Shah) v the Secretary of State for the Home Department** (12 March 2001) the court considered the case of an asylum applicant with a residence permit for one Member State, who, from force of circumstance, lodged an asylum application in another Member State. Whilst such situation might be thought to be rare, there is no empirical data to suggest that this is necessarily so. There are other circumstances (e.g. separation of family members) where the State in which an application was lodged will not necessarily be the applicant's informed or voluntary choice.

Article 4

8. Article 4(3) - This provision concerns the situation where an asylum applicant withdraws his or her asylum application and makes an application for some other form of protection. The provision suggests that the procedure for determining the State responsible would continue. ILPA has concerns about the legal basis of this provision. Whilst such basis purports to be found in Article 63(1), this concerns only those persons who apply for Geneva Convention refugee status. It would seem clear therefore that the proper scope of the Regulation is to enable its application to cover only those with a pending Geneva Convention application. It is surely the case that persons who, for whatever reason, withdraw their application for recognition under the Geneva Convention will thereby fall outside the scope of the Regulation.

9. In any event, ILPA also considers that the provision is contrary to Member States' obligations under other international instruments. Considering both the very wide diversity in non-1951 Convention protection offered by Member States and low level of harmonisation between Member States for any such subsidiary protection, it is impossible to guarantee all types of protection in all Member States. As **T.I. v the United Kingdom** (7 March 2000) well demonstrates, Member States cannot avoid their individual ECHR responsibilities by a notion of collective responsibility under the Dublin (or any similar) Convention. In all the circumstances Article 4(3) must be removed.

Chapter III: Hierarchy of Criteria

Article 6

10. The provision makes as first priority the reunification of an unaccompanied minor with family members. ILPA welcomes the provision as essential recognition of the vulnerability of refugee children and prioritisation of their needs. ILPA considers however that the provision must be applied flexibly so as to ensure that where no blood relations are within the European Union, the minor is able to be reunited with a person with whom the minor shares a de facto relationship. Furthermore, it is essential that the reunification of the minor with family members is not delayed in any way and that Member States take all possible steps to facilitate an unaccompanied minor reuniting with his or her family members.

Article 7

11. This provision makes as next priority the reunification of family members where one has been recognised as a refugee in one Member State. Again ILPA welcomes this provision as an essential recognition of the importance of the need to maintain family ties for asylum applicants. This will obviously have an impact upon the emotional, social as well as economic support, which the asylum applicants will receive during the often stressful and uncertain determination procedure.

12. However ILPA considers that reunification should not be restricted to Geneva Convention refugees; rather reunification of family members should apply where any form of subsidiary protection has been granted. There are a large number of people who for various reasons accept subsidiary protection. They will still be able to provide stability and support to their family members who seek international protection. Furthermore, their need and desire to maintain family unity will be exactly the same as those recognised as refugees. Such amendment would still fall within the scope of Article 63(1), since it would simply set out another criterion for allocating responsibility for applications for recognition as a Geneva Convention refugee.

Article 8

13. This article provides for family reunification for those applicants whose family members are themselves asylum applicants. However this is restricted to those persons who are subject to the normal, rather than accelerated, determination procedure. ILPA has expressed its strong reservations to the two-speed procedure set out in the draft directive on Minimum Standards on Procedures in Member States for granting and withdrawing refugee status. ILPA is extremely concerned to see a further differentiation between the rights enjoyed by those being considered under the two types of procedure. In this regard ILPA notes that the use of the accelerated procedure may not simply relate to the substance of the asylum application and it cannot be presumed that those subject to accelerated procedure have ill-founded claims. In any event undoubtedly there will be a degree of inaccuracy in categorisation of claims and the accelerated procedure does not automatically lead to a rejection of the claim.

14. ILPA considers that the same humanitarian and other considerations will exist for those being dealt with under an accelerated procedure as with those being dealt with under the normal procedure. It is very frequently the case that accelerated procedures are lengthy and in any event subject to the same delays as normal procedures.

15. The benefits of family reunification are felt not only by asylum applicants themselves. There are also advantages to Member States in terms of the stability and security which family members can offer an asylum applicant.

Articles 9 to 13: Comment on criteria

16. Articles 9 to 13 of the proposed Regulation apply essentially the same criteria for determining responsibility for examining an asylum application as are contained in the Dublin Convention. ILPA's position is the same as it was to the Commission's working paper ("*Revisiting the Dublin Convention: developing Community legislation for determining which Member State is responsible for considering an asylum application submitted in one of the Member States*") to which reference should be made.

17. Articles 9 to 13 seek to make the Member State, which permitted the asylum applicant to enter the European Union, or the Member State, which was responsible for the applicant's entry or continued stay, responsible for examining the asylum application. ILPA is fundamentally opposed to such criteria for the following main reasons.

18. First, it is both regrettable and undesirable that Member States are effectively punished for allowing asylum applicants to enter the territory of the European Union. The increasing use of visas, carriers' sanctions and other means for preventing asylum applicants from reaching the territory of the European Union means that there are generally no lawful means available to asylum applicants wishing to reach the European Union. Member States with external borders should not be made to feel delinquent in their duties as border guards for the Union merely because asylum applicants appear to have passed into the Union through their State. This is contrary to the 1951 Convention, and the obligation on the part of

Member States to offer international protection and fulfil their international obligations in good faith.

19. In any event, the persistence on the part of the European Union to stigmatise entry into the European Union in this way has the undesirable consequences that as States on the fringes resort to ever more draconian methods of patrolling external borders, so asylum applicants correspondingly have no choice but to resort to more dangerous means in order to access the territory of the European Union.

20. Whereas the Commission points to the desire to reduce secondary movements within the European Union and multiple applications, ILPA considers that the evidence from the operation of the Dublin Convention suggests that the proposed criteria for determining responsibility can not possibly have that effect. Research commissioned by the Commission, carried out by Bocker and Havinga, suggests that secondary movements occur for a wide range of complex economic, social and cultural reasons. It is ILPA's experience that the choice of country is rarely based on pure economic motives, but is more likely to be for family or cultural reasons.

21. It is wholly inappropriate and lacking in humanity to consider that those who do dare to express a desire as to the country in which they claim asylum are making "abusive" claims. Indeed as already stated the 1951 Convention itself envisages a degree of applicant's choice (**R v Uxbridge Magistrates' Court, ex parte Adimi**, [1999] 4 All ER 520) and it is humane for Member States for applicants to be able to make their claim in a country influenced by family, cultural or other social ties.

22. A system which ignores those reasons for secondary movements will be unable to address them and will ultimately be unable to prevent the desire to make the secondary movement. The desire to make those secondary movements will translate into the destruction of documentation and hazardous journeys being made in order to avoid being sent to a Member State which for that asylum applicant is seen as undesirable.

23. The numerous legal challenges to the operation of the Dublin Convention should demonstrate that even where the asylum applicants do not resort to making hazardous journeys or to the destruction of documentation, they will make

whatever legal challenges possible. The success of these challenges (certainly in the United Kingdom) indicates that courts recognise the concerns of asylum applicants, are suspicious of administration and on occasions the legal approaches in other Member States (particularly in relation to the divergent approach to 'non state agents' of persecution). This tears apart the solidarity of the Community and will ultimately undermine the "harmonisation" process envisaged by the Tampere European Council.

24. The experience from the operation of the Dublin Convention demonstrates that in practice only a small number of asylum applicants are in fact transferred to another Member State. Thus the proposed Regulation relates to an extremely small proportion of asylum applications in any event. However, the cost of operating such system is disproportionately high. Member States would surely be better advised spending those resources on the improvement of their asylum procedures so as to ensure that all claims can be dealt with efficiently and fairly in the future.

25. The Commission, in its explanatory memorandum, considers that standards still diverge too much to have an applicant's choice system at this point in time**,** and there would be a risk of harmonisation downwards to the lowest standards. ILPA likewise would not wish to see any downward harmonisation of asylum procedures or standards of refugee recognition. However ILPA considers that it would be simple enough to protect against Member States lowering their standards by including a standstill clause in the directive relating to the harmonisation of asylum procedures, criteria and reception conditions.

26. It is with these points in mind that ILPA considers that Articles 9 to 13 should be entirely replaced with a new set of criteria based on allocation of responsibility according to the State in which the asylum application is lodged thereby providing an element of choice for the asylum applicant. Not only would this lead to greater certainty, but it would reduce the likelihood of secondary movements. It would certainly be a more humane system and it would also be one more in keeping with with Member States' international obligations..

Articles 9 to 13: Comment on mechanisms

27. In addition to the concerns set out above about the general criteria for determining responsibility for asylum claims, ILPA believes that the mechanics of the system set out in Articles 9 to 13 are entirely unworkable.

28. Articles 10 and 12 refer to the irregular crossing of borders into a Member State of the European Union and the knowing and unknowing toleration of persons on the territory of a Member State in order to determine responsibility.

29. ILPA considers that experience of the operation of the Dublin Convention demonstrates that it is extremely difficult to prove that a person has been present in another Member State unless that Member State has properly recorded their presence. Undoubtedly it is envisaged that the operation of Eurodac will facilitate this. However, ILPA submits that to the extent that Member States with external borders punished for allowing asylum applicants into the European Union, there will always be incentive for those States to avoid recording the presence or entry of the asylum applicants.

30. ILPA believes that the provisions might lead to situations where Member States encourage third country nationals to move on into other Member States quickly in order to avoid the time period set out in Articles 10 and 12 being clocked up, rather than documenting or recording their presence. It will be extremely difficult for one Member State to prove that another Member State "knowingly" tolerated the presence of an asylum applicant on its territory, and this will inevitably lead to distrust between Member States.

31. Indeed ILPA considers that the operation of Eurodac which is necessitated by the Dublin Convention system and the need to establish which State permitted the asylum applicant to enter the EU territory, will be extremely cumbersome and expensive. A system based on where the application is lodged would significantly reduce the costs of operating Eurodac.

Article 14

32. Article 14 provides that where no Member State responsible for examining the asylum application can be designated it is the Member State with which the asylum

application is lodged which should be responsible for examining it. ILPA welcomes this provision in that unlike most of the preceding criteria, it is workable, effective and humane. It will ensure that identification of the responsible State for examining an application is swift and not burdened by the need for bureaucratic and cumbersome systems of negotiation between Member States.

33. ILPA considers that this provision is fair and humane and reflects the principles set out in the UNHCR Executive Committee Conclusion No. 15 which states that "the intentions of the asylum seeker as regards the country in which he wishes to request asylum should as far as possible be taken into account". It is only regrettable that this principle is not taken as the first principle for determining which Member State is responsible for examining an asylum application.

Article 15

34. Article 15 provides that where family members submit applications to the same Member State at the same time or close together in time, but the operation of the Regulation would lead them to being separated, then the family unit should be maintained by the Member State responsible for the largest number of them examining all the claims or by the Member State responsible for the oldest family member's claim examining all the claim. ILPA welcomes this proposal in so far as it recognises the need to maintain family unit. However this provision would not be necessary if the allocation system was based on where the asylum application is lodged.

Chapter IV: Humanitarian Clause

Article 16

35. The retention of the humanitarian clause from the Dublin Convention is welcomed. However as with the Dublin Convention the effectiveness of this provision is almost nullified by its lack of enforceability and the discretionary nature of its application by Member States. ILPA's experience of the Dublin Convention is that Member States are reluctant to apply the humanitarian clause.

ILPA believes that this is because of concern that the exception would become the rule; yet the reality is that it has been rarely, if ever, applied.

Chapter V: Taking Charge and Taking Back

Article 18

36. In general Article 18 provides that requests for taking back by another Member State should be made within 65 days. ILPA welcomes the shorter time periods in which a Member State can call upon another Member State to take back an asylum applicant. In general ILPA considers that the long delays experienced under the Dublin Convention before requests were even made lead to uncertainty for asylum applicants. This is obviously made even more undesirable where the asylum applicant is detained pending removal to another Member State.

Article 19

37. This provision requires the requested Member State to respond within one month to a request to take back, or be deemed to have accepted responsibility. ILPA welcomes shorter time periods in so far as they provide greater certainty for asylum applicants, particularly where they may be detained. However ILPA is extremely concerned that these provisions may result in the bouncing of asylum applicants from one Member State to another where a Member State is deemed to accept responsibility in the absence of any decision. ILPA considers it wholly undesirable that a person can be transferred on notification only given the likelihood that the receiving Member State will refuse to accept responsibility and reject the applicant or attempt to transfer him or her elsewhere.

Article 20

38. This provision lays down the procedures which for the communication of decisions concerning inadmissibility of an application where responsibility for its examination lies on another Member State. It also provides that there should be an appeal to the courts against such a decision. However this will not have suspensive effect.

39. ILPA welcomes the inclusion of an appeal and considers that this to be consistent with Member States' obligations under Article 13 ECHR .

40. However, what the proposed Regulation seeks to give with one hand, it takes away with the other because the appeal does not have suspensive effect. The Explanatory Memorandum comments on this provision as follows: "Since a transfer to another Member State is not likely to cause the person concerned serious loss that is hard to make good, it is not necessary for the performance of the transfer to be suspended pending the outcome of the proceedings."

41. ILPA does not accept this rationale. First, it is extremely difficult for an asylum applicant who has been removed from the jurisdiction to maintain contact with lawyers who would necessary have to conduct the appeal. Most asylum applicants lead a hand to mouth existence and international communications are likely to be impossible. The problems are multiplied if the asylum applicant does not have a legal representative before the transfer takes place and if the removal means that the applicant is no longer entitled to legal aid to contest the decision. Second, the asylum applicant may have been moved onward to some other country (whether the country of origin or some other country which the State responsible has persuaded to deal with the asylum application) before the appeal is determined. In these cases, even if successful, the appeal is likely to be of little advantage to the asylum applicant.

42. Plainly the appeal right is meant to confer a real and effective means of challenge to the transfer decision. On this basis such appeal must be suspensive if it is not in practice to be rendered meaningless.

43. The same objection applies to the non-suspensive character of the appeal in Article 21(1)(f).

Chapter VI: Administrative Co-operation

Article 24

44. This provision permits Member States to enter into bilateral agreements concerning the implementation of the Proposal. ILPA is concerned that any such

bilateral agreements are not a mechanism to circumvent an asylum applicant's procedural rights. It is imperative therefore that such bilateral agreements are only approved by the Commission where they clearly safeguard the rights of the asylum seeker.

Part III: Amendments

1) **Article 2(k)** should be replaced as follows:

"subsidiary protection" shall have the meaning prescribed in Article 2(g) of Directive 2002/xx [on definition of refugees and subsidiary protection]

Because of the amendments set out below, there is no longer a need to define "visa", but there is a need to define "subsidiary protection".

2) Article 3(1) should be amended as follows:

"An asylum application shall be examined by a single Member State ***in accordance with its international obligations***"

Member States should recall their international obligations when they undertake to examine asylum applications.

3) **Article 3(3)** should be amended as follows:

"…is not its responsibility under the criteria of this Regulation, ***provided that the applicant consents***".

It is essential that the Regulation, like the Dublin Convention, require the consent of the applicant for any variation from its rules.

4) **Article 4(3)** should be **deleted**.

This provision goes beyond the legal base of Article 63(1), and would violate the Member States' international human rights obligations.

5) A new **Article 7(2)** should be added as follows:

"Paragraph 1 shall apply mutatis mutandis where an asylum-seeker has a member of his family who has subsidiary protection status in a Member State".

Family reunion should also be guaranteed for asylum-seekers whose family member has subsidiary protection status, in particular since no proposed or adopted Community measure would ensure family reunion for such persons.

6) **Article 8(1)** should be amended as follows:

"…being examined in a Member State ***[four words deleted]*** within the meaning of…"

Family reunion should also be ensured for persons subject to the "accelerated" procedure.

7) Article 8(2) should be replaced by the following:

"Paragraph 1 shall apply mutatis mutandis where an asylum-seeker has a member of his family whose application for subsidiary protection is being examined in a Member State"

Family reunion should also be guaranteed for asylum-seekers whose family member has applied for subsidiary protection, in particular since no proposed or adopted Community measure would ensure family reunion for such persons.

8) **Articles 9 to 13** should be **deleted**

The principle of allocating responsibility without consent of the asylum-seeker is expensive, unworkable, and risks breaching Member States' human rights obligations.

9) A new **Article 14(2)** should be added as follows:

"Where it appears that an applicant, before requesting asylum in a Member State, already had a connection or close links with a Member State, a Member State may, if it appears fair and reasonable, call upon the applicant to apply for asylum in that other Member State. If the applicant and the other Member State consent, Article 3(3) shall apply mutatis mutandis. If either the applicant or the other Member State, or both, do not consent, paragraph 1 shall apply".

This provision is based on the wording of UNHCR Executive Committee Conclusion 15, which envisions the possibility of requesting asylum seekers to consider making their asylum request in another Member State instead. The suggested paragraph spells out the consequences of the asylum-seeker's and the other Member State's consent to this request, and also of their lack of consent.

10) **Article 20(2)** should be amended as follows:

"Appeal shall **[word deleted]** suspend…"

An appeal without suspensive effect is meaningless.

11) **Article 21(1)(f)** should be amended as follows:

"Appeal shall **[word deleted]** suspend the performance…"

An appeal without suspensive effect is meaningless.

12) **Article 24(1)(b)** should be amended as follows:

"…and take back, **provided that the applicant consents**."

This safeguard is needed to prevent this option from being used to circumvent applicants' rights.

13) **Article 24(1)(c)** should be **deleted.**

This deletion is a consequence of the deletion of Articles 9 to 13.

14) Article 24(2) should be amended as follows:-

"…after it has checked that they do not infringe this Regulation **and do not hinder access to the asylum applicant's access to the asylum procedure**"

Bilateral agreements between Member States must not infringe asylum applicants' procedural rights.

15) A new **Article 25(4)** should be added as follows:

"With effect from the date mentioned in the second paragraph of Article 31 of this Regulation, Articles 8 and 10 of Regulation 2725/2000 shall be deleted."

This follows from the change in the criteria for responsibility. Consequential amendments will also have to be made to Articles 9, 13 and 15 of that Regulation.

16) A new **Article 25a** should be added as follows:

"This Regulation shall be without prejudice to Articles 15 and 18 of Directive 2001/55."

The Regulation needs to state expressly that the rules on responsibility and family reunion in the temporary protection directive are not affected by it.

17) A new **Article 29(4)** should be added as follows:

"Without prejudice to Regulation 1049/2001 and Decision 1999/468, proposed implementing measures shall be made available to the public, including by electronic means, in sufficient time to ensure adequate opportunity for scrutiny and comment by the European Parliament, national parliaments, regional and local governments and the public."

Given the importance of the implementing measures to be adopted, there needs to be a special provision allowing for effective scrutiny by parliaments and civil society, supplementing the

right of public access to documents implemented by Regulation 1049/2001 and the special provisions for transmitting information to the EP contained in the ‘comitology decision’.