

Meeting the Needs in Central Europe and the Baltics: Some Preliminary Lessons Learned from the Successes and Failures of Three Years of Asylum System Development Work in Europe

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A. Introduction

The purpose of this article is to summarize the difficulties faced and to reflect upon some preliminary results of the European Union (EU) accession-driven¹ 'asylum system development' process known as the Phare Horizontal Asylum (PHA)² and its key component, the round table (RT) process. This article will discuss some of the issues and problems raised in the context of the PHA and evaluate the RT process in the context of EU accession and 'asylum system development' in Central Europe and the Baltic States (CEBS). Finally, this article will share the lessons learned from the PHA and RT processes and, in so doing, hopes to open up the dialogue in relation to the development of improved European 'asylum system development' activities.³

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¹ The EU accession process for the CEBS consists of a 31 chapter 'Screening Report' as well as a series of negotiations and assistance programmes. Chapter 24 in the screening report deals with the subject of asylum. The main assistance element, the 'Phare' programme was originally established in 1990 as the Poland Hungary Assistance for the Reconstruction of the Economy programme. It has since been extended to the ten CEBS.

² Phare Horizontal Programme on Asylum (Joint Support Programme on the Application of the EU *Acquis* on Asylum and related Standards and Practices in the Associated Countries of Central Europe and the Baltics). It is also known as the PHP.

³ European 'asylum system development' is a two-pronged process with the EU Member States engaging in harmonization activities and the CEBS engaging in accession preparations.

B. The EU Asylum Harmonization Process

The EU asylum harmonization process, officially christened by the entry into force of the Treaty of Amsterdam in May 1999, has placed a number of responsibilities on EU Member States, the institutions of the EU and the various organizations working within the EU space towards the development of a single asylum system, refugee status determination institutions and guidelines for human and other resource management and development.

While a relatively new topic in EU Member State administrations, 'asylum system development' has in fact been an issue of discussion in the CEBS for many years.⁴ Accession to the EU and full membership has been linked to the fulfillment of certain criteria in many fields, including asylum. In most fields these standards have been set by the EU Commission.⁵ In the field of asylum⁶ this criterion is in fact a collection of standards and practices from the EU Member States, neither uniform nor harmonized.⁷ The implementation of these criteria, to be mentioned in more detail below, has fallen on a number of shoulders within the EU institutions and the Member States themselves. This process is also without a standard approach and therefore interpretations are many.

To bring a bit more reason into the process, at least in the field of asylum, the EU Commission's DG1A, along with the German Federal Office for the Recognition for Foreign Refugees (BAFI), the EU Member States' authorities concerned with asylum and the United Nations High Commission for Refugees (UNHCR), committed themselves to designing a number of activities and initiatives which would help facilitate the technical implementation of these criteria. Thus was the PHA⁸ born.

C. The PHA in Brief

An element of UNHCR's capacity building, protection and 'asylum system development' programme in the CEBS⁹ is being implemented through a two year

⁴ The CEBS refers to Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovak Republic and Slovenia. Bulgaria and Romania are also considered to be a part of the stability pact group of states.

⁵ The EU *Acquis Communautaire*.

⁶ The EU *acquis* on asylum.

⁷ The 1993 'Copenhagen Criteria' provide the basis for EU enlargement including the existence of a market economy, rule of law and democratic institutions. EU Member States were considered the models of such standards. Additional criterion in the field of asylum is known as the EU *acquis* on asylum.

⁸ Phare consists of a number of different programmes in a number of fields such as horizontal programmes in the fields of asylum, police co-operation, border management, migration, etc. In addition, each CEBS has its own national programme under Phare.

⁹ See the UNHCR's 1999 Global Report.

fair and efficient 'asylum system development' process known as the PHA.¹⁰ The PHA was jointly drafted, and is sponsored by the EU Commission's Phare Programme, DG Enlargement. It is led by the BAFI based in Nuremberg.¹¹ UNHCR is the junior partner in the PHA. The PHA's aim is to support the implementation of the EU *acquis* on asylum, including the European Convention on Human Rights (ECHR) and the 1951 Refugee Convention/1967 Protocol, and related standards and practices in order to prepare the CEBS for accession to the EU.¹²

Joint Support Programme on the Application of the EU *Acquis* on Asylum and Related Standards and Practices in the Associated Countries of Central Europe and the Baltic States

Main Points of the Programme:

- *Two-Year Duration*
- *Cost*: 3 Million EURO, Funded by the EU Commission (DG1A-DG Enlargement)
- *BAFI*: German Federal Office for the Recognition of Foreign Refugees as lead agency
- UNHCR as supporting or 'Junior' partner
- *81 activities* in total (ten RTs, 18 workshops, ten evaluation missions, 40 study visits, evaluation conferences)
- *Main Themes*: familiarization with the obligations and responsibilities associated with transposition of the EU *Acquis* on Asylum and related standards and practices
- *Beneficiaries (10)*: Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Romania, Slovak Republic, Slovenia
- *Target Groups*: Practitioners and decision-takers: MOI, MOJ, MFA, refugee authorities, judiciary (2nd instance), law enforcement, border authorities, non-governing organizations (NGOs)
- *Additional topics*: Access to territory, standard and accelerated procedures (safe third country/country of origin notions), appeals (2nd instance), counselling, support, and integration, treatment of refugees with special needs, legislative and practitioner capacity needs,
- *EU Member States (7)*: Austria, Denmark, France, Germany, The Netherlands, Spain, and Sweden providing expert opinion and advice

¹⁰ Elements of the PHA methodology are being applied in the Phare CEBS migration programme, stability pact and CIS regions.

¹¹ The BAFI, as lead agency, served the PHA as its financial and administrative secretariat. The UNHCR was mainly responsible for the substantial and content related elements of the PHA including the round tables. The workshops were designed by the EU Member States and the UNHCR resource persons.

¹² The complete project description is available from the lead agency.

The anchor of the PHA is the five phase RT process:

Phase one of the RT process saw an analysis of needs of the individual asylum systems of the CEBS by the UNHCR and the CEBS delegations. These analyses became known as factual working documents (FWDs). The FWDs¹³ were developed by the UNHCR and completed by UNHCR offices in the CEBS working with their national counterparts. They analyzed the state of the legislative, institutional and practitioner capacity implementation, related standards and practices of the main elements of the EU *acquis* on asylum in the CEBS, these included:¹⁴

- European Convention on Human Rights (ECHR) (Articles 3, 5 and 8);
- 1951 Refugee Convention;
- 1990 Dublin Convention (and CIREA);
- 1992 London Resolutions and Conclusion (manifestly unfounded, host 'safe' third country, safe country of origin notions);
- 1995 Resolution on Minimum Guarantees;
- 1996 Joint Position on the Harmonized Approach to the Refugee Definition;
- 1997 Resolution on Unaccompanied Minors.

Phase two was the review of the FWDs by CEBS delegations, the EU and the UNHCR asylum 'experts'. At the conclusion of this review a country specific national action plan (NAP-1999) was drafted by each group. The confidential NAP-1999 represents 'asylum system development' plans in the above-mentioned areas.

Phase three saw the NAPs-1999 approved by the CEBS delegations, the EU Member States and the UNHCR experts during the first series of RTS.

Phase four, roughly one year later, saw the review and update of the NAPs (NAP-2000) in light of their implementation and related developments. The key elements to the NAP-2000 are the suggested follow-up steps and linking of existing 'asylum system development' initiatives.

Phase five includes the implementation of the NAPs-2000, the drafting of 'future reports' regarding follow-up and the identification of additional support resources for the CEBS.

In addition to the RT process the PHA consists of a number of events related to the RTs: needs specific workshops (WS) process, evaluation missions undertaken by EU Member State officials, study visits by CEBS officials, evaluation conferences and future reports. Each activity brings together CEBS practitioners, UNHCR and EU Member States in a number of combinations. According to the project description all these events should have been based on the conclusions of the RT process.

¹³ See S. Anagnost, Buchhorn, Mayne, 'Factual Working Document Summary' (1998).

¹⁴ A similar approach is being discussed regarding the EU Member States in addition to other potential candidate countries such as Cyprus, Malta, Turkey and the stability pact region mentioned above.

Main PHA Events, Dates and Locations 1999–2000

<i>Event</i>	<i>Dates</i>	<i>Location</i>
<i>Preparatory Conference</i>	22–24 February 1999	Nuremberg
<i>PHA TOT</i>	15–19 March	Vienna
<i>Workshop One</i>	12 April–21 May	
Group One	12–23 April	Bled, Slovenia
Group Two	26 April–07 May	Bled, Slovenia
Group Three	10–21 May	Bled, Slovenia
<i>Round Table One</i>	14 June–16 July	
Team One	15–17 June	Warsaw
Team Two	21–22 June	Budapest
Team Three	28 June–01 July	Sofia
Team Four	05–08 July	Tallinn
Team Five	12–15 July	Riga
<i>Workshop Two</i>	06–24 September	
Group One	06–10 September	Gothenburg
Group Two	13–17 September	Gothenburg
Group Three	20–24 September	Gothenburg
<i>Workshop Three</i>	18 October–5 November	
Group One	18–22 October	Budapest
Group Two	25–29 October	Budapest
Group Three	01–05 November	Budapest
<i>Workshop Four</i>	22 November–10 December	
Group One	22–26 November	Prague
Group Two	29 November–3 December	Prague
Group Three	06–10 December	Prague
<i>Eval. & Org. Conf.</i>	25–27 January 2000	Nuremberg
<i>Evaluation Missions</i>	14–25 February	CEBS States
<i>Workshop Five</i>	06–24 March	
Group One	06–10 March	Höxter/ Paderborn
Group Two	13–17 March	Höxter/ Paderborn
Group Three	20–24 March	Höxter/ Paderborn
<i>Round Table Two</i>	28 March–5 May	
Team One	28–30 March	Prague
Team Two	03–04 April	Ljubljana
Team Three	10–13 April	Bucharest
Team Four	17–20 April	Bratislava
Team Five	09–12 May	Vilnius
<i>Workshop Six</i>	08–26 May	
Group One	08–12 May	Höxter/ Paderborn
Group Two	15–19 May	Höxter/ Paderborn
Group Three	22–26 May	Höxter/ Paderborn

<i>Event</i>	<i>Dates</i>	<i>Location</i>
<i>Study Visits I</i>	12–30 June 2000	EU Member States
<i>Study Visits II</i>	04–22 September	EU Member States
<i>Closing Conference</i>	17–19 October	Nuremberg

Team One = CZE, POL

Team Two = HUN, SVN

Team Three = BUL, ROM

Team Four = EST, SVK

Team Five = LAT, LIT

Group One = CZE, HUN, POL, SVN

Group Two = BUL, ROM, SVK

Group Three = EST, LAT, LIT

An overall element of the PHA and the RT process in particular is the linking of the EU Member States with their CEBS counterparts to develop long-term, lasting mutual support relationships.

The PHA's scheduled completion date was 31 December 2000.

C. Overview of the RT Process

The RT process, led by the UNHCR, represents the political component the PHA. The aim of the RT process is to bring together the main domestic¹⁵ and foreign actors¹⁶ in a state's asylum system (pre-procedural, procedural, post-procedural components). This is in order to evaluate the legislative, institutional and practitioner capacity needs and concerns leading towards the implementation of the EU asylum *acquis*, plus related standards and practices and also to identify concrete steps towards future support and development.

The RTs are therefore a meeting of relevant asylum system actors in order to develop concrete and lasting 'asylum system development' plans. Each RT brings together two CEBS and their respective EU Member States, the EU and the UNHCR support team in country specific working groups for an intense two to three day development session.

RT II combines the results of the EU Member State-led evaluation missions with the progress to date of the implementation of the NAP and an outline of on-going needs and support objectives to form the NAP 2000 (NAP-2000). The NAP-2000 is evaluated at the end of the PHA and forms the basis for the 'Future Report', a final outline of remaining needs and support objectives.

The RTs represent one element in a joint development and support process. They

¹⁵ Refugee authority, law enforcement, Ministry of Interior, Justice, Education, members of the judiciary, NGOs, etc.

¹⁶ The UNHCR, EU DGs Enlargement and Justice and Home Affairs, EU Member States.

are hosted by the UNHCR in co-operation with all PHA partners. The RTs must be seen in the context of the overall accession driven 'asylum system development' process throughout the CEBS.¹⁷ This includes the regional and sub-regional activities led or held in partnership with the UNHCR,¹⁸ the various EU initiatives,¹⁹ the numerous bi-lateral support initiatives between the CEBS and the EU Member States,²⁰ the PHA WS process, evaluation missions and study visits of the PHA in addition to the overall progress made by the individual CEBS through domestic development.²¹

D. Brief Analysis of the RT Process

The results of the RT process rest on three main elements:

1. National Action Plans 1999 and 2000;
2. Evaluation Mission reports/checklists;
3. the willingness of the CEBS, EU Member States and the UNHCR participants to remain open and constructive throughout the process.

The RT process was not without its problems. The PHA as a whole represented a major challenge for the UNHCR management team. Several problems needed to be addressed:

1. the UNHCR had never committed itself to such large scale, pro-active protection and 'asylum system development' in its 50 year history;²²
2. the UNHCR, a non-state actor in the PHA, was the only actor in the position to undertake the CEBS wide FWD needs analyses and follow-up, both highly

¹⁷ Development regular protection and capacity building responsibilities of the UNHCR offices.

¹⁸ Including support- and capacity-related programmes for the judiciary such as the Asylum Judges Support Project, law enforcement authorities, lawyers and legal aid programmes such as the Asylum Rights Support Initiative and refugee law clinics, NGOs, support for decision takers through COI seminars, etc.

¹⁹ Regular reports on the progress of the candidate countries, accession partnerships, national plans for the adoption of the *acquis*, Phare national programmes, Twinning, reports from the pre-accession advisors, Odysseus and other relevant training programmes, etc.

²⁰ The Scandinavian countries have been active in the Baltic States, Germany in Poland and the Czech Republic, Austria in Hungary, the Slovak Republic and Slovenia, etc.

²¹ It should be noted that the general administration of each RT was carried out between the UNHCR project management in Vienna (working in co-operation with the BAFI, the EU Commission and participating EU Member States) and the host UNHCR office (working in co-operation with domestic partners).

²² The UNHCR generally plays a more reactive role and this new position within the PHA as the driving force was an uncomfortable experience for many within the organization.

- sensitive and potentially compromising undertakings, and to maintain regular quality control checks on the results of the PHA events;²³
3. the UNHCR expects states to adhere to hard and soft international refugee protection standards²⁴ which are, in some cases, higher than those found in EU Member States and in the EU *acquis* on asylum;²⁵
 4. The EU *acquis* on asylum, as a collection of mainly soft law minimum standards, is not binding as such on EU Member States but made to be binding on the CEBS;²⁶
 5. the EU Member State partners, including the lead agency, had relatively little experience with ‘asylum system development’ in the CEBS, the EU *acquis* on asylum,²⁷ and lacked the necessary experts and lecturers to fulfill their role in the PHA;
 6. asylum related training tools and substantial reviews of the elements of the *acquis*, other than the UNHCR the EU *acquis* commentaries,²⁸ did not exist;²⁹
 7. the lead agency had not sufficiently adapted the activities of the PHA to complement the results of the RT process although this was mentioned as early as 1998 as a potential problem;³⁰
 8. the CEBS had undergone a superficial ‘screening’ process under the auspices of the EU JHA Task Force³¹ which did not look into substantial problems

²³ The UNHCR network of offices provided the majority of the content as well as administrative support for most phases of the PHA.

²⁴ Including the 1951 Refugee Convention and other UN conventions, the ECHR case law, Excomm Conclusions, the UNHCR Handbook, position papers, etc.

²⁵ Further complications arose when the ECHR was discussed, as neither the UNHCR nor the EU could be considered as ‘guardians’ of this Convention

²⁶ The EU *acquis* on asylum is not included in the upwards of 80,000 pages of the EU *acquis communautaire* which is considered binding on both the EU and the candidate countries. This confusion remained throughout the duration of the PHA for many participants

²⁷ This was not universal, however during the course of the PHA two main EU *acquis* experts left the process. In general the main experts on the *acquis* were to be found within the UNHCR

²⁸ See S. Anagnost, W. Buchhorn, J. van der Klaauw, ‘UNHCR Trainers’ Tool Box on EU Matters’.

²⁹ The lead agency supported by the EU Commission forbid the use of these texts as training material on the grounds that they were too critical of the original EU instruments. An attempt was made to re-write the texts with a more neutral approach. The new texts, almost identical to the original commentaries, were published as ‘Brussels Commentaries’ during the last quarter of the PHA, after the RT and WS processes had all but finished.

³⁰ This problem was caused, in part, by a misunderstanding of the role of the UNHCR in the PHA and of its interest and added value to the process. This remained a problem throughout the duration of the PHA.

³¹ Now DG Justice and Home Affairs.

and provided largely positive comments on ‘asylum system development’ in light of the EU *acquis* on asylum in the CEBS;³²

9. DG1A,³³ proprietor of Phare, and the JHA Task Force did not co-ordinate their various ‘asylum system development’ programmes which created competition and confusion in the CEBS and the EU Member States regarding the relationship between Phare and the screening process;³⁴
10. the political decision-takers in the CEBS³⁵ and the EU Member States had not been properly informed of the obligations and expectations of the PHA activities.³⁶

Many of the above-mentioned challenges remained unsolved throughout the course of the PHA and the results of which, mentioned in more detail below, were greatly reduced.

In general, however, the right combination was found during the RT process. Detailed results can be found below.

E. Selected Progress and Success Indicators

The success of the RT process depends very much upon the parallel developments in the above-mentioned context. Although RTs alone are not successful in themselves, they should represent a milestone in the overall ‘asylum system development’ process. The efforts undertaken towards the development of a fair and efficient asylum system, as well as related problems and obstacles encountered, play a very important role in determining the success of any RT. We considered the following checklist as possible PHA/RT success indicators:³⁷

I. Legislative

1. Identification or elaboration of specific legislative changes which would

³² Later the EU Commission reports, based on the PHA, would provide more detailed critique of the CEBS progress in the field of asylum. It should be noted however that the 13 October 1999 Commission reports contained several incorrect analyses of some of the CEBS.

³³ Now known as DG Enlargement.

³⁴ Similarly, neither organ formally shared their intentions or results with the group enlargement, also working in the CEBS on asylum issues. The European Parliament (EP) was not officially informed of the PHA.

³⁵ In many cases competition existed in the national context, making it difficult to bring two important ministries or agencies together during the RTs.

³⁶ For example, the political and decision taking level from the EU Member States and the CEBS was absent from most of the RT process. Much of the PHA-related communication simply got lost in national administrations.

³⁷ It should be noted that the lead agency did not draw up measurable success or progress indicators for the PHA in general.

better align a national legal system with international standards and practices (1951 Refugee Convention, ECHR, CRC directly in national legal text, etc.).

2. Inclusion of legislative safeguards regarding accelerated procedures.
3. Legislative change that would include competent NGOs in the asylum procedure.
4. Legislative change that calls and financially provides for state funded legal, psycho-social and medical aid for asylum seekers and refugees.
5. The passage of a 'Freedom of Information Act', allowing access to asylum application information for legal aid providers.
6. Draft legislation, which signifies a recognition of international standards in the spirit of the 1948 Universal Declaration of Human Rights and 1951 Refugee Convention.

II. Institutional

1. Identification of, or discussions and suggestions for, institutional changes that support democratic and transparent decision taking (i.e. qualified non-law enforcement authority taking decisions in the first instance, appeals procedures with suspensive effect, development or strengthening of independent second instances).
2. Streamlining of decision-taking institutions.
3. Strengthening or development of state funding for legal, social and medical aid programmes for asylum seekers and refugees.
4. Inclusion of management training, supervision and other support elements for decision takers.
5. Long-term partnerships between the CEBS institutions and the EU Member State counterparts.

III. Practitioner capacity/training

1. Identification of changes in practitioner practice (no detention of asylum seekers, principle of non-refoulement respected, proper decisions being written based on thorough research of conditions in country of origin, etc.).
2. Identification of training focal points in each agency working with asylum seekers and refugees.
3. Qualification courses for decision takers/minimum standards of professionalism.
4. Needs based staff changes regarding legal, social and medical aid.
5. Concrete identification and elaboration of practitioner needs specific training/development programmes for practitioners.

IV. Co-operation/team building

1. Enhancement of the UNHCR-national partner dialogue enhanced (acceptance of further meetings on crucial issues, etc.).

2. Identification or elaboration of seminar/training on important themes (access to procedure, detention, care of vulnerable groups/those with special needs, etc.).
3. Agreed inclusion of professional and proven NGOs in elements of the asylum system.
4. Identification of future national task force follow-up and meetings.
5. Initiation or continuation of pre-accession advisor.
6. Initiation or continuation of Twinning.
7. Initiation or continuation of bi-lateral or regional support.

V. Financial

1. Commitment by a national authority to increase funding for basic and/or additional programming/activities (revitalization of reception/accommodation facilities, hiring of additional decision takers, support for NGOs, etc.).
2. Phare National Programme to reflect needs identified in the NAP-2000.
3. Agreement to pursue EU (Odysseus, EIDHR, etc.) and other non-UNHCR sources for funding.

The above-mentioned indicators should be kept in mind when reviewing the final results of the RT process and the NAP-2000.

F. Preliminary Results of the PHA and RT Process³⁸

I. General results

The RTs produced mixed results (to be discussed in further detail below). On the one hand the level of participation remained below that of the political decision takers necessary to carry out necessary and sustainable changes. On the other hand the RTs did create a forum which allowed sensitive issues to be discussed between the CEBS, the EU Member States, the EU Commission and the UNHCR participants.

As the legislative process and change in general in the CEBS is ongoing it is important that the RT conclusions be seen in light of the progress and success benchmarks raised above. Expectations therefore need to be realistic in addition to being measurable.

1. Legislative results

A number of legislative changes took place in the CEBS as a result or during the PHA. It is difficult to assess whether or not these legislative changes were a direct

³⁸ The complete reports on each RT country session can be requested from the CEBS delegations involved in the PHA.

result of the PHA, if the PHA helped to encourage these changes or if these changes happened in spite of the RT process.³⁹ In Lithuania, for example, the refugee law which was drafted by Parliament was halted at the last minute by the Lithuanian President, due in part to the lobbying against the law by EU Member States and the UNHCR experts during the RT process.⁴⁰ What is clear from the results of the RT process and therefore should be seen as a success is that throughout the PHA, in particular the RT process, the asylum specific legislation of each of the CEBS was thoroughly reviewed, analyzed and critiqued. This review in and of itself brought about a number of realizations and discoveries.⁴¹ Further legislative changes, which will bring the asylum systems in the CEBS in conformity with international standards and the expectations of the EU *acquis* on asylum, can only be achieved by a continued, developed mutual support approach between the EU Member States and the CEBS through further joint actions with national and international actors.⁴²

2. Institutional results

Institutional changes are far more simple to identify but more difficult to achieve. Throughout the course of the PHA two asylum offices had been restructured (Bulgaria and Hungary) and many others have gone through a process of adaptation. It is too early to tell what effect these changes will have on their respective asylum systems and even more difficult to credit the PHA with these changes. Institutional changes require that the decision takers are motivated and agree to the changes. The RT process was, in general, absent of the highest level of decision takers and this greatly limited the results in this field that one could achieve. In two cases (Bulgaria and Estonia) new actors were introduced into the asylum procedure, in both cases border guards played a more substantial role regarding refugee status determination.⁴³

One should credit the RT process with bringing the EU Member States and the CEBS asylum offices into closer contact with each other. These relationships will need to be strengthened over time and this will require a great deal of bi-lateral support as well as regional support and energy.

³⁹ The Czech Republic and Slovenia had been drafting new laws before the PHA began. These laws were reviewed during the PHA and in some cases improved.

⁴⁰ The law will be revised by the Lithuanian Parliament in the course of 2000.

⁴¹ Many of the CEBS participants had not been involved in the legislative process prior to the PHA. This was the case, similarly, for many EU Member States participants.

⁴² At the time of drafting this article, the EU *acquis* on asylum, in general, remains a soft law collection of minimum standards.

⁴³ This might be seen as a step backwards given that these changes took place during the PHA, under the watchful eyes of the EU Member States, the EU Commission and the UNHCR, and even discussed at length during the RT process. If one sees the institutional changes that took place during the PHA as part of a larger, longer development process, these regressions become issues of concern which need to be observed, reviewed and critiqued. The PHA therefore could be seen as an institutional development and learning process.

3. Practitioner capacity/training results

Changes in practitioner capacity and decision taking are difficult to assess. Over the short term it would be unfair to mark the success or failure of the PHA in this regard.

Decision-taking in the first and second instances was identified during the RT process as the area which needs the most support and development. Long-term results will depend on the strength of the follow-up, more importantly the co-operation between the EU Member States and the CEBS regarding improved decision taking.

The RT process was in many ways a large scale, regional training programme for the EU, the CEBS and the UNHCR participants. In terms of understanding the institutional and cultural differences which separate the three main actors in the PHA, the RT process might be seen as largely successful. In effect an entire pool of experts from the EU Member States, with little or no knowledge or experience in the CEBS, received two years of intense training. Many of these experts found the region and its situation interesting enough to continue to work on other asylum system initiatives (Phare Horizontal Programme Migration, Twinning and pre-accession advisors (PAAs), bilateral co-operation, etc.). This should be seen as an unintentional success of the RT process and PHA in general.

Training is often not co-ordinated, with a number of domestic actors in effect competing with bilateral, regional training or training offered by international organizations.⁴⁴ More specific training needs were also identified, namely with regards to the drafting of legislation, interviewing techniques and credibility assessment for decision takers and legal aid providers, decision writing for judges and overall training for law enforcement and border authorities. Management and office organizational training is all but absent throughout the CEBS. Language training remains the most difficult and expensive problem to overcome.⁴⁵ It was also noted, in the case of training for law enforcement and border officials, that existing training programmes, from other states (the EU and the CEBS) were not being taken into consideration.⁴⁶ In this regard the RT process must be seen as successful as it brought together many of the main actors responsible for these projects and placed these projects on the table for discussion and debate.

⁴⁴ As mentioned in the country reports above, training programmes and training calendars were extensively reviewed during the RT process. In many cases it became apparent that no such 'needs-based' training programmes existed in the asylum offices of the CEBS. Training has been, in the main, *ad-hoc* and emergency-oriented.

⁴⁵ On the one hand, there is a willingness to learn languages on the part of the CEBS actors, on the other hand such training is expensive and without the guarantee that that trained individual will remain in the field of asylum. In addition, it is difficult to recommend a language to learn since the EU still uses 12 official languages and no decision has been taken regarding English, French or German as the unofficial language of discussion.

⁴⁶ The existence of training for police authorities in Bulgaria was not linked to a similar initiative in the Baltics. A 'ten-country asylum judges support project' did not include the Baltics. Several such discrepancies were discovered during the context of the RT process.

The core training element of the PHA is the workshop process (WS). Given the expected and actual relationship between the WS and RT processes, one might conclude that as a training programme the PHA failed to achieve its results.⁴⁷

What was also noted is the lack of review and quality control of training, which is undertaken in the CEBS within the context of the PHA, bi-lateral or national. This is a critical element that should be addressed through a more harmonized approach to training throughout Europe: the institutionalization of a European asylum related training calendar and the establishment of asylum training focal points.

4. Co-operation/team building results

In this regard the RT process achieved a great deal through the NAP-2000 and the partnering of EU Member States and CEBS. More attention should have been paid to the specific country conditions, communalities and national systems as this would have made for a more rational pairing and partnering throughout the process.⁴⁸

The PHA did allow for a strengthening of ongoing bilateral arrangements and Twinnings (Sweden in Latvia, Germany in Hungary and the Slovak Republic, Austria in Slovenia). It also helped to integrate the UNHCR structure in the region with a number of these programmes. New Twinnings, PAAs and bilateral projects were discussed during the course of the RT process. This should be seen as progress whose success depends very much on follow-up.

As mentioned above, the asylum offices in the EU Member States were for the first time exposed on a large scale to the standards and conditions in the CEBS. This reflects a success of the PHA and RT process.

5. Financial results

In most cases asylum offices did not increase funding for certain areas identified during the course of the RT process. There was a noted absence of financial authorities at the RTs, namely the ministries for finance and the parliamentary budget committees. Future financial changes and priority setting can only be achieved if these agencies are involved.

Legal aid, training, reception centres, border controls, accommodation centres, country of origin information (COI) documentation centres, etc. all need funding. One success of the RT process might be that the EU Commission and the EU Member States were made aware that the expectations of the EU *acquis* on asylum translates into some very basic costs, which in many cases cannot be met alone by the CEBS.

⁴⁷ This might be concluded from the general feedback received, namely that the different workshops were often too general, that the lecturers were not familiar enough with the state of affairs in the CEBS and that the topics of the workshops did not exactly meet the specific needs identified during the RT process.

⁴⁸ Spain and France, rather than Finland and Sweden, were paired with Estonia. Ultimately, this makes little sense in relation to long-term development.

The issue of lobbying for financial support was raised and it was seen as an area that needs further development, with possible support from the EU Member States, the UNHCR and the EU.

H. Conclusions and Suggested Follow-up to the PHA and RT Process

I. General conclusions

In order to assess effectively its conclusions, the RT process must be seen as one step in the overall 'asylum system development' of the CEBS. Follow-up should be based on the concrete results of the RT process, the NAP-2000 and an assessment of the aims and effectiveness of bilateral initiatives. One overall difficulty in developing helpful conclusions that will assess the RT process and provide constructive follow-up suggestions is that the EU asylum harmonization process has yet to provide concrete guidance regarding the future state of the following key elements:

1. common border controls and the role of border officials in the asylum procedure;
2. common reception, transit and accommodation standards;
3. common asylum procedures;
4. common institutional structures for handling asylum applications;
5. common standards for legal, psycho-social, and medical aid;
6. common standards for second/appeals instance bodies (judicial or tribunal);
7. a clear definition of the role of the European Court of Justice (ECJ) regarding asylum issues;
8. a working language of the EU.

Without such guidance many of the suggested follow-up steps might be seen as superfluous or incredible. Asking the CEBS, the EU Member States, the EU or the UNHCR to commit resources in order to encourage further improvements and developments, that might change dramatically as the above mentioned elements come into play, would be unfair and a waste of resources which could be invested in improving country of origin conditions.

Necessary multi-country development initiatives in the field of asylum should focus on the specific issues raised during the RT process and the NAP-2000. Some suggestions include:

1. the creation of COI databases and technical support;
2. the creation of national and European Court of Human Rights asylum decision case law databases;
3. the creation of developments to domestic legal aid structures and standards;
4. the creation of interpreter pools and databases of existing or uncommon languages;

5. the creation of management and language training for heads of asylum offices;
6. the creation of lobbying and legislation writing courses for heads of asylum offices (see legislative conclusions below);
7. the creation of interviewing techniques and credibility assessment training programmes for first instance decision takers;
8. the creation of decision writing training programmes for second instance decision takers;
9. the creation of training programmes for border authorities and law enforcement agencies.

In order to improve upon the results mentioned above, all actors in the domestic asylum systems of the CEBS need to be better informed. It was noticed that the refugee offices of the CEBS kept control over the RT process by not informing other ministries, even their own, until the last minute. To avoid this in the future any such project or development initiative should be agreed upon at the highest political level. To avoid the problems faced during the PHA RT process it is important that any political, or decision taking, component of a project be attended by the right political level of decision taker. This will save time and avoid creating internal conflicts that will lead to decisions being overturned or ignored. In addition if there is to be another project with a needs assessment of standards and conditions all the activities within the project should reflect an evaluation of these needs and programmed to address them in a specific and systematic manner.⁴⁹

Any future project which deals with 'asylum system development' in the CEBS or the EU should also maintain one secretariat and be linked to all existing projects in the field.⁵⁰

Along these lines the various asylum related training and support initiatives⁵¹ need to be better co-ordinated and if possible brought together under one umbrella

⁴⁹ This was not the case with the PHA in general, as the WS process did not achieve its stated aims due to its focus on general issues. This created further problems during the RT process as there was an expectation that the CEBS delegations, through the WS process, had acquired certain skills, information and had discussions on themes which would advance the level of political discussions at during the RT process.

⁵⁰ One great problem which faced the PHA organizers were the internal problems facing the EU Commission's DG for Enlargement (formerly DG1A) and DG for Justice and Home Affairs (formerly the JHA Task Force in the Commission's Secretariat). Neither DG co-ordinated its 'asylum system development' efforts, namely Phare and screening. This lack of co-ordination created confusion among the CEBS and, in the case of Estonia, defeated the purpose of the PHA and its potential results.

⁵¹ The Odysseus Programme, the reception, integration and repatriation programmes (now the European Refugee Fund), national programmes for the adoption of the *acquis* (NPAAAs), the Twinings and the PAAs, the various bilateral projects between the EU Member States and individual CEBS, the various programmes run by regional, international organizations and private foundations as well as the technical assistance programme from the EU such as TAIEX.

with at least a common training and planning calendar. This makes sense for a few reasons, the first is that duplication of efforts creates waste and waste leads to frustration and confusion. The WS process of the PHA could have been enhanced or could have enhanced existing training initiatives. The second is that the existence of so many initiatives leads to an unhealthy competition between various organizations offering training. This depletes the limited resources, which are available for the protection of asylum seekers and refugees. This, in turn, makes the asylum field unattractive to potential future investors such as private foundations and state governments. Resources are desperately needed to maintain protection and training programmes.

Experts and others who are expected to review and assess country conditions need either to be trained and tested experts or to be given a more thorough training on the standards and conditions in the areas that they are expected to work. Such training should include discussions with governmental, international and non-governmental experts in the form of a training-of-trainers prior to each new project.

The EU Member States, the CEBS and the UNHCR participants in the PHA have, through the two years of the process, become well-acquainted to the situations facing the CEBS. These resources are of extreme value and should not be lost when the PHA concludes. Follow-up needs to include these individuals and their experiences in so far that they are able to contribute.

There is also a lack of modern, adaptable, region and asylum specific educational tools to help facilitate future 'asylum system development' and the training, which is necessary to accompany such development. Resources need to be invested in the development of asylum specific training tools such as country specific over views, explanatory material regarding the practical application of the EU *acquis* on asylum, the 1951 Refugee Convention and the ECHR, the effects of enlargement on the CEBS and the EU Member States. Such tools would help to train a steady flow of European asylum experts.

II. Legislative conclusions

The legislative process in the CEBS is slow, cumbersome and secretive. Legislation is, in most cases, with the exception of Lithuania, a process which is tightly controlled by the concerned ministry and in many cases the asylum office involved is not informed.⁵²

The legislative process needs to be effectively reformed and the relevant asylum offices need to play a stronger, more active role in this process through the drafting of necessary legislation and lobbying of concerned agencies. Such skills do not currently exist in the CEBS.

With a few exceptions the legislation in the CEBS is moving steadily towards conformity with the EU *acquis* on asylum as it presently stands. Some areas need

⁵² This is also true for the budget process throughout most of the CEBS.

immediate attention such as state support and funding for legal, psycho-social and medical aid for asylum seekers and refugees.⁵³ In most cases the ECHR and the 1951 Refugee Convention have been transposed into national legislation. This process is not complete, however, and efforts need to be taken to guarantee that these two conventions are reflected in the national laws of the CEBS.⁵⁴

III. Institutional conclusions

However, there is still resistance to drastic institutional change, especially in those countries on the verge of entry into the EU. Such countries are unlikely to radically alter border authorities, law enforcement agencies or asylum offices until a clearer signal is sent from the EU regarding the common asylum system.

Two CEBS (Bulgaria and Estonia), despite protests from the EU Member States and Commission representatives, have adopted provisions which allow for border guards to play a decision making role in the accelerated procedure at the border and airport. An EU position on this issue will be the only way to confirm these changes as correct or incorrect.

In general, the CEBS have well-functioning asylum agencies acting as the first instance. Problems arise almost universally regarding the quality of the decision taken due to poor research, poorly held and recorded interviews, lack of use of COI in a foreign language, lack of access to certain COI, lack of reference to national and international case law and standards. A solution might be 'on-the-job' training for the decision takers and a PAA with decision-taking and interviewing experience to work with these decision-takers. These changes need to come from the managerial level, however, and in many cases the heads of asylum agencies in the CEBS are not trained as managers nor do they possess adequate decision-taking or interviewing experience. The CEBS asylum agency managers need to be trained and they need to develop these skills. Such a programme might be held in co-operation with asylum agency managers from the EU.

There remains a chronic problem throughout the CEBS regarding the second or appeals instances. In some states (Poland, Lithuania, Romania) there are two appeals instances but uncertainty as to whether a judicial or tribunal body will hear the appeal. In others (Estonia) it is unclear whether an appeal instance has the right to change the decision of the first instance or merely send the case back to the first instance for another decision. And still in others (Czech Republic) the independence of the second instance is in doubt. Where the second instance is a judicial body the judges are not normally specialized in refugee law and hear a number of other administrative cases. This has led to a backlog of cases and bad decision taking.

Refugee law judges associations exist in the CEBS, but they are generally weak

⁵³ The role of NGOs providing this aid also needs to be clarified in most CEBS. Clear EU directives to this end would help to solve this problem.

⁵⁴ Were the EU to formally adopt both conventions as binding elements of EU law, this problem could be addressed in a more systematic fashion.

and unable to influence the asylum structures in which they function. Therefore training and development of skills is often *ad hoc* and dependent on outside actors. Lack of specialization leads to many judges wondering if they are indeed refugee law judges, administrative law judges or both.⁵⁵ Proper management is an ongoing issue that has yet to be resolved. Funding for second instance bodies remains an issue that also raises the question of their independence in the face of budget cuts and salary fluctuations. Issues such as suspensive effect and reasonable time limits to appeal do not pose major problems.

Therefore, major reform needs to be undertaken in the CEBS. Judges should seek to be specialized in refugee law. Second instance associations in the EU Member States might support the process through bilateral support for the CEBS counterparts.⁵⁶ Finally legal, psycho-social and medical aid for asylum seekers and refugees, as mentioned above, needs to become an institutional standard either provided and/or supported by state and non-state agencies. This issue remains *ad hoc* and unreliable throughout the CEBS. Currently there are no standards regarding such provisions, simply suggestions. A number of national and regional networks exist but their ability to provide an effective, efficient and quality service is hampered by the fact that political and financial support is unreliable. The EU should offer standards of quality and financial guarantees to aid providers that is long term and not *ad hoc*. This should also be accompanied by a strict quality control (of both state and non-state aid providers) and/or an accreditation process that will qualify certain providers and disqualify others.⁵⁷

IV. Practitioner capacity/training conclusions

As mentioned above, training is very important but as many will point out most of the CEBS practitioners have been over-trained.⁵⁸ What is needed is proper managerial follow-up and quality control as to the effects of this training. Poor decision taking on the part of first and second instance practitioners remains a problem throughout the CEBS, and it is doubtful that additional training will solve the problem. Quality control in this regard could mean the difference between the life and death of an asylum seeker. Therefore any measures taken need to be instituted with full political approval and financial support. Training courses should therefore be applied, tested, reviewed and accredited.

⁵⁵ This problem has quality and financial implications regarding who to train and by what methods.

⁵⁶ The creation of a European refugee law judges association, responsible for the training and development of refugee law judges, might be an additional solution. An EU directive regarding standards for second instance, judicial or tribunal, bodies (see above) might help as a long-term solution.

⁵⁷ A PAA with such a portfolio is one way to support this change.

⁵⁸ There were over 500 training events for practitioners throughout the CEBS in 1998–1999 according to the UNHCR refugee law training department.

To avoid overlap and duplication, all asylum-related training programmes should be co-ordinated and a national training calendar drawn-up and training focal points appointed at all agencies dealing with asylum issues. These issues were discussed during the RT process but their institutionalization following the closure of the PHA needs further guarantees. An EU sponsored training programme and the development of tools for asylum agency managers and decision takers could be a cost-effective way to meet this need. Based on thorough training and needs analyses undertaken by the relevant actors, in co-operation with an accredited training authority with asylum system experience, a training development programme should be drawn-up. This programme should set very clear and measurable goals such as improved decisions, language skills, improved access to COI, etc. The programme could have domestic and European components.⁵⁹ Without such an investment programme, the asylum systems of the CEBS and the practitioners which make them work will not be able to function effectively.

V. Co-operation/team building conclusions

Once the project comes to an end, the amount of information and experience concerning 'asylum system development' and the CEBS (as garnered by the EU, the CEBS and the UNHCR participants in the PHA) will be lost, if it is not reapplied.

The number of Twinning and PAAs, bilateral support projects, etc. is expected to grow throughout 2001. There is need for proper co-ordination at a European level. Without a clearly structured dialogue between the EU DGs enlargement and Justice and Home Affairs, the UNHCR and the EU Member States, the confusion and waste of scarce 'asylum system development' resources will continue to grow.

If national training calendars and training focal points are to be established, it would be sensible for there to be a European-wide training calendar and task force on 'asylum system development' which included the above-mentioned actors mentioned.⁶⁰

VI. Financial conclusions

The CEBS remain, on the whole, without effective state and non-state budgets and fund-raising outlets. Therefore, any development suggestions need to come with financial assistance as well.

Bundling or combining support through bilateral or regional activities may solve some of the institutional and training needs, such as better border procedures, legal aid, improved decision taking and clarification of second instance roles, but most development remains country specific. Priority setting, which would help resolve

⁵⁹ Such a programme might be included in the terms of reference of a PAA.

⁶⁰ This should reduce the waste associated with the current state of 'asylum system development' in the CEBS. It will also help to standardize training and set certain necessary benchmarks in the field of 'asylum system development'.

some of the financial concerns, depends very much on the future outlook of the EU border policy, unified reception conditions, a common asylum system and institutions and standards for legal aid. Without clear signals, the CEBS (and many EU Member States) cannot afford to make necessary changes for fear that they will have to undo or alter these changes in the near future.

Resources are indeed scarce, and will remain so unless a greater awareness is made in each CEBS of the importance of a properly developed asylum system. This will, however, conflict with certain domestic priorities and will be unlikely to be the single solution. Co-financing of certain improvements will be the only way for the CEBS to undertake such improvements over the next five years. A clear signal from the EU regarding what these improvements should be will make such developments possible.

Ultimately, the CEBS' financial priorities do not focus on the field of 'asylum system development'.

The expectations and improvements of the EU *acquis* on asylum translate into some very basic costs that will require financing and each CEBS has made it clear that large-scale funding will not come from domestic resources.