

Asylum and international protection in the EU: strengthening cooperation and solidarity

UNHCR's initial inputs to strategic guidelines for future development of the area of freedom, security and justice

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Overarching principles and elements

Instruments and tools have already been developed in the Justice and Home Affairs (JHA) area which can help to address many of the EU's current challenges in the area of asylum, including deaths at sea, lack of access at borders, the pressures of the Syria crisis. The Treaties, as amended, and the legal and policy measures adopted over the course of 15 years since 1999, have defined ambitious but achievable goals on which real progress has been made. Continued commitment and engagement will be needed to bring that work to completion, and to ensure that standards defined by agreement among States can be met and implemented in practice.

All states, institutions and other stakeholders in the EU context have obligations to uphold, and the potential to benefit collectively from further efforts to achieve the objectives set at Tampere in 1999, which have been validated and reinforced by the work done since then. In the asylum area, the collective interest in common rules and more consistent practice has been acknowledged. Further work is needed to ensure more consistent implementation and the fulfillment of fundamental rights that can result from fair and efficient asylum systems.

At the same time, greater coherence will be needed between and within areas of activity at national and EU level. Multi-faceted responses, which acknowledge and draw on the links between different policy areas, will be needed to tackle Europe's more complex questions in the future – including those arising around migration, economic growth including labour market needs, cooperation with neighbouring countries and respect for fundamental rights, in a context where greater security and adherence to law can be assured. A more holistic approach, based on respect for fundamental rights, would help ensure that asylum-seekers, refugees and others in need of protection do not fall into gaps which might arise between different policy areas.

Ongoing challenges around international protection in the EU are among those that warrant such **cross-cutting** engagement. Thousands of people have died in recent months and years in sea disasters in the Mediterranean. These terrible human catastrophes highlight starkly the need for systems that work: to address

the root causes of flight and desperate irregular journeys to Europe; to manage borders humanely and effectively; but also to ensure rescue at sea, and to bring refugees to safety where necessary. Strengthened responses to such complex challenges must involve dedicated resources, political will and concrete measures across different sectors of justice and home affairs, as well as foreign affairs, and development and humanitarian actors. Much can be drawn from existing EU tools and expertise, as well as cooperation within and between states, within the EU and beyond; and the contribution of other concerned stakeholders. Such partnerships have the potential to contribute constructively to more **effective protection systems**, as well as principled and well-managed border and migration policies.

Over the next few years, there are a number of concrete areas in which the EU and its Member States and institutions are encouraged to take further steps, based on the existing legal framework and Treaty objectives, in their collective interest (see part 2 below). Beyond this, a set of longer-term, more aspirational goals can also be envisaged (see part 3). The Union is encouraged to look ahead to this longer-term vision, while continuing to address realistic and achievable goals for the immediate future. UNHCR has set out below a number of proposals for both, which the EU, Member States and institutions are encouraged to consider.

Current priorities & needs: Implementing and strengthening the existing legal & policy framework

1. The Common European Asylum System (CEAS)

The EU is encouraged to reaffirm its commitment to establishing and ensuring the **effective operation in practice** of a **common policy on asylum and international protection** based on the **full and inclusive application of the 1951 Convention** relating to the Status of Refugees and other relevant treaties.

It is acknowledged that the Common European Asylum System (CEAS) should comprise a **uniform asylum status**, valid throughout the Union, as well as a uniform status of subsidiary protection; in addition to **common procedures** for granting and withdrawing protection, and reception standards, among other elements. Measures and practice forming part of CEAS must ensure absolute respect for the principle of *non-refoulement* and that the right to asylum shall be guaranteed in accordance with the **Charter of Fundamental Rights** (Arts 18, 19).

The central principles of **fundamental rights** and **solidarity** should underpin further development and implementation of the CEAS. Other key elements must include **security**, for the individual and the state; **durable solutions** for those in need of protection; and other outcomes, including **return** in safety and dignity, for those who do not. Procedural and substantive **safeguards** are crucial to the efficient operation of asylum systems in the Union, and can help Member States swiftly and accurately **identify** refugees and people at risk of serious harm, as well as those who do not qualify for protection.

Implementation of asylum laws

Based on the recast EU instruments agreed by the Council and Parliament, the EC is facilitating discussion among Member States and intends to produce guidance to assist their **transposition** into domestic legislation. National laws

fulfilling the aims and detailed standards in the recast measures and the Treaties can provide the basis for more **accurate, high quality asylum decision-making** and protection.

It is widely acknowledged that **implementation** represents the next major priority following agreement on the recasts. The European Asylum Support Office (EASO) will play a central role in assisting Member States through the further development of tools and systems for support, aiming at promoting best practice and high standards, across the spectrum of practical cooperation activities. In this context, ongoing cooperation on **quality in asylum decision-making, training, and country of origin information (COI)** remain essential to efforts to ensure greater convergence and accuracy in asylum claim determination. It will also be important to ensure appropriate attention to gender-related issues, as well as specific needs, among other areas. Successful projects and initiatives implemented at national level could usefully be shared. UNHCR and other partners can and should be encouraged further to contribute to practical cooperation actions, bringing to bear their expertise and skills.

The recast **Dublin Regulation**, correctly implemented, could ensure more swift and resource-efficient identification of the responsible Member State for determining an asylum claim, with particular attention being paid to implementation of the family criteria. The shortcomings of the Dublin procedure need to be addressed at all levels including lack of full compliance with registration and reception standards at places of entry, the lack of use of all the criteria which can be used to determine the responsible country, and the absence of a mechanism that can organize intra-EU solidarity. Attention to utilization of other applicable responsibility criteria, additional to that of the first state of entry, as well as dependency and discretionary clauses, could ensure more sustainable outcomes. They could also reduce secondary movement, notably where family members are involved.

The **Early Warning and Preparedness mechanism** will potentially provide a crucial tool for assisting States in need of support to address immediate or foreseeable pressures and challenges. States and other bodies will need to lend their full cooperation to EASO and the Commission to ensure that an accurate, up-to-date picture is available, and measures taken where needed to ensure that States are in a position to fulfill their *acquis* obligations. The planned evaluation of Dublin in 2015 will provide an opportunity to adjust or reinforce the system as and if needed, based on the experience of Dublin's application up till then.

The recast Reception Conditions Directive reinforces the principle of **free movement** for asylum-seekers, with detention to be used only where necessary on the basis of an individual assessment, and only if other less coercive **alternatives to detention**¹ cannot be applied effectively. Sharing of experience and best practices on such alternatives would be important to provide Member States with the means to fulfill this obligation, along with requirements to ensure

¹ UNHCR's revised Detention Guidelines provide concrete proposals for States seeking to develop and utilize alternatives to detention: UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <http://www.refworld.org/docid/503489533b8.html>

effective judicial oversight and adequate conditions where detention is used.

For some MS, providing adequate **reception** conditions, and avoiding the use of detention except where necessary and unavoidable, remains an ongoing challenge. Stronger, more sustainable reception systems, including through more effective use of EU funds, but complemented by adequate investment of national funds and efforts, should be pursued. Sharing information and experiences of alternatives to detention is encouraged. Collaborative approaches to sharing of reception capacity and expertise could also further be explored.

*Refugee and
subsidiary
protection and
other forms of
status*

A uniform asylum status, and a **uniform subsidiary protection status** throughout Member States of the Union, through consistent and harmonised application of the CEAS instruments, would entail greater consistency in the status and levels of rights accorded to people in need of international protection throughout the EU.

Following **evaluation** of the measures and progress made in implementation of the CEAS, and related instruments, including the revised Long-term Residence Directive, consideration should be given to further steps to achieve the objectives of the Treaties for establishment of common procedures and uniform status of asylum and subsidiary protection.

A mechanism for the transfer of protection responsibilities should be a goal of the CEAS with consideration given to possibilities for creating a framework for the transfer of protection of beneficiaries of international protection when exercising their acquired residence rights under EU law, in line with Article 78 (a) of the TFEU. In addition, this measure could contribute to alleviating the particular pressures felt by some Member States as a result of granting protection to significant numbers of applicants, by providing international protection beneficiaries with opportunities to take up residence in other Member States, subject to fulfillment of relevant conditions, and with respect for the principle of *non-refoulement*.

UNHCR recognises that a functioning asylum system requires that persons who are not in need of international protection are returned swiftly to their countries of origin in safety and dignity and in accordance with law, once their claims are rejected after a fair process. Voluntary return will generally be the more cost-effective and straightforward option, but involuntary return may be required in some cases, to ensure an asylum system functions effectively with sustained public support. For people who cannot be removed, long-term detention or extended stay without basic rights or status is undesirable for their host communities, as well as for them, most notably in the case of children.

*Comprehensive,
accurate data to
underpin policy
and practice*

Accurate, comparable and up-to-date information and analysis – both quantitative and qualitative - about the asylum situation and asylum-related trends in Member States are needed, to enable the adoption of informed and impactful policies and measures. EASO's mandate to collect information will be very important to provide the Member States and EU with an up-to-date and clear picture, in the context of Early Warning but also on an ongoing basis, using its other information tools.

Competent and expert bodies, including EU, national and non-EU entities can also contribute to reinforcing information-gathering and analytical processes at EU level through regular monitoring activities.

Credibility assessment is a crucial area of asylum practice in many Member States, which determines the outcomes of protection claims in a large proportion of cases. Further research, exchange of good practice and development of tools could assist Member States with this significant challenge. UNHCR's analysis in the '*Beyond Proof*' report,² produced following an EU-funded project undertaken in cooperation with Member States, could provide a valuable starting point for promoting effective implementation of the relevant standards on credibility in the Qualification and Asylum Procedures Directives.

Dialogue and cooperation between administrations (first instance bodies) and **courts** in and between Member States could help advance knowledge and understanding of practical challenges on both sides. As courts play a key role in interpreting legal provisions and assessing challenges to negative decisions, their involvement in practical cooperation and other relevant initiatives is to be encouraged to ensure an effective remedy is truly available.

2. Access to territory and asylum procedures in the Union; protection-sensitive border and migration management

While recent amendments to EU instruments have reinforced rights of **access** for those claiming protection at borders and in Member States, this remains a challenge in practice. The practice of building fences to serve as a deterrent and push-backs at the border remain serious concerns. A focus on ensuring access to an effective means of pursuing claims for protection is needed, in line with international and European obligations. This should be pursued through relevant fora and with competent bodies, including Frontex. Coherence between the Union's goals on **migration and border management** on the one hand, and ensuring observance of **asylum and other fundamental rights** on the other, is essential to achieve this.

Readmission agreements with countries located at the external borders of the EU which are either not safe or which do not have the capacity to provide more space for refugees need to be approached with caution. While officially these agreements should not apply to asylum-seekers, the lack of access to interpreters and clear instructions given to border guards lead to a situation where people in need of international protection are not able to seek asylum and are sent back to non EU-countries as "irregular migrants" irrespective of their need for international protection.

People moving irregularly towards Europe in dangerous conditions – including not only those needing protection, but also others moving for other reasons – pose increasingly complex challenges for EU Member States, stretching the capacity of their reception and asylum systems in many cases. **Streamlined processes** for **identifying** those who are seeking protection, potentially through improved

² UN High Commissioner for Refugees (UNHCR), *Beyond Proof, Credibility Assessment in EU Asylum Systems : Full Report*, May 2013, available at: <http://www.refworld.org/docid/519b1fb54.html>

identification and **referral** systems, could further be developed. Such mechanisms could also be developed further in collaboration with EU Member States working collaboratively, as well as international and non-governmental organisations, based on successful models and projects used in some Member States in the recent past, notably the Praesidium project in Italy.

Collaboration with other countries, including countries of transit and first asylum, should also be a vehicle for reinforcing protection principles at and beyond the EU's borders. Work undertaken by the Task Force on the Mediterranean, and the Commission's subsequent Communication,³ acknowledges the importance of working in partnership with countries in Europe's region. Further work to develop regional approaches, including with countries in North Africa, could provide a valuable opportunity to development of more comprehensive responses to the extremely complex phenomenon of movements toward Europe, involving a focus on ensuring access to territory and to fair and efficient asylum procedures for those who may need international protection.

3. Enabling refugees to contribute: fulfilling their maximum potential

Effective **integration**, including through targeted measures aimed at people granted international protection, can help ensure that newcomers will contribute more effectively to their host societies at an early stage. This can also reinforce public support for asylum policies and practice. In addition, Member States could benefit from harnessing the skills and experience of those granted a right to stay on protection grounds, including where there are demands in the relevant sectors of the labour market, and could facilitate processes for recognition of educational and school certification.

Many civil society organizations have extensive experience and expertise which can be brought to bear by States. Refugees and former refugees themselves can also provide insights and support to newcomers that can also facilitate the process, and deserve a voice in this and other processes. Consideration should be given to extending European Asylum Migration Integration Fund (AMIF) envelopes to include priority needs identified by NGOs, local authorities, and refugees who often have a different perception of where the priorities should be. While recognizing that the Commission has made progress by consulting NGOs, funding allocations do not enable them to benefit directly from the funding of the Commission.

³ COM(2013)869 final, 4.12.13, http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131204_communication_on_the_work_of_the_task_force_mediterranean_en.pdf

4. Reinforced solidarity in action, within and beyond the Union

Intra-EU solidarity

The Treaties provide that the Union's common policy on asylum should be based on 'solidarity among the Member States' (Art 67(3) TFEU). Measures developed to date form part of a **'toolbox'**, elements from which could hold great potential to ensure more effective solidarity in action.

Drawing on discussions among States and a study undertaken at the request of the Commission in 2013, a pilot project on **supported processing of asylum claims** is foreseen. UNHCR welcomes proposals that a pilot would focus on people **rescued at sea in international waters** who claim asylum, a particularly vulnerable category for whom allocating responsibility has posed challenges in the past. As the Task Force on the Mediterranean has underlined, recent tragic incidents at sea have highlighted the pressing need to develop more effective and proactive approaches to ensure access to protection in safe conditions, and a supported processing pilot could provide a starting point.

Voluntary relocation of people in need of protection may help some Member States with limited capacity, in targeted, strategic conditions. States benefiting from such support must be encouraged to strengthen integration systems further, demonstrating their commitment to fulfilling their obligations towards those who will remain, as well as their European partners.

Solidarity with third countries

Beyond the EU, ongoing efforts to reinforce asylum capacity- and institution-building are essential. The EU and Member States are strongly encouraged to continue to engage with States in their near neighbourhood, and beyond, and to promote international protection and respect for fundamental rights together with border and migration management, difficult though this may be in many cases. Regional Protection Programmes (RPPs) or Regional Development and Protection Programmes can form a part of this.

Further humanitarian and development cooperation and assistance, in coordination with capacity-building, are essential. Recognizing that 80% of the world's refugees are hosted in developing countries, which are often least well-equipped to provide them with shelter, the EU has the potential and responsibility to continue to support host countries in refugees' regions of origin. Justice and Home Affairs entities can step up their efforts to work in close coordination with development and aid actors to ensure that maximum impact from their investments can be achieved.

Increased EU resettlement, including increased resettlement numbers for

refugees coming to a wider group of Member States, could strengthen the strategic impact of resettlement for Europe. A target of 20,000 resettled refugees to be resettled to Europe by 2020 has been put forward by civil society, including many organisations at the national level which are ready to support Member States in this endeavor. These can offer concrete contributions to reception and integration, reinforcing the sustainability and potentially public support. Greater EU involvement, including through EASO-coordinated identification of priorities and other elements, could be foreseen for the future.

Humanitarian visas or ‘protected entry procedures’ also merit further consideration, taking into account their use in the past by a number of Member States. Their potential value and feasibility should be revisited, as a potential means to ensure people at risk can be identified outside the EU, and granted visas by Member States on a voluntary basis, to facilitate their travel to safety in Europe.

Legal migration opportunities to the EU Member States for refugees, incorporating protection safeguards, could be considered, as part of further legal migration measures, to address labour market needs, among others. Such measures could enable people who have been recognized as refugees in one country, but are presently unable to move on lawfully to another, to apply for entry to Europe as skilled workers or under other categories. This could help the individual to realize his or her potential, as well as European countries seeking to recruit suitable migrants in line with their needs. In very concrete terms, enhancing **legal migration** channels and mobility schemes can also potentially relief pressure on asylum processes, by offering alternatives to at least some people whose reasons for moving onwards from first country of asylum to Europe are unrelated to protection needs. Provision of accessible, accurate information about conditions in Europe and the dangers of irregular travel across frontiers should also further be developed, including in continuation of existing and past EU-funded projects together with third countries.

Other measures to **address root causes of forced and other forms of displacement** and ‘push’ factors – including working with third countries to promote conflict resolution and reinforce respect for fundamental rights – remains an ongoing priority.

5. Swifter, coherent and flexible European responses to protection needs in emergencies

Recent years have seen **major crises** that have triggered forced displacement and significant new arrivals in or close to Europe, including many people in need of international protection. The most devastating of these has been the conflict in **Syria**, which has forced millions to flee in the face of unspeakable violence and persecution.

Member States have been called upon at various points in recent years to

impacting on Europe

consider or undertake **contingency planning** to prepare for possible significant arrivals at frontiers or within the territory, including people seeking asylum. Member States require preparation and systems, including arrangements to immediately call for support from the Commission and EASO if needed, to ensure that legal standards and obligations will be adhered to including in the context of increased arrivals.

Ways need to be found to ensure that the practical and legal tools available where appropriate - including the Temporary Protection Directive - can be used effectively. New tools may also be required to enable Europe to respond to actual or threatened displacement crises in a rapid and comprehensive way, based on lessons learned from experiences of recent years.

6. Family reunification

Respect for family life is a key principle of European fundamental rights law, reflected in key parts of the EU *acquis*. Family unity is also a key priority of many refugees, and their integration process may be greatly facilitated by reunion with close relatives, whose presence can help them restart their lives.

Bringing families together can also serve as a **protection tool**. States may be able to save lives through **facilitated family reunion** between refugees in Europe and family members who have also been forced to flee. UNHCR has explicitly promoted this in the context of the Syria emergency, where countless families have been separated. Enhanced family reunification systems in the EU could also represent a responsibility-sharing gesture for countries in the region of origin of refugees, through resettlement or humanitarian admission based on family links criteria.

Increased family reunion channels could also remove a powerful incentive for many third nationals to move onward in the EU. Many people move from one Member State to another to rejoin family members. Applying correctly the family and discretionary criteria under Dublin, as well as more flexible approaches to family reunification in general, could address this issue to the benefit of individuals as well as states, through reducing costs and unnecessary procedures, and enhancing integration potential.

7. Identifying and addressing specific needs

Third country national children in the EU benefit from the protections afforded by EU law and policy, but also international provisions under the Convention on the Rights of the Child and the 1951 Refugee Convention. EU laws and policies on child protection (including the 2010 Action Plan on unaccompanied children) acknowledge that the best interests of the child are a primary consideration. More effective implementation of the best interests principle is needed, both for children in families and with caregivers, as well as those who are unaccompanied or separated from those responsible for them under law or custom. Work underway under the EASO's auspices on key challenges, such as age

assessment and family tracing, can help States addressing these crucial aspects of the process. Across the range of policy areas, child protection and respect for their best interests ought to be strengthened as a mainstream priority.

New measures on **identification** and providing for people with specific needs or vulnerabilities have been adopted in the recast instruments. States have taken the positive step whilst acknowledging the challenges, including increased costs, timeframes and risks that people without such needs may invoke the provisions in some cases. While existing processes may provide effective opportunities to identify such people in some Member States, dedicated procedures for identification may be required in others.

Strengthened knowledge and skills could help achieve more effective and streamlined implementation of these provisions, for the benefit of those who need them. Training and guidance on identification and treatment of people who have experienced **torture or trauma**, survivors of **sexual and gender-based violence**, or victims of trafficking who may have protection needs, could assist Member States as well as the people concerned.

8. Protection for victims of trafficking in human beings

Victims of trafficking in human beings may have international protection needs as **refugees**, or people at risk of serious harm who are in need of **subsidiary protection**. This requires criminal law enforcement bodies to have the knowledge required to identify and refer trafficking victims to asylum authorities, where needed. It also demands that asylum authorities are aware of the specific risks which may face victims of trafficking, and analyse them in light of protection criteria in the asylum *acquis*. A fundamental rights-based approach to victims of trafficking could help address the fragmentation of their entitlements across different policy areas.

9. Statelessness

Statelessness arises as an EU and Member State priority, not only because a large and increasing number of Member States are party to the 1954 Convention relating to the Status of Stateless persons and the 1961 Convention on the Reduction of Statelessness, but also because of the EU's commitment to addressing fundamental rights concerns. The EU pledged in September 2012 that Member States which had not done so would accede to the 1954 Convention, and consider acceding to the 1961 Convention. The EU *acquis* recognizes, to a certain extent, the need for legal protection for stateless persons, including them in the definition of third country nationals who may qualify for subsidiary protection under the Qualification Directive. These starting-points could and should be taken further through additional measures to strengthen the protection of stateless persons where they fall outside the scope of the Qualification Directive; to promote law reform to prevent statelessness (notably among children); and to reduce statelessness through facilitation of the acquisition of nationality for stateless persons in Member States, with the eventual goal of eradicating

statelessness in Europe by 2020. Specific procedures for the identification and recognition of stateless persons have been adopted in a number of Member States, which could provide positive examples for others.

The longer-term vision: Further steps for the future

Joint processing in the EU is a concept which could be developed further to strengthen responsibility-sharing in future. Examined in a 2013 EC study on the feasibility and implications of joint processing, which identified four possible models, the idea could contribute to more effective responsibility-sharing, mutual trust and consistent outcomes from asylum processes in the EU in some situations.

Ways should be considered both to strengthen the protection of **stateless persons** and to prevent and reduce statelessness, in law and practice, in the future through EU measures and increased inter-state cooperation. Much could be achieved within the Union's existing legal competences, and even more if that sphere of competency were to be expanded in the longer-term future.

Possible future accession by the European Union to the **1951 Convention relating to the Status of Refugees**, and the 1954 Convention relating to the Status of Stateless persons, could strengthen the place of the EU as a leading actor in the international protection system, and a global leader in fundamental rights.