

## **UNHCR Working Paper A REVISED “EU PRONG” PROPOSAL**

### **A. Genesis and rationale of revised “EU prong” proposal**

1. In June 2003, UNHCR presented a three-pronged proposal in the context of a dialogue with European Union Member States. This focussed on multilateral cooperation and the equitable sharing of burdens and responsibilities, goals identified both by the European Commission<sup>1</sup> and in the Agenda for Protection.<sup>2</sup> The proposal contained elements on improving access to solutions in regions of origin and on improving domestic asylum systems, as well as a so-called “EU-prong”. The latter aimed to encourage EU Member States to address the phenomenon of mixed movements of asylum-seekers and economic migrants by processing jointly presumed manifestly-unfounded asylum claims from selected non-refugee-producing countries of origin. The proposal in its entirety and the EU prong in particular provoked an intense dialogue.

2. Even though overall numbers of asylum applications have declined in Europe, there continue to be serious concerns about the misuse of asylum procedures and the smuggling and trafficking which often accompany it. At the same time, the fast approaching deadline for agreement by May 2004 on the building blocks of the common European asylum system set at Tampere has accentuated the trend towards downward harmonisation, more exceptions and even derogations to established standards, as evidenced in particular by discussions surrounding the Draft Asylum Procedures Directive.

3. In the intervening months, there has also been an increasing awareness of the likely challenges to Member States’ asylum systems resulting from the imminent accession of 10 new EU Member States in May 2004 combined with the operation of the new “Dublin II” and Eurodac Regulations.<sup>3</sup> This combination of factors may well change the pattern of asylum applications within the enlarged EU. Fingerprinting and registration under Eurodac are likely to mean asylum-seekers can more easily be identified if they seek to move from one EU country to another. Much larger numbers of asylum-seekers may be referred back to and present claims in Member States at the EU’s new external borders as the point of entry into the EU responsible under Dublin II for examining their claims. Returns under Dublin II could therefore overwhelm less well-equipped asylum systems and contribute to pressure for irregular onward movement within the EU. Ultimately, the overloading of some national asylum systems could jeopardise the harmonisation process itself as well as respect for basic protection standards.

4. In light both of considerations relating to the earlier proposals and new thinking about asylum developments in Europe, UNHCR has revised its “EU prong” proposal. The proposed revision endeavours to take into account

- the concerns of future EU States on the external borders of the enlarged EU likely to be most affected by the implementation of Dublin II and Eurodac;
- the concerns of EU Member States, particularly those relating to mixed migratory flows and the return of those not in need of international protection; and
- the longer term objective of the EU harmonisation process to establish a common European asylum system.

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<sup>1</sup> See Communication from the Commission to the Council and the European Parliament, Towards a more accessible, equitable and managed asylum system, 3 June 2003, COM(2)03) 315 final; Communication from the Commission to the Council and the European Parliament on the common asylum policy and the Agenda for Protection, 26 March 2003, COM(2003)152 final.

<sup>2</sup> A/AC.96/965/Add.I, 26 June 2002.

<sup>3</sup> Council Regulation (EC) No. 343/2003 of 18 Feb. 2003 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, OJ L 50/1, 25 Feb. 2003 (Dublin II); Council Regulation (EC) No. 2725/2000 of 11 Dec. 2000 concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 316, 15 Dec. 2000, p. 1.

5. UNHCR's revised EU prong is presented here as a further move towards responsibility sharing within the EU in the provision of reception, decision-making and durable solutions for asylum-seekers and refugees. In short, it proposes the processing of certain categories of asylum claims in EU Reception Centres. Those recognised to be in need of international protection in this process would be settled in participating EU Member States in accordance with agreed burden-sharing criteria, whilst those found not to be in need of international protection would be returned promptly to their respective countries of origin under joint EU operations supported by an international organisation such as the International Organisation for Migration (IOM). Other categories of asylum-seekers would continue to be assessed under the national system applicable in the Member State responsible for assessing the claim. These arrangements would be established in an incremental manner and are outlined in the paragraphs below. Structural elements include the creation of EU Reception Centres and an EU Asylum Agency, their legal basis being determined by one or more Council Regulations or Decisions.

## **B. Proposed procedural elements**

### **Registration and pre-screening**

6. UNHCR's revised EU-prong proposal recommends that registration and pre-screening be moved progressively from a matter implemented at national level to one that is carried out at EU level. Initially, therefore these processes would continue to be carried out by national officers, assisted if necessary by staff made available through the EU Asylum Agency, there where capacity is lacking or systems become overwhelmed by an influx. Registration and pre-screening would, however, progressively become an EU undertaking which

- registers the personal details of asylum applicants;
- channels asylum applicants into the national asylum procedure or the EU Reception Centre, depending on the categories set out in paragraph 7 below;
- identifies family members who can be reunited;<sup>4</sup>
- refers victims of trafficking without protection concerns wishing to return to their country of origin to an organisation such as IOM for assistance; and
- refers arrivals not claiming asylum for return to their country of origin under relevant readmission agreements, with IOM assistance as appropriate.

### **Categories of asylum claim to be assessed in EU Reception Centres**

7. In order to determine which asylum applications should be assessed at EU Reception Centres, UNHCR suggests that caseloads be identified either in relation to measures needed to ensure the effective implementation of Dublin II and Eurodac and/or on the basis of the asylum-seeker's country of origin. Categories of asylum claims which EU Member States could consider processing in EU Reception Centres would include:

- caseloads in EU Member States where the number of transfers under Dublin II and the effect of Eurodac threaten to jeopardise the effective implementation of these instruments;
- caseloads present in several EU Member States from countries of origin whose asylum-seekers are regularly rejected in high numbers in destination States; and/or
- caseloads present in several EU Member States from countries of origin, which warrant pooling of resources to determine status because of their complexity.

8. In this way, States could pool and share their expertise and experience. If all asylum claims in the particular category concerned were determined at the same Centre (or group of Centres if the numbers of applications warrant it), this should reduce pressure for irregular

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<sup>4</sup> Article 8 of the "Dublin II" Regulation determines that where "an asylum seeker has a family member in a Member State whose application has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for asylum, provided that the persons concerned so desire". On a similar basis, if assessment of the claim of one family member was already under way at one EU Reception Centre, other family members could be reunited there.

secondary movement and the likelihood of multiple asylum applications. Flexibility to adjust the caseloads selected would be needed, so as to adapt to changes in the numbers or nature of arrivals.

### **Process to determine claims of selected caseloads in EU Reception Centres**

9. It is envisaged that decision-making in the EU Reception Centres would lead to a uniform status for those in need of international protection valid throughout the Union. Procedures and decision-making would

- involve first instance decisions being made in an interim phase by national officers of the State concerned, supported by officials, interpreters, etc. seconded by the EU Asylum Agency and, at a later stage, directly by EU officers of the EU Asylum Agency; and
- appeals decided, in an interim phase, on the basis of the national system in place in the Member State concerned (if necessary, supported by the EU Asylum Agency) and, at a later stage, by an independent EU Asylum Review Board created under an appropriate instrument determining its composition and mandate; as well as
- follow a consolidated asylum procedure regulated by a new Council Regulation or Decision for the purpose of determining refugee status *and* subsidiary protection substantively on the basis of the Qualification Directive.

### **Settlement through burden-sharing arrangements of those found to be in need of international protection**

10. Settlement of those found to be in need of international protection in EU Member States on the basis of agreed criteria represents a key element of UNHCR's proposal. Otherwise the potentially overwhelming burden of hosting *and* integrating persons in need of international protection is likely to fall largely on EU Member States at the external borders of the Union. Asylum-seekers' awareness that cases recognised in EU Reception Centres would end up being settled among all Member States, rather than just in the Member State hosting the EU Reception Centre would represent an incentive for applicants to remain in the Reception Centre to which they have been assigned until a decision is made, thus reducing pressure for onward irregular movement among Member States. The criteria for an equitable distribution would take into account:

- effective links, including family, educational, or cultural ties;
- the absorption capacity of Member States; and
- the contribution to burden sharing made, for instance, by Member States with EU Reception Centres on their territory.

11. Assistance with integration would be provided through a (relaunched) European Refugee Fund, thus also assisting burden sharing.

### **Return of those not in need of international protection to countries of origin**

12. Collective action by EU Member States to ensure the prompt return of those found not to be in need of international protection to their countries of origin<sup>5</sup> would allow the burden of returning rejected cases to be addressed jointly. Readmission agreements, complemented, for instance, by the forthcoming draft Directive on the mutual recognition of return decisions to be presented in early 2004, and other supportive incentives represent important components. Collective action by EU Member States is advantageous for the following reasons:

- prior negotiation of readmission agreements helps ensure rejected cases can be transferred promptly and under acceptable conditions;
- such negotiations are facilitated by the joint political weight of the EU and Member States;
- rejected asylum-seekers from the same country of origin can be held together (and if likely to abscond, detained) before deportation and returned more easily as a group; and

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<sup>5</sup> See UNHCR Executive Committee, Conclusion No. 96 (LIV) on the return of persons found not to be in need of international protection.

- the burden of returning rejected asylum-seekers is carried jointly by the EU and Member States, rather than falling solely on the State hosting the EU Reception Centre.

### **Role of international organisations and other actors**

13. Collective EU action along the lines outlined above would enable the EU to take advantage of support and assistance from international organisations and non-governmental organisations (NGOs), including local civil society groups. UNHCR's supervisory and monitoring role under its Statute in conjunction with Article 35 of the 1951 Convention relating to the Status of Refugees, could be realised, for instance, through

- overall monitoring to ensure integrity and transparency of the process, including through the appropriate sharing of data;
- the provision of UNHCR expert advice, training and other capacity building support, especially in acceding Member States; and
- at a later stage, the provision of an advisory and support function to the EU Asylum Agency and the EU Asylum Review Board once these are established.

14. NGO assistance in EU Reception Centres, including through the provision of advice and counselling, would be especially valuable in Member States with more limited capacities. As for IOM, functions could involve the provision of assistance

- to victims of trafficking without international protection needs, wishing to return to their country of origin and referred to it by Member States after pre-screening;
- to arrivals not claiming asylum and returning to their country of origin; or
- assistance with the return of asylum-seekers found after pre-screening not to be in need of international protection.

## **C. Proposed structural elements**

### **EU Asylum Agency**

15. The creation of an **EU Asylum Agency** represents an integral element of the UNHCR revised proposal. Like the recently agreed EU Agency for the Management of Operational Cooperation at External Borders, endorsed in November 2003 by the Council of Ministers, the EU Asylum Agency could set up offices in the different Member States as well as a headquarters in one Member State. Staff would initially be seconded from national immigration or asylum agencies and, as the Agency expands, then be independently recruited. The initial functions of the Agency would essentially be related to capacity building and provision of support, with these functions expanding as it became established. Functions could thus progressively include:

- support for and later carrying out of registration/pre-screening of asylum-seekers at points of entry or in EU Reception Centres;
- rapid deployment of decision-makers, interpreters, etc. to deal with particular influxes or capacity problems;
- provision of training, expert advice, country of origin information, etc. to Member States to strengthen capacities and assist harmonisation of decision-making;
- at a later stage, first instance decision-making in a collectively implemented EU asylum procedure;
- establishment and management of an independent EU Asylum Review Board;
- coordination and administration of settlement solutions within the EU; and
- coordination of return of those found not to be in need of international protection.

### **EU Reception Centres within the EU**

16. The proposal also envisages the establishment of Reception Centres for asylum-seekers within the EU. A number of such centres could, for instance, be located close to the land and sea borders of the EU to facilitate reception and return. Asylum-seekers would be hosted in such centres for determination of their claims both from within the EU Member State

where the Centre was situated and from other EU Member States on the basis of an appropriate arrangement. Features of these EU Reception Centres would include:

- all asylum-seekers from selected caseloads are in principle hosted in such centres while their claims are determined;
- decent accommodation and reception facilities are provided, taking account of the special needs of vulnerable persons, including children;<sup>6</sup>
- funding is with the support of a (relaunched) European Refugee Fund;
- EU Reception Centres are in principle open; an exception could be made where a particular Centre is dedicated to determining categories of presumed manifestly unfounded cases from designated countries of origin where most applicants are likely to face rejection and return and where simplified procedures would ensure fair but swift processing of claims.<sup>7</sup>

#### **Legal basis: EC Regulation(s) or Decision(s)**

17. The legal basis for the proposals outlined above would need to be set out in one or more Council Regulations or Decisions. These would represent “measures on refugees and displaced persons”, which “promot[e] a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons”, as envisaged in Article 63(2b) of the Consolidated Treaty. Two phases of implementation are envisaged, initially involving joint (inter-State) processing under the national law of the State where the EU Reception Centre is located and in conformity with EC Regulations and international standards. This pooling of decision-making and resources could later pave the way for collective EU processing by the EU Asylum Agency. As these mechanisms are gradually instituted, instrument(s) will be needed to regulate matters including:

- the creation of EU Reception Centres, including appropriate reception arrangements and basis for processing cases there;
- the creation of an EU Asylum Agency, including an EU Asylum Review Board, and the composition and mandate of these bodies;
- the EU-wide recognition of asylum decisions taken collectively;
- the distribution criteria for EU settlement of those recognised to be in need of international protection;
- the joint return endeavours for rejected cases; and
- the inter-relationship between the EU arrangements and applicable national law.

#### **D. Similarities and differences with original UNHCR EU-prong proposal**

18. The revised EU-prong is similar to UNHCR’s original proposal in the following key respects:

- reception and processing remains within EU borders;
- settlement through burden-sharing arrangements of those recognised;
- burden-sharing in return operations;
- monitoring role for UNHCR.

19. Bearing in mind subsequent developments, the revised proposal is, however, more comprehensive in that

- a clearer administrative structure is established (EU Reception Centres; EU Asylum Agency; EU Asylum Review Board);
- EU-level processing is no longer for “asylum applicants originating from designated countries of origin who are primarily economic migrants resorting the asylum channel” but for the categories outlined in paragraph 7 above;
- it takes account of problems likely to be faced by EU Member States, including in particular those situated at external borders as a result of the implementation of Dublin II and Eurodac;

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<sup>6</sup> Standards in EU Reception Centres would be based on those set out in Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers. Additionally, in some situations, host family or other types of reception arrangements could be envisaged.

<sup>7</sup> For applicable standards, see Executive Committee Conclusion No. 30 (XXXIV). In such cases, detention would be subject to human rights guarantees, including the right to regular judicial review.

- EU Reception Centres are in principle open, unless there are exceptional circumstances as outlined in paragraph 16 above;
- decision-making is in principle under a regular rather than an accelerated procedure;
- the proposal provides a mechanism for progressive shift from national to EU reception, processing and settlement/return arrangements.

#### **E. The need for urgent action**

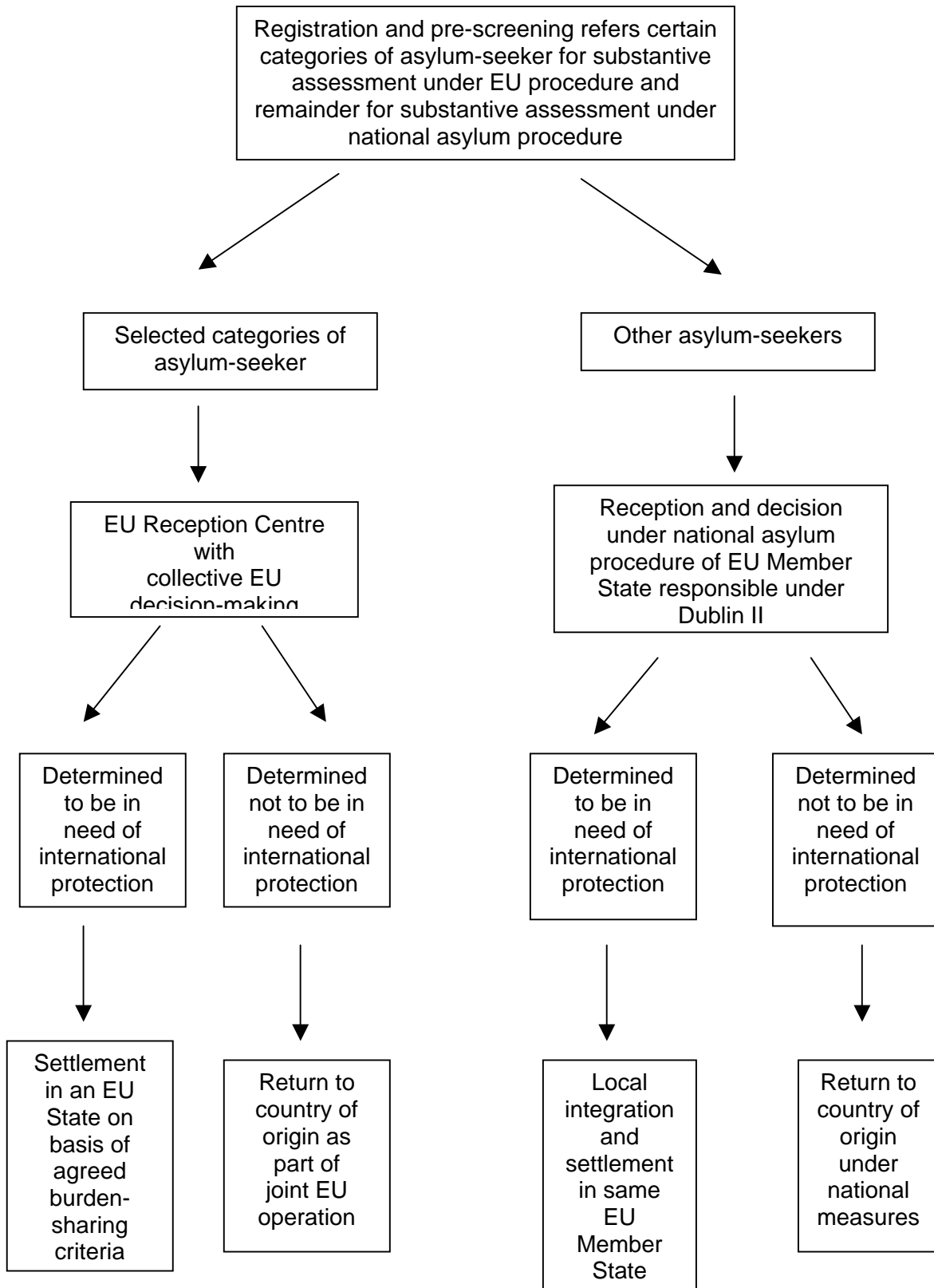
20. Common European approaches are urgently needed to address the asylum/migration nexus, to preserve the integrity of the Council Directives and other arrangements put in place as part of the harmonisation process, including under Dublin II and Eurodac, and to avoid the overburdening of inadequately resourced asylum environments.

21. By reducing pressure on national asylum debates, it may also provide space to take a fresh look at the draft Council Directive on asylum procedures. This Directive has been the subject of concerns including those brought to the attention of the Italian Presidency by the High Commissioner for Refugees in his letter and Aide Mémoire of 20 November 2003.

22. The proposal outlined here is more ambitious than its predecessor, but the need for collective action and a clearer sense of direction as to how the common European asylum system can be realised is more evident, particularly in view of the EU's impending enlargement in 2004.

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**CHART OF REVISED UNHCR PROPOSAL ON “EU PRONG”**



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