



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

UNHCR proposals to address current and future arrivals of asylum-seekers, refugees and migrants by sea to Europe

1. Rescue at sea

1.1 The need for a robust and predictable response by European States

With the end of the Mare Nostrum operation, the number of crossings and deaths in the Mediterranean Sea in 2015 is expected to remain high. During the first two months of 2015 alone, the estimated number of those dead or missing stood at 373 persons. This should not come as a surprise. As long as the drivers for migration persist, migrants and refugees will continue to undertake perilous journeys to seek safety.

While the Frontex-led Joint Operation Triton has contributed to search and rescue operations, this border surveillance operation does not have the resources and mandate to carry out the robust search and rescue operation that this situation requires.

In order to avert further tragedy, the European Union must mount a credible search and rescue operation in the Mediterranean or fund Italy to resume an effective search and rescue operation embedded in a number of other complementary measures, including reinforced law enforcement against criminal smuggling and trafficking networks.

1.2 Compensating private operators

The shipping industry has played a significant role in search and rescue operations in the Mediterranean, leading private companies to incur heavy financial losses in the process. As a result, they have started to re-route their voyages to avoid areas frequented by migrant boats, and private vessels are becoming more reluctant to reveal their positions at sea. In order to reverse this unfortunate trend, States should consider the establishment of schemes to compensate shipping companies for the losses they may incur while upholding the long-standing tradition, and obligation, of rescue at sea. Measures could include exemption from docking fees when disembarking persons rescued at sea, and working on predictable disembarkation modalities for such rescue operations. A mechanism established by the International Maritime Organization during the massive departures from Viet Nam by boat in the 1980s still exists and could be reactivated.

2. Intra-EU solidarity

In order to address the current migration challenges that Europe is facing, the EU must consider innovative approaches that better reflect solidarity and responsibility-sharing among its Member States.

2.1 Support to Member States under migratory pressures

All indicators suggest that the current pressures will continue in 2015. It thus remains of paramount importance to provide targeted support to the countries facing the largest arrivals, namely Italy and Greece but also others at the EU external border which may come under pressure such as Bulgaria, Cyprus, Hungary and Malta. In accordance with article 8 of the Regulation¹ establishing the European Asylum Support Office (EASO), such pressure may be characterised by the sudden arrival of a large number of third-country nationals who may be in need of international protection and may arise from the geographical or demographical situation of the Member State. The support plans implemented by the European Asylum Support Office (EASO), as well as the funding support of the European Commission, remain crucial and will hopefully help improve the identification process as well as reception conditions, particularly for sea arrivals to Italy and Greece.

2.2 Full implementation of the Dublin Regulation²

The Dublin III Regulation continues to be the only regional legal instrument that governs the allocation of responsibility for asylum-seekers. Although not designed as a solidarity tool, the full potential of this Regulation is not being used, as Member States are not fully implementing the hierarchy of criteria provided by Dublin III, including the clauses relating to family reunification, unaccompanied minors and the discretionary clauses³.

UNHCR is suggesting a proactive and efficient use of the enhanced articles 8-11 of the Dublin III Regulation for unaccompanied children and family members, and the dependency clause in article 16. In accordance with the EASO pilot projects on supported Dublin processing, EASO and Member States could provide experts and operational support to facilitate the processing of Dublin “take-charge” requests, including the determination of the Member State responsible for the application.

UNHCR is also proposing the proactive and flexible use of the discretionary clauses, in particular article 17 (2) of the Dublin III Regulation. Article 17 (2) provides for the possibility for the Member State in which the application for international protection is made to “request another Member State to take charge of an applicant in order to bring together any family relations on humanitarian grounds based in particular on family or cultural considerations, even where that Member State is not responsible [...]”.

¹ See Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:EN:PDF>

² See Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>

³ See articles 7-11 and articles 16-17.

Member States could utilize this provision to agree on a pilot arrangement that could include providing applicants with visas by the agreed Member State to enter and apply for international protection there in cases where their application for international protection is considered as “manifestly founded” or “likely to be well-founded,” such as applicants from the Syrian Arab Republic or other country with comparably high protection rate. In this context, Member States could also consider offering or pledging to admit a certain number of asylum-seekers under article 17.

Fast and correct processing of Dublin III cases, as described above, would represent an incentive for asylum-seekers to cooperate in identification procedures and could prevent them from resorting to irregular means to reunite with family members and communities in other Member States. This would help reduce trafficking. It would also be a more concrete demonstration of solidarity towards countries that are facing particular pressures.

UNHCR’s observations in the field suggest that if Dublin III is not used this way, it is mainly due to operational constraints. The “Dublin Units” in a number of Member States face serious capacity issues and tend to focus on “take back” requests. They are poorly equipped and ill-trained to examine whether the situation of some asylum-seekers could fall under the family reunification or discretionary clauses. The European Commission, particularly through EASO, could provide timely and much needed support to immediately strengthen these units with the consent of these states and in addition to, or within, existing support plans, so that they are able to play the roles that were entrusted to them.

UNHCR takes note of the scheduled review of the functioning of the Dublin Regulation in 2016, which is a timely exercise.

2.3 Pilot relocation programme for Syrian refugees and beneficiaries of subsidiary protection

EASO support plans show the need for some targeted, ad hoc and time-limited support to countries like Greece and Italy. Using the letter and spirit of articles 33 and 36 of the Dublin Regulation, UNHCR considers that it would be timely to establish a pilot relocation programme, initially targeting Syrians rescued at sea and disembarked in Greece and Italy. Syrians constituted 32% of the sea arrivals in the EU in 2014 (69,000 persons), very few of whom applied for asylum in Italy and Greece

Some 200,000 Syrians have now arrived in Europe since the beginning of the conflict. Although it may not be described as a mass influx in the sense of the Temporary Protection Directive (TPD)⁴, practical cooperation measures are needed to promote a balance of efforts among States of disembarkation, States of main destinations and other Member States. The current dispersion of Syrian refugees in the European Union is seriously imbalanced, with Germany and Sweden hosting more than half.

⁴ See Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0055&from=en>

UNHCR firmly believes that if the TPD cannot be activated for Syrian refugees, there must a way to promote cooperation, solidarity and responsibility-sharing among Member States. Reference may be made in this respect to the spirit of articles 24 to 26 of the TPD, which refer to “community solidarity” and the transfer of beneficiaries to other Member States in relation to available capacity.

EASO engagement in support plans in Greece and Italy will provide a certification of the quality of the asylum adjudication in these countries for Syrian asylum-seekers, which will enable other Member States to engage in such a pilot project, while avoiding some aspects of the debate on mutual recognition, on which no consensus exists today. It is urgent to establish such a pilot project, based on the voluntary participation of Member States. It should be accompanied by emergency support measures for the participating countries.

UNHCR believes that such a programme to be managed by EASO, in accordance with article 5 of the Regulation establishing EASO⁵, and in consultation with Italy, Greece and UNHCR will bring about a concrete, practical and predictable measure of solidarity among some Member States and that it will re-build trust among them in implementing the EU asylum acquis. It will also encourage Syrians to apply for asylum in Greece and Italy. Furthermore, it will address the security constraints of several Member States and will contribute to the reduction of trafficking and exploitation linked to the current onward movements within the EU.

This pilot project would be time-limited and based on the positive and negative lessons learned from the implementation of the EUREMA projects in Malta. Within the limits of UNHCR’s current budgetary constraints, UNHCR stands ready to assist in the design and initial implementation of such a pilot project.

3. External solidarity

3.1 Support to the development of asylum systems in countries outside the European Union

UNHCR values the support that the European Union has been providing through a range of initiatives, such as the recently launched Regional Development and Protection Programmes (RDPPs) to increase protection space and develop viable and functioning asylum systems, while at the same time supporting refugee host communities. The Office is prepared to assist the European Union in fine-tuning the goals and implementation modalities of these initiatives to ensure that they are truly complementary to the efforts that are taking place in these countries by the concerned authorities in close coordination with other international and regional organizations, including UNHCR. By virtue of its mandate, expertise, presence in and knowledge of the situation on the ground, as well as previous experience with similar programmes

⁵ see footnote 1 above

that the European Union has implemented, UNHCR will remain a reliable partner in these efforts.

3.2 Processing and solutions support

UNHCR has been informally approached by a number of EU Member States inquiring as to whether it would be ready to participate in arrangements that may be set up in some transit and first asylum countries in Africa and the Middle East to assess the claims of third country nationals for international protection *in situ*. This in itself is not a new concept, as refugees in many regions are already being processed upon arrival by the host country or by UNHCR. Under certain circumstances, such processing could be envisaged through a multilateral cooperative arrangement.

Processing, to determine who is in need of international protection and who is not, needs to be complemented by programmes aimed at differentiated solutions. UNHCR would welcome EASO involvement in providing practical and operational support to possible processing arrangements. For such discussions to move ahead, and in line with Austria's "save lives" proposal, it will be crucial for the European Union to give a clear sign of its commitment to find solutions for the majority of persons granted international protection within such modalities, including resettlement to EU Member States.

For those in need of international protection, UNHCR is also ready to explore conditions under which the Office, Member States and EU institutions could support the processing of more refugees for resettlement and for other forms of admission to EU Member States, from a designated pilot place in North or East Africa, following consultations with concerned asylum countries.

As the Justice and Home Affairs Council recognized in its Conclusions of 10 October 2014⁶, EU Member States should expand their resettlement programmes to "credible" numbers that can make a difference in any refugee context, both for the country of asylum that is hosting large numbers, as well as for the individuals who are thinking of embarking on dangerous journeys, thereby offering real alternatives.

In line with this Conclusion, UNHCR renews its call to European countries to make larger commitments to receive refugees through sustainable and strategic use of resettlement programmes, while endorsing the campaign led by five non-governmental organizations (NGOs) and the International Organization for Migration (IOM) for Europe to provide 20,000 resettlement places per year by 2020⁷.

UNHCR also continues to urge European States to intensify their efforts to increase opportunities for other forms of admission, in parallel with resettlement, so that people in need of international protection can reach safety in Europe without having to resort to smugglers and dangerous irregular movements. Such programmes could include

⁶ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/145053.pdf

⁷ <http://www.resettlement.eu/page/resettlement-saves-lives-2020-campaign>

humanitarian visa schemes, extended family reunification, private sponsorship programmes, as well as study and labour migration schemes.

In parallel, the current family reunification procedures need to be streamlined, and access to them needs to be ensured along the migratory routes currently being used. Several recent studies⁸ by European NGOs point to serious deficiencies which should be remedied to guarantee the enjoyment of this right under the EU asylum acquis and to provide a legal alternative to irregular and dangerous onward movements.

UNHCR reiterates its hope that the EU Horn of Africa Migration Route Initiative will complement efforts already taking place in various countries and under the auspices of the African Union, and that it will prove to be a meaningful opportunity for European States and countries in North and East Africa to collaborate on issues of common concern, including combatting people smuggling and trafficking in human beings and managing mixed migration flows.

For those not in need of international protection and not entitled to other forms of stay in third countries, access to programmes which facilitate their return to their countries of origin must be effective and easily available.

4. Integration

Today, as anti-foreigner rhetoric is widespread in Europe and is threatening the protection environment established by the European asylum acquis, collective efforts are needed to highlight the positive contributions that refugees and their families make to the societies in which they live. It is equally important that the integration of these persons, including those who have come to Europe through resettlement programmes, remains high on the agenda of the European Union, its institutions and Member States. All efforts should be made to ensure that solid national integration support programmes are developed, and that they receive the adequate resources and support they need. Homelessness and destitution among refugee communities is visible in some Member States, fuelling anti-foreigner sentiments. This situation gives the impression to the public that the asylum system is not properly managed.

5. Return of persons not in need of international protection

In UNHCR's view, there is no functioning asylum system without support and confidence from the public. The Office does not object to the return of people found not to be in need of international protection to countries of origin or to third countries where readmission agreements exist, as long as such returns are carried out in a safe and orderly manner; that they are in full compliance with the international and European human rights obligations of EU Member States; and that situations in which affected migrants may become stranded are avoided. Some Member States under

⁸ See for example Disrupted Flight: the realities of separated refugee families in the EU, November 2014 <http://ecre.org/component/downloads/downloads/958.html>

migratory pressures do not have functioning return policies and programmes, which undermines the implementation of the Common European Asylum System (CEAS) and trust among Member States.

It is, therefore, important that the European Commission and Member States assist those EU countries under migratory pressure (i.e. the current States benefiting from the EASO support plan) to put in place effective and humane return policies, building on the existing good practices of some EU States which have sound assisted voluntary return programmes. The operational capacity of Frontex to coordinate joint returns, the good practice and cooperation of some Member States vis-à-vis some countries of origin, and the existing expertise of IOM in this domain can also be built upon.

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